

An Annexure to Submission to the 3rd Cycle of Universal Periodic Review of Indonesia by the Asian Legal Resource Centre (ALRC) and the Asia Pacific Mission for Migrants (APMM)

ASIA PACIFIC: Action required to protect the human rights of Indonesian migrant workers in the Asia Pacific and Middle East and across the globe

1. The Asia Pacific Mission for Migrants (APMM) and the Asian Legal Resource Centre (ALRC) would like to draw the attention of the Human Rights Council to the increasing trends of abuse, exploitation, deceit, government neglect, and other forms of human rights violations against Indonesian migrant workers in the Asia Pacific region. This is still continually being ignored, if not tolerated and worsened by the Indonesian government, because of policies that put migrants in a more vulnerable situation.

Background

2. There are approximately 6 million Indonesian migrant workers in major destination countries in the Asia Pacific and Middle East region, such as Bahrain, Jordan, Malaysia, Singapore, Hong Kong, and Saudi Arabia. About 75% of these Indonesian migrant workers are female and are working as foreign domestic workers. In 2014, according to World Bank data, the Indonesian government received a record high \$8.55 billion of remittance from Indonesian migrants working in various destination countries.

3. The Indonesian government is signatory to various international conventions pertaining to civil and political rights, human rights, and rights of migrant and their families, such as the International Convention on Civil and Political Rights (ICCPR), Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and International Convention on the Protection of All Migrant Workers and Members of their Families. The APMM and ALRC commends the Indonesian government for being party to these international instruments that aim to protect the human rights of Indonesians, specifically the migrants. Being signatory to these international conventions implies various mechanisms and social services to fully protect and provide for Indonesian migrant workers and uphold their human rights and dignity.

4. APMM and ALRC are concerned with the current condition of Indonesian migrant workers in the region. Currently, many of them are victims of illegal recruitment, state exaction, exorbitant fees, human trafficking, abuse (physical and sexual), exploitation, trumped-up charges, government neglect, and other forms of human rights violations. And, this is not to mention the psychological trauma and social stigma that their families suffer in the home country when their loved ones become victim to human rights violations while working abroad.

Made worse by the Indonesian government

5. In 2011, the Indonesian government, through the information management and immigration system (SIMKIM), implemented Law No. 6, which will computerize the data gathered through biometrics when Indonesians apply for a passport. The said biometrics is also applied to Indonesian migrants already working abroad and who are citizens abroad. SIMKIM is connected with Overseas Workers Computerization System (SISKO-KLN), Population Administration System (SIAM) based ID Number (NIK), and Indonesian Representative Overseas: KDEI Taiwan, KJRI Hong Kong, KBRI Abu Dhabi, KJRI Dubai, KBRI Kuwait, and Brunei Darusalam. As a result of SIMKIM connections with national government agencies, and with its integrated system connected to Indonesian embassies / consulates abroad, SIMKIM can detect discrepancies in passport data that do not match the demographic data in Indonesia and Indonesian migrant workers abroad.

6. The Indonesian government, through the Indonesian Consulate and Indonesian Immigration, enforces data of all Indonesian citizens in Hong Kong to be based on official data recorded in Indonesia. This is despite many Indonesian migrant workers in Hong Kong being victim to recruitment agencies that falsify their identities during the application process, such as name and date of birth, to speed up the process of employment.

7. The Law implemented in 2011 lacks the avenue of public consultations with Indonesians, specifically with Indonesian migrant workers through their respective embassies / consulates. The Law has no clear mechanisms on how to correct the so-called biometrics data that appears in passport, or the data that is in any travel documents being used by Indonesian migrants, without putting the workers in jeopardy. Based on the experience of more than 150,200 International Domestic Workers (IDWs) in Hong Kong, the said law, which is lacking in clear mechanisms, such as protection of migrants applying for new passport or travel documents, has caused confusion and restlessness. Worse, the Indonesian migrants are themselves being accused of falsification of public documents, and are being arrested and deported, and are eventually losing their jobs and the opportunity to work again in Hong Kong.

8. The case of Sunarmi Darso Nardi is noteworthy. The Hong Kong Immigration and Police arrested Sunarmi Darso Nardi on 25 November 2015. She was charged with falsification of public documents, because her date of birth (3 May 1978) in her previously used passports differed from what is written in her new passport (3 May 1979). The Indonesian Consulate in Causeway Bay, Hong Kong, corrected her information when she applied for a new passport. Sunarmi got her original passport from her travel agency an hour before her flight to Hong Kong on 4 October 2003. During that short time, she did not check the details on her passport. All she wanted was to work in Hong Kong to help her family that is victimized by poverty. Based on the experiences of IDWs in Hong Kong, altering of the age of the applicant is common practice for recruitment agencies in Indonesia, something the Indonesian government readily allows.

9. In August 2016, the Coalition of Service Providers for Ethnic Minorities (CSPEM-HK) requested a meeting with the Immigration officer of the Indonesian Consulate to raise their concerns on Law no. 6, as there were a number of cases already where Indonesian migrants were charged and convicted. However, in the case of Sunarmi, the Indonesian Consulate officials advised her again, just as it does to other migrant workers charged with falsification of public documents, to admit her fault and provide all the details to the HK Immigration Department.

10. The Indonesian government, through its Consulate in Hong Kong, did not provide Sunarmi with the necessary legal assistance so that she could defend herself in court. Migrant serving institutions and Indonesian migrant organizations advised Sunarmi to apply for a Duty Lawyer to represent her during the hearing. The charges against Surnami were dropped, because of her persistent refrain that it was the Recruitment Agency's fault. The Indonesian government allows for these kinds of malpractices to be done by recruitment agencies, which puts Indonesian migrants at risk. Sunarmi insisted that during her application to the said recruitment agency she gave a copy of her Indonesian ID and a birth certificate containing the real date of her birth, i.e. 3 May 1979.

11. Sunarmi pleaded not guilty thrice during the course of the trial. She sought the help of migrant organizations and migrant serving institutions. Sunarmi's case is a concrete example of government neglect. Indonesian government violated the International Convention on the Protection of the Rights of All Migrant Workers and their Families, particularly Article 7, Section 6, which states that "*Whenever a migrant worker is deprived of his or her liberty, the competent authorities of the State concerned shall pay attention to the problems that may be posed for members of his or her family, in particular for spouses and minor children.*"

12. Indonesian government has also violated Article 23 of the same Convention, which states that *“Migrant workers and members of their families shall have the right to have recourse to the protection and assistance of the consular or diplomatic authorities of their State of origin or of a State representing the interests of that State whenever the rights recognized in the present Convention are impaired. In particular, in case of expulsion, the person concerned shall be informed of this right without delay and the authorities of the expelling State shall facilitate the exercise of such right.”*

13. The Indonesian government’s inaction on the illegal acts of recruitment agencies, i.e. altering Surnami’s data and the date of other such migrants, has placed the migrants in a more vulnerable situation. This is a violation of Article 37: *“Before their departure, or at the latest at the time of their admission to the State of employment, migrant workers and members of their families shall have the right to be fully informed by the State of origin or the State of employment, as appropriate, of all conditions applicable to their admission and particularly those concerning their stay and the remunerated activities in which they may engage as well as of the requirements they must satisfy in the State of employment and the authority to which they must address themselves for any modification of those conditions.”*

14. The Network of Indonesian Migrant Workers in Hong Kong (JBMI) documented cases similar to that of Sunarmi. The victims who were charged with falsification of documents, as per Law no. 6 being forcefully implemented by the Indonesian government on their nationals in Hong Kong, admitted guilt upon being advised to do so by their Consular Office in Hong Kong. Such a policy and advice has led to the imprisonment of around 14 Indonesian migrant workers, with three persons being given suspended sentence, and only one being acquitted (Surnami) by the Hong Kong Magistracy Court. They have been charged with giving false information by the Hong Kong government, and this is because of Indonesian government’s lack of protection for migrant workers. As a result, these migrants have lost their jobs, and they have been arrested, detained, and deported back to Indonesia. Due to the conviction, they already have a criminal record in Hong Kong, and so they lose the opportunity to return and work in Hong Kong.

15. Moreover, Indonesian government through its Consular Office in Hong Kong, put every IDW in a more vulnerable situation. The advice to just accept that the migrants are at fault is a clear disregard of the right of every IDW against self-incrimination.

16. Apart from enforcing Law no. 6 on Indonesian migrant workers, such migrant workers are charged a huge amount of money, ranging from HKD \$12,000 to HKD \$15,000, by recruitment agencies, for a job in Hong Kong. The workers often pay around \$2,500 per month, in 5 to 6 installments; this is equivalent to 6 months of their salary. Upon arrival in HK, the newly arrived migrant workers are brought to money lending agencies to file for a loan. The money lending agencies release the money and give it directly to the recruitment agencies. The recruitment agencies make it appear that it is a personal loan, in order to justify the loan. The loan is re-paid through 7-11 or OK shops. The Indonesian government legalizes the placement fee paid to recruitment agencies. Such a money-racketeering scheme of recruitment agencies and money lending agencies, as approved by Indonesian government, puts migrant workers in debt bondage.

Actions and Recommendations

17. The Indonesian government needs to review Law no. 6, which seeks to computerize the passport applications and travel documents of its nationals working abroad. The government should implement clear mechanisms that will address the discrepancy of data previously held by Indonesian migrant workers, to avoid the unnecessary filing of criminal charges against IDWs working abroad.

18. The government needs to strengthen support and services offered by consular offices to Indonesian migrant workers, not only in Hong Kong but also in many destination countries in the Asia Pacific and

Middle East region. Specifically, the government needs to provide the necessary legal support and protection to IDWs facing criminal charges in destination countries.

19. The government should investigate and prosecute recruitment agencies that violate the human rights of IDWs and commit various illegal actions and schemes that further put the migrants in a more vulnerable situation while they are working abroad. Stricter rules, regulations, and policies need to be implemented to ensure recruitment agencies cannot take advantage of the vulnerability of migrants, whose only objective is to help their family survive abject poverty.

###