

# **INDONESIA**

## **SUBMISSION TO THE UNITED NATIONS COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS**

52<sup>nd</sup> Pre-sessional working group  
2 to 6 December 2013

**AMNESTY  
INTERNATIONAL**



Amnesty International Publications

First published in 2013 by  
Amnesty International Publications  
International Secretariat  
Peter Benenson House  
1 Easton Street  
London WC1X 0DW  
United Kingdom  
[www.amnesty.org](http://www.amnesty.org)

© Amnesty International Publications 2013

Index: ASA 21/034/2013  
Original Language: English  
Printed by Amnesty International, International Secretariat, United Kingdom

All rights reserved. This publication is copyright, but may be reproduced by any method without fee for advocacy, campaigning and teaching purposes, but not for resale. The copyright holders request that all such use be registered with them for impact assessment purposes. For copying in any other circumstances, or for reuse in other publications, or for translation or adaptation, prior written permission must be obtained from the publishers, and a fee may be payable. To request permission, or for any other inquiries, please contact [copyright@amnesty.org](mailto:copyright@amnesty.org)

Amnesty International is a global movement of more than 3 million supporters, members and activists in more than 150 countries and territories who campaign to end grave abuses of human rights.

Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards.

We are independent of any government, political ideology, economic interest or religion and are funded mainly by our membership and public donations.

**AMNESTY  
INTERNATIONAL**



# CONTENTS

|   |    |
|---|----|
| Introduction .....  | 4  |
| 1. Sexual and reproductive health and rights (Articles 2, 3, 12 and 13) ..... | 4  |
| 1.1 Barriers to sexual and reproductive health and rights.....                | 5  |
| 1.2 Unsafe abortion and the threat of criminalization .....                   | 9  |
| 1.3 Female genital mutilation.....  | 11 |
| 2. Domestic Workers (Articles 3, 6, 7, 10, 11, 12 and 13).....                | 14 |
| 2.1 Domestic workers in Indonesia.....  | 14 |
| 2.2 Migrant Domestic workers .....  | 19 |
| 3. Religious Minority Groups (Articles 2, 6, 11, 12 and 13).....              | 22 |

# INTRODUCTION

Amnesty International submits the following information to the United Nations (UN) Committee on Economic, Social and Cultural Rights (the Committee) in advance of its 52<sup>nd</sup> pre-sessional meeting, at which it will prepare for the review of Indonesia's initial report on implementation of the International Covenant on Economic, Social and Cultural Rights (the Covenant).<sup>1</sup>

The briefing draws on Amnesty International's ongoing research on Indonesia, which involves regular contact with local and international non-governmental organizations (NGOs), victims and their families, lawyers, government officials and other individuals. It highlights concerns around barriers to sexual and reproductive health rights; domestic workers in Indonesia; migrant domestic workers; and religious minority groups. It is important to note that the concerns listed here are not exhaustive.

## 1. SEXUAL AND REPRODUCTIVE HEALTH AND RIGHTS (ARTICLES 2, 3, 12 AND 13)

In its General Comment 14, the Committee has stated that states parties to the Covenant should “refrain from limiting access to contraceptives and other means of maintaining sexual and reproductive health, from censoring, withholding or intentionally misrepresenting health-related information, including sexual education and information”.<sup>2</sup> Furthermore, the Committee has stated that states must “take measures to protect all vulnerable or marginalized groups of society, in particular women, children, adolescents and older persons, in the light of gender-based expressions of violence” and “should also ensure that third parties do not limit people's access to health-related information and services”.<sup>3</sup> However, Amnesty International's research has found that women and girls across Indonesia continue to face serious obstacles in law, policy and practice, to fulfilling their sexual and reproductive rights, barriers which are rooted in gender discrimination. These barriers constitute violations of Indonesia's international human rights obligations to respect, protect and fulfil women's and girls' right to health, in particular sexual and reproductive health.<sup>4</sup>

---

<sup>1</sup> Initial reports submitted by states parties under articles 16 and 17 of the Covenant: Indonesia (UN Doc: E/C.12/IDN/1), 29 October 2012.

<sup>2</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 14: The right to the highest attainable standard of health (UN Doc: E/C.12/2000/4), 11 August 2000, para 34.

<sup>3</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 14: The right to the highest attainable standard of health (UN Doc: E/C.12/2000/4), 11 August 2000, para 35.

<sup>4</sup> See generally Amnesty International, *Left without a choice: Barriers to reproductive health in Indonesia* (Index: ASA 21/013/2010 (Amnesty International, *Left without a choice*)).

The failure to ensure that women and girls can realize their sexual and reproductive rights free from discrimination, coercion and the threat of criminalization is undermining Indonesia's ability to achieve the UN Millennium Development Goals (MDGs), and in particular MDG 3 on gender equality and MDG 5 on improving maternal health.

## 1.1 BARRIERS TO SEXUAL AND REPRODUCTIVE HEALTH AND RIGHTS

### **Discrimination against unmarried women and girls**

Both the Population and Family Development Law (No. 52/2009) and the Health Law (No. 36/2009) provide that access to sexual and reproductive health services may only be given to legally married couples, thus excluding all unmarried people from these services. Government midwives and doctors interviewed by Amnesty International in March 2010 confirmed that they normally do not provide reproductive health services, including contraception and family planning, to unmarried women and girls.<sup>5</sup> The Indonesian Planned Parenthood Association (IPPA) and The Sexual Rights Initiative also report that "young people aged 10-24, especially those who are unmarried, do not receive sufficient information and education on sexual and reproductive health and rights".<sup>6</sup>

District health officers and other government officials told Amnesty International in March 2010 that contraception and family planning services are intended solely for married people in accordance with laws and policies.

The Indonesian government has denied that the 2009 Health Law restricts access to services for unmarried women, stating: "Law on Health of 2009 is part of the Government's effort to fulfil the reproductive right and health of married couple, as clearly stipulated on Article 72. This Law has never been directed to prevent unmarried women from accessing any information and service on family planning and the same article (72d) also specifies that everyone has the right to receive proper information, education and counselling on reproductive health. Various information, including on contraception, is accessible through public campaigns conducted by the government or any public discourses. This is one of the efforts to fulfil the rights to reproductive health for teenagers or unmarried couples."<sup>7</sup> It remains unclear how such campaigns are reaching those from poor and marginalized communities.

---

<sup>5</sup> See Amnesty International, *Left without a choice*, Supra No4, pp24-26.

<sup>6</sup> See Submission on Young People's Sexual and Reproductive Rights in Indonesia, 13th Session of the Universal Periodic Review – Indonesia- June 2012, Joint Submission by The Indonesian Planned Parenthood Association (IPPA) and The Sexual Rights Initiative, para 8.

<sup>7</sup> List of issues and questions with regard to the consideration of periodic reports: Indonesia, Addendum Responses of Indonesia to the list of issues to be taken up in connection with the consideration of its combined sixth and seventh periodic reports (CEDAW/C/IDN/6-7), (UN Doc: CEDAW/C/IDN/Q/6-7/Add.1), 18 January 2012, para 81.

The current barriers in accessing full reproductive health services leave unmarried women and girls at risk of unwanted pregnancies, sexually transmitted diseases, and human rights abuses. For example, unmarried adolescents who become pregnant are often forced to stop schooling. Instead of risking rejection by the wider community, some women and girls may decide – or be forced – to marry when they become pregnant, or else to seek an unsafe abortion which puts them at risk of serious health problems and maternal mortality.<sup>8</sup>

For unmarried women and girls who want to continue pregnancy, it remains unclear how they can access reproductive health services during pregnancy and at the time of the birth, without getting married first.<sup>9</sup> Amnesty International's research has confirmed that the fear of stigmatization can discourage pregnant unmarried women and girls, especially if they are from poor and marginalized communities, from seeking antenatal and postnatal services.

Unmarried women and girls who are rape victims may also not receive access to reproductive health services, either because they do not know they are entitled to these services or due to the fear of stigmatization.<sup>10</sup>

Unmarried girls who become pregnant face the threat of expulsion from school or discriminatory treatment. From September to November 2010, there were moves to introduce virginity testing as part of female students' eligibility to study,<sup>11</sup> and more recently there were some attempts to restrict the ability for some pregnant students from taking national exams in East Java and East Nusa Tenggara.<sup>12</sup> This would have a significant impact not only on girls' right to education, but also their future employment opportunities. Such tests and exclusions are intrusive and degrading, and furthermore, are plainly discriminatory, as nowhere are men and boys subjected to any equivalent form of "moral" testing.

---

<sup>8</sup> See Amnesty International, *Left without a choice*, Supra No4, p25.

<sup>9</sup> See Amnesty International, *Left without a choice*, Supra No4, p25.

<sup>10</sup> See for example the case of Aida, in Amnesty International, *Left without a choice*, Supra No4, p25.

<sup>11</sup> *The Jakarta Globe*, "Students at Indonesian Vocational School Forced to Take Pregnancy Tests", 11 November 2010, available at: <http://www.thejakartaglobe.com/home/students-at-indonesian-vocational-school-forced-to-take-pregnancy-tests/406004>, accessed 26 September 2013; *The Jakarta Post*, "Councilors mull virginity as criteria for enrolment", 22 September 2010, available at: <http://www.thejakartapost.com/news/2010/09/22/councilors-mull-virginity-criteria-enrollment.html>, accessed 26 September 2013; and *Antara* "Virginity test proposal in Jambi opposed by various parties", 27 September 2010, available at: <http://www.antaranews.com/en/news/1285599822/virginity-test-proposal-in-jambi-opposed-by-various-parties>, accessed 26 September 2013. See also *Agence France-Presse*, "Indonesia Rejects Proposal to Subject Girls to Virginity Tests", 28 September 2010.

<sup>12</sup> *The Jakarta Globe*, "Pregnant Student Exam 'Ban' Provokes Outrage", 14 April 2012, available at: <http://www.thejakartaglobe.com/education/pregnant-student-exam-ban-provokes-outrage/511288>, accessed 26 September 2013. See also *The Jakarta Post*, "NTT high schools keep pregnant students away from national exam", 17 April 2012, available at: <http://www.thejakartapost.com/news/2012/04/17/ntt-high-schools-keep-pregnant-pupils-away-national-exam.html>, accessed 26 September 2013.

### **Restrictions on married women and girls' reproductive choices**

There are significant restrictions on married women's and girls' access to family planning services in law. This is in part due to the requirement for the husband's consent: in the Population and Family Development Law, decisions about family planning should be taken jointly between married couples.<sup>13</sup> Interviews with health workers in March 2010 confirmed that the husband's consent was necessary to access some methods of contraception (for example, Intrauterine Device, IUD).

Beyond the interpretation of the Population and Family Development Law which requires the husband's consent, Amnesty International's research in 2010 also found that health workers often restricted access to contraceptives for married women and girls if they had not yet had children. Amnesty International's interviews with health workers suggest that they fear that they would be blamed if a woman was not going to have children after having been given a contraceptive method. A midwife interviewed in Aceh explained that although she did not think contraception devices could cause infertility, she preferred not to provide childless married women with access to modern contraception methods because she did not want to challenge the cultural beliefs commonly held by the local community and be held accountable for subsequent childlessness.

### **Restrictions on access to information on sexuality and reproduction**

Indonesia's Criminal Code (*Kitab Undang-Undang Hukum Pidana*, KUHP) contains legal provisions which criminalize supplying information to people relating to the prevention and interruption of pregnancy (see Articles 534, 535 and also 283).<sup>14</sup> Punishments range between two and nine months' imprisonment. Furthermore, Article 299 of the Criminal Code provides for up to four years' imprisonment for any person who gives treatment to a woman which contributes to the termination of her pregnancy or which makes her believe that it is intended to induce termination of pregnancy (this could be applied to, for example, emergency contraception).

---

<sup>13</sup> It was already the case in the former Population Law (No. 10/1992). The explanatory comments of Article 19 stated that the husband and wife have a common responsibility to negotiate an agreement about timing and spacing of children and the choices they will make.

<sup>14</sup> Article 534 states that "[a]ny person who either openly exhibits means for preventing pregnancy, or without being requested offers, by disseminating in writing, shows where such means or services for the prevention of pregnancy are available, shall be punished by a maximum light imprisonment of two months". Article 535 states that "[a]ny person who either openly exhibits means for the termination (*menggugurkan*) of pregnancy, or openly or without being requested offers or shows where such means or services for the disturbance of pregnancy are available, shall be punished by a maximum light imprisonment of three months". Article 283 states that any person who offers, hands over permanently or temporarily shows to a minor who he knows or reasonably suspects not yet to have reached the age of seventeen years, either a piece of writing, a portrait or an article offending against decency, or a means to prevent or to terminate (*mencegah atau menggugurkan*) pregnancy, shall be sentenced to a maximum of 9 months' imprisonment.

Although Amnesty International is not aware of individuals being sentenced to terms of imprisonment for having violated these legal provisions, the fact that they remain part of Indonesian law has a chilling effect on information providers. The draft revised Criminal Code, which was submitted to Parliament for consideration in December 2012, provides for a fine of up to Rp 6 million (US\$530) for anyone who publicly demonstrates a device to prevent pregnancy, publicly or when unsolicited, or shows how to obtain a device to prevent pregnancy, publicly or by publishing writings that are unsolicited.<sup>15</sup>

Some sexual and reproductive rights activists have expressed concerns about the Pornography Law (No. 44/2008), which they fear could prevent them from disseminating information on sex education free from the threat of criminalization. The law defines pornography broadly. It encompasses material that “contravenes norms of community morality”, and provides for punishment of between four and 15 years of imprisonment for those who produce, disseminate, fund or use such material.<sup>16</sup>

**Amnesty International considers that the Indonesian authorities should:**

- Review and amend the Population and Family Development Law and the Health Law to bring them in line with international human rights law and standards. In particular legal provisions which discriminate on the grounds of marital status should be amended;
- Repeal provisions in the Criminal Code criminalizing the dissemination of information on the prevention of pregnancy and revise the Pornography Law (No. 44/2008) to ensure that it is fully consistent with international law and standards;
- Publicly support the work of human rights activists, who are promoting and providing sexual and reproductive health information and services (for example contraceptives) and ensure that they are able to do their work free from the threat of criminalization;
- Ensure that a comprehensive reproductive health education programme is included in the national school curriculum. Materials should be developed in a way so that adolescents, regardless of their level of education or marital status, can fully access information on the prevention of unwanted early pregnancies and sexually transmitted diseases, including HIV/AIDs. Materials should be developed in a way which is non-discriminatory and which do not reinforce the stereotyping of women’s and men’s roles;
- Take measures to ensure that state officials, health workers and other service providers provide women and girls, regardless of their marital status, age-appropriate information and

---

<sup>15</sup> Draft Bill No. R-88/Pres/12/2012, on file with Amnesty International, Article 480. Although the penalty can be substituted for community service of between one month and one year, the draft Code also provides for imprisonment of up to one year for non-payment of the fine.

<sup>16</sup> The Pornography Law (No. 44/2008) defines pornography as “picture, sketch, illustration, photo, writings, vocalizations, sounds, moving picture, animations, cartoon, conversation, body movements or other form of messages that are communicated or transmitted via media communications and/or public shows that is indecent or sexually exploitative or contravenes norms of community morality”.



services on reproductive health programmes. Monitoring mechanisms should be in place to ensure that reproductive health programmes are implemented free from discrimination;

- Ensure that students who are pregnant are not dismissed from school and that no education facilities discriminate against women and girls, including by ensuring that they do not set any criteria, such as pregnancy, that could result in women and girls being barred from education and further, put in place that appropriate support measures to ensure that pregnant women and girls continue to receive an adequate level of education; and
- Ensure that all degrading and discriminatory procedures such as virginity testing are prohibited.

## 1.2 UNSAFE ABORTION AND THE THREAT OF CRIMINALIZATION

Abortion is criminalized in most cases in Indonesia. A woman or girl seeking an abortion, or a health worker providing one, may be sentenced to up to four or 10 years' imprisonment respectively. As a result of this law, abortions in Indonesia are often performed clandestinely in unsafe conditions. According to official government figures, unsafe abortions account for between five and 11 per cent of maternal deaths in Indonesia.<sup>17</sup>

Under the new Health Law passed in 2009, there are only two exceptions under Indonesian Law in which a woman may legally seek and health workers perform an abortion: if the health of the mother or foetus is endangered or in the case of pregnancy resulting from rape. A woman who is pregnant as a result of rape, or a woman experiencing life-threatening complications as a result of pregnancy, has to meet several criteria to access abortion services.<sup>18</sup> Some of these criteria can be very difficult to meet in practice, especially for

---

<sup>17</sup> Official government figures vary. Recent figures indicate that abortion accounts for five per cent of maternal deaths in Indonesia, see Ministry of National Development Planning (BAPPENAS), *A roadmap to accelerate achievement of the MDGs in Indonesia*, 2010, p123. However, previous figures indicate that abortion accounts for 11 per cent of maternal deaths in the country, see National Development Planning Agency, *Report on the Achievement of Millennium Development Goals Indonesia 2007, 2007*, p52. According to Head of the Indonesian Planned Parenthood Association (PKBI), 2.5 million unsafe abortions occur in Indonesia every year. See *Suaramerdeka*, "Tiap Tahun Terjadi 2,5 Juta Aborsi", 30 September 2013, available at: <http://www.suaramerdeka.com/v1/index.php/read/cetak/2013/09/30/238430/Tiap-Tahun-Terjadi-25-Juta-Aborsi->, accessed 1 October 2013.

<sup>18</sup> Articles 75 and 76 of the Health Law provide that abortions can only be performed legally in these two cases in the following circumstances: (i) Following the intervention of a health adviser (*konseling dan/atau penasehatan*) before and after the medical intervention, who is competent and has the authority to do so; (ii) before the end of the six week period from the date of the first day of the woman's period, except in cases of medical emergencies; (iii) by a health worker who has the skills and a certificate delivered by the Minister of Health which acknowledges his/her authority; (iv) with the woman's consent; (v) with the permission of the husband, except for victims of rape; and (vi) Provided the services meet the requirements set out by the Minister of Health. Women must pass five selection criteria out of six to access abortion services.

women and girls who live in remote areas or who have limited access to health care services generally due to distance and/or other socio-economic and cultural factors.

To access legal abortion services in the event of pregnancies that are life-threatening for the woman or the foetus, the Health Law requires the consent of the husband (Article 76(d)). For married women and girls, this access criterion risks denying them access to health- and life-preserving medical care for reasons that are medically unjustifiable. Unmarried women and girls are denied access in a way that is clearly discriminatory.

Legal abortion provisions for rape victims are only permitted within the first six weeks of pregnancy.<sup>19</sup> This limited timeframe means that most rape victims may not be able to access safe abortion provisions within the required timeframe as they may not know they are pregnant by then. Furthermore, Indonesian law requires that there be two elements of proof of rape (for example testimony from the victim; the defendant; an expert etc) – which in reality can be very difficult for victims to demonstrate.<sup>20</sup>

Following the passage of the 2009 Health Law a government regulation was supposed to be issued to provide further guidelines for doctors and health workers on providing abortion services in the event of pregnancies that are life-threatening and for rape victims.<sup>21</sup> While Amnesty International is aware that the Indonesian authorities are working on the implementing regulation, it has yet to be issued, almost four years after the law was passed, leaving many doctors and health workers uncertain if they can provide these services.

**Amnesty International considers that the Indonesian authorities should:**

- Decriminalize abortion in all circumstances in order to combat the high number of clandestine unsafe abortions. In cases where women and girls have an unwanted pregnancy as a result of rape, or where a pregnancy poses a threat to the woman's life or health, ensure they have access to safe abortion services in practice;
- Revise the Health Law, and in particular:
  1. Repeal legal provisions pertaining to a husband's consent for any health intervention;
  2. Extend the time limit regarding access to legal abortion services for rape victims; and

---

<sup>19</sup> Article 76(a) of the 2009 Health Law.

<sup>20</sup> Deficiencies remain within criminal law in Indonesia in addressing the particular challenges of investigating offences which involve sexual violence. For example, the Criminal Procedure Code provides that a judge can only impose a criminal sentence on someone if s/he has two elements of proof. These can either be a testimony from the victim; the defendant; an expert; a letter; or a sign (Articles 183–184). The Domestic Violence Law also requires two elements of proof in cases of sexual violence (Articles 54 and 55).

<sup>21</sup> Article 74(2) (4) of the 2009 Health Law states that "Further regulations regarding the indication of medical emergencies and rape, as referred to in subsection (2) and subsection (3) will be governed by a Government Regulation".

3. Revise legal provisions in the Health Law to ensure that women who suffer from complications arising from an abortion have the explicit right to receive post-abortion care regardless of whether the abortion was legal or not.
  - Ensure that any woman who has a complication related to an abortion procedure receives timely emergency care;
  - Ensure that women and girls have access to information about legal abortion services; and
  - Health workers should provide age-appropriate information on legal safe abortion services regardless of their personal or religious convictions. Monitoring mechanisms should be in place to ensure health workers provide these services in practice.

### 1.3 FEMALE GENITAL MUTILATION

In November 2010 the Ministry of Health issued regulation No. 1636/MENKES/PER/XI/2010 concerning “female circumcision” (*sunat perempuan*).<sup>22</sup> The regulation legitimizes the practice of female genital mutilation and authorizes certain medical professionals, such as doctors, midwives and nurses, to perform it (Article 2). Article 1.1 defines this practice as “the act of scratching the skin covering the front of the clitoris, without hurting the clitoris”. The procedure includes “a scratch on the skin covering the front of clitoris (*frenulum clitoris*) using the head of a single use sterile needle” (Article 4.2 (g)). According to this regulation, the act of “female circumcision” can only be conducted with the request and consent of the person circumcised, parents, and/or guardians (Article 3.1).<sup>23</sup>

This regulation violates a number of Indonesian laws, including those which give effect to international human rights treaties ratified by the state<sup>24</sup> and runs counter to a 2006 government circular, No. HK.00.07.1.3. 1047a, signed by the Director General of Community Health, which specifically warned about the negative health effects of female genital mutilation.

A 2003 study conducted by the Population Council in Jakarta with the support from the Ministry for Women’s Empowerment concluded that “extensive medicalization of [female circumcision] has already occurred in some parts of the country and is underway in others”.<sup>25</sup>

---

<sup>22</sup> Minister of Health of the Republic of Indonesia Regulation Number 1636/MENKES/PER/XI/2010 on Female Circumcision, 15 November 2010, enacted in Jakarta on 28 December 2010.

<sup>23</sup> Commentary based on an unofficial translation, on file with Amnesty International.

<sup>24</sup> For example Presidential Decree No. 36/1990 concerning the ratification of the Convention on the Rights of the Child (CRC); Law No. 23/2002 on Child Protection; Law No. 7/1984 on the ratification of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); Law No. 5/1998 on the ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); Law No. 39/1999 on Human Rights; Law No. 23/2004 on the Elimination of Domestic Violence; and Law No. 23/2009 on Health.

<sup>25</sup> Population Council, *Female Circumcision in Indonesia: Extent, Implications and Possible Interventions*

This conclusion was supported by a 2009 Indonesia-wide survey on female genital mutilation, published by the Institute of Population and Gender Studies, Yarsi University, Jakarta, which found that “medicalization” of female genital mutilation “continues to this day without showing any tendency of a downward trend”.<sup>26</sup> The 2009 study, which examined the practice of female genital mutilation by health institutions (general hospitals, women and children’s hospitals, and maternity clinics) and health professional organizations, found that 18 per cent performed female genital mutilation.<sup>27</sup> The study found that, of the health institutions that perform “female circumcision”, 56 per cent said that the procedure was “symbolic” and did not remove any part of the genitalia and the remaining 44 per cent admitted to removing parts of the female genitalia.<sup>28</sup>

During research carried out in March 2010,<sup>29</sup> Amnesty International was told by many women and girls that they chose female genital mutilation for their own baby girl in recent years. The practice is generally undertaken by a traditional birth attendant within the first six weeks after the baby girl is born. The women said they had asked that their baby girl have female genital mutilation performed for religious reasons. Other reasons women cited ranged from wanting to ensure the girl’s “cleanliness” (the external female genitalia are considered dirty) and avoiding diseases; to perpetuating cultural or local practices; or seeking to regulate or suppress the girls’ urge towards “sexual activity” during adulthood. Some women described the procedure as being merely a “symbolic scratch”, while in other cases they explained that it consisted of cutting a small piece of the clitoris. Many women interviewed agreed that there would be some bleeding as a result.

Female genital mutilation has long been recognized as a human rights violation in consensus documents,<sup>30</sup> in general comments and recommendations from the treaty monitoring bodies,<sup>31</sup> other UN bodies,<sup>32</sup> and by human rights and health experts.<sup>33</sup> In its General

---

*to Uphold Women’s Health Rights*, Jakarta, September 2003, p39.

<sup>26</sup> Uddin, Prof Dr. Jurnalís et al, *Female Circumcision: A Social, Cultural, Health and Religious Perspective*, Institute of Population and Gender Studies, Yarsi University, Jakarta (Jakarta: Yarsi University Press, 2010), (Uddin et al, 2010), p162.

<sup>27</sup> Uddin et al, 2010, Supra No28, pp3-4.

<sup>28</sup> Uddin et al, 2010, Supra No28, pp8-10.

<sup>29</sup> Amnesty International, *Left without a choice*, Supra No4.

<sup>30</sup> United Nations Fourth World Conference on Women, Platform for Action, September 1995; National Council of Childhood and Motherhood, “Cairo Declaration for the Elimination of FGM,” June 23, 2002; UN General Assembly, “Traditional or Customary Practices Affecting the Health of Women and Girls,” Resolution 56/128, 19 December 2001, A/RES/56/128; UN Commission on the Status of Women, Ending Female Genital Mutilation, UN Doc. E/CN.6/2008/L.2/Rev. 1.

<sup>31</sup> UN Committee on the Rights of the Child, General Comment No. 4, Adolescent Health and Development in the Context of the Convention of the Rights of the Child, 2003; and the UN Committee on the Elimination of Discrimination against Women, General Recommendation No. 14 on Female circumcision, 1990; and General Recommendation 24 on Women’s Health, 1999; UN Committee on Economic, Social and Cultural Rights, General Comment No. 14, The Right to the Highest Attainable

Comment 14, the Committee states that States have an obligation to “adopt effective and appropriate measures to abolish harmful traditional practices affecting the health of children, particularly girls”, including female genital mutilation.<sup>34</sup> The Committee has further stated that States are obliged to “ensure that harmful social or traditional practices do not interfere with access to pre- and post-natal care and family-planning; to prevent third parties from coercing women to undergo traditional practices, e.g. female genital mutilation; and to take measures to protect all vulnerable or marginalized groups of society, in particular women, children, adolescents and older persons, in the light of gender-based expressions of violence.”<sup>35</sup> Medicalizing the practice raises further questions about medical ethics, and does little to mitigate the long-term health consequences for those who are affected.

The Committee on the Elimination of Discrimination against Women in 2012 and the Human Rights Committee in 2013 have both expressed concerns about the 2010 regulation on “female circumcision” and have recommended that it be immediately revoked and specific legislation be enacted prohibiting the practice.<sup>36</sup> However to date no steps have been taken to implement these recommendations. Indeed, in the context of the Universal Periodic Review of Indonesia in September 2012 the Indonesian government rejected a recommendation to repeal the regulation.<sup>37</sup> Further, the government defended the regulation stating “[t]he regulation of the Ministry of Health of November 2010 was issued to ensure a safe procedure, and by no means to encourage or promote the practice of female circumcision.”<sup>38</sup>

---

Standard of Health, 2000; UN Human Rights Committee General Comment No. 28, the Equality of Rights between men and women, 2000.

<sup>32</sup> UN General Assembly Resolution 67/146 Intensifying global efforts for the elimination of female genital mutilations, UN Doc. A/RES/67/146, 5 March 2013.

<sup>33</sup> UN Commission on Human Rights, “Report of the Special Rapporteur on violence against women, its causes and consequences,” E/CN.4/2002/83, January 31, 2002; International Federation of Gynecology and Obstetrics, “World Health Assembly for FGM Resolution,” January 20, 2009.

<sup>34</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 14: The right to the highest attainable standard of health (UN Doc: E/C.12/2000/4), 11 August 2000, para 22.

<sup>35</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 14: The right to the highest attainable standard of health (UN Doc: E/C.12/2000/4), 11 August 2000, para 35.

<sup>36</sup> See Concluding observations of the CEDAW: Indonesia, UN Doc. CEDAW/C/IDN/CO/6-7, 7 August 2012, paras 21-22 and the Human Rights Committee Concluding observations on the initial report of Indonesia (Advance Unedited Version), July 2013, para 12. In addition, the Committee against Torture had previously expressed concern about the practice of female genital mutilation in its concluding observations. See UN Doc. CAT/C/IDN/CO/2, 2 July 2008.

<sup>37</sup> See Addendum to the Report of the Working Group on the Universal Periodic Review: Indonesia (UN Doc: A/HRC/21/7/Add.1), 5 September 2012 para 6.8, referring to recommendation 109.26 (Norway) in Report of the Working Group on the Universal Periodic Review: Indonesia (UN Doc: A/HRC/21/7), 5 July 2012.

<sup>38</sup> Report of the Working Group on the Universal Periodic Review: Indonesia (UN Doc:

**Amnesty International considers that the Indonesian authorities should:**

- Immediately repeal the Regulation of the Minister of Health No. 1636/MENKES/PER/XI/2010 concerning female circumcision; and
- Put in place a comprehensive long-term plan with relevant ministries, other governmental entities, and civil society organizations aimed at the eradication of female genital mutilation. The plan should include:
  1. The enactment of specific legislation prohibiting female genital mutilation, and providing appropriate penalties for those who perform female genital mutilation;
  2. The publicizing and dissemination of the 2006 government circular, No. HK.00.07.1.3.1047a, signed by the Director General of Community Health, which specifically warned about the negative health effects of female genital mutilation on women; and
  3. The implementation of public awareness-raising campaigns at community levels and within health institutions to change the cultural perceptions, including gender stereotyping, associated with female genital mutilation.

## 2. DOMESTIC WORKERS (ARTICLES 3, 6, 7, 10, 11, 12 AND 13)

### 2.1 DOMESTIC WORKERS IN INDONESIA

Amnesty International has long standing concerns about the situation of domestic workers in Indonesia, the vast majority of whom are women and girls. The organization continues to receive reports of abuses against domestic workers in the country.<sup>39</sup>

A major problem is the lack of official information about domestic workers and their situation in Indonesia. An International Labour Organization (ILO) study published in 2004 concluded that there are about 2.6 million domestic workers in Indonesia, and that around 26 per cent are below the age of 18.<sup>40</sup> According to the ILO, over 90 per cent of domestic workers in

---

A/HRC/21/7/Add.1), 5 September 2012 para 6.8.

<sup>39</sup> Its submission to the CEDAW in October 2011, Komnas Perempuan, the Commission on the Elimination of Violence against Women, noted “Jala PRT, an organization advocating for the protection of the rights of domestic workers, reports that between 2007 and 2011 there were 726 cases of violence, 536 cases of unpaid wages and 617 cases where female domestic workers were held in captivity against their will”. See *National Human Rights Institution Independent Report Regarding the Implementation of the Convention on the Elimination of All Forms of Discrimination against Women in Indonesia, 2007 – 2011 Submitted to the CEDAW Committee*, 8 October 2011, para 43.

<sup>40</sup> International Labour Organization (ILO), *Bunga-bunga di Atas Padas: Fenomena Pekerja Rumah Tangga Anak Di Indonesia*, [Flowers on the Rock: Phenomenon of Child Domestic Workers in Indonesia], 2004. These figures were most recently quoted by the ILO in June 2013. See ILO press release, World Day Against Child Labour 2013: Child domestic workers to present “The Broken Pearl behind the Mop”,

Indonesia are women and girls.<sup>41</sup> The Indonesia Population and Housing nationwide census conducted in 2010 did not include any specific questions attempting to obtain data on domestic workers within each household.<sup>42</sup>

The lack of comprehensive figures on the number of domestic workers currently working in Indonesia, and of disaggregated data on their gender, age, origin, socio-economic background and conditions in which they work, makes it difficult to determine the extent of the problem of any abuse and exploitation, and to craft effective policies to address these issues. It also places Indonesia in breach of its obligation under the Covenant to collect such data in order to assess the human rights situation of vulnerable and marginalized groups such as domestic workers and take appropriate action.

### **Lack of legal protection as workers**

Domestic workers in Indonesia are not protected by legislation safeguarding workers' rights, leaving them vulnerable to economic exploitation and the denial of their rights to fair conditions of work, health and education.

Existing domestic legislation – in particular the 2003 Manpower Act (Law No. 13/2003) – discriminates against domestic workers, because it does not afford them the same protection which other workers receive under its provisions. Protections under this law, for example reasonable limitation on working hours, remuneration adequate to secure a life with dignity, and standards providing for rest and holidays and maternity provisions, are only extended to the employees of “entrepreneurs” in “business” or “social or other undertakings with officials in charge” – definitions which private households and domestic workers do not meet. Only one sub-provision of one article mentions any protections applicable to other workers – obliging the employer of those workers to provide protection of their welfare and health (Article 35.3).<sup>43</sup> This lack of legal protection disproportionately affects women and girls as

---

17 June 2013, available at: [http://www.ilo.org/jakarta/info/public/pr/WCMS\\_216753/lang--en/index.htm](http://www.ilo.org/jakarta/info/public/pr/WCMS_216753/lang--en/index.htm), accessed 26 September 2013.

<sup>41</sup> ILO press release, World Day Against Child Labour 2013: Child domestic workers to present “The Broken Pearl behind the Mop”, 17 June 2013, available at: [http://www.ilo.org/jakarta/info/public/pr/WCMS\\_216753/lang--en/index.htm](http://www.ilo.org/jakarta/info/public/pr/WCMS_216753/lang--en/index.htm), accessed 26 September 2013.

<sup>42</sup> E-mail correspondence, 8 July 2010; and Amnesty International interviews, Jakarta, 9 and 12 March 2010.

<sup>43</sup> This sub-provision states that in employing people, employers are “under an obligation to provide protection which shall include protection for their welfare, safety and health, both mental and physical”. Violation of this provision does carry a specified penalty of “a criminal sanction in jail for a minimum of one month and a maximum of four years and/or a fine of a minimum of 10 million Rp (1,104.11 USD) and a maximum of 400 million Rp (44,164.73 USD)” (Article 186.1). However, this sub-provision does not specify benchmarks by which to measure the provision of this protection, meaning that these vague concepts are open to varying interpretation and signify a huge and discriminatory divide from the wide range of specific guarantees which apply to the employees of entrepreneurs under other articles of the Manpower Act. Furthermore, in practice this provision has meant little to the daily reality of Indonesia’s

the vast majority of domestic workers in Indonesia are female.

The Committee has stated that states parties to the Covenant must “take the requisite measures, legislative or otherwise, to reduce to the fullest extent possible the number of workers outside the formal economy, workers who as a result of that situation have no protection”. It has further stated that “domestic and agricultural work must be properly regulated by national legislation so that domestic and agricultural workers enjoy the same level of protection as other workers”.<sup>44</sup> However, to date domestic workers in Indonesia are not afforded the same legal protections as others in the country.

As noted by Indonesia in its periodic report to the Committee,<sup>45</sup> there have been positive moves towards better legal protection for domestic workers, and the enactment of a Domestic Workers Protection Law has been on the legislative agenda since 2010. However, there has been limited progress on debating and passing the draft law. In January 2012 the Parliamentary Commission on Health, Manpower and Population Affairs (Komisi IX), which is overseeing the drafting process, formed a working group to review the draft law article by article and to consult with civil society organizations.

The draft legislation contains several positive elements. The draft law provides for written employment agreements (Article 19); conditions for termination of employment (Article 27), and the right to join a trade union (Article 29). It includes provisions prohibiting the employment of child domestic workers below 18 years old (Article 6(1)) and its Article 7 provides for administrative sanctions for employers and recruitment agencies who recruit a domestic worker under the age of 18. It also provides for criminal sanctions for those who use threats, violence, abduction, confinement, forgery, fraud and/or abuse of power to recruit domestic workers (Article 59).<sup>46</sup>

Although Amnesty International welcomes discussions on the draft legislation in the House of People’s Representatives, the organization is concerned that the draft as it stands does not meet a range of obligations under the Covenant, and other international human rights and labour treaties and standards.<sup>47</sup> Several provisions are also less favourable than those provided for in the 2003 Manpower Act, perpetuating existing discrimination against domestic workers. For example although the Manpower Act contains provisions relating to sick pay, clearly defined daily and weekly rest periods, and a clearly defined holiday

---

domestic workers.

<sup>44</sup> Committee on Economic, Social and Cultural Rights, General Comment No.18: The Right to Work (UN Doc E/C.12/GC/18), 6 February 2006.

<sup>45</sup> Initial reports submitted by states parties under articles 16 and 17 of the Covenant: Indonesia (UN Doc: E/C.12/IDN/1), 29 October 2012, para 75.

<sup>46</sup> Commentary based on a March 2013 draft of the law, translated by Amnesty International. On file with Amnesty International.

<sup>47</sup> For example, Indonesia has ratified ILO Convention No. 100 on Equal Remuneration (in 1958); ILO Convention No. 111 on Discrimination (Employment and Occupation) (in 1999), as well as the CEDAW (in 1984).



allowance, similar provisions are not included in the draft legislation.<sup>48</sup> Amnesty International is also concerned that the draft as it stands does not contain adequate provisions on wages, limitations on working hours and redress mechanisms. Further, the current draft does not contain explicit and specific provisions relating to women and girls, for example maternity provisions, although such provisions are included in the 2003 Manpower Act.<sup>49</sup>

#### **Impact on women and girls of the failure to protect workers' rights**

Provisions in the Manpower Act which guarantee specific protection for women workers do not apply to domestic workers, meaning that their treatment – for example during pregnancy and at the time of birth – depends solely on the goodwill of their employer. Interviews with domestic workers conducted by Amnesty International in March 2010 found that domestic workers who are pregnant risk losing their job as a result of their pregnancy, without any form of compensation. Others may be forced to work long hours without adequate time to rest if they want to keep their job.<sup>50</sup> Some of the domestic workers told Amnesty International that they were forced to work even if they did not feel well or they felt the work they were doing was too heavy for their condition and put their health and pregnancy at risk.<sup>51</sup>

These findings are in line with those of a 2007 Amnesty International report which found that while some domestic workers were provided adequate time to rest when they were ill, others had to continue working when they were feeling unwell.<sup>52</sup> Overall Amnesty International found that women domestic workers usually left their job early during pregnancy rather than work, sometimes in harsh conditions. Many domestic workers told Amnesty International that a domestic worker who becomes pregnant would either lose her job or no longer be paid if she decided to take maternity leave.

---

<sup>48</sup> While Article 21 (2) of the draft provides that terms and conditions of work must include accumulated hours of work; weekly rest; leave entitlements; time off during working hours and holiday allowances, these are not sufficiently defined. In contrast, Article 79 of the Manpower Act provides periods or rest and leave to include: “The period of rest between working hours at least half an hour after working for 4 (four) hours consecutively and this period shall not be inclusive of working hours; The weekly rest is 1 (one) day after 6 (six) workdays in a week or 2 (two) days after 5 (five) workdays in a week; and The yearly period of rest is 12 (twelve) workdays after the workers/labourer works for 12 (twelve) months consecutively”.

<sup>49</sup> In the current draft, Article 32(f) states that an employer shall “provide guarantees of protection for security, health and safety”. The elucidation of the law clarifies that “health protection guarantees” include maternity leave; however, no mention of such protections is made anywhere else in the draft.

<sup>50</sup> See Amnesty International, *Exploitation and abuse: The plight of women domestic workers* (Index: 21/001/2007), 14 February 2007 (Amnesty International, *Exploitation and abuse*).

<sup>51</sup> See Amnesty International, *Left without a Choice*, Supra No4, Chapter 5: The Case Study of Domestic Workers as a Vulnerable Group.

<sup>52</sup> Some felt that they were viewed with suspicion when they were sick and although they wanted to rest they were obliged to continue working. In addition, very few domestic workers were trained on how to use potentially hazardous materials despite reports indicating that domestic workers are at serious risk of injuries in the household. See Amnesty International, *Exploitation and abuse*, Supra No53.

### **Lack of access to education and information on sexual and reproductive health rights**

Women and girl domestic workers in Indonesia typically leave school early. This has a significant impact on their future education and employment opportunities. It also means that they have even less access to information on sexuality and reproduction than those who complete their schooling. In March 2010 Amnesty International met many adolescent domestic workers who stopped schooling when they were under 15, limiting their access to public sources of information on sexual and reproductive rights. Access to this kind of information is further restricted for domestic workers because they live at their employers' houses, and are often not married. They may not be able to move freely outside the house, or be able to freely access sources of public information within the house (for example television and radio).<sup>53</sup>

It is essential that information about sexual and reproductive health, is available to enable victims of sexual abuse to seek medical services and other forms of support. Domestic workers should also have full access to information and services on family planning, forced marriage, early marriage, pregnancy and the prevention of HIV/AIDS and other sexually transmitted diseases.

### **Amnesty International considers that the Indonesian authorities should:**

- Pass specific legislation regulating the labour rights of domestic workers in accordance with international law and standards, and in particular:
  1. Provisions contained in the legislation should not be less favourable than what is provided for in the Manpower Act;
  2. The draft Domestic Workers Protection Law should be amended to explicitly include legal provisions pertaining to the specific needs of women, in particular during and after pregnancy, including requirements specified under article 11.2 of the Convention, such as the prohibition of dismissal or other sanctions on the grounds of pregnancy, provision of special protection to women during pregnancy and introduction of maternity leave without loss of employment. Where employers are known to have breached these obligations, they should be sanctioned in the same manner as other employers; and
  3. The draft Domestic Workers Protection Law should ensure that domestic workers enjoy freedom of movement and of communication and access to information.
- Ratify the ILO Domestic Workers Convention (No. 189) and ILO Maternity Protection Convention (No.183) and incorporate their provisions into domestic law and implement them in policy and practice;

---

<sup>53</sup> See Amnesty International, *Left without a choice*, Supra No4, pp39-40; and Amnesty International, *Exploitation and abuse*, Supra No53, p40.

- Immediately undertake a thorough survey assessing the number of domestic workers in every Indonesian province. This survey should gather data on their gender, age, origin, socio-economic background and conditions of living and employment. All data collected should be treated confidentially with appropriate standards of data protection;
- Ensure domestic workers have access to information and health care with respect to sexual and reproductive rights.

## 2.2 MIGRANT DOMESTIC WORKERS

In recent years, the Indonesian government has recognized the need to provide greater protection for migrant workers, and in May 2012 ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Migrant Workers Convention). Amnesty International welcomes this move as a positive step; however, the organization remains seriously concerned about the treatment of Indonesian migrant workers during all stages of the migration cycle. It is vital that the Indonesian government takes immediate steps to effectively implement its obligations under the Migrant Workers Convention, both in policy and practice.

Amnesty International's research<sup>54</sup> has found that prospective migrant domestic workers in Indonesia are regularly deceived in relation to their pay or other key aspects of their terms and conditions of employment both by brokers working on behalf of recruitment agencies in Indonesia and by the recruitment agencies themselves. This deception leads many migrant domestic workers into situations of debt, making it difficult for them to gain a living by work which they freely choose or accept, as provided in the Covenant.<sup>55</sup> Furthermore, Amnesty International's research has found that the Government is failing in its duty to properly regulate recruitment agencies, including punishing those which deceive prospective migrants, in violation of Indonesia's Law No. 39/2004 concerning the Placement and Protection of Indonesian Overseas Workers.

Research by Amnesty International found that recruitment agencies in Indonesia compel prospective women migrant domestic workers, under the threat of a penalty, to stay at agency-run training centres and, subsequently, in their jobs in Hong Kong.<sup>56</sup> One of the key coercive mechanisms used for this purpose is the confiscation of personal documents (e.g. identity cards, family certificates, school diplomas and property titles), which are held as collateral to ensure that prospective migrants cannot back out of the migration process and pay the full recruitment fee. The evidence from the research cited above indicates that this is a common practice.

---

<sup>54</sup> Amnesty International conducted interviews with 97 Indonesian migrant domestic workers and returnees in Hong Kong and Indonesia respectively between May 2012 and March 2013.

<sup>55</sup> Article 6(1).

<sup>56</sup> See Amnesty International, *Exploited for profit, failed by governments: Indonesian migrant domestic workers trafficked to Hong Kong* (Index: ASA 17/029/2013), forthcoming November 2013.

The migrant women cannot get their documents back until they pay off their debts. However, this is practically impossible without taking up the job abroad as the recruitment fees, which include accommodation, subsistence and training over 110 days, are charged at a flat rate from day one. Thus, if prospective migrants change their mind after a couple of days or in the second week, they will be liable to pay a penalty which can be as much as the full recruitment fee. In 2012, this was set at IDR 14,780,400 or US\$1,730. For a domestic worker employed in Jakarta, earning a monthly wage of between IDR 800,000 and 1,000,000 (US\$80-100), it would take about 17 months to repay this debt.<sup>57</sup> At this point, any threat by the recruitment agency not to send the migrant worker abroad is normally a sufficient “menace of a penalty” to ensure that the woman complies with whatever instructions she is given. If they do not secure foreign employment, they will not be able to repay their debts, let alone support their families.

Restrictions placed on the women’s freedom of movement in the training centres, along with the limitations imposed on the use of mobile phones and family visits, further strengthens the recruitment agencies’ control over the prospective migrants, as it is difficult for them to access any advice or support from outside the centres.

In this way, recruitment agencies are able to coerce Indonesian women into accepting jobs with different terms and conditions of work to what they were originally promised and to sign documents without knowing what they are for.<sup>58</sup>

Prospective migrant workers are also compelled to work for the staff of the recruitment agency and/or as “interns” for families outside the training centre while at the training centres in Indonesia. In addition to being an exploitative practice, in some cases this would also constitute forced labour, as the women are made to work in underpaid jobs they have not volunteered for against their will under the threat of penalty. In this case, the penalty that they are threatened with is that, unless they do the work allocated to them, they will not be given a job abroad and they will then be left indebted to the recruitment agency.<sup>59</sup>

Interviews conducted by Amnesty International also indicated that living conditions in training centres are generally basic with common complaints of overcrowding and a lack of shower facilities, toilets and beds. Some interviewees told Amnesty International that they felt that they were not given enough food at the training centre and had to supplement their diet, and many complained that the quality of the meals was substandard because the ingredients were not fresh or nutritious, and that they were rarely given protein-rich foods,

---

<sup>57</sup> Information provided by Erna Murniaty, Chairperson, Indonesian Migrant Workers Union (*Serikat Buruh Migran Indonesia* or SBMI) in a correspondence on 29 April 2013 and migrant domestic workers interviewed by Amnesty International. It is important to note that domestic workers in Indonesia, including Jakarta, may receive less or no salary.

<sup>58</sup> ITUC, IMWU and HKCTU, *Final Report on Malpractices of Recruitment Agencies toward Indonesian Domestic Workers in Hong Kong* (unpublished), in collaboration with the Institute for National and Democratic Studies (INDIES), June 2012, p25.

<sup>59</sup> See Amnesty International, *Exploited for profit, failed by governments: Indonesian migrant domestic workers trafficked to Hong Kong* (Index: ASA 17/029/2013), forthcoming November 2013.

such as meat, fish or eggs. Amnesty International is also concerned that some women were subject to mandatory contraception injections, especially before being allowed to leave the training centre and visit their families.

The evidence cited above shows that Indonesian recruitment agencies are routinely involved in the trafficking and exploitation of migrant domestic workers for forced labour.<sup>60</sup> The recruitment agencies and their brokers are recruiting Indonesian women, using deception and coercion, for the purposes of their exploitation in Hong Kong - practices that come within the definition of trafficking as set out in UN Protocol to Prevent Suppress and Punish Trafficking in Persons, Especially Women and Children (ratified by Indonesia on 28 September 2009).<sup>61</sup> The Indonesian Government's failure to prevent these human rights abuse means that it is not complying with its obligations under the Covenant and other international treaties that it has ratified, including ILO Convention No. 29 on Forced Labour.

Under Law No. 39/2004, the Indonesian Government has a responsibility, either directly or through the National Board for the Placement and Protection of Indonesian Overseas Workers (BNP2TKI), for regulating and supervising the placement and protection of migrant domestic workers and investigating and punishing recruitment agencies which do not comply with the Law. The Government is not discharging these responsibilities adequately and, as shown by Amnesty International's research, numerous provisions of Law No. 39/2004 are not being implemented on a routine basis.

For example, Article 70.3 of Law No. 39/2004 obliges recruitment agencies to treat prospective migrants "humanely and in a normally acceptable manner". Failure to do so is punishable under Article 103 with prison sentence of between one and five years. "Normally acceptable and humane treatment" should, at a minimum, include the protection of human rights, such as the rights to freedom of speech and movement, equal pay for work of equal value, adequate food and protection from threats, abuse and forced labour, and reproductive autonomy. The evidence collected by Amnesty International, however, indicates that a significant number of training centres' treatment of prospective migrants falls far short of the standard set in article 70.3 of Law No. 39/2004, as well as of Indonesia's international human rights obligations. Yet, the government has not taken sufficient action against those agencies that are not complying with the law.

---

<sup>60</sup> It is worth highlighting that the ILO Committee of Experts has repeatedly stated "that trafficking in persons for the purpose of exploitation [...] is encompassed by the definition of forced or compulsory labour in Article 2(1) of the Convention No.29", See for example the Tripartite Meeting of Experts on Forced Labour and Trafficking for Labour Exploitation, *Report concerning the possible adoption of an ILO instrument to supplement the Forced Labour Convention 1930 (No.29)*, ILO, February 2013, pp4, 15 and 39.

<sup>61</sup> The UN Protocol to Prevent Suppress and Punish Trafficking in Persons, Especially Women and Children states that trafficking involves "the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation" (Article 3(a)).

**Amnesty International considers that the Indonesian authorities should:**

- Guarantee that migrant workers who are working and living with families as “interns” while at the training centres are paid wages that are commensurate with the local area and that they are not charged for accommodation, food or training while they are working as “interns”;
- Review and improve the quality of the government’s general oversight of the training provided by recruitment agencies;
- Strengthen the monitoring of recruitment agencies, including through increased capacity for regular and unannounced inspections, and fully enforce Law No. 39/2004, in particular penalize recruitment agencies which do not treat trainees “humanely and in a normally acceptable manner” (Article 103), including practices that restrict freedom of movement, the confiscation of documents, enforced contraception and carrying out unpaid work for staff or exploitative “internships”. Where appropriate agencies’ licences should be revoked and criminal sanctions applied;
- Use the 2007 anti-trafficking regulations to prosecute recruitment agencies which are involved in the trafficking of migrant domestic workers and amend Law No. 39/2004 so that the use of deception as a means of trafficking faces adequate punishments rather than the administrative sanctions currently outlined in article 72 of the Law;
- Incorporate the provisions of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families into domestic law and implement it in policy and practice; and
- Ratify ILO Convention No.189 concerning Decent Work for Domestic Workers, incorporate its provisions into domestic law and implement it in policy and practice.

### 3. RELIGIOUS MINORITY GROUPS (ARTICLES 2, 6, 11, 12 AND 13)

Amnesty International continues to document attacks against members of religious minorities by mobs, at times accompanied or incited by radical Islamist groups. These attacks target in particular Ahmadiyya and Shi’a communities. Homes, schools and places of worship have been burnt or destroyed as a result, in some cases forcing communities – including children – out of their homes and into temporary shelters and accommodation without access to basic facilities and services or adequate privacy, space and security. In these cases, the authorities have failed to adequately protect these communities from being forced out of their homes and acts of violence, and in most cases have also failed to investigate and prosecute the violence. In some cases, the authorities have also forcibly evicted them.

Amnesty International has noted an increase in local regulations that discriminate against the Ahmadiyya after a 2008 Joint Ministerial Decree was issued cautioning members of the

Ahmadiyya community to, among other things, cease the propagation of their beliefs.<sup>62</sup> Local authorities and radical Islamist groups have justified discrimination, intimidation and attacks against religious minorities, especially the Ahmadiyya, by referring to these regional and national laws or regulations. In many cases, police have failed to take adequate measures to prevent these attacks despite prior knowledge of threats against the community. Amnesty International is also aware that in some instances there has been a failure by the police to protect these communities when the attacks occur. Many children have been traumatised by these attacks.<sup>63</sup>

Government failures to address these attacks have meant that members of these minority groups, including children, have been unable to return to their homes and have had to stay in temporary shelter for several years without adequate access to minimum essential levels of water and sanitation and food, or medical care (see the Lombok and Sampang cases below), in violation of Indonesia's obligations under the Covenant, and other international treaties. Amnesty International is also concerned that in some cases, it has been difficult for children to continue with their schooling.

The Committee has stressed the obligation of state parties to ensure that:

“Evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights. Where those affected are unable to provide for themselves, the State party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available.”<sup>64</sup>

However, as highlighted below, in many cases the authorities have failed to meet these obligations, and to establish conditions, and to provide the means, which allow those affected by the attacks to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country.

Amnesty International has also received information that Ahmadiyya followers and other religious minorities face obstacles in obtaining identity cards from local government authorities because of their religious beliefs.<sup>65</sup> The lack of legal identity documents makes it

---

<sup>62</sup> 2008 Joint Decree by the Minister of Religious Affairs, Attorney General and Minister of Internal Affairs. There are local regulations forbidding Ahmadiyya activities in a number of cities (Bekasi, Depok, Bogor, Samarinda, Pekanbaru, Padang, Cimahi), districts (Pandeglang, Kampar, Sukabumi, Cianjur, Kuningan, Garut, West Lombok ) and provinces (Banten, East Java, West Java, South Sulawesi) in Indonesia.

<sup>63</sup> In April 2011, Amnesty International interviewed children of Ahmadiyya followers who had been traumatised after attacks on a community in the sub-district of Cikeusik, Banten province in February 2011 which left three Ahmadi's dead as well as from the 2006 attacks in Lombok.

<sup>64</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 7: The right to adequate housing: forced evictions, para 16.

<sup>65</sup> The officially recognized religions in Indonesia are Islam, Protestantism, Catholicism, Hinduism, Buddhism, and Confucianism. Article 64 of Law No. 23/2006 on Civil Registration states that if a

very difficult to obtain birth certificates for their children, access education and employment, register their marriages, or access other forms of state assistance.

■ About 116 people, including at least 40 babies and children,<sup>66</sup> belonging to the Ahmadiyya community have been living in temporary accommodation in Mataram, Lombok for over seven years. In February 2006 they were forced to flee their homes in Ketapang, West Lombok sub-district after their houses were destroyed by mobs. The attacks appeared to be motivated by the religious beliefs of those living in the communities. After the attacks, the police carried out investigations to identify the perpetrators. Although several suspects were questioned, Amnesty International is not aware of anyone being brought to justice for the attack. The displaced families have been unable to return to their homes and rebuild their lives. An Amnesty International visit in March 2010 found that the community were living in three 20-by-8-metre dormitories. The rooms for each family were 3 square metres each and divided by banners and sarongs tied up with plastic string. The facilities lacked essential services. Tap water was frequently cut off by the authorities and there was no electricity supply. Dozens of adults in the shelter did not have identity cards and have faced various obstacles in obtaining such cards from the local authorities.<sup>67</sup> As of June 2013 the situation in the shelter remains the same. At least 21 individuals have been denied identity cards, and have therefore been unable to access essential services, including free health care which, by law, is available to those identified as poor. Further, at least 12 children have not been able to obtain birth certificates.<sup>68</sup> During meetings, the local authorities have repeatedly told the community that it is better for them to live in the shelter as neither the authorities nor the police can guarantee their security and protection if they return to their homes. It should be highlighted that the government has the obligation to protect all individuals against violence, discrimination, and abuse, irrespective of their beliefs or ethnicity.

---

person's religion is not one of the recognized religions, he or she "must still be served and must be recorded in the population database" but the column on religion in the identity card will be left blank. Nevertheless persons belonging to a non-recognized religious group have found it difficult to obtain identity cards. See Setara Institute, *Di Atas Kaki Sendiri: Pengabaian Negara atas Suara Korban Pelanggaran Kebebasan Beragama/Keyakinan* [On their Own Feet: State neglect of the voices of victims of violations of freedom of religion/belief], February 2012, pp71-78.

<sup>66</sup> According to news sources, at least 20 babies have been born in the temporary shelter. See *Portal KBR*, "Pemerintah NTB Tolak Beri Akta Lahir 20 Anak Ahmadiyah" [NTB authorities deny birth certificates to 20 Ahmadiyya children], available at: [http://www.portalkbr.com/nusantara/nusatenggara/2681517\\_4265.html](http://www.portalkbr.com/nusantara/nusatenggara/2681517_4265.html), accessed 26 September 2013.

<sup>67</sup> See Amnesty International, *Indonesia: Displaced and forgotten: Ahmadiyya in Indonesia* (Index: ASA 21/006/2010); and *Indonesia: Open letter on the displaced Ahmadiyya community in Mataram, Lombok* (Index: ASA 21/008/2010).

<sup>68</sup> Amnesty International E-mail correspondence with confidential contact, 1 August 2013. See also *VOA Indonesia*, "Warga Ahmadiyah di NTB Sulit Dapatkan KTP dan Akta Kelahiran" 22 June 2013, available at: <http://www.voaindonesia.com/content/warga-ahmadiyah-di-ntb-sulit-dapatkan-ktp-dan-akta-kelahiran/1687411.html>, accessed on 26 September 2013.



■ At least 168 Shi'a followers in Sampang, East Java, including 51 children, have been living in temporary shelters since August 2012, after their village was attacked by an anti-Shi'a mob. One person was killed and 35 houses were destroyed in the incident. Between August 2012 and June 2013 the community were housed by local authorities in a sports complex in Sampang, East Java, where they did not receive adequate food and medical supplies from the Sampang district authorities. In early May 2013, the local authorities halted clean drinking water and food supplies to the displaced community. The authorities had previously cut off food supplies on 22 November 2012 but resumed supply on 4 December 2012.<sup>69</sup> Some children reportedly suffered from diarrhoea, infections to their respiratory system, gastritis and anaemia while living in the shelter. The community was prevented from returning to their village by the local authorities because they said they could not guarantee the safety of the community. This has had a negative impact on community livelihoods – and the ability of individuals to work and support themselves – as most of the adults are tobacco farmers. In January 2013, the East Java and Sampang district authorities told the evicted Shi'a community that they would have to convert to Sunni Islam if they wanted to return to their homes, otherwise, they would be forcibly relocated either to another part of the province or to somewhere outside Java island. The displaced community rejected being relocated, preferring to return to their homes and livelihoods in safety. On 21 June they were forcibly evicted by the Sampang district authorities to a housing facility in Sidoarjo, East Java, around four hours by road from their homes, after hundreds of people organized a demonstration outside the complex calling on the local authorities to evict the Shi'a community and remove them from the Sampang district.

The Human Rights Committee recently expressed its concern about reports suggesting the failure of the Indonesian authorities to protect victims of violent attacks motivated by religious hatred and has made recommendations to the government to address this situation.<sup>70</sup>

**Amnesty International considers that the Indonesian authorities should:**

- Ensure that religious communities displaced by violence are given immediate access to adequate housing and essential services such as clean drinking water and lighting, as well as health and education;
- Take immediate steps, based on genuine consultation with the communities on all viable options, to ensure the safe, voluntary and dignified return of religious communities displaced by intimidation and attacks back to their homes or permanently resettle them elsewhere in the country with access to essential services and sufficient livelihood opportunities; and
- Ensure that local authorities issue the *Ahmadiyya* with all the documents necessary for the enjoyment and exercise of their legal rights, without imposing unreasonable conditions.

---

<sup>69</sup> For further information, See Amnesty International, *Urgent Action: Shia's at risk of forced relocation* (Index: ASA 21/002/2013), 5 January 2013; Amnesty International, *Urgent Action, Authorities cut off food and water to Shi'as* (Index: ASA 21/043/2012), 26 November 2012; and Amnesty International, *Religious freedom under attack as Shi'a villagers face eviction*, 15 January 2013

<sup>70</sup> See concluding observations of the Human Rights Committee: Indonesia, UN Doc. CCPR/C/IDN/CO/1, 21 August 2013, paras 17-18 and 25-26.

**AMNESTY  
INTERNATIONAL**



[www.amnesty.org](http://www.amnesty.org)