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# Indonesia

## Exploitation and abuse: the plight of women domestic workers

### 1. Introduction

**Ratna** started working as a domestic worker when she was 13 years old... *“I stopped going to school because after my father died my family didn’t have enough money to pay for my schooling... [I found my first employer] through my neighbours... I was told that my salary would be Rp.350,000 (US\$40) per month. But I was only paid Rp.150,000 (US\$17) per month...”*

She told Amnesty International that she felt ‘cheated’ during the recruitment process because her female employer turned out to be violent: *“[My employer] threw hot water on me when she got angry. She said I was wrong... my work was not good enough...She also threw the boiler at me and once she almost used an iron to hit me”...*

*“I cleaned the house, cooked, swept the floor, and took care of the children... every day from five in the morning until midnight.”* No breaks were allowed. *“The only time I could go outside was when I hung clothes to dry... once a week... My employer said, ‘girls are not allowed to go outside’.”*

*“[I slept] in the kitchen... with no mattress... just on the floor. I didn't have a key [to the room]. I felt cold... scared... My employer locked me in the room [every evening], saying it was for my protection. I couldn't go to the bathroom during the night”.*

Ratna was not allowed to make phone calls or send letters either. Her employer said it was too expensive. She could not contact her family, and did not have any news of them.

Ratna’s experience with two of her other employers was similar. She suffered poor conditions of work and physical and psychological abuse. Her second employer spat on her *“in the morning, in the afternoon, in the evening and at night”*, and did not give her any salary. While she was there she slept in the storage room: *‘there was no door...and it was very small. There were lots of things around and it was smelly’*. The third employer shouted at her continuously and slapped her frequently. Once she was not given food for three days. There, she was forced to work from 5am until 1am without any day of rest.

Ratna recalls that when her eldest sister died her mother managed to let her know and asked her to come home for the funeral, but she was not given permission by her employer so could not go. Her mother tried to find out why she was not coming but Ratna did not tell her the truth about her situation. *“Until now, she doesn’t know what happened to me. [I feel] too scared and embarrassed to tell her [Even now] I don’t speak about my experience... [I feel] too ashamed”.*<sup>1</sup>

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<sup>1</sup> Interview, 28 February 2006, Jakarta. All the names of domestic workers interviewed have been changed to ensure their security, and all testimonies have been translated from Indonesian to English.

Too many women domestic workers in Indonesia like Ratna face human rights abuses at work. Often forced to work from as young as 12 years of age, they suffer economic exploitation and poor working conditions as well as gender-based discrimination. Many are subjected to physical, psychological and sexual violence. Some are even killed.

Their misery often remains hidden from view. Not only are the workers themselves ashamed of talking about their experiences, but the authorities and general public appear oblivious to them. By contrast, the plight of Indonesian domestic workers in other parts of Southeast Asia and the Middle East often make headlines in Indonesia.

It is estimated that there are approximately 2.6 million domestic workers in Indonesia. Poorly educated, unskilled, from poor backgrounds, conducting menial tasks and without career prospects, they are often considered and treated as second-class citizens. Their lower status in Indonesian society is also explained by gender prejudices and stereotypes which exist in relation to their work. Domestic work is seen as less important than other types of work as women have been doing it without formal payment for centuries.

In Indonesia, women domestic workers are not protected by current legislation safeguarding workers rights, in particular the 2003 Manpower Act (No.13/2003, *Undang-Undang tentang Ketenagakerjaan*). The Act distinguishes between workers employed by 'businesses' or 'social or other undertakings with officials in charge', and other workers. Domestic workers fall under the latter category but the Act only guarantees its extensive protections of workers' rights to workers who fall into the former category. Thus the Manpower Act itself discriminates against domestic workers and leaves them without legal protection of their workers' rights, such as access to the minimum wage, a 40-hour working week, and standards providing for regular breaks and holidays.

Under international law, all workers are entitled to core labour rights, including the right to wages which provide them with an adequate standard of living, reasonable limitation of working hours, the right to rest, the right to holiday, and the right to join a trade union.<sup>2</sup> Yet, Indonesian domestic workers are denied these rights. Their conditions depend exclusively on the goodwill (or otherwise) of their employer, a situation which in the case of Ratna and many others has led to tragic consequences.

**What is a domestic worker?**

Although there is no standard definition of a domestic worker, definitions in legislation throughout the world seem to agree that domestic service requires the following components: the workplace is a private home; the work performed has to do with servicing the household; the work is carried out on behalf of the direct employer, the householder; the domestic worker is directly under his/her authority;

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<sup>2</sup> International Covenant on Economic, Social and Cultural Rights (ICESCR), art 7 and 8

the work performed must be done on a regular basis and in a continuous manner; and the employer shall not derive any pecuniary gain from the activity done by the domestic worker.<sup>3</sup>

Women domestic workers are exposed to human rights abuses, including denial of their rights to health, education, an adequate standard of living and freedom of movement. They are also at risk of trafficking<sup>4</sup> and violence. Despite a Domestic Violence Law (which applies to domestic workers) passed by the Indonesian parliament in September 2004, the lack, so far, of awareness and enforcement of the law has resulted in domestic workers remaining vulnerable to violence in the household as their working environment.

This was the situation found by an Amnesty International delegation when it visited the province of Java, Indonesia in February-March 2006. Delegates travelled to central and eastern Java where they met 40 women domestic workers, community representatives, medical and legal practitioners, civil society organizations, local and international NGOs, UN agencies, and representatives of the police and local government. During their visit to Indonesia Amnesty International delegates also met government representatives in Jakarta.

This report focuses on women and girl domestic workers who work for private employers throughout Indonesia, whether they work part-time or full-time, and whether they live in or outside their place of employment. Using detailed analysis and case studies, the report outlines the human rights abuses they face and makes recommendations to the Indonesian government to take urgent steps to ensure that this situation does not continue. In particular, it calls on the Indonesian government to condemn violations and take measures to address the abuse of domestic workers' human rights, ensure fair conditions of work for all workers, and operate a "zero tolerance" policy on violence against women – a scourge which affects too many women domestic workers and constitutes a grave violation of their human rights.

## **2. Background**

The latest census conducted by the Indonesian National Institute of Statistics (*Badan Pusat Statistik*, BPS) in 2001 places the number of domestic workers in Indonesia at 570,000. But a 2002 International Labour Organization (ILO) study concluded that there are about 2.6 million domestic workers in Indonesia, the overwhelming majority being women and girls.<sup>5</sup> The percentage of male domestic workers remains marginal. According to the ILO estimate, they comprise less than five percent of the total number of domestic workers. Approximately

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<sup>3</sup> See Ramirez-Machado, José Maria, *Domestic work, conditions of work and employment: A legal perspective*, International Labour Organization (ILO), Conditions of Work and Employment Series No. 7, 2003, pp. 9-15, <http://www.ilo.org/public/english/protection/condtrav/pdf/7cws.pdf> (hereafter Ramirez-Machado, ILO study, 2003).

<sup>4</sup> See International Catholic Migration Commission (ICMC), *Trafficking of Women and Children in Indonesia*, May 2003.

<sup>5</sup> The survey was conducted by the University of Indonesia and the ILO International Program on the Elimination of Child Labour (IPEC). See 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.

one third of domestic workers are girls below the age of 18. The vast majority of domestic workers in Indonesia come from Indonesia itself. All the domestic workers Amnesty International interviewed were Indonesian citizens.

Indonesian women domestic workers usually come from rural and poor urban areas in east, central and west Java, Lampung, west Kalimantan and Nusa Tenggara to work in populated cities like Jakarta, Surabaya, Medan, Batam, Balikpapan, and Pontianak. They are usually recruited informally and meet their first employer through family, friends or neighbours. It is estimated by local domestic workers organizations that only 10 per cent on average are recruited through employment agencies.

## **2.1 Cultural and social context**

Domestic work has ancient roots in Indonesia, as it does in many countries in Asia. It is not unusual for a rich family to have one or two domestic workers from poorer areas working for them. Considered “servants” or “helpers”, they are referred to as “*pembantu*” or “*pembantu rumah tangga*” which literally means “helper” or “household helper”. Their work traditionally includes but is not limited to: cleaning, washing, sweeping, cooking, taking care of children, doing the shopping, and on rare occasions, doing the gardening or looking after the employer’s business.

Domestic workers tend to start very young – when they are 12 or 13 years old. According to the Javanese or “*ngenger*” tradition, it is normal to send children from poorer backgrounds to wealthier members of their extended family, or to people who will commit to providing the child with a decent education and a place to live.<sup>6</sup> In exchange, the child helps with household work. From the point of view of the public, domestic workers are considered members of the family and not employees.

However, the hierarchical gap between domestic workers and their employers is so great that the public views their status as deeply inferior. Domestic workers are considered to be subordinate to their employer. The harsh conditions they endure are tolerated not only by the public, but by the workers themselves who have been influenced by this understanding of their position. Domestic workers are seen effectively as second-class citizens whose subordinate role excludes them from those rights enjoyed by other members of the community.

In addition to being perceived as “helpers” or family members and facing the perception of inferior status because of their work, domestic workers find it very difficult to have the value of their work recognized. As in other countries, they suffer from the fact that domestic work is overwhelmingly seen as “women’s work” and is not recognized as worthy of the social esteem accorded to many other types of work. As women have been conducting

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<sup>6</sup> See Indonesian Ministry of Women’s Empowerment, *Panduan Kebijakan Perlindungan Pekerja Rumah Tangga Anak* (Policy pilot for the protection of child domestic workers), 2006, p. 16.

this type of household work for centuries free of charge, society as a whole tends to dismiss it, and judges it as “unproductive”.

## **2.2 Push and pull factors in the decision to become a domestic worker**

Although some of the girls and women interviewed wanted to continue secondary schooling, they were forced to drop out at the age of 12 or 13, due to limited financial means. Many told Amnesty International that their families could no longer pay the required tuition fees and other related costs.<sup>7</sup> A few of them reported that the 1998 economic crisis further worsened their situation and compelled them to work earlier than expected to help their parents or allow their younger siblings to go to school.

Indonesia is a state party to the Convention on the Rights of the Child (CRC) which guarantees the right to education regardless of a child’s sex.<sup>8</sup> Indonesia’s own law recognizes the equal right of boys and girls to education.<sup>9</sup> However, a common belief that boys have a higher status than girls and will be better able to make use of the education they receive means that low attendance rates for girls are not necessarily regarded as a problem. Although Indonesian figures on gender parity in education compare favourably with the global average,<sup>10</sup> the Indonesian government acknowledges that girls have higher rates of illiteracy and lower enrolment and participation in higher education than boys.<sup>11</sup> They also admit that the curriculum and teaching methods reflect gender bias.<sup>12</sup> The Indonesian government has launched a few initiatives in the field of education to counter this trend. They have taken special measures such as quotas, fellowships, subsidies and guaranteed admission for girls to schools and institutions of higher education. They have also undertaken to revise textbooks, curricula, teaching and learning methods to make them more sensitive to gender.<sup>13</sup>

According to the Ministry of Education, statistics show that girls are more likely than boys to drop out from primary and secondary school.<sup>14</sup> Many girls are forced by their

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<sup>7</sup> In Indonesia, there is no legal guarantee of free education. The government acknowledges that not all children are able to attend secondary school because of relatively high schooling fees, inaccessibility and a selection system based on catchment areas. See Second Periodic Report of State Parties due in 1997: Indonesia, UN Committee on the Right of the Child, UN Doc. CRC /C/65/Add.23, 7 July 2003, para. 321.

<sup>8</sup> See art 2(1) and 28.

<sup>9</sup> Art 5 of Law No. 20/2003 on the National Education System.

<sup>10</sup> See: <http://millenniumindicators.un.org/unsd/mdg/SeriesDetail.aspx?srid=611&crd=>

<sup>11</sup> Combined fourth and fifth periodic reports of State parties to CEDAW: Indonesia, UN Doc. CEDAW/C/IDN/4-5, 27 July 2005, para. 45. See also para. 52: “Despite all efforts, women’s sex roles and stereotyping remain major challenges to the implementation of the Convention.” And para 96: “At the elementary school level, there was no gender gap between girls and boys, but there was a gap at the higher level of education: girls completing high school amounted to only 12.8 percent while boys reached 17.5 percent. Similarly there was a significant gap with regard to illiteracy rates for both sexes in urban and rural areas. Statistics compiled by the Ministry of National Education for 1999/2000 reveal that the percentage of the drop-outs at the elementary level was 3 percent. At the junior high school level, the percentage of drop-outs was 4.1 percent while at senior high school level it was 3.4 percent, the majority of whom were girls. Because of this, it is difficult for them to obtain better jobs.”

<sup>12</sup> Combined fourth and fifth periodic reports of State parties to CEDAW: Indonesia, UN Doc. CEDAW/C/IDN/4-5, 27 July 2005. para. 95 “Gender inequalities also remain to be reflected throughout the educational activities such as in the teaching and learning process, in the textbooks as well as in the teaching aids.”

<sup>13</sup> UN Doc. CEDAW/C/IDN/4-5, July 2005, see para 48 and 53.

<sup>14</sup> See UNICEF, “Fact-sheet – girls’ education in Indonesia”, 2003.

economic condition and other factors to work before they reach the age of 15, losing – sometimes for life – opportunities for education. Similarly, women who marry young are likely to end their education early, thereby limiting their job opportunities. This situation is further worsened by the high level of unemployment in Indonesia: in February 2005, the unemployment rate was over 10 per cent, and over 28 per cent for 15-24 year olds.<sup>15</sup> Once women and girls have started to work as domestic workers, they will find few other job prospects along the way.

All domestic workers interviewed by Amnesty International said that they themselves chose their current profession. Most saw domestic work as an opportunity to earn money and acquire experience outside their local neighbourhood or region. It is likely that cultural, economic and social factors played a substantial role in influencing their vocational choice. Domestic work is one of the most obvious employment options for poor, unskilled girls and women with limited education who are seeking paid work and to whom many other avenues of employment will be barred due to their socio-economic and educational status.

According to local NGOs, girl domestic workers are particularly sought after because they are “cheap” and not as demanding as their adult counterparts.<sup>16</sup> In other words, children are not paid equally for equal work. Although children should not engage in work under the same working conditions as adults, where this does happen, Amnesty International believes that they should be remunerated equally for their work.

That women and girls in Indonesia start work at such an early age clearly violates the international standards to which the government has agreed. In 1999, Indonesia ratified ILO Convention No. 138 concerning Minimum Age for Admission to Employment, and declared the minimum age for employment in the country be 15 years old.<sup>17</sup> Although, according to the declaration which Indonesia made upon ratifying ILO Convention 138 on the Minimum Age of Employment, free and compulsory education should be guaranteed in Indonesia until the general minimum age of employment, which is 15,<sup>18</sup> an estimated 1.8 million children of primary school age (7-12 years old), and 4.8 million children age 13-15 years, remain outside schools.<sup>19</sup>

Some organizations have also documented the role of recruitment agencies in encouraging young girls to become domestic workers. Reports indicate that some recruitment agents travel to villages specifically to recruit domestic workers and that some lie about

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<sup>15</sup> Preliminary results from a National Labour Force Survey reported in: World Bank, *Indonesia: Economic and Social Update*, October 2005, p.16.

<sup>16</sup> Interview with the Surabaya Child Crisis Centre (SCCC), 8 March 2006, Surabaya.

<sup>17</sup> The Convention provides for state parties to declare a minimum age so that “no one under that age shall be admitted to employment or work in any occupation” (art 1).

<sup>18</sup> The age of completion of compulsory education should be the same as the minimum age for employment according to ILO Convention 138. When Indonesia ratified ILO Convention 138, it specified 15 as that age, which means that the general minimum age of employment is 15 and free and compulsory education should be guaranteed in Indonesia until the age of 15.

<sup>19</sup> The National Economic Survey, 2002, quoted in UNICEF, “Fact sheet – girls’ education in Indonesia”, 2003. [http://www.unicef.org/indonesia/girls\\_education\\_fact\\_sheet\\_final\\_ENG\\_1\\_.pdf#search=%22girls%20indonesia%20education%2015%20years%20old%22](http://www.unicef.org/indonesia/girls_education_fact_sheet_final_ENG_1_.pdf#search=%22girls%20indonesia%20education%2015%20years%20old%22).



conditions of work or salaries to attract interest. Recruitment agents reportedly convince some girls and their parents by claiming that domestic work is an easy route out of poverty for the girl as well as her family.<sup>20</sup>

### **2.3 Lack of data**

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, makes determination of the extent of the problem, and therefore the level of response needed to address it, impossible. Even the Indonesian government acknowledges that they do not have access to detailed figures concerning domestic workers, and rely on ILO data.<sup>21</sup>

Neighbourhood cooperative areas (*Rukun Warga* and *Rukun Tetangga*), in charge of monitoring the well-being of households and providing them with administrative support, exist throughout Indonesia. They constitute the lowest level of administrative unit in Indonesia and are regulated by law.<sup>22</sup> The leaders of the cooperative areas are chosen by the people within the cooperative area, at a village or neighbourhood level. One of their tasks is to register and monitor the number of people living in every household. While they could have a valuable role in registering domestic workers at a local level, they do not currently assume any such role. Local officials argue that the domestic worker population is too mobile to be effectively recorded and monitored. It may also be that it is beyond the capacity of these cooperative areas to conduct effective recording of domestic workers. Amnesty International believes that the recording and release of comprehensive figures on domestic workers ought to be one of the first steps taken by the Indonesian government in tackling the concerns about the treatment of domestic workers in Indonesia.

## **3. Domestic workers are vulnerable to violence**

The context of isolation in which domestic workers live, together with their low social status and dearth of employment options makes them highly vulnerable to a range of abuses, including physical, sexual and psychological violence. Amnesty International has recorded some of the extreme situations domestic workers may face in their daily work. These situations occur in the broader context of denial of a range of rights of domestic workers (see chapters 4 and 5).

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<sup>20</sup> See Human Rights Watch, *Always on Call: Abuse and Exploitation of Child Domestic Workers in Indonesia*, June 2005.

<sup>21</sup> See Indonesian Ministry of Women's Empowerment, *Panduan Kebijakan Perlindungan Pekerja Rumah Tangga Anak* (Policy pilot for the protection of child domestic workers), 2006, p. 16.

<sup>22</sup> See the regulation by the Home Minister No. 7/1983 about the establishment of 'Rukun Tetangga' and 'Rukun Warga'.

### **3.1 Violence against women domestic workers**

#### 3.1.1 Physical and sexual violence against domestic workers

*“He forced me to have sex with him.”* A 22-year-old domestic worker

In February 2006, a 13-year-old domestic worker fled her employer’s home in Bogor, West Java. In the bathroom, her female employer had hit her head repeatedly and poured water over her body. She was then pushed face down against the toilet bowl. Over the course of the girl’s seven-month stay at the household, she alleges that her employer ill-treated her on numerous occasions, including beating her with a pan and burning her with cigarettes.<sup>23</sup>

The girl was among those lucky enough to break free from an abusive employment situation. For 20-year-old Syahrani, there was no escape. In May 2006, her male employer was arrested in Makassar, South Sulawesi province, for ill-treating her and causing her death.<sup>24</sup> Her employer reportedly beat her on her arms, legs and head, with an iron bar. The abuse occurred twice over a two day period, resulting in Syahrani’s death two days later.

Such cases of abuse are under-reported to the police and rarely reach the public eye. Isolated from their family and friends, women domestic workers risk losing their jobs if they speak out – a risk most of them do not feel in a position to face. Their fear, coupled with the failure of government authorities to protect domestic workers’ rights and to prevent, investigate and punish abuses committed against them (*see 3.2.2*), leaves much of the violence perpetrated against such women and girls in the shadows.

Domestic workers also face an acute risk of sexual abuse, including rape. A 22-year-old domestic worker was forced by her employer in Jakarta to have sex with his younger brother between June and October 2004. *“He forced me to have sex with [him],”* she recalled. *“He started by trying to seduce me, flatter me, embrace and kiss me all over my body. He was getting excited and dropped my hand so I managed to run. But he caught me again, forced me to go to the room and shut the door”.* When she fell pregnant, the employer’s family held a meeting, where they asked the brother to marry her. However, the brother refused, saying she was ugly. On 15 November, the family expelled the domestic worker from the household. She was paid her outstanding wages and given Rp. 40,000 [US\$ 4] to cover transportation costs.

A 33-year-old domestic worker reported that she had been raped repeatedly by her employer, an entertainer, between December 2004 and January 2005 in Jakarta. She said that he would approach her while she slept and take off his clothes. She said, *“he was a big man”*, and there was nothing she could do. After some time, she managed to escape the house.

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<sup>23</sup> The names of the perpetrators and places have been withheld to protect the victims from possible reprisals.

<sup>24</sup> *The Jakarta Post*, 10 May 2006.

The UN Special Rapporteur on violence against women has stated that in certain circumstances, violence against women by private actors, including gender-based violence that is perpetrated against women and girls in the domestic sphere, should be considered a form of torture if it is severe and if the state fails to take appropriate steps to prevent and punish it.<sup>25</sup>

**Dewi:** *“Once the male employer called me while he was in the bathroom... He only had a towel on... [I felt intimidated as] we were alone in the house... He then came to the kitchen and touched me from behind while I was cooking... I rejected him... He tried again two other times but I kept rejecting him... [I felt that] if the female employer had been there, it wouldn't have happened... [A month later], I was alone in the child's room, and he came saying that he was looking for some clothes... The female employer was in the bathroom then... The male employer tried to have sex with me but he didn't succeed... After the incidents, I decided to leave this employer. I was too afraid... I had no protection there... I didn't know who to talk to, and didn't feel brave enough to go to the police, as usually they are all men... I was afraid that it would become my problem”.*<sup>26</sup>

Like Dewi, many women and child domestic workers are vulnerable to sexual harassment. According to data from a local NGO, child domestic workers in Pamulang, Jakarta, have been forced to massage their employers in intimate areas, embrace and kiss them, and watch them take a bath. The isolation of the household and the difference in status between the domestic worker and the employer create an environment where employers can act with a belief that they will not face any consequences for their abusive actions.

According to international standards, sexual harassment includes:

*“such unwelcome sexually determined behaviour as physical contact and advances, sexually coloured remarks, showing pornography and sexual demands, whether by words or actions. Such conduct can be humiliating and may constitute a health and safety problem; it is discriminatory when the woman has reasonable ground to believe that her objection would disadvantage her in connection with her employment, including recruitment or promotion, or when it creates a hostile working environment.”*<sup>27</sup>

The UN Special Rapporteur on violence against women has characterised sexual harassment as unlawful violence, an assault on human dignity, and considers it discrimination against women.<sup>28</sup> In her 1997 report, she concluded that sexual harassment is used as a tool to control and intimidate women, and maintain their subordinate social status. *“Sexual*

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<sup>25</sup> The inference is that such violence meets all of the requirements of the definition of torture, including a prohibited purpose such as discrimination or punishment. See, for example, Radhika Coomaraswamy, UN Special Rapporteur on violence against women, Report to the Commission on Human Rights, UN Doc. E/CN.4/1996/53, 6 February 1996, paras. 42-50.

<sup>26</sup> Interview, 26 February 2006, Jakarta.

<sup>27</sup> CEDAW General Recommendation 19, A/47/38.

<sup>28</sup> The UN Special rapporteur on violence against women described sexual harassment as a form of violence in the community, a form of sex discrimination, and an assault on female sexuality that served to perpetuate women's subordinate position in society. Radhika Coomaraswamy, Special Rapporteur on violence against women, Report to the UN Commission on Human Rights, UN Doc. E/CN.4/1995/42, 22 November 1994. Also see the UN Declaration on the Elimination of Violence against Women, Art 2.

*harassment strikes at the heart of women's economic self-sufficiency*". "Women are nine times more likely than are men to leave their jobs as a result of sexual harassment". Where women do not feel they have the option of leaving their jobs, they may also lack the means to stop ongoing abuse.

### 3.1.2 The scale of domestic violence against women

In 2006, the National Commission on Violence against Women (Women's Commission, *Komnas Perempuan*) revealed that over the preceding year there was a sharp rise in cases of violence against women (VAW) reported to women's organizations, hospitals, religious courts, district courts, special service units and high prosecution offices.<sup>29</sup> In 2005, over 20,000 cases were reported – a 69 per cent increase on the previous year. Although this rise partly resulted from an increased number of agencies willing to provide data to *Komnas Perempuan*, it also demonstrated an increased public awareness that domestic violence is prohibited and that there now exist national mechanisms to counter this type of abuse.

*Komnas Perempuan* acknowledges that this number "merely reflects the tip of the iceberg". Because cases frequently go unreported, the incidence of violence against women of various forms is certainly much higher.

#### **Box 1: Definition of 'violence against women'**

The term "violence against women" has been defined in the UN Declaration on the Elimination of Violence Against Women as "*any act of gender-based violence that results in, or is likely to result in physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.*"<sup>30</sup>

It encompasses, but is not limited to, the following:

- \* Physical, sexual or psychological violence occurring within the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;

- \* Physical, sexual or psychological violence occurring within the community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;

- \* Physical, sexual or psychological violence condoned by the State wherever it occurs.<sup>31</sup>

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<sup>29</sup> This study includes the following forms of VAW: domestic violence (acts of violence committed in the family and by individuals familiar to the victim), violence in the community (acts of violence committed outside of the household e.g. workplace) and VAW in relation to the state (acts of violence committed due to failure of the state to uphold its legal commitments and VAW in conflict areas). See *Komnas Perempuan*, "Violence against women 2005: domestic violence and restrictions in the name of morality", [http://www.komnasperempuan.or.id/public/KP%20Annual%20Notes%202006%201\\_.pdf](http://www.komnasperempuan.or.id/public/KP%20Annual%20Notes%202006%201_.pdf), 2006.

<sup>30</sup> Art 1, The UN Declaration on the Elimination of Violence Against Women.

<sup>31</sup> Art 2, The UN Declaration on the Elimination of Violence Against Women.

In their General Recommendation 19, the Committee on the CEDAW<sup>32</sup> states that gender-based violence is a form of discrimination, which gravely affects women's enjoyment of their human rights.

Although women are also reported to be perpetrators of violence in the home, particularly against children, the majority of victims of violence in the home are women and girls. In Komnas Perempuan's study 82 per cent of reported cases of violence against women occurred in the household environment, and over 45 per cent of victims were housewives. Violence against domestic workers remains poorly documented and reported; only 87 cases (0.52 per cent of total reported cases of domestic violence) were reported in the Komnas Perempuan's study. Mirroring broader patterns of under-reporting, the actual number of incidents is certainly much higher.

### **3.2 Obstacles to protecting women domestic workers from violence**

*“Indonesia will continue to actively support national, regional and international processes that promote and protect women's rights and the rights of the child. It will continue to intensify its attempts in eliminating discrimination against women and in applying zero tolerance for violence against women.”<sup>33</sup>*

#### 3.2.1 National laws pertaining to physical and sexual violence

The Criminal Code (*Kitab Undang-Undang Hukum Pidana*, KUHP) specifically prohibits a number of violent acts against women including rape and sexual assault (art 285-91), trafficking (art 297), sexual harassment (art 294.2), slave-trading (art 324-7), kidnapping (art 328), using violence or the threat of violence to force somebody to do something against their will (art 335), murder (art 338-50) and abuse (art 292-4 and 351-8).

The Criminal Code has traditionally been the reference law in Indonesia in relation to provisions on violence against women. Many critics have highlighted the need to amend the legislation to better suit the particular needs and rights of women – among other criticisms – and a new Criminal Code has been under discussion for many years. According to the Legal Aid Foundation Apik (*Lembaga Bantuan Hukum Apik*, LBH Apik), article 356.1 of the Criminal Code needs to be amended because it refers only to wives, children or parents as potential victims of domestic violence but not to other types of victims including domestic workers, or those who live together in other relationships, including lesbian, gay, bisexual or transgender people. Further, the Criminal Code does not include psychological violence as a form of violence.<sup>34</sup>

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<sup>32</sup> Indonesia ratified CEDAW in 1984.

<sup>33</sup> Government of Indonesia, Commitment and voluntary pledges of Indonesia in the field of Human Rights, Doc. Ref. 306/SOC 101/IV/06, 28 April 2006, <http://www.un.org/ga/60/elect/hrc/indonesia.pdf>

<sup>34</sup> See Legal Aid Foundation Apik website, at <http://www.lbh-apik.or.id/gd-legislative%20advocacy.htm>.

In September 2004, the government took concrete steps toward eliminating violence against women by ratifying Law No. 23 Regarding Elimination of Violence in the Household (*Undang-undang penghapusan Kekerasan dalam Rumah Tangga, KDRT*).<sup>35</sup> This law defines violence in the household as:

*“any act against anyone, particularly woman, bringing about physical, sexual, psychological misery or suffering, and/or negligence of household including threat to commit act, forcing, or seizure of freedom in a manner against the law within the scope of household”* (art 1).

The state shall *“prevent”* the occurrence of violence in the household, *“take action against the perpetrator”* and *“protect”* the victims of violence in the household. Domestic workers are specifically included in this law and are referred to as *“the individual working to assist the household and living in the household”* (art 2.1 c).

The law clearly *“prohibits violence in the household”* (art 5). This violence includes:

- Physical violence, defined as *“an act bringing about pain, sickness, or serious injury”* (art 6).
- Psychological violence, defined as *“an act bringing about fear, loss of self-confidence, loss of capability to act, hopelessness, and/or serious psychic suffering on someone”* (art 7).
- Sexual violence, defined as *“forcing sexual intercourse carried out against an individual living within the scope of the household”* and *“forcing sexual intercourse against one of the individuals within the scope of the household for commercial purpose and/or a certain purpose”* (art 8).
- *“Neglect of an individual within the scope of the household”*. The law states that there is an obligation *“provide livelihood, treatment or care for the individual”*. (art 9).

The law is an improvement on the provisions on violence against women in the Criminal Code in many ways, including in expansive definitions of both domestic violence, and potential victims of that violence. The law criminalises sexual harassment for the first time in Indonesia. It also clearly defines the obligations of police officers, prosecutors, judges, members of the community in addressing domestic violence, including in obliging any witnesses of domestic violence to report it to the police. The law also imposes tougher penalties for some acts of domestic violence, such as increasing the maximum sentence for rape from 12 years’ imprisonment in the Criminal Code, to 15 years’ imprisonment in the Domestic Violence Law.

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<sup>35</sup> Official translation available at <http://www.komnasperempuan.or.id/public/UU%20No%2023%202004%20PKDRT-%20English.pdf>. For the original version, see State gazette of the Republic of Indonesia of 2004, Number 4419.

Although welcomed, the law has yet to be implemented fully, especially as regards to violence against domestic workers. Despite a major awareness raising campaign in 2005, local police officers and judges reportedly do not make full use of the law and in some cases prefer to rely on the Criminal Code. Although the government sponsored campaign, which focused mostly on domestic violence against spouses and children, has resulted in a better reporting of domestic violence cases to various institutions (including the police, hospitals and community centres), reporting of violence against domestic workers remains low. This may be partly due to low awareness among officials and victims themselves that the law also applies to domestic workers.

Amnesty International urges the Indonesian government to continue its awareness raising program to ensure that the law is fully understood by the whole population, and fully implemented by the police and judicial officials. The Indonesian population should be made aware that the Domestic Violence Law also applies to domestic workers and that cases of violence against domestic workers should be immediately reported.

### 3.2.2 The limited effect of legal remedies

Successful prosecutions of domestic violence and other forms of gender-based violence against women are relatively rare considering the scale of the phenomenon. Many women are reluctant to file formal complaints. The few who do often retract their statements so that many cases never reach the courts. According to a 2002 report to the UN Special Rapporteur on the Independence of Judges and Lawyers prepared by Komnas Perempuan and partner organizations, of 548 cases of VAW handled by four women's crisis centres in Jakarta in April 2001-02, less than 10 per cent (45 cases) were reported to the police.<sup>36</sup> Police officers at the Women's Desk of the Metropolitan Police Station of East Jakarta confirmed that VAW cases were rarely reported.<sup>37</sup> Only two cases of abuse of domestic workers had been reported to them between January and March 2006.

Women domestic workers' reluctance to report incidents to the police is grounded in cultural, economic and educational factors.

First, women may be ashamed to disclose the incident to the police. One domestic worker interviewed explained that she did not go to the police because she thought they were all male (*see Dewi's case, p10*). In Indonesia, it is still taboo to speak openly about sex, and attitudes women and girls should adopt about sexual relationships are carefully coded. Extra-marital relationships are criminalised in law. Any married man or woman who commits adultery or who takes direct part in the act knowing that the co-partner is married shall be punished by a maximum imprisonment of nine months (art 254). This means that women

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<sup>36</sup> Of the 45 cases, 10 resulted in convictions; five sentences of between six and eight years' imprisonment and one maximum sentence of 12 years were imposed. Of the 257 cases handled by the Jakarta Metropolitan Police Women's Desk between April 2001 and April 2002, only 18 per cent reached the courts; almost 20 per cent of cases were affected by the reluctance of women to file formal complaints and the subsequent retraction of complaints.

<sup>37</sup> Interview, 6 March 2006.

domestic workers may be reluctant to report sexual abuse if they are married themselves or if the perpetrator of the abuse was married him/herself at the time of the incident for fear of being accused of breaking the law. Although recent discussions over the controversial pornography law have shown an increased divide within Indonesian society over these issues, a conservative attitude nurturing gender stereotypes whereby a woman is confined in the private sphere and should refrain from having sexual relationships before marriage still prevails, especially among the least educated. In this context, female domestic workers may feel too intimidated to disclose particularly intimate incidents to the police, a male dominated institution. Amnesty International notes that this reluctance by women domestic workers to testify could perhaps be challenged if there was more awareness about the recently established gender desks exclusively staffed by female police officers in police stations.<sup>38</sup>

Secondly, domestic workers may fear losing their jobs or not finding other jobs afterwards if they speak out. This is especially true if the case goes to court, as the process may take a long time and discredit the worker in the eyes of her current and any potential future employers. Additionally, the legal process can be time consuming, making it difficult for the domestic worker to continue working while going through court proceedings.

Lastly, victims may not be aware that domestic violence is a crime. Provisions within the Law on Domestic Violence state that the government shall “*organize communication, information, and education regarding violence in household; organize socialization and advocacy regarding violence in household; and organize gender-sensitive education and training on the issue of violence in household and shall establish gender sensitive service standard and accreditation*” (art 12). However, much remains to be done to publicize the law and to operationalise its awareness-raising provisions. The Domestic Violence Law remains poorly known, even among judges, and domestic workers are among the last to be informed about their rights in this regard. An overwhelming majority of the domestic workers interviewed had not heard about the Domestic Violence Law and did not know it was applicable to their situations.

Cases of violence and other abuses against domestic workers reported to the police rarely make it to court. Most are instead settled through “mediation” outside the scope of the legal system. Domestic workers and employers come to an agreement, usually financial, to resolve the matter in private and any criminal charges against the perpetrator are dropped. Amnesty International was told that these practices are facilitated to some degree by the higher status and financial weight of employers compared to those of domestic workers. While employers are often in a strong position to bargain on a financial amount to settle the case and thereby avoid criminal punishment, domestic workers have little option but to accept what their employer offers. With corruption rife across the judiciary and police system, these practices may lead to impunity for perpetrators and lack of access to justice for victims,

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<sup>38</sup> The police run more than 200 “special crisis rooms” or “women’s desks” throughout the country where female officers receive reports from women and child victims of sexual assault and trafficking and where victims find temporary shelter. In US Department of State, “*Country reports on human rights practice*”, Indonesia, March 2006, <http://www.state.gov/g/drl/rls/hrrpt/2005/61609.htm>.



potentially fuelling a cycle of abuse whereby perpetrators go free and commit abuse over again.<sup>39</sup> The Indonesian government should ensure that domestic workers who come to an agreement with their employer after having reported their case to the police do so with full awareness of their rights. Allegations of criminal assault should be investigated and prosecuted by the police wherever there is evidence. Their decision to pursue an investigation should not be affected by whether or not compensation of any kind has been offered to or accepted by the alleged victim.

If a case goes to court, domestic workers may still face obstacles. There may be some reluctance among police, prosecutor's offices, judges and lawyers to tackle the case due to a persistent belief that domestic violence remains a private issue which does not require state intervention. Many believe that the victim herself, rather than the perpetrator, is responsible for the violence she endured, having provoked such violence by not carrying out her work properly.<sup>40</sup> According to local NGOs these obstacles to victims' access to justice are further exacerbated by a lack of "respect" for domestic workers within the judiciary itself. Domestic workers are again victims of their low status within Indonesian society (*see 2.1*).

**Sunarsih:** In 2001, a 15-year-old domestic worker who worked in South Surabaya, east Java, was repeatedly hit for over an hour by her female employer until she died. She was attacked for taking fruits without, according to the employer, 'official' permission. Sunarsih reportedly took the fruits because she was desperate to eat something, and had no other access to food: her salary had not been paid and her employer forbade her from leaving the house. The female employer was given a four-year prison sentence for ill-treatment resulting in Sunarsih's death by the Surabaya district court. The sentence was reduced to two years on appeal. By 2005, the employer, who had already been released, was again accused of ill-treatment by the three domestic workers in her employment. The domestic workers reported to the police that they had to work every day from 3:00 am until 1:00am, and that if they were tired and late in their work, they would be beaten by their female employer with a brush, a broom, or an iron pipe. Also, they were deprived of adequate food, and some days given only water. In April 2005, the 38-year-old female employer was sentenced to seven months imprisonment by the Surabaya district court for her treatment of the three workers. In August 2005, she was released and was waiting for the outcome of an appeal she had submitted to the High Court.

### 3.2.3 Limited victims' protection mechanisms under criminal law

Until very recently, the absence under Indonesian law of protections for victims and witnesses during the investigation of a criminal offence and before, during, and after trial, has proved a substantial impediment to the effective investigation and prosecution of crimes involving violence against women. These crimes have been difficult to prosecute successfully in the past because, among other things, many times they occur in private where no witnesses are

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<sup>39</sup> See UN Special Rapporteur on the independence of judges and lawyers, Report to the UN Commission on Human Rights on the mission to Indonesia of 15-24 July 2002, UN Doc. E/CN.4/2003/65/Add.2, 13 January 2003.

<sup>40</sup> See Legal Aid Foundation Apik website, at <http://www.lbh-apik.or.id/gd-legislative%20advocacy.htm>.

present, and victims are often reluctant to report the crime or to testify in court for fear of reprisals and/or stigmatization.

However, protections available to victims and witnesses have significantly increased in the wake of the passing of a Witness Protection Act in July 2006, and with the provisions of the Domestic Violence Act which was passed in 2004 (Law 23/2004). The Domestic Violence Act details extensively the protections and services to be provided to victims of domestic violence. The Witness Protection Act and the Domestic Violence Act may be used in conjunction with one another.<sup>41</sup>

The Witness Protection Act includes the important provision that victims and witnesses do not have to give their testimony in court for that testimony to qualify as admissible evidence. The presiding judge has the discretion to allow the victim or witness to testify in writing or via teleconference in the presence of an authorized official. These specifications are crucial to the protection of victims and witnesses, including in cases of sexual violence.

The Domestic Violence Act obliges the police to provide temporary protection (up to seven days) to a victim within 24-hours of receiving a report of violence in the household, and within 24-hours of beginning to provide that protection, the police are obliged to request a protection instruction ruling from a court. However, the Act does not specify in practical terms what a protection instruction ruling should encompass, except that protection should be “all efforts intended to provide a sense of security to the victim”<sup>42</sup> to be provided by the family and social and state institutions. The Act does specify procedures for the detention of perpetrators who violate protection instruction rulings, without expanding on what would constitute this violation.<sup>43</sup> A protection instruction ruling lasts for one year, with the possibility of an extension. The Act also provides for health, counseling, spiritual mentoring and companionship services to be provided to the victim.

Article 15 of the Domestic Violence Act also obliges any person who witnesses or is aware of the occurrence of violence in the household, to seek to prevent the continuation of the crime, and to provide protection and assistance to the victim. This provision is important to domestic workers due to their isolation from family and friends, and the invisible nature of their work and living arrangements.

These protections available to victims and witnesses, should contribute positively to attempts to investigate and prosecute certain crimes, including violence against women, and

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<sup>41</sup> Should they contradict each other, the most specific law relevant to that crime will take precedence.

<sup>42</sup> Art. 1 (4) Law No. 23/2004 Regarding Elimination of Violence in the Household (*Undang-undang penghapusan Kekerasan dalam Rumah Tangga*, KDRT, Official translation available at <http://www.komnasperempuan.or.id/public/UU%20No%2023%202004%20PKDRT-%20English.pdf>. For the original version, see State gazette of the Republic of Indonesia of 2004, Number 4419

<sup>43</sup> Art. 35 (1-3) and Art. 38 (1-2), Law No. 23/2004 Regarding Elimination of Violence in the Household (*Undang-undang penghapusan Kekerasan dalam Rumah Tangga*, KDRT

should contribute to lessening the trauma and fear victims and witnesses may have about reporting and testifying against criminal acts.

However, there are still deficiencies under criminal law in Indonesia in addressing the particular challenges of investigating gender-based crimes, including crimes involving sexual violence. These, in conjunction with limitations in the provisions of services, will negatively impact on the ability of a victim or witness to avail themselves of protection and services.

The Criminal Procedure Code (Kitab Undang-Undang Hukum Acara Pidana – KUHAP) determines the procedures and rights of individuals at the different stages of investigation and trial, and was under revision at time of writing this report. Amnesty International is concerned that the current draft of the revised KUHAP requires that a victim or witness must be present in court to make their testimony, in contradiction with the provisions in the Witness Protection Act abovementioned. The Witness Protection Act will remain applicable despite this incongruity, but nevertheless the revised KUHAP must be amended to avoid any contradiction and confusion between the two laws. In particular, the revised KUHAP must permit victims or witnesses, where necessary for their protection or for other valid reasons, including in cases of sexual violence, to give their evidence *in camera* (closed proceedings) or via video or audio-link in a manner that fully respects the right of the accused to a fair trial. However, closed hearings should not be mandatory in such situations. As in the Witness Protection Act, the revised KUHAP must be amended to provide that the presiding judge should have the discretion to allow the victim or witness to testify in open court, having regard to all the circumstances, particularly the views of the victim or witness.

In addition, the revised KUHAP must be amended to contain sufficient provisions designed to address the challenges of investigating gender-based crimes, including crimes involving sexual violence. For example the revision of the KUHAP must include provisions banning courts from drawing inferences about the credibility, character or predisposition to sexual availability of a victim based on prior or subsequent sexual conduct of the victim. The revision must also include provisions that regulate the admission of evidence regarding the consent or lack thereof of the victim in a crime of sexual violence. A closed hearing to consider the admissibility or relevance of such evidence should be available as of right. Furthermore the revision should expressly provide that, while a court must not convict a defendant unless satisfied of his or her guilt beyond reasonable doubt, corroboration is not required for any crime, particularly crimes of sexual violence.

The Domestic Violence Act provides that various services be offered to victims or witnesses of domestic violence, including that they be provided with health care and taken to a safe house or an alternative dwelling. Although government-sponsored and NGO-run crisis centres and shelters providing support and secure accommodation for domestic worker victims of violence are available in Jakarta and other major cities they are not widely available in more isolated areas, especially outside Java. There are also only a limited number of hospitals which have expertise in dealing with violence against women, especially outside major cities. Health providers Amnesty International met in Jakarta explained that currently

treatment and counselling are available for free in some hospitals for victims of domestic violence. Although these are positive steps, Amnesty International is concerned that the limited provision of the services required by victims of domestic violence may mean that many domestic workers may not have access to these services. Domestic worker victims of domestic violence may also be impeded in accessing these services due to their geographical isolation, or may simply not know that the services exist.

## 4. Domestic workers are denied workers' rights

### Box 2 International standards on decent conditions of work

By ratifying the ICESCR, Indonesia has agreed to be legally bound by its provisions. These form part of domestic law<sup>44</sup> and include state obligations in relation to ensuring decent conditions of work. As enshrined in article 7 of the ICESCR and other standards, everyone has the right to enjoy just and favourable conditions of work.<sup>45</sup> State parties to the ICESCR must ensure, in particular:

- Remuneration which, as a minimum, provides all workers with:
  - Fair wages and equal pay for work of equal value without any distinction; in particular, women are guaranteed conditions of work that are at least the same as those enjoyed by men, with equal pay for equal work
  - A decent living for themselves and their families according to the provisions of the present Covenant
- Safe and healthy working conditions
- Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

*“All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”<sup>46</sup>*

*“Protection of workers is intended to safeguard the fundamental rights of workers and to secure the implementation of equal opportunity and equal treatment without discrimination on whatever basis in order to realize the welfare of workers/labourers*

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<sup>44</sup>According to section 7(2) of Indonesia's Law No.39/1999 on Human Rights, provisions of international treaties which concern human rights and which have been ratified by Indonesia form part of domestic law.

<sup>45</sup> See in particular the eight fundamental ILO standards which Indonesia has ratified: Freedom of Association and Protection of the Right to Organize Convention (No.87); Right to Organize and Collective Bargaining Convention (No.98); Forced Labour Convention (No.29); Abolition of Forced Labour Convention (No.105); Minimum Age Convention (No.138); Worst Forms of Child Labour Convention (No.182); Equal Remuneration Convention (No.100); and Convention concerning Discrimination in respect of Employment and Occupation Elimination (No.111). Indonesia has also ratified the ILO Employment Service Convention (No.88), Workers Housing Recommendation (No.115) and Labour Inspection Convention (No.81).

<sup>46</sup> Art 26 of the ICCPR.

*and their family by continuing to observe the development of progress made by the world of business.”<sup>47</sup>*

## **4.1 Manpower Act**

In 2003 the Indonesian government passed the Act Concerning Manpower (Manpower Act, Law 13/2003) to embody the rights and protections of both employers and employees. The Act contains provisions regulating key workers' rights including minimum wage and equal remuneration, limitations on working hours, leave, and the right to join a trade union. It also contains provisions pertaining to the specific needs of women, including maternity leave, and the regulation of child labour. It enunciates arrangements for termination of employment and for industrial dispute resolution, and specifies criminal and administrative sanctions for the violation of provisions in the Act. However, despite the expansiveness of the sentiments in the preamble, the rights embodied in the Act are not extended to all workers in Indonesia, and domestic workers are among those excluded from its protections.

The Manpower Act makes a distinction between two entities which employ people – ‘employers’ (*pemberi kerja*) and ‘entrepreneurs’ (*pengusaha*). An ‘employer’ is defined as “individual, entrepreneur, legal entities or other entity that employ manpower by paying them wages or other forms of remuneration.” This description clearly would include employers of domestic workers. An ‘entrepreneur’ is then defined as “an individual, a partnership or a legal entity that operates a self-owned enterprise... [or] a non-self-owned enterprise,” and an enterprise is “every form of business” or “social or other undertakings with officials in charge.”<sup>48</sup> A domestic household would not fall into the definition of an enterprise, and therefore domestic workers do not qualify as being employed by entrepreneurs.

All protections of key workers rights in the Manpower Act, such as the rights listed above, are specified to apply only to the employees of entrepreneurs. Therefore, domestic workers, and other workers whose manner of employment does not fall within the definition of employment by ‘entrepreneurs’, are excluded from the protections of fundamental workers rights which are extended to other workers in Indonesia. Domestic workers are consequently left without legal protections of their employment rights.<sup>49</sup>

The Manpower Act does contain a small number of provisions relating to the obligations of employers, but none of these relate to the rights of any worker they employ. Only one sub-section of one provision describes the obligations of an ‘employer’ *vis a vis* an employee, stipulating that in employing people, the employers are “under an obligation to

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<sup>47</sup> Act of the Republic of Indonesia No. 13/2003 Concerning Manpower (Manpower Act), 25 March 2003, preamble, paragraph d. English translation available at the Ministry of Manpower and Transmigration website, [http://www.nakertrans.go.id/perundangan/undang-undang/UU-13\\_eng.pdf](http://www.nakertrans.go.id/perundangan/undang-undang/UU-13_eng.pdf).

<sup>48</sup> Art 1 (4-6), Act of the Republic of Indonesia No. 13/2003 Concerning Manpower (Manpower Act)

<sup>49</sup> During interviews with officials from the Ministry of Manpower, Amnesty International was told that domestic workers are not covered at all by the Manpower Act and do not fall under the responsibility of the Ministry.

provide protection which shall include protection for their welfare, safety and health, both mental and physical.”<sup>50</sup> 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 Rp10,000,000 and a maximum of Rp400,000,000.”<sup>51</sup> However, without any specific benchmarks or specified rights, 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 Act. Furthermore, in practice this provision has meant little to the daily reality of Indonesia’s domestic workers. The limitations and vagueness of article 35 certainly does not allow domestic workers a legal basis on which to claim minimum wage, the regulation of reasonable working hours, or other rights guaranteed to other workers in Indonesia under the Manpower Act.

The preamble of the Manpower Act declares that the “protection of workers is intended to safeguard the fundamental rights of workers and to secure the implementation of equal opportunity and equal treatment without discrimination on whatever basis...”<sup>52</sup> The Act contains no explanation of why its own provisions discriminate against a significant proportion of the national workforce.

## 4.2 Inadequate and abusive conditions of work

**Imah:** “I started working as a domestic worker when I was 14 years old. At that time I was offered work by my neighbour as a child minder in Jakarta with a salary of 150,000 Rp [US\$ 16] per month. But I was only paid 40,000 Rp [US\$ 4.3] per month and in addition to the work of child-minding I had to do household tasks like cooking, cleaning, ironing, and all other housework. I also had to clean two cars every morning, and take care of all nine members of the family. These were the normal conditions for seven months.

After Lebaran [the last day of Ramadan, the fasting month] I moved to a second employer and worked in the Petamburan region in West Jakarta. ... In this place I also experienced psychological violence, being abused, complained at, my employers were sullen with me, and I was often not allowed to speak. For two years my wages were withheld by my employer so that I could not leave the village and could not change jobs.

Around 2000 I moved work to the area of Srengseng-Kebon Jeruk, West Jakarta. With this third employer my suffering did not end because I suffered sexual harassment and attempts of rape by my male employer. During nine months of work, my salary was not paid by my employer. Repeatedly I asked for my wages, but my employer answered that my wages had already been sent to my village

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<sup>50</sup> Art 35 (3), Act of the Republic of Indonesia No. 13/2003 Concerning Manpower (Manpower Act), 25 March 2003, preamble, paragraph d. English translation available at the Ministry of Manpower and Transmigration website, [http://www.nakertrans.go.id/perundangan/undang-undang/UU-13\\_eng.pdf](http://www.nakertrans.go.id/perundangan/undang-undang/UU-13_eng.pdf).

<sup>51</sup> Art 186 (1), Act of the Republic of Indonesia No. 13/2003 Concerning Manpower (Manpower Act)

<sup>52</sup> Preamble, paragraph d., Act of the Republic of Indonesia No. 13/2003 Concerning Manpower (Manpower Act)

*through his mother-in-law. But my parents never received any of my monthly salary. I complained about this to my parents, and not long afterwards, my father picked me up to return home to the village.*

*During 2001 I worked for a fourth employer, in the area of Pondok, Kopi-Klender, East Jakarta. In that place too, I was not free from violence. I had to work very hard, getting up at 4am and going to bed at 1am. I had no rest time and I was not allowed to leave the house. A month later I left this place because I couldn't endure it.”<sup>53</sup>*

#### 4.2.1 No contract - deception and lies

*“There was no agreement. I didn't know anything about the job when I started.”<sup>54</sup>*

*“There was no contract. The salary agreed was Rp.100,000 (less than US US\$11) per month... Although there was an oral agreement on salary, it was not respected.”<sup>55</sup>*

None of the domestic workers Amnesty International interviewed were given a written contract before they started employment. Sometimes there was an oral agreement about the type of tasks they were expected to carry out and the salary they would be paid, but few were told how many hours they would work during the week, whether they would be given holidays and where they would be living. Once they started employment, many realized that even their oral agreement, especially on salary, was not respected. Although some felt frustrated and left their job shortly afterwards, many considered themselves lucky to have a job at all and some felt for various reasons that they had to stay. Domestic workers hired through recruitment agencies are not automatically provided with a written contract either. Where a contract does exist, it is often only between the employer and the recruitment agency, thus excluding domestic workers from the agreement and failing to create clear and enforceable legal entitlements for her.

Based on best practices, the ILO recommends that a written or oral contract setting out the rights and obligations of domestic workers in the workplace be agreed and enforceable by domestic workers. According to the ILO, the following elements should be included: job description, type of employment (full-time/part-time, live-in/live-out), clear outline of the duration and conditions of any probationary period, number of working days, hours of work, breaks, overtime, holidays, wages, leave, conditions of termination of employment, and procedure for the settlement of disputes.<sup>56</sup>

Under the Manpower Act (*see 4.1*), a written work agreement must at least include:  
*“the name, address and line of business; the name, sex, age and address of the worker; the occupation or the type of job; the place, where the job is to be carried out; the*

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<sup>53</sup>Testimony, Jakarta, 20 July 2006.

<sup>54</sup> Interview, 5 March 2006, Surabaya.

<sup>55</sup> Interview, 5 March 2006, Surabaya.

<sup>56</sup> See Ramirez-Machado, ILO study, 2003, p15.

*amount of wages and how the wages shall be paid; the rights and obligations of both the employer and the worker; the date the work agreement starts to take effect and the period during which it is effective; the place and the date where the work agreement is made; and the signatures of the parties involved in the work agreement”*(art 54).

As stipulated further in article 63:

*“If a work agreement for an unspecified time is made orally, the employer is under an obligation to issue a letter of appointment for the relevant worker. The letter of appointment...shall at least contain information concerning: the name and address of the worker; the date the worker starts to work; the type of job or work; and the amount of wages”.*

In the current context of exploitation of and discrimination against domestic workers in Indonesia, Amnesty International considers that the government of Indonesia should work with employers, recruitment agencies and domestic workers’ representatives to develop model contracts for the employment of domestic workers. In doing so, the government of Indonesia should seek the technical assistance of the ILO, as required.

#### 4.2.2 Not a living wage

Domestic workers are subjected to massive underpayment compared to other workers, and often live in conditions which are inadequate and abusive (*see 4.2.3 and 5.2*). Salaries of women domestic workers are on average half to a third of the national minimum wage. The domestic workers interviewed by Amnesty International in Jakarta were paid on average between Rp.150,000 (US\$16) and Rp.300,000 (US\$32) a month. By comparison, the minimum wage, set annually by province, was Rp.700,000-750,000 (US\$74-\$80) in 2004-2005, during their period of employment.

Under the Manpower Act, “*entrepreneurs are prohibited from paying wages lower than the minimum wages*” (art 90). In April 2006, Muzni Tambusai, a senior official at the Manpower and Transmigration Ministry, admitted that “*it was still difficult to live on a minimum wage of almost Rp.800,000 (US\$86) in Jakarta*”.<sup>57</sup> The Confederation of All-Indonesian Workers Unions was reported as estimating that up to 70 per cent of the almost 110 million workforce in the informal sector – those not employed by entrepreneurs and therefore excluded from the protections of the Manpower Act – do not receive even the minimum wage.

In Indonesia, domestic workers have traditionally been denied minimum wage protection. It is usually argued that as domestic workers are provided with accommodation, food, and other allowances, it is very difficult to calculate how much to deduct from their

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<sup>57</sup> *The Jakarta Post*, 27 April 2006.



salaries for such expenses. Government officials have further argued that setting a minimum wage would prevent some employers from hiring domestic workers thus it would be detrimental to employers who would no longer benefit from this service and to domestic workers who would not find a job.

While regulating the rights of domestic workers presents specific challenges, this does not justify depriving such workers of their rights, which Indonesia has undertaken to respect when ratifying relevant international conventions (*see 4.3*). The primary concern should be to ensure that all domestic workers are guaranteed a wage adequate to secure their right to an adequate standard of living.

#### **Minimum wage laws protecting domestic workers in other countries**

A number of countries, including the Philippines, have fixed legislation on the minimum wage for domestic workers. Others like Colombia and Spain have applied the national minimum wage to domestic workers. Some national laws also entitle domestic workers to certain benefits in kind. For instance, in the Philippines, the law on domestic workers holds that lodging, food and medical treatment should be added to the minimum wage rate determined under the rule on Employment of Househelpers. A number of national laws on domestic work ensure that domestic workers are paid on a regular basis, whether weekly or monthly. In South Africa, the law refers to certain deductions which are not permitted by law. For instance, an employer cannot receive or withhold any payment from domestic workers for: their employment or training; supplying them with work equipment, including work tools or clothing, or of any food while they are working or at the workplace.<sup>58</sup>

During the recruitment process, some were deceived about their salaries. Although they were told they would be paid a certain sum, some were paid half of this promised salary (*see Imah's case above, p21*). Domestic workers also reported denial of pay, late pay, and denial of compensatory pay for overtime.

#### 4.2.3 Long working hours and no rest time

*"I started when I was 15 years old... I cooked, washed the clothes, cleaned the house and looked after three children... I was also asked to take care of a large garden... Sometimes I was asked to give massages to female employers at night... I worked every day, with no days off, from 5am until 11pm"*<sup>59</sup>

Domestic workers in Indonesia often work excessive and unreasonably long hours. The women domestic workers interviewed by Amnesty International worked on average 70 hours a week, sometimes a lot more - up to 22 hours a day.

<sup>58</sup> See Ramirez-Machado, ILO study, 2003, pp. 55-62.

<sup>59</sup> Interview, 4 March 2006, Jakarta.

Most domestic workers worked seven days a week, without a day of rest. As with other working conditions, hours and rest periods depended on the goodwill of the employer. Those with the most sympathetic employers were granted one day off per week. In some cases, they were allowed to take some rest during the day. However, some said they had very little or no rest throughout the day. This is a violation of domestic workers' rights to safe and healthy working conditions and their right to fair wages in the case where they are not compensated for overtime.

Lack of legal regulations and the 'closed door' nature of domestic work make it difficult to monitor the exact number of hours worked by domestic workers. For those who 'live in' the house of their employer, the line between work and rest is often extremely blurred. This is especially true when domestic workers who take care of children sleep in the same room as the children or are otherwise charged with catering for their needs during the night. When children were sick, workers reported that they could not sleep because they had to take care of them. They were on duty 24 hours a day, often seven days a week:

*"I worked from 5 am until the child was asleep, sometimes until 3 am – usually until 10 pm. I could rest sometimes, maximum one hour during the day. When the child was sick (around once a month), I had to stay and sleep with him. I felt responsible because it was my job"*<sup>60</sup>

Although there is no uniform international agreement on the acceptable number of weekly working hours, there is a general agreement under ILO standards, that there must be "progressive reduction of normal hours of work, when appropriate, with a view to attaining the standard of the 42-hour week without any reduction in the wages of the workers".<sup>61</sup> The ILO Forty-Hour Week Convention 1935 (No. 47) states that the principle of a 40-hour week should be applied in a way that does not cause a lowering of the standard of living of workers. Most national legislation on domestic workers regulates the number of their working hours and makes a distinction between the maximum number of hours in a working week (usually around 40 hours a week) and circumstances which may require additional work (e.g. care of a sick member of the family).<sup>62</sup>

Under the Manpower Act, workers are required to work a maximum of 40 hours a week. If they work more than this they must be paid for the additional hours worked.<sup>63</sup> However, the majority of the domestic workers interviewed received the same salary regardless of the number of hours they worked. They stated that they had no choice about the number of hours they worked. They felt obliged to work overtime to keep their job.

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<sup>60</sup> Interview with Dewi, Jakarta, 26 February 2006.

<sup>61</sup> Art 1.1 Reduction of Hours of Work Recommendation, 1962 (No. 116).

<sup>62</sup> Blackett, Adelle, *Making domestic work visible: the case for specific regulation*, ILO, 2000, Chapter 4, Hours of Work. See: <http://www.ilo.org/public/english/dialogue/ifpdial/publ/infocus/domestic>, and Ramirez-Machado, ILO study, 2003, pp. 19-22.

<sup>63</sup> Under the 2003 Manpower Act (art 77), workers shall not work more than seven hours a day or 40 hours a week for six workdays a week, or eight hours a day or 40 hours a week for five workdays a week. Although these provisions do not apply to certain businesses, if entrepreneurs wish their workers to work longer, they are required to obtain their approval, pay them overtime and not make them work more than three hours' overtime in a day or 14 hours in a week.

The Manpower Act, in conformity with international standards, offers provisions for night work and sets out specific periods of rest, including one day off per week for workers who work seven hours a day, or two days off per week for workers who work eight hours a day.<sup>64</sup> All workers should be guaranteed these basic provisions set out in the Manpower Act.

On 23 January 2002, the Ministry of Manpower and Transmigration and the Ministry of Women's Empowerment officially proclaimed their support for a day of rest to be allocated to domestic workers every week. Their statement came in response to an intense lobbying campaign by NGOs. Despite such a long-standing initiative and public pledges, domestic workers are denied this right. Local NGOs believe that, in addition to being detrimental to health and well-being, the lack of a day off makes it almost impossible for domestic workers to organize to promote their rights (*see 4.1.5*).

#### 4.2.4 No holiday

*“For Lebaran, I would return home for two days... I never stayed longer – I was scared the employer would be angry”<sup>65</sup>*

Although most domestic workers Amnesty International interviewed were allowed to return home to their families for one or two weeks for the traditional Muslim holiday of “*Lebaran*”, some were not allowed a holiday at all. Some were also denied time off during Indonesian public holidays, for example very few were permitted to attend National Independence Day ceremonies on 17 August. When combined with long working hours, denial of regular breaks and work during public holidays the conditions for those domestic workers who were denied a holiday were oppressive.

Under the Manpower Act, workers in Indonesia who have been with an employer for over a year are allocated 12 working days' leave a year, in addition to time off during public holidays.<sup>66</sup> It is clearly stated that if they work during public holidays, they should be given compensatory pay. In most national legislation on domestic workers, there are provisions on annual leave and public holidays.<sup>67</sup> In Colombia, Chile, Costa Rica, Honduras, Paraguay and Viet Nam domestic workers are afforded the same general entitlement as other workers concerning holidays with pay. In general, domestic workers are also entitled to a day off with full pay on public and statutory holidays.

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<sup>64</sup> The ILO Night Work Convention, 1990 (No. 171) and Recommendation (No. 178), which are applicable to domestic workers, call for the adoption of specific measures to be taken for night workers to protect their health, assist them to meet their family and social responsibilities, provide opportunities for occupational advancement, and compensate them appropriately.

<sup>65</sup> Interview, 8 March 2006, Surabaya.

<sup>66</sup> Under the Manpower Act (art 75), workers are not obliged to work on formal public holidays unless the type and nature of their job must be conducted continuously or there is specific agreement between the worker and the entrepreneur. They must receive overtime pay for such work.

<sup>67</sup> See Ramirez-Machado, ILO study, 2003, pp. 42-45.

#### 4.2.5 Obstacles to joining a union

Some of the domestic workers Amnesty International interviewed suffered severe restrictions on their freedom of movement and association. In some cases, their conditions amounted to forced confinement as they were not allowed to leave their employer's house, had no day off and could not join meetings and other social events outside the employer's home (*see* 5.3).

In this context, many domestic workers are unaware of the plight of their colleagues, and unaware of their right to join a union. Although their rights to freedom of association and collective bargaining are not directly thwarted by the government, these rights do not receive much publicity in spite of recent legal interpretations in favour of domestic workers' right to association.<sup>68</sup> Employers do not seem to know that they are contravening the right of domestic workers to unionize by preventing them from meeting other domestic workers, or stopping them from attending specific gatherings of domestic workers at unions and other places.

According to the ICESCR and other treaties and standards:

*"Everyone has the right to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests". (art 8)<sup>69</sup>*

#### **DW Union Tunas Mulia: the only union of domestic workers in Indonesia**

DW Union Tunas Mulia was established in Yogyakarta, central Java in April 2003 and was officially recognized as a union by the local representative of the Ministry of Manpower and Transmigration a year later.<sup>70</sup> They now have 175 members, all current or former domestic workers. They are affiliated with a number of agencies, including the Yogyakarta Local Network for Domestic Workers Protection (*Jaringan Perlindungan Tangga*), the Alliance of Yogyakarta Workers (*Aliansi Buruh Yogyakarta*), the Network of Court Observers (*Jaringan Pemantau Peradilan*) and the National Network for Domestic Workers Advocacy (JALA PRT). Their activities include: advocacy on individual cases and legislative reforms; dissemination of information via a theatre group, the radio, a communication forum, a discussion group; and welfare activities through a small shop, laundry facilities, and health insurance facilities. They are financed through membership contributions (Rp.2,000 monthly [US\$ 0.2]) and are organized in six communities where they discuss various topics relevant to domestic workers.

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<sup>68</sup> See the Elucidation to Section 10 of Law No.21 of 2000 on Trade Unions which specifically mentions the right of domestic workers to associate, cited in ILO Jakarta, "The Regulation of Domestic Workers in Indonesia, Current Laws, International Standards and Best Practices", p. 11.

<sup>69</sup> See also Convention No. 87: Freedom of Association and Protection of the Right to Organize Convention (1948), Convention No. 98: Right to Organize and Collective Bargaining Convention (1949), and art 104 of the Manpower Act.

<sup>70</sup> Interview with Susi Apriyanti, Chairperson of DW (Domestic Worker) Union Tunas Mulia, Yogyakarta, 21 March 2006.

In Indonesia, there is only one union of domestic workers. DW Union Tunas Mulia faces great difficulty in encouraging domestic workers to join the union and attend their meetings. This is in large part due to the restrictions employers place on their workers. The union described how one domestic worker has to whisper on the phone whenever she calls them because she is afraid of her employer. Other domestic workers reported that their employers forbade them from attending DW Union Tunas Mulia meetings. The union reported that it was common to witness employers preventing domestic workers from going to the union office.

#### 4.2.6 Health

*“When I was sick I had to continue working. Although I was given money to buy medicine, I was never sent to the doctor. I continued working, very slowly.”<sup>71</sup>*

The one sub-provision in the Manpower Act, article 35(3), which relates the duty of ‘employers’ regarding their workers, discusses only loose concepts – employers are “under an obligation to provide protection which shall include protection for their welfare, safety and health, both mental and physical.” As discussed in section 4.1, the absence of any specified rights or any clear benchmarks by which to assess the provision of these obligations means that employers of domestic workers continue to base their treatment of those workers almost exclusively on goodwill. Furthermore, this signifies a huge divide from the many specific provisions pertaining to health and welfare, which apply to the employees of entrepreneurs under the Manpower Act. As a result, Amnesty International found clear disparities of treatment among those domestic workers interviewed. While some domestic workers were provided adequate time to rest when they were ill, others had to continue working when they were feeling unwell. Some felt that they were monitored 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.<sup>72</sup>

Some employers did not allow domestic workers to seek medical attention when they were ill. Even if an employer permitted them to seek medical attention, domestic workers often could not afford to pay for their medical treatment or for hospital costs due to their low wages.<sup>73</sup> This reflects a general pattern in Indonesia, where healthcare is economically inaccessible to a large portion of the population. Indonesia is a state party to the ICESCR, which guarantees the right to the highest attainable standard of health. This means that the government has obligations to ensure that healthcare is progressively available, accessible, acceptable and of sufficient quality. The Government of Indonesia should take immediate

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<sup>71</sup> Interview, 9 March 2006, Surabaya.

<sup>72</sup> See Human Rights Watch, *Always on Call: Abuse and Exploitation of Child Domestic Workers in Indonesia*, June 2005, and 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, pp. 109-110.

<sup>73</sup> See World Health Organization, “*Macroeconomics and Health initiatives in Indonesia*” [http://www.who.int/macrohealth/action/Indonesia\\_finalreport.pdf](http://www.who.int/macrohealth/action/Indonesia_finalreport.pdf), April 2006.

and concrete steps to ensure that no one is denied access to health care due to an inability to pay.

A wide range of provisions in the Manpower Act outline the responsibilities which entrepreneurs have for the health and safety of their employees. These include the following: ensuring that employees are provided with adequate rest time (art 79); ensuring a healthy and safe working environment (art 86 and 87) and ensuring that female employees are able to access care meeting their specific needs, especially relating to pregnancy (art 76).<sup>74</sup> The Manpower Act states that employees should be paid in cases of illness, festive occasions and death in the family (art 93).

Specific provisions provide for women workers during their menstrual period, at times of pregnancy and during night work. However, none of the specific provisions for women employees of entrepreneurs are applicable to women domestic workers. As domestic workers are excluded from the guarantees under these specific provisions for women in the Manpower Act, they do not enjoy protection in relation to their gender-specific needs, in violation of the obligations which Indonesia has undertaken under CEDAW (*see box 3*).

**Nining** was reportedly raped by her employer until she fell pregnant. She decided to move to another employer as a result of the violence, however she did not tell her new employer about her pregnancy. Throughout her pregnancy she tried to hide it. When she was about to give birth, her employer was away for a few days. She gave birth to the baby on her own in the house. However, after the birth she was exhausted and fell asleep. When she woke up, the baby was dead. As she did not know what to do, she decided to hide the baby in the ceiling. After a few days when the employer returned, she smelled a strong smell. When she checked the ceiling, the body of the baby fell down. The employer went to the police, and subsequently, the domestic worker was accused of lack of attention towards the baby and of murdering him. She was eventually sentenced to two years in jail. The sentence was reduced to a year on appeal.

According to the ICESCR and other standards, mothers should be given special protection before and after childbirth. During this time, they should be given paid leave or leave with adequate social security benefit (art 10).<sup>75</sup> Further, article 12 of CEDAW requires state parties to ensure that women receive “*appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.*”

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<sup>74</sup> See Subsection 5, Occupational Safety and Health, Manpower Act.

<sup>75</sup> Several ILO conventions address the maternal health of women employees, in particular hazardous working conditions and pregnancy-related discrimination, including Maternity Protection Conventions, Nos. 3 (1919), 103 (1952) and 183 (2000), and Maternity Protection Recommendation, No. 95 (1952).

**Box 3: International Standards on assurances of equal rights between men and women**

As a state party to the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), Indonesia has agreed to uphold human rights for everyone regardless of gender.<sup>76</sup>

CEDAW defines discrimination against women as "any distinction, exclusion, or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field." According to CEDAW, the Government of Indonesia has a duty to "take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights"<sup>77</sup> (art 11).

In particular, the following rights must be upheld (art 2.1):

- The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work (d);
- The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave (e);
- The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction (f).

Further, as stated in the ICCPR, everyone shall be equal before the law.

#### 4.2.7 Exploitation of children

In Indonesia, domestic workers start working as young as 12 or 13 years of age. The Ministry of Women Empowerment acknowledges that child domestic workers (below the age of 18) are subjected to a number of abuses, including physical, psychological, economic and sexual violence,<sup>78</sup> child trafficking and forced labour. A number of young domestic workers told Amnesty International that they felt "exhausted" and "demoralized". Some, who were able, returned to their family because they could not cope with the poor working conditions.<sup>79</sup>

<sup>76</sup> UN Charter (Art 1, 13 and 55(b) and 55(c)); Universal Declaration of Human Rights (art 2); ICCPR (Art 2(1) and 3); ICESCR (Art 2(3) and 3). The UN Charter is a treaty binding on all UN member states, including Indonesia.

<sup>77</sup> Also see ICESCR: "Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits" (art 10.2).

<sup>78</sup> The Ministry defines economic violence as the withholding of and inadequate pay.

<sup>79</sup> See Human Rights Watch, *Always on Call: Abuse and Exploitation of Child Domestic Workers in Indonesia*, June 2005.

**Box 4: International standards on Child labour**

The CRC calls for the strict regulation of child labour.<sup>80</sup> As a state party, Indonesia has a duty to “*take legislative, administrative, social and educational measures to ensure...the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.*”

In particular, Indonesia must provide for:

- a minimum age or minimum ages for admission to employment (*see 2.2.* – the minimum age for employment in Indonesia is 15 years old);
- appropriate regulation of the hours and conditions of employment;
- appropriate penalties or other sanctions to ensure that the present article is effectively enforced (art 32).

Having ratified the ILO's Worst Form of Child Labour Convention, Indonesia has a duty to remove children from the worst forms of child labour, defined as follows.

- All forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
- Work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.<sup>81</sup>

According to the ILO International Program on the Elimination of Child Labour (IPEC), child domestic work is an intolerable form of child labour when the child:

- is sold or trafficked;
- is bonded to repay family debt;
- works without pay;
- works excessive hours;
- works in isolation or during the night;
- is exposed to safety or health hazards;
- is unreasonably confined to the employer's premises;
- suffers physical violence or sexual harassment;
- is very young.<sup>82</sup>

The Indonesian Law on Child Protection stipulates that “*every child...shall be entitled to receive protection from the following: a. discrimination; b. exploitation of an*

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<sup>80</sup> The CRC was ratified by Indonesia in 1990. Also see ICESCR, which provides for the protection of children from economic and social exploitation, and harmful or dangerous employment, and requires states to set age limits on child employment (art 10(3)).

<sup>81</sup> Art 3, ILO Worst Forms of Child Labour Convention (No. 182).

<sup>82</sup> See ILO-IPEC, *Facts on Child Domestic Labour*, Geneva, March 2003, [http://www.ilo.org/public/english/standards/ipecc/publ/download/factsheets/fs\\_domesticlabour\\_0303.pdf](http://www.ilo.org/public/english/standards/ipecc/publ/download/factsheets/fs_domesticlabour_0303.pdf)



*economic or sexual nature; c. neglect; d. harsh treatment, violence and abuse; e. injustice; and f. other forms of mistreatment”* (art 13.1).<sup>83</sup> Specific protection must be given to children who have suffered economic or sexual exploitation; who are victims of kidnapping, sale or trading; and who are victims of violence including physical, psychological and sexual violence. Economic or sexual exploitation of children, sale of children and violence against children are strictly prohibited (art 66, 68 and 69).

In July 2005, a joint public statement made by the Minister of Manpower and Transmigration, and the Minister of Women’s Empowerment stressed the need to tackle the issue of child domestic workers. Following the July declaration, the Ministry of Women’s Empowerment took the lead on promoting a new programme to ensure better protection of child domestic workers.<sup>84</sup> The aim of the programme is to obtain a commitment from policy makers to:

- decrease the number of child domestic workers below the age of 15;<sup>85</sup>
- increase the number of child domestic workers who have access to education;
- ensure that recruitment agencies have an ethical code of conduct and operational standards and procedures;
- increase the number of regulations prohibiting child work below the age of 15.

As part of this project, the Ministry of Women’s Empowerment launched guidelines on the protection of child domestic workers in March 2006. These require employers to treat child domestic workers fairly and humanely, pay them a just wage on time, and allow them time to pray. Employers are encouraged to provide domestic workers with access to schooling as well as one day off per week. The guidelines also call on labour agencies to train domestic workers before they are employed, draw up codes of conduct, and monitor the living and working conditions of child domestic workers. The police are expected to monitor recruitment agencies and employers.<sup>86</sup>

Amnesty International welcomes the new guidelines, but is concerned that they constitute recommendations rather than binding obligations in the form of law. The timescale of the programme and the exact means by which it is to be deployed remain unclear. Amnesty International is also concerned that this programme is led by the Ministry of Women’s Empowerment instead of the Ministry of Manpower and Transmigration, and that it focuses only on child domestic workers and not on all domestic workers. By doing so it does not address the roots of the broader problem, that is, that domestic workers are denied full access to labour rights under national legislation.

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<sup>83</sup> Law on Child Protection (No. 23/2002, *Undang-Undang tentang Perlindungan Anak*).

<sup>84</sup> See Indonesian Ministry of Women’s Empowerment, *Panduan Kebijakan Perlindungan Pekerja Rumah Tangga Anak* (Policy pilot for the protection of child domestic workers), 2006, p. 16.

<sup>85</sup> In Indonesia, children between the ages of 15 and 18 years old are allowed to work under certain conditions.

<sup>86</sup> *Inter Press Service*, “Indonesia: Law awaited to protect child domestic workers”, 12 April 2006, [www.ipsnews.net/news.asp?idnews=32864](http://www.ipsnews.net/news.asp?idnews=32864)

### 4.3 Need for full legal protection of domestic workers

#### Minimum standards on domestic workers

According to the ILO, domestic workers should have as a minimum legal protection covering:

- Clearly defined daily hours of work and rest periods;
- Clear-cut standards on night work and on overtime, including adequate compensation and subsequent and appropriate rest time;
- Clearly defined weekly rest and leave periods (annual leave, public holidays, sick leave and maternity leave);
- Minimum wage and payment of wages;
- Standards on termination of employment (notice period, grounds for termination, severance pay); and
- Action against child domestic work.

Child domestic workers should be provided special protection including: a clear minimum legal starting age; reduced number of hours of work in accordance with the worker's age; rest periods; clear-cut limits on overtime and night work; legal authorization to work (parental and from the labour authorities); obligatory medical examination; and access to at least elementary education or vocational training.<sup>87</sup>

#### 4.3.1 Limited protection under regional regulations

Some regional governments have autonomy in the areas of labour relations, trafficking, human rights, gender-equality and other related issues, and have produced regulations which affect domestic workers.

In Jakarta, there are two laws regulating domestic work: Local Ordinance on Improving the Welfare of Domestic Workers (No 6/1993);<sup>88</sup> and Local Ordinance on Manpower (No 6/2004). The latter offers limited provisions pertaining to the labour rights of domestic workers. It states only that recruitment agencies must provide domestic workers with accommodation and “welfare facilities”, while employers must make written contracts and register them with the Governor's office.<sup>89</sup> The Local Ordinance No 6/1993 is a little more comprehensive. It sets obligations of employers towards domestic workers, and obligations of recruitment agencies when they are placing domestic workers.<sup>90</sup> Conflict can be

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<sup>87</sup> Ramirez-Machado, ILO study, 2003, p. 69.

<sup>88</sup> ILO's legal analysis of current regulations affecting domestic workers in Indonesia, pointed out that the Jakarta Local Ordinance in Improving the Welfare of Domestic Workers, although providing standards to protect domestic workers, is not well-known and its legal value is unclear, given that it was passed before the entry into force of the Manpower Act. See ILO Jakarta, “*the regulation of domestic workers in Indonesia, current laws, International Standards and Best Practices*”, <http://www.ilo.org/public/english/region/asro/jakarta/download/dwregulation.pdf>, June 2006.

<sup>89</sup> See ILO Jakarta, “*the regulation of domestic workers in Indonesia, current laws, International Standards and Best Practices*”, p17.

<sup>90</sup> The recruitment agencies must ensure that employers provide domestic workers with accommodation, training, health care, a minimum of six months employment, a choice of employment and a written contract. Equally, employers are required to grant pay, food, drink, annual leave, a new set of clothes per year, a decent place to sleep, humane treatment, an opportunity to

resolved through the Domestic Worker Dispute Resolution Team which is appointed by the office of the Jakarta governor, and penalties for breaching the provisions of local ordinance No 6/1993 are up to three months imprisonment.

According to a 2006 ILO study on current regulations affecting domestic workers, the 1993 ordinance's impact is limited due to: poor socialisation of the regulation; lack of enforcement; unclear legal value (as it predates the Manpower Act which was passed in 2003); weak 'naming' of domestic workers (they are referred to as *pramuwisma* -house attendant- instead of *pekerja rumah tangga* -domestic worker) and; the absence of provisions on a range of labour rights including rest days, rest time and overtime, minimum wage, right of domestic workers to associate, organize themselves, and freely express their opinions for the purposes of improving their working conditions. In addition, the ordinance does not reiterate the national requirement of a minimum age for entry into employment of 15 years, and contains no labour inspection provisions.

Recently, draft regional regulations concerning domestic work have been submitted to Provincial Parliament in Yogyakarta, Semarang, Surabaya and Manado. In Surabaya, the draft regional regulation on protection of domestic workers for east Java (*Draf Rancangan peraturan daerah, propinsi Jawa Timur tentang pelaksanaan perlindungan rumah tangga*) includes provisions on fair conditions of work, such as adequate breaks and salary, freedom from violence, safe and healthy working conditions, right to receive training, right to join a union, and right to a day of rest or adequate compensation (art 3). Provisions pertaining to a written or oral contract between the employer and the employee are detailed (art 12). It also states maximum hours of work per day.

Despite the positive intentions behind these regional regulations, concerns remain that they may still offer a lower level of protection for domestic workers' rights than the Manpower Act. For instance, the maximum number of working hours per day under the Manpower Act is eight hours, whereas the Surabaya act stipulates a maximum of 10 hours for domestic workers. This type of treatment, which varies between domestic workers and other workers, may create a two-tier system, which "legally" reinforces discrimination against domestic workers.

#### 4.3.2 Towards a law on domestic workers

Amnesty International has been informed that the Ministry of Manpower and Transmigration drafted a law on domestic workers<sup>91</sup> in June 2006 to better regulate the conditions of domestic workers. This step is following a general global trend in favour of the creation of specific domestic workers legislation. In at least 19 countries throughout the world, specific legislation

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worship, basic health care, registration with the *Lurah* (urban district) Head, and registration with the Jakarta Manpower Office (if an agent is not used). See ILO Jakarta, "the regulation of domestic workers in Indonesia, current laws, *International Standards and Best Practices*", p16.

<sup>91</sup> See "Rancangan Undang-Undang Republik Indonesia Nomor: ... Tahun... Tentang Perlindungan Pekerja Rumah Tangga" (Draft Law on domestic workers).

or regulations to regulate the work of domestic workers have been put in place.<sup>92</sup> These laws are beneficial in many ways. They allow the state to regulate better an important part of the workforce, and ensure that minimum standards of employment are provided to these workers. This can be done in a way that protects the rights of the workers while ensuring the regulation is suitable given the type of work and living arrangements prevalent in this sector.<sup>93</sup>

The draft law on domestic workers includes provisions pertaining to the age of domestic workers (art 6),<sup>94</sup> their rights (art 9),<sup>95</sup> and employers' responsibilities and duties (art 13 and 14).<sup>96</sup> It also provides that a written contract between a domestic worker and the employer must contain certain elements<sup>97</sup> and that contracts may be oral or written (art 20). Salary will be regulated by local authorities (art 21.1). It also says that domestic workers have the right to rest one day per week (art 22.5) and have 12 days annual leave. Provisions on termination of employment are contained in article 25. Sanctions against employers who fail to abide by this law are administrative (art 28).

Despite the positive aspects of the recent draft, Amnesty International is concerned that some of the ILO minimum standards on domestic workers are missing. In particular, there is no mention of minimum wage, clearly defined daily hours of work and rest periods; of provisions on night work and on overtime, including adequate compensation and subsequent and appropriate rest time; of provisions on public holidays, sick leave and maternity leave. Provisions pertaining to the special needs of women, which are included in the Manpower Act, are also missing.

The Director General for labour inspection at the Ministry of Manpower and Transmigration was reported as saying that "the bill carried no physical sanctions against any violation of the agreement between housemaids and their recruiting agencies, or any violation of the labour relationship between workers and their employers because the job was informal".<sup>98</sup>

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<sup>92</sup> <http://www.ilo.org/public/english/protection/condtrav/pdf/7cws.pdf>, p14.

<sup>93</sup> See the South African and Philippines model for best practices models in ILO Jakarta, "The Regulation of Domestic Workers in Indonesia, Current Laws, International Standards and Best Practices", pp 28-38 and Ramirez-Machado, ILO study, 2003.

<sup>94</sup> A number of conditions must be filled before a recruitment agency or a private employer is authorised to recruit a domestic worker between the age of 15 and 17 years old (e.g. they must obtain prior parents' authorization, ensure the domestic worker can read and write, that she will not work at night, that she will have the opportunity to continue studying etc).

<sup>95</sup> It includes the right to adequate breaks, the right to a healthy and safe working environment, the right to form or join a union, the right to practice their own faith, and the right to be free from discrimination and violence in the home.

<sup>96</sup> Employers must pay wages in accordance with the work contract and on a monthly basis; grant adequate breaks; provide adequate time to conduct acts of devotion in accordance with their religion and other beliefs; provide due protection to ensure adequate health and welfare conditions in the workplace; provide *halal* and nutritious food; provide minimum facilities including clothes, and a place to sleep; and not make domestic workers conduct work which may be harmful.

<sup>97</sup> A written contract must include the identity of both parties, their rights and duties, the type of work which will be conducted by the domestic worker, the working conditions (breaks etc), working hours, religious aspects, health and welfare protection, dispute resolution mechanisms, place and date of the agreement and signature of both parties.

<sup>98</sup> The Jakarta Post, 7 September 2006.

According to the UN Committee on Economic, Social and Cultural Rights, state parties to the ICESCR are obliged to progressively regulate the informal sector to ensure rights at work to everyone who works in that sector. The Committee specifies 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>99</sup>

Amnesty International urges the Indonesian government to ensure that during the drafting process, due attention is given to the alignment of this new legislation with internationally recognised standards on workers in general, and on domestic workers in particular. Specifically, the law must offer labour standards to domestic workers which are at least equal to the rights of other workers under the Manpower Act, to ensure that they no longer suffer from discrimination. In this way the Indonesian government would ensure that the domestic workers legislation fulfils its human rights obligations.

During the drafting process, the Indonesian government should seek the active consultation and participation of all relevant parties, including domestic workers’ associations and support groups, employers’ organizations and recruitment agencies’ representatives.

#### 4.3.3 Need for dispute resolution mechanisms

As the provisions in the Manpower Act relating to dispute resolution mechanisms do not apply to domestic workers, they currently have no recourse to justice and reparations through the judicial system. They have been deprived until now of access to any formal mechanisms.<sup>100</sup> It is unknown whether the new Industrial Court, which is currently being set up, will accept to mediate cases of disputes over domestic workers’ rights.<sup>101</sup> Domestic workers are currently forced to rely on informal dispute resolution mechanisms to settle claims against their employers. For instance, some domestic workers may seek assistance from family members, recruitment agents, neighbourhood cooperative groups (*see* 2.3) or the village head to resolve conflicts over labour rights with their employer.

Given the international conventions on labour rights it has ratified (*see box 2*), and its obligation under international human rights law to ensure access to justice and an effective remedy for violations of human rights (including labour rights),<sup>102</sup> the Indonesian government

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<sup>99</sup> Committee on Economic, Social and Cultural Rights, General comment No. 18: The right to work (art 6 of ICESCR), UN Doc. E/C.12/GC.18, 6 February 2006.

<sup>100</sup> The Central Industrial Dispute Settlement Panel (P4P) stated in 1959 that disputes involving domestic workers are outside the jurisdiction of the formal employment dispute resolution system. See Ramirez-Machado, ILO study, 2003, p. 11.

<sup>101</sup> Law No. 2 of 2004 on Industrial Dispute Settlement.

See: <http://www.ilo.org/dyn/natlex/docs/MONOGRAPH/67355/64259/F716574065/IDN67355.PDF>.

<sup>102</sup> The right to an effective remedy implies the right to seek and obtain full reparation, including restitution, compensation, satisfaction, rehabilitation and guarantees of non-repetition. “In accordance with its domestic law and international legal obligations, a State shall provide reparation to victims for acts or omission which can be attributed to the State and constitute gross violations of international human rights law or serious violations of international humanitarian law”. Principle 15 of the Basic principles and guidelines on the right to a remedy and reparation for victims of gross violations of international human

should put in place appropriate mechanisms to give domestic workers access to fair and transparent legal remedies, including access to the new Industrial Court. Any further mechanisms needed for the resolution of domestic workers' labour disputes should be established, and guarantee of access to these and other such mechanisms must be included in the domestic worker legislation, alongside clear and appropriate measures to deter individuals from breaching the law and effective supervisory mechanisms.<sup>103</sup>

## **5. Domestic workers are subject to other human rights abuses**

### 5.1 No access to information about sexual and reproductive rights

*“The human rights of women include their right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence. Equal relationships between women and men in matters of sexual relations and reproduction, including full respect for the integrity of the person, require mutual respect, consent and shared responsibility for sexual behaviour and its consequences”.*<sup>104</sup>

Most adult domestic workers Amnesty International met appeared to have little or no knowledge of their sexual and reproductive rights (*see box below*). They often replied ‘I don't know’ when asked what they knew about women's health, family planning and safe sexual relationships. They did not appear to know anything about sexually transmitted diseases and how to protect themselves against them. Nor did they seem to know about contraception methods and how to prevent unwanted pregnancy. When questioned about their sexual and reproductive rights, many responded: "dua anak cukup" ("no more than two children"), echoing former President Soeharto's family planning policy of the 1960s and 1970s to decrease birth rates in Indonesia. However, few seemed to know how to access relevant sexual and reproductive health services. Amnesty International is concerned that the Indonesian government fails to provide domestic workers with adequate access to information and services on sexually transmitted diseases including HIV/AIDS, as well as on contraception methods. This lack of knowledge and information may well place women and girl domestic workers at greater risk of unsafe sex and unwanted pregnancy.

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rights law and serious violations of international humanitarian law, adopted by the Commission on Human Rights in its Resolution 2005/35 of 19 April 2005.

<sup>103</sup> See Ramirez-Machado, ILO study, 2003, p. 70.

<sup>104</sup> Paragraph 96 of the Beijing Platform for Action, the inter-governmental agreement reached at the end of the Fourth UN World Conference on Women, 1995.

**Sexual and reproductive rights**

Sexual and reproductive rights are grounded in human rights that are already recognized in international human rights treaties and other relevant human rights standards. They encompass the rights to: freely decide to be sexually active or not; freely engage in consensual sexual relations; pursue a satisfying, safe and pleasurable sexual life; choice of partner; consensual marriage; decide freely and responsibly the number, spacing and timing of any children. They include the right to the highest attainable standard of health, including sexual and reproductive health, which means a state of complete physical, mental and social well-being with regard to a person's sexuality and capability to reproduce, and includes the rights to: access sexual and reproductive health services; seek, receive and impart information in relation to sexuality and reproduction; and sexuality education.

The right to the highest attainable standard of health, enshrined in the International Covenant on Economic, Social and Cultural Rights (ICESCR),<sup>105</sup> requires governments to provide for “*education and access to information concerning the main health problems in the community, including methods of preventing and controlling them*”.<sup>106</sup> This includes access to education and information relating to sexual and reproductive health.

According to a survey conducted by the Demography Institute in 1999, 61% of girls and women aged between 15 and 19 years old in Indonesia had unwanted pregnancies. Twelve per cent of them underwent abortion and 70 percent of those performed the abortion by themselves<sup>107</sup>. In Indonesia, abortion is authorized by law under strict circumstances. It is only allowed if it is performed by official health practitioners to preserve a woman's life or health. Otherwise, it is severely punished by law.<sup>108</sup> The periodic report to CEDAW in which this survey was cited also acknowledges adolescent reproductive health problems, including HIV/AIDS and other sexually transmitted diseases, and a high rate of maternal morbidity and mortality, as issues of particular concern.<sup>109</sup>

The Indonesian government has set up service delivery points that provide counselling to adolescents on sexual and reproductive health, and disseminated an education package for adolescents through schools, universities, out of school programs and forums for peer education and parents. Programs have also been undertaken to provide information on sexually transmitted diseases in family planning and maternal health programs.<sup>110</sup> Despite these efforts, Amnesty International is concerned that these actions may not reach women and

<sup>105</sup> The ICESCR was ratified in 2006.

<sup>106</sup> Committee on Economic, Social and Cultural Rights, General comment No. 14: The right to health (art 12 of ICESCR), UN Doc. E/C.12/2000/4, 11 August 2000, para. 44.

<sup>107</sup> Combined fourth and fifth periodic reports of State parties to CEDAW: Indonesia, UN Doc. CEDAW/C/IDN/4-5, 27 July 2005, para 131, p.45.

<sup>108</sup> Under section 348 of the Criminal Code, any person performing an abortion is subject to imprisonment for five and a half years. Under section 346, a woman wilfully inducing her own miscarriage is subject to imprisonment for up to four years. See UN Population Division, Department of Economic and Social Affairs, ‘Abortion Policies: A Global Review 2002’, [www.un.org/esa/population/publications/abortion/index.htm](http://www.un.org/esa/population/publications/abortion/index.htm).

<sup>109</sup> Combined fourth and fifth periodic reports of State parties to CEDAW: Indonesia, UN Doc. CEDAW/C/IDN/4-5, 27 July 2005, see for example para 130, 135, and 124

<sup>110</sup> Combined fourth and fifth periodic reports of State parties to CEDAW: Indonesia, UN Doc. CEDAW/C/IDN/4-5, 27 July 2005, paras. 129, 135 and 139, p. 44, 46 and 47.

girl domestic workers, as they live in isolated environments and do not have access to public forums (see 4.2.5 and 5.3).

With regard to adolescents' sexual and reproductive health, the Committee on the Rights of the Child stated that:

*"[s]tates parties should provide adolescents with access to sexual and reproductive information, including on family planning and contraceptives, the dangers of early pregnancy, the prevention of HIV/AIDS and the prevention and treatment of sexually transmitted diseases (STDs). In addition, states parties should ensure that they have access to appropriate information, regardless of their marital status and whether their parents or guardians consent. Adolescent girls should have access to information on the harm that early marriage and early pregnancy can cause, and those who become pregnant should have access to health services that are sensitive to their rights and particular needs."*<sup>111</sup>

According to the World Health Organization, victims of violence are more likely to suffer from a range of health problems including depression, anxiety, psychosomatic symptoms, eating problems, and sexual dysfunctions. They are also at increased risk of sexually transmitted disease, unplanned pregnancy and various gynaecological problems including chronic pelvic pain and painful intercourse.<sup>112</sup>

Amnesty International believes that a large scale education program on sexual and reproductive rights is needed to ensure that domestic workers have full access to information on family planning and contraceptives, forced marriage, early marriage and pregnancy, the prevention of HIV/AIDS and other sexually transmitted diseases, in light of the vulnerability of girl and women domestic workers to gender-based violence including rape, sexual harassment and trafficking (see 4.2). Information about sexual and reproductive rights is important to enable victims of sexual abuse to better understand what has happened to them and where to obtain medical services and other forms of support.

As the World Health Organisation has noted, *"it is important to address the demonstrated reluctance of abused women to seek help"*. In order to do so, medical responses to violence against women should be integrated into all areas of care (e.g. emergency services, reproductive health services such as antenatal care, family planning, and post-abortion care, mental health services, and HIV and AIDS related services). Where providers are appropriately trained, and aware and willing to address violence and coercion, sexual and reproductive health services can also serve as an entry point for identifying and supporting women in abusive situations and for delivering referral or support services.<sup>113</sup>

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<sup>111</sup> Committee on the Rights of the Child, General Comment No. 4: Adolescent Health and Development in the Context of the Convention on the Rights of the Child, UN Doc. CRC/GC/2003/4, 1 July 2003, para. 31

<sup>112</sup> See <http://www.who.int/mediacentre/factsheets/fs239/en/index.html>.

<sup>113</sup> WHO Multi-country Study on Women's Health and Domestic Violence against Women, [http://www.who.int/gender/violence/who\\_multicountry\\_study/summary\\_report/en/index.html](http://www.who.int/gender/violence/who_multicountry_study/summary_report/en/index.html)



## 5.2 Inadequate standard of living

*“Everyone has the right to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.”<sup>114</sup>*

*“I slept near the kitchen, at the back. There was no window in the room, no door, no mattress either. I was scared there.”<sup>115</sup>*

A significant number of residential domestic workers live in inadequate conditions. Some reported that they did not have a mattress to sleep on, were forced to sleep in the kitchen, a storage room or other inappropriate rooms. They reported feeling unsafe, cold and unhappy living in those conditions. Of those who did have their own sleeping quarters, many felt insecure in their bedroom as it did not have a door or a key to lock the door and anyone could enter their room at any time, thus making them more vulnerable to domestic violence.

As a state party to the ICESCR, the Indonesian government has a duty to ensure that all domestic workers are progressively assured, among other things, adequate housing, food and clothing. According to the Committee on Economic, Social and Cultural rights:

*“adequate housing must be habitable, in terms of providing the inhabitants with adequate space and protecting them from cold, damp, heat, rain, wind or other threats to health”.<sup>116</sup> Furthermore, “An adequate house must contain certain facilities essential for health, security, comfort and nutrition.”*

Although most domestic workers interviewed were provided sufficient food and adequate clothing and bedding, some were not. Ratna (*see box pp 1*) described how she had to eat left-over food every day, and that she did not have sufficient clothing. A 20-year-old domestic worker said she had to eat the same unbalanced diet everyday. *“I eat the same food everyday, noodles with eggs,”* she said. *“They never give me fruits and vegetables. I am bored of eating. Sometimes I lie, I say I’ve already eaten”.*<sup>117</sup>

When domestic workers are fired, they often lose their accommodation without notice. Adequate time should be given to the domestic worker to find another suitable place to live. The Committee on Economic, Social and Cultural Rights has insisted that the concept of adequate housing should take into account the legal security of tenure.

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<sup>114</sup> Art 11.1, ICESCR.

<sup>115</sup> Interview, 11 March 2006, Surabaya.

<sup>116</sup> Committee on Economic, Social and Cultural Rights, Sixth session (1991), General comment No. 4: The right to adequate housing (art 11.1 of ICESCR).

<sup>117</sup> Interview, 8 March 2006, Surabaya.

### 5.3 Restrictions on freedom of movement and communication

*“I stayed in the house of my employer most of the time... They were scared something would happen to me... that I would get pregnant... In the evening it was forbidden [to leave the house]. Even during the day there were limitations. I couldn’t go out for very long and I had to report each time I went out.”*<sup>118</sup>

Many domestic workers interviewed faced limitations to their freedom of movement, which amounts in some cases to forced confinement. Some were not allowed to leave the house in the evening. Those who did manage to go out had to seek prior permission and report where and with whom they were going out. Only in rare instances were they provided with the key to the house. Some employers reportedly said that they saw no reason for the domestic workers to go outside. Young unmarried domestic workers are particularly likely to be subjected to severe restrictions on their freedom of movement by their employers who, the workers reported, were concerned that they might ‘meet boys’, enter sexual relationships and fall pregnant.

According to article 12 of the International Covenant on Civil and Political Rights (ICCPR)<sup>119</sup>, “Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement”. According to the Human Rights Committee, “liberty of movement is an indispensable condition for the free development of a person”, and state parties to the ICCPR “must ensure that the rights guaranteed in article 12 are protected not only from public but also from private interference”.<sup>120</sup>

Some domestic workers interviewed were also restricted in their ability to communicate with the outside world. They were not permitted easy access to a phone. Some domestic workers reported that they had to ask first before calling, and generally felt too scared to ask permission.

### 5.4 Restrictions on the right to practice one’s faith

Although most domestic workers were allowed to pray freely in their employer’s house, some domestic workers told Amnesty International that they were not allowed to practice their religion. Some of the Muslim domestic workers interviewed said that they were given pork to eat even though this is against their religious convictions. Some were also prevented from going to the mosque or from praying five times a day in accordance with their religious convictions.

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<sup>118</sup> Interview, 9 March 2006, Surabaya.

<sup>119</sup> Indonesia ratified the ICCPR in 2006.

<sup>120</sup> Human Rights Committee, Sixty-seventh session (1999), General comment No. 27, Freedom of movement (art 12 of ICCPR) paras 1 and 6.

According to article 18 of the ICCPR:

*“Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.”*

The Human Rights Committee in its General Comment on article 18 has clarified that:

*“the concept of worship extends to ritual and ceremonial acts giving direct expression to belief, as well as various practices integral to such acts, including the building of places of worship, the use of ritual formulae and objects, the display of symbols, and the observance of holidays and days of rest. The observance and practice of religion or belief may include not only ceremonial acts but also such customs as the observance of dietary regulations, the wearing of distinctive clothing or headcoverings, participation in rituals associated with certain stages of life, and the use of a particular language customarily spoken by a group”.*

## **6. Recommendations to the Indonesian authorities**

The following recommendations are addressed to: the President of Indonesia; the Minister for Manpower and Transmigration; the Minister for Justice and Human Rights; the State Minister for Women Empowerment; the Coordinating Minister for People's Welfare; the Minister of Health; the Minister for Home Affairs; the Minister for National Education; the National Parliament; and relevant regional authorities.

### **6.1 Official condemnation and prohibition of abuses**

- Officially recognize and publicly condemn all human rights abuses against domestic workers, including gender-based discrimination, psychological, physical and sexual violence and other human rights abuses that they are subject to;
- Ensure that domestic workers are recognized legally as workers and enjoy all the rights that are provided in international law and standards, including the ICCPR, the ICESCR and relevant ILO conventions;
- Ensure that the law explicitly prohibits the employment of children below the age of 15 as domestic workers, and that children under the age of 18 shall not be engaged in the worst forms of child labour, as provided in the CRC and ILO Conventions 138 and 182;
- Ensure that the law prohibits restrictions on domestic workers' rights to assembly, to collective bargaining and to freedom of movement;

- Immediately undertake a thorough survey assessing the number of domestic workers in every Indonesian province. Through the next Indonesian census gather data on their gender, age, origin, socio-economic background and conditions of living and employment.

### 6.2 'Zero tolerance' for Violence against Women domestic workers

- Publicize the Domestic Violence Law and relevant services, such as the recently established gender desks in police stations, to domestic workers, their employers and recruitment agents, including through the media;
- Conduct training to ensure that legal practitioners, including judges and prosecutors, and police are fully briefed about the content and applicability of the Domestic Violence Law;
- Make police aware that their decisions to pursue an investigation should not be affected by whether or not compensation has been offered or accepted;
- Courts must employ all relevant provisions available in the Witness Protection Act and the Domestic Violence Act to minimise the trauma and fear experienced by victims and witnesses, and to provide appropriate protection for victims and witnesses;
- Ensure that medical responses to violence against women are integrated into all areas of care (e.g. emergency services, reproductive health services, mental health services, and HIV and AIDS related services).

### 6.3 Decent conditions of work for all workers

- Ensure that specific legislation regulating the labour rights of domestic workers contains provisions which are consistent with international law and not less favourable than what is provided for in the Manpower Act. Such legislation should contain provisions ensuring the equal protection of domestic workers' rights in relation to:
  - ❖ Reasonable limitation on working hours through clearly defined maximum hours of work per 24 hours and per week;
  - ❖ Clear standards to ensure remuneration adequate to secure a life with dignity;
  - ❖ Conditions for night work and overtime, including adequate compensation and subsequent appropriate rest time;
  - ❖ Clearly defined weekly rest and leave periods (annual leave, public holidays, sick leave and maternity leave);
  - ❖ Standards on termination of employment;
  - ❖ Access to dispute resolution mechanisms, including courts;

- Actively seek the participation of domestic workers and their representatives as well as of recruitment agencies and employers' representatives in the drafting process.
- Develop model contracts for the employment of domestic workers with employers', recruitment agencies' and domestic workers' representatives;
- Recognize the right of domestic workers to collective bargaining and freedom of association, and ensure that the exercise of these rights is not impeded by employers;
- Ensure that regional regulations pertaining to domestic workers are in accordance with international and national standards on the rights of workers, and widely publicized;
- Ensure that employers of domestic workers are fully aware of their responsibilities under labour standards;
- Immediately disseminate the guidelines on 'prohibition of child labour' which have recently been adopted by the Ministry of Women Empowerment.

#### 6.4 Ensuring protection of other rights

- Take measures to ensure that domestic workers enjoy freedom of movement and of communication;
- Take measures to ensure that education is free and compulsory for all until the age of 15 years old;
- Take measures to ensure employers respect domestic workers' enjoyment of the right to education; take positive measures to enable and assist domestic workers to enjoy the right to education;
- Devise an education programme on sexual and reproductive rights to provide domestic workers with access to information on family planning and contraceptives, forced marriage, early marriage and pregnancy, the prevention of HIV/AIDS and other sexually transmitted diseases;
- Take measures to ensure that all human rights of domestic workers are respected, protected and fulfilled, including their economic, social and cultural rights including rights to an adequate standard of living, including adequate housing, food and clothing.
- Ensure that healthcare is progressively available, accessible, acceptable and of sufficient quality. Take immediate and concrete steps to ensure that no one, including domestic workers, is denied access to healthcare due to an inability to pay;
- Take measures to ensure that domestic workers are free to practice their religion in the home of their employer and in places of worship, and that they are not subject to any form of discrimination on the basis of their religion.