

**United Nations Country Team in Indonesia**  
**Report for the Universal Periodic Review of Indonesia – 13<sup>th</sup> Session May-June 2012**

**I. Introduction**

This report contains information from members of the United Nations Country Team (UNCT) in Indonesia, and is a review of the country's progress on human rights since the last Universal Periodic Review (UPR) in 2008. The previous UPR resulted in three core conclusions, made with the agreement of the State, and a further seven recommendations that enjoyed the full support of the Government of Indonesia.<sup>1</sup>

**II. Implementation of Universal Periodic Review Working Group 2008 Outcome Report**

Indonesia has taken additional capacity-building measures in support of programmes and projects on women and children, and the government has developed laws and policies that support these programmes and projects. Indonesia has made efforts to strengthen national human rights institutions and to harmonize local laws with national and international standards. Ratification plans for UN Conventions are partly highlighted in the National Action Plan of Action Program on Indonesian Human Rights (RANHAM 2011-2014). Progress has been made in terms of promotion of human rights through the second and third National Action Plans on Human Rights, National Access to Justice Strategy and relevant laws on human rights. Human rights training and education has been provided by state institutions within law enforcement, although there has been limited progress evaluation. Indonesia has chaired the Association of Southeast Asian Nations (ASEAN) in 2011, and has been involved in the development of the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC), ASEAN Commission on Migrant Worker (ACMW) and the ASEAN Intergovernmental Commission on Human Rights (AICHR).

However, despite ongoing efforts, the Criminal Code is yet to be finalized and the issue of torture is not adequately addressed in the new draft. The government is making efforts to combat impunity, though past gross violations of human rights and cases of enforced disappearances are still to be brought to justice. Inappropriate use of the intelligent law and the defamation law allows for restrictions on civil society; Human rights organizations cannot enter Papua, and the safety of human rights defenders continues to be a concern. Indonesia is yet to accede to international human rights instruments recommended in 2008<sup>2</sup>.

**III. Background and framework**

1. Institutional and human rights structure

Indonesia has ratified 6 main core UN Covenants<sup>3</sup>, with a number of State agencies and affiliated bodies addressing human rights problems in Indonesia, including the Ministry of Law and Human Rights (MOLH), the Ministry of Foreign Affairs (MOFA), the Ministry of Women's Empowerment and Child Protection (MWECP)<sup>4</sup>, the National Commission on Violence Against Women (Komnas Perempuan), Indonesian Commission on Human Rights (Komnas HAM) and the Indonesian Commission on Protection of Children's Rights (Komite Perlindungan Anak Indonesia- KPAI).

2. Policy measures and legislative developments

Presidential Decree 23/2011 resulted in the National Plan of Action on Indonesian Human Rights 2011-2014 (RANHAM 2011-2014). The National Council for Social Security was established in 2008 to oversee implementation of the 2004 law on National Security System. The National Action Plan on Older Persons 2010-2014 was established and additional funding has been allocated to the Social Insurance for Older Persons program. The National Strategy on Access to Justice was launched in 2009 and integrated into the National Medium Term Development Plan (RPJMN) 2010-2014. Government Regulation 47/2008 on compulsory education specifies the

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<sup>1</sup> UPR Working Group - Indonesia, Outcome Report 2008, Human Rights Council, April 2008.

<sup>2</sup> Rome Statute of the International Criminal Court, the Optional Protocol to the Convention on the Rights of the Child on involvement of children in armed conflict, the Optional Protocol to the Convention on the Rights of the Child on the sale of Children, child prostitution and child pornography and the Optional Protocol to the Convention against Torture, Cruel, Inhuman and Other Degrading Treatment, and sign International Convention on the Protection of All Persons from Enforced Disappearance.

<sup>3</sup> CRC, CEDAW, CERD, CAT, ICCPR and ICESCR

<sup>4</sup> Formally known as Ministry of Women's Empowerment (MoWE)

minimal education programme that all Indonesian citizens must follow regardless of religion, tribe or socioeconomic status. Presidential Regulation 15/2010 resulted in the establishment of a National Team for the Acceleration of Poverty Reduction (*TNP2K*). The government has adopted a new Immigration law 6/2011 which provides punishment of up to two years of imprisonment for officials found guilty of aiding and abetting human trafficking or people smuggling.

Ministerial Regulation 02/2010 issued by MWECP resulted in the National Plan of Action on the Prevention and Respond to Violence against Children.—Chaired by the Coordinating Ministry of People’s Welfare (MENKOKESRA), the National Anti-Trafficking Task Force developed the second National Plan of Action on the Elimination of Criminal Act of Trafficking in Person and Sexual Exploitation of Children (2009). Amongst other strategic priorities, this plan includes the ratification of the optional protocols of the CRC. The National HIV and AIDS Strategy and Action Plan 2010-2014, developed by the Ministry of People’s Welfare and the National AIDS Commission, integrates HIV issues into the government structures and development planning.

#### **IV. Promotion and protection of human rights on the ground**

##### **1. Cooperation with human rights mechanisms**

To date, Indonesia has submitted ten treaty reports<sup>5</sup>, including two submitted since 2008 under CEDAW and CRC (both in 2010<sup>6</sup>), and one is to be submitted under CAT in 2012. However, three reports are still overdue<sup>7</sup>, two of which were due after 2008. Since November 2007, Indonesia has not hosted any visits of Special Procedures of the Human Rights Council, despite seven requests and three reminders made since 2008.<sup>8</sup> Indonesia was a founding member of the Human Rights Council in 2006-2007 and has been re-elected for 2011-2014 membership. As part of its pledges and commitments to the Council, Indonesia volunteered to fully cooperate with the UN human rights mechanism and to “continue its active and constructive engagement in the promotion of universal respect for all Human Rights,” and to “continue its meaningful cooperation with the Office of the United Nations High Commissioner for Human Rights.”<sup>9</sup>

##### **2. Implementation of international human rights obligations**

###### **A. Equality and non-discrimination**

Progress has been made in the prevention of Violence Against Women (VAW) and care for victims of violence. In 2010, MWECP developed the Minimum Standards of Services for survivors of violence. In addition to the provision of health and psychosocial counseling under the health sector, the standards mandate a multi-sectoral approach in dealing with victims of violence including a referral mechanism that involves the social welfare, civil society, police, attorney-general’s office, the court and legal aid. The RPJMN established protection of children as one of the cross-sectoral priorities to fulfill the rights of Indonesian children.<sup>10</sup>

There is alleged racial discrimination in Papua and Kalimantan<sup>11</sup> in relation to transmigration programmes. The ILO Committee of Experts has, on several occasions, requested the Government of Indonesia to indicate concrete measures taken at the national and regional levels to ensure there is no employment discrimination as a result of the implementation of transmigration programs,<sup>12</sup> though no clear measures have been taken by the Government in response to these requests. A high number of conflicts arise each year between local communities and palm oil

<sup>5</sup> Two under CAT (2001 and 2005), four under CEDAW (1986, 1997, 2005 and 2010), one under CERD (2006), and three under CRC (1992, 2002 and 2010).

<sup>6</sup> All data collected from OHCHR Indonesia Website, last visited 11/10/2011

<sup>7</sup> <http://www.unhchr.ch/tbs/doc.nsf/NewhvVAllSPRByCountry?OpenView&Start=1&Count=250&Expand=80.6#80.6>

<sup>8</sup> One CCPR report due in 2007, one CESCR due in 2008 and one CERD report due in 2010

<sup>8</sup> Requests made for an Independent Expert on Foreign Debt (2008 and 20 May 2011), a Special Rapporteur on Adequate Housing (2008, reminder in 2009), an Working Group on Enforced or Involuntary Disappearances (2008, Reminder in 18 August 2011), an Independent Expert on Minority Issues (2009), an Independent Expert on Access to Safe Drinking Water and Sanitation (2008, Reminder in March 2010), CERD Committee on Indigenous People’s Rights to Their Lands and Resources (28 September 2009 and reminder on 2nd September 2011) and a Special Rapporteur on Freedom of Religion (April 2011)

<sup>9</sup> United Nations General Assembly: Note Verbal dated 5 April 2011 from the Permanent Mission of Indonesia to the United Nations Addressed to the President of the General Assembly

<sup>10</sup> Presidential Regulation no. 5 year 2010 on the National Mid Term development Plan. Annex. page II.1-43

<sup>11</sup> CEACR: Individual Observation concerning Discrimination (Employment and Occupation) Convention, 1958 (No. 111) Indonesia (ratification: 1999) Published: 2008

<sup>12</sup> CEACR: Individual Observation concerning Discrimination (Employment and Occupation) Convention, 1958 (No. 111) Indonesia (ratification: 1999) Published: 2008

companies as well as between the Dayak and the Madura ethnic groups in Palangkaraya, Central Kalimantan, as a result of past and present Government transmigration programmes.<sup>13</sup>

The process of decentralization to sub-national level governments has seen the issuance of bylaws at provincial level which are: 1) not always harmonized with national laws and international conventions; and 2) sometimes discriminatory towards women and other marginal groups including the lesbian, gay, bisexual, and transgender population (LGBT). According to the National Commission on Violence Against Women (*Komnas Perempuan*), no less than 154 discriminatory bylaws in 7 provinces have been issued<sup>14</sup> to date, impacting women negatively by restricting their movement, limiting access to economic opportunities and imposing restricted interpretation of religious belief to legitimize perpetration of violence against women<sup>15</sup>. Despite provisions for reproductive health services outlined in the Population and Family Development Law (No. 52/2009) and the Health Law (No. 36/2009), unmarried women and girls are not eligible to receive these health benefits (article 76 of Health Law), creating an impact on their right to health and, in the case of schoolgirls, their right to education.

Under Articles 72 and 78 of the Health Law, access to information on sexual and reproductive health may only be provided to ‘legal partners’ (‘pasangan yang sah’; ‘pasangan usia subur’), implying that in practice only married couples can have access to family planning provisions. There is also an issue of neglected health services for people having experience with leprosy, people living with HIV, people with mental health problems, and people with no legal identity document

Indonesia has a number of laws and regulations which prohibit discrimination, including the Human Rights Law (Law No 39/100), Elimination of Violence against Women (Law No 7/1984), the Narcotics Law (Law no 35/2009), and the Ministry of People’s Welfare Regulation no 2/2007 on Harm Reduction among Injecting Drug Users. However, in practice groups such as male and female sex workers, injecting drug users, and people from the LGBTQ community<sup>16</sup> are vulnerable to violence and being marginalized, and have considerable difficulty in obtaining protection from violence, and accessing justice when their rights have been violated

## **B. Right to life, liberty and security of the person**

The Government of Indonesia has made efforts since 2008 to strengthen services for victims of violence, including victims of trafficking through various shelters and hospital-based integrated services. Presidential Decree No. 69/2008 resulted in the set up of Anti-Trafficking Task Forces at national, provincial and district levels, in order to coordinate prevention, protection and prosecution activities in relation to trafficking in persons (TiP), although effectiveness is hindered due to lack of funding and qualified staff. The Ministry of Foreign Affairs issued Regulation No. 4/2008 establishing the concept of ‘integrated citizen service’, aimed at improving the quality of services and strengthen protection for Indonesian citizens overseas, including migrant workers, through either the availability of services itself or via the transparency and standardization of services, such as applying common service fees. In line with this new Regulation, the Government increased the number of labour attachés deployed in migration destination countries<sup>17</sup> and some embassies have taken measures to improve and adapt their services according to migrant workers’ needs, often in partnership with civil society organizations.

However, many recruitment agencies do not report newly arrived migrant workers, resulting in a lack of awareness of the number or location of many Indonesian migrant workers present in the country in question. In 2009, during a study visit, IOM reported 150 women staying at the embassy shelter in Malaysia which normally has a capacity of 70 people. Such situation, according to embassy officials is very common.<sup>18</sup>

Trafficking of persons is an issue, with an estimated 5,100 sex workers under 18 years of age operating in Jakarta alone,<sup>19</sup> and victims are trafficked externally and internally mainly to work as domestic workers (55%) and or in

<sup>13</sup> CERD/C/IDN/CO/3, paragraphs 17 and 18, 15 August 2007.

<sup>14</sup> As the National Commission on Violence against Women recorded in ‘in the name of regional autonomy: the institutionalisation of discrimination in Indonesia’; 2010

<sup>15</sup> 38 bylaws on criminalisation of women, 21 bylaws on control of the woman’s body, 4 bylaws on discrimination against migrant workers, 9 bylaws on limitation on the ahmadiya community and 82 bylaws on religious devotion or religious life.

<sup>16</sup> Lesbian, Gay, Transgender, Bisexual and Queer community

<sup>17</sup> There are now Indonesian Labour Attachés deployed in 11 destination countries which are: Republic of Korea, Brunei Darussalam, Singapore, Jordan, Syria, Qatar, Malaysia, Saudi Arabia, Hong Kong SAR, United Arab Emirates and Kuwait.

<sup>18</sup> Labour Migration from Indonesia: an Overview of Indonesian Migration to Selected Destinations in Asia and the Middle East, IOM, 2010, p. 50.

<sup>19</sup> ILO, Committee of Experts on the Application of Conventions and Recommendations, Individual Observation concerning the Worst Forms of Child Labour Convention (No.182) (Indonesia) 2011.

prostitution (16.5%)<sup>20</sup>. There is no national database system on Victim Assistance for trafficking, and insufficient financial resources limit effectiveness of victim assistance, particularly reintegration assistance. There is also a limited knowledge by law enforcers on trafficking, victim identification, victims' rights and victims' assistance, leading to raids often being conducted without proper victim identification and a lack of referral to relevant service providers.<sup>21</sup> Screening of returning Indonesian migrant workers (TKIs) at airports is not always conducted, and officials often lack the knowledge and skills to identify signs of abuse or trafficking. Even if victims identified, they are not always referred to relevant services<sup>22</sup>.

Child sex tourism is an issue in most urban areas and tourist destinations, such as Bali and Riau Island<sup>23</sup>. Approximately 30 per cent of the women in prostitution in Indonesia are below the age of 18, with 40,000–70,000<sup>24</sup> Indonesian children falling victim to sexual exploitation. ILO Committee of Experts has expressed serious concern at the significant number of children who are victims of commercial sexual exploitation, including child sex tourism, and more could be done to protect children under 18 years from this worst form of child labour<sup>25</sup>. In addition, there is a need to pursue efforts to implement Regulation No. PM.30/HK.201/MKP/2010 on Guidelines on the Prevention of Sexual Exploitation of Children in Tourism, and to provide information on the impact of measures taken.<sup>26</sup>

### C. Administration of justice and the rule of law

In order to improve people's access to justice, the government has adopted National Strategy on Access to Justice in 2009. The Strategy constitutes a document that outlines key measures that need to be taken at both national and sub-national levels, in order to improve access of the people (particularly the poor and the marginalized) to justice services within the legal, governance, economic, and social sectors. In 2010, the Strategy has been incorporated into the RPJMN, by which the relevant ministries are commanded to further translate them into their annual planning and budgeting on justice related issues.

The Ministry of Women's Empowerment and Child Protection, working with national and sub-national training centers, continues to promote the integration of gender-based violence related issues into the training modules of training centers of police, judges, attorneys, health workers and psychosocial workers.

The National Strategy on Access to Justice notes that women "are often treated unfairly even before the judicial process has begun"<sup>27</sup>. Female victims of violence still face elements of discrimination within the plural legal systems due to three factors: 1) some plural family laws contain unequal provisions for women and men; 2) the customary and religious justice systems often do not have sanctions against gender-based violence; and 3) because these legal systems are often procedurally biased against women.<sup>28</sup> Between 2007-2010, the Directorate General for Religious Courts's initial data showing the number of poor people accessing religious courts increased 14-fold<sup>29</sup> but still many law enforcers are still biased against women and the justice systems do not have capacity to execute the sanctions against gender-based violence<sup>30</sup>

Many migrant workers who experience problems overseas are unable to solve them while abroad. There are many cases of labour migrants not reporting their cases until they return home. In addition, a large number of cases are never reported to the authorities, and thus stand no chance of being resolved. Furthermore, many labour migrants experience poor handling of their cases, indicating weaknesses in the legal aid service, especially in the regions of origin<sup>31</sup>. Law enforcement authorities and regional governments do not yet have adequate infrastructure or

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<sup>20</sup> IOM Indonesia's data generated by its Direct Assistance Program for Victims of Trafficking in Persons (2005-2011)

<sup>21</sup> US TiP Reports, 2009, 2010, 2011

<sup>22</sup> US TiP Reports, 2008, 2009, 2010, 2011

<sup>23</sup> (Ministry of Culture and Tourism, in the "Progress Report of Research on Commercial Sexual Exploitation of Children in Tourism Areas in 2004")

<sup>24</sup> ILO Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III(1A) to the International Labour Conference, 100th Session, 2011 (Geneva), p339

<sup>25</sup> ILO Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III(1A) to the International Labour Conference, 100th Session, 2011 (Geneva), p339

<sup>26</sup> ILO Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III(1A) to the International Labour Conference, 100th Session, 2011 (Geneva), p339

<sup>27</sup> NSA2J 2009:123

<sup>28</sup> UN Women, 'Progress of the Worlds's Women (2011) page 69

<sup>29</sup> *ibid*, page 75.

<sup>30</sup> Komnas Perempuan noted both at state and non-state justice system, women still face barriers to pursuing justice and it starts from reporting their cases that often procedurally biased against women and at the execution of the sanctions. <http://www.komnasperempuan.or.id/keadilanperempuan/>

<sup>31</sup> IOM report 'Labour Migration from Indonesia: an overview of Indonesian Migration to selected destinations in Asia and the Middle East' (2010), p.38.

understanding to handle the cases of labour migrants and there is no basic standard in case management that is easily accessible to labour migrants<sup>32</sup>.

The level of investigation, conviction and prosecution in cases of trafficking has overall increased.<sup>33</sup> This is partly a result of capacity-building activities to train law enforcement officers on the new Anti-Trafficking Law. In 2008, the Police also assigned liaison officers to Indonesian embassies in several destination countries to support law enforcement cooperation with host governments. However, due to a high turnover, the knowledge and common understanding of the new Law across the three law enforcement institutions is not optimal with many police, judges and prosecutors still unfamiliar with the legislation or applying the Law differently<sup>34</sup>.

#### **D. Freedom of association, peaceful assembly and the right to participate in public and political life**

The Government of Indonesia is yet to repeal or amend sections 160 and 335 of the Criminal Code, on ‘instigation’ and ‘unpleasant acts’, so as to ensure that these provisions cannot be used abusively as a pretext for the arbitrary arrest and detention of trade unionists<sup>35</sup>. The ILO Committee of Experts has also expressed concern over the criminal sanctions involving compulsory labor that can be imposed for the expression of political or ideological views or for the participation in peaceful strikes<sup>36</sup>. Insufficient measures have been taken to educate the police in relation to their response to industrial action.<sup>37</sup> The Government has still not issued the envisaged regulation for civil servants to exercise this right to freedom of association<sup>38</sup>.

#### **E. Right to social security and to an adequate standard of living**

Efforts made by the Government of Indonesia to tackle inequality through various social protection programs, both at the central and local levels are the signs of paradigm shift from mainly emphasizing economic development to a more people centered development. Problems surrounding geographical diversity, inadequacy of human resources<sup>39</sup>, and difficulties in managing fiscal flow<sup>40</sup> are the main contributor to these conditions, though little concern has been paid into the political economic of the current decentralized and democratized Indonesia. The latter seems to be more related to the political dynamics both at the central and local level that generate incentives or disincentives to pursue equality in health policy making<sup>41</sup>.

Indonesia has been working to strengthen the national social protection frameworks, including the “Four Guarantees” that together make up the Social Protection Floor (SPF). Work still needs to be undertaken to ensure the SPF is based on national and international human rights frameworks, promotes gender equality, and gives special protection to vulnerable groups such as the very poor, the disabled and socially marginalized groups such as the LGBT community.

To date, the implementation of government policy on insurance for labour migrants has not been focused on the efficient processing and settlement of insurance claims from labour migrants experiencing problems. Moreover, the insurance policy has been revised numerous times yet it is still unable to guarantee the rights of labour migrants to claim the insurance that they are required to pay for pre-departure<sup>42</sup>.

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<sup>32</sup> IOM report ‘Labour Migration from Indonesia: an overview of Indonesian Migration to selected destinations in Asia and the Middle East’ (2010), p.38.

<sup>33</sup> IOM, US Department of State Trafficking in Persons Reports 2009 to 2011

<sup>34</sup> IOM, US Department of State Trafficking in Persons Reports 2008 to 2011

<sup>35</sup> The ILC Conference Committee on the Application of Conventions and Recommendations urged all necessary measures be taken in order to bring the law and practice into conformity with the right to freedom of association, so that no sanctions involving compulsory labour could be imposed for the expression of political or ideological views or for the participation in peaceful strikes (ILCCR: Examination of individual case concerning Convention (No. 105): Abolition of Forced Labour, 1957 Indonesia (ratification: 1999) Published: 2008)

<sup>36</sup> ILCCR: Examination of individual case concerning Convention (No. 105): Abolition of Forced Labour, 1957 Indonesia (ratification: 1999) Published: 2008

<sup>37</sup> CEACR: Individual Observation concerning Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) Indonesia (ratification: 1998) Published: 2010

<sup>38</sup> Act No. 21 of 2000 proclaims that civil servants shall enjoy freedom of association and that the implementation of this right shall be regulated in a separate Act. This Act has not been developed by the Government.

<sup>39</sup> Human resources for health at the district level in Indonesia: the smoke and mirrors of decentralization, Peter Heywood and Nida P Harahap; *Human Resources for Health*, 2009, 7:6

<sup>40</sup> See for example Public funding of health at the district level in Indonesia after decentralization – sources, flows and contradictions Peter Heywood and Nida P Harahap; *Health Research Policy and Systems*, 2009, 7:5

<sup>41</sup> See for example Leaders, Elites and Coalitions: The Politics of Free Public Services in Decentralised Indonesia Andrew Rosser, Ian Wilson & Priyambudi Sulistiyanto; *Research Paper, Leadership Development Program*, May 2011

<sup>42</sup> Labour Migration from Indonesia: an overview of Indonesian Migration to selected destinations in Asia and the Middle East (IOM)

## **F. Right to education and to participate in the cultural life of the community**

Past efforts have seen significant achievements in *Education For All*, despite the recent economic crisis. In 2010 and 2011 there has been an increase in the budget for education with an allocation of Rp 209.5 trillion and Rp 248.9 trillion respectively,<sup>43</sup> and educational laws and policies have been developed in line with this increase in budget allocation. The Government of Indonesia is making strong efforts to increase distance learning higher education.

Indonesia has almost achieved complete national enrolment in primary education, although too many Indonesian children are still not in school, as they drop out early or do not reach minimal learning standards. Access to early child development is limited with net enrolment rate between 20% and 51%, and regional variations as low as 8% in Papua. Moreover, results from preliminary analysis of the 2009 SUSENAS data show that more than 15% of primary school age children in remote areas are not in school, which is more than seven times higher than the national average. Only 55% of children from low-income families are enrolled in junior secondary schools<sup>44</sup>.

Unbalanced education across regions continues to be a challenge, especially in relation to coastal areas and small islands, and outer islands. In addition, some areas stricken by natural disaster have no access to education, as is the same with some indigenous people<sup>45</sup>. A high number of people, including school age children haven't received any basic education due to a lack of understanding concerning the importance of education, or lack of infrastructure and transportation facilities<sup>46</sup>.

Indonesia has national decrees which enable and allow HIV-related reproductive and sexual health education for young people, as mentioned in Ministerial of Education Decree No. 9/U/1997 on HIV Prevention through Education and Ministerial Decree No. 303/U/1997 on Guidelines to Prevent HIV through Education.<sup>47</sup> HIV education is part of the curriculum at all levels of educations and in teacher training. However, individual school headmasters, districts and provinces are allowed considerable authority to adapt this education to local culture and religious sensitivities. This implies that many young people could miss out on effective sexual and reproductive health education, as is confirmed by data from the 2007 IYARHS report showing that only 14.3% of young people aged 15 - 24 have comprehensive knowledge about HIV and AIDS.<sup>48</sup>

With regard to the right to participate in the cultural life of the community, Indonesia is actively implementing the 1972 World Heritage and 2003 Intangible Heritage Conventions.

## **G. Right to the highest attainable standard of health care**

The MoH is making effort to ensure the implementation of Law No. 36/2009 on Health, with the enactment of government regulation notably ensuring access to reproductive health information and services, including family planning, that are of good quality; affordable by the people (article 73). In addition to married couples, unmarried and young people of reproductive age have been included in the Indonesia Demographic and Health Survey in 2012 questionnaire to determine TFR (total fertility rate).

Indonesia has made progress in reaching the MDGs, and Under Five Mortality is believed to be on track at 35 per 1,000 live births in 2010 as against the target of 28 per 1,000 in 2015. The Population and Family Planning Board (BKKBN) and the Ministry of Health (MOH) are making efforts to ensure the implementation of Law No. 52/2009 on Population Dynamics and Family Development to ensure access to reproductive health and family planning information, counseling and services and to increase male participation in family planning (article 21). Efforts are being made by BKKBN and the Ministry of National Education to increase access to quality information and education on population and family planning for students and educators through the school system.

Indonesia is not on track to meet the MDG 6 target, which includes halting and reversing the spread of HIV, and universal access to treatment for HIV. There has been expansion of HIV prevention and treatment services, such as

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<sup>43</sup> Fiscal Budget Laws

<sup>44</sup> BPS, Statistical Central Agency 2009, Ministry of National Education 2009, National Social Economic Survey conducted by National Bureau of Statistics, 2009

<sup>45</sup> RANHAM 2011-14

<sup>46</sup> RANHAM 2011-14

<sup>47</sup> Education Sector Response to HIV, Drugs and Sexuality in Indonesia, UNESCO, 2010

<sup>48</sup> Indonesia UNGASS Report 2010

the expansion of antiretroviral therapy coverage from 25% in 2007<sup>49</sup> to about 40% in 2009.<sup>50</sup> However, an increasing number of people are infected with HIV in Indonesia, especially through sexual transmission.

Maternal Mortality data has been included in the 2010 Census. However, Indonesia is not on track to reduce maternal deaths by 2015<sup>51</sup>. Several factors contribute to Indonesia's high maternal mortality including the high total fertility rate (TRF), as well as low quality and access to family planning and reproductive health services and information<sup>52</sup>. There are increasing trends of unmet need for family planning, from 8.6 in 2003 to 9.1 in 2007. Gaps in child and infant mortality have widened geographically and favor children living in Java and Sumatera islands compared to remote provinces in eastern Indonesia. Children from the poorest households of Indonesia run 3.6 times the risk of dying before age five, compared with their wealthiest peers.<sup>53</sup>

Based on the criteria established by the Countdown Working Group of Health Policy and Health Systems, there are three critical policy indicators of which Indonesia has not or has only partially adopted, which are evidently recommended to improve coverage of core child survival interventions, especially among the poor: 1) International Code of Marketing of Breast-milk Substitutes, 2) community management of pneumonia with antibiotics, and 3) community management of diarrhoea with low-osmolarity oral rehydration salts and zinc<sup>54</sup>.

Abortion is allowed in the event that there is indication of medical emergency threatening the life of the mother and/or foetus or in pregnancy as a result of rape (Law 36/2009 art. 75). Even in cases when a woman has been raped, she must pass several selection criteria in order to receive abortion services, which proves difficult for women living in remote access and/or with limited access to health services for financial or geographic reasons. In cases when the mother or fetus is endangered, the husband's consent to abortion is required (Law 36/2009 art. 76).

The Ministry of health allows female genital mutilation (FGM) under health officer supervision and with the permission from the family and the girl, though FGM has no health benefits and is a violation of the human rights of girls and women. Drug abuse continues to be seen as a criminal act, and drug users are criminalized, even for first offences. A lack of effective drug rehabilitation makes it difficult to implement the 2009 national level court decision that drug use is a health issue, and users should be sent to drug rehabilitation rather than prison.

## H. Right to work

The Ministry of Manpower and Transmigration has initiated the development of Guidelines on Sexual Harassment at the Workplace and issued these by Ministerial Circular Letter in 2011,<sup>55</sup> forming part of a revitalized campaign to promote equal employment opportunities and principles of non-discrimination in the workplace by the Ministry of Manpower.

The legal framework for the protection of migrant workers, both in terms of Memorandums of Understanding with other countries, domestic legislation and enforcement mechanisms, is not effective in ensuring the protection from exploitation and violations of their human rights, in Indonesia and in destination countries. This includes, among others, recruitment fees borne by the migrant worker leading to a situation of debt-bondage or forced labour;<sup>56</sup> inadequacy of information provided to potential migrant workers;<sup>57</sup> ineffective or non-existent monitoring of registered and informal recruitment agencies;<sup>58</sup> an absence of enforceable written contracts<sup>59</sup>; lack of adequate standards and policies on pre-departure training.<sup>60</sup> Attention to migrant worker's health, in particular the growing nexus between migration and HIV is integral to facilitating the overall safety and protection of Indonesian migrant workers, as the vulnerability to gender-based violence (GBV) of female migrant workers (most of whom are

<sup>49</sup> Country report on the Follow up to the Declaration of Commitment on HIV/AIDS (UNGASS), reporting period 2008-2009, NAC 2010

<sup>50</sup> Universal Access report on health sector, MoH, 2011

<sup>51</sup> UNICEF Childinfo [http://www.childinfo.org/maternal\\_mortality.html](http://www.childinfo.org/maternal_mortality.html)

<sup>52</sup> Report on the Achievement of Millennium Development Goals Indonesia, 2007, BAPPENAS, 2007

<sup>53</sup> WHO. (2009). *Improving Child Health and Development in South-East Asia Region: A Strategic Framework for Action*. New Delhi: World Health Organization - SEARO

<sup>54</sup> Countdown Working Group on Health Policy and Health Systems. (2008). Assessment of the health system and policy environment as a critical complement to tracking intervention coverage for maternal, newborn and child health. *Lancet*, 371, 1284-1293.

<sup>55</sup> Ministerial Circular Letter No. SE.03/MEN/IV/2011 (15th April 2011) by the Ministry of Manpower and Transmigration

<sup>56</sup> ILO Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III(1A) to the International Labour Conference, 98th Session, 2009, (Geneva) p218

<sup>57</sup> Ibid, p219

<sup>58</sup> Ibid.

<sup>59</sup> ILO: The cost of coercion: Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, International Labour Conference, 98th Session, 2009 (Geneva), p23.

<sup>60</sup> Ibid, p26.

domestic workers), including sexual violence and rape, places female domestic workers at higher risk of HIV infection.

The Government has a draft Act for the Protection of Domestic Workers. There is deep concern about the number and situation of children (and women) working as domestic workers<sup>61</sup>. The Government has been requested to take necessary measures to ensure that domestic work becomes regulated and that the draft Act for the Protection of Domestic Workers is adopted as a matter of urgency.<sup>62</sup> Act No. 13 of 2003 (Manpower Act) excludes from its application, children who are engaged in self-employment or working without a clear wage relationship, including in domestic work,<sup>63</sup> therefore necessary measures need to be taken to ensure that thorough investigations and robust prosecutions of persons who employ children under 18 years of age in hazardous domestic work are carried out and that sufficiently effective and dissuasive sanctions are applied in practice. The ILO Committee of Experts has repeatedly requested the Government to continue taking measures in order to address the situation of child domestic workers, and to provide information on the results achieved, particularly in terms of the prevention and withdrawal of children from domestic labour.<sup>64</sup>

## **I. Internally Displaced Persons**

A set of internationally accepted guidelines for training on the Minimum Initial Services Package (MISP) for reproductive health in humanitarian setting has been accredited by the MoH for nation-wide implementation (the rights of IDPs). The MOH has allocated budget in 2011 for awareness creation on the rights to reproductive health service and the prevention of gender-based violence in emergency situations among sub-national health providers. In addition, MOH also allocates funds for the procurement of maternity, post delivery and hygiene kits for women IDPs (the rights of IDPs).

## **J. Refugees and Asylum-Seekers**

The Government of Indonesia has responded to people in need of international protection, by adhering to the principle of *non-refoulement* and granting the right of temporary stay to refugees and asylum-seekers. This is an illustration of a *de facto* implementation of key principles of the 1951 Convention, including the commitment of Indonesia to international solidarity with the other States Parties of the CSR51.

The newly adopted Immigration Regulations issued in September 2010 No. IMI-1489.UM.08.05, entitled *Handling of Irregular Migrants*, determines that an irregular migrant who declares his/her intention to seek asylum will not be subject to deportation, and that his/her presence in the country will be authorized, provided that such person has obtained an Attestation Letter from UNHCR or granted Mandate refugee status by UNHCR. In most cases, refugees and asylum-seekers enjoy freedom of movement and a certain degree of a limited number of social rights. However, due to the lack of a legal status in Indonesia, the situation of the refugees and asylum seekers remains informal and precarious.

## **K. The Right to Nationality**

Following the adoption of the 2006 Citizenship Act abolishing key discriminatory provisions of the previous legislations on nationality, the Government of Indonesia has adopted several proactive measures to reduce and prevent statelessness, which include issuing the confirmation of nationality for Indonesia's ethnic minorities. However, many Indonesian children born abroad to Indonesian migrant workers in neighbouring countries are at risk of statelessness due to their illegal stay as the parents are reluctant to register their child due to fears of deportation. There is a lack of accurate data on the number of stateless persons living in the archipelagos, in addition to gaps in birth registration, reducing reliability of data on the stateless population to estimations.

## **L. Persons with Disability**

The current applicable law<sup>65</sup> on Persons with Defect (*Penyandang Cacat*), defines a Person with Disabilities (PwD) as a person with physical and mental impairments that prevent effective social functioning or participation. Civil society organizations (CSOs) have long asked for the replacement of this law, and the Indonesian National

<sup>61</sup> See Human Rights Watch: *Workers in the Shadows: Abuse and Exploitation of Child Domestic Workers in Indonesia* (2009)

<sup>62</sup> CEACR: *Individual Observation concerning Minimum Age Convention, 1973 (No. 138) Indonesia* (ratification: 1999) Published: 2011

<sup>63</sup> CEACR: *Individual Observation concerning Minimum Age Convention, 1973 (No. 138) Indonesia* (ratification: 1999) Published: 2011

<sup>64</sup> ILO Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III(1A) to the International Labour Conference, 100th Session, 2011 (Geneva), p339.

<sup>65</sup> Indonesian law No. 4 Year 1997



Parliament ratified the Convention on the Rights of Persons with Disabilities (CRPD) on October 18, 2011, presenting an opportunity to revise or replace the current law. The Indonesian House of Representatives has declared the agreement of the accession of the International Convention on People with Disabilities (ICPD).

### 3. Work with civil society

The MOH with its regional crisis centers is partnering with the Indonesia Red Cross (PMI), the Midwives Association (IBI) and the civil societies in the provision of multi-sectoral response in emergency situations. The Indonesian government is increasingly recognizing the key role of CSOs in addressing HIV prevention, treatment, care and support. A number of stakeholder groups are members of the National AIDS Commission, including: People Living with HIV; national networks of men who have sex with men; transgenders; sex workers; drug users and drug victims; and HIV positive women. National regulations now allow government funding from the district and provincial level to local CSOs working on HIV outreach and other programmes. However, the capacity of many groups to undertake advocacy and manage programmes remains limited. There are also issues in the long term funding and sustainability of CSOs working in health and social services, including HIV.

However, civil society is not yet playing an optimal role with clear well-defined linkages to local government in service delivery and government policy development processes.<sup>66</sup> This is in spite of the fact that in some districts as many as 60-70 % of children might be served with basic services provided by civil society organizations such as faith-based groups, while overall some 40% of schools are owned by privately, mostly by faith-based organizations.<sup>67</sup>

An independent assessment of the Commission on Protection of Children's Rights (KPAI) highlighted various human and financial limitations. In 2010, a new commission was appointed. The Commissioners mostly come from religious affiliated political parties and often have a background as either members of civil society or Government officials. However, it should be noted that the selection process for the Commissioners has been critiqued for being exclusive and limited. The budget supporting KPAI remains limited to allow the full functioning of the Child Rights Body.

## IV. Achievements, best practices, challenges and constraints

### Achievements and Best Practices

The government of Indonesia has established laws and policies in order to implement various national action plans (see above). The RANHAM 2011-2014 establishes a framework consisting of seven core elements: 1) establishment and enforcement of RANHAM executors institutions; 2) preparation for ratification of human rights international instruments; 3) harmonization of the draft and evaluation of the rule of law; 4) education on human rights; 5) the application of human rights norms and standards (divided into various rights); 6) community communication service; and 7) the monitoring, evaluation and reporting system. Under each element, problems are identified, and strategies and action plans developed, with outputs, expected results, timescale and responsible institutions highlighted.

### Challenges and Constraints

Relevant laws and policies have already been established under the structure of the current legal system. However, the implementation of these laws and policies is lacking, and public ignorance of the Law has resulted in a lack of claim and demand for rights. The decentralized policy has allowed sub-national authorities to establish additional local laws and policies, resulting in more than 1000 local laws and policies are not in accordance with national and internationally agreed standards, of which at least 154 are discriminatory against women.<sup>68</sup> The United Nations Partnership for Development Framework 2011-2015 (UNPDF), which highlights the strategic focus of the UN in Indonesia, is fully aligned with and supporting the national priorities as articulated in the RPJMN. While supporting the Government of Indonesia, the UN recommends that more effort is put into the effective

<sup>66</sup> UNDP, 'Papua Needs Assessment: An Overview of Findings and Implications for the Programming of Development Assistance' (UNDP, Bappenas, Government of Papua, 2005), p. 13 and GoI Papua, World Bank, United Nations, 'Papua Accelerated Development Needs Assessment (PADNA): Draft for consultations', Vol. 2, Background Papers November 2009, pp. 17, 35.

<sup>67</sup> Ibid  
<sup>68</sup> <http://www.voanews.com/indonesian/news/Komnas-Perempuan-189-Perda-Diskriminatif.html>, and As the National Commission on Violence against Women recorded in 'in the name of regional autonomy: the institutionalisation of discrimination in Indonesia'; 2010

implementation of existing laws and policies that are in accordance with national and internationally agreed standards.

## V. Recommendations

The UN Country Team suggests that Indonesia considers the recommendations listed below:

### Legislation

- Implementation of International Covenant on Economic Social and Cultural Rights (Article 13 and 15)
- Ratification of key ILO Conventions for the protection of domestic workers, migrant workers, indigenous peoples and persons with disabilities, and integration of principles from these conventions into national law<sup>69</sup>
- Ratification of UNESCO's International Conventions<sup>70</sup>
- Approve the Indonesia Breastfeeding Code and Marketing of Breast milk Substitutes
- National level review of district and Provincial level laws and regulations ("Perda") against the Indonesian Constitution, national law and international conventions signed and ratified by the Indonesian government
- Repeal or amend sections of the Criminal Code on 'instigation' and 'unpleasant acts' and remove sanctions involving compulsory labour.

### Institutions

- Government of Indonesia to protect rights of asylum seekers and increase coordination in handling asylum matters by allocating roles of departments appropriately.
- To meet the rights of elderly people (aged 60 years or over) for special needs in terms of friendly access to health care and socio-economic welfare.
- Encourage the continued application of a human-rights based approach and promotion of gender equality to reduce disparities and achieve Millennium Development Goals.
- Ensure independent children's rights body is enabled with appropriate financial and human resources.
- Ensure standardized and government-approved pre-departure briefing and training of sufficient quality and provide better protection services to migrant workers overseas and upon return.
- Continue counter-trafficking efforts particularly in terms of prosecution and prevention.

### Policies

- Continue evidence based policy development, and improve research and systematic data collection and utilisation, to better identify and understand the sources of inequality and the population at risk.
- Ensures implementation of the Law No. 23/2004 on Domestic Violence and Law No. 21/2007 on Trafficking by rigorous capacity development of law enforcers and empowerment of communities and women to claim their rights.
- Expand the implementation of the minimum services standards for victims of violence to all 33 provinces in Indonesia; including the allocation of local budget for free service to victims.
- Develop comprehensive and effective policy framework and implementation mechanism for safe migration and universal access to treatment, prevention, care and support with the long term objective to reverse and halt the spread of the HIV epidemic in the country.
- Develop a policy framework that upholds the right to work without discrimination based on HIV status, including the rights of migrant workers to pursue employment and work regardless of their HIV status.
- Health Ministerial decree of 2010 on the medicalization of female circumcision should be withdrawn.
- The government should promote and ensure the involvement of civil society in reproductive health service provision especially for adolescents and vulnerable population.
- To adopt an Act guaranteeing the exercise of the right to organize to civil servants, pursuant to section 4 of Act No. 21 of 2000<sup>71</sup>.
- MOH to develop and approve the community case management of common childhood illnesses (pneumonia, diarrhea) to improve access of preventive and curative services especially in remote areas.

<sup>69</sup> ILO Convention 169 on the Rights of Indigenous and Tribal Peoples, UN Convention of the Rights of Persons with Disabilities, UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, ILO Convention 189 on Decent work for Domestic Workers, ILO Convention 97 on Migration for Employment, ILO Convention 143 on Migrant Workers, ILO Convention 159 on Vocational Rehabilitation and Employment (Disabled Persons)

<sup>70</sup> UNESCO 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict, UNESCO 1970 Convention for the fight against the illicit trafficking of cultural property, UNESCO 2001 Convention on the Protection of the Underwater Cultural Heritage, UNESCO 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions

<sup>71</sup> Act No. 21 of 2000 proclaims that civil servants shall enjoy freedom of association and that the implementation of this right shall be regulated in a separate Act.

- Establish policies to promote local and national funding of CSOs and other voluntary sector groups, for example, through the zakat, and tax incentives schemes.
- Implement article 6 of Law no. 4 (1997) and improve opportunities for employment of persons with disability.
- Government of Indonesia to ammend discriminatory bylaws that have direct or indirect implications on violation of women's human rights.

#### Access to Justice

- Access to justice to encompass all sectors, including legal enforcers, legal education, public services, civil society and community based organizations.
- To promote alternatives to detention of refugees and asylum-seekers.
- Improve equity (access) to justice of the poor, the marginalized, especially indigenous persons, persons with disability, and minority groups.

#### Rights to Equality and Non-discrimination

- Government to allocate funds to undertake Violence Against Women (VAW) Survey in 2013.
- Government to allocate funds to support the establishment of an independent Equal Employment Opportunities Body.
- Improve social protection for persons with disability in general and, in particular, for children and those with serious impairments.

#### Education

- To prevent early marriage, pregnancy, the spread of HIV among adolescents, the Ministry of National Education should ensure the inclusion of life skills – based sexual and reproductive health education into the national secondary school curriculum.
- Maintain increase in funding for education despite any negative effects of the recent economic crisis.

#### Health

- To ensure resources are made available at the sub-national level when trying to meet needs for family planning, especially for the poor and vulnerable (e.g., adolescents, sex workers, Internal Displaced Persons) and people living in remote areas to ensure contraceptive commodity security.
- Adopt a responsive and more strengthened health system especially under decentralized set up in order to ensure full universal access of basic integrated high impact and cost effective services especially maternal and child health and nutrition, inclusive to poor families and their children.
- Ensure a well-designed, targeted and packaged, integrated, comprehensive health risks financing for the poor families and their children to improve health facility utilization and health outcomes.
- Expand mental health provision at the local and provincial levels, including drug and other addiction treatment services.