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**SUBMISSION OF THE INTERNATIONAL COMMISSION OF JURISTS (ICJ)  
TO THE UN COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN  
VIEW OF THE COMMITTEE'S EXAMINATION OF THE INITIAL REPORT OF  
INDONESIA UNDER THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL  
AND CULTURAL RIGHTS**

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**SUBMISSION OF THE INTERNATIONAL COMMISSION OF JURISTS TO THE COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS ON THE INITIAL PERIODIC REPORT OF INDONESIA**

1. During its 52nd session, from 28 April to 23 May 2014, the UN Committee on Economic, Social and Cultural Rights (the Committee) will examine Indonesia's compliance with its obligations under the International Covenant on Economic, Social and Cultural Rights (the Covenant), including in light of the State Party's initial report under article 16 of the Covenant. In this context, the International Commission of Jurists (ICJ) welcomes the opportunity to submit the present briefing to the Committee.

**Executive Summary**

2. In this briefing, the ICJ expresses concern about Indonesia's failure to fully comply with its obligations under the Covenant in connection with the following: the right to equal remuneration for work of equal value; protection and remedies afforded to domestic workers; the right to strike for civil servants; activities carried out against trade unions; and the right to take part in cultural life. The ICJ concludes with recommendations as to some of the steps Indonesia should undertake to comply its obligations under the Covenant, including its implementation in national law and practice.
3. The present briefing complements the information provided to the Committee in the ICJ's submission in view of the Committee's preparation of a List of Issues for the examination of Indonesia's initial report.<sup>1</sup> The present submission therefore considers the questions posed by the Committee to the Indonesian authorities in the List of Issues and builds on the concerns that the ICJ identified and set out in its submission for the preparation of a List of Issues, as well as on other concerns arising from the organization's analysis of Indonesia's compliance with its obligations under the Covenant. The ICJ's concerns arise in relation to Indonesia's obligations under articles 2, 3, 6, 7, 8, 11, 12 and 15 of the Covenant.

**ARTICLE 7 TAKEN TOGETHER WITH ARTICLE 2 AND 3, THE RIGHT TO JUST AND FAVOURABLE CONDITIONS OF WORK**

List of Issues, paragraph 14: Please indicate the measures taken by the State party for application of the principle of equal remuneration for work of equal value.

4. Indonesia is a party to two international treaties that affirm the principle of equal remuneration for work of equal value and impose obligations aimed toward the realization of this principle in law. They are:
  - (i) ILO Convention No. 100 on the Equal Remuneration for Men and Women Workers for Work of Equal Value, to which Indonesia has given effect through the implementation of Law No. 80 Year 1957; and
  - (ii) ILO Convention No. 111 on Discrimination in Respect of Employment, to which Indonesia has given effect through the implementation of Law No.21 Year 1999.
5. Further, in 2003, Indonesia adopted the Labor Law (Law No.13/2003), which covers employees of both private and state-owned enterprises. Article 6 of the Labor Law states that "every worker/labourer has the right to receive equal treatment without discrimination from their employer". Article 76 provides for special protection for women

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<sup>1</sup> International Commission of Jurists, *Submission for the preparation by the Committee of a List of Issues to be considered during the examination of the initial report of Indonesia*, submitted October 2013, <http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2013/11/ICJ-submission-LOI-Indonesia-CESCR.pdf>.

in the workplace, particularly those who work from 11p.m. to 7a.m.,<sup>2</sup> and articles 88 to 98 lay out the wage policy of Indonesia,<sup>3</sup> regardless of whether the worker is male or female.

6. Despite the adoption of the abovementioned laws, there remains significant wage inequality between men and women in Indonesia. According to the Global Gender Gap Report of 2013, Indonesia managed to obtain a score of 0.70 out of a total 1.00 on female-to-male ratio, which translates to only 70 female workers for every 100 male workers being given equal remuneration for work of equal value.<sup>4</sup>
7. In March 2012, the International Trade Union Confederation (ITUC) released the publication *Frozen in Time: Gender Pay Gap Unchanged for 10 Years*, featuring findings on Indonesia, among other countries. This research includes data from both public and private companies. For Indonesia, the research covers 16 sectors.<sup>5</sup> The research found that, apart from objective factors such as qualifications, responsibilities, and size of company, there existed other factors such as a wide range of discriminatory practices that affect the country's gender pay gap.<sup>6</sup> This means that despite both men and women having equal work experience, qualification, and position, gender pay differentials still occurred. The study concluded that nine percent of Indonesia's gender pay gap was due to discriminatory practices.<sup>7</sup>

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<sup>2</sup> Article 76(3) of Law No.13/2003 states:

Entrepreneurs who employ female workers/ labourers to work between 11 p.m. until 7 a.m. are under an obligation:

- a. To provide them with nutritious food and drinks; and
- b. To maintain decency/ morality and security in the workplace.

<sup>3</sup> Article 88(3) of Law No.13/2003 states:

The wages policy that protects workers/labourers as mentioned under subsection (2) shall include:

- a. Minimum wages;
- b. Overtime pay;
- c. Paid-wages during the absence;
- d. Paid-wages because of activities outside of his job that he has to carry out;
- e. Wages payable because he uses his right to take a rest;
- f. The form and method of the payment of wages;
- g. Fines and deductions from wages;
- h. Other matters that can be calculated with wages;
- i. Proportional wages structure and scale;
- j. Wages for the payment of severance pay; and
- k. Wages for calculating income tax.

Article 98 of Law No.13/2003 states:

(1) In order to provide recommendations and considerations for the formulation of wages policies to be established by the Government, and to develop a national wages system, the National Wage Council, Provincial Wage Councils, and District/ City Wage Councils shall be established.

(2) The councils as mentioned under subsection (1) shall have representatives from the government, entrepreneurs' organizations, trade/labour unions, universities and experts as their members.

(3) The members of the National-level Wage Council shall be appointed and dismissed by the President while the members of Provincial Wage Councils and District/ City Wage Councils shall be appointed and dismissed by the Governors/ District Heads/ Mayors of the respective provinces, districts and cities.

(4) The provisions concerning the procedure for the formation of, membership composition of, procedures for appointing and dismissing members of and duties and working procedures of wages system councils as mentioned under subsection (1) and subsection (2) shall be regulated with a Presidential Decision.

<sup>4</sup> World Economic Forum, *The Global Gender Gap Report 2012*, [http://www3.weforum.org/docs/WEF\\_GenderGap\\_Report\\_2013.pdf](http://www3.weforum.org/docs/WEF_GenderGap_Report_2013.pdf), p. 50.

<sup>5</sup> The 16 sectors covered by the ITUC report: agriculture; fishing; mining; manufacturing; utilities; construction; wholesale and retail; hotels and restaurants; transport, storage and communication; finance; real estate, renting and business; public administration and defence; education; health and social work; other community, social and personal services; and private households.

<sup>6</sup> Ibid.

<sup>7</sup> Ibid, p.44.

8. Research conducted by the Australian Agency for International Development found that, within the same professions, women in Indonesia were still earning approximately 25 percent less than men.<sup>8</sup> The same study also concluded that pay inequality in Indonesia stemmed from the fact that women continued to face barriers such as social norms and traditional laws or practices that restricted the type of work in which women could engage.<sup>9</sup>
9. With regard to labor inspectors, Better Work, a labour organization, reported in May 2013 that Indonesia was in dire need of additional 3,700 labor inspectors before the current Ministry of Manpower and Transmigration is able to ensure that the implementation of labour laws in all workplaces in the country can work well.<sup>10</sup> The report indicated that at present, there are only 2,384 labor inspectors for 216,547 companies in the country.<sup>11</sup>
10. Pursuant to articles 2, 3 and 7 of the Covenant, the Committee has emphasized in its General Comment No. 20 on non-discrimination, that State Parties have an "obligation to adopt special measures to attenuate or suppress conditions that perpetuate discrimination".<sup>12</sup> Those special measures adopted with a view to eliminating any workplace discrimination will be legitimate so long as they are "reasonable, objective and proportional".<sup>13</sup>
11. In addition, the Committee indicated that States should establish mechanisms and national institutions that are not only easily accessible to all without discrimination, but also able to "adjudicate or investigate complaints promptly, impartially and independently", before any alleged violations or complaints can be addressed effectively.<sup>14</sup>
12. In Indonesia, there exist two national institutions aimed at promoting and protecting human rights in the country: the National Commission on Human Rights (Komnas HAM) and the National Commission on Violence against Women (Komnas Perempuan). Komnas HAM alone is mandated to "examine and investigate incidents...(that) likely constitute violations of human rights",<sup>15</sup> while the functions of Komnas Perempuan are to monitor and increase awareness of violence against women.<sup>16</sup> Despite Komnas HAM's additional powers to monitor and mediate complaints<sup>17</sup> of alleged human rights violations, the body has thus far been ineffective in providing any non-judicial redress to victims of human rights violations as it lacks an effective follow-up system that is crucial in obtaining more information on the status of submitted cases to various State agencies, including the Attorney General.<sup>18</sup> The ICJ has also reviewed the laws as listed in paragraph 4 above, and it is concerned that, in Indonesia, such remedial or accountability mechanism is either not available or, where available, found to be ineffective.

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<sup>8</sup> Australian Aid, *Empowering Indonesian Women for Poverty Reduction*, September 2012, <http://aid.dfat.gov.au/countries/eastasia/indonesia/Documents/mampu-part-a.pdf>, p. 10.

<sup>9</sup> Ibid p. 11.

<sup>10</sup> Better Work, 'Labour Inspector Urgency', 2 May 2013, <http://betterwork.org/indonesia/?p=3258> (Accessed 11 March 2014).

<sup>11</sup> Ibid.

<sup>12</sup> General Comment No. 20, Non-Discrimination in Economic, Social and Cultural Rights, UN Doc.E/C.12/GC/20, para 9.

<sup>13</sup> Ibid.

<sup>14</sup> Ibid para. 40.

<sup>15</sup> Article 89(3)(b) of Law No.39 Year 1999 concerning Human Rights. Note that Komnas HAM does not possess quasi-judicial powers. The key powers of the Commission is stipulated under article 76 of Law No.39 Year 1999 which are "to study, research, disseminate, monitor and mediate human rights issues."

<sup>16</sup> Komnas Perempuan, 'Profile', <http://www.komnasperempuan.or.id/en/about/profil/> (Accessed 10 March 2014).

<sup>17</sup> Komnas HAM receives approximately 4000 to 6000 complaints annually. See Asian Forum for Human Rights and Development (FORUM-ASIA), *2013 ANNI report on the Performance and Establishment of National Human Rights Institutions in Asia*, 2013, p.30.

<sup>18</sup> Interview with Mr. Chris Biantoro, Lawyer of KontraS, 10 March 2014. See also Asian Forum for Human Rights and Development (FORUM-ASIA), *2013 ANNI report on the Performance and Establishment of National Human Rights Institutions in Asia*, 2013, p.30.

List of issues, paragraph 17:

Please indicate the steps taken towards the adoption of a law on the protection of domestic workers. Please also provide information on the protections afforded to them, and on the mechanisms of the remedies available to victims of exploitation and abuse by employers.

13. Domestic workers are not covered under the Indonesian Labor Law. Although article 1(4) includes individuals not necessarily employed in enterprises in its definition of "employers", most of the provisions in the law refer specifically to employees working for "enterprises" or "entrepreneurs".<sup>19</sup> The dispute resolution mechanism established in article 136 of the Indonesian Labor Law covers only labourers or workers employed by "entrepreneurs", and not by individual employers as in the case of domestic workers.
14. In December 2009, the Indonesian Legislation Council agreed to initiate the drafting process of elaborating a Domestic Workers Protection Bill and to have it prioritized for action by Parliament in 2010.<sup>20</sup> Although the ICJ notes that initial discussions with civil society groups have been held and a legislative working group has been established to scrutinize the draft,<sup>21</sup> the bill has yet to be taken up by the House of Representatives. No further progress has been reported on this legislation, to date.<sup>22</sup>
15. In April 2014 Indonesia is set to hold parliamentary elections. While the new members of parliament will not be able to remove this bill from the list of draft laws that Parliament is supposed to deliberate on,<sup>23</sup> it remains to be seen whether the new set of parliamentarians will include this bill in the list of priorities in the new national legislative programme.<sup>24</sup>
16. The Law on the Elimination of Violence in the Household (Law No. 23/2004), which became effective on 25 March 2003, may provide some protection to those domestic workers who suffer from abuse in the household. Under article 2(1)(c) of the law, a domestic worker falls under the definition of an "individual working to assist the household and living in the household" and is considered a member of the "household". This means that if a domestic worker suffers from some form of household violence,<sup>25</sup> the relevant Indonesian authorities are obliged under the law to provide the necessary type of protection needed and take action against the perpetrator. In practice, however, a large number of domestic workers continue to work in isolation and are not aware that domestic violence, where household members engage in violence against domestic workers, is a crime or that the law offers the

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<sup>19</sup> Article 6 of Law No.13 Year 2003 concerning Manpower states:

An **enterprise** (*perusahaan*) shall refer to

- a. Every form of business [undertaking], which is either a legal body or not, which is owned by an individual, a partnership or a legal body that is either privately owned or state owned, which employs workers/ labourers by paying them wages or other forms of remuneration;
- b. Social undertakings and other undertakings with officials in charge and which employ people by paying them wages or other forms of remuneration.

<sup>20</sup> HRW, 'Indonesia: Guarantee Domestic Workers' Rights in 2010', 13 February 2010, <http://www.hrw.org/news/2010/02/12/indonesia-guarantee-domestic-workers-rights-2010> (Accessed 23 February 2014).

<sup>21</sup> Isabelle Arradon, 'Bringing Indonesian domestic workers out of legal limbo', *Jakarta Post*, 15 February 2013, <http://www.thejakartapost.com/news/2013/02/15/bringing-indonesian-domestic-workers-out-legal-limbo.html> (Accessed 23 February 2014).

<sup>22</sup> Interview with Mr. Chris Biantoro, Lawyer of KontraS, 24 February 2014.

<sup>23</sup> Ibid.

<sup>24</sup> Ibid.

<sup>25</sup> Article 5 of Law No. 23 Year 2004 concerning Elimination of Violence in Household defines "violence" as either physical, psychic, sexual or negligence.

workers protection.<sup>26</sup> Amnesty International has noted that law enforcement authorities do not fully utilize the above-mentioned Law on the Elimination of Violence in the Household<sup>27</sup> and in some instances, prefer to rely on other Criminal Code provisions concerning assault and rape instead.<sup>28</sup> According to the Commission for the Disappeared and Victims of Violence (KontraS), it is the general practice in the police force to rely on the Criminal Code, even where the Code is unable to protect domestic workers who face abuses.<sup>29</sup> As a result, most perpetrators escape without even being charged, let alone face trial and, if convicted, face criminal sanction.<sup>30</sup> In this context, it should also be noted that the relevant provisions under the Criminal Code only cover victims who are wives, children, or parents. It was precisely because of this limitation that the Law on the Elimination of Violence in the Household was enacted.<sup>31</sup> The lack of enforcement of this law is concerning as the majority of domestic workers in Indonesia are women and girls below the age of 18. Many of these persons are victims of rape, sexual harassment and other forms of gender-based violence.<sup>32</sup>

17. The ICJ remains concerned at the lack of legal protection for domestic workers in Indonesia. According to statistics from the National Network for Domestic Workers Advocacy (Jala PRT), there are now approximately 10 million domestic workers in the country and, in 2013 alone, Jala PRT received a total of 650 complaints of abuse of domestic workers.<sup>33</sup>

#### **ARTICLE 8: RIGHT TO STRIKE**

List of issues, paragraph 18:  
Please provide information on measures taken to guarantee the right to strike for civil servants.

18. Civil servants have freedom of association and the right to organize under article 44(1) of Act No. 21/2000 on Trade Unions. Article 44(2) of Act No. 21/2000 on Trade Unions, however, states that the implementation of the freedom of association and the right to organize of civil servants shall be regulated in a separate act. To date, no such

<sup>26</sup> Amnesty International, 'Indonesia: Domestic workers continue to face abuse and exploitation due to lack of legal protection', 25 November 2011, <http://www.amnesty.org/fr/library/asset/ASA21/035/2011/en/48c21604-e3fc-4a73-90c8-7173d27623e1/asa210352011en.pdf> (Accessed 23 February 2014).

<sup>27</sup> Amnesty International, *Indonesia-Exploitation and abuse: the plight of women domestic workers*, February 2007, [http://amnesty.org.hk/web/file/humanrightsreport/report/Indonesia\\_Exploitation%20and%20abuse\\_the%20plight%20of%20women%20domestic%20workers.pdf](http://amnesty.org.hk/web/file/humanrightsreport/report/Indonesia_Exploitation%20and%20abuse_the%20plight%20of%20women%20domestic%20workers.pdf), p. 13.

<sup>28</sup> Human Rights Watch, 'Plight of Domestic Workers Still Forgotten in the Sex Abuse Debate', 28 June 2012, <http://www.hrw.org/news/2012/06/28/plight-domestic-workers-still-forgotten-sex-abuse-debate> (Accessed 10 March 2014). Interview with Mr. Chris Biantoro, Lawyer of KontraS, 10 March 2014.

<sup>29</sup> Interview with Mr. Chris Biantoro, Lawyer of KontraS, 10 March 2014. He explained that, in practice, the Criminal Code is not applicable to domestic workers because violence or abuses that take place in the household are considered a private matter and a domestic problem, which the State is hesitant to interfere with.

<sup>30</sup> Ibid.

<sup>31</sup> Ibid p. 11. The report adds that according to Legal Aid Foundation Apik (LBH Apik), amendments needs to be made to article 356.1 of the Criminal Code as only wives, children or parents are recognized as potential victims of domestic violence. Other types of victims including domestic workers are excluded.

<sup>32</sup> Isabelle Arradon, 'Bringing Indonesian domestic workers out of legal limbo', *Jakarta Post*, 15 February 2013, <http://www.thejakartapost.com/news/2013/02/15/bringing-indonesian-domestic-workers-out-legal-limbo.html> (Accessed 23 February 2014).

<sup>33</sup> Vita A.D. Busyra, 'Plight of Domestic Workers in Indonesia is seen as Mirroring Slavery', *Jakarta Globe*, 25 February 2014, <http://www.thejakartaglobe.com/news/plight-of-maids-in-indonesia-mirrors-slavery/> (Accessed 26 February 2014).



law has been enacted pursuant to article 44(2) of Act No. 21/2000 on Trade Unions. In an observation adopted in 2012 by ILO's Committee of Experts on the Application of Conventions and Recommendations (CEACR), the Committee expressed the hope that the Government of Indonesia will adopt an act guaranteeing the exercise of the right to organize to civil servants, pursuant to article 44(2) of Act No. 21/2000 on Trade Unions.<sup>34</sup>

19. The right to strike of civil servants is guaranteed under part 8 of the Indonesian Labor Law. Article 137 of the law states that the right to strike "shall be carried out legally, orderly, and peacefully as a result of failed negotiations." The ICJ has previously criticized this terminology because it confers a wide discretion to employers.<sup>35</sup> The right to strike is further limited under article 139 of the Indonesian Labour Law, wherein it states that "[t]he implementation of strike staged by the workers/labourers of enterprises that serve the public interest and/or enterprises whose types of activities, will lead to the endangerment of human lives, shall be arranged in such a way so as not to disrupt public interests and/or endanger the safety of other people."
20. Regulation No. 53/2010 lays out the rules on discipline specifically for civil servants. It states in article 4(6) of the Regulation that civil servants are "prohibited to undertake joint activities with superiors, colleagues, subordinates, or others, whether within or outside the work environment, with the aim of personal gain or benefiting a certain class or any other party, which directly or indirectly causes harm to the country."
21. On 28 November 2013, after the doctors from a General Hospital in Garut district in the province of West Java had joined in a nationwide strike to express their disapproval against the imprisonment of three colleagues,<sup>36</sup> reports began to emerge that the local authorities in the town of Garut had put pressure on those doctors who had joined the strike by threatening to cut their salary. The strike had followed a decision of the Supreme Court, on 18 September 2012, which had overturned the decision of the district court and convicted the above-mentioned three doctors on professional negligence charges in connection with the death of a patient who had undergone a Caesarean section.<sup>37</sup> Reports indicated that the local authorities of Garut had intimated that the doctors' strike was illegal under Regulation No. 53/2010 and had used this as the basis for threatening to cut the doctors' wages.<sup>38</sup>
22. According to the ILO, States should "not implement total prohibition of strikes, but rather to provide for the maintaining by a defined and limited category of staff of a negotiated minimum service when a total and prolonged stoppage might result in serious consequences for the public."<sup>39</sup> Although strike action may be prohibited for

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<sup>34</sup> Observation of the International Labour Organization Committee of Experts on the Application of Conventions and Recommendations (CEACR), adopted 2012, published 102<sup>nd</sup> ILC session (2013), [http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID:3081647:NO](http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3081647:NO) (Accessed 17 March 2014).

<sup>35</sup> International Commission of Jurists, *Submission for the preparation by the Committee of a List of Issues to be considered during the examination of the initial report of Indonesia*, submitted October 2013, <http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2013/11/ICJ-submission-LOI-Indonesia-CESCR.pdf>, para 24 – 26.

<sup>36</sup> Sigit Zulmunir, 'Garut akan potong tunjangan dokter yang mogok', *Koran Tempo*, 28 November 2013, <http://koran.tempo.co/konten/2013/11/28/328559/Garut-Akan-Potong-Tunjangan-Dokter-yang-Mogok> (Accessed 26 February 2014). See also 'Dr. Ayu and colleagues acquitted', *Antarnews.com*, 7 January 2014, <http://www.antarnews.com/en/news/92568/dr-ayu-and-colleagues-acquitted> (Accessed 10 March 2014).

<sup>37</sup> Nadya Natahadibrata and Ina Parlina, 'Doctors blasted for protest', *Jakarta Post*, 28 November 2013, <http://www.thejakartapost.com/news/2013/11/28/doctors-blasted-protest.html> (Accessed 26 February 2014).

<sup>38</sup> Sigit Zulmunir, 'Garut akan potong tunjangan dokter yang mogok', *Koran Tempo*, 28 November 2013, <http://koran.tempo.co/konten/2013/11/28/328559/Garut-Akan-Potong-Tunjangan-Dokter-yang-Mogok> (Accessed 26 February 2014).

<sup>39</sup> ILO, *ILO Principles Concerning the Right to Strike*, 2000, [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---normes/documents/publication/wcms\\_087987.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_087987.pdf), p. 19.

essential services<sup>40</sup> such as for those working in hospitals, supplying electricity and water, telecommunications and air traffic control, when a civil servant is deprived of his or her right to strike, appropriate guarantees should be provided.<sup>41</sup> Such appropriate guarantees include the "adequate, impartial and speedy conciliation and arbitration proceedings in which parties concerned can take part at every stage and in which the awards, once made, are fully and promptly implemented."<sup>42</sup>

23. The ICJ has reviewed the provisions in Regulation No. 53/2010, and it considers that the regulation fails to provide any effective remedy, such as compensation or grievance procedure for civil servants who are prevented from striking. KontraS also confirmed that there are no other laws in the country that provide legal redress for civil servants in this regard.<sup>43</sup>

List of issues, paragraph 19:

Please provide information on measures taken to combat unfair dismissal and violence based on trade union affiliations and activity in spite of the existing legal provisions.

24. Upon the ratification of ILO Convention No. 87 of 1948 concerning Freedom of Association and the Protection to Organize, the Government of Indonesia adopted Act No. 21/2000 concerning Trade Unions. Under article 28 of the Act, prohibiting or preventing a worker from carrying out trade union activities is a criminal act.<sup>44</sup> Anyone who is found to have violated article 28 shall be liable to a sentence of up to five years' imprisonment and/or a maximum fine of Rp500,000,000 (USD 435,000).<sup>45</sup>
25. A position paper released by the Jakarta Legal Aid Institute (LBH Jakarta) on 30 April 2012 noted that there had been an increase in cases involving the violation of freedom of association since 2007, and in 2011 alone, the organization received a total of 11 complaints about union busting.<sup>46</sup> Although the rights of trade unions are guaranteed

<sup>40</sup> Ibid p. 20 and 21. The report adds that non-essential services include radio and television; petroleum sector; ports; banking; computer services for the collection of excise duties and taxes; department stores; pleasure parks; metal sector; mining sector; transport generally; refrigeration enterprises; hotel services; construction; automobile manufacturing; aircraft repairs; agricultural activities; supply and distribution of foodstuffs; the Mint; government printing service; alcohol, salt and tobacco monopolies; education sector; metropolitan transport; postal services.

<sup>41</sup> Ibid p. 20.

<sup>42</sup> Ibid p. 24.

<sup>43</sup> Interview with Mr. Chris Biantoro, Lawyer of KontraS, 10 March 2014.

<sup>44</sup> Article 28 of Act No. 21/2000 on Trade Unions states:

Everybody is prohibited from preventing or forcing a worker/ laborer from forming or not forming a trade union/ labor union, becoming union official or not becoming union official, becoming union member or not becoming union member and or carrying out or not carrying out trade/labor union activities by:

- a. Terminating his employment, temporarily suspending his employment, demoting him, or transferring him to another post, another division or another place in order to discourage or prevent him from carrying out union activities or make such activities virtually impossible;
- b. Not paying or reducing the amount of the worker/ laborer's wage;
- c. Intimidating him or subjecting him to any other forms of intimidation;
- d. Campaigning against the establishment of trade unions/ labor unions.

<sup>45</sup> Article 43 of Act No. 21/2000 on Trade Unions.

<sup>46</sup> LBH Jakarta, 'Kertas Posisi LBH Jakarta Dalam Peringatan Hari Buruh Sedunia 2012 Kebebasan Berserikat: Solusi untuk Kesejahteraan Buruh', 30 April 2012, <http://www.bantuanhukum.or.id/web/blog/2012/04/30/kertas-posisi-lbh-jakarta-dalam-peringatan-hari-buruh-sedunia-2012-kebebasan-berserikat-solusi-untuk-kesejahteraan-buruh/> (Accessed 25 February 2014).



under the law, in practice, there is a climate of impunity for cases involving union busting and such a trend is weakening the trade unions' movement.<sup>47</sup> LBH Jakarta explained that despite the hundreds of cases submitted to the police and labor inspectors pursuant to articles 40<sup>48</sup> and 41<sup>49</sup> of Act No. 21/2000 on Trade Unions, only one case had successfully resulted in a conviction.<sup>50</sup> In this case, four workers in the company called PT King Jim Indonesia had their employment contract terminated, after they had proposed that a Collective Labour Agreement be introduced to help resolve the many labour issues that were affecting the company.<sup>51</sup> The general manager of the company was charged by the State Prosecutor under articles 28 and 43 of Act No. 21/2000 on Trade Unions in 2008 and on 12 January 2009, the High Court of East Java found the defendant guilty of union busting and sentenced her to prison for one year and six months.<sup>52</sup> An appeal is currently pending.<sup>53</sup>

26. The position paper further identified two ways in which this climate of impunity is perpetuated:

- (i) by arresting and criminally charging union activists or workers who are active in pursuing their rights which includes efforts to form trade unions and speaking at press conferences. The most common offence used by employers against their workers or employees is defamation (articles 310, 311 and 315 of the Criminal Code);<sup>54</sup> and
- (ii) by non-action or refusal to process any complaints related to labour matters.<sup>55</sup>

27. In October 2013, Indonesian trade unions and LBH Jakarta urged the Indonesian National Police to establish a special crime unit to better handle labour matters.<sup>56</sup> According to Ismet Inoni, Head of Legal and Advocacy for the Federation of Independent Trade Union (Gabungan Serikat Buruh Independen or GSB), members of the police lack comprehensive understanding of domestic labour laws and their application.<sup>57</sup>

28. Further, under article 40 of Act No. 21/2000 on Trade Unions, labour inspectors also have the responsibility to monitor employers to ensure that the right to carry out union activities is not violated. However, according to LBH Jakarta, many labour inspectors, similarly to the members of the police, are unable to apply the relevant facts and evidence of a particular complaint or case to the law. LBH Jakarta explained that such a conclusion was reached because, more often than not, cases or complaints are rejected on the basis that labour inspectors fail to draw the link between the acts

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<sup>47</sup> Ibid. The majority of union busting cases submitted fail to reach the courts or obtain any solution. See also interview with Ms. Pratiwi Febry, Lawyer at LBH Jakarta, 10 March 2014.

<sup>48</sup> Article 40 of Act No. 21/2000 on Trade Unions provides:

To guarantee workers/laborers' right to organize and trade unions/labor unions' right to carry out union activities, government labor inspectors shall carry out inspection in accordance with prevailing laws and regulations.

<sup>49</sup> Article 41 of Act No. 21/2000 on Trade Unions provides:

In addition to the special authority of the investigating police officers from the Police of the Republic of Indonesia, special authority to function as investigators according to prevailing laws and regulations to carry out investigations of crimes is also given to certain civil servants within the jurisdiction of the government agencies whose jobs and responsibilities on manpower affairs.

<sup>50</sup> ICJ's submission for preparation by the Committee on Economic, Social and Cultural Rights of a List of Issues for the Examination of the Initial Report of Indonesia, October 2013, <http://icj.pengine.netdna-cdn.com/wp-content/uploads/2013/11/ICJ-submission-LOI-Indonesia-CESCR.pdf>, para 22. See also interview with Ms. Pratiwi Febry, Lawyer at LBH Jakarta, 10 March 2014.

<sup>51</sup> Interview with Ms. Pratiwi Febry, Lawyer at LBH Jakarta, 10 March 2014.

<sup>52</sup> Ibid.

<sup>53</sup> Ibid.

<sup>54</sup> Ibid.

<sup>55</sup> Ibid.

<sup>56</sup> Ady, 'Polri Dituntut Bentuk Unit Khusus Ketenagakerjaan', *Hukumonline.com*, 23 October 2013, <http://www.hukumonline.com/berita/baca/lt526790377e2e1/polri-dituntut-bentuk-unit-khusus-ketenagakerjaan> (Accessed 25 February 2014).

<sup>57</sup> Ibid.

being complained of and the list of violations under article 28 of Act No. 21/2000 on Trade Unions. For instance, as noted in the position paper of LBH Jakarta, employers often charge those employees attempting to form unions with defamation under Indonesia's Criminal Code. Many labour inspectors or members of the police would not be able to see this as a form of intimidation against the employees, which is illegal under article 28(c) of Act No. 21/2000 on Trade Unions.

**ARTICLE 15, TAKEN TOGETHER WITH ARTICLE 2,  
CULTURAL RIGHTS**

List of issues, paragraph 32:

Please provide information on measures taken to protect the cultural heritage of ethnic and linguistic minorities and of indigenous populations in the State party, and to create favourable conditions for them to preserve, develop, express and disseminate their identity, history, culture, language, traditions and customs.

29. In Indonesia, a person's right to take part in cultural life, as guaranteed under article 15 of the Covenant, is protected under two provisions of the 1945 Constitution. Article 28C(1) of the Constitution entitles an individual "to develop himself/herself through the fulfilment of his/her basic needs, the right to get education and to benefit from science and technology, arts and culture, for the purpose of improving the quality of his/her life...". Article 32 ensures that the State advances national culture by safeguarding the freedom of society to preserve and develop cultural values, including local languages. In addition, Indonesia supported the adoption of the UN Declaration on the Rights of Indigenous Peoples in 2007,<sup>58</sup> which in turn recognizes indigenous knowledge, traditional practices and cultures.<sup>59</sup>
30. Despite the above-mentioned legal guarantees, the ICJ is concerned to note that the Government of Indonesia has yet to make any effort to amend or review Law No. 44/2008 on "pornography", particularly when the broad definition of "pornography" under article 1(1)<sup>60</sup> and article 10<sup>61</sup> of the law has already resulted in the prohibition imposed by the Government of West Java upon performers of "Jaipong", a local cultural dance, from wearing "sexy costumes and executing provocative dance moves".<sup>62</sup> The ICJ considers the sweeping definition of pornography to be inconsistent with Indonesia's obligations under article 15 of the Covenant, as well as article 19 of the International Covenant on Civil and Political Rights (ICCPR), to which Indonesia is a party.

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<sup>58</sup> General Assembly, General Assembly Adopts Declaration on Rights of Indigenous Peoples, UN Doc. GA/10612, 13 September 2007, <http://www.un.org/News/Press/docs/2007/ga10612.doc.htm>.

<sup>59</sup> Articles 8(1), 9(1), 11(1), 12(1), 13(1), 14, 15(1), 24(1) and 31(1) of the Declaration of Indigenous Peoples.

<sup>60</sup> Article 1 of Law No. 44 Year 2008 states:

Pornography is a picture, sketch, illustration, photos, writing, voice, sound, video, animation, cartoon, speech, body movement or other forms of messages through various types of media and/or performances in public that contains obscenity or sexual exploitation that violates the norms of morality in society.

<sup>61</sup> Article 10 of Law No. 44 Year 2008 states:

Everyone is prohibited from displaying him or herself or other persons in a performance or in public that depicts nudity, sexual exploitation, intercourse or other pornographic contents.

<sup>62</sup> Abdul Khalik, 'Jaipong dance becomes latest victim of pornography law', *Jakarta Post*, 4 June 2009, <http://archive.is/GRNY>, (Accessed 25 February 2014).

31. On 25 March 2010, the Constitutional Court ruled that the law did not contravene the 1945 Constitution and rejected the request to re-examine the law.<sup>63</sup> According to Komnas Perempuan, the continued implementation of the law remains a threat to Indonesia's pluralist society as it "disregards the principle of a democratic nation and undermines the building of a nation state based on respect for Indonesia's diversity".<sup>64</sup> Indigenous peoples would now have to give up their traditional ways of dressing or face travel restrictions in the country.<sup>65</sup> In 2009, the Governor of Bali publicly rejected the enforcement of the law in his province, as the Act "conflicts with local culture and tradition".<sup>66</sup>
32. Under the Covenant, the Government of Indonesia has, at the very least, the minimum obligation to "create and promote an environment" that allows all persons to "participate in the culture of their choice".<sup>67</sup> This must be "exercised without discrimination, to recognize cultural practices and to refrain from interfering in their enjoyment and development".<sup>68</sup> Any form of limitation must "pursue a legitimate aim, be compatible with the nature of his or her right and be strictly necessary for the promotion of general welfare in a democratic society".<sup>69</sup> The objective of this law appears to be overly broad, going beyond a legitimate purpose, for example of protecting children from exploitation through pornography. These limitations imposed on certain minority or indigenous groups are certainly not necessary or proportionate to such legitimate aims.
33. Apart from the Covenant, the ICJ also notes that the restriction of dance or cultural and traditional practices limits a person's freedom of expression to "impart information and ideas of all kinds...in the form of art", as enshrined in article 19 of the ICCPR. The Government of Indonesia must ensure any restriction is in line with the necessity and proportionality test as stipulated under article 19(3) of the ICCPR.

## RECOMMENDATIONS

34. In light of the above-mentioned concerns, the ICJ considers that the Government of Indonesia should implement the following recommendations in order to comply with its obligations under the Covenant:

### ARTICLE 7

#### (i) Equal remuneration for work of equal value

1. Ensure that the standards and procedures under Law No. 80 Year 1957 concerning the ratification of ILO Convention No. 100 on the Equal Remuneration for Men and Women Workers for Work of Equal Value, Law No.21 Year 1999 on the ratification of ILO Convention No. 111 on Discrimination in Respect of Employment and Law No.13 Year 2003 concerning Manpower are fully implemented and complied with appropriately in all work places in Indonesia.

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<sup>63</sup> Hans David Tampubolon, 'Constitutional Court upholds divisive pornography law', *Jakarta Post*, 26 March 2010, <http://www.thejakartapost.com/news/2010/03/26/constitutional-court-upholds-divisive-pornography-law.html> (Accessed 24 February 2014).

<sup>64</sup> Komnas Perempuan, 'A Step Backwards for Indonesian Democracy: Constitutional Court Decision on the Pornography Act', 26 March 2010 <http://www.komnasperempuan.or.id/en/2010/03/a-step-backwards-for-indonesian-democracy-constitutional-court-decision-on-the-pornography-act/> (Accessed 24 February 2014).

<sup>65</sup> Ibid.

<sup>66</sup> Sunanda Creagh, 'Interview – Bali governor says won't enforce Indonesia porn law', *Reuters*, 3 June 2009, <http://in.reuters.com/article/2009/06/03/idINIndia-40056420090603> (Accessed 25 February 2014).

<sup>67</sup> General Comment No. 21, Right of everyone to take part in cultural life, E/C.12/GC/21, para 55.

<sup>68</sup> Ibid para 44.

<sup>69</sup> Ibid para 19.

2. Ensure that an increased number of labour inspectors are hired sufficient to guarantee that existing labour inspectors, as stipulated under article 176 of Law No.13 Year 2003, are able to carry out their duties promptly, competently and independently to ensure that applicable labour laws are fully implemented, and that employers who are in non-compliance with domestic labour laws be penalized accordingly.
3. Introduce legal measures with a view to further reducing the gender pay gap and eliminating any workplace discrimination.
4. Ensure that Komnas HAM establishes a follow-up system that allows the commission to effectively monitor the status and progress of cases concerning breaches of labor laws, which, in turn, is important to ensure the provision of effective remedies and reparation to victims of labor violations.

(ii) Domestic workers

5. Ensure that the draft Domestic Workers Protection Bill remains a priority on the State Party's agenda after the elections in April 2014, with the aim to expediently passing the draft Bill at the earliest opportunity and ensuring that the draft Bill is in line with international law and standards, and in particular with the Covenant.
6. Ensure that the Indonesian National Police are made fully aware of Law No.23/2004 and of the law's applicability to domestic workers who suffer from abuses in the household.
7. Ensure that prompt, effective and independent investigations into all complaints and allegations of domestic worker abuses are carried out, and that the Indonesian National Police utilizes Law No.23/2004 in this regard.

**ARTICLE 8**

(i) Right to strike

8. Review Law No.13 Year 2003 concerning Manpower and Regulation No. 53 Year 2010 and amend provisions that are inconsistent with the rights of civil servants to participate in strikes, particularly, the need to incorporate a list of professions that fall under essential services; desist from implementing a total prohibition of strikes; and establish a grievance procedure for civil servants in essential services who had their right to strike illegally restricted or violated.
9. Review Ministerial regulation No. KEP.232/MEN/2003 concerning Legal Consequences of Illegal Strikes, particularly article 4, ensuring that compulsory arbitration applies only where essential services are involved.

(ii) Trade unions

10. Adopt an act guaranteeing the exercise of the right to organize by civil servants, pursuant to article 44(2) of Act No. 21/2000 on Trade Unions.
11. Establish a special crime unit in the Indonesian National Police that specializes in labour laws and its application to ensure that the criminal enforcement of labour law is handled more effectively.
12. Ensure that the Indonesian National Police and labour inspectors are well trained and equipped with knowledge about the application of the relevant labour laws regarding union busting, particularly articles 28 and 43 of Act No. 21/2000 on Trade Unions.
13. Ensure that labour inspectors carry out prompt, effective and independent investigations, and ensure that employers appropriately implement or enforce

relevant legal provisions under Act No. 21/2000 on Trade Unions relating to workers' entitlement to participate in trade union activities.

14. Ensure that the Indonesian National Police conduct prompt, effective and independent investigations into all credible allegations of union busting activities as they may disclose criminal offences under article 28 of Act No. 21/2000 on Trade Unions, such as illegal dismissals and defamation suits.

#### **ARTICLE 15**

15. Review and repeal or amend Law No. 44/2008 concerning Pornography, particularly articles 1 and 10, ensure that it is compatible with the State Party's obligations under the Covenant, article 19 of the ICCPR, and standards contained in the Declaration on the Rights of Indigenous Peoples.