



UNITED NATIONS COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST
WOMEN

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18 October – 12 November 2021

**SUBMISSION OF THE INTERNATIONAL COMMISSION OF JURISTS TO THE UN
COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN IN
VIEW OF ITS EXAMINATION OF THE EIGHT PERIODIC REPORT OF INDONESIA
UNDER THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF
DISCRIMINATION AGAINST WOMEN**

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A. Introduction

1. During its 80th session, from 18 October to 12 November 2021, the United Nations Committee on the Elimination of Discrimination against Women (the Committee) is scheduled to examine Indonesia's implementation of and compliance with its obligations under the Convention on the Elimination of all Forms of Discrimination against Women ("CEDAW") in light of the State party's eight periodic report under Article 18 of the Convention, including the "Replies of Indonesia to the list of issues and questions in relation to its eighth periodic report."¹
2. In this context, the International Commission of Jurists (ICJ) welcomes the opportunity to present this submission to the Committee with a view to assisting its review of Indonesia's human rights record under CEDAW.
3. In this submission, the ICJ highlights two areas of concern:
 - lack of gender responsive measures to protect women in the context of Indonesia's purported response to the COVID-19 pandemic; and
 - discriminatory laws and bills against women in Indonesia.

B. Lack of gender responsive measures to protect women in the context of Indonesia's purported response to the COVID-19 pandemic

a. Special protection for women workers

4. On 15 December 2020, ICJ sent an open letter to Indonesia's COVID-19 Mitigation Task Force calling for special measures to protect women workers in the context of the country's purported response to the COVID-19 pandemic.² In the letter, the ICJ called on the Task Force to take proactive and special measures to protect women workers, in line with the Committee's Guidance Note on COVID-19,³ which, among other things, emphasized:

"The COVID-19 crisis adversely affects women in low-paid jobs and in informal, temporary or other precarious forms of employment, especially in the absence of social protection. COVID-19 response and economic recovery plans should address gender inequalities in employment, promote transition of women from the informal economy to the formal economy and provide relevant social protection systems for them. They should also formulate post-pandemic programmes and targets for women's economic empowerment. Economic resuscitation, diversification and market expansion plans should target women and provide economic stimulus packages, low-interest loans and/or credit guarantee schemes to women-owned businesses and ensure women's access to market, trade and procurement opportunities, with particular attention given to women living in rural areas."

¹ Replies of Indonesia to the list of issues and questions in relation to its eighth periodic report, UN Doc. CEDAW/C/IDN/RQ/8 (2 February 2021), available at <https://undocs.org/CEDAW/C/IDN/RQ/8> (hereinafter Replies of Indonesia)

² International Commission of Jurists (ICJ), "Indonesia: ICJ addresses open letter to COVID-19 Mitigation Task Force calling for special measures to protect women workers in its pandemic response" (16 December 2020), available at: <https://www.icj.org/indonesia-icj-addresses-open-letter-to-covid-19-mitigation-task-force-calling-for-special-measures-to-protect-women-workers-in-its-pandemic-response/>

³ Guidance Note on Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and COVID-19, available at <https://www.corteidh.or.cr/tablas/centro-covid/docs/Covid-19/CEDAW-Guidance-note-COVID-19.pdf>

5. Such response measures are aimed at implementing Indonesia's obligation to adopt "temporary special measures" to ensure progress in achieving *de facto* equality between men and women.
6. In its letter, the ICJ specifically recommended that the Task Force should promote government responses with view to: (1) ensuring that women receive basic needs support; (2) providing more working opportunities for women to work from home; and (3) providing online counseling or mental health support for women workers.
7. The ICJ considers that the failure to recognize the gender dynamics affecting women workers, particularly public health emergency workers, limits the effectiveness of Indonesia's overall response efforts and impedes the full realization of women's human rights in the country.
8. In the Replies of Indonesia to the list of issues and questions in relation to its eighth periodic report,⁴ the government stated that it had established social protection programs, namely, the Family Hope Program (PKH) and Staple Food Program. The government has claimed that these programs are directed at women.⁵ First, women are the holders of card Beneficiaries (KPM), a card to access both programs. Second, the programs are designed for female family members. However, research⁶ by Indonesia Corruption Watch (ICW), *Koalisi Perempuan Indonesia*, and Bengkel APPek Kupang on the policy of social assistance towards women shows that access or opportunity to benefit from the above-mentioned social programs are still very minimal for those women whose needs are the greatest. The research concludes that gender-neutral assistance that is not based on a needs assessment is not effective in enhancing women's opportunities to improve their economic situation.⁷ Although the programs are *prima facie* directed at women, they do not seem to be effective in reaching those women whose needs are the greatest.
9. In its Open Letter, the ICJ highlighted that the beneficiaries of these programs include single working mothers who head their household, many of whom are eligible to benefit from the above-mentioned programs, but often are not registered to receive such assistance.⁸ In this regard, Indonesia has the obligation to proactively take measures to ensure equal access of both women and men to support. Recently, the country's Minister of Village, Development of Disadvantaged Regions and Transmigration stated that, as many as 2.5 million of total 8 million recipients of direct cash assistance (BLT) villages were female heads of households. According to Halim, these female heads of household have never received government assistance during the Covid-19 pandemic.⁹
10. ICJ has called on the Indonesian government to continuously improve the above-mentioned programs and its policies to better address the impact of COVID-19, especially for women and other at-risk groups.

⁴ Replies of Indonesia, para. 11

⁵ Replies of Indonesia, para. 12

⁶ Indonesia Corruption Watch, Koalisi Perempuan Indonesia Jawa Timur, Bengkel Advokasi Pengembangan dan Pemberdayaan Kampung (Bengkel APPeK) NTT, "Urgensi peningkatan bantuan sosial, khususnya untuk perempuan rentan, di tengah pandemi COVID 19" (30 June 2021), available at https://www.antikorupsi.org/sites/default/files/dokumen/2021%20Urgensi%20Peningkatan%20Bansos%20untuk%20Kelompok%20Rentan_0.pdf (accessed 15 September 2021)

⁷ Dewi Anggraeni & Almas Sjafrina, Indonesia Corruption Watch, Siaran Pers, "Menelisik Bantuan Covid-19 untuk Perempuan Rentan", *Antikorupsi.org*, 23 June 2021, available at <https://antikorupsi.org/id/article/menelisik-bantuan-covid-19-untuk-perempuan-rentan>

⁸ Sania Mashabi, "Kepala Keluarga Perempuan Kesulitan Ekonomi, Kemensos Minta Pemda Perbaiki Data Penerima Bansos", *Kompas.com* (3 August 2020), available at <https://nasional.kompas.com/read/2020/08/03/20272151/kepala-keluarga-perempuan-kesulitan-ekonomi-kemensos-minta-pemda-perbaiki> (accessed 20 September 2021)

⁹ Fransiskus Adhiyuda, "2.5 juta penerima BLT Dana Desa Ternyata Perempuan Kepala Keluarga" (24 September 2020), available at <https://www.tribunnews.com/bisnis/2020/09/24/25-juta-penerima-blt-dana-desa-ternyata-perempuan-kepala-keluarga> (accessed 20 September 2021)

b. Special protection for lesbian, bisexual and transgender women

11. Despite the World Health Organization (WHO) recommending¹⁰ that countries with limited access to vaccines, such as Indonesia, should prioritize people hailing from “sociodemographic groups at *significantly higher risk* of severe disease or death”, including “sexual minorities”, the Indonesia government has excluded transgender individuals, including transgender women, from those groups of people prioritized for vaccination.¹¹
12. Transgender people in Indonesia, including transgender women, have a right to non-discriminatory access to vaccines, part and parcel of their overall right to health,¹² guaranteed by Article 12 CEDAW, taken alone and in conjunction with Articles 1 and 2 of CEDAW.¹³ CEDAW General Recommendations no. 24 advised that State parties of CEDAW should report on measures taken to eliminate barriers that women face in access to health-care services and what measures they have taken to ensure women timely and affordable access to such services.¹⁴ Guidance Note on CEDAW and COVID-19 calls all State Parties to address discrimination against lesbian, bisexual, and transgender women in access to healthcare.¹⁵
13. On the International Day Against Homophobia, Transphobia and Biphobia, 17 May 2021, the ICJ called upon the Indonesian authorities to ensure that lesbian, gay, bisexuals, transgender and intersex (LGBTI) individuals, transwomen, in particular, are not excluded from access to Covid-19 vaccines. Indonesia started vaccinating the country’s general population in July 2021; an electronic identity card (e-KTP) is required to be vaccinated. However, most transwomen do not have and cannot obtain an e-KTP and are thus unable to access COVID-19 vaccines.¹⁶
14. Despite efforts by the Indonesia government and various organizations ever since the country rolled out its vaccination program, to date, there are still numerous transwomen left behind by the covid-19 vaccination rollout due to bureaucratic difficulties for them in obtaining the e-KTP and the harmful gender stereotypes and stigma attached to them in Indonesia’s society.¹⁷ The government has failed to ensure equal access to healthcare for all. Under Article 12 of CEDAW, Indonesia is obligated

¹⁰ WHO Sage Roadmap for Prioritizing Uses of COVID-19 Vaccines in the Context of Limited Supply, 13 November 2020, available at https://www.who.int/docs/default-source/immunization/sage/covid/sage-prioritization-roadmap-covid19-vaccines.pdf?Status=Temp&sfvrsn=bf227443_2

¹¹ Haris Prabowo, Siti Nadia Tarmizi: “Transgender Tak Masuk Kelompok Rentan untuk Prioritas Vaksin”, *Tirto.id* (25 August 2021), available at <https://tirto.id/transgender-tak-masuk-kelompok-rentan-untuk-prioritas-vaksin-giVh> (accessed 16 September 2021)

¹² ICJ, “The Unvaccinated: Equality not Charity in Southern Africa”, A Briefing Paper (May 2021), <https://www.icj.org/wp-content/uploads/2021/05/Africa-The-Unvaccinated-Publications-Reports-2021-ENG.pdf>

¹³ as well as under Article 12 of the International Covenant on Economic, Social, and Cultural Rights (ICESCR) to which Indonesia is a party. The UN Committee on Economic, Social and Cultural Rights has affirmed that all healthcare goods, facilities and services must be available, accessible, acceptable and of adequate quality, especially to the most vulnerable or marginalized sections of the population, in law and in fact, without discrimination of any of the prohibited grounds.

¹⁴ CEDAW General Recommendation No.24, available at https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/INT_CEDAW_GEC_4738_E.pdf

¹⁵ General Recommendations Adopted by the Committee on the Elimination of Discrimination against Women, available at https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/INT_CEDAW_GEC_4738_E.pdf

¹⁶ ICJ, “Indonesia: trans women face discrimination in access to Covid-19 vaccines”, Open Letter (May 17 2021), available at <https://www.icj.org/indonesia-trans-women-face-discrimination-in-access-to-covid-19-vaccines/>

¹⁷ Amir Baihaqi, “Suka Cita Waria di Surabaya Dapat Jatah Vaksinasi COVID-19”, *Detik.com* (August 26 2021), available at https://news.detik.com/berita-jawa-timur/d-5700161/suka-cita-waria-di-surabaya-dapat-jatah-vaksinasi-covid-19?_ga=2.199536103.870963924.1630763611-173561142.1618984739 (accessed 16 September 2021)

to take all appropriate measures to eliminate discrimination against women in the field of health care.¹⁸

C. Discriminatory laws and bills against women in Indonesia

a. Law on Job Creation

15. Article 88 (B) of Law No.11 Year 2020 regarding Job Creation establishes that a person's wage is calculated based on a time and/or result unit.¹⁹ As a result of this provision, the application of hourly and piece-rate wages for women workers have been legalized. Women who need to take breaks during working hours or time off work as a result of menstruation, miscarriage, clinic visits during maternity, pregnancy, or women who need to and/or wish to breastfeed during working hours²⁰ are threatened with wage deductions on account of the fact that the above mentioned reasons mean that they need to temporarily stop working during working hours; they are also threatened with dismissal. Article 11(2)(b) requires State parties to CEDAW should introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances.²¹

b. The Sexual Violence Bill

16. Since 2012, Komnas Perempuan (National Commission on Violence Against Women) has proposed the adoption of a Sexual Violence Bill,²² and prepared a draft in 2014.²³ The Bill was proposed, among other things, because the increase of the sexual and gender-based violence (SGBV) cases in the country, and the public outcry at the country's disregard for SGBV survivors. Since then, however, the adoption of the Bill has been postponed a number of times.²⁴ The Committee, in the List of Issues and Questions in relation to eighth periodic report of Indonesia, has asked the Indonesian government to indicate any steps taken to adopt the Sexual Violence Bill.²⁵ In its replies, the government notes that it has

¹⁸ Article 12 of CEDAW, available at

<https://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#article12>

¹⁹ Undang-Undang Republik Indonesia Nomor 11 tahun 2020 tentang Cipta Kerja (Law No 11 Year 2020 regarding Job Creation), available at <https://uu-ciptakerja.go.id/wp-content/uploads/2020/11/Salinan-UU-Nomor-11-Tahun-2020-tentang-Cipta-Kerja.pdf>

²⁰ Fikri Arigi, "Patriarchal job creation law makes women vulnerable, union says", *Tempo.co* (8 October 2020), available at <https://en.tempo.co/read/1394196/patriarchal-job-creation-law-makes-women-vulnerable-union-says> (accessed 15 September 2021)

²¹ Article 11(2)(b) of CEDAW, available at

<https://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#article12> (accessed 15 September 2021). This is also in violation of Article 25(2) of the Universal Declaration of Human Rights, Article 10(2) of the International Covenant on Economic, Social, and Cultural Rights (ICESCR), Article 11 and 12 of CEDAW, Article 18(2) and Article 18(3) of the Convention on the Rights of the Child, as well as International Labor Standards as enshrined in ILO Discrimination (Employment and Occupation) Convention, 1958 (No.111) and ILO Maternity Convention, 2000 (No. 183) (International Labour Organisation 2014).

²² Hafitz Maulana, "Darurat Sahkan RUU Penghapusan Kekerasan Seksual", *Tirto.id* (6 December 2020), available at <https://tirto.id/darurat-sahkan-ruu-penghapusan-kekerasan-seksual-f7PS> (accessed 15 September 2021)

²³ Komnas Perempuan, Naskah Akademik Rancangan Undang-Undang tentang Penghapusan Kekerasan Seksual, available at <https://komnasperempuan.go.id/pemetaan-kajian-prosiding-detail/naskah-akademik-rancangan-undang-undang-tentang-penghapusan-kekerasan-seksual>

²⁴ Dhoni Setiawan, "No more delays': Activists pin hopes on passing of sexual violence bill", *The Jakarta Post* (January 17, 2021), available at <https://www.thejakartapost.com/news/2021/01/17/no-more-delays-activists-pin-hopes-on-passing-of-sexual-violence-bill.html> (accessed 15 September 2021)

²⁵ List of issues and questions in relation to the eighth periodic report of Indonesia, Committee on the Elimination of Discrimination against Women, para.9, CEDAW/C/IDN/Q/8, available at

prioritized the draft bill in the National Legislation Program (Prolegnas) for 2021.²⁶ The Minister of Women Empowerment and Children Protection of the Republic of Indonesia, Bintang Puspayoga, stated that the Sexual Violence Bill is very crucial to address the existing legal gaps in protection against sexual violence. The Minister further explained that, through the adoption of the Sexual Violence Bill, the nation can be protected through a system that can really prevent sexual violence and provide a recovery system to the survivor of sexual violence.²⁷

17. CEDAW General Recommendation No.35 recommends that State parties “ensure that all legal systems, including plural legal systems, protect victims/survivors of gender-based violence against women and ensure that they have access to justice and to an effective remedy, in line with the guidance provided in general recommendation No. 33.”

D. Recommendations

18. In light of the information and human rights concerns discussed above, the ICJ calls on the Committee to urge the government of Indonesia to implement the following recommendations in order to fulfill its international legal obligations under CEDAW:

On lack of gender responsive measures to protect women in the context of Indonesia’s purported response to the COVID-19 pandemic

- a. Special protection for women workers
 - Continuously improve the program and policies to better address the impact of COVID-19, especially for women workers
- b. Special protection for lesbian, bisexual and transgender women
 - Ensure access to vaccine for lesbian, bisexual and transgender women. The government should reach out to transwomen and waive the e-KTP as the requirement to receive vaccination

On discriminatory laws and bills against women in Indonesia

- a. Law on Job Creation
 - Amend the provisions of the law on job creation that threaten women workers’ exercise of their sexual and reproductive rights
- b. Sexual Violence Bill
 - Pass the sexual violence bill to prevent sexual violence and provide recovery to the survivor of sexual violence

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fIDN%2fQ%2f8&Lang=en

²⁶ Replies of Indonesia, para. 45

²⁷ Kementerian Pemberdayaan Perempuan dan Perlindungan Anak Republik Indonesia, Isi Celah Hukum, Dukung Pengesahan RUU PKS, 1 Juni 2021, Press Release, Siaran Pers Nomor: B-172/SETMEN/HM.02.04/06/2021, available at

<https://www.kemenpppa.go.id/index.php/page/read/29/3214/isi-celah-hukum-dukung-pengesahan-ruu-pks>