

**INTERNATIONALLY RECOGNISED CORE
LABOUR STANDARDS IN INDONESIA**
**REPORT FOR THE WTO GENERAL COUNCIL REVIEW OF
THE TRADE POLICIES OF INDONESIA**
(Geneva, 27 and 29 June 2007)

EXECUTIVE SUMMARY

Indonesia has ratified all eight core ILO labour Conventions. In view of restrictions on trade union rights and the prevalence of child labour and forced labour as well as discrimination, determined measures are needed to comply with the commitments Indonesia accepted at Singapore, Geneva and Doha in the WTO Ministerial Declarations over 1996-2001, and in the ILO Declaration on Fundamental Principles and Rights at Work.

Indonesia has ratified both core ILO Conventions on freedom of association and on collective bargaining. However there are restrictions with regard to freedom of association, collective bargaining and the right to strike, both in law and in practice. Public sector workers are further restricted in their rights.

Indonesia has ratified the core ILO Convention on Equal Remuneration as well as the Convention on Discrimination. However there are various legal shortcomings and a substantial number of workers are not covered by legislation. In practice there is discrimination in employment and wages and women are concentrated in low-pay low-skilled jobs and in informal employment relationships. Women migrant workers and domestic workers are among the most badly affected.

Indonesia has ratified the core ILO Convention on the Worst Forms of Child Labour and the Convention on Minimum Age. Despite some initiatives, child labour remains a serious problem in Indonesia and includes the worst forms of child labour.

Indonesia has ratified both Conventions on Forced Labour. There is some degree of trafficking for forced labour and forced prostitution, and forced child labour on fishing platforms.

INTERNATIONALLY RECOGNISED CORE LABOUR STANDARDS IN INDONESIA

Introduction

This report on the respect of internationally recognised core labour standards in Indonesia is one of the series the ITUC is producing in accordance with the Ministerial Declaration adopted at the first Ministerial Conference of the World Trade Organisation (WTO) (Singapore, 9-13 December 1996) in which Ministers stated: "We renew our commitment to the observance of internationally recognised core labour standards." The fourth Ministerial Conference (Doha, 9-14 November 2001) reaffirmed this commitment. These standards were further upheld in the International Labour Organisation (ILO) Declaration on Fundamental Principles and Rights at Work adopted by the 174 member countries of the ILO at the International Labour Conference in June 1998.

The ITUC affiliates in Indonesia are the Confederation of Indonesian Trade Unions (KSPI/CITU) and Serikat Buruh Sejahtera Indonesia (SBSI). Trade union figures indicate that 3.4 million workers are unionised, which constitutes 4% of the total workforce and 14% of those employed in formal work.

Since the financial crisis in 1997, Indonesia's economy has suffered from low economic growth and high unemployment. The share of agricultural workers declined from 55% in 1990 to 41% in 1997, but then increased again to 46% in 2003.

Agriculture accounted for 15.6% of GDP in 2004, industry for 44.3% (including manufacturing at 28.7%) and services 41.4%. The annual growth rate for agriculture in 2004 was 4.1%, for industry 3.9% (6.2% for manufacturing) and for services 7.0%.

The total value of merchandise exports in 2005 was US\$ 88,845 million and of imports US\$ 62,195 million. The total value of goods and services exports in 2005 was US\$ 108,239 million and of imports US\$ 93,521 million.

Main export products in Indonesia are fuel, estate crops, manufactures, mineral products, machinery and electrical equipment and textiles. Main imports are food, fuel and energy, capital goods, electronic goods and machinery, base metals, chemicals and oil and gas. Main export

markets are Japan, the US, China and Singapore. Imports mainly come from Singapore, Japan, China and the US.

Indonesia is a member of ASEAN (Association of South East Asian Nations). Indonesia, as part of ASEAN has signed or is in the process of negotiating trade agreements with Australia, New Zealand, India, China, South Korea, Japan and the EU. Indonesia is also in negotiations with the US and Japan bilaterally.

I. Freedom of Association and the Right to Collective Bargaining

Indonesia ratified ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organise in 1998 and ILO Convention No. 98 on the Right to Organise and Collective Bargaining in 1957.

Trade Union Rights in Law

The Trade Union Act allows workers in the private sector to organise, but trade unions have to register with the Ministry of Manpower in order to be recognised. At least ten members are required to form a union. Trade unions can be formed across sectors and nationwide. The union has to keep the government informed of nominations and changes in their governing bodies.

Preventing a worker from joining a union is subject to a fine or imprisonment. However, anti-union discrimination is widespread in practice as legal procedures are very lengthy, sometimes taking up to six years, and bribery and corruption of judges is a problem. Consequently when workers try to set up unions, frequently companies either terminate their employment or demote union leaders and members. There have also been attacks on trade union organisers by the military and police, paid for by employers. Such attacks were widespread, and despite some measures taken to reduce them, they remain very common.

A trade union can be dissolved by court if its basic principles conflict with the Constitution or with the national ideology of consensus and national unity or if some of the members have committed a crime against national security in the union's name and have been sentenced to at least five years in prison.

Public sector workers have the right to organise but this right is restricted. Section 44 of 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. Such an Act has not been adopted yet.

Teachers belong mainly to the PGRI, the Teacher's Association, which is registered at the national level as a trade union; however, the PGRI branches at the district level must also register as unions with local Ministry officials in order to receive legal status.

Unions have the right to collective bargaining, but article 119 of the Manpower Act states that a union must recruit more than 50% of the total workforce in the enterprise, or receive more than 50% support of all workers in an enterprise in support of the union's demands. Only plant level unions have the right to collective bargaining but not federations and confederations, which is not in line with the Convention. Collective

agreements must be concluded within 30 days after the beginning of the negotiations or must be submitted to the Ministry of Manpower for mediation, conciliation or arbitration. About 25% of companies with over ten employees have a collective bargaining agreement but they rarely go beyond the legal minimum provisions.

Workers have the right to strike but this right is restricted. With regard to the right to strike, the Manpower Act includes a specific statement on the right to strike, with regard to the use of outsourcing and contract labour, a clause on the payment of wages during strikes over normative issues, a prohibition on the replacement of workers during legal strikes and higher pay if the worker is suspended during a labour dispute process. Although it is less difficult to strike than before it still remains dangerous to engage in strikes. Strikes remain characterised by police intervention and violence, as before.

Before a strike can be undertaken, a process of mediation has to take place with the employer involving first a bipartite meeting followed, if necessary, by mediation by a government official. Furthermore, in the case of an illegal strike, employers must make two written appeals within a period of seven days for workers to return to work. Those who do not return are considered to have resigned.

The Industrial Relations Dispute Settlement Act of 2004 came into effect in 2006 and creates a new system of tripartite labour courts with an aim to end corruption in the dispute resolution process. It is foreseen that industrial disputes be settled through bipartite negotiation first. If no agreement can be reached a mediator can be brought in within 30 days. If this fails, the dispute can be brought before the Industrial Relations Court with a verdict within 50 days.

The Act requires a written notification of a strike, at least seven days in advance for the strike to be legal. The notification needs to include the starting and ending time of the strike, the venue for the action, reasons for the strike and signatures of the chairperson and secretary of the striking union. The Ministerial regulation KEP.232/MEN/2003 states that all strikes at enterprises that "cater to the interests of the general public and/or at enterprises whose activities would endanger the safety of human life if discontinued" are illegal. Strikes are also classified illegal if they are not the result of failed negotiations (failure is determined as a deadlock declared by both sides).

In practice, strikes have been prohibited in the public sector, in essential services and at enterprises that serve the public interest, which goes far beyond the ILO definition of acceptable prohibitions on strike

action, which states that strikes may only be restricted where there exists “a clear and imminent threat to the life, personal safety or health of the whole or part of the population”.

The 2003 Manpower Act meets most of the fundamental ILO standards, except for compliance with child labour conventions (see Section III below), and for section 106. Section 106 compels all companies with more than 50 employees to establish a bipartite cooperation institution with equal representation of union and non-union workers in a factory. The role of this institution overlaps therefore with the representative role of unions.

Section 59 of the Manpower Act allows for contract labour if work is temporary in nature, but this provision is often violated by employers. A common practice is to declare bankruptcy of a company and then reopen after a few days while only hiring workers on a contract labour basis. This is done with the apparent approval of labour dispute settlement committees.

KSBSI and other trade unions in Indonesia have recently made a judicial review to the Constitutional Court (Mahkamah Konstitusi) complaining about Law No. 25 (2007) on Investment, with regards to its articles against nationalisation and because they consider it will result in greater income and job insecurity.

Trade Union Rights in Practice

In 2004 a union was organised at the PT Musim Mas plantation and refinery, based in Riau province, by workers complaining that conditions did not comply with minimum standards set in the law. When the union raised demands with management in February 2005, the response was to fire the chairman of the union. This was followed by a range of developments, including anti-union tactics by management such as the firing of leaders, management support for a management-friendly union, use of replacement workers, and violence against union pickets when security guards drove into a picket with a truck and injured two union members. Six union leaders were arrested for crimes against public order. A large number of workers were fired and union leaders were sentenced to jail. The fired members and jailed leaders of the union were forced to accept a settlement, which was reached in June 2005, but much less than the legally mandated severance pay was given, in exchange for giving up appeals of sentences and cases against unjust firing. A complaint was filed at the ILO and the ILO requested the government to make an independent investigation into the circumstances under which the settlement with the imprisoned leaders was reached. This recommendation was essentially ignored by the government.

In January 2005 at PT Sinar Apparel International, located in Cibitung near the town of Bekasi (West Java), which produces garments for

prominent brands such as Marks & Spencer, GAP and John Apparel, management refused to bargain with a union that was organised. Instead they used tactics that included trying to bribe union leaders. When this tactic failed, management sacked the union's chairman, Arifin. A one day strike in October 2005 due to a dispute over late payment of wages resulted in the dismissal of Dedeh, a union member. At the end of the year, pressure by the KASBI (Congress of Indonesia Unions Alliance), supported by the International Textile, Garment and Leather Workers' Federation (ITGLWF) and international brands sourcing from the factory, forced the factory to reinstate Arifin, cease all anti-union harassment, and initiate efforts to reach a collective bargaining agreement with the union. However, Dedeh's case remained unresolved.

In 2005, the Federation of Independent Tobacco, Cane and Sugar Workers (FSPM TG) was the subject of a severe and worsening campaign, apparently aimed at destroying the federation. The campaign was led by a colluding group of employers (private and state enterprises), local and national Ministry of Manpower authorities, and Suharto-era labour leaders. The treatment of FSPM TG caused the Director-General of the ILO to raise his concern about these "very serious violations of freedom of association" directly with the government. The International Union of Food Workers (IUF) filed a complaint against the government of Indonesia at the ILO's Committee of Freedom of Association, and the Committee made a number of recommendations in 2006 which the government has refused to implement.

In Timika Papua, the KSBSI trade union reports that the multinational company PT Freeport Indonesia which produces concentrates of copper, gold and silver has opposed the existence of the FPE (Federation of Mining and Energy) trade union. The management has undertaken intimidation and has dismissed two plant level trade union leaders alleging that they are "provocateurs" and that they have stolen small materials with a price of about US\$ 45.

KSBSI reports on a further case of anti-union discrimination in Berau East Kalimantan since August 2006 when PT Kiani Kertas, a pulp and paper company owned by General Prabowo Subianto, son in law of the former President Soharato, began a campaign of intimidation against the trade union federation of Forestry and Agriculture workers (HUKATAN-KSBSI). 167 of a total of 370 members of KSBSI in the company have now been dismissed.

In April 2005, over 600 Securicor/Group 4 Falk workers in Jakarta and Surabaya went on strike over terms and conditions of employment in the newly merged security company. The company however refused all requests

for negotiations. One month later, the company dismissed hundreds of union members who were participating in a legal strike. In June 2006 the Supreme Court ruled a reinstatement of 262 fired workers, but management refused to comply with the ruling.

In 2004, strikes in the Panarub factory, a sport shoe manufacturer located in Tangerang and producing for Adidas, led to the dismissal of 33 leaders and activist members of the Perbupas union for undertaking strikes at the factory.

PT Busana, a factory, located in Bogor (Java), which produces sportswear for Dutch, Italian and other brands, including Head, Lotto, Le Coq Sportif, Ecko and Bear USA was subject to independent monitoring in 2003. The monitor, hired by representatives of international brands and Oxfam Australia, who was allowed access to the factory by PT Busana management, issued a report on 31 March 2003 that found clear evidence of management intimidation and harassment of the union. This included the union being forced to turn over membership lists, a refusal to recognise and bargain with the union, the demotion and transfer of union leaders, and threatening of union activists. Following a strike in July 2003, the factory dismissed four union leaders, and around 170 other members.

Four trade union leaders of four factories of Bridgestone Tyre were suspended without pay following a dispute in 2002 over wage negotiations. Furthermore, Bridgestone continued to refuse recognition of these union leaders as representatives of the union for collective bargaining, thereby violating the members' freedom to choose who should represent them. The case was brought before the ILO Committee on Freedom of Association, which addressed a number of requests to the government. These related to the extent of anti-union discrimination provisions in the Industrial Relations Disputes Settlement Act of 2004, the means of redress used in the case of the four union officials, the limitations on their union activities while they still enjoyed a formal employment relationship with the enterprise, and the need for the procedure they had launched for anti-union discrimination to take precedence over their dismissal procedures.

In July 2006, an employee of PT Cipta Mebelindo Lestari, a furniture company in Deli Serdang, was arrested and shot in the knee. Two other workers were arrested as well. All three were members of the FSBSI union. The workers in the factory had gone on strike in March 2006 as they did not receive the regional monthly minimum wage or compulsory insurances and did not get the days off they were entitled to. The company responded with laying off 447 workers out of a total of 800 workers. The provincial authorities were asked to intervene to end the dismissals and to implement the labour law.

Sarta bin Sarmin, plant level chairman of the Federation of Construction, General and Informal Workers (FKUI-SBSI) has been in prison since 1 May 2007, accused of organising a workers' demonstration in Tangerang to celebrate Labour Day under illegal conditions. The KSBSI has argued that the police and government have violated ILO Convention No. 87 and No. 98, Law No.9/1998 on freedom of speaking in public, Bill No.21/2000 on Trade Unions, Bill No.39/1999 on Human Rights, and the Collective Agreement between Police, Trade Union, and Government of Republic Indonesia and the ILO, Jakarta of 19 April 2005 about the Guideline of Police action on upholding law and order on Industrial Dispute Relations.

The end of the WTO's Agreement on Textiles and Clothing in 2004 led to a wave of factory closures in West and Central Java, with the government's failure to enforce the law enabling many of the remaining factories to break the trade unions in their factories, and an increasing use of contract labour. There have been three cases of factory closures (Adidas suppliers) in Indonesia since the end of 2006, with 18,000 workers involved.

Recent factory closures in the electronics and garments sector on the Bintan Islands led to job losses for 2,670 workers, with many more possibly to follow. Foreign investors are reported to have complained about the fact that the official working week is only 40 hours and about the payment of overtime to workers, despite the fact that these benefits provide workers with their due reward for the work undertaken.

Labour legislation does apply in Export Processing Zones but the atmosphere generally is anti-union. There are 7 EPZs in Indonesia. There are plans to create three Special Economic Zones that might include a relaxing of labour legislation on the three major islands of Riau Island province.

Conclusions

Workers have the right to organise, to collective bargaining and the right to strike. However, there are restrictions on these rights and public sector workers face even more restrictions than private sector workers. In practice there is anti-union discrimination, non-respect of labour laws and interference in strikes by police and the military.

II. Discrimination and Equal Remuneration

Indonesia ratified ILO Convention No. 100 on Equal Remuneration in 1958 and ILO Convention No. 111 on Discrimination (Employment and Occupation) in 1999.

There are broad provisions on the prohibition of discrimination contained in the new Manpower Act, but there is a lack of specificity in the elaboration of specific grounds and the lack of a definition of discrimination in accordance with the Convention. The CEACR committee (2006) had noted that sections 5 and 6 of the Manpower Act are intended to cover a number of specific grounds, but that these need amendment or clarification through regulation or guidelines for the precise protection provided under these sections and that such amendment or clarification should be in conformity with the Convention - which means that both direct and indirect discrimination on grounds of race, sex, national extraction, colour, social origin, political opinion and religion should be prohibited.

The former Manpower Act of 1997 had provided that “in determining wages the employers shall be prohibited to practice discrimination on whatever basis with respect to jobs of the same value”. The CEACR Committee (2006) had pointed to the omission of a specific provision guaranteeing men and women equal remuneration for work of equal value and it had requested the Government to consider amending Manpower Act No. 13/ 2003. However, the new Act of 2003 still does not include a specific provision guaranteeing that men and women workers shall receive equal remuneration for work of equal value.

The CEACR (2003) refers to Decree No. 37 of 1967 and Decree No. 418/KPTS/EKKU/5/1981 of the Ministry of Agriculture, which contain disparate treatment between men and women in relation to payment of employment-related benefits.

The World Bank report notes that only 41% of women versus 73% of men are employed or looking for work. Women are more likely to be made unemployed than men. Women are over-represented in unpaid and low-paid jobs, and are underrepresented in the formal economy. Within the formal economy women earn on average 76% of what men earn. Studies have shown that 80% of this difference is due to discrimination.

An Asian Development Bank (ADB) report found that women’s earnings are only around 70% of male earnings. This ratio decreases with higher levels of education. The ADB report further notes that informalisation of labour has increased, especially after the financial crisis, and that the female labour force participation rate has gone down, from 49% in 1990 to 48% in 1998 and 40.3% in 2003. The number of workers in

informal employment relationships increased from 65% in 1998 to 71% in 2003.

The ADB report further notes that even in formal employment, women are in low-paying low-skilled occupations. Many are employed in low paying textile, garment and footwear industries. Women are underrepresented in civil service jobs and make up 38% of the civil servants with only 14% in higher positions. Most of them are employed as nurses and teachers. Only 17% hold a managerial position. The crisis led to job losses for women in the formal economy. A large share of informal work takes place in Agriculture, mainly done by women. In rural areas paid work by women went down from a level of 4 million women in 1997 to 1.9 million women in 2003. The share of women out of those engaged in urban informal work rose from 46% to 49%, whereas the share in informal work in the rural areas rose from 80% to 86% between 1998 and 2003. Around 18% of working women are unpaid. This number rose from 16 million in 2000 to 18 million in 2003. Job losses in the formal economy have thus led to an increase in informal jobs and in unpaid work.

The CEDAW report also found that women receive significantly lower salaries than men for the same work done. The report also shows existing inequalities regarding women's access to higher education and employment opportunities, often due to stereotyped attitudes, and the strategies and programmes undertaken to address these inequalities.

The CEACR report (2006) further notes that the statistics of the Department of Manpower and Transmigration 2003 show a women's average wage/net salary per month of 74 per cent of that of men. They show that "about 55 per cent of women are employed in the monthly wage category of less than 200,000 rupiah, while they represent only 13 per cent of those employed in the highest wage category of more than 2,000,000 rupiah."

A 2001 study on male-female wage differentials in Indonesia showed that the male-female wage gap has decreased over time (the period being 1986-1997), mainly due to education. The gap is wider in rural areas than in urban areas. The female-male wage ratio tends to decline when the individual gets older. It reaches a bottom around the age of 30-40 years and then increases again. The study further concludes that a considerable proportion of the difference in the potential wages between men and women can be attributed to discrimination. In fact, women who face or expect some kind of wage discrimination become discouraged from entering the labour market.

There is a large number of migrant workers in Indonesia, estimated at 2.5 million according to CEDAW (2007), of which some 80% are women (World Bank). Around 90% of them work in informal employment relationships, mainly as domestic workers. Male migrant workers mainly work in construction in formal jobs. Workers' rights of many of these women are not respected and they are subject to rape, harassment, wage cuts and harsh working conditions. The CEDAW report notes that there are hundreds of cases of abuse against Indonesian migrant workers each year but that very little has been done to protect them. Women are also trafficked abroad for the purpose of prostitution.

There is no gender gap between girls and boys at the elementary level, but there is gender disparity at the primary level. At the higher level only 12.8% of girls complete high school compared to 17.5% of boys (CEDAW 2007). The CEDAW report notes that the majority of drop-outs are girls.

A report by Amnesty International (*Indonesia, Exploitation and abuse: the plight of women domestic workers*) estimates that there are approximately 2.6 million domestic workers in Indonesia, stating that "They are poorly educated, unskilled, from poor backgrounds, conducting menial tasks and without career prospects, and they are often considered and treated as second-class citizens". In Indonesia, women domestic workers are not protected by legislation protecting workers' rights, such as the 2003 Manpower Act (No.13/2003). The Manpower Act thus discriminates against domestic workers and leaves them without legal protection of rights such as access to the minimum wage, a 40-hour working week, and standards providing for regular breaks and holidays. Further information concerning domestic workers is provided under the "Forced Labour" section below.

As cited in the *Jakarta Post*, a recent report by a local NGO network, Sekretariat Bersama Indonesia Bersero (SBIB) notes that free trade agreements that have been signed by Indonesia have resulted in absence of job security and in more uncertainty on income, especially among female workers, due to increased contract labour or piece rates. Such contract workers in export enterprises are paid according to minimum wage standards but are not included in social security programmes. Neither are they entitled to paid leave. For female workers there is an age limit that bars them from working for the same employer. There is no maternity leave, and once female workers get married or become pregnant they are immediately fired, according to the survey results. Free trade has also resulted in increased unemployment. Some 77% of textile companies in Java and Bali have stopped operating, resulting in 1.2 million people losing their jobs.

There is discrimination against the Chinese-Indonesians that comprise 3% of the total population of Indonesia, or approximately 7 million.

Hundreds of thousands of people, former political prisoners (tapols) who were detained and held in prison for ten years or more without charge or trial following the events in October 1965 which brought the former dictator Suharto to power, today continue to be stigmatised, as do their relatives. They remain subject to discrimination in employment and many jobs are not open to them. Their children also face discrimination in education and training once it is known that one of their parents was a tapol. Identity cards in many regions still contain the initials ET for ex-tapol. Class action has been filed by LBH Jakarta, representing seven organisations, whose members' rights have been violated. Among these organisations is one representing members who were compelled to give up their jobs or were dismissed without receiving salaries, allowances or severance pay, another whose members were dismissed from state employment, the armed forces or the police without receiving pensions to which they were entitled and another whose members who had been subject to special investigation for not having 'a clean environment' and were therefore unable to find work.

Conclusions

Women are concentrated in informal employment relationships, and in the low-pay and low-skilled jobs in the formal economy. There is a substantial gender wage gap and discrimination in employment. Poor economic conditions have led to further deterioration in the situation of women workers in Indonesia. The situation of women migrant workers and domestic workers is characterised by exploitation and non-respect of workers' rights.

III. Child Labour

Indonesia ratified ILO Convention No. 138, the Minimum Age Convention in 1999 and ILO Convention No. 182, the Worst Forms of Child Labour Convention in 2000.

The minimum age for work is 15 years. Young people between 15 and 18 are not allowed to work more than 4 hours per day and are only allowed to carry out work that does not stunt or disrupt their physical, mental and social development

The 2003 Manpower Act does not cover children who are engaged in self-employment or in employment without a clear wage relationship.

Section 69(1) of the Manpower Act allows employment of children aged between 13 and 15 years for light work as long as the job does not stunt or disrupt their physical, mental or social development. They are not allowed to work more than three hours per day. The work should not interfere with schooling, and health and safety requirements have to be respected. There is no list of types of light work activities that may be performed by children between 13 and 15 years.

The Manpower Act section 74(2)(d) states that children under 18 must not be employed in work that is harmful to their health, safety or morals. The minimum age to work as a member of a ship crew is 18 and the types of hazardous work that are permissible must be determined by government regulation. Act No. 1/2000 provides for 13 types of hazardous work that children should not perform and a ministerial decree No. 235/Men/2003 states the types of work that are likely to harm the health, safety or morals of children.

The ILO report *“Combating Child Labour in Asia and the Pacific”* refers to a 2003 national socio-economic survey according to which 1,502,600 children between 10 and 14 worked and were not attending school. Another 1,621,400 were not attending school and helped at home or were involved in other activities. The survey reported that 4,180,000 children of secondary school age (13-15) were not attending school, which represents 19% of this age group.

The CEACR report of 2006 notes that the Central Statistics Bureau estimated in 2001 that approximately 11% of children between 5 and 14 were seeking money through their own efforts, 64% were working in home industries, 23% worked for an employer against payment, and 4% worked for an employer without being paid. The report further notes that the Committee on the Rights of the Child (CRC) reported that 6,686,936 children were in need of special protection in 2002.

Especially in rural areas the prevalence of child labour is high. Children work on plantations and in agriculture. Many children are employed in home industries, domestic work and fisheries. In Indonesia the number of child domestic workers under 18 is estimated at 688,132, which represents 26.5% of the 2.6 million child domestic workers worldwide (ILO-IPEC 2003).

The worst forms of child labour in Indonesia include domestic work, drug trafficking, footwear, jermal/deep sea fishing, (forced) garbage

collecting, mining and quarrying, offshore fishing, sexual exploitation and trafficking.

The 2004 Committee on the Rights of the Child report notes that Indonesia counts some 60,000-70,000 street children.

According to a study conducted by ILO-IPEC (ILO-IPEC report, pages 4, 107 and 108), 30% of all persons engaged in commercial sexual work are under 18 years of age in Jakarta, Bali, Batam and North Sumatra. The Office of Women Empowerment estimates that approximately 210,000 children were working in brothels all over the country in 2001. The number of children involved in prostitution seems to have been on the rise since the late 1990s.

The CEACR report (2004, direct request) notes that “according to an ILO assessment study (TBP report, page 50), 15,000 children were involved in the sale, production and trafficking of drugs in Jakarta in 2003.”

In 2002 a Tripartite Action Plan for Decent Work was adopted providing a strategic framework for employers, workers and government, with support of the ILO. This included the elimination of child labour and in particular the worst forms of child labour and specific programmes concerning child domestic workers, child labour in hazardous occupations such as mining, fishing and agriculture.

In 2002 the National Action Committee, a national committee operated on a tripartite basis and with the involvement of ILO-IPEC, prepared a National Action Plan for the Elimination of the Worst Forms of Child Labour. This is a three-phase programme over 20 years. In the first five years, the key objectives of the programme are: (a) to increase public awareness that worst forms of child labour must be eliminated; (b) to map the existence of the worst forms of child labour and efforts to eliminate them; (c) to develop and start implementation of a programme for the elimination of the worst forms of child labour with priority to offshore work and diving, trafficking for prostitution, work in mines, in the footwear industry, and the involvement of children in the trafficking of drugs. According to an ILO-IPEC rapid assessment study, in 1999 more than 4 million children below the age of 18 were involved in the abovementioned activities (including approximately 45,000 working in mines and 100,000 in drug trafficking).

The ILO/IPEC Time Bound Programme for the elimination of the worst forms of child labour was launched in 2003 and runs till 2007. It includes change in policy concerning child labour and targets five priority areas (trafficking of children, drug manufacturing and trafficking, fishing, footwear and mining). A total of 26,350 children would be prevented from

being engaged in child labour and 5,100 would be withdrawn. An action plan to reduce the number of children on fishing platforms should reduce the number of child workers from 7,000 to 1,000 in five years time. In its report the CEACR Committee notes that ILO/IPEC technical assistance had contributed to the withdrawal of 344 children from fishing platforms and that since 2000, 2,111 children were prevented from working in "jermas". Preventive programmes are also in place with regard to domestic work, footwear and mining. Such programmes include support actions for schooling and alternative income generating programmes for parents. Projects focused on the direct elimination of child workers have been undertaken in the footwear industry.

The CEACR report of 2006 on the worst forms of child labour notes that there is no clear definition of trafficking of children and that a new Bill should clearly define trafficking, prohibit trafficking of children under 18 years for labour or sexual exploitation and provide for appropriately dissuasive penalties. The CEACR report notes that according to an ILO assessment 21,500 children were victims of trafficking for the purpose of prostitution in Java in 2003. There is also trafficking for the purpose of prostitution at international level and Indonesians are trafficked to Malaysia, Brunei, Hong Kong, Taiwan and Australia. The National Action Plan aims at reducing by half the number of trafficked children by 2013 through ensuring the application of legal norms and actions against traffickers, the rehabilitation and integration of victims of trafficking, and prevention of trafficking. In addition there is an ILO/IPEC TICSА Project on combating child trafficking for sexual and labour exploitation, which was adopted in 2003.

According to an ILO survey of 2003, 700,000 domestic workers were under the age of 18 years. Child domestic workers worked long hours (more than 15 hours per day), seven days a week, receive low pay or were not paid at all. An ILO programme was launched in 2002 to identify effective ways of addressing child domestic labourers who are often exploited. This included various activities such as support for regulations providing basic protection for domestic workers (for instance, at least one day's leave per week).

The CEACR report (direct request 2004) "notes that basic education lasts nine years and is compulsory (section 48 of Law No. 23/2002 on Child Protection). It observes that the Government is responsible for providing "free education or assistance or special services to children from families of limited means (section 53 of Law No. 23/2002 on Child Protection)". However, the costs of education in Indonesia are significant. According to another ILO report, the cost of education and associated costs (transport, uniforms etc.) for one child in elementary school and one in junior

secondary school are equal to between two and three months gross salary at the level of the provincial minimum wage. The Committee on the Rights of the Child (CRC report, page 80), states that “high rates of out-of-school children have resulted in an increased number of working children and street children, with the former often working under less than secure conditions.” According to the information provided by the Government to the Committee on the Rights of the Child (CRC/6/65/Add.23, Additional report, 7 July 2003, page 68), “girls are three times more likely to be illiterate than boys for children aged 10 to 18.” Unicef statistics show a primary school net enrolment of 95% for boys and 93% for girls, and a secondary school net enrolment of 57% for boys and girls over the period 2000-2005.

The CEACR Committee (Observation 2006) notes that “according to the ILO/IPEC project launched in 2004 and entitled “Support to the Indonesian National Plan of Action and the Development of the Time-Bound Programme for the Elimination of the Worst Forms of Child Labour” (page 17) the involvement of labour inspectors in child labour issues is limited at present. Inspectors work with inadequate human and financial resources. As they cannot inspect all workplaces, they give priority to larger enterprises and consequently leave out the unregulated informal sector where most child labourers are found.”

Conclusions

Child labour is a serious problem in Indonesia, and includes the worst forms of child labour. Despite efforts to end child labour and programmes with ILO/IPEC, the number of children involved in child labour remains very high. Children work in agriculture, plantations, fishing, manufacturing, mining, domestic work, sexual exploitation and drug trafficking. Many children drop out of school and labour inspection is insufficient.

III. Forced Labour

Indonesia ratified ILO Convention No. 29, the Forced Labour Convention in 1950 and ILO Convention No. 105, the Abolition of Forced Labour Convention, in 1999.

Forced labour as meant under the Conventions does occur in the form of trafficking for forced labour or forced prostitution, forced child labour in fishing, forced labour by migrant workers and compulsory prison labour that is not in line with the Convention.

Trafficking is prohibited but the law is not comprehensive in its definition of trafficking. The law prohibits forced or compulsory labour.

The CEACR report notes that children are obliged to work in extremely dangerous conditions on fishing platforms (jermal) off the north-east coast of Sumatra.

There is also widespread use of children for collection of garbage, often under forced conditions.

There is trafficking of women and children in Indonesia, including for the use of forced prostitution.

The CEACR report notes that “unskilled Indonesians wishing to work abroad have to go through recruitment agencies, which charge them extortionate processing and training fees. Migrant workers are thus severely indebted even before they start working abroad. They are legally required to sign contracts with the recruitment agencies and have little power to negotiate their terms. Some contracts are even drafted in a foreign language and applicants are forced to lie about their age, address and even their identity. These workers end up accepting whatever work they are offered, even if it is different from the work envisaged in the contract. They are therefore in a situation of vulnerability to exploitation and forced labour.”

The report further notes that “prospective migrant workers are exploited before, during and after their period abroad. Agencies require prospective migrant workers to live in training camps for up to 14 months, where they may be forced to work for the recruitment agency staff. Furthermore, conditions in these centers are extremely difficult and certain workers do not always benefit from freedom of movement. The agencies generate substantial profits as the exploitation of migrant workers continues after their departure for host countries. Once they are abroad, migrant workers have to pay off agency fees, which are usually higher than the legal maximum set by the Government. Depending on the country to which they emigrate, the agency is paid a sum corresponding to a number of months salary, which varies according to the country. In these circumstances, it is difficult for the workers, who are mistreated and forced to work longer hours than the normal working day under harsh conditions, to leave because of the contracts they have signed and the money owed to recruitment agencies. These workers encounter difficulties in obtaining information and assistance from their consular authorities, particularly on any redress mechanisms. Finally, migrant workers also have to pay agency fees to renew their contracts, which are usually higher than the legal maximum. Some agencies, by using coercion and deception for the

recruitment and transportation of migrant workers abroad, are engaged in the trafficking of persons.”

Interviews by Amnesty International show that many employers of domestic workers in Indonesia use forced confinement and that workers are often not allowed to leave their employer’s house, have no day off and cannot join meetings and other social events outside the employer’s home. The Amnesty report further notes that women domestic workers are exposed to human rights abuses, including denial of their rights to health, education, an adequate standard of living and freedom of movement. Approximately one third of domestic workers are girls below the age of 18. Indonesian women domestic workers usually come from rural and poor urban areas in east, central and west Java, Lampung, west Kalimantan and Nusa Tenggara to work in populated cities like Jakarta, Surabaya, Medan, Batam, Balikpapan, and Pontianak. None of the domestic workers Amnesty International interviewed were given a written contract before they started employment. Domestic workers are subjected to massive underpayment compared to other workers, and often live in conditions which are inadequate and abusive. Salaries of women domestic workers are on average half to a third of the national minimum wage. The women domestic workers interviewed by Amnesty International worked on average 70 hours a week and sometimes a lot more - up to 22 hours a day. As the provisions in the Manpower Act relating to dispute resolution mechanisms do not apply to domestic workers, they do not have any formal recourse to justice and reparations through the judicial system. Freedom of association is not respected in many cases and employers try to prevent their employees from joining a union.

Concerning compulsory prison labour, Article 1(a) of the Convention prohibits the use of forced or compulsory labour as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system. The CEACR Committee has noted that, under section 139 of the Manpower Act (No. 13 of 2003), read in conjunction with section 185 of the same Act, restrictions on the right to strike in enterprises that serve the public interest are enforceable with sanctions of imprisonment for a term of up to four years (which involves compulsory prison labour). In order to be compatible with the Convention, restrictions on the right to strike enforced with sanctions involving compulsory labour must be limited in scope to the situations of force majeure or to essential services in the strict sense of the term (namely, those whose interruption would endanger the life, personal safety or health of the whole or part of the population).

Conclusions

Forced labour is prohibited in Indonesia, but does occur in the form of trafficking of people for forced labour or forced prostitution, forced child labour on fishing platforms, compulsory prison labour not in line with the Convention, and forced labour by migrant workers.

Final Conclusions and Recommendations

1. The government has to bring legislation in line with Conventions No. 87 and No. 98 and ensure enforcement of these Conventions.
2. Legislation on collective bargaining, which is too restricted right now, should be brought in line with the Convention and also allow for bargaining at sectoral and interprofessional level.
3. Police and military intervention during strikes that infringes fundamental workers' rights should be curtailed.
4. The government should adopt an Act that effectively provides the right to freedom of association to civil servants.
5. The government should amend legislation on the right to strike and bring several provisions in line with the Convention. The definition of essential services should be narrowed in line with the Convention as well.
6. Units producing for exports show a high level of non-respect and non enforcement of core labour standards, in particular trade union rights and discrimination, which needs to be addressed urgently.
7. Amendments of the 2003 Manpower Act are necessary given that a number of sections are currently not in line with the Conventions on Discrimination in Employment and on Equal Remuneration.
8. More efforts have to be made to reduce the gender wage gap and discrimination in employment. Women workers have been most affected by negative economic shocks and therefore need particular assistance, both to keep them in employment and to increase formal employment among women, especially in high skilled jobs.
9. Specific measures have to be taken to reduce the exploitation and non-respect for workers' rights of Indonesian migrant workers and domestic workers, including amending the Manpower Act so it extends to such workers.
10. The government should bring the Manpower Act in line with the Convention so that it covers children who are engaged in

self-employment or in employment without a clear wage relationship.

11. Existing programmes have to continue and additional measures have to be taken to end all forms of child labour especially the worst forms of child labour.
12. The government should ensure increased and improved labour inspection, provide free schooling and reduce school drop outs.
13. The government should take adequate measures to end all forms of trafficking of people and urgent measures should be taken to provide effective protection of migrant workers.
14. Provisions on compulsory prison labour should be brought in line with the Convention.
15. In line with the commitments accepted by Indonesia at the Singapore and Doha WTO Ministerial Conferences and its obligations as a member of the ILO, the Government of Indonesia should therefore provide regular reports to the WTO and the ILO on its legislative changes and implementation of all the core labour standards.
16. The WTO should draw to the attention of the authorities of Indonesia the commitments they undertook to observe core labour standards at the Singapore and Doha Ministerial Conferences. The WTO should request the ILO to intensify its work with the Government of Indonesia in these areas and provide a report to the WTO General Council on the occasion of the next trade policy review.

References

- ADB, Indonesia, Country Gender Assessment, July 2006.
- Amnesty International, Indonesia, Exploitation and abuse: the plight of women domestic workers
http://web.amnesty.org/library/index/engasa210012007_2007
- Asia-Pacific Human Rights Information Center (HURIGHTS), FOCUS (newsletter), March 2006
- CEDAW/C/IDN/4-5, 27 July 2005, pages 33-41
- CEDAW, Pre-session working group thirty ninth session, 23 July-10 August 2007, CEDAW/C/IDN/Q/5
- Feridhanusetyawan, Tubagus, Haryo Aswicahyono and Ari A. Perdana, *The Male-Female Wage Differentials in Indonesia*, CSIS working paper series, July 2001
- ICFTU, *Annual Survey on Violations of Trade Union Rights*, 2006
- ILO, Ratification of Core Labour Standards
- ILO, CEACR reports from 2004-2005-2006
- ILO, Gender Equality Department
- ILO, *Child domestic labour in South East and East Asia: emerging good practices to combat it*, 2005.
- ILO/IPEC, *Combating Child Labour in Asia and the Pacific, Progress and Challenges*, 2005
- Südwind, *Arbeitsbedingungen bei Aldi-Zulieferern in China und Indonesien*, 2007
- Tapol, the Indonesia Human Rights Campaign :
<http://tapol.gn.apc.org/bulletin/2005/Bull179.htm>
- The Jakarta Post, Policies “unfriendly to foreign investors”, 7 May 2007.
- The Jakarta Post, “Government accused of selling out workers for free trade deals”, 1 May 2007.
- The Jakarta Post, “Indonesia could suffer as result of free trade agreements”, 13 April 2007.
- UNICEF, at a glance: Indonesia statistics,
http://www.unicef.org/infobycountry/indonesia_statistics.html

- US Department of State, Country Reports on Human Rights Practices, Indonesia, 2006
- World Bank country statistics
- World Bank Brief, Indonesia, Gender Equality and Development, March 2006.
