Affecting Women and Children in ASEAN: A Baseline Study

Violence, Exploitation, and Abuse and Discrimination in Migration
Violence, Exploitation, and Abuse and Discrimination in Migration Affecting Women and Children in ASEAN: A Baseline Study

by

Ranyta Yusran
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**Government Regulations**


Presidential Decrees and Regulations


2. Presidential Decree No. 18 of 2011 on the National Prosecutor Commission. 4 March 2011.

3. Presidential Decree No. 17 of 2011 on the Task Force for the Handling of Indonesian Citizen or Migrant Workers who Face Death Penalty Abroad. 7 July 2011.

4. Presidential Instruction No. 3 of 2010 on Justice for All Development Program. 21 April 2010.


8. Presidential Regulation No. 81 of 2006 on the National Authority for the Placement and Protection of Indonesian Overseas Workers. 8 September 2006.


Ministerial Regulations and Decrees


Chief of Police Regulations

1. Regulation of the Chief of Indonesian National Police Forces No. 3 of 2008 on the Establishment of the Special Women and Children Unit and the Inspection Procedure of Victims and/or Witnesses. 22 May 2008.

2. Regulation of the Chief of Indonesian National Police Forces No. 10 of 2007 on the Organisation and Management of Special Women and Children Unit. 6 July 2007.

Regional Legislations


Court Decision

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<td>AI</td>
<td>Amnesty International</td>
</tr>
<tr>
<td>ACILS</td>
<td>American Center for International Labor Solidarity</td>
</tr>
<tr>
<td>ARTIP Project</td>
<td>Asia Regional Trafficking in Persons Project</td>
</tr>
<tr>
<td>ASEAN</td>
<td>Association of Southeast Asian Nations</td>
</tr>
<tr>
<td>AusAID</td>
<td>Australian Agency for International Development</td>
</tr>
<tr>
<td>Bappenas</td>
<td>Badan Perencanaan Pembangunan Nasional (National Development Planning Agency)</td>
</tr>
<tr>
<td>Bareskrim</td>
<td>Badan Reserse Kriminal Polisi (Criminal Investigation Unit)</td>
</tr>
<tr>
<td>BKKBN</td>
<td>Badan Kependudukan dan Keluarga Berencana Nasional (National Population and Family Planning Agency)</td>
</tr>
<tr>
<td>BNP2TKI</td>
<td>Badan Nasional Penempatan dan Perlindungan Tenaga Kerja Indonesia (National Agency for the Placement and Protection of Indonesian Workers)</td>
</tr>
<tr>
<td>BP3TKI</td>
<td>Balai Pelayanan, Penempatan, dan Perlindungan Tenaga Kerja Indonesia (Service Centre on the Placement and Protection of Indonesian Migrant Workers)</td>
</tr>
<tr>
<td>BPS</td>
<td>Badan Pusat Statistik (Statistic Indonesia)</td>
</tr>
<tr>
<td>CAT</td>
<td>Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment</td>
</tr>
<tr>
<td>CEACR</td>
<td>Committee of Experts on the Application of Conventions and Recommendations</td>
</tr>
<tr>
<td>CEDAW</td>
<td>Convention on the Elimination of all Forms of Discrimination against Women</td>
</tr>
<tr>
<td>CIA</td>
<td>Central Intelligence Agency</td>
</tr>
<tr>
<td>CRC</td>
<td>Convention on the Rights of the Child</td>
</tr>
<tr>
<td>CWGI</td>
<td>CEDAW Working Group Initiative</td>
</tr>
<tr>
<td>FGM</td>
<td>Female Genital Mutilation</td>
</tr>
<tr>
<td>GCSKSW</td>
<td>Global Campaign to Stop the Killing and Stoning of Women</td>
</tr>
<tr>
<td>GIEP</td>
<td>Global Initiative to End all Corporal Punishment of Children</td>
</tr>
<tr>
<td>GoI</td>
<td>Government of Indonesia</td>
</tr>
<tr>
<td>HRC</td>
<td>Human Rights Council</td>
</tr>
<tr>
<td>HRW</td>
<td>Human Rights Watch</td>
</tr>
<tr>
<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
</tr>
<tr>
<td>ICESCR</td>
<td>International Covenant on Economic, Social, and Cultural Rights</td>
</tr>
<tr>
<td>ICMC</td>
<td>International Catholic Migration Commission</td>
</tr>
<tr>
<td>ICSW</td>
<td>International Council on Social Welfare</td>
</tr>
<tr>
<td>ILO</td>
<td>International Labour Organisation</td>
</tr>
<tr>
<td>INCCCM</td>
<td>Indonesian NGO Coalition for CRC Monitoring</td>
</tr>
<tr>
<td>IOM</td>
<td>International Organisation for Migration</td>
</tr>
<tr>
<td>IPU</td>
<td>Inter-Parliamentarian Union</td>
</tr>
<tr>
<td>Jala PRT</td>
<td>Jaringan Nasional Advokasi Pekerja Rumah Tangga (National Network for Domestic Workers Advocacy)</td>
</tr>
<tr>
<td>Jangka PKTP</td>
<td>Jaringan Advokasi Kebijakan Penghapusan Kekerasan Terhadap Perempuan (Network for the Advocacy of Policies to Eliminate Violence against Women)</td>
</tr>
<tr>
<td>JKP3</td>
<td>Jaringan Kerja Prolegnas Pro Perempuan (Coalition Network for Pro-Women National Legislation)</td>
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<td>KDRT Law</td>
<td>Undang Undang tentang Kekerasan Dalam Rumah Tangga</td>
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<td>KNPBPTA</td>
<td>Komite Nasional Pemberantasan Bentuk Bentuk Pekerjaan Terburuk bagi Anak (National Committee on the Elimination of Worst Forms of Child Labour)</td>
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<td>Komnas Anak</td>
<td>Komisi Nasional Perlindungan Anak (National Commission on Child Protection)</td>
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<tr>
<td>Komnas HAM</td>
<td>Komisi Nasional Hak Asasi Manusia (National Commission on Human Rights)</td>
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<tr>
<td>Komnas Perempuan</td>
<td>Komisi Nasional Anti Kekerasan terhadap Perempuan (National Commission on Violence against Women)</td>
</tr>
<tr>
<td>Acronym</td>
<td>Full Name</td>
</tr>
<tr>
<td>---------</td>
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</tr>
<tr>
<td>KPAI</td>
<td>Komisi Perlindungan Anak Indonesia (Commission on the Protection of Indonesian Children)</td>
</tr>
<tr>
<td>LPSK</td>
<td>Lembaga Perlindungan Saksi Korban (Witness and Victim Protection Institution)</td>
</tr>
<tr>
<td>MOWE</td>
<td>Ministry/Minister of Women Empowerment</td>
</tr>
<tr>
<td>MUI</td>
<td>Majelis Ulama Indonesia (Indonesian Council of Ulama)</td>
</tr>
<tr>
<td>NCWCR</td>
<td>NGO Coalition for Women and Children Rights</td>
</tr>
<tr>
<td>NGO</td>
<td>Non Governmental Organisation</td>
</tr>
<tr>
<td>NHRI</td>
<td>National Human Rights Institution</td>
</tr>
<tr>
<td>OHCHR</td>
<td>Office of the High Commissioner for Human Rights</td>
</tr>
<tr>
<td>OP-CEDAW</td>
<td>Option Protocol to the Convention on the Elimination of all Forms of Discrimination against Women</td>
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<tr>
<td>OPM</td>
<td>Organisasi Papua Merdeka (Free Papua Organisation)</td>
</tr>
<tr>
<td>P2TP2A</td>
<td>Pusat Pelayanan Terpadu Pemberdayaan Perempuan dan Anak (Integrated Service Centre for the Empowerment of Women and Children)</td>
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<tr>
<td>PHCTIP</td>
<td>Taskforce Gugus Tugas Pencegahan dan Penanganan Tindak Pidana Perdagangan Orang (National Taskforce for the Prevention and Handling of the Crime of Trafficking in Persons)</td>
</tr>
<tr>
<td>PPT</td>
<td>Pusat Pelayanan Terpadu (Integrated Service Centre)</td>
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<tr>
<td>PPTKIS</td>
<td>Pelaksana Penempatan Tenaga Kerja Indonesia Swasta (Private Agency for the Placement of Indonesian Migrant Worker)</td>
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<tr>
<td>Prolegnas</td>
<td>Program Legislasi Nasional (National Legislation Program)</td>
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<tr>
<td>SCVC</td>
<td>SOS Children's Villages Canada</td>
</tr>
<tr>
<td>SOM</td>
<td>Smuggling of Migrant</td>
</tr>
<tr>
<td>SPM</td>
<td>Standar Pelayanan Minimal Layanan Terpadu bagi Perempuan dan Anak Korban Kekerasan (Minimum Service Standard for Women and Children Victims of Violence)</td>
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<td>TeSA129</td>
<td>Telepon Sahabat Anak 129</td>
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<tr>
<td>TIP</td>
<td>Trafficking in Persons</td>
</tr>
<tr>
<td>TIPR</td>
<td>Trafficking in Persons Report</td>
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<tr>
<td>TK-PTKIB</td>
<td>Tim Koordinasi Pemulangan Tenaga Kerja Indonesia Bermasalah dan Keluarganya dari Malaysia (The Coordination Team for the Repatriation of Problematic Indonesian Migrant Workers and Family from Malaysia)</td>
</tr>
<tr>
<td>UPPA</td>
<td>Unit Pelayanan Perempuan dan Anak (Special Women and Children Unit)</td>
</tr>
<tr>
<td>UN</td>
<td>United Nations</td>
</tr>
<tr>
<td>UNCT</td>
<td>United Nations Country Teams</td>
</tr>
<tr>
<td>UN ESCAP</td>
<td>United Nations Economic and Social Commission for Asia and the Pacific</td>
</tr>
<tr>
<td>UNICEF</td>
<td>United Nations Children's Fund</td>
</tr>
<tr>
<td>UNDP</td>
<td>United Nations Development Program</td>
</tr>
<tr>
<td>UNODC</td>
<td>United Nations Office on Drugs and Crimes</td>
</tr>
<tr>
<td>UNSG</td>
<td>United Nations Secretary General</td>
</tr>
<tr>
<td>UNTOC</td>
<td>United Nations Convention on Transnational Organised Crime</td>
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<tr>
<td>UN WOMEN</td>
<td>United Nations Entity for Gender Equality and the Empowerment of Women</td>
</tr>
<tr>
<td>UPR</td>
<td>Universal Periodic Review</td>
</tr>
<tr>
<td>USAID</td>
<td>United States Agency for International Development</td>
</tr>
<tr>
<td>WGAT</td>
<td>Working Group on the Advocacy against Torture</td>
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<tr>
<td>YPHAI</td>
<td>Yayasan Harapan Anak Indonesia (Children Human Rights Foundation)</td>
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Formal Name :  Republik Indonesia (Republic of Indonesia)  
Capital City :  Daerah Khusus Ibukota Jakarta (Special Capital Region of Jakarta)  

| Administrative division | Provinces: 33  
Regencies and Cities: 497  
Districts: 6,747 |
|-------------------------|-------------------------------------------------|
| Population              | Male: 119,630,913  
Female: 118,010,413  
Both Sexes: 237,641,326 |
| Life expectancy         | 70.9 years |
| Age structure           | 0 – 14 years: 28.87% (male 35,298,880/female 33,304,383)  
15 – 64 years: 66.09% (male 78,969,160/female 78,083,952)  
65 – Over: 5.04% (male 5,362,873/female 6,622,078) |
| Sex ratio               | 101.4 |
| Religion                | Islam: 87.18%, Christianity: 6.96%, Catholicism: 2.91%, Hinduism: 1.69%,  
Buddhism: 0.72%, Kong Hu Chu: 0.05%, other beliefs: 0.13%, and unknown: 0.06% |
| Ethnic groups           | Java (41.71%), Sunda (15.41%), Malay (3.45 %), Madura (3.37%), Batak (3.02%),  
Minang (2.72%), Betawi (2.51%), Bugis (2.49%), Banjar (2.05%), Banten (1.74%),  
and more than 900 ethnic groups comprising of 21.87% of the population |
| Functional literacy rate| Male: 94%  
Female: 86.8%  
Both sexes: 90.4% |
| Net enrolment ratio in secondary schools | Male: 66%  
Female: 65% |
| Migration rate          | Net: -1.15 migrant(s)/1,000 population |

3 Statistic Indonesia, Statistic Indonesia 2011, 2.  
5 Statistic Indonesia, Statistic Indonesia 2011. p. 76. Sex ratio usually expresses the number of males for every 100 females.  
8 Central Intelligence Agency (CIA), The World Fact Book 2011 – Indonesia, <www.cia.gov>, accessed on 22 September 2011. Information on the age structure is based on 2011 estimates. The number cited in the CIA World Fact Book is based on both Indonesian official source and estimates (as of July 2011). Even though the paper cited BPS as the official source, due to the limited information on the results of the 2010 Census provided by BPS the Study will cite other reliable sources such as the CIA World Fact Book, UNESCO Institute of Statistic, World Development Indicator 2010, and other reliable sources.  
10 Ibid.
<table>
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<th>Metric</th>
<th>Value</th>
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<td>Number of citizens working overseas</td>
<td>Total: 2,679,536 (as of February 2010)11</td>
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<td>Number of foreign workers in country</td>
<td>102,288 (2010)12</td>
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<td>Percentage of female-headed households</td>
<td>13% (2007)13</td>
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<td>Labour force participation rate (15 years +)</td>
<td>Male: 86%</td>
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<td>Unemployment rate</td>
<td>Male: 7.5%</td>
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<td>Proportion of unpaid family workers</td>
<td>Total: 108,207,76716</td>
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<td>Fertility rate</td>
<td>2.15 children born/woman17</td>
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<td>Maternal mortality rate</td>
<td>307 deaths/100,000 live births18</td>
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<td>18 or 21 years old22</td>
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<td>Marriageable age</td>
<td>Female: 16 years old</td>
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11 Statement of Rusman Setiawan, Head of BPS, cited in Detik Finance, BPS: Jumlah TKI Arab Saudi Capai 1,5 Juta Orang, <www.us.finance.detik.com>, accessed on 12 October 2011. According to the Head of BPS, the data is provided by the Ministry of Labour and Transmigration. However, differing number of Indonesian workers abroad was put forward by the National Agency for the Placement and Protection of Indonesian Workers (BNP2TKI), where it stated that in 2010 there were at least 4,310,000 Indonesian migrant workers in 41 countries (cited in National Commission on Violence against Women (Komnas Perempuan). 2010 Note on Violence against Women. 7 March 2011, 29. Further discrepancy on the number of Indonesian workers abroad is shown by the data provided by BNP2TKI, though coming from year 2009, it documented 632,172 Indonesian workers abroad consisted of 103,188 males and 528,984 females.

12 Ministry of Labour and Transmigration, Penggunaan Tenaga Kerja Asing di Indonesia Tahun 2010, <www.pusdatinaker.balitfo.depakertrans.go.id>, accessed on 12 October 2011. The Ministry’s report only presented the total number of foreign workers in Indonesia; it did not present the number of male and female foreign workers. Disaggregated data is not available.


14 *Ibid.*, The 2010 Census shows that as of 2010, Indonesia’s labour force has reached 169,038,063 people (accessible on http://sp2010.bps.go.id) however, in 2011 BPS stated that the labour force in Indonesia has reached 119,400,000 (it does not provide gender disaggregate data, see www.bps.go.id). Further clarification on this statement is needed since the gap in theumber is quite significant.

15 *Ibid.*, BPS Indonesia stated that as of February 2011 unemployment rate has reached 8,100,000 people, 6.8% than the total labour force, see <www.bps.go.id>, accessed on 24 September 2011.


17 Statistic Indonesia, Statistic Indonesia 2011, 2.

18 GoI, 2008 Indonesian UPR, para. 55. However, The World Fact Book 2011 – Indonesia states that maternal death in Indonesia reaches the number of 240 deaths per 100,000 live births.

19 Statistic Indonesia, Statistic Indonesia 2011, 2.


22 There are two standards of age of majority in Indonesian legal system. According to the Civil Code the age of majority is 21 years old however other Indonesian Laws concerning minor generally stipulate 18 years old as the age of majority.

Age of consent  |  15 years old\textsuperscript{24} (female, Criminal Code)/18 years old\textsuperscript{25} (both sexes, Child Protection Law)  
---|---  
Age of criminal responsibility  |  12 years old\textsuperscript{26}  
Minimum age of employment  |  15 years old\textsuperscript{27}  
Minimum age for military recruitment and participation  |  18 years old\textsuperscript{28}  

Table 1 – General Information on Indonesia

\textsuperscript{24} Indonesian Criminal Code, art. 287(1). The Criminal Code only indicates the age of consent for girls. However, see ibid, Law No. 1 of 1974 stipulates that the age of marriage for girls are 16 and 19 for boys, this means that there is 4 years gap for girls as indicated by the two laws and no clear stipulation for age of consent of boys.  
\textsuperscript{25} Law on Child Protection., art. 81.  
\textsuperscript{26} Law No. 11 of 2012 on the Juvenile Court System, State Gazette 2012:153. 30 July 2012, art. 1(3). Prior to the enactment of the Law on the Juvenile Court System, article 1(1) of Law No. 3 of 1997 on Juvenile Court (State Gazette 1997:3, 3 January 1997) established that the age of criminal responsibility in Indonesia was 8 years old. The definition was declared as unconstitutional by the Constitutional Court in 2010 and that the age of criminal responsibility shall be 12 years old (Case No. 01/PUU-VIII/2010, decision of 24 February 2011), which lead to the enactment of the present Law on Juvenile Court System. stipulates that the age of criminal responsibility should be 12 years old.  
\textsuperscript{28} Law No. 34 of 2004 on the Indonesian National Army, State Gazette No. 2004:127, 16 October 2004, art. 28(1)
A OVERVIEW

1 Introduction

This Baseline Study of reports/literatures and policies (the Study) will examine various reports related to the issues of violence, exploitation, and abuse and discrimination in the context of migration affecting women and children with the purposes of:

1. Reviewing the extent of the problems of violence, exploitation, and abuse and discrimination in migration affecting women and children that various reports have documented on Indonesia;
2. Reviewing the de jure State responses;
3. Reviewing the implementation, monitoring, and prevention mechanisms in Indonesia done both by the GoI and civil society; and
4. Reviewing the progress indicators and challenges pertaining to the problems of violence, exploitation, and abuse and discrimination in migration affecting Indonesian women and children.

The overall aim of the Study is to present a composite document that reflects the abovementioned points based on existing reports and literatures on subjects of violence, exploitation, and migration affecting women and children. Furthermore, based on the data provided by the reports and literatures, the Study will try to cumulate gaps in information and make them as bases for recommendations for further studies. In no way does the Study intend to present new findings or researches that are not based on already-existing reports and literatures.

The Study will examine reports that were concluded from 2005 onward. The reports that come from the official sources of the Government of Indonesia (GoI) are considered as primary sources, especially national reports submitted to the Human Rights Council (HRC) and the UN Treaty Bodies. However, to maintain a balanced perspective, the Study will also scrutinise reports produced by UN organs, bodies, and funds, most notably the HRC and the human rights treaty bodies such as the Committee of the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW Committee) and Committee of the Convention on the Rights of the Child (CRC Committee).

Indonesia’s Universal Periodic Report (UPR) and Periodic Reports to the CEDAW and CRC Committees, together with the observations of stakeholders and UN bodies/funds and the concluding comments of the HRC and the treaty bodies, will be the main focus of this Study. On this note, there is also an incomplete report that the Study will rely on, which is Indonesia’s 3rd and 4th Periodic Report to CRC Committee (submitted in 2007). This report was concluded and submitted in 2007. However, until this moment, a written reply from the GoI to the List of Issues made by the CRC Committee, as well as observations and concluding comments from the CRC Committee to Indonesia’s 3rd and 4th Periodic Report, are not yet available. Additionally, the Study will strive to compare the data in the above-mentioned reports with relevant and more recent reports made by the GoI, the National Human Rights Institutions (NHRI), the UN bodies and funds (including special mechanisms), and reliable reports from international and local Non-Governmental Organisations (NGOs).

With regard to issues or questions raised in this Study that are not covered by the reports presented to the HRC and the treaty bodies, the Study will resort to existing reports issued by relevant State ministries/institutions/agencies; Indonesian NHRI; reporting mechanisms under the UN specialised agencies such as the International Labour organisation (ILO); reports supported by UN funds such as UNICEF and UNIFEM (now UN WOMEN); and publications of international organisations such as the International Organisation for Migration (IOM) and local NGOs. The Study shall take into account existing legislation, regulations, and plans of actions that shape Indonesia’s policies on the protection of women and children against violence, exploitation, and abuse and discrimination in migration. Independent analysis of relevant legislation will be conducted if the Study deems it is important to include legislation or regulations which are not mentioned in any of the reports.

A comprehensive examination of existing reports from various sources on violence, exploitation, and migration affecting women and children is crucial to give a balanced and holistic description of the facts on the field. Furthermore, it is necessary to take into account reports from various sources on the matter since most reports usually used different perspectives and approaches in determining their methodology, which resulted in differing conclusions, estimates, and priorities in their identification of problems, evaluations, and recommendations.

Ranyta Yusran
2 Intended Reader

The Study is intended to induce further studies in the subject of protection of women and children from violence, exploitation, and abuses and discrimination in the context of migration and to contribute to raising awareness of the general population on these issues. To that end, the intended readers of this Study are consisted of:

1. Policy makers and legislatures;
2. Implementing agencies;
3. ASEAN, especially its newly established ASEAN Intergovernmental Commission on Human Rights (AICHR), the ASEAN Commission for the Promotion and Protection of the Rights of Women and Children (ACWC), and the ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers;
4. International and other regional organisations;
5. International and local NGOs;
6. Academics; and
7. General public.

3 List of Literatures

<table>
<thead>
<tr>
<th>No.</th>
<th>Report Title</th>
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Periodic Reports to the UN Treaty Bodies: CEDAW and CRC Committees

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<tr>
<td>9.</td>
<td>Combined Sixth and Seventh Periodic Reports of States Parties: Indonesia (CEDAW/C/IDN/6-7)</td>
<td>GoI</td>
<td>7 January 2011</td>
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<tr>
<td>10.</td>
<td>Responses of Indonesia to the List of Issues to be Taken Up in Connection with the Consideration of its Combined Sixth and Seventh Periodic Reports (CEDAW/C/IDN//Q/6-7/Add.1</td>
<td>GoI</td>
<td>18 January 2012</td>
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<tr>
<td>16.</td>
<td>An Independent Report prepared by the National Commission on Violence against Women presented on the Occasion of Indonesia’s Combined Fourth and Fifth Periodic Reports to the CEDAW Committee</td>
<td>Komnas Perempuan</td>
<td>19 July 2007</td>
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<tr>
<td>17.</td>
<td>Concluding Comments of the Committee on the Elimination of Discrimination against Women: Indonesia (CEDAW/C/IDN/CO/5)</td>
<td>CEDAW Committee</td>
<td>10 August 2007</td>
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<td>25.</td>
<td>Concluding Observations: Indonesia (CRC/C/15/Add.223)</td>
<td>CRC Committee</td>
<td>26 February 2004</td>
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**Reports From the Government of Indonesia**

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<th>No.</th>
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<td>26.</td>
<td>Working Children in Indonesia 2009</td>
<td>Statistic Indonesia (BPS) in collaboration with ILO</td>
<td>February 2010</td>
</tr>
<tr>
<td>28.</td>
<td>Compilation of Reports on Trafficked Children, Children in Conflict with the Law, Child Workers, and Abused Children</td>
<td>Ministry of Women Empowerment (MOWE)</td>
<td>2008</td>
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<td>29.</td>
<td>Government’s Response to the UN Secretary General’s (UNSG) Study on Violence against Children</td>
<td>GoI</td>
<td>2005</td>
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**Reports of the Indonesian NHRIs**

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<td>30.</td>
<td>2011 Note on Violence against Women: Stagnation of the Legal System, Suspending the Hope of Female Victim</td>
<td>Komnas Perempuan</td>
<td>7 March 2012</td>
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<tr>
<td>No.</td>
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<td>31.</td>
<td>2010 Note on Violence against Women: Terror and Violence against Women, Losing State Control</td>
<td>Komnas Perempuan</td>
<td>7 March 2011</td>
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<td>32.</td>
<td>Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment</td>
<td>Komnas Perempuan</td>
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<td>33.</td>
<td>2009 End Year Reflection</td>
<td>Commission on Protection of the Child (KPAI)</td>
<td>30 December 2009</td>
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<td></td>
<td><strong>Reports of UN Bodies and Funds</strong></td>
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<tr>
<td>34.</td>
<td>Domestic Violence Legislation and Its Implementation: an Analysis of ASEAN Countries based on International Standards and Good Practices (2nd Ed.)</td>
<td>UNIFEM (now UN WOMEN)</td>
<td>2011</td>
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<tr>
<td>35.</td>
<td>Factsheet on Commercial Sexual Exploitation and Trafficking of Children</td>
<td>UNICEF</td>
<td>Undated</td>
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<td><strong>Reports of International and Regional Organisations</strong></td>
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<td>40.</td>
<td>Policy Analysis and Programme Response on Trafficking in Persons and HIV in Women and Girls in Indonesia</td>
<td>IOM</td>
<td>2010</td>
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<td>41.</td>
<td>Labour Migration from Indonesia: an Overview of Indonesian Migration to Selected Destinations in Asia and the Middle East</td>
<td>IOM</td>
<td>2010</td>
</tr>
<tr>
<td>42.</td>
<td>Situation Report on International Migration in East and Southeast Asia: Regional Thematic Group on International Migration including Human Trafficking</td>
<td>IOM</td>
<td>2008</td>
</tr>
<tr>
<td>43.</td>
<td>ASEAN Handbook on International Legal Cooperation in Trafficking in Persons</td>
<td>Association of Southeast Asian Nations (ASEAN) supported by the Australian Government's Asia Regional Trafficking in Persons Project (ARTIP Project) and UNODC</td>
<td>August 2010</td>
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<tr>
<td>44.</td>
<td>Progress Report on Criminal Justice Responses to Trafficking in Persons in the ASEAN Region</td>
<td>ASEAN supported by the ARTIP Project</td>
<td>July 2011</td>
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<td><strong>Reports of International NGOs</strong></td>
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<tr>
<td>46.</td>
<td>Left without a Choice: Barriers to Reproductive Health in Indonesia</td>
<td>Amnesty International (AI)</td>
<td>2010</td>
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<td>47.</td>
<td>Workers in Shadows: Abuse and Exploitation of Child Domestic Workers in Indonesia</td>
<td>Human Rights Watch (HRW)</td>
<td>February 2009</td>
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<td>48.</td>
<td>Someone that Matters: the Quality of Care in Childcare Institutions in Indonesia</td>
<td>Save the Children (in collaboration with the Ministry of Social Affairs and UNICEF)</td>
<td>December 2007</td>
</tr>
<tr>
<td></td>
<td><strong>Reports of Local NGOs</strong></td>
<td></td>
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</tbody>
</table>
B. VIOLENCE

1 Description of the Problem

“Documenting violence against women is difficult for a number of reasons. First, the influence of social and cultural norms in determining what constitutes violence impedes a universal consensus on the definition of VAW. Second, only a limited number of cases of VAW are reported officially. Third, violence against women in many cases regarded as a private rather than a public issue.”


a. Prevalence of Violence

i. Prevalence of Violence against Women

The 2012 and 2008 Indonesian national reports to the UN Human Rights Council (2012 and 2008 Indonesian UPR) and the two Indonesian Periodic Reports to the CEDAW Committee (2005 and 2011 IPR-CEDAW) highlighted special circumstances where violence against women is prevalent, such as violence against Indonesian women and girl domestic workers abroad and domestic violence against women at home. Apart from the two special circumstances presented by the


GoI in its reports to the UN Human Rights mechanisms, related reports indicated other special circumstances where violence against women is prevalent. These special circumstances include:

circumstances consisted of violence against women and girls domestic workers in Indonesia, violence against women in conflict areas, and community-based violence against women.

The reports presented by the GoI did not provide background information on the victims and perpetrators (e.g. age range, education, profession, ethnicity, etc.) nor did they provide types of violence inflicted upon the victims. Pertaining to the issue of the lack of statistical background data of the victims and perpetrators, the Study will utilise mainly the latest annual report produced by the National Commission on Violence against Women (Komnas Perempuan), one of Indonesia’s NHRIs responsible for the monitoring and protection of women’s rights in Indonesia, to fill out the gap.

In this section, the Study would also like to note that even though many reports classified trafficking in women and children as a form of violence, the Study will only include the discussion on trafficking in the next section relating to exploitation. This is pertinent to the definition of trafficking, especially in women and children, stipulated under Indonesian Law on Trafficking in Persons (TIP Law) where it sets out trafficking as a crime with the intent to exploit the objects of trafficking without necessarily applying violence on the victims.

Violence against Women Domestic Workers Abroad and in Indonesia

Concern over violence against women and girl-child domestic workers abroad is highlighted in the 2008 Indonesian UPR and the 2005 IPR-CEDAW. The 2005 IPR-CEDAW notes that each year there are 387,000 Indonesian migrant workers of which women comprised more than 70% and the majority of them are domestic workers. The types of violence that these women undergo include non-payment of wages and extortion in the destination countries and during pre-departure stages in Indonesia.

In its 2007 submission to the CEDAW Committee, Komnas Perempuan recorded 1,259 cases of discrimination, exploitations and violence experienced by Indonesian migrant workers in which more than 80% comprised of women and 90% of these women were employed as domestic workers. Furthermore, the CEDAW Working Group Initiative (CWGI) indicated that in 2005 there were 19 cases of deaths, 101 cases of torture accompanied by rape, 117 cases of lost contacts, and 4,100 cases of deportation, trafficking, unpaid wages, and long working hours befalling Indonesian women domestic workers abroad.

A study conducted by the International Labour Organisation (ILO) in 2010 shows 785,000 Indonesian women leave Indonesia to work abroad as migrant and domestic workers, a significant increase compared to the number presented by GoI in 2005. Violence against Indonesian women domestic workers abroad is still prevalent until now, as confirmed by 2011 Indonesia’s Combined Sixth and Seventh Periodic Reports to the CEDAW Committee (2011 IPR-CEDAW).

The non-inclusion of violence against women domestic workers in Indonesia’s reports was pointed out during the 1st Session by UN agencies and funds and AI. CWGI and Komnas Perempuan expressed the same

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32 Despite the internationally accepted term of “Survivor” to represent Victim, the Study will use the term “Victim” since it has the closest meaning to the term Victim (Korban) in Indonesia’s legal system and furthermore, most reports examined by this Study use the term Victim instead of Survivor.


34 See, for example, Gol. 2008 Indonesian UPR. par. 50-51; and CWGI. 2007 CWGI-CEDAW, para. 131

35 TIP Law, art. 1(1) and 2.

36 Gol. 2008 Indonesian UPR, para. 51.


38 Ibid., para. 108

39 Ibid.


43 Gol, 2011 IPR-CEDAW. para. 97 – 99. The report was submitted in January 2011, submissions by NGOs and CEDAW Committee’s Considerations and Concluding Remarks are yet to be submitted.

44 UN OHCHR, 2008 Compilation of UN Documentation, para. 17

45 UN OHCHR, 2008 Summary of Stakeholders’ Reports, para. 11.
point in their 2007 submission to CEDAW Committee.\textsuperscript{46} The ILO estimates there are as many as 2.6 million domestic workers in Indonesia and the majority were women and girls aged 13 to 30 serving in approximately 2.5 million Indonesian households.\textsuperscript{47} According to AI, women and girl-child domestic workers in Indonesia regularly experienced physical, psychological, and sexual violence including sexual harassment and rape by their employer.\textsuperscript{48} In 2009, Human Rights Watch (HRW) emphasised the need for Indonesia to recognise and take action against the abuse of domestic workers at home in order for advocacy on the protection of the Indonesian domestic workers abroad to have any credibility.\textsuperscript{49}

**Domestic Violence against Women**

Domestic violence against women in Indonesia is pervasive. The 2005 IPR-CEDAW indicated that data on domestic violence are not easy to acquire since victims rarely report the occurrences publicly.\textsuperscript{50} In 2006, Komnas Perempuan recorded 22,152 cases of violence against women reported to it and its partner institutions and 74% were cases of domestic violence.\textsuperscript{51} Komnas Perempuan noted that domestic violence always dominates cases of violence against women in Indonesia until now.\textsuperscript{52}

<table>
<thead>
<tr>
<th>Year</th>
<th>Violence against Women</th>
<th>Domestic Violence against Women</th>
</tr>
</thead>
<tbody>
<tr>
<td>2005</td>
<td>20,391</td>
<td>16,615 (82%)</td>
</tr>
<tr>
<td>2006</td>
<td>22,512</td>
<td>16,709 (74%)</td>
</tr>
<tr>
<td>2007</td>
<td>25,522</td>
<td>20,380 (80%)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Year</th>
<th>Violence against Women</th>
<th>Domestic Violence against Women</th>
</tr>
</thead>
<tbody>
<tr>
<td>2008</td>
<td>54,425</td>
<td>42,076 (77%)</td>
</tr>
<tr>
<td>2009</td>
<td>143,586</td>
<td>136,849 (95%)</td>
</tr>
<tr>
<td>2010</td>
<td>105,103</td>
<td>101,128 (96%)</td>
</tr>
<tr>
<td>2011</td>
<td>119,107</td>
<td>113,878 (95.61%)</td>
</tr>
</tbody>
</table>

Table 3 – Occurrences of Domestic Violence against Women reported to Komnas Perempuan in 2005 - 2010\textsuperscript{53}

Table 3 shows significant yearly increase in the reporting of violence against women, especially domestic violence. Komnas Perempuan’s data shows a significant jump of the number of cases of domestic violence against women reported by victims in 2008 and 2009 from 54,425 occurrences to 143,586. Meanwhile, in more recent time, the table points out an increase of 13.32% in the number of violence against women that were reported in 2011 compared to the number of violence recorded in 2010. Komnas Perempuan is of the opinion that this increase of reporting was due to the progress in the data collection technique and, most importantly, it indicated the growing awareness among women of domestic violence as violation of rights, which push them to report domestic violence that they suffered.\textsuperscript{54}

<table>
<thead>
<tr>
<th>Types of Spousal Violence</th>
<th>Classification of Domestic Violence based on Relationship</th>
</tr>
</thead>
<tbody>
<tr>
<td>Psychological</td>
<td>Spousal Violence (Wife)</td>
</tr>
<tr>
<td>103,691</td>
<td>110,468</td>
</tr>
<tr>
<td>Economy</td>
<td>Dating Violence</td>
</tr>
<tr>
<td>3,222</td>
<td>1,405</td>
</tr>
<tr>
<td>Physical</td>
<td>Violence against Girl Child</td>
</tr>
<tr>
<td>2,790</td>
<td>283</td>
</tr>
<tr>
<td>Sexual</td>
<td>Violence committed by exes</td>
</tr>
<tr>
<td>1,398</td>
<td>141</td>
</tr>
<tr>
<td>Others</td>
<td>Violence against domestic workers</td>
</tr>
<tr>
<td>1,452</td>
<td>42</td>
</tr>
<tr>
<td>Other Relationship</td>
<td>Other Relationship</td>
</tr>
<tr>
<td>1539</td>
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</tbody>
</table>

Table 4 – Division of Cases of Domestic Violence against Women based on Relationship and Types of Spousal Violence (Komnas Perempuan Note 2011)

In 2011, Komnas Perempuan, together with its 393 partner institutions, received and documented 113,878 occurrences.

\textsuperscript{46} CWGI. 2007 CWGI-CEDAW, para. 135 – 139; and Komnas Perempuan. 2007 KP-CEDAW.

\textsuperscript{47} ILO, Recognising, 2.

\textsuperscript{48} Ibid.

\textsuperscript{49} HRW, Workers in the Shadows: Abuse and Exploitation of Child Domestic Workers in Indonesia. February 2009. p. 11.

\textsuperscript{50} Ibid., According to the report of Kalyanamitra on the number of domestic violence against women cited in the 2005 IPR-CEDAW, "Kalyanamitra found that within the period 1997 - 1999 there were 299 cases of rape, 46 cases of sexual harassment and 42 cases of domestic violence. The figure increased quite significantly during 2000 and 2001 with the total number of cases reaching 488 rape cases, 150 cases of sexual harassment and 213 cases of domestic violence."

\textsuperscript{51} Komnas Perempuan., 2007 KP-CEDAW, para. 24 – 25. Furthermore, Komnas Perempuan highlighted the fact that over the year domestic violence has always been the highest form of violence against women.

\textsuperscript{52} Komnas Perempuan, 2011 Note, 11.


\textsuperscript{54} Komnas Perempuan, 2009 Annual Note on Violence Against Women: Not only at Home, Women’s Experience on Violence in an Unbalanced Power Relations (2009 Annual Note), 7 March 2010, 9.
reports on domestic violence against women and children. Compared to the reports received in 2010, the number of the reports received increased by 12.61%. According to Komnas Perempuan, the increasing number indicates that victims of violence exist in various parts of Indonesia and they need proper assistance and better access to report their grievances.\(^\text{59}\)

The 2011 Note shows that spousal violence dominates the occurrences of domestic violence against women, consisting of more than 95% of the total occurrences of domestic violence reported to Komnas Perempuan and its partner institutions.\(^\text{56}\) Cases of domestic violence reflected in table 4 also covers violence perpetrated by boyfriends, ex-husbands, ex boyfriends, employers, or other family members.\(^\text{57}\) Types of spousal violence identified by Komnas Perempuan consist of psychological, physical, economic, and sexual violence.\(^\text{58}\) Interestingly, the 2011 Note notes that 95% of victims of spousal violence opt to bring their grievance to the Religious Court and/or Religious High Court.\(^\text{59}\)

In relation to the profile of victims and perpetrators, Komnas Perempuan’s 2011 Note reveals that most victims and perpetrators come from age group of 25-40 years.\(^\text{60}\) The most vulnerable victims are those who fall under the age group of 13 - >40 and the highest number of victims is found in the age group of 25 – 40.\(^\text{61}\) The Report also points out that perpetrators of violence against women also include male children as young as 13 years old.\(^\text{62}\) Most of the victims and perpetrators recorded by Komnas Perempuan have at least completed their secondary education.\(^\text{63}\) However, Komnas Perempuan emphasised that the data is not conclusive as it only captures cases that have been reported to Komnas Perempuan and its partner institutions.

In its recent report to CEDAW Committee, the GoI quoted a 2007 study conducted by the Indonesian Survey on Health and Demography showing 26% of married women relent on violence committed by their husbands.\(^\text{64}\) Furthermore, the 2011 State of World’s Children indicates that 31% of women victims of spousal violence (14 – 49 years old) accepted that their husbands’ acts are justifiable.\(^\text{55}\) The 2011 IPR CEDAW indicates that women who are aware of their rights have a more balanced bargaining position in the household and are in a better position to access health services compared to women who relent to their husbands’ actions.\(^\text{66}\)

**Violence against Women in Conflict Areas**

During the 1st Session of the Universal Periodic Review, the UN Special Rapporteurs on the Question of Torture and Violence against Women underlined the issue of violence against women in conflict areas in Indonesia.\(^\text{67}\) The Special Rapporteurs pointed out that “[a] 2003 joint urgent appeal indicated that an estimated 100 women had reportedly been raped since the declaration of martial law in Aceh on 19 May 2003… and listed 21 cases of alleged rape, gang rape and sexual violence that had been transmitted to the Special Rapporteurs.”\(^\text{68}\) Furthermore, UN documentation suggested that the perpetrators of such violence were mostly members of the army and police forces.\(^\text{69}\) CWGI in its 2007 submission to CEDAW Committee identified types of violence suffered by Acehnese women during that time to include rape, sexual harassment, battery, and murder.\(^\text{70}\)

Meanwhile, in Papua, another conflict area, the Working Group on Documentation of Violence against

\(^{56}\) Ibid, 12.
\(^{57}\) Ibid.
\(^{58}\) Ibid.
\(^{59}\) Ibid.
\(^{60}\) Ibid, 15.
\(^{61}\) Ibid.
\(^{62}\) Ibid.
\(^{63}\) Ibid.

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Women and Violations of Women’s Rights in Papua (Papua WG) reported that violence against women in conflict areas is still prevalent. The perpetrators of the violence are mostly members of the military and police forces. In 2009, the Papua WG identified at least 138 cases of violence against women perpetrated by members of the military and police forces. Based on the monitoring conducted by Komnas Perempuan throughout 2011, the condition of these women has not improved and new cases of violence against women in Papua keep on occurring. The report indicates that victims are often neglected and support for women victims is weak in all aspects, and these render them vulnerable to re-victimisation. Komnas Perempuan notes that the presence of the Indonesian military forces in Papua has become the constant source of insecurity and inconvenience for Papuans. Based on the reports received, the existence of the military force in Papua has fostered an air of impunity, triggered occurrences of cases of sexual violence and exploitation, and blocked the rights of women victims to truth, justice, and recovery.

Komnas Perempuan indicates that sexual violence against women also occurs in Maluku and Poso, areas where social conflicts are rampant. The occurrences of violence are mostly due to the posting of security forces in both areas. Women who live in conflict areas also experienced further violence in the form of denial of their right to compensation, as experienced in post-conflict Aceh by victims of sexual violence and rape.

State Violence against Women and Discriminative National and Regional Legislations

In relation to other forms of State violence, the 2010 Note of Komnas Perempuan recorded an increase in the number of cases of State violence against women. The 2010 Note reveals that, in 2010, there were 445 cases of State violence based on reports submitted in Jakarta and East Java alone. The 2010 Note shows a significant increase of State violence where usually Komnas Perempuan recorded an average of 50 cases per year. The number of State violence return to “normal” in 2011, with only 42 recorded occurrences. Types of State violence that took place against women in 2010 consist of forced removal of residence, destruction of place of worship, arrest of female dancers (as a part of the implementation of the Anti-Pornography Law), and cessation of religious practice.

Discriminative Regional Regulations

Komnas Perempuan’s annual reports indicate that, despite positive developments on the protection of women against violence made by central and regional governments, some national legislation and regional regulations reflect discriminatory provisions against women. In 2009, Komnas Perempuan identified at least 154 regional regulations that discriminate against women and may create opportunities for abuse of women by the Government and the society. The number of discriminative regional regulations continued to increase in 2010 to 189 and, finally, to 207 discriminative regulations by the end of 2011. From this number, Komnas Perempuan identifies 78 regional regulations as directly discriminatory toward women; 4 regulations as causing neglect to the rights and protection of migrant workers; 94 regulations related to the utilisation of religion for political imaging, which can be harmful to women’s rights; and 31 regional regulations related to restriction of the freedom of religion (27 regulations were specifically adopted on the banning of Ahmadiyah religious group).

72 Ibid, 20.
73 Ibid.
74 Komnas Perempuan. 2011 Note, 22.
75 Ibid.
76 Ibid, 23.
77 Ibid.
79 Ibid., para. 23.4.
These regional regulations are enacted at provincial, municipality/regency, and village levels. They are spread out in more than one hundred regencies and municipalities in 26 provinces. In its submission to the Constitutional Court, Komnas Perempuan adds that these regional regulations mostly utilised unverified religious and moral reasoning in justifying the institutionalisation of discrimination against and criminalisation of women.

Below are some examples of regional regulations indicated in Komnas Perempuan reports that are identified as discriminative and creating justifications for violence against women:

1. Regional Regulation (Qanun) No. 14 of 2003 on Khalwat (immoral behaviour) in Aceh, criminalises immoral behaviour (such as when a woman was found being alone with a man who is not her husband or relative), with the heaviest penalty of public flogging. Aceh is not the only region in Indonesia that enforces such regulation, a research in 2008 shows that a similar regulation is also implemented in Bulukumba Regency of South Sulawesi.

   Implementation of the Qanun:

   According to Komnas Perempuan, in 2010, at least 301 Acehnese women were arrested for immoral behaviour and, in 2011, there are 46 cases of violation of the Qanun on Khalwat. Komnas Perempuan notes that, throughout 2012, the public flogging for violation of this Qanun was hardly ever executed. However, reports from Komnas Perempuan's partner institutions show that violations of the Qanun on Khalwat usually incite the local society to enforce the Qanun upon the perpetrators by their own hands. Forms of punishment that the local society imposed consisted of, among others, beating; banishment from their homes; and public humiliation in the forms of reconstruction of the acts violating the Qanun in front of a public audience and being paraded in humiliating condition.

2. Qanun No. 11 of 2002 on the Implementation of Sharia Law in Aceh contains a provision obligating women to wear Islamic attire. In 2010, Komnas Perempuan documented at least 1,375 women apprehended in raids conducted by the regional government. A similar regulation is also implemented in Bulukumba Regency of South Sulawesi.

3. Regional Regulation of Tangerang Municipality No. 8 of 2005 on the Prohibition of Prostitution (Banten Province) defines (and criminalises) a prostitute as “every person with suspicious behaviour or act as to raise a presumption that that person is a prostitute is prohibited to be seen on public streets, courts, boarding houses, hostels, hotels, dorms, … or other public places”. Komnas Perempuan views this regional regulation as vague and has a great potential to justify violence against women. Furthermore, Komnas Perempuan states that a number of municipalities/regencies also adopted similar formulation in their regional regulations. Those regions include, among others, Indramayu Regency,
Lahat Regency, Bandar Lampung Municipality, Palembang Municipality, Bantul Regency, and Tasikmalaya Regency.105

**Discriminative National Legislations and Policies**

Apart from indicating discriminative regional regulations that will potentially expose women to violence, Komnas Perempuan also identifies legislation and policies enacted at the national level of a similar nature. These discriminative legislations and policies include Law No. 44 of 2008 on Pornography and the 2008 Joint Decision of Minister of Religious Affairs, Attorney General, and Minister of Interior on the Warning and Instruction to the Followers, Members, and/or Organisers of Jemaat Ahmadiyah Indonesia and the Society (2008 Joint Decision).106 In 2011, Komnas Perempuan identified a total of seven discriminative legislations at the national level that are in force.107 Below are several examples of discriminative national legislations and policies and their impact on women and children as indicated in Komnas Perempuan’s reports:

1. **Anti-Pornography Law:**

Komnas HAM is of the opinion that Indonesia’s definition of pornography under the Anti-Pornography Law’s and its implementation is vague, prone to multiple interpretations, and can easily cause unjustifiable criminalisation of citizens, especially women.108 In 2010, there were three cases where 11 women were convicted under this Law. Ten of these women worked as dancers at bars or cafes and four dancers were later on proved to be victims of internal trafficking.109

In relation to the Anti-Pornography Law, in 2010, well known celebrities (one male and two females), were investigated and tried for having their sexual activities recorded, while the person who distributed the recordings has never been brought to justice.110 Furthermore, the head of a certain region even went as far as banning these celebrities from staying or visiting his constituency because of their immoral behaviour.111 In relation to this case, Komnas Perempuan believed that the trial of these celebrities based on the Anti-Pornography Law is a violation of their private sphere and that the public reaction to this case reflect negative stigmatization and victimisation of women.112

2. **Discriminative State Policies against Minority Religious Groups (the Case of Ahmadiyah)**

Meanwhile, in the case of violence against women and children of Ahmadiyah group, apart from the adoption of the 2008 Joint Declaration on Ahmadiyah community, Komnas Perempuan also notes that there are at least six discriminative regional regulations toward the Ahmadiyah community.113 Komnas Perempuan fears that the adoption of these regulations and policies will potentially cause violence on Ahmadiyah’s women and children as indicated in the increasing number of attacks directed against the Ahmadiyah community in 2006 – 2010.114

Komnas Perempuan documented 276 cases of violations of human rights from attacks on the Ahmadiyah community in the past 5 years.115 Forms of violence suffered by Ahmadiyah women arising from these attacks and in social life include rape, threat of rape, sexual harassment, and sexual-related intimidation.116 The operation of the 2008 Joint Declaration, together with the implementation of Law No. 1/PNPS/1965 on the Prevention, Abuse and/or Desecration of Religion, has contributed to fostering discrimination and

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105 Ibid, 79 – 86; See also Komnas Perempuan, 2009 Annual Note, 26. Please note that all of the said regencies and municipalities are located in Sumatera and Java islands.
106 Komnas Perempuan, 2010 Note, 18.
107 Komnas Perempuan, 2011 Note., 29.
110 Ibid, 22.
111 Ibid.
113 Komnas Perempuan, 2010 Note, 17.
114 Ibid, 20
115 Ibid.
116 Ibid, 21; See also NGO Coalition for Women and Children Rights (NCWCR), Universal Periodic Review on Indonesia: Women and Children Issues (2011 Shadow Report I – UPR), 2011, para. 15; See also UN OHCHR, 2012 Summary of Stakeholders’ Reports, para. 29.
violence against women and children coming from a religious sect outside the six acknowledged religions in Indonesia. Women and children coming from these “unrecognised” religious groups are vulnerable to further State violence such as the deprivation of their right to get ID card, deprivation of the right of children to get a birth certificate, deprivation of the right to get a marriage certificate if women decide to get married with men from “unrecognised” religious groups, etc.

Community-based Violence

Komnas Perempuan noted that community-based violence against women is prevalent. In 2010, Komnas Perempuan and its partner institutions recorded 5,187 cases of community-based violence against women, in which, 2,937 cases were cases of sexual violence. The number shows a significant increase from Komnas Perempuan’s 2010 report, which documented 3,530 cases of community-based violence against women with 1,781 cases involving sexual violence. The types of violence include sexual violence, psychological and physical violence, trafficking, violence against migrant workers, and kidnapping.

<table>
<thead>
<tr>
<th>Type of Violence</th>
<th>No. Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Abduction of girls</td>
<td>55</td>
</tr>
<tr>
<td>Migrant Workers</td>
<td>105</td>
</tr>
<tr>
<td>Trafficking</td>
<td>289</td>
</tr>
<tr>
<td>Psychological violence (including threats)</td>
<td>267</td>
</tr>
<tr>
<td>Physical violence (including murder and grave bodily harm)</td>
<td>1,408</td>
</tr>
<tr>
<td>Sexual violence (including rape, attempted rape, and harassment)</td>
<td>2,937</td>
</tr>
</tbody>
</table>

Table 5 – Komnas Perempuan 2011’s Data on Community Based Violence

According to Komnas Perempuan, occurrences of sexual violence are more frequent in Banten Province, which is located between Jakarta and West Java provinces, compared to the other 32 provinces. The reports recorded by Komnas Perempuan’s partner institutions in Banten show that there are 519 cases of sexual violence in Banten alone.

Apart from the report presented by Komnas Perempuan, the Study believes that the issue of harmful traditional practices on women should also be considered as community-based violence. The 2011 IPR CEDAW states that the practice of female circumcision/female genital mutilation (FGM) is prevalent in Indonesia. According to the report, there is even a group that supports the practice of FGM by interpreting a certain hadith as obligating FGM as it is for male. However, it is very unfortunate that there is no available data on the number of FGM practices over the years.

Komnas Perempuan concludes that the practice of FGM is a form of violence against women as well as reflecting degrading and discriminatory treatment toward women. The NGO Coalition for Women and Children Rights (NCWCR) added in its Shadow Report to Indonesian UPR for the 13th Session of the UPR that the practice of FGM is somewhat condoned at national policy level through the adoption of the Ministerial Regulation No. 1636/MENKES/PER/X/2010 on Female Circumcision, which stipulates the procedure to be followed by medical personnel in performing FGM. CEDAW Committee truly considers this as a setback since the adoption of this Ministerial Regulation has undermined the 2006 Circular issued by the Director...
General of Medical Service on the banning of FGM.\textsuperscript{129}

\textbf{ii. Prevalence of Violence against Children}

The 2008 Indonesian UPR and the 2007 Combined Third and Fourth Periodic Report to CRC Committee (2007 IPR-CRC)\textsuperscript{130} identified several circumstances/issues related to children where violence is prevalent. These circumstances include: ill treatment and violence against children committed by parents or other family members, including corporal punishment; child/early marriages; violence against child labour; and violence against children in conflict with the law. Another prevalent circumstance identified by UN Documentations and Komnas Perempuan is violence against children in conflict areas.

\textbf{iii. Treatment and Violence at Home including Corporal Punishment}

In the 2008 Indonesian UPR the GoI indicated that ill treatment and violence by parent(s) against their children is prevalent in Indonesia.\textsuperscript{131} Furthermore, the 2007 IPR-CRC also acknowledged the challenge posed by the practice of applying corporal punishment to children at home and at school as a way to impose discipline.\textsuperscript{132}

Both CRC and the Global Initiative to End all Corporal Punishment of Children (GIEP) indicated that corporal punishment in Indonesia is still lawful at home and there is no explicit prohibition of corporal punishment at schools.\textsuperscript{133} The Special Rapporteur for Torture indicated that children in Indonesia are at high risk for corporal punishment and ill treatment in their families, schools, and detentions.\textsuperscript{134} This condition is exacerbated by the adoption of regional regulations that tolerate corporal punishment on children, for example, through the provisions of the Regional Regulation in Aceh (Qanun) on the implementation of Sharia Law, which inflicts public flogging on anyone who violates Sharia Law, including people under the age of 18.\textsuperscript{135}

According to the data provided by Ministry of Women Empowerment (MOWE), among 1,000 children in Indonesia, 30 children have a higher probability of experiencing violence.\textsuperscript{136} A 2006 survey found 2.81 million incidents of violence against children and the ratio of boys and girls victims of violence is 3.1% to 2.9% of the total population of children.\textsuperscript{137} MOWE indicates that 61.4% of the perpetrators are the parents and 3.8% are consisted of other family members.\textsuperscript{138} MOWE also highlights the higher probability of violence against children at home to happen in rural areas (3.16%) compared to big cities (2.81%). Types of violence against children perpetrated by parents and other family members include: physical abuse, verbal insult, sexual violence, and neglect.\textsuperscript{139} In 2008, Plan International conducted a survey on 1,500 students in three major cities in Indonesia where 67% of those students stated that they experienced abuse at school perpetrated by peers and teachers.\textsuperscript{140}

Another study conducted in 2007 by the Ministry of Social Affairs, Save the Children, and UNICEF found that physical force, humiliating and degrading treatment

\textsuperscript{129} CEDAW Committee, 2012 CO-CEDAW, para. 21.


\textsuperscript{131} GoI, 2008 Indonesian UPR, para. 25. The UPR did not provide further data to support the prevalent of ill-treatment and violence committed by parent(s) to their children.

\textsuperscript{132} GoI, 2007 IPR-CRC, para. 75.

\textsuperscript{133} UN OHCHR, 2008 Summary of Stakeholders’ Reports, para. 13; and UN OHCHR, 2008 Summary of UN Documentations, para. 21.

\textsuperscript{134} UN OHCHR, 2012 Compilation of UN Reports, para. 21.

\textsuperscript{135} NCWCR, 2011 Shadow Report I – UPR, para. 12.


\textsuperscript{137} MOWE, Child Victims of Violence, 1. The figures presented by MOWE are based on Survei Kekerasan terhadap Perempuan dan Anak Tahun 2006 (2006 Survey on Violence against Women and Children) conducted by Statistic Indonesia and MOWE.

\textsuperscript{138} Ibid.

\textsuperscript{139} Ibid, 2.

are used as ways to educate and discipline children.\textsuperscript{141} The study also reveals that, especially in some Islam-based childcare institutions, additional punishments are given to children who did not manage to carry out religious practices correctly.\textsuperscript{142} These additional punishments usually consisted of extra chores such as cutting the grass, cleaning toilets, and heaving water.\textsuperscript{143} Slapping, kicking, and stomach pinching are some of the forms of punishment that children suffered in these institutions for violations such as late for prayers, breaking curfew, eating while standing, and leaving the premise without permission.\textsuperscript{144}

\textit{Early Marriage: a Form of Violence}

The GoI viewed early marriages as a form of violence against children.\textsuperscript{145} According to the data provided by the National population and Family Planning Agency (BKKBN), in 2009, early marriages (of girls under the age of 16) in Indonesia reached 21.75\% of all marriages;\textsuperscript{146} in rural areas, it has reached 47.79\%. Plan Indonesia noted that out of 2.049 million marriages, 34.5\% are marriages of children between the ages of 13 – 16. The 2010 Census showed that the average age of marriage in Indonesia is 15.\textsuperscript{147} The Indonesian Planned Parenthood Association suggested that restrictive abortion law coupled with stigma associated to unmarried pregnant girls forced unmarried underage women/girls who become pregnant into marriage.\textsuperscript{148}

The Study notes differing percentages of early marriage produced by the Commission on the Protection of Children (KPAI), Indonesia’s NHRI responsible for the protection of children’s rights, and the percentage presented by AI. KPAI’s study, which reveals that in 2009 there were 690,000 early marriages (less than 18 years of age), accounting for 34\% of all marriages.\textsuperscript{149} Meanwhile, AI’s study on Reproductive Health in Indonesia reveals that many women married when they were really young, sometimes as young as 13 (or younger).\textsuperscript{150} AI refers to the finding of the UN concerning the risks of early marriage and early pregnancy:

Early Marriage leading to early pregnancy can greatly increase girls’ risk of dying in pregnancy and childbirth. Girls aged 10 – 14 are five times more likely to die in pregnancy or childbirth than women in their twenties. Girls aged 15 – 19 are twice as likely to die.\textsuperscript{151}

To better illustrate the prevalence of early marriage in Indonesia, in 2008, a Moslem cleric took a 12 years old girl as his second wife and told the public that he planned to marry another two girls aged nine and seven.\textsuperscript{152} He claimed that such marriage is not prohibited under Islamic teachings and that the girls’ parents, who came from a poor economic background, had given their permission.\textsuperscript{153} The 2005 IPR-CEDAW indicates that such practices are common, especially in rural villages and urban slums where poverty prevails.\textsuperscript{154}

This phenomenon begs the question whether the notion of early marriage in Indonesia also indicates the prevalence of forced marriage for underage women or whether it is only an issue of the usage of different terms by different parties. For instance, the NGO Coalition for Women and Children Rights (NCWCR) in its 2011 shadow report to the HRC uses the term of forced child marriage instead of early marriage.\textsuperscript{155} NCWCR later on elaborates that apart from establishing a low minimum age to marry for a girl (16 years old), Indonesia’s Marital Law still makes it possible for girls below 16 to marry with the permission of their parents.\textsuperscript{156} In the understanding of the Study, this exemption highlights the absence of

\begin{flushleft}
\textsuperscript{141} Ministry of Social Affairs, Save the Children, and UNICEF, Someone that Matters: The Quality of Care in Childcare Institutions in Indonesia, Jakarta: December 2007, 169.

\textsuperscript{142} \textit{Ibid.}

\textsuperscript{143} \textit{Ibid.}, 170.

\textsuperscript{144} \textit{Ibid.}

\textsuperscript{145} GoI, 2008 Indonesian UPR, para. 30.

\textsuperscript{146} NCWCR, 2011 Shadow Report I – UPR, par. 9. It’s a slight decrease compared to the percentage of early marriages in 2004, which was 25\% (See 2008 Indonesian UPR, para. 31).

\textsuperscript{147} UN OHCHR, 2012 Summary of Stakeholders’ Reports, para. 30.

\textsuperscript{148} \textit{Ibid.}

\textsuperscript{149} Amnesty International (AI), Left without a Choice: Barriers to Reproductive Health in Indonesia, November 2010, 15.

\textsuperscript{150} \textit{Ibid.}

\textsuperscript{151} \textit{Ibid.}, 16.


\textsuperscript{153} \textit{Ibid.}

\textsuperscript{154} GoI, 2005 IPR-CEDAW, para. 163.

\textsuperscript{155} NCWCR, 2011 Shadow Report I – UPR, para. 9.

\textsuperscript{156} \textit{Ibid.}
\end{flushleft}
consent in child marriage and increases the likelihood of forced marriage of girl children. Moreover, in line with the Study’s assessment, historically, when Indonesia was still under the occupation of the Netherlands, early marriage was closely associated with forced marriage where the consent of the bride was usually absent.\textsuperscript{157}

Violence against Children in Conflict with the Law

Another prevalence of violence implied by the 2008 Indonesian UPR and 2007 IPR-CRC is violence against children in conflict with the law. CRC expressed its concern on the low minimum age of criminal responsibility (8 years old) and over the fact that alleged child offenders are still detained in the same place as adults.\textsuperscript{158} KPAI in 2009 stated that at least 6,000 children go into Indonesia’s criminal legal system every year.\textsuperscript{159} KPAI indicated that members of the police force have committed violence against these children by not implementing a diversion approach and directly criminalising these children.\textsuperscript{160} Moreover, a study on Juvenile Justice in Indonesia (2003 JJI), conducted by UNICEF in 2003, shows that the police frequently used violence against alleged child offenders, especially during the arrest and interrogation.\textsuperscript{161} Children are also frequently held in the same cell as adults when they served detention.\textsuperscript{162} On this note, UNICEF observes that “detention of children in facilities designated for adults exposes these children to risk of violence, abuse, harmful influence, and other forms of violations of their rights.”\textsuperscript{163} With regard to the role of prosecutors, 2003 JJI indicates that prosecutors tend to accede to police investigations and opt to send the case to court instead of implementing diversion mechanisms.\textsuperscript{164}

A recent case shows that the police’s treatment of children in detention has not improved. In December 2011, two children aged 17 and 14 were found dead while they were in detention at a local police precinct in West Sumatera.\textsuperscript{165} The police stated that the two children committed suicide; however, further investigation showed signs of abuse, such as bruises on the victims’ body, and a gunshot wound on one of the victims’ body.\textsuperscript{166} In February 2012, Indonesia’s National Chief of Police acknowledged that police personnel had committed torture against the two boys. He insisted, however, that the act did not cause those children’s death.\textsuperscript{167} Due to high public pressure on the police to investigate this case, the West Sumatera Regional Police Force has launched a formal investigation and established four police personnel as suspects of torture committed against the two children.\textsuperscript{168}

In relation to the practice of the Juvenile Court, the Children Human Rights Foundation (YPHAI) indicated that at least 4,000 children were brought to court for petty offences and, most of the time, these children were tried without the presence of legal counsel. Ninety per cent (90%) of these children had to serve time in prison.\textsuperscript{169} Meanwhile the data provided by MOWE revealed that, in 2008, there were 4,301 children held in penitentiaries and detention centres, consisting of 3,999 boys and 302 girls.\textsuperscript{170} A recent data from the Directorate of Corrections Ministry of Law and Human Rights in July 2010 stated there are 6,273 children in Detention and Correction Centres all over Indonesia. There are 2,357 children in Juvenile Correction Centres and the rest of them (3,916) are placed in Adult Correction Centres.\textsuperscript{171}

\textsuperscript{157} Susan Blackburn, Women and the State in Modern Indonesia, New York: Cambridge University Press. 2004, 76.
\textsuperscript{158} UN HRC, 2008 Compilation of UN Documentation, para. 26.
\textsuperscript{159} KPAI, 2009 End Year Note, 30 December 2009.
\textsuperscript{160} Ibid.
\textsuperscript{162} Ibid.
\textsuperscript{163} Ibid.
\textsuperscript{164} Ibid.
\textsuperscript{165} BBC Indonesia, Komnas HAM Desak Penyidikan Pidana Kasus Sijunjung, 25 January 2012. <www.bbc.co.uk>, accessed on 20 February 2012.
\textsuperscript{166} Step Vaessen, Indonesian Police Accused over Brothers Deaths, 17 February 2012, <www.aljazeera.com>, accessed on 20 February 2012.
\textsuperscript{167} Tempo, Pengakuan Kepala Polri, 3 February 2012, <www.tempo.co>, accessed on 20 February 2012.
\textsuperscript{170} MOWE, Child in Conflict with the Law, Undated, <www.menegpp.go.id>, accessed on 29 October 2011.
\textsuperscript{171} KPAI, Pemantauan Dan Penelaahan Terhadap Penanganan Anak Pelaku Tindak Pidana, 2011.
Violence against Child Labour and Street Children

The reports acknowledge the prevalence of violence against child labour in Indonesia\(^{173}\) and some of the examples put forward include violence against girl-child domestic workers and street children.\(^{174}\) With regard to violence against girl-child domestic workers, the UN Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography received reports indicating that, in 2006, over 680,000 domestic workers in Indonesia were under the age of 18 and more than 90% were girls.\(^{175}\) Most of them started working at a very young age of 12. Meanwhile, the ILO indicated that almost 35% of 2.6 million domestic workers in Indonesia are below the age of 18 and more than 25% of domestic workers are below the age of 15.\(^ {176}\) These children are often made to work 14-18 hours a day, seven days a week. Some of them also suffered from physical and sexual abuse and were then prevented from accessing essential medical care.\(^ {177}\)

The CRC is also concerned about the high number of children who are living and working on the street who fall victim to violence, arbitrary arrest and detention during sweeping operations and raids conducted by police force or municipal authorities.\(^ {178}\) In 2007, the Ministry of Social Welfare recorded approximately 104,497 children living on the street in Indonesia and only 14,451 children were recorded to have received social care from designated shelters.\(^ {179}\) In its recent UPR report, the GoI stated that, in 2011, there were approximately 230,000 street children in Indonesia.\(^ {180}\)

In the 2008 Shadow Report to the CAT Committee, the Indonesian Working Group on the Advocacy against Torture (WGAT) reported that street children also experience abuses in the hands of law enforcers, especially during raids.\(^ {181}\) The abuse includes arbitrary arrest and detention. The Report indicates that, most of the time, law enforcers did not treat them as required under the Child Protection Law.\(^ {182}\) The abuse continues when street children are being transferred to rehabilitation centres, where they often experience sexual harassment and are forced to use drugs.\(^ {183}\) A survey in 2007 conducted by the Jakarta Centre for Street Children listed types of violence used by law enforcers against street children to include hitting, kicking, burning with cigarette, blackmailing, arbitrary detention, harassing sexually, and shaving their hair.\(^ {184}\)

Violence against Children in Conflict Areas

In conflict areas such as Papua, violence against children perpetrated both by members of the military/police force and resistance groups still takes place. Even though GoI reports to HRC and the treaty body committees did not indicate this, UN documentations and stakeholders’ reports indicate the prevalence of violence against children in conflict area. UN documentations pointed out the use of excessive force by law enforcement officials against school children in 2006\(^ {185}\) and Komnas Perempuan reported that refugee children in Papua live in constant fear of being harassed by law enforcers, since they were suspected as children of members of the Free Papua Organisation (OPM).\(^ {186}\) Based on the research that Komnas Perempuan conducted in two refugee communities from Yambi and Tingginambut districts, Komnas Perempuan revealed that these refugees have never received assistance from the GoI due to their status as “suspected OPM/OPM accomplices”.\(^ {187}\)

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\(^{173}\) Ibid, para. 15
\(^{174}\) UN OHCHR, 008 Compilation of UN Documentations, para. 17.
\(^{176}\) ILO, Recognising Domestic Worker, 4.
\(^{177}\) Ibid.
\(^{178}\) UN OHCHR, 2008 Compilation of UN Documentations, para. 21.
\(^{180}\) GoI, 2012 Indonesian UPR, para. 104.

\(^{181}\) Indonesian Working group on the Advocacy against Torture (WGAT), Shadow Report: Prepared for the UN Committee against Torture in Connection to Its Review of Indonesia’s Second Periodic Report under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2008 SR-CAT), 18.
\(^{182}\) Ibid, 48.
\(^{183}\) Ibid, 65.
\(^{184}\) Ibid, 72.
\(^{185}\) UN OHCHR, 2008 Compilation of UN Documentation, para. 13.
\(^{186}\) Komnas Perempuan, 2010 Note, 43 – 45.
\(^{187}\) Ibid, 44.
b. Root Causes of Violence and Aggravating Practices

i. Definition of Violence

There is no specific definition of violence against women and children under Indonesian legislation; however, Law No. 23 of 2004 on the Elimination of Domestic Violence (KDRT Law) defines domestic violence as:

Any act against a person especially a woman, which cause misery or physical, sexual, psychological suffering, and/or domestic neglect including threats to perform acts, coercion, or deprivation of liberty against the law within the domestic sphere.\(^\text{188}\)

The Law offers protection to victims from physical violence, psychological violence, sexual violence, and domestic/household neglect.\(^\text{189}\) In the case of violence against children, Law No. 23 of 2002 on Child Protection (Child Protection Law) protects children against discrimination; exploitation (economically and sexually); neglect; cruelty, violence, and abuse; injustice; and other ill treatment.\(^\text{190}\) The Child Protection Law goes on to provide protection to children against torture or inhumane punishment.\(^\text{191}\) The commission of such acts is punishable by the State.\(^\text{192}\) Especially in the case of violence against children, if the act of violence was committed by parents, guardian, or caregiver, then their status shall constitute an aggravating factor, which will entail harsher penalties.\(^\text{193}\)

ii. Root Causes

The examined reports mainly brought up qualitative analysis in discussing root causes of violence against women and children. It is very unfortunate that quantitative analysis on the root causes of violence against women and children does not show up in any of the examined reports’ discussion.

The 2008 Indonesian UPR and the Periodic Reports to CEDAW and CRC Committees do not specifically address patriarchal culture and religious interpretation as root causes of violence against women and children in Indonesia. However, in the 2007 CC-CEDAW, the CEDAW Committee states that:

The Committee is concerned about the persistence of entrenched patriarchal attitudes and stereotypes about the roles and responsibilities of women and men in the family and society that discriminate against women. Such stereotypes and attitudes constitute serious obstacles to women's enjoyment of their human rights and the implementation of the Convention and are the root cause of the disadvantaged position of women in a number of areas, including in the labour market and in political and public life.\(^\text{194}\)

Moreover, some notable reports suggest that patriarchal culture and religious interpretation serve as root causes in marginalising women and children and rendering them vulnerable to violence.\(^\text{195}\) In 2012, the CEDAW Committee gave a comprehensive elaboration on possible root causes that might contribute to violence against women. It stated that deep-rooted stereotypes on the roles, responsibilities, and identities of women in family and society have contributed to the prevalence of violence against women in Indonesia, including the occurrence of harmful traditional practices against women and girls such as early marriage, FGM, and polygamy.\(^\text{196}\) CEDAW Committee notes that stereotyping of women flourishes due to the persistence of cultural norms and practices.

\(^{188}\) Law No. 23 of 2004 on Elimination of Domestic Violence (KDRT Law), State Gazette 2004:95. 22 September 2004, art. 1(1).

\(^{189}\) Ibid, art. 5 – 9.

\(^{190}\) Child Protection Law, art. 13(1).

\(^{191}\) Ibid, art. 16(1).

\(^{192}\) Ibid, art. 80 – 82; and KDRT Law, art. 44 – 49.

\(^{193}\) Child Protection Law, art. 13(2).

\(^{194}\) CEDAW Committee, 2007 CC-CEDAW, para. 16.


\(^{196}\) CEDAW Committee, 2012 CO-CEDAW, para. 23.
The Global Campaign to Stop the Killing and Stoning of Women (GCSKSW) in its 2010 report reveals that “the common denominator in the use of ‘culture’ to justify women’s subordinate status, and violence against them, is the instrumentalisation of sacred concepts and human rights instruments to maintain patriarchal gender relations.” The report added that “gender-based violence is a continuum; violence that starts at home is spread and connected to violence permeating the street, community, country, and across continent... one cannot discount the role of the community or state in violence that occurs in the home.”

Even at the policy-making level in Indonesia, the influence of patriarchal culture is prevalent. GCSKSW quoted a study on Marital Violence in Bugis Society on how culture and religion justify women’s subordinate position in religious and State ideology:

> Women’s subordinate position in religious and state ideology is legitimised by invoking the doctrine of *kodrat* (referring to women’s ‘nature’ or destiny) to naturalise gender inequality. The colloquialism *ikut suami* (‘follow the husband’) is frequently invoked in popular interpretations of state and religious rhetoric that seek to instruct women on appropriate gender roles and relations, whilst attempting to normalize women’s subservience.

The justification later on leads to discriminative policies in Indonesia such as the application of cruel punishment to women in certain regions for their allegedly improper behaviour against religious teachings. An example of this phenomenon of cruel and inhuman punishment imposed on women is demonstrated in Aceh’s Regional Regulation (Qanun) No. 14 of 2003 on Immoral Behaviour, which stipulates that the punishment for all acts that lead to *zina* (extra marital sexual relation) is public flogging.

In an Expert Group Meeting conducted by the UN Economic and Social Commission for Asia and the Pacific (UN ESCAP) in 2007, Ms. Zaitunah Subhan, an Islamic scholar and an Expert Adviser to MOWE, stated that: “Numerous violations relating to violence against women have occurred as the result of misinterpretation of Islamic teachings due to incomplete readings of religious texts and explanation of such violence that are influenced by patriarchal culture.” She pointed out several common examples of misinterpretation of the Qur’an that tightly related to the prevalence of patriarchal culture in Indonesia, such as the common misinterpretation of the *nusyuz* verse in the Qur’an as a base to arbitrarily justify wife beating; the practice of polygamy; and discriminative law on inheritance.

Still, in relation to patriarchal culture and religious interpretation as root causes of violence, in the case of causes of violence against children, the Indonesian Development Planning Agency (Bappenas) identified the prevalence of traditional values that justify parents to treat their children as property that can be treated in any way they see fit. Additionally, in the report to the CRC Commission, GoI underlined that one reason for the higher number of abuse against boys compared to girls is the prevalence of local culture and gender stereotyping that “male children should be able to stand a test.”

In the 2008 Indonesian UPR, the GoI, by acknowledging early marriage as a form of violence against children, indicates discrimination as one of the triggers of violence. The GoI explanation refers to the application of discriminative law that leaves children, especially girls, prone to fall victims to early marriage. Moreover, the 2008 Indonesian UPR also indicates that the implementation of the Child Protection Law, especially on children in conflict with the law, is still “hampered by a lack of understanding among law enforcement officers (judges and attorneys), who have been accustomed to...
using the Indonesian Criminal Code rather than the new Law on Child Protection.”

In relation to the treatment of children in conflict with the law, the 2008 report submitted by UNICEF (2008 UNICEF-UPR) to the HRC for the 2008 Indonesian UPR indicates that the problem of corruption occurs as one of the reasons that hamper protection of children in conflict with the law. The report indicates that incidences of bribery with regard to out-of-court settlement are common.

In 2010, Arist Merdeka Sirait, Commissioner of National Commission on Child Protection (Komnas Anak), stated that the data collected and received by Komnas Anak shows poverty as one of the root causes of violence against children, especially domestic violence perpetrated by parents and other family members. KPAI also voiced the same concern, noting that “uncontrolled modernisation will always alleviate poverty with all of its characters such as high number of criminality, prostitution, and life pressure... this will eventually lead to violence against children in all sort of forms such as neglect, child labour, child trafficking, child prostitution, and physical violence that can cause sufferings and even death.”

c. Impact of Violence

The 2008 Indonesia UPR and Periodic Reports to CEDAW and CRC Committees do not provide information on the impact of violence against women and children. According to the 2006 Violence against Women and Children Survey (2006 VWCS), in 2006, there were three million cases of violence, of which 2.27 million women were victims. The 2006 VWCS indicated that 69.5% of these women suffered trauma, 10% experienced material loss, 9% suffered from depression and stress, and 4.6% bore physical injuries and it found that the occurrence of trauma on victims in rural areas is slightly higher (by 3.3%) than on victims in urban areas. Meanwhile, the Indonesian Ministry of Health (IMH) indicates that 10%-12% of children in Indonesia who fall victim to violence suffered physical and mental disorders.

A study conducted by Komnas Perempuan in Jakarta and Yogyakarta in 2005 confirmed another set of effects of violence against 294 women that consist of permanent physical impairment, unwanted pregnancy that leads to unsafe abortion, miscarriage, still born, etc.; severe trauma; and suicide. The study cited and confirmed WHO's finding that women who fall victims to violence tended to visit the emergency unit frequently. However, in case of pregnant victims, they did not go to check on their pregnancy more frequently.

Komnas Perempuan also points out the impact of religious-based violence against women and children. In a study conducted by Komnas Perempuan on the treatment of women and children of the Ahmadiyah group, Komnas Perempuan concluded that religious-based violence directed against Ahmadiyah group by the surrounding community has a tremendous impact on Ahmadiyah’s women and children, such as health deterioration and mental disorder; loss of livelihood; loss of the right to start a family; loss of citizenship status. Meanwhile, in the case of children, Komnas Perempuan identified reproduction of hate among Ahmadiyah’s children and other children. This leads to the development of fear and physical injuries to Ahmadiyah children, as well as to severe trauma to children who experienced or witnessed violence perpetrated against

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209 Ibid, 12.
211 Ibid.
212 Please note that there are two commissions on child protection, KPAI and Komnas Anak. KPAI is the national commission established by the Government meanwhile Komnas Anak is a local NGO on child protection.
their parents or property because of their beliefs.222

2 De Jure State Responses

a. Bases of State Responsibility

i. International Commitments

Over the years, Indonesia had adopted or signed and/or ratified/acceded to major international human rights treaties, including those that oblige Indonesia to provide women and children protection against violence. These were reflected in the 2008 Indonesian UPR, Indonesia’s Periodic Reports to CEDAW and CRC Committees, the feedback reports from various stakeholders, as well as the HRC’s and the treaty bodies’ Concluding Remarks.

<table>
<thead>
<tr>
<th>No</th>
<th>International Instrument</th>
<th>Date of Adoption (Ad), or Signature (S), Ratification (R), or Accession (A)</th>
<th>Instrument of Ratification/Accession</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.</td>
<td>1966 International Covenant on Civil and Political Rights (ICCPR)</td>
<td>23 February 2006 (A)</td>
<td>Law No. 12 of 2005 on the Ratification of the International Covenant on Civil and Political Rights</td>
</tr>
<tr>
<td>7.</td>
<td>1984 Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT)</td>
<td>28 October 1998 (R)</td>
<td>Law No. 5 of 1998 on the Ratification of Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment</td>
</tr>
<tr>
<td>8.</td>
<td>1990 International Convention on the Protection of all Migrant Workers and Members of Their Families (Migrant Workers Convention)</td>
<td>22 September 2004 (S)</td>
<td>—</td>
</tr>
</tbody>
</table>

222 Ibid, 5-6.

223 Normally in Indonesia’s treaty practice, a ratification of an international treaty is always done by enacting a law. The enactment of a Presidential Decree as an instrument ratification is considered as providing insufficient legal basis for the applicability of the Convention in Indonesia. This concern was also raised in Indonesia’s Second Periodic Report in 2002; GoI, 2002 IPR-CRC, para. 17.
<table>
<thead>
<tr>
<th>No</th>
<th>International Instrument</th>
<th>Date of Adoption (Ad), or Signature (S), Ratification (R), or Accession (A)</th>
<th>Instrument of Ratification/Accession</th>
</tr>
</thead>
<tbody>
<tr>
<td>9</td>
<td>2002 A World Fit for Children&lt;sup&gt;224&lt;/sup&gt;</td>
<td>11 October 2002 (Ad)</td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>1996 Declaration and Agenda for Action of the 1&lt;sup&gt;st&lt;/sup&gt; World Congress against Commercial Sexual Exploitation of Children (Stockholm Declaration)&lt;sup&gt;225&lt;/sup&gt;</td>
<td>31 August 1996 (Ad)</td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>1995 Beijing Declaration on platform for Action&lt;sup&gt;226&lt;/sup&gt;</td>
<td>15 September 1995 (Ad)</td>
<td></td>
</tr>
<tr>
<td>12</td>
<td>1993 Declaration on the Elimination of Violence against Women&lt;sup&gt;227&lt;/sup&gt;</td>
<td>20 December 1993 (Ad)</td>
<td></td>
</tr>
<tr>
<td>13</td>
<td>1990 United Nations Rules for the Protection of Juveniles Deprived of their Liberty (the Riyadh Guidelines)&lt;sup&gt;228&lt;/sup&gt;</td>
<td>14 December 1990 (Ad)</td>
<td></td>
</tr>
</tbody>
</table>

Table 6 – International Human Rights Treaties signed/ratified/acceded by Indonesia related to protection of women and children against violence

With regard to its international obligations as described in Table 6, the HRC in the 2008 Compilation of UN Documentations highlighted the reservations that Indonesia made to the above conventions, consisting of reservations/declarations of understanding on Articles 1, 14, 16, 17, 21, 22, and 29 of CRC; Article 29(1) of CEDAW on dispute settlement mechanism; and Common Article 1 of ICCPR and ICESCR on the right to self-determination.<sup>229</sup> In 2007, IPR-CRC, the GoI stated that Indonesia has withdrawn its declarations of understanding on Articles 1, 14, 16, 17, 21, 22, and 29 of CRC on 11 January 2005.<sup>230</sup>

Responding to Indonesia’s periodic reports, the HRC and UN Treaty Bodies gave their recommendations and suggestions, which this Study deems as relevant to the prevalence of violence against women in Indonesia at present (see section B.1.a above), to better implement Indonesia’s international obligations. Some of the recommendations made in the various documentation prepared by the OHCHR and UN Treaty Bodies as reflected in, for instance, the reports of the working groups on UPR and concluding comments of CEDAW and CRC Committees are as follows:

1. To complete the process of ratifying the 2000 Optional Protocol on Children in Armed Conflict to realise the commitment Indonesia has made when it signed the Optional Protocol in 2001.<sup>231</sup>
2. To incorporate a definition of discrimination into its constitution or national legislation that conforms to Article 1 of CEDAW and to ensure the availability of mechanisms and remedies to women whose rights have been violated.<sup>232</sup>
3. To take down provisions in regional regulations which are discriminatory toward women, both at the provincial and regency/municipality levels, especially those identified in the annual report of Komnas Perempuan.<sup>233</sup> CEDAW Committee highlights that decentralisation and the power of the regional governments to issue regional regulations is

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<sup>226</sup> GoI, 2002 IPR-CRC, para. 527.
<sup>229</sup> UN HRC, 2008 Compilation of UN Documentations, 2.
<sup>230</sup> GoI, 2007 IPR-CRC, para. 4.
<sup>231</sup> CEDAW Committee, 2007 CC-CEDAW, para. 6; UN HRC, 2008 RWG-UPR, para. 77; and UN HRC, 2012 RWG-UPR, para. 108.1.
<sup>233</sup> CEDAW Committee, 2012 CO-CEDAW, para. 16 and 18(b).
shall not reduce the obligation of the GoI as the central government to fulfill Indonesia’s obligation under its international commitments.\textsuperscript{234}

4. In general, CEDAW Committee recommends Indonesia to repeal, within a clear time frame, any discriminatory laws against women at national level, especially those identified by Komnas Perempuan and the Ministry of Law and Human Rights.\textsuperscript{235}

5. Specifically in relation to the issue of discriminatory provision on the minimum age of marriage, CEDAW Committee recommends Indonesia to amend its Marital Law in accordance to its obligation under CEDAW.\textsuperscript{236} In 2012, noting the absence of any response to this recommendation, the Committee reiterates this recommendation by stating that the GoI should “...repeal, in particular, discriminatory provisions of Marriage Law No. 1/1974.”\textsuperscript{237} Additionally, the Committee points out that, in order for the Marital law to be in compliance with CEDAW, it has to ensure, in the revised version, the prohibition of polygamy; exclusion of the different roles of women and men in the household; provision for protection of women who decide to undertake inter-faith marriage; and inclusion of the option of civil marriages to all women.\textsuperscript{238}

6. With regard to the prevalence of violence against women in conflict areas, CEDAW Committee urges the GoI to provide full and effective reparation encompassing restitution, compensation, rehabilitation, satisfaction, and guarantee of non-repetition; to provide medical and psychological support to women who were victims of violence during conflicts; and to ensure the security of internally displaced women.\textsuperscript{239}

7. In relation to the issue of violence against women domestic workers in Indonesia, the Committee recommends Indonesia to enact comprehensive laws and establish procedures to monitor and safeguard the rights of women domestic workers and adequately prosecute and punish abusive employers.\textsuperscript{240} Additionally, the Working Group on UPR and CEDAW Committee also recommends Indonesia to ratify ILO Convention No. 189 on Domestic Workers.\textsuperscript{241}

8. CEDAW Committee urges the GoI to enhance women’s awareness of their rights under CEDAW and to provide trainings to judges and law enforcers on women’s rights to build a legal culture that is supportive of women’s equality.\textsuperscript{242}

9. In relation to violence, including sexual violence, and discrimination against women coming from minority or religious or indigenous groups, CEDAW Committee recommends the GoI to implement effective measures to eliminate violence against these women.\textsuperscript{243}

10. In its 2002 IPR-CRC, the GoI committed to ratify the Additional Protocols to the Geneva Conventions. Moreover, it promised to establish a national mechanism to provide protection, monitoring, and physical and psychological recovery and social reintegration of children in situations of armed conflict within the next five years.\textsuperscript{244} However, until now, Indonesia has yet to ratify the Additional Protocols to the Geneva Conventions.

11. Regarding the minimum age of criminal responsibility, CAT Committee recommended Indonesia to increase the age of criminal responsibility as soon as possible and abolish all forms of corporal punishment of children.\textsuperscript{245} CAT Committee added that Indonesia should take all necessary measures to ensure the proper functioning of juvenile justice system.\textsuperscript{246}

12. Considering that CRC was ratified by Indonesia through an Act of Government, \textit{i.e.} Presidential Decree, CRC Committee suggests that Indonesia consider supporting Indonesia’s ratification of CRC by the adoption of an Act of Parliament.\textsuperscript{247}

13. Indonesia is encouraged to follow through on its intention to accede to several international law instruments pertaining to the protection of human rights, especially those related to protection against violence: 1) Rome Statute of the International Criminal Court; 2) the Optional Protocol to the

\textsuperscript{234} Ibid, para. 16.

\textsuperscript{235} Ibid, para. 18(a); See also GoI, 2011 IPR-CEDAW, para. 20.

\textsuperscript{236} CEDAW Committee, 2007 CC-CEDAW, para. 19.

\textsuperscript{237} CEDAW Committee, 2012 CO-CEDAW, para. 18(a).

\textsuperscript{238} Ibid, para. 48(b).

\textsuperscript{239} Ibid, para. 28.

\textsuperscript{240} CEDAW Committee, 2007 CC-CEDAW, para. 6; and UN HRC, 2008 RWG-UPR, para. 23.

\textsuperscript{241} UN HRC, 2012 RWG-UPR, para. 109.8; and CEDAW Committee, 2012 CO-CEDAW, para. 38(a).

\textsuperscript{242} CEDAW Committee, 2012 CO-CEDAW, para. 12.

\textsuperscript{243} Ibid, para. 46(b).

\textsuperscript{244} GoI, 2002 IPR-CRC, para. 443.

\textsuperscript{245} UN OHCHR, 2012 Compilation of UN Reports, para. 39.

\textsuperscript{246} Ibid.

\textsuperscript{247} CRC Committee, 2004 CO-CRC, para. 13 – 14.
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CRC on the Sale of Children, Child Prostitution, and Child Pornography; and 3) the Optional Protocol to CAT. Indonesia is also further encouraged to consider signing the International Convention on the Protection of all Persons from Enforced Disappearance.  

14. In 2011, the United Nations Country Team (UNCT) found out that there are more than 1,000 regional regulations that are unconstitutional and not in compliance with Indonesia’s international obligations related to the observance of human rights. Most of these regional regulations contain discriminatory provisions against women. UNCT recommended the GoI to amend discriminatory regional regulations that have direct or indirect impact on violations of women’s rights.

15. UNCT recommended the GoI to undertake a survey on violence against women in 2013.

16. UNCT also recommended that the GoI improve access to justice for the poor and marginalised groups and, adding to this, the CAT Committee recommended the GoI to provide an effective free legal aid system.

17. CAT Committee recommended Indonesia to undertake all necessary measures to eradicate the persistent practice of FGM as the practice has no health benefits and is a violation of women’s rights. On the same subject, CEDAW Committee urges Indonesia to remove Ministerial Regulation No. 1636/MENKES/PER/XI/2010 issued by the Minister of health allowing Female Circumcision and restore the 2006 Circular issued by the Director General of Medical Service on the banning of FGM. The Committee also urges the GoI to criminalise all forms of FGM.

18. Several members of the Working Group on UPR that scrutinised the GoI’s UPR Report, recommend the GoI to:

- Eliminate legal and political provisions that discriminate women and violate sexual and reproductive rights;
- Expressly prohibit through legislation violence against children at home, schools, penal institutions, and centres of alternative cares; and, all in all, to abolish all corporal punishment of children in all settings;
- Take all necessary measures to ensure the proper functioning of the juvenile justice system, e.g., by treating minors in a manner appropriate to their age;
- Ensure the inclusion of sexual and reproduction education in the curriculum of secondary schools as an effort to prevent early marriage and unwanted pregnancy;
- Ratify CRC Optional Protocol on Communication Procedures;
- Raise the minimum age of criminal responsibility to 16 years;

Komnas Perempuan highlights that, until now, Indonesia has not realized its commitments to ratify various international treaties pertinent to the protection of women’s rights, such as the 1998 Rome Statute of the International Criminal Court, 1999 OP-CEDAW, and the 1990 ICRMW. Komnas HAM also upholds this observation in its shadow report to UN HRC responding to the GoI report in the 13th UPR Session in 2012. Furthermore, Komnas Perempuan urged the GoI to follow up on CEDAW recommendations and recommendations of the Special Rapporteur on violence against women.

ii. Regional Commitments

Even though it is not mentioned in either of the reports that the GoI submitted to the HRC and other UN Treaty Bodies, apart from the international instruments listed

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248 UN HRC, 2008 RWG-UPR, para. 77.2; and UN HRC, 2012 RWG-UPR, para. 108.
249 UN OHCHR, 2012 Compilation of UN Documentations, para. 2.
250 Ibid, para. 13.
251 Ibid.
253 Ibid, para. 38.
254 Ibid, para. 25.
255 CEDAW Committee., 2012 CO-CEDAW, para. 22(a)
256 Ibid.
257 UN HRC, 2012 RWG-UPR, para. 108.66
258 Ibid, para. 108.75 and 109.28.
259 Ibid, para. 108.93.
260 Ibid, para. 108.124.
262 Ibid, para. 109.29.
263 Ibid, para. 11.
264 UN OHCHR, 2012 Summary of Stakeholders’ Reports. para. 1.
265 Ibid, para. 18.
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in Table 4, Indonesia also pledged its commitment in regional forums to protect women and children from violence and to advance their rights. Pertaining to this issue, the Study takes the initiative to list Indonesia’s commitments through the Association of Southeast Asian Nations (ASEAN).266

<table>
<thead>
<tr>
<th>No.</th>
<th>ASEAN Instruments</th>
<th>Date of Adoption</th>
<th>Adopting Authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.</td>
<td>2009 Terms of Reference of the ASEAN Commission for the Promotion and Protection of the Rights of Women and Children</td>
<td>22 October 2009</td>
<td>ASEAN Socio-Cultural Community Council</td>
</tr>
<tr>
<td>4.</td>
<td>2004 ASEAN Declaration against Trafficking in Persons Particularly Women and Children</td>
<td>29 November 2004</td>
<td>Heads of State/Government</td>
</tr>
<tr>
<td>5.</td>
<td>2004 ASEAN Declaration on the Elimination of Violence against Women in ASEAN Region</td>
<td>30 June 2004</td>
<td>Foreign Ministries</td>
</tr>
<tr>
<td>6.</td>
<td>2001 Declaration on the Commitments for Children in ASEAN</td>
<td>2 August 2001</td>
<td>Ministers Responsible for Social Welfare</td>
</tr>
<tr>
<td>7.</td>
<td>1993 Resolution on the ASEAN Plan of Action for Children</td>
<td>2 December 1993</td>
<td>Ministers Responsible for Social Welfare</td>
</tr>
<tr>
<td>8.</td>
<td>1988 Declaration of the Advancement of Women in the ASEAN Region</td>
<td>5 July 1988</td>
<td>Foreign Ministers</td>
</tr>
</tbody>
</table>

Table 7 – List of ASEAN Instruments on Protection of Women and Children

Unfortunately, to the best knowledge of the Study, none of the reports discussed the national implementation of these regional commitments and how they affect Indonesia’s policies and legislation regarding the protection of women and children.

b. National Policies against Violence

Unfortunately none of the reviewed reports made classifications on preventive, protective, and curative legislations and other policies.267 Therefore, based on the legislation and policies identified in the reviewed reports, the Study will try to classify such legislation and policies into three categories: preventive, protective, and curative measures.

266 ASEAN instruments are accessible on <www.asean.org>, additionally, for easier access to these documents, visit <www.cil.edu.sg>, accessed on 7 December 2011.

I) General Legislations and Policies


Moreover, Komnas Perempuan Annual Reports identified other legislations and implementing regulations issued by Indonesian Ministries and other State institutions relevant to the protection of women and children. Those regulations are: 1) MOWE Regulation on Minimum Service Standard for Women and Children Victims of Violence (MOWE Regulation on SPM);281 2) the Regulation of the Chief of Indonesian National Police Forces (CNP Regulation) on the Establishment of Special Service Room and Inspection Procedure for Victim and Witness of Violence;282 3) Law on Legal Aid;283 4) Minister of Interior Circulation Letter on the Acceleration of the Implementation of Standard Minimum Services;284 and 5) Attorney General Circulation Letter on the Handling of Cases on Violence against Women.285

268 Gol, 2008 Indonesian UPR, para. 10.
270 Gol, 2002 IPR-CRC, para. 15 and 20; and Gol, 2007 IPR-CRC, para. 2.
280 Regulation of the Chief of Indonesian National Police Forces No. 10 of 2007 on the Organisation and Management of Special Women and Children Unit (CNP Regulation on PPA), 6 July 2007.
282 Regulation of the Chief of Indonesian National Police Forces No. 3 of 2008 on the Establishment of the Special Women and Children Unit and the Inspection Procedure of Victims and/or Witnesses (CNP Regulation on PPA and Inspection Procedure). 22 May 2008.
283 Law No. 16 of 2011 on Legal Aid (Law on Legal Aid), State Gazette 2011:104. 2 November 2011.
### a. Preventive Measure

<table>
<thead>
<tr>
<th>No.</th>
<th>Legislation</th>
<th>Relevant Provisions</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>The Criminal Code</td>
<td></td>
</tr>
</tbody>
</table>
  a. Articles 285 – 286 on the prohibition of rape (only applies to women)  
  b. Articles 287 – 288 on the prohibition of having sexual relations with underage girl  
  c. Article 289 on the prohibition of sexual abuse  
  d. Articles 290 – 296 on the prohibition of the commission of obscene acts against children (below 15 years of age)  
  e. Articles 297 and 300(1.1.) on the prohibition of trade in women and male minors  
  f. Article 299 on the prohibition of facilitating illegal abortion to women and article 347 on the prohibition of committing force abortion  
  g. Article 300 on the prohibition of intoxication of women and children  
  h. Articles 305 – 308 on the prohibition of child abandonment and abuse  
  i. Articles 330 – 332 on the prohibition of abduction of women and children (below 12 years of age), mostly in relation to slavery-like activities  
  j. Articles 341 – 343 on the prohibition of murdering one’s own infant  |
| 2.  | The Human Rights Law |  
  Article 58(2) on the prohibition of violence against a child by his/her parents/guardian (this includes: physical or mental abuse; neglect; mistreatment; sexual assault, including rape; or murder)  |
| 3.  | The Law on Human Rights Court |  
  a. Article 8 (d-e) on the inclusion of prevention of pregnancy of women of a group and forcible transfer of children of a particular group to another groups as an element of genocide  
  b. Article 9 (g-i) on the inclusion of slavery, including trafficking in women and children, and rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilisation and other sexual violence against women as elements of crimes against humanity  
  c. Articles 37 and 40 on the penalisation of acts described under Articles 8 (d-e) and 9 (g-i)  |
| 4.  | KDRT Law |  
  Article 44 – 50 on the prohibition of physical, psychological and sexual violence, and negligence  |
| 5.  | Victims and Witnesses Protection Law |  
  a. Articles 37 – 40 on the prohibition of coercion on victims/witnesses that can compromise the rights of victims/witnesses  
  b. Articles 41 – 42 on the prohibition of giving information on the whereabouts of protected victims/witnesses  |

Table 8 – List of Preventive Measures Provided under General Legislations and Policies on Violence against Women and Children
### b. Protective Measure

<table>
<thead>
<tr>
<th>No.</th>
<th>Legislation</th>
<th>Relevant Provisions</th>
</tr>
</thead>
</table>
| 1.  | 1945 Constitution | a. Article 28B(2): Every child shall have the right to live, to grow and to develop, and shall have the right to protection from violence and discrimination.  
   b. Article 34(1): Impoverished persons and abandoned children shall be taken care of by the State. |
| 2.  | The Law on Human Rights | a. Article 5(3) on greater protection to disadvantaged groups and children  
   b. Article 17 on the guarantee of women to effective protection, through competent national courts and other public institutions, against any act of discrimination  
   c. Article 41(2) on Special Facilities and Treatment for Pregnant Women and Children  
   d. Article 58(1) on the right to protection against all forms of physical and mental abuse, neglect, mistreatment, and sexual assault  
   e. Article 66 on the rights not to be subjected to oppression, torture, or inhuman punishment; death penalty or life imprisonment; and arbitrary detention |
| 3.  | KDRT Law | a. Articles 1(2) and 11 on State guarantee on the prevention and elimination of domestic violence, especially against women  
   b. Article 2 on the inclusion of children and domestic workers as part of a family that require protection from domestic violence  
   c. Articles 16 – 25 and 28 on integrated provisional protection given to victims of domestic violence (involving the police force, medical personnel, social workers, religious figure, volunteer workers, legal counsels, and the court  
   d. Articles 35 – 38 on special measures taken for the protection of the victims (including provisional apprehension of the perpetrator by the police without an arrest warrant)  
   e. Article 55 on the pronouncement that victim’s testimony, as one type of evidence recognised under the Penal Procedural Code, is sufficient to convict the alleged perpetrator, if accompanied with another type of evidence (defendant’s confession) |
| 4.  | Victim and Witness Protection Law | Note: the law has no specific reference to women and children, however it extends general protection to all victims of criminal acts under Indonesian legislations.  
   a. Article 5(1) recognizes the rights of victims and witnesses of crimes to protection and freedom from threats; to be involved in choosing and determining the form(s) of protection; to be free to give testimony without pressure; to acquire an interpreter; to be free from incriminating questions; to acquire information on the development of the case and court decision/judgment; to acquire new place of residence; to acquire legal assistance; and to acquire sustenance until the end of the protection period.  
   b. Chapter III on the establishment of the Witness and Victims Protection Institution (Lembaga Perlindungan Saksi dan Korban, LPSK) that is responsible in rendering protection to victims and witnesses of crimes |
| 5.  | CNP Regulation on PPA | a. Articles 2 and 4 on the duty of the special women and children unit (UPPA) to protect women and children crime victims in the form of rendering legal protection, conducting investigation, and cooperating with other relevant institutions, including NGOs  
   b. Article 6(3) on UPPA’s jurisdiction, which covers:  
      - Crimes against women and children: trafficking, people smuggling, violence (including sexual violence), prostitution, illegal adoption, pornography, and money laundering from proceeds of the abovementioned crimes  
      - Protection of women and children as victims and/or witnesses  
      - Other crimes where the alleged perpetrator is a woman or a child |
<table>
<thead>
<tr>
<th>No.</th>
<th>Legislation</th>
<th>Relevant Provisions</th>
</tr>
</thead>
</table>
| 6.  | CNP Regulation on the Establishment of Special Service Room and Inspection Procedure for Victim | Note: Basically, the CNP Regulation on the Establishment of Special Service Room and Inspection Procedure for Victim and Witness of Violence adds more protections and clearer obligations of the UPPA to the existing protections and obligations described in the CNP Regulation on UPPA (see the description in no. 5 of this table)  
   a. Article 2(2 and 3) on the role of UPPA to conduct examination on victims and witnesses (women and children) by applying utmost care to the victims’ and witnesses’ human rights  
   b. Chapter III on the obligation of the police force to make UPPA available in every region, district, and sub-district in Indonesia as well as in the national police’s headquarter  
   c. Article 10 on the functions of UPPA to, among others, receive reports on crimes against women and children; render counselling for victims; refer victims to receive medical treatment; conduct investigation; request for visum et repertum; update the victims on the development of the investigation; guarantee the safety of victims and witnesses; coordinate integrated multi-sectoral cooperation; etc.  
   d. Chapter VII on standardised procedure to handle cases where women and children were the victims or perpetrators  
   e. Article 19 on integrated cooperation among relevant institutions to provide protection to women and children |
| 7.  | MOWE Regulation on SPM | a. Article 3 on the right of women and children victims of violence to receive necessary basic services  
   b. Article 5 on types of services provided to women and children under the SPM scheme that include:  
      - Receiving complaints from women and children victims of violence;  
      - Providing health services to victims;  
      - Enforcing the law and rendering legal assistance to the victims  
      - Facilitating reinstatement and social reintegration of victims  
   c. Articles 1(13) and 6 on relevant units and institutions responsible in providing SPM to women and children victims of violence both at national and regional levels |

Table 9 – List of Protective Measures Provided under General Legislations and Policies on Violence against Women and Children

**Curative Measure**

<table>
<thead>
<tr>
<th>No.</th>
<th>Legislation</th>
<th>Relevant Provisions</th>
</tr>
</thead>
</table>
| 1.  | Law on Human Rights | a. Article 50 on the right of women to take legal actions as individuals (unless determined otherwise under religious law)  
   b. Article 62 on the right of children to access adequate health service and social security as befits his physical and emotional needs |
| 2.  | KDRT Law | a. Article 10 on the rights of victims to acquire protection from family, law enforcers, judiciary, legal counsel, social institution, or from other parties; health care in accordance with his/her need; special treatment in relation to the victim’s confidentiality status; counterpairing by a social worker and legal assistance at every examination level; and religious/spiritual service/guidance  
   b. Article 39 – 43 on integrated curative measures for victims of domestic violence |
| 3.  | Victims and Witnesses Protection Law | a. Article 6 on the rights of victim of grave human rights violations (see Law on Human Rights Court) to receive medical assistance and psychological-social rehabilitation  
   b. Article 7 on the right of victims of grave human rights violations to claim compensation and the right of victims to claim restitution and compensation from the perpetrators through the Court |
Violence, Exploitation, and Abuse and Discrimination in Migration Affecting Women and Children in ASEAN: A Baseline Study

<table>
<thead>
<tr>
<th>No.</th>
<th>Legislation</th>
<th>Relevant Provisions</th>
</tr>
</thead>
</table>
| 4.  | The Law on Legal Aid | Article 3:  
   a. To ensure and fulfill the right of every person to access to justice;  
   b. To realise the constitutional right of every person in relation to the principle of equality before the law;  
   c. To ensure that legal aid is implemented in all parts of Indonesia; and  
   d. To realise an effective, efficient, and responsible judiciary.  
   Article 4(1): Legal aid is rendered to a person who is facing legal issue. |
| 5.  | Government Regulation on Cooperation in Recovery of Victims of Domestic Violence (implementing regulation of KDRT Law) | a. Article 1(6) on the pronouncement of the authority of MOWE as the responsible ministry for victims’ recovery  
   b. Article 2 on the facilities provided by central and local government, including social institutions such as the establishments of special units in the police force, service centres and safe houses as well as other relevant facilities, and the availability of professional experts  
   c. Articles 4 – 14 on the types of recovery of victims (medical assistance, victim’s assistance, counselling, religious service, and social reinstatement); designated institutions to carry out the recovery measure; and process of recovery measures  
   d. Chapter III on cooperation on recovery of victims, including monitoring, evaluation, and improvement |
| 6.  | MOWE Regulation on the Establishment of Coordination Forum on the Cooperation on the Prevention and Recovery of Victims of Domestic Violence | a. Articles 1(1) and 2(1) state that the Forum is consisted of elements from the Government and the society, both at the regional and national level.  
   b. Article 3 on the duties of the forum: 1) to give recommendations for policy-making process; 2) to establish sound coordination with all relevant institutions; 3) to promote legislations related to the elimination of domestic violence; 4) to collate and develop data and information relevant to domestic violence; 5) to conduct study, monitor, evaluate, and oversee the implementation of recovery of victims of domestic violence; and 6) to submit report, recommendation, and consideration to MOWE in relation to the prevention of violence and recovery of victims.  
   c. Article 4(1) states that the Forum will be directed by the Minister of Women Empowerment, Minister of Health, Minister of Religious Affairs, and the Chief of the National police Forces. |
| 7.  | MOWE Regulation on SPM | Social rehabilitation for women and children victims of violence conducted by numerous government and non-government institutions (Articles 5 -6). |

Table 10 – List of Curative Measures Provided under General Legislations and Policies on Violence against Women and Children

2) Legislation and Policies related Specifically to the Protection of Women against Violence:

In relation to the issue of violence against women, the GoI reports to HRC and the treaty bodies only mentioned Presidential Decree No. 181 of 1998 renewed by Presidential Decree No. 65 of 2005 on the National Commission on Violence against Women (Presidential Decree on Komnas Perempuan)\(^\text{286}\) and the draft law on Gender Equality,\(^\text{287}\) which this Study considers as relevant to the protection of women against violence. Unfortunately, a consolidated version of the Indonesian draft law on Gender Equality, to the knowledge of this Study, is not yet accessible. Therefore, the Study will only describe the relevant provision(s) of the Presidential Decree on Komnas Perempuan.

The provisions in the Presidential Decree on Komnas Perempuan only indicate protective measures to facilitate women’s rights. Komnas Perempuan was established to prevent and address the prevalence of violence against women as well as to eliminate any kind of violence against women.\(^\text{288}\) Komnas Perempuan is an independent body and responsible directly to the President.\(^\text{289}\) Komnas Perempuan conducts monitoring, including fact-finding missions, on any forms of violence against women and is also responsible for taking measures to ensure accountability.\(^\text{290}\) Most importantly, Komnas Perempuan

\(^{286}\) Presidential Decree No. 65 of 2005 on the National Commission on Violence against Women (Presidential Decree on Komnas Perempuan), 18 October 2005. This Presidential Decree cancelled the previous Presidential Decree No. 181 of 1998 on Komnas Perempuan.

\(^{287}\) See GoI, 2011 IPR-CEDAW, para. 22.

\(^{288}\) Presidential Decree on Komnas Perempuan, art. 1.

\(^{289}\) Ibid, art. 3 and 20.

\(^{290}\) Ibid, art. 4(c).
may give recommendations and develop regional and international cooperation for the advancement of the protection of women against violence and women’s rights.291

The 2011 IPR-CEDAW notes the enactment of Law No. 36 of 2009 on Health (Law on Health).292 The Study notices that Article 75(2) of the Law on Health indicates a remarkable shift in the Government attitude toward abortion. Article 75(2) of the Law on Health stipulates that abortion can be conducted in cases of pregnancy that is caused by rape and can cause psychological trauma to the woman (victim of rape). The Study classifies this provision as a curative measure for women victims of violence.

3) **Legislations and Policies Related Specifically to the Protection of Children against Violence:**

The GoI report to HRC and to the treaty bodies listed legislations and regulations that this Study deems relevant to protection of children against violence: Law on Juvenile Court System;293 Law on Child Protection; and Law on Child Welfare.294 In 2003, in accordance with Law on Child Protection, the President of Indonesia enacted a Presidential Decree on the Commission on the Protection of Children (Presidential Decree on KPAI).295 Prior to the establishment of KPAI, the GoI already established National Commission for the Elimination of the Worst Forms of Child Labour (KNPBPTA) through the enactment of Presidential Decree No. 12 of 2001.296

<table>
<thead>
<tr>
<th>Legislation</th>
<th>Relevant Provisions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Law on Child Protection</td>
<td>a. Articles 13(2) and 90 on aggravating circumstances for perpetrator of violence against children.</td>
</tr>
<tr>
<td></td>
<td>b. Articles 77 and 80 on the prohibition of violence against and neglect of children</td>
</tr>
<tr>
<td></td>
<td>c. Article 78 on punishment for negligence of children that require special protection</td>
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<tr>
<td></td>
<td>d. Articles 81 – 82 on the prohibition of rape and sexual abuse against children</td>
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<tr>
<td></td>
<td>e. Article 85(b) on the prohibition to harvest a child's organ and/or tissue illegally</td>
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</tbody>
</table>

Table 11 – List of Preventive Measures Provided under Specific Legislations and Policies on Violence against Children

<table>
<thead>
<tr>
<th>No. 1</th>
<th>Legislation</th>
<th>Relevant Provisions</th>
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</thead>
<tbody>
<tr>
<td>a.</td>
<td>Articles 13(1) and 16(1) on the right of children to receive protection against all forms of violence inhumane punishment</td>
<td></td>
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<tr>
<td>b.</td>
<td>Articles 16(3) and 17(1) on the rights of children in conflict with the law</td>
<td></td>
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<tr>
<td>c.</td>
<td>Articles 17(2) and 18 on the rights of children that become victims of violence</td>
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<tr>
<td>d.</td>
<td>Articles 20 – 26 on the obligation of the state, government, parents, family, and society to provide protection to children</td>
<td></td>
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<tr>
<td>e.</td>
<td>Article 47 on the obligation of the state, government, and family to protect children from illegal act of organ transplant</td>
<td></td>
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<tr>
<td>f.</td>
<td>Article 54 on the obligation to protect children against violence in school or other education institutions</td>
<td></td>
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<tr>
<td>g.</td>
<td>Articles 55 – 58 on the obligation of the government to provide protection to neglected children</td>
<td></td>
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<tr>
<td>h.</td>
<td>Articles 59 – 71 on the obligation of the government on other state institutions to provide special protection to children in state emergency, including armed conflict; children in conflict with the law; children coming from indigenous groups; and children that fall victims to sexual and/or economic exploitation, drug abuse, trafficking, and all forms of violence</td>
<td></td>
</tr>
<tr>
<td>i.</td>
<td>Articles 74 – 76 on the establishment of the National Commission on Child Protection (KPAI) to monitor the implementation of children's rights</td>
<td></td>
</tr>
</tbody>
</table>

291 Ibid, art. 4(d-e).
293 Law No. 11 of 2012 on the Juvenile Court System (Law on Juvenile Court System), State Gazette 2012:153, 30 July 2012.
294 Law No. 4 of 1979 on Child Welfare (Law on Child Welfare), State Gazette 1979:32, 23 July 1979. GoI reports to the HRC and the treaty bodies did not mention this law however; it was mentioned in the compilation regulations related to psychological violence against children published by Komnas Anak.
295 Presidential Decree No. 77 of 2003 on the Commission on the Protection of Children (Presidential Decree on KPAI), 14 October 2003. The enactment of this Presidential Decree is based on Article 76(4) of the Law on Child Protection. However, the Presidential Decree only deals with technical issues relating to KPAI’s internal mechanism and apparatus.
a. Article 3 on the rights of every child who is undergoing criminal proceeding. These rights include:
- To be treated humanely by observing the needs of the child in general;
- To be separated from adult offenders;
- To receive effective legal assistance and other forms of assistance;
- To have leisure time;
- To be free from torture, other cruel, inhuman or degrading treatment or punishment;
- To be exempt from death penalty and a lifetime imprisonment;
- Not to be apprehended, detained, or imprisoned except as a last resort and only for a short period of time;
- To receive justice before an objective and impartial juvenile court and to be tried in closed proceeding.
b. Article 5(1) on the obligation of the juvenile court system to prioritise restorative approach

c. Article 7(1) on the obligation of investigators and prosecutors to prioritise diversion

d. Articles 6 – 15 on the role of parents, social workers, probation officers, investigators, prosecutors, and judges in implementing diversion as well as the procedure

e. Article 17 on the obligation of investigators, prosecutors and judges to give special protection to children in conflict with the law

f. Article 18 on the obligation of probation officers, social workers, investigators, prosecutors, judges, and advocates to prioritise the best interest of the child involved in criminal proceedings

g. Article 23 on the right of the child to have the presence of his/her legal counsel, social worker/probation officer, and parents/guardians at all stages of the legal process

h. Article 30 on humane treatment of the child during examination

i. Article 32 on the prohibition to detain a child as long as there is a guarantee from the parents or guardian

Table 12 – List of Protective Measures Provided under Specific Legislations and Policies on Violence against Children

<table>
<thead>
<tr>
<th>No. 3</th>
<th>Legislation</th>
<th>Law on Child Welfare</th>
</tr>
</thead>
<tbody>
<tr>
<td>Relevant Provisions</td>
<td></td>
<td></td>
</tr>
<tr>
<td>a.</td>
<td>Article 2 on the rights of the child to welfare and to receive care and protection (further elaborated in Articles 3 – 11)</td>
<td></td>
</tr>
<tr>
<td>b.</td>
<td>Article 11(1) on the efforts to achieve child’s welfare conducted by the government and society. They consist of: advocacy, development, prevention, and rehabilitation</td>
<td></td>
</tr>
</tbody>
</table>

**c. Assessment of State Policies**

**i. Assessment of Policies Pertaining to Women and Children**

**a. Domestic Violence**

Indonesian legislation defines domestic violence as a crime punishable under the Indonesian legal system.\(^{297}\)

KDRT Law defines domestic violence as “any act against a person especially a woman, which cause misery or physical, sexual, psychological suffering, and/or domestic neglect including threats to perform acts, coercion, or deprivation of liberty against the law within the domestic sphere.”\(^{298}\)

Under Article 2(1) of KDRT Law, the scope of the Law includes:

a. Husband, wife, and child (including foster child and stepchild);

b. Persons that have family ties with the persons referred in point a (by blood, by marriage, and by guardianship. Also include relation stemming from wet-nursing) that live in the same household; and

c. Domestic worker that live in the same household.

Unfortunately the Law limits the scope of its application to those people that live in the same household.\(^{299}\) It does not include violence against women that is conducted by a former or current intimate partner or a couple that is not bound by wedlock.\(^{300}\)

Another shortcoming of the Law is that domestic violence under the Indonesian Legal System (Penal Code) is treated as, to borrow the Indonesian term, “delik aduan” or *klacht delicten* in Dutch or, loosely translated in English, offence on complaint.\(^{301}\) The protection granted under the Law can only be activated when the victim or other person holding a power of attorney from the victim or, in the case of a minor, the parent/guardian or the child victim files a complaint to the police; only then can the police initiate an investigation.\(^{302}\) Even then, within three months after the complaint was filed, the victim can retract her/his complaint.\(^{303}\) Therefore, even if the victim had filed a complaint, she/he can still retract the complaint within three months and stop the investigation process.

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\(^{297}\) GoI, Responses of Indonesia to the List of Issues to be Taken in Connection with the Consideration of Its Combined Sixth and Seventh Periodic Reports (2012 RIPR-CEDAW). CEDAW/C/IDN/Q/5/Add.1, 18 January 2012, para. 9.

\(^{298}\) KDRT Law, art. 1(1).

\(^{299}\) *Ibid*, art. 2.

\(^{300}\) Implied in *Ibid*.

\(^{301}\) Indonesian Criminal Code, art. 284, 287, and 293.

\(^{302}\) KDRT Law, art. 26 – 26.

\(^{303}\) See the introduction of this sub section above.

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Regardless of its weaknesses, the enactment of KDRT Law is seen as an unprecedented move under the Indonesian legal system to extend protection to women and children against domestic violence. The 2011 IPR CEDAW underlines that KDRT law has managed to bring issues of domestic violence into public and State domains. The Law encourages victims to report the violence that they experienced and provides remedies for their grievances.

b. Rape

Under Article 285 of the Indonesian Criminal Code, rape is committed by “Any person who by using force or threat of force forces a woman to have sexual intercourse with him outside of marriage...” The Indonesian Criminal Code does not base its definition of rape on lack of consent. Instead, the provision underlines that the act must be accomplished by force to qualify as rape. Furthermore, the Criminal Code provides a circumstance to qualify the crime of rape:

Any person who outside of marriage has carnal knowledge of a woman of whom he knows that she is unconscious or helpless shall be punished with a maximum imprisonment of nine years.

Provisions on rape under the Criminal Code only apply when the victim is a woman and has no marital relation with the perpetrator. If the victim is a man, then the act will not qualify as rape; it will only be considered as sexual abuse. Article 285 of the Criminal Code on rape does not describe the act of rape itself in detail.

At present GoI is planning to replace the present Criminal Code since the Indonesian Criminal Code was inherited from the Dutch and many consider it outdated. Recently, the Director General of Regulation stated that the draft for the new criminal code (2005 Draft Code) is currently undergoing its final polishing before it is presented to the President for approval and, after that, the draft will go for discussion at the House of Representatives. The draft law establish a detailed and wider definition of rape and includes the element of consent rather than requiring proof of force.

(1) …

(a) A man who has an intercourse with a woman outside of marriage, against the will of the woman;
(b) A man who has an intercourse with a woman outside of marriage, without the consent of the woman;
(c) A man who has an intercourse with a woman outside of marriage, with the consent of the woman but, the consent was made based on threat to be killed or harmed;
(d) A man who has an intercourse with a woman outside of marriage, with the consent of the woman believing that the man was her legally-wed husband;
(e) A man who has an intercourse with a woman who is below the age of fourteen, with her consent; or
(f) A man who has an intercourse with a woman outside of marriage, knowing that the woman is unconscious or helpless

The provision relating to the crime of rape under the 2005 Draft Code also includes penetration of any orifices by any object as a form of rape.

The Law on Health legalises abortion on pregnancy resulted from rape. Furthermore, the Law necessitates that a Government Regulation be enacted to implement this provision. However, unfortunately, the required Government Regulation has yet to come to realisation.

Criminal Code is based on the code published in the State Gazette number 732 of 1915, known as Wetboek van Strafrecht voor Indonesie. The Code was last amended by Law 27 of 19 May 1999.

Suara Pembaruan, RUU KUHP segera Diserahkan ke Presiden. 6 January 2012. www.suarapembaruan.com accessed on 28 December 2011. The GoI has spent 30 years in drafting this draft law.

Ibid, art. 491(2).
Law on Health, art. 75(2).
Ibid, art. 75(4).
1. Marital Rape

Indonesia only criminalised marital rape in 2004 through the enactment of KDRT Law. Article 5 of KDRT Law includes sexual violence as one of the types of violence that can take place in domestic settings. Furthermore, Article 8 of KDRT Law stipulates:

The sexual violence referred to in Article 5 letter c shall include:
   a. Forcing sexual intercourse carried out against an individual living within the scope of the household;
   b. Forcing sexual intercourse against one of the individuals within the scope of the household for commercial purpose and/or a certain purpose.

Any person, who is proven guilty of committing the act described under Article 8(a) of KDRT Law, shall be punished by imprisonment of 12 years at maximum or a fine of thirty six million rupiah at maximum.\(^{315}\) If the act caused irreversible impact/injury to the victim, or mental disorder for at least four weeks, or miscarriage or death of a foetus, or cause harm to the victim’s reproductive organ, the perpetrator shall be punished for at least 5 – 20 years of imprisonment or a fine from twenty five million to five hundred million rupiah.\(^{316}\) According to Komnas Perempuan, the wide definition given under Article 8(a) of KDRT Law is sufficient to include the act of marital rape.\(^{317}\)

Interestingly, AI argues that KDRT Law does not specifically refer to rape but only to sexual violence.\(^{318}\) CEDAW Committee even went as far as saying that there is no reference to marital rape under the KDRT Law.\(^{319}\) AI adds that the KDRT Law requires at least two elements of proof (for example, the victim’s testimony and the defendant’s confession).\(^{320}\) Lastly, as has been described above, the case of marital rape is treated as “delik aduan” or offence on complaint.\(^{321}\)

2. Statutory Rape

Unfortunately, none of the reports to both CEDAW and CRC Committees discuss statutory rape. Both the Indonesian Criminal Code and Child Protection Law criminalise statutory rape.\(^{322}\) According to the Indonesian NGO Coalition for CRC Monitoring (INCCM), the concept of statutory rape under the Indonesian Criminal Code is not clearly defined and Article 287 of the Criminal Code sets a very low age of consent, which is 15 years old.\(^{323}\) INCCM also noted that the penalty given to the perpetrator of statutory rape is lighter than the penalty set for the perpetrator of rape and Article 287 of the Criminal Code only applies to girl victims.\(^{324}\) Further, under Article 287 of the Criminal Code, if the victim is above the age of 12 but below the age of 15, statutory rape is treated as “delik aduan” or complaint offence.\(^{325}\)

After the enactment of the Child Protection Law in 2002, the definition of statutory rape expanded to include boy victims and raised the age of consent to 18 years old.\(^{326}\) The Study noted that, until now, Indonesia has never

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\(^{315}\) KDRT Law, art. 46.
\(^{316}\) Ibid, art. 48.
\(^{318}\) AI, Left without a Choice., 19.
\(^{319}\) CEDAW Committee, 2012 CO-CEDAW, para. 25.
\(^{320}\) AI, Left without a Choice, 19.
\(^{321}\) See the explanation on “delik aduan” in the assessment of State Policies relating to Domestic Violence above.

\(^{322}\) Article 287 of the Criminal Code describes the act of statutory rape as:
   (1) Any person who out of marriage has carnal knowledge of a woman whom he knows or reasonably should presume that she has not yet reached the age of fifteen years or, if it is not obvious from her age, that she is not yet marriageable…
   (2) A prosecution shall be instituted only by complaint, unless the woman has not yet reached the age of twelve years or one of the cases of Articles 291 and 294 is present.


\(^{324}\) Ibid.

\(^{325}\) Indonesian Criminal Code. Art. 287(2). See the explanation on “delik aduan” in the assessment of State Policies relating to Domestic Violence above.

\(^{326}\) Child Protection Law, art. 81.
revoke Article 287 of the Criminal Code. In facing this dilemma, it is not clear how the general principle of law lex specialis derogat lex generalis (a specialised law overrides a law on general matters) applies in Indonesia and which Law should prevail. Popular opinion shows that the legal principle is accepted as a legal custom and therefore can be applied even with the absence of a pronouncement in a law. However, Indonesia’s practice apparently does not reflect such acceptance; it indicates that a legal principle, in order to be applied in Indonesia, needs to be pronounced in a law. For instance, Article 1 of Indonesia’s Trade Code stipulates that the Trade Code shall prevail over the Civil Code in trade matters. A Professor in Legal Science is of the opinion that in case where the specialised Law does not pronounce that it prevails over a general Law (as in the case between the Child Protection Law and the Criminal Code), then both laws apply with equal strength.

One interesting point that is worth to mention is the differing ages of consent (legal age for sexual activities) indicated in various Indonesian legislation. Apart from the Criminal Code and the Child Protection Law, if the minimum age of marriage can be considered as age of consent, the Indonesian Marital Law establishes that the minimum age of marriage is 16 years for a girl and 19 years for a boy with the consent of the parents. However, a Religious Court can give a dispensation to this provision if the parents from both sides agree; it means that a marriage between a boy and a girl below the age of 19 and 16 years old is still possible. In this setting, it is difficult to apply Article 81 of the Child Protection Law since the practice of early marriage between persons below the age of 18 is still possible under the Marital Law.

Fortunately, in recent years, many Courts in Indonesia have come to realise that early marriage has become the main cause for most divorces in Indonesia, especially in Java. The Courts have also admitted that the application of Article 81 of Child Protection Law is deemed as important by Indonesian Courts to discourage practices of early marriages, as is shown in the Supreme Court’s 2010 interlocutory decision on a case of early marriage (Syekh Puji case). KPAI noted that this decision can set a precedent to enforce the application of Article 81 of Child Protection Law to deter not only early marriage practices, but also to deter adults from having sexual intercourse with children with or without the child’s consent. Note also that the draft Penal Code referred to above establishes the age of 14 as the threshold for statutory rape, even if the victim consents.

c. Sexual Violence and Harassment

In general, the Criminal Code, to some extent, provides protection to women and children against sexual violence. Apart from the Criminal Code, KDRT Law also provides protection. In relation to the situation where sexual violence takes place, apart from KDRT Law that offers protection against violence that take place in a household, the Study finds nothing in Indonesian legislation that expressly provides protection for women and children against sexual violence that takes place in specific situations (e.g., workplace, schools, etc.).

The Indonesian Criminal Code regime does not recognise the term sexual violence and sexual harassment under its...
The recognised term under the Criminal Code that might cover sexual violence and harassment is “perbuatan cabul” or “obscene act” in English. Article 289 of the Criminal Code stipulates, “Any person who by using force or threat of force forces someone to commit or tolerate obscene acts, shall, being guilty of factual assault of the chastity…” Article 290 of the Criminal Code adds situations when consent of the victim cannot be presumed or the element of force need not be present:
- If the victim is unconscious or helpless; and
- If the victim has not reached the age of fifteen years or not yet marriageable.

There is nothing in the Criminal Code that explains types of act that can be qualified as “obscene”. Judging from the language of Article 285 of the Criminal Code, it is safe to say that, as long as the sexual activity imposed on the victim does not involve intercourse, then it is considered as obscene act. The 2005 Draft Code, however, defines obscene acts, as “any acts that violate the sense of decency, or other vile acts, and the act should arise from sexual-related intention.” If a person in a position of trust, e.g., parent, guardian, stepparent, teacher, caregiver, commits obscene acts, he/she will receive a lighter penalty. However, under the Child Protection Law, perpetrators of violence who are in a position of trust will receive heavier penalties.

The Code on Criminal Procedure provides general rules to be applied in criminal case examination, including cases of rape. There is nothing under Indonesian legislations, in relation to the examination of rape cases, that mentions considerations of prior sexual history of the victim, the level of force needed to prove sexual assault, etc.

The Code on Criminal Procedure does not prohibit bail for perpetrators of obscene acts. Other legislation, however, provides other protective measures to victims in general, including victims of obscene acts and rape, if there is any risk to the victim arising from the perpetrators. Protective measures under the law on Witness and Victim Protection includes:
- Victims can be dispensed (by the order of the Court) from giving his/her testimony in person during the trial; and
- Victims cannot be prosecuted or held responsible in civil cases based on his/her report/complaint, testimony that is going to be given, is being given, or had been given.

The Law on Victim and Witness Protection also guarantees the rights of victims to:
- acquire protection and be free from threats;
- be involved in selecting the form(s) of protection;
- be free to give testimony without pressure;
- acquire an interpreter;
- be free from incriminating questions;
- acquire information on the development of the case and court decision/judgment;
- acquire new place of residence;
- acquire legal assistance; and
- acquire sustenance until the end of the protection period.

The Law provides that the Witness and Victim Protection Institution (LPSK) shall be responsible for the implementation of these rights.

Meanwhile, if the crime happened in a domestic/household setting, the victims can request protection from the district court. Based on the victim’s request, the Court can order provisional apprehension of the suspect up to thirty days or restraining order for the suspect not to approach the victim.

### d. Women and Children in Armed Conflict

Indonesia has acceded to the Four Geneva Conventions of 1949 through the enactment of Law No. 59 of 1999.
1958. In 2002, the Indonesian Ministry of Defence enacted a Ministerial Decision on the Implementation of Humanitarian Law and Human Rights in the Application of State Defence. The Decision stipulates the applicability of the Four Geneva Conventions, other international humanitarian instruments that reflect international customs, and numerous international human rights instruments that Indonesia has ratified or acceded to in the application of the State’s defence. Furthermore, this ministerial decision shall be implemented by the Indonesian armed forces. Unfortunately, any regulations related to the conduct of the armed forces in conflict situations issued by the Commander of the Indonesian armed forces are not available for public. Therefore, it is rather hard to scrutinise the policies implemented by the Indonesian armed forces in relation to humanitarian and human rights law in armed conflict situations, let alone on the issue of protection of women and children.

However, generally, based on Indonesia’s accession to the Four Geneva Conventions of 1949, Indonesia has the obligation to provide minimum protection to women and children during an armed conflict situation, especially protections given under the Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War. Moreover, in accordance with the Decision of the Indonesian Minister of Defence above, Indonesia also has an obligation to adhere to provisions of international human rights instrument relating to the protection of women and children in armed conflict situations that Indonesia has ratified or acceded to. Some of the relevant international human rights instruments that Indonesia has ratified or acceded to are 1) CRC; 2) CEDAW; 3) ICCPR; and 4) ICESCR.

In practice, even though Indonesia already acceded to international instruments related to protection of women and children in armed conflict situations, Indonesia has not adjusted its domestic legislations in accordance with its obligation laid down in those international instruments. As an example, there is nothing in Indonesian legal system that defines an armed conflict situation. Indonesia has not criminalised war crimes under its domestic legislation. The mentioning of protection of women and children in armed conflict is scarce, even the Law on Human Rights Court does not cover the protection on women and children sufficiently.

The Study notes that, in the level of legislation, only the Child Protection Law, the Law on Child Welfare, the Law on Human Rights, and the Law on Human Rights Court indicate some resemblance of guarantee of the protection of women and children in armed conflict situations. These laws mostly focus on the protection of children in armed conflict by establishing that, in case of emergency, the safety of children shall be prioritised and children have the right not to be involved in armed conflict situations. Furthermore, the Child Protection Law guarantees special protection of children in armed conflict situations. Article 61 of the Law emphasises that

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351 Ibid, point 1 – 4.
352 Ibid, point 6.
354 Decision of the Minister of Defence, point. 4.
355 See Table 6 above.
356 International conventions, which Indonesia has ratified or acceded to, relevant to the protection of women and children in armed conflict situations are, among others: 1) the Four Geneva Conventions of 1949; 2) CEDAW; 3) CRC; 4) ICCPR; and 5) ICESCR.
357 The Law on Human Rights Court in Indonesia deals mainly with the criminalization of Crimes against humanity and genocide as grave violations of human rights punishable under Indonesian Law. However, the Law does not define an armed conflict situation and does not criminalise war crimes, which elements include protection of women and children in armed conflict situations under international law.
358 Law on Child Welfare, art. 3; Law on Human Rights, art. 63.
359 Child Protection Law, art. 59 – 61.
the implementation of special protection to children refugees\textsuperscript{360} shall adhere to humanitarian law provisions. However, the reference to the application of humanitarian law was not made to the protection of children in armed conflict situations as described under Article 60(d) of Child Protection Law.

Meanwhile, there is hardly anything in Indonesian legislation that refers to the protection of women in an armed conflict situation. The Minister of Women Empowerment and Child Protection, Linda Amalia Sari Gumelar, acknowledges that Indonesian women who live in conflict situations have not yet been protected by the Law.\textsuperscript{361} One of the few existing laws that refer to the protection of women in a conflict situation can be found in the Law on Human Rights Court, which stipulates that gender-based violence (rape, enforced sterilisation and abortion, sexual slavery, etc.) is included as one of the categories of offenses encompassed by both genocide and crimes against humanity.\textsuperscript{362}

MOWE acknowledges that a legal umbrella is needed to protect women and children in armed conflict situations. Since 2009, MOWE has held numerous public consultation meetings to discuss the draft of National Action Plan on the Protection, Prevention, and Empowerment of Women in Conflict Areas (RAN-P4DK).\textsuperscript{363} The Minister asserts that the enactment of RAN-P4DK is a part of Indonesia’s obligation to implement the UN Security Council Resolution 1325 (2000) related to the protection of women and children in armed conflict situations.\textsuperscript{364} In her report to the House of Representative, MOWE affirmed that RAN-P4DK will be enacted through a Ministerial Regulation by the end of 2011.\textsuperscript{365} To date this has not yet occurred.

\textit{ii. Assessment of Policies Pertaining to Women}

\textbf{a. Discrimination}

\textsuperscript{360} Ibid, art. 60(a) on refugee children.


\textsuperscript{362} Law on Human Rights Court, art. 8 – 9.

\textsuperscript{363} MOWE, Perempuan di Daerah Konflik.


\textsuperscript{365} Indonesian House of Representative. Summary of Meeting, 29 November 2011, 7 – 8.

In the 2005 IPR-CEDAW, GoI states that the 1945 Constitution establishes discrimination as a violation of human rights.\textsuperscript{366} Article 281 (2) of the 1945 Constitution provides a broad prohibition of discrimination by stipulating: “everyone is entitled to be free from discriminatory treatment on any basis and is entitled to be protected from discriminatory treatment.”\textsuperscript{367} GoI then continues with providing a definition of discrimination under Article 1(3) of the Law on Human Rights:

Discrimination is any limitation, harassment or exclusion, whether direct or indirect, based on human differentiation determined by religion, tribe, race, ethnicity, group, association, social status, economic status, sex, language, or political belief, that causes the reduction, deviation from, or abolition of the recognition, implementation or use of human rights and fundamental freedoms in the political, economic, legal, social, cultural, and other aspects of life, whether at the individual or collective level.\textsuperscript{368}

Moreover, Article 17 of the Law on Human Rights also provides a guarantee for women to have effective protection by competent national tribunals and other public institutions against any act of discrimination:

Everyone without discrimination has the right to justice by submitting applications, grievances, and charges of a criminal, civil, and administrative nature, and to a hearing by an independent and impartial tribunal, according to legal procedure that guarantees a hearing by a just and fair judge allowing an objective and impartial verdict to be reached.\textsuperscript{369}

Indonesian legislations also provide guarantees for everyone to equal rights to seek work and to have education.\textsuperscript{370} The 2011 IPR-CEDAW listed several laws that, according to the GoI, reflect integrated policies in GoI’s effort to eliminate discrimination against women, such as the Law on the National Long-term Development Plan (2005 – 2025); TIP Law; Laws on General Elections; and Law on the Elimination of Racial and Ethnic Discrimination.\textsuperscript{371} However, CWGI noted
that most legislations only contain the general principle of non-discrimination without specifically referring to discrimination against women. CWGI added that the legislations have not been able to explicitly define discrimination.

In 2007, the CEDAW Committee sent a list of issues and questions to the GoI. One of the questions presented to the GoI concerned the absence of a clear definition of “discrimination against women modelled on Article 1 of the Convention.” In its response, the GoI stated that it is preparing a Draft Law on Gender Equality, which will include a definition of discrimination against women in accordance with CEDAW provision. GoI added that the draft is scheduled for 2008. As a response to the GoI reports, CEDAW Committee encouraged Indonesia “to incorporate a definition of discrimination into its Constitution or national legislation that conforms with Article 1 of the Convention.” These exchanges of communications indicate that there is no gender-specific non-discrimination clause under Indonesian legislation. Nevertheless, to the knowledge of this Study, the Draft Law on Gender Equality has yet to be enacted. The Indonesian Minister for Women Empowerment, Linda Gumilar, indicated in her latest statement that the Draft Law was still in discussion in the DPR and hopefully would be enacted by the end of 2011.

Pertaining to the absence of a definition of discrimination against women modelled on Article 1 of CEDAW in Indonesia’s legal system, the Study would like to point out an important question: does Indonesia need to enact a new law to accommodate Article 1 of CEDAW when Indonesia has already ratified CEDAW in 1984? Despite various arguments on the status of international law in Indonesia’s domestic legal system, the Study is of the opinion that even without the enactment of the draft Law on Gender Equality, CEDAW provisions can be implemented directly in Indonesia’s legal system since Indonesia is a monist Country. To demonstrate the basis of this statement, Indonesia’s Law No. 24 of 2000 on International Treaty (Law on International Treaty), requires every instrument signifying Indonesia’s ratification or accession to an international treaty to be published in the State Gazette for the purpose of informing the public about Indonesia’s consent to be bound to the treaty and therefore the treaty binds all citizens. This provision implies that the ratification of or accession to a treaty binds Indonesia both externally and internally and applicable even without the existence of an implementing legislation. Therefore, based on the argument that Indonesia is a monist Country, CEDAW provisions can be applied directly in Indonesia’s domestic legal system even without the enactment of implementing legislation or without translating them into national law; however, what Indonesia needs is harmonisation of its law to accommodate the implementation of CEDAW.

Another argument that can be put forward for the direct application of CEDAW provisions is in relation to the wordings chosen by the GoI to be utilised in the Law for the Ratification of CEDAW. The GoI stated that the provisions of CEDAW in no way contradict the 1945 Constitution or other legislations; in light of this finding, the GoI decided to sign CEDAW on 29 July 1980 and to ratify the Convention by way of law. An Indonesian expert on Gender Studies, Sjamsiah Ahmad, stated that the predetermination that CEDAW does not contradict the 1945 Constitution or other legislation constitutes a sufficient indication that CEDAW can be implemented directly in Indonesia’s domestic legal system without the need to enact an implementing legislation.

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372 CWGI, 2007 CWGI-CEDAW, para. 34.
373 Ibid.
374 CEDAW Committee, List of Issues and Questions with regard to the Consideration of Periodic Reports (List of Issues), CEDAW/C/IDN/Q/5. 27 February 2007, para. 3.
375 GoI, 2007 GoI Response-CEDAW, para. 2.
376 Ibid.
377 CEDAW Committee, 2007 CC-CEDAW, para. 9.
382 Ibid, Consideration, para. c – e.
383 Statement of Sjamsiah Ahmad during HRRC’s Consultative Meeting on the Baseline Study, Jakarta, 23 June 2012.
Nonetheless, for the sake of clarity, guidance, and to ensure real and practical enforcement, a clear and definitive statement in legislation describing and prohibiting discrimination against women would be highly beneficial.

b. Gender-based Violence

In relation to gender-based violence in Indonesia, even though GoI’s reports to the HRC and Treaty Bodies did not specifically mention this, the Study concludes that, based on the information provided in the reports, Indonesia penalises some forms of gender-based violence through various legislation such as the Criminal Code, the Law on Human Rights Court, and KDRT Law.\(^{384}\) The Indonesian Criminal Code penalises the acts of rape, statutory rape,\(^{385}\) trade in women, abduction of women, and violence against women’s reproductive health.\(^{386}\) The Law on Human Rights Court includes gender-based violence as elements of genocide and crimes against humanity, crimes classified as grave violations of human rights under Indonesian legal system.\(^{387}\) Finally, KDRT Law criminalises and penalises violence, especially against women, that takes place in the household.\(^{388}\)

There is no exact definition of gender-based violence under the Indonesian legal system that corresponds to the definition of gender-based violence provided under CEDAW Committee’s General Recommendation 19(6) as a whole. The definition of domestic violence provided in Article 1(1) of KDRT Law has some resemblance to the definition of gender-based violence in the General Recommendation 19(6); however, the scope of application of Article 1(1) of KDRT Law is limited as demonstrated below:

a. According to CEDAW General Recommendation No. 19(6), gender-based violence is defined as:

violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty

b. According to Article 1(1) of KDRT Law, domestic violence is defined as:

Any act against a person especially a woman, which cause misery or physical, sexual, psychological suffering, and/or domestic neglect including threats to perform acts, coercion, or deprivation of liberty against the law within the domestic sphere.

According to a publication by the Indonesian Ministry of Law and Human Rights, the formulation of the definition domestic violence under KDRT Law had taken into account the definition of gender-based violence provided by CEDAW General Recommendation 19(6).\(^{389}\) However, the context of gender-based violence under Article 1(1) of KDRT Law is only limited to the household while the definition given in CEDAW General Comment 19(6) applies in any situation as long as it is directed to a woman and based on the fact that the person is a woman. This, of course, is a very significant discrepancy in the scope of protection.

c. Harmful Traditional Practices affecting Women

To the knowledge of this Study, Indonesia does not have any legal provisions protecting women from harmful traditional practice such as forced marriage, dowry deaths, acid attacks and FGM as described under CEDAW General Recommendations No. 14 and No. 19(11). To some extent the Criminal Code criminalises acts that cause bodily harm to anyone, including women. However, no legal provision specifically protects women against serious forms of violence that are typically committed in connection with traditional practices or values.

According to AI and CEDAW Committee, practices of FGM in Indonesia still take place.\(^{390}\) A significant progress in national regulation banning FGM had taken place back in 2006 when the Director General of Medical

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384 Please see table 8 above.
385 The Criminal Code, art. 287. The provision on statutory rape provided in the Indonesian Criminal Code only apply if the victim is a girl and the statutory age in 12 years old.
386 See Table 8 above.
387 Ibid.
388 KDRT Law, art. 1(1).
390 CEDAW Committee 2007 CC-CEDAW, para. 20; AI, Left without a Choice., 18.
Service issued Circular No. HK 00.07.1.3.104.1047a on the Health Impact of Female Circumcision. The Circular stipulated that FGM gives no benefit to women’s health; on the contrary, it causes harm and unnecessary pain. Therefore, all medical staff were prohibited to conduct or assist the execution of FGM. Following the adoption of the 2006 Circulation, then Director General of Medical Service urged the Minister of Health to enhance the legal status of the Circular and to involve the Ministry of Religious Affairs in banning FGM.

However, in 2010, the Minister of Health issued a Ministerial Regulation on Female Circumcision, which basically served as a guideline for medical staff on how to conduct or to assist in the conduct of FGM. The adoption of the 2010 Ministerial Regulation overrides the 2006 Circular, thus lifting the banning of FGM. Many people see this as a step back because, in 2006, the Director General of Health Development issued a circular establishing the negative health impact of FGM on women and prohibited medical staff from performing FGM. On the other hand, the 2010 Regulation does not prohibit FGM; on the contrary, it regulates methods of FGM.

### iii. Assessment of Policies Pertaining to Children

#### a. Neglected or Negligent Treatment on Children

A neglected child under the Child Protection Law is defined as a child whose needs, physically, mentally, and socially, are not sufficiently fulfilled. Neglect of children is considered as violence against children and punishable under the law. The treatment of a child with neglect by a parent, guardian, or caregiver constitutes an aggravating factor for his/her punishment.

The GoI is obliged to provide special protection to neglected children. Special protection guarantees under the Child Protection Law include monitoring, prevention, care, and rehabilitation. The Ministry of Social Welfare is responsible for monitoring the implementation of social services provided for neglected children under Child Protection Law. If the Ministry finds any indications that parents are neglecting their child then the Ministry can file for a Court Order to place the child in foster care.

In relation to practices of corporal punishment on children, Article 54 of the Child Protection Law stipulates, “children attending school must be protected against violence and abuse from teachers, school managers, and school mates both in the school or other educational institutions.” The Law on Human Rights guarantees the right of every child not to be subjected to acts of oppression, ill treatment or inhuman penalty. According to the Global Initiative to End All Corporal Punishment of Children (EAPC) in its 2007 Briefing for the HRC on Indonesia’s UPR, there is no explicit prohibition of corporal punishment in schools. EAPC also highlighted that there is no explicit prohibition of corporal punishment as a disciplinary measure in penal institutions as well.

#### b. Street Children

Until now, there is nothing under any legislation that specifically mentions the term “street children”. According to Article 34 of the Constitution, the State has the obligation to take care of impoverished people and abandoned children. Furthermore, Article 34 stipulates that the State also has the obligation to develop a social security system and provide sufficient public service facilities. In its concluding observation, the Committee

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392 Ibid.


394 Ibid.


396 AI, Left without a Choice, 18.

397 Ibid, 1(6).

398 Ibid, art. 13(1) and 77.

399 Ibid, art. 13(2).

400 Ibid, art. 59.

401 Ibid, art. 71.

402 Ibid, art. 55(4).

403 Ibid, art., 57 – 58.

404 Law on Human Rights, art. 66.


406 Ibid.
against Torture highlights that Indonesia has not provided adequate protection to street children against violence in accordance with Articles 2 and 16 of CAT.407

c. Juvenile Justice: Children in Detention

Indonesian legislation provides protection to children in conflict with the law, including children in detention. Provisions that relate to the treatment of children in detention are provided under Law No. 11 of 2012 on Juvenile Court System replacing Law No. 3 of 1997 on Juvenile Court. The detention of a child in conflict with the law is prohibited if there is a guarantee provided by the parents or guardian that the child in question will not run away or eliminate/contaminate evidence or committed the same criminal act.408 Detention of a child can only be done if the child is of the age of 14 years old or older and suspected of having committed a crime which can cause criminal penalty of 7 years or more.409

The approach toward child detention in Law on Juvenile Court System is in a way more clear than that of the previous law on Juvenile Court which vaguely stipulated that the detention of a child shall only be conducted after carefully considering the child's interest and/or the interest of the society.410 Juvenile detention facilities shall be separated from adults' detention facilities.411 The detention of a child in conflict with the law can be issued by the Police (during the first phase of investigation), the Prosecutor (during the second phase of the investigation), and the Court (during the trial, up to cassation).412

The child who is being detained is entitled to receive legal assistance from one or a group of legal counsel. This right should be conveyed by the institution that issued the detention order to the child's parents, guardian, or foster parents.414 The child has the right to have the presence of a legal counsel or paralegal in every stage of the legal process.415 The legal counsel has the obligation to observe the interest of the child and public order.416

Under the Law on Juvenile Court System, a child in conflict with the law can be detained, for the purpose of investigation and trial, up to 110 days.417 This indicate a significant progress compared to the total number of days that a child can be hold in detention under the previous Juvenile Court Law, which allowed the detention of a child for the whole legal process up to 200 days.418

3 Implementation, Monitoring and Prevention

a. Implementing and Monitoring Mechanisms

In relation to the implementation of protection of women and children against violence, the Ministry of Women Empowerment (MOWE) is generally responsible for the implementation of CEDAW and State policies on the implementation of women’s and children's rights, including protection against violence.419 MOWE has developed the Minimum Service Standard for the Empowerment of Women and Protection of the Child for Integrated Service for Women and Children Victims of Violence as a minimum service standard for the handling of women and children victims of violence.420

The integrated service provided by MOWE includes the


408 Law on Juvenile Court System, art. 32(1).

409 ibid, art. 32(2).

410 Law No. 3 of 1997 on Juvenile Court. Art. 45(1). This also includes the consideration on the child’s physical, psychological, and sociological development.

411 Law on Juvenile Court System, art. 32 – 33.

412 ibid, art. 32 – 40.

413 See the Criminal Code, Arts. 1(2), 1(4), 4, and 6. Under the Indonesian Criminal Code, there are two stages of investigation. The first stage of investigation is to determine whether or not a crime has taken place, this stage is known as Penyelidikan. The police force has the soul authority to conduct the investigation at this stage. The second stage of investigation falls under the authority of both the AGO and Police force and is known as Penyidikan. This stage aims at to determine the suspect once the Penyelidikan stage is completed.

414 Law on Juvenile Court System, art. 32 – 40.

415 ibid, art. 23(1).

416 ibid, art. 18.

417 ibid, art. 33 – 38. This is assuming that the case goes all the way to the Supreme Court and that in every phase the detaining institution issued a warrant for extension of the detention.

418 Law No. 3 of 1997 on Juvenile Court, art. 44, and 46 – 49. Under Article 50, an additional of 30 days (maximum) of detention can be given to the child if he or she suffers from a grave physical or mental disorder.


420 Gol, 2011 IPR-CEDAW, para. 49.
establishment of the Integrated Services Unit for the Empowerment of Women and Children (P2TP2A).421

According to 2007 IPR-CRC, “P2TP2A is established in every province, regency and municipality, to undertake the task of preventing violence, discrimination, harassment, mistreatment, and neglect of and handling, recovering, rehabilitating, and reintegrating child victims.” However, the 2012 Indonesian UPR stated that the GoI had only established P2TP2A in 18 provinces and 113 regencies/municipalities. The GoI added that P2TP2A also functions as information and trauma-healing centres.424

Apart from MOWE, the Ministry of Social Affairs is responsible for the protection of neglected children and street children. To implement its mandate, the Ministry of Social Affairs provides trauma centres, shelters, and safe houses for neglected and abused children (and women).426

Meanwhile, in relation to legal enforcement of protection of women and children against violence, GoI reports indicated that Indonesia has established a special unit, Women and Children Protection Unit (UPPA), within every district police office to handle criminal cases that involve women and children both as perpetrators and victims. Specifically for the protection of victims of violence, in 2006, Indonesia established the Witness and Victims Protection Institution (LPSK) aiming at protecting victims and witnesses against further violence in relation to criminal proceedings. In the case of the juvenile justice system in Indonesia, the reports mention the close involvement of the Bureau of Corrections (BAPAS) to ensure the fulfilment of the rights of children in conflict with the law in every stage of legal proceeding.429

The National Commission for Human Rights (Komnas HAM), the National Commission on Violence against Women (Komnas Perempuan), and the National Commission for the Protection of Children are established by the GoI to oversee the implementation of women and children rights. The GoI also established the National Commission for the Elimination of Worst Forms of Child Labour (KNPBPTA) to deal with, among others, child workers as victims of violence. The legislative body also has a Parliamentary Female Caucus that actively promotes gender perspective and women’s rights in the Parliament.

The most recent development in this context was the signing of a joint decree between the Minister of Social Affairs, Minister of Home Affairs, Minister of National Education, Minister of Religious Affairs, Minister of Health, Minister of Law and Human Rights, and MOWE with the Chief of Indonesian National Police on Improving Social Welfare of Street Children. The signing of this joint decree marked the commitment of these ministries together with the police force to conduct joint monitoring activities to decrease the number of children returning to the streets. The strategy prioritises the role of family-based treatment, with MOWE being the responsible institution to empower the role of families to prevent children from returning to the street.

Even though the reports do not mention the existence of other institutions that might play relevant roles in the implementation and monitoring of the protection of women and children against violence, the Study, for the sake of clarity, finds it necessary to mention several institutions that do play an important role in monitoring the implementation of this State obligation. This is particularly important in relation to the protection of children in conflict with the law against abuse conducted by law enforcers and the judiciary. The said institutions are:

430 GoI, 2011 IPR-CEDAW, para. 162.
431 GoI, 2007 IPR CRC, para. 8.
432 GoI, 2011 IPR-CEDAW, para. 162; See also GoI, 2005 IPR CEDAW, para. 38.
433 GoI, 2012 Indonesian UPR, para. 106.
434 Ibid.
435 Ibid.
436 See the part on prevalence of violence above, especially the discussion relating to “Violence against Children in Conflict with the Law” and “Street Children”.

Ranyta Yusran
1) The National Police Commission ---- an independent commission established by the President. One of its main functions that is relevant to the protection of children in conflict with the law is to receive complaints and suggestions from the society regarding police misconduct.\footnote{Law No. 2 of 2002 on the Police Force of Republic of Indonesia. State Gazette 2002:2. 8 January 2002. Art. 58(2)(c).}

2) The National Prosecutor Commission ---- an independent commission established by the President. Its authority include to receive and take necessary acts on complaints or reports filed by members of society on misconduct that might have been done by a prosecutor and to monitor and evaluate the performance of the Indonesian prosecutors.\footnote{Presidential Decree No. 18 of 2011 on the National Prosecutor Commission. 4 March 2011, art. 3 – 4.}

3) The Judicial Commission ---- the Commission was established as mandated by the Constitution to, among others, supervise the conduct of Indonesian judges.\footnote{Law No. 22 of 2004 on the Judicial Commission. State Gazette 2004:89, 13 August 2004, art. 19} The Commission also has the power to impose sanctions if a judge is responsible for misconduct or acts unethically.\footnote{Ibid, art. 20.}

b. Complaints Process

Neither reports discussed complaint processes on the handling of violence against women or children in detailed manner. They did, however, cite relevant bodies that have the power to receive and handle complaints filed by victims of violence. In this case, the Study will only cite authoritative bodies identified under the reports and cite relevant regulations pertaining to the complaint mechanisms.

From the institutions identified in the previous section on “Implementing and Monitoring Mechanism”, institutions that have the authority to receive and take action on complaints regarding violence against women and children are as follows:

1. TeSA 129, in 2006, MOWE, in cooperation with national and international NGOs, established a child helpline known as “Telepon Sahabat Anak 129” (TeSA 129) using free dial facilities in Jakarta, Surabaya, Banda Aceh, Makassar, Pontianak, and Sidoarjo.\footnote{GoI, 2007 IPR-CRC, para. 68 and 111.} TeSA 129 aims at providing child protection services to victims of abuse and neglect as well as to serve as a mechanism for child-friendly complaints.\footnote{Ibid, See also GoI. 2008 UPR Indonesia, para. 29.}

2. MOWE, An integrated mechanism on recording and reporting of child victims of violence has been developed and made available at every regency/municipality, provincial, and national level, with MOWE as the lead agency.\footnote{Ibid, para. 74.}

3. P2TP2A, in the case of violence against children, victims can file complaints with P2TP2A in accordance with the guidelines provided by MOWE through Regulation No. 2 of 2011 on Guidelines in the Handling of Children Victims of Violence. For the handling of cases of violence against women and children in general, the complaint mechanism through P2TP2A is provided under MOWE Regulation No. 1 of 2010 on Integrated Service System.\footnote{See tables 8 – 10 above.} P2TP2A should be available in every regency/municipality. According to the said MOWE Regulations, in conducting its duty, it needs the cooperation of relevant UPPA. In the execution of its mandate, P2TP2A faces some challenges as will be described in the section of “Progress Indicators and Challenges” below. In 2009, P2TP2A handled 143,586 cases of violence all over Indonesia.\footnote{GoI, 2012 Indonesian UPR, para. 93.}

4. UPPA (Police Force), in accordance with the 2007 CNP Regulation on UPPA,\footnote{See table 9 above.} every complaint filed in relation to cases of violence against women and children made to the local police office will be referred to UPPA. The procedure and handling of such complaint by UPPA is regulated under 2008 CNP Regulation on the Establishment of Special Service Room and Inspection Procedure for Victim and Witness of Violence.\footnote{Ibid.} In the execution of its mandate, UPPA faces some challenges as will be described in the section of “Progress Indicators and Challenges” below. Both UPPA and P2TP2A are parts of an Integrated Service Unit provided under MOWE Regulation on the Minimum Service Standard for Women and Children Victims of Violence. Apart from UPPA and
P2TP2A, there are also other units such as Integrated Crisis Centre (PKT), Protection House and Trauma Centre (RPTC), Social Protection House for Children (RPSA), Women Crisis Centre (WCC), Legal Aid Centre (LBH), and others. Women and Children who are victims of violence as well as witnesses put their complaints and reports through these integrated service units. UPPA and P2TP2A have recorded 534 cases of domestic violence in 2009, which were resolved in 13 provinces. However, there is no information through what ways the complaints were resolved, e.g., whether through out-of-court-settlement or through judicial process. Furthermore, bearing in mind that Indonesia is a Country with a population of more than 240 million people and consists of 33 provinces, the number of recorded cases did not do well to act as a progress indicator for the effectiveness of the work of both institutions. It is feasible that the lack of information from the victims’ side on their rights and protection offered might hamper their access to justice, including their access to these two institutions, hence the low number of reported cases.

5. KPAI and KNPBPTA, both Commissions hold a special mandate to deal with complaints relating to children in conflict areas. Gol further adds that both institutions also cooperate in enhancing their legal standing to be authorised for pro justitia investigations with regard to child abuse cases by proposing the amendment of the Law on Child Protection. The mandates of KPAI and KNPBPTA are stipulated under 2003 Presidential Decree on KPAI and 2001 Presidential Decree on KNPBPTA.

6. Komnas Perempuan, even though under Presidential Decree No. 65 of 2005 Komnas Perempuan does not have the authority to handle individual cases directly, many women victims of violence come to Komnas Perempuan and report the violence that they suffer. To respond to the growing reports on violence against women, in 2003, Komnas Perempuan established Complaint for Referral Unit (UPR). UPR will receive complaints from victims and, depending on the needs assessment of each particular complaint, refer complaints to relevant partner institutions for follow-up.

7. MoU on Access to Justice for Women Victims of Violence, signed by the Chief of National Police, the Attorney General, the Supreme Court, Komnas Perempuan, Association of Indonesian Advocates, and the Minister of Law and Human Rights. Indonesia 2012 report to UPR Mechanism stated “the MoU aims to accelerate advocacy processes on violence against women cases”. One of the most important points in the MoU is the affirmation of the obligation of Indonesian Lawyers, under the coordination of the Association of Indonesian Advocates, to render legal assistance to women who are victims of violence on a pro bono basis.

c. Protection and Rehabilitation

In 2006, the Gol passed the Government Regulation on the Implementation and Cooperation for Recovery of victims of Domestic Violence that serves as guideline for the implementation for integrated efforts to provide services in the recovery of victims of domestic violence. The Government Regulation has established a coordination network consisting of relevant institution for the recovery of victims (medical workers, social workers, volunteers, and religious authorities) under the coordination of MOWE.

The 2011 IPR-CEDAW also indicates the 2007 MOWE Regulation on the Establishment of Coordination Forum on the Cooperation on the Prevention and Recovery of Victims of Domestic Violence as one of the mechanisms that provide protection and rehabilitation to victims.
of violence.\textsuperscript{462} To further advance this commitment, in 2010, MOWE passed another regulation on Standard Minimum Services for Women and Children Victims of Violence (MOWE regulation on SPM) that provides integrated services of relevant institutions such as, among others, UPPA, P2TP2A, health care institutions, safe house and trauma centres, Social protection Safe House for Children, Women Crisis Centre, and Legal Aid Centres.\textsuperscript{463}

In relation to regional efforts, the GoI reported that, since 2004, regional governments, both at municipal and provincial levels, have passed numerous by-laws on protection of women and children victims of violence.\textsuperscript{464} These by-laws provide integrated protection and cooperation mechanisms among relevant institutions in their respective regions.\textsuperscript{465} Yogyakarta, Central Java, East Java, Bengkulu, and North Sulawesi are among the provinces that have enacted by-laws on local efforts on protection of women and children victims of violence. Additionally, in 2011, the General Attorney issued a circular letter to all prosecutors in Indonesia concerning the handling of cases of violence against women, which basically lays down guidelines to all prosecutors on the special treatment of women who are victims and/or perpetrators.\textsuperscript{466}

For the sake of thoroughness, the Study deems it necessary to include other protection and rehabilitation mechanisms that are not mentioned in either of the reports, since these mechanisms also form important parts in the general protection of women and children against violence. The first mechanism is the mechanism provided under KDRT Law that involves the role of the police and the court to provide protection to victims of domestic violence such as issuing restraining order against the perpetrators.\textsuperscript{467} The other mechanism provided under Indonesian legislation is the Witness and Victim Protection regime of Law No. 13 of 2006. The regime provides general protection to victims (and witnesses) in a criminal case (including forms of violence against women considered as crimes under Indonesian legal system) during investigation and court proceedings.\textsuperscript{468}

d. Prevention Strategy

i. Prevention Strategy: Violence against Children

Especially for the protection of children against violence, MOWE is leading a public campaign entitled “Stop Violence against Children”.\textsuperscript{469} A series of public campaigns is being conducted nationally, starting in Central Java, East Java, West Nusa Tenggara and East Sumba, East Nusa Tenggara, Maluku, and South Sulawesi. The campaign is targeted at raising awareness in homes and families, schools, the judiciary, and other formal sectors.\textsuperscript{470}

Though the report does not mention the lead institution, the 2008 Indonesian UPR indicates that the GoI launched a massive campaign to “Stop Early Marriages”, in West Nusa Tenggara and North Coast of Java.\textsuperscript{471} A video diary documenting cases of sexual violence against children was produced by child victims to be used as a medium for advocacy to prevent violence and exploitation.\textsuperscript{472} Moreover, to raise awareness of the general public, the GoI has made available the CRC Implementation Report on the Internet.\textsuperscript{473}

The Ministry of Health, Ministry of Education, Ministry of Social Affairs, and the National Police have developed a number of standard guidelines for the handling of cases of violence against children.\textsuperscript{474} They serve as standard operating procedures for health workers, teachers, social workers, and police in preventing violence against children.

\begin{itemize}
    \item [462] Ibid. See also table 10 above on the discussion about the said MOWE Regulation.
    \item [463] Ibid. para. 46; See also tables 7 and 8 above on the discussion about the said MOWE Regulation.
    \item [464] Ibid. para. 203.
    \item [465] Ibid.
    \item [467] See tables 9 and 10 above on the description of protection and rehabilitation measures provided in KDRT Law.
    \item [468] See table 9 above on the description of protection measures provided in the Law on Witness and Victim Protection.
    \item [469] GoI, 2008 Indonesia UPR, para. 27.
    \item [470] Ibid.
    \item [471] Ibid. para. 30.
    \item [472] Ibid.
    \item [473] GoI, 2007 IPR-CRC, para. 19. The report can be accessed on www.kotalayakanak.org
    \item [474] GoI, 2008 Indonesian UPR, para. 37(d).
\end{itemize}
Another strategy to prevent early marriage is the establishment of sanctions by the Ministry of Religious Affairs for chaplains who conduct matrimonial ceremonies for couples under the age of 18. The Ministry has launched a program to raise awareness of the existence of these sanctions.

### ii. Prevention Strategy: Violence against Women

Meanwhile, in the case of protection of women against violence, since 1999, the GoI has adopted a Zero-Tolerance Policy as a strategy to eliminate violence against women. The policy also engages cooperation from numerous stakeholders from government institutions, women study centres, as well as NGOs. As a result of this cooperation, in 2000, the National Action Plan on the Elimination of Violence against Women was launched.

In 2000, the President enacted Presidential Instruction No. 9 of 2000 that obliges all Government representatives and agencies to mainstream gender sensitivity in their policies, programs, projects, activities and budgets to eliminate gender-based discrimination. In the context of regional autonomy, both the Ministry of Law and Human Rights and the Ministry of Home Affairs have issued guidelines for drafting regional by-laws for regional governments emphasising principles of non-discrimination of women and gender equality.

The Ministry of Religious Affairs also contributes to efforts to prevent violence against women caused by pseudo-religious customs that legitimise violence against women through the improvement of religious curricula and ensuring that the material previously used are replaced with more gender-equitable material. The GoI believes that this is necessary to de-radicalise biased religious views upheld by certain religious groups against women. Adding to this, the GoI also states that it will conduct a widespread, interdisciplinary, integral and holistic research to map the practice of FGM, including studies on numerous physical, biological, sexual, cultural, psychological and religious implications of the practice. The studies are pertinent to produce better policies on the matter.

### 4 Role of Non-State Actors

#### a. Assistance to Victims

Komnas Perempuan in its 2011 independent report to CEDAW Committee mentions that crisis centres at numerous hospitals (63 units) and community-based Women Crisis Centres spread in 20 provinces play an important role in providing assistance to women and children victims of violence in Indonesia. Their efforts in providing assistance for victims are also part of an integrated services mechanism under MOWE Regulation on SPM. There are also more than 75 health centres, community-based crisis centres, and NGOs from all over Indonesia identified as Komnas Perempuan partner institutions in providing assistance and report on women and children victims of violence.

According to 2011 IPR-CEDAW, several NGOs have been pioneering what is called Pesantren-based women crisis centres to handle cases of violence against women, which are now operating in Jakarta, East Java, Madura, and West Nusa Tenggara. They provide counselling services for women and victims’ empowerment programs.

#### b. Prevention Programs


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475 GoI, 2011 IPR CEDAW, para. 199.
476 Ibid.
477 GoI, 2011 IPR-CEDAW, para. 34
478 GoI, 2005 IPR-CEDAW, para. 72.
479 Ibid.
480 Ibid, para. 35.
481 GoI, 2011 IPR-CEDAW, para. 8.
482 GoI, 2011 IPR-CEDAW, para 33.
483 Ibid.
484 Ibid, para. 152.
485 Ibid.
487 GoI, 2011 IPR-CEDAW, para. 46; See also the description of MOWE Regulation on SPM in Table 10 above.
488 Komnas Perempuan, 2010 Notes, 6 – 10.
489 GoI, 2007 IPR CRC, para. 111.
490 GoI, 2011 IPR-CEDAW, para. 34.
491 Ibid.
International Indonesia, and UNICEF, has conducted public consultations in 18 Provinces on violence against children in Indonesia's perspective.\(^{492}\)

In the effort to eliminate discrimination against women, 2011 IPR CEDAW acknowledges the active role of NGOs in advocacy through religious approach. It cited an example set out by two NGOs, Puan Amal Hayati and Rahima and Fahima that wage campaigns on Islam partiality to justice and gender equality. The NGOs play an important role in the curriculum reform in Pesantren (Quranic Study) incorporating gender perspective and equality.\(^{493}\) The Study sees this effort as a positive initiative to address root causes of violence against women and children, especially causes related to patriarchal culture and religious interpretation that subjugate the position of women and children in society.

c. Monitoring and Cooperation

In August 2007, the OHCHR deployed a human rights adviser to Indonesia to assist in strengthening a human rights-based approach in UN agencies’ programs and developing a joint program to strengthen the capacity of the three NHRIs in Indonesia in handling occurrences of violence against women and in child protection.\(^{494}\) However, at GoI’s request, the UN terminated the human rights adviser position in January 2010.\(^{495}\)

i. Women

Local NGOs have been actively supporting Komnas Perempuan in the monitoring of cases of violence against women. The NGOs assist Komnas Perempuan in putting together detailed documentation on cases of violence against women that include the number and distribution of cases, advocacy notes, as well as progress and regress in the handling of cases of violence against women.\(^{496}\)

The 2011 IPR-CEDAW acknowledges the active involvement of NGOs in the policy-making process relating to the prevention and handling of violence against women as well as protection of women against violence. Some examples resulting from NGOs’ active advocacy of women’s rights are 1) the successful adoption of KDRT Law;\(^{497}\) and 2) the active engagement of NGOs in the drafting of the revision of Marital Law and the Islamic Law Compilation.\(^{498}\)

Moreover, the 2011 IPR-CEDAW also mentions the constant assistance rendered by the Network for the Advocacy of Policies to Eliminate Violence against Women (JANGKA PKTP), now known as the Coalition Network for Pro-Women National Legislation (JKP3), in assisting the Government and the House of Representative in advocating pro-gender equality policies.\(^{499}\) JKP3 consists of various non-government organisations focusing on issues of women’s empowerment.\(^{500}\) Most importantly, the Government acknowledges the invaluable role of JKP3 during the drafting of KDRT Law, Law on Health, Law on the Eradication of Human Trafficking, and many others.\(^{501}\)

ii. Children

The Study notices that, according to the reports, most of the involvement of non-state actors in monitoring and cooperation on the protection of children against violence occurs by way of engaging with relevant Government Institutions and conducting studies/assessments on specific issues. Some collaboration also aims at developing mechanisms to support the protection of children and prevention against violence.

As has been mentioned in Section C above, at the regional level, both in municipalities and provinces, local governments have established task forces involving NGOs and business organisations in implementing child protection policies. This, according to GoI, is in line with the mandates prescribed under regulations on regional governments, which include the obligation of regional governments to ensure the protection of women and children against violence.\(^{502}\) In relation to independent monitoring on the implementation of child protection policies, Komnas HAM, KPAI, and Komnas Perempuan as independent State Institutions have developed a

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\(^{492}\) GoI, 2007 IPR-CRC, para. 76 (footnote 57).

\(^{493}\) GoI, 2011 IPR-CEDAW, para. 34.

\(^{494}\) UN OHCHR, 2012 Compilation of UN Documentations, para. 12.

\(^{495}\) Ibid.

\(^{496}\) GoI, 2011 IPR-CEDAW, para. 194.

\(^{497}\) Ibid, para. 24.

\(^{498}\) Ibid, para. 35.

\(^{499}\) Ibid, para. 24 and 60.

\(^{500}\) Ibid.

\(^{501}\) Ibid.

\(^{502}\) GoI, 2007 IPR CRC, para. 7.
mechanism for independent monitoring mechanism on child protection that include joint programs with UNICEF, UNDP, and UNFPA.

Responding to the need of having a sound documentation on children issues, the GoI has been engaging with UNICEF, ICMC, ACILS, and ECPAT in developing database systems on monitoring on the rights of the child, children faced with legal prosecution, and children outside of family care. The GoI has secured funding to maintain this database for the period of 2009 – 2014. KPAI in collaboration with UNICEF Indonesia have conducted a needs assessment to support KPAI independence to implement its mandate to submit reports, investigations results, and recommendations to the President in relation to children protection issues.

With regard to neglected and street children, in 2007, Ministry of Social Affairs together with UNICEF and Save the Children UK has conducted a comprehensive study on the quality of service provided in foster homes. The study was conducted in 6 provinces namely Aceh, Central java, West Kalimantan, north Sulawesi, West Nusa Tenggara, and Maluku.

5  Progress Indicators and Challenges

  a. Progress Indicators

  i. Institutional Progress Indicators Pertinent to the Protection of Women and Children against Violence

Since the enactment of KDRT Law in 2004, the GoI has enacted many laws and regulations, both at the national and regional levels, to support the implementation of KDRT Law. These regulations mostly focus on cooperation among relevant State institutions, law enforcement agencies, and NGOs to provide services and protection to victims of domestic violence, monitoring and handling of cases of domestic violence, and prevention of domestic violence and recovery of victims. In 2011, substantial progress was made by the GoI in enhancing the institutional capacity of legal enforcers in rendering access to justice through the adoption of the Law on Legal Aid and the Attorney General’s Circulation Letter on the Handling of Cases on Violence against Women.

The GoI has already established 305 UPPA in police stations in 32 provinces, which comprise 115 senior officials and 982 police officers who are specially trained to provide counselling, medical examinations, escort, and safe houses for women and children victims of violence. By July 2009, MOWE had assisted in the establishment of 17 P2PTP2A at provincial level and 12 P2TP2A at regency/municipality level. Komnas Perempuan reported that, by 2011, there are at least 113 P2TP2A established all over Indonesia. Komnas Perempuan also noted that, with the support of civil societies, there are 63 Integrated Crisis Centres integrated to hospitals and 42 Women Crisis Centres established all over Indonesia. In addition to this, the Minister of Interior had adopted a circular letter on the Acceleration of the Implementation of Minimum Service Standard in relation to MOWE Regulation on SPM. The Circular established 13 Minimum Service Standards, including the Minimum Service Standard for Women and Children Victims of Violence, which aims, among others, to boost regions in Indonesia to establish Minimum Service Standard for Women and Children Victims of Violence.

  ii. Progress Indicators in the Case of Protection of Women

The 2007 GoI Response to CEDAW Committee states that the GoI is still discussing the Draft Law on Gender Equality. This Draft Law will include the definition of discrimination against women in accordance with the definition provided by CEDAW. At present, the Study notes that the Draft Law is still under discussion by the

509  Gol, 2011 IPR-CEDAW, para. 203; See also the section on Assessment on State Policies above and tables 6 – 10.
510  Komnas Perempuan, 2011 Note., 38.
511  Gol, 2011 IPR-CEDAW, para. 203 and 204.
512  Ibid, para. 205.
514  Komnas Perempuan, 2011 Note, 38.
515  Gol, 2007 Response to CEDAW Committee, para. 2.
516  Ibid.
In relation to the prevalence of FGM in Indonesia, the 2011 IPR CEDAW indicates that the Indonesian Council of Ulama (Majelis Ulama Indonesia, MUI) has reached a positive agreement affirming that any practice of genital mutilation is strongly opposed. Nonetheless, they still approve of the practice as long as the methods applied are those that do not harm women. In other words, the MUI does not completely prohibit FGM practice and still opens the possibility of people conducting FGM. Furthermore, as noted above, the Directorate General of Public Health issued a circular in 2006 declaring that the practice of FGM harms and hurts women and prohibiting medical workers from engaging in such practice. Unfortunately, as a response to the issuance of the 2006 circular, MUI issued a decision (fatwa) opposing the 2006 circular as will be discussed in the following section on Challenges (Section 5.b.i below).

The GoI states that it has made progress in raising women awareness against domestic violence. The 2011 IPR CEDAW shows increasing reports made by victims of domestic violence, especially women, to various organisations documented by Komnas Perempuan. The GoI notes that KDRT Law manages to encourage victims to reveal and report domestic violence while, previously, domestic violence was considered as taboo and embarrassment. Furthermore, Komnas Perempuan, in collaboration with other State’s Institutions and civil society organisations, has consistently included reliable statistics on cases of violence against women gathered from Komnas Perempuan branches and its partner institutions all over Indonesia in its annual reports. These reports are accessible to relevant stakeholders.

iii. Progress Indicators in the Case of Protection of Children

According to the Indonesia’s 2012 UPR report, in early 2012, the GoI was still under the process of revising Law No. 3 of 1997 on Juvenile Court so that it will complement the provisions of CRC at the domestic level. The revision will include, among others, the discourse of diversion in the handling of juvenile cases, inclusion of restorative justice approaches, and increasing the minimum age for criminal responsibility from 8 to 12 years. In relation to the improvement of the age of criminal responsibility, the Study notices a positive development reflected in a recent Constitutional Court judgment. In its 24 February Decision, the Constitutional Court declared provisions of the Law on Juvenile Courts which set out the age of criminal responsibility at 8 years as unconstitutional. The Court is of the opinion that the ideal age of criminal responsibility in accordance with the interpretation of the Constitution, taking into consideration the general practice in the international plane, is the age of 12 years. Finally in July 2012, the GoI enacted Law No. 11 of 2012 on Juvenile Court System replacing Law No. 3 of 1997 on Juvenile Court.

Still relevant to the issue of juvenile justice, the Ministry of Law and Human Rights is developing 16 special child penitentiaries that are separate from adult prisons as mandated by the Law on Juvenile Court (now Law on Juvenile Court System) and Child Protection Law. Furthermore, MOWE is formulating a model for child-friendly court and restorative justice in Central Java and West Nusa Tenggara, and has established a law enforcement network that consists of the police force, prosecutors, judges, penitentiary boards, and legal aid foundations.

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519 GoI, 2011 IPR-CEDAW, para. 131.
520 Ibid, para. 132.
522 Ibid, para. 192.
524 GoI, 2012 Indonesian UPR, para. 102.
525 Ibid.
527 Ibid, 151 - 152.
528 GoI, 2008 Indonesian UPR, para. 36.
In 2007, the GoI initiated the process of developing a National Action Plan for the Elimination of Violence against Children to address issues of prevention of violence, discrimination, harassment, mistreatment, and neglect, as well as recovering, rehabilitating, and reintegrating child victims. More recently, in 2010, MOWE passed a Ministerial Regulation on National Action Plan on the Prevention and Handling of Violence against Children. The GoI is also in the process of developing regulations aiming at prohibiting all forms of physical and psychological punishments of children at home and in schools. Moreover, in relation to the issue of protection of street children, the GoI, in 2006, with the support of World Bank through its Global Road Safety Partnership, has developed School Children Safety Program to ensure the safety of street children. In 2010, the GoI adopted Presidential Instruction No. 3 of 2010 on Justice for All Development Program, which established the Street Children Social Welfare Program as one of its outputs.

In relation to the urging of the CRC Committee for Indonesia to ratify the two optional protocols of CRC, in 2012, the GoI informed the Working Group on UPR that the draft laws on the ratification of both optional protocols have been submitted to the Parliament and they are expected to be ratified soon. Similar progress is also being made regarding the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women; the GoI has given its oral commitment to the CEDAW Committee to ratify the Optional Protocol that allows individual complaints to be brought before the Committee in cases of CEDAW violations.

b. Challenges

Even though the GoI mentioned positive developments taking place in relation to the handling of cases of violence against women and children through the establishment of UPPA in each district police office, the 2011 IPR CEDAW indicates several challenges with regard to the actual practice. The Report highlights limited funding and lack of continuity in the special handling mechanism for psychological rehabilitation as some of the challenges faced by UPPA. The Report also notes that the presence of UPPA is still scarce in some provinces such as Maluku, which only has two UPPA in the whole province.

i. Challenges in the Protection of Women against Violence

Since the regional autonomy regime was introduced into the Indonesian legal system, GoI has identified gaps of commitment in the implementation of national human rights commitments at the regional level and this is reflected in various local by-laws, which not only discriminate against women, but also violate women’s rights. Komnas Perempuan, in close cooperation with 367 community-based organisations, has undertaken measures to concretely contribute to identifying local regulations which are discriminative against women on religious and traditional values. Komnas Perempuan continues to monitor gender-biased regional regulations and push for improvement by the local government. However, in spite of vigorous advocacy against regional regulations that condone violence against women, Komnas Perempuan still finds numerous regional regulations that discriminate against women and enable violence against women to take place.

As has been mentioned above (see Section 5.a.ii), despite having issued an agreement on the harmful nature of the practice of FGM, unfortunately, the MUI issued a fatwa “prohibiting the prohibition” of FGM as stated under the Directorate General of Public Health 2006 Circular. The 2010 IPR CEDAW did not give a clear elaboration on the notion “prohibiting the prohibition”; however, in its fatwa the MUI stated that the reason of its...
opposition was that FGM is considered as “makrumah (memuliakan) and the prohibition of female circumcision is considered as in contradiction with Islamic Law.”\(^{544}\) Unfortunately, possibly in order to appease the MUI on the matter of FGM, the Ministry of Health in 2010 enacted a Regulation, which, instead of prohibiting the practice, regulates the practice and methods of FGM.\(^{545}\) This is a discouraging development that is yet to be covered by GoI reports to UN Treaty Bodies in relation to FGM. Clearly, there are contradictory regulations and policies on this contentious subject that the GOI has yet to resolve.

In relation to the prevalence of domestic violence against women, despite the enactment of KDRT law and the increasing awareness in the society, the GoI notes that a thorough and integrated approach in the handling of cases of domestic violence had not been carried out well.\(^{546}\) One of the main challenges in the fight against domestic violence in Indonesia is the lengthy and complicated legal process that victims have to go through under the KDRT Law regime.\(^{547}\) To add to this challenge, Indonesia’s law enforcers still applied the old stereotypical and gender-biased mind-set in resolving cases of domestic violence.\(^{548}\) As an example, the judges of the religious courts tend not to use KDRT Law despite the fact that many divorce cases cite domestic violence as the cause of divorce.\(^{549}\) This is disconcerting since more than 30% of the divorce cases filed in 2006 – 2007 were filed on the ground of domestic violence.\(^{550}\) Still in relation to the prevalence of domestic violence, CEDAW Committee expresses its concern that until now a monitoring mechanism for the enforcement of KDRT Law is still absent.\(^{551}\)

CEDAW Committee in its recent concluding observation notes that most Indonesian women are still not aware of their rights under CEDAW; this cripples their capacity to uphold their rights.\(^{552}\) Moreover, the Committee also states its concern on the lack of awareness among Indonesia’s law enforcers with regard to the rights protected under CEDAW as well as Indonesia’s failure to “fully and systematically incorporate the Convention throughout Indonesian Law.”\(^{553}\) To emphasise on the lack of awareness of law enforcers, especially in the case of violence against women, the Committee highlights the fact that the police still practice mediation in rape cases, payment of fine as settlement for the case, and the practice of marrying the victim of rape to the rapist.\(^{554}\)

Another challenge in preventing domestic violence is the Marital Law that places women in vulnerable position in marriage.\(^{555}\) The GoI is committed to revising the Marital Law, however the process has been going on for years. Numerous State Ministries were appointed as lead agencies in carrying out the process and yet, the GoI argues, the revision of the Marital Law faces challenges from the public that cause the initiative to be put on hold.\(^{556}\)

CAT Committee noted in 2012 that even though Indonesian Health Law has allowed abortion to be conducted on women victims of rape, victims still find it hard to access the service.\(^{557}\) Victims have to pass several selection criteria to receive abortion service; this has proven difficult to victims since most of them have limited access to health services due to financial or geographical reasons.\(^{558}\)

### ii. Challenges in the Protection of Children against Violence

In general, the GoI indicates that, unfortunately, KPAI only has limited capacity in promoting child protection in Indonesia.\(^{559}\) Another challenge is the difficulty in effectively implementing P2PTP2A and TeSA 129, mostly

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544 See MUI Fatwa No. 9A of 2008 in Yulianti Muthmainnah: Larangan Khitan Perempuan.
547 Ibid, para. 193
549 Ibid, para. 207.
550 Ibid.
551 CEDAW Committee, 2012 CO-CEDAW, para. 25(c).
552 Ibid, para. 11.
553 Ibid.
554 Ibid, para. 25(b).
555 Gol, 2011 IPR-CEDAW, para. 207.
556 Ibid, para. 197.
557 UN OHCHR, 2012 Compilation of UN Reports, para. 51.
558 Ibid.
559 Gol, 2008 Indonesian UPR, para. 37(3d).
due to the lack of public awareness of the existence of P2TP2A and TeSA 129 and lack of resources.\textsuperscript{560}

Overall, the GoI in its 2007 IPR-CRC views the juvenile justice system in Indonesia as yet to be child-friendly.\textsuperscript{561} For instance, the existing juvenile correctional facilities do not have proper facilities and resources to provide mental and physical rehabilitation in order to reintegrate the children back into society.\textsuperscript{562} GoI acknowledges that one of the primary challenges in implementing juvenile criminal procedures is the lack of understanding among law enforcement officers (judges and attorneys), who have been accustomed to using the Indonesian Criminal Code rather than the new Law on Child Protection.\textsuperscript{563} The GoI finds it difficult to change the mind-set of law enforcers, the judiciary, the public, and other stakeholders to acknowledge and observe the rights of children in conflict with the law.\textsuperscript{564} Furthermore, from a practical point of view, the GoI points out that procedural errors still occur during the arrest, detention, trial and imprisonment of children in conflict with the law as well as in the observance of the right of children to refrain from answering matters beyond their knowledge.\textsuperscript{565}

The documentation and the availability of information on cases related to child protection, including their development, are still weak.\textsuperscript{566} This is specifically true in relation to documentation of child trials provided by UPPA at the district police units.\textsuperscript{567}

Turning to the issue of violence against children in childcare institutions, a study conducted in 2007 by the Ministry of Social Affairs, in collaboration with Save the Children and UNICEF, indicates the absence of specific research on sexual violence that might take place in childcare institutions.\textsuperscript{568} This is based on the consideration that physical violence against children does take place in some of these institutions; the study found almost no instance of sexual violence being identified or referred to by the children that it interviewed.\textsuperscript{569} Another challenge that this study addresses is the absence of individual care plan and review concerning the placement of each child living in childcare institutions.\textsuperscript{570}

6 Gaps and Recommendations for Further Studies

a. Gaps in Indonesia’s Legal Framework and Policies

The Criminal Code has laid down general provisions on protection of women and children against violence. In recent years, Indonesia has made heartening developments in increasing the legal protection of women and children against violence through the adoption of Law on Human Rights, Law on Child Protection, Law on Juvenile Court System, KDRT Law, TIP Law, and many others. However, in the course of this study, the Study has noticed a number of legal gaps and uncertainties in the legal framework:

1. Indonesia’s legal framework has yet to penalise sexual harassment at work place;
2. There is no definition of child soldiers;
3. With regard to the age of consent, there are different provisions in different laws setting out or indicating different ages of consent. For example, the age of consent according to the Child Protection Law is 18 years, while marriageable age according to the Marital Law is 16 years old;
4. Early marriage for underage children is still possible under Indonesian legal framework as long as there is parental consent or consent from the child’s guardian;
5. Indonesia still maintains the age of eight as the age of criminal responsibility while CRC clearly stipulates that States Parties shall set out the age of criminal responsibility at 12 years old. The Constitution Court has stated in its 2011 decision that the age of criminal responsibility in Indonesia should follow the age requirement established under CRC; however, amendment of relevant laws has not taken place yet;
6. Indonesian KDRT Law does not extend its protection to violence against women that is conducted by former or current intimate partner who is not bound by wedlock;

\textsuperscript{560} GoI, 2007 IPR-CRC, para. 112 – 113.
\textsuperscript{561} GoI, 2007 IPR-CRC, para. 164.
\textsuperscript{562} GoI, 2012 Indonesian UPR, para. 103.
\textsuperscript{563} GoI, 2008 Indonesian UPR, para. 17; See also GoI, 2007 IPR-CRC, para. 164.
\textsuperscript{564} GoI, 2012 Indonesian UPR, para. 103.
\textsuperscript{565} GoI, 2007 IPR-CRC, para. 168.
\textsuperscript{566} GoI, 2008 Indonesian UPR, para. 37.
\textsuperscript{567} Ibid.
\textsuperscript{568} Ministry of Social Affairs, Save the Children, and UNICEF, Someone that Matters, 176 – 177.
\textsuperscript{569} Ibid, 177.
\textsuperscript{570} Ibid, 172.
7. The term statutory rape is not clearly defined by Indonesian legal framework. Even though some provisions under the Criminal Code and the Child Protection Law prohibit an act similar to statutory rape, the application of various provisions on the age of consent makes the implementation of these provisions more difficult;
8. The terms sexual violence and sexual harassment are not recognised under the Indonesian legal system. The Criminal Code uses the term “perbuatan cabul” or obscene act to describe sexual violence and sexual harassment and it does not explain types of act that can be considered as “obscene”;
9. International provisions pertaining to protection of women and children during times of armed conflict have not been sufficiently integrated in the Indonesian legal system. For example: Indonesia has not defined the term “armed conflict” in its legal system; Indonesia has yet to criminalise war crimes, which elements of crimes include the criminalisation of gender-related crimes and violence against children; and
Even in the existing legislations relevant to the protection of women and children in armed conflict, protection given to women and children against violence is insufficient;
10. Under the Indonesian legal system, there is no specific definition on discrimination against women that corresponds with the definition set up under CEDAW;
11. There is nothing under Indonesian law that provides protection of women from harmful traditional practices such as forced marriage, dowry death, acid attack, and FGM as described under CEDAW General Recommendations No. 14 and No. 19(11);
12. Existing literature indicates that there is no explicit prohibition of corporal punishment of children as disciplinary methods in schools and penal institutions;
13. The existing legal framework is replete with contradictory provisions, inconsistencies, duplicative or overlapping provisions, and is generally unsystematic in defining a framework for the protection of women and children.

b. Gaps in the Literatures

Research and studies on violence against women in Indonesia have grown significantly over the years, especially after the adoption of KDRT Law in 2004. These studies cover multiple aspects of the subject, including assessment of existing national legislations and policies regarding protection of women and children against violence. Various stakeholders, including the GoI, contributed to the body of literature on violence against women and children. In fact, in 2006, the GoI, through Statistic Indonesia and MOWE, conducted a nationwide survey on violence against women and children occurring in various situations. Other reports conducted by non-state actors have collated reports of violence against women and children, ranging from specific regions in Indonesia to nationwide coverage through various NGO networks. They discuss the prevalence of various forms of violence against women and children and even go as far as profiling the perpetrators and victims.

However, the Study concludes that there are some gaps in the information provided in the existing literature. The Study also notices that some studies on the prevalence of violence against women and children in Indonesia have become rather obsolete since they were conducted prior to 2005 and need to be updated in accordance with current developments. Below is a list of gaps of information and studies that the Study has identified:

1. The Study did not come across any data on the numbers of incidents of violence against women and children in general that were being reported to and handled by the police and prosecutors as well as the disposition of these cases in the investigatory, prosecutorial, and judicial stages.;
2. In conjunction with the point above, so far the Study has yet to find a comprehensive study analysing from quantitative and qualitative standpoints the effectiveness of national legislation and policies adopted to protect women and children from violence (e.g., KDRT Law, Human Rights Law, Child Protection Law, Criminal Code). No such comprehensive study maps out all the implementing legislation, regulations, and policies pertaining to the protection of women and children against violence;
3. There is no official statistical study/survey conducted subsequent to 2006 that covers the occurrences of violence against women and children throughout Indonesia;
4. On the prevalence of violence experienced by children in conflict with the law, the University of Indonesia and UNICEF conducted the last comprehensive study on the issue in 2003 (Situation Analysis on the Juvenile Justice System in Indonesia). The report covered, for instance, assessment of relevant legislations, prevalence of violence in each stage of legal process, and practices that deviated from the legal framework. Little is known whether the findings of the study are still relevant at present;

5. There is little information on the prevalence of:
   - Economic violence against women and children. For instance, economic violence that might arise from the termination of a marriage either by death or by divorce and issues relevant to how women and children access marital property;
   - Marital rape and statutory rape. Information on the number of reported cases, or investigation, prosecution, and conviction is close to nonexistent;
   - Corporal punishment as disciplinary measure to children;
   - Violence against street children and negligent treatment of children;
   - Violence against women and children belonging to minority groups as well as background information, profiling of perpetrators and victims, and analysis on existing legal framework on the protection of minority groups;
   - Violence against women and children in situations of armed and social conflicts. There are some reports produced in the past on this subject however they need to be updated. Little information is known on women and children who are internally displaced due to armed conflict and social conflict, let alone on the prevalence of violence against them;
   - Forced marriage of underage women. Despite acknowledging early marriage as a form of violence against children, little is known from existing literatures whether the prevalence of early marriage in Indonesia also signifies the prevalence of forced marriage of underage women. There is also insufficient information on the mapping of early marriage in Indonesia, how many unions constituted forced marriage, the familial and social dynamics involved, and whether traditional practices play a significant role in this phenomenon; and
   - Specific harmful traditional practices such as FGM throughout Indonesia. For instance, even though the GoI has stated that FGM is prevalent in Indonesia, this statement was not supported with statistical data;

6. Information on the Indonesian armed forces regulations pertaining to the conduct of the armed forces in situations of armed conflict. The Study perceives that this is due to the difficulties in gaining access to such information from the Indonesian armed forces;

7. There is no clear mapping of national legislation and policies applicable during states of emergency (e.g., situations of armed, social conflicts, and disasters) and the protections afforded to women and children in such circumstances;

8. So far, the Study has not found a comprehensive study analysing the implementation of Indonesia’s international obligations at national and local levels;

9. There is no conclusive data on the number or implementation of regional regulations and municipal enactments that discriminate against women and children and make them vulnerable to violence; and

10. Existing literatures only provide limited information on the role of non-state actors in the protection of women and children against violence. This also applies to the role of non-state actors in perpetrating or encouraging violence against women and children, and the governmental responses to such conduct.

c. Recommended Areas/Subjects for Further Studies

Based on the gaps identified from the existing literature and the national legal framework identified in the preceding sub-sections, the Study encourages stakeholders to focus on conducting further studies in the following areas/subjects:

1. An update to the 2006 GoI nationwide survey on violence against women and children is necessary to confirm the prevalence of violence against women and children at present;

2. Statistical survey on the numbers of incidents of violence against women and children in general that were reported to and handled by the police and prosecutors, as well as the disposition of cases and the number and nature of convictions made by the judiciary. Such a survey should be followed by an assessment of the procedures and practices applied
by the three institutions in handling cases of violence against women and children;
3. Analysis and assessment of the effectiveness of existing national legislation and policies pertaining to the protection of women and children against violence and extensive mapping of all implementing legislation and policies;
4. An update to the 2003 UNICEF Situation Analysis on the Juvenile Justice System in Indonesia;
5. Studies on the prevalence of specific forms of violence against women and children such as:
   - Economic violence against women and children;
   - Marital rape;
   - Statutory rape;
   - Corporal punishment as disciplinary measure for children;
   - Violence against street children and negligent treatment of children;
   - Violence against women and children belonging to minority groups;
   - Violence against women and children in situations of armed and social conflicts;
   - Violence, especially sexual violence, against children who live in childcare institutions;
   - Forced marriage of underage women; and
   - Specific harmful traditional practices such as FGM, acid attacks, and dowry deaths all over Indonesia.

Apart from the prevalence of specific forms of violence, it is necessary for each study to include, for instance, assessment of background information on the root causes and impact of each specific form of violence; profiling of the perpetrators and victims; and, if identified, the contribution of national and regional legislation in the prevalence of such violence;
6. Extensive mapping on national legislation and policies, including regional regulations (if there are any), applicable in times of state of emergency, such as armed conflict, social unrest, and disaster. The study shall focus on the assessment of provisions pertaining to the protection of women and children in the state of emergency. Especially in the case of armed conflict situation, assessment of the implementation of Indonesia’s international obligations prescribed by international instruments that it has ratified or acceded to, particularly those obligations relevant to the protection of women and children, is very essential;
7. A survey on discriminative regional regulations that leave women and children vulnerable to violence and their implementation and impacts. Such a study should include institutional responses to such regional regulations and the role of non-governmental or quasi-governmental groups in encouraging or perpetrating discriminatory practices and violence; and
8. Extensive mapping of the various roles of non-state actors in assisting women and children victims of violence; in the prevention of violence; monitoring efforts; and their cooperation with the GoI on the protection of women and children against violence.

C EXPLOITATION

1 Description of the Problem

On the Definition: According to General Comment No. 13 (2011) on the Rights of the Child to Freedom from all Forms of Violence, exploitation is identified as one of the forms of violence, based on Article 19 of CRC.571 Furthermore, Article 3(a) of the 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children defines exploitation to include “at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”572

a. Prevalence of Exploitation

The problem of exploitation of women and children in Indonesia as defined under relevant human rights instruments are prevalent. The reports identify some forms of exploitation of women and children that include labour exploitation (including forced labour, debt bondage, slavery or slavery-like practices), sexual exploitation (including forced prostitution, sale of brides), and sale

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of infants for illegal adoptions. Most exploitations of women and children in Indonesia are closely related to issues of trafficking in persons and migration for work.

i. Trafficking of Women and Children

Trafficking as a gateway to exploiting women and children is prevalent in Indonesia. The 2011 Trafficking in Persons Report (2011 TIPR) made by the United States’ Department of State considers Indonesia as a major source country and to a much lesser extent a destination and transit country for trafficking. There are, however, differing estimates of the number of women and children victims of trafficking according to reports of various organisations. To illustrate this, in 2008, UNICEF gives an estimate of at least 80,000 – 100,000 women and children victims of trafficking every year, while, in 2011, the US Department of States, quoting IOM, estimates that there are 6.5 million to 9 million Indonesian migrant workers worldwide, 69% are identified as women, and from this number, 3 to 4.5 million are victims of trafficking. UNODC, on the other hand, takes a more cautious way by not presenting any estimates at all of the victims of trafficking in persons from Indonesia. The Study notes that the methods that were used to come up with these estimates are still unclear.

The International Organisation for Migration (IOM) is one of the organisations that can provide hard data on trafficking in persons in Indonesia, including trafficking in women and children. Based on its documentation, IOM places Indonesia in the first position for trafficked victims’ country of origin. From March 2005 – December 2010, the International Organisation for Migration (IOM) assisted and documented 3,840 trafficked persons in Indonesia comprising 2,717 women and 905 children. Over eighty per cent (81.01%) of victims were trafficked across the border, with majority of women and children (2,859) trafficked to Malaysia, and 18.99% were trafficked internally. Furthermore, IOM statistics shows that the majority of these victims were recruited by agents (47.34%) and the rest were recruited by legal recruiting agents, friend, family member, neighbour, etc. There were also victims who were kidnapped into trafficking.

![Table 13 – Number of Trafficked Persons based on Recruiter](source: IOM Statistics March 2005 - December 2010)

<table>
<thead>
<tr>
<th>Recruiter</th>
<th>Total</th>
<th>% Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agent</td>
<td>1,818</td>
<td>47.34%</td>
</tr>
<tr>
<td>Legal recruiting agent</td>
<td>1,125</td>
<td>29.30%</td>
</tr>
<tr>
<td>Friend</td>
<td>229</td>
<td>5.96%</td>
</tr>
<tr>
<td>Family Member</td>
<td>228</td>
<td>5.94%</td>
</tr>
<tr>
<td>Neighbour</td>
<td>188</td>
<td>4.90%</td>
</tr>
<tr>
<td>No data</td>
<td>114</td>
<td>2.97%</td>
</tr>
<tr>
<td>Self contact</td>
<td>81</td>
<td>2.11%</td>
</tr>
<tr>
<td>Other</td>
<td>29</td>
<td>0.76%</td>
</tr>
<tr>
<td>Kidnapped</td>
<td>15</td>
<td>0.39%</td>
</tr>
<tr>
<td>Boyfriend</td>
<td>10</td>
<td>0.26%</td>
</tr>
<tr>
<td>Husband</td>
<td>3</td>
<td>0.08%</td>
</tr>
<tr>
<td><strong>GRAND TOTAL</strong></td>
<td><strong>3,840</strong></td>
<td><strong>100%</strong></td>
</tr>
</tbody>
</table>


574 Asia Regional Trafficking in persons Project (ARTIP Project), Country Profile: Indonesia, <www.artipproject.org>, accessed on 23 February 2012.

575 US Department of State, 2011 TIPR, 191.

576 UNICEF, 2008 UNICEF-UPR, 2. The estimates are derived from the statistics provided by MOWE and the Indonesian Police. The Study notices that this estimates has been referred to since 2003.

577 US Department of State, 2011 TIPR, <www.state.gov>, accessed on 23 February 2012. The US TIP report has been using these estimates since 2010.

578 UNODC, Map on the Percentage of Victims from other Regions. <www.unodc.org>, accessed on 23 February 2012.
Traffickers utilise various means to attract and control victims, including promises of well-paying jobs, debt bondage, community and family pressures, threats of violence, rape, false marriages, and confiscation of ID and travel documents. IOM also identifies types of exploitation or human rights violations suffered by the victims. As shown in the table below, these consist of, among others, not being allowed to keep earned money/withholding of salary (84.55%); excessive working hours (79.76%); total denial of freedom of movement (77.08%); verbal/psychological abuse (74.89%).

<table>
<thead>
<tr>
<th>Type of Exploitation</th>
<th>Frequency</th>
<th>%Freq</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not allowed to keep earned money</td>
<td>3,246</td>
<td>84.55%</td>
</tr>
<tr>
<td>Excessive working hours</td>
<td>3,063</td>
<td>79.76%</td>
</tr>
<tr>
<td>Freedom of movement totally denied</td>
<td>2,960</td>
<td>77.08%</td>
</tr>
<tr>
<td>Verbal/psychological abuse</td>
<td>2,876</td>
<td>74.89%</td>
</tr>
<tr>
<td>Total deprivation of wages</td>
<td>2,757</td>
<td>71.82%</td>
</tr>
<tr>
<td>Seizure of documents</td>
<td>2,556</td>
<td>66.55%</td>
</tr>
<tr>
<td>Lack of health care services in the case of illness</td>
<td>2,187</td>
<td>56.94%</td>
</tr>
<tr>
<td>Deprivation of adequate supply of food and water</td>
<td>2,027</td>
<td>52.80%</td>
</tr>
<tr>
<td>Physically abuse</td>
<td>1,813</td>
<td>47.20%</td>
</tr>
<tr>
<td>Poor sanitary state of living place</td>
<td>1,423</td>
<td>37.07%</td>
</tr>
<tr>
<td>Ideological pressure</td>
<td>1,328</td>
<td>34.57%</td>
</tr>
<tr>
<td>Imprisonment</td>
<td>1,114</td>
<td>29.02%</td>
</tr>
<tr>
<td>Traded to various employers</td>
<td>992</td>
<td>25.84%</td>
</tr>
<tr>
<td>Sexual abuse</td>
<td>782</td>
<td>20.37%</td>
</tr>
<tr>
<td>Partial deprivation of wages</td>
<td>612</td>
<td>15.94%</td>
</tr>
<tr>
<td>Rape</td>
<td>363</td>
<td>9.46%</td>
</tr>
<tr>
<td>Freedom of movement partially denied</td>
<td>305</td>
<td>7.94%</td>
</tr>
<tr>
<td>Forced consumption of alcohol</td>
<td>272</td>
<td>7.09%</td>
</tr>
<tr>
<td>Forced use of drugs</td>
<td>205</td>
<td>5.34%</td>
</tr>
</tbody>
</table>

Table 14 – Breakdown of Trafficked Persons based on Type of Exploitation (Source: IOM Statistic March 2005 - December 2010)

The Study finds it difficult to retrieve information from primary sources in relation to the number of cases of trafficking, traffickers, and victims handled by Indonesia’s law enforcers. Thus, the Study has to settle with information provided by secondary sources, namely from UNODC, GoI (MOWE and 2011 IPR-CEDAW), and the US Department of State. However, even though each source claimed that it retrieved its information from Indonesia’s police force, there are discrepancies in the numbers presented. This is demonstrated in the following tables:

<table>
<thead>
<tr>
<th>Year</th>
<th>No. Victims</th>
<th>No. Perpetrators</th>
<th>No. Prosecutions</th>
<th>No. Convictions</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>F</td>
<td>C</td>
<td>Total</td>
<td>M</td>
</tr>
<tr>
<td>2004</td>
<td>103</td>
<td>10</td>
<td>113</td>
<td>-</td>
</tr>
<tr>
<td>2005</td>
<td>125</td>
<td>18</td>
<td>143</td>
<td>-</td>
</tr>
<tr>
<td>2006</td>
<td>496</td>
<td>120</td>
<td>616</td>
<td>-</td>
</tr>
<tr>
<td>2007</td>
<td>334</td>
<td>240</td>
<td>574</td>
<td>-</td>
</tr>
<tr>
<td>2008</td>
<td>510</td>
<td>88</td>
<td>598</td>
<td>-</td>
</tr>
<tr>
<td>2009</td>
<td>187</td>
<td>55</td>
<td>242</td>
<td>-</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Year</th>
<th>No. Victims</th>
<th>No. Perpetrators</th>
<th>No. Prosecutions</th>
<th>No. Convictions</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>F</td>
<td>C</td>
<td>Total</td>
<td>M</td>
</tr>
<tr>
<td>2003</td>
<td>81</td>
<td>20</td>
<td>101</td>
<td>-</td>
</tr>
<tr>
<td>2004</td>
<td>103</td>
<td>-</td>
<td>103</td>
<td>-</td>
</tr>
<tr>
<td>2005</td>
<td>125</td>
<td>18</td>
<td>143</td>
<td>-</td>
</tr>
<tr>
<td>2006</td>
<td>496</td>
<td>129</td>
<td>625</td>
<td>-</td>
</tr>
<tr>
<td>2007</td>
<td>331</td>
<td>150</td>
<td>481</td>
<td>139</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Year</th>
<th>No. Victims</th>
<th>No. Perpetrators</th>
<th>No. Prosecutions</th>
<th>No. Convictions</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>F</td>
<td>C</td>
<td>Total</td>
<td>M</td>
</tr>
<tr>
<td>2004</td>
<td>-</td>
<td>-</td>
<td>141</td>
<td>51</td>
</tr>
<tr>
<td>2005</td>
<td>-</td>
<td>-</td>
<td>110</td>
<td>37</td>
</tr>
<tr>
<td>2006</td>
<td>-</td>
<td>-</td>
<td>142</td>
<td>56</td>
</tr>
<tr>
<td>2007</td>
<td>-</td>
<td>-</td>
<td>252</td>
<td>109</td>
</tr>
<tr>
<td>2008</td>
<td>-</td>
<td>-</td>
<td>129</td>
<td>55</td>
</tr>
<tr>
<td>2009</td>
<td>-</td>
<td>-</td>
<td>139</td>
<td>84</td>
</tr>
<tr>
<td>2010</td>
<td>-</td>
<td>-</td>
<td>106</td>
<td>112</td>
</tr>
</tbody>
</table>

Table 15 – Comparison of Information on the Handling of Trafficking Cases by Indonesian Law Enforcers Provided by Various Sources

583 US Department of State, 2011 TIPR, 193.
584 IOM Indonesia, General Information of Trafficked Persons, 9.
585 Ibid, Multiple answers were given by the victims.
586 MOWE, Anak yang Diperdagangkan (Trafficking), November 2009, <www.menegpp.go.id>, accessed on 8 March 2012; See also GoI, 2011 IPR-CEDAW, para. 47
588 US Department of State, 2005 – 2011 Trafficking in Persons

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More confusingly, according to the 2012 Indonesian UPR, citing the report of the Attorney General’s Taskforce on the Handling of Criminal Acts of Terrorism and Trafficking in Persons, from 2006 – 2009 there are only 97 cases that were prosecuted and 38 convictions.\textsuperscript{589} Compared to the first section of Table 15 above, the numbers of cases of trafficking in persons handled by the Prosecutor presented by the GoI in its reports do not tally with the number presented in the 2012 Indonesian UPR.

Furthermore, information provided by the reports represents aggregated data related to the handling of trafficking cases in Indonesia. That is, they do not make classifications according to internal and external trafficking. Curiously, in its 2012 UPR Report, the GoI stated that in 2010 alone there were 28,289 Indonesian citizens indicated as victims of trafficking in persons.\textsuperscript{590} The GoI did not mention whether the number is an official number, its source and the method used to arrive at such conclusion.

\textbf{a. Cross Border Trafficking of Indonesian Women and Children}

The 2009 Trafficking in Persons Report, issued by the US Department of State, identifies forced labour and debt bondage as the greatest human trafficking threats in Indonesia.\textsuperscript{591} The 2011 TIPR states that almost all 33 provinces in Indonesia serve as source areas for trafficking with Java, West Kalimantan, Lampung, North Sumatera, and South Sumatera being the biggest source areas in Indonesia.\textsuperscript{592} This is also confirmed by IOM, which listed 32 provinces as source areas of trafficking.\textsuperscript{593} In the case of cross border trafficking, destination countries for the victims include, among others, Malaysia, Singapore, Middle Eastern Countries (such as Saudi Arabia, Kuwait, Syria, Egypt, Jordan), Taiwan, Hong Kong, North America, and Europe. Malaysia was indicated as the biggest destination country for women trafficked from Indonesia.\textsuperscript{594} IOM notices that there are growing trends in trafficking of Indonesian women to Iraq's Kurdistan for the purposes of domestic servitude and an increasing practice of traffickers kidnapping young girls to Malaysia for prostitution.\textsuperscript{595} Especially in trafficking of children, UNICEF reported in 2009 that the transnational trafficking route from Indonesia included destinations such as Brunei, Australia, Saudi Arabia, Kuwait, the Netherlands, Germany, and Austria.\textsuperscript{596} Women and children, especially girl children, are mostly trafficked outside of Indonesia for the purposes of labour and sexual exploitation, such as domestic work, forced prostitution, factory work, waiting, begging, masseuse, sale for illegal adoption.\textsuperscript{597}

Many Indonesian women migrant workers, especially those trafficked for the purpose of working as domestic workers, are identified as victims of trafficking.\textsuperscript{598} Exploitation of these women often starts even at the very beginning of their recruitment.\textsuperscript{599} For example, it is a common practice conducted by Private Agencies for the Placement of Indonesian Migrant Worker (Pelaksana Penempatan Tenaga Kerja Indonesia Swasta, PPTKIS) to hold migrant workers responsible for all the fees and costs of their recruitment, processing, training, and transportation.\textsuperscript{600} The longer the workers remain in a holding or training centre, the greater their debt will become. The 2011 TIPR concludes that such practice

\begin{thebibliography}{99}
  \bibitem{589} GOL, 2012 Indonesian UPR, para. 122.
  \bibitem{590} \textit{Ibid.}, para. 117.
  \bibitem{591} US Department of State, 2009 Trafficking in Persons Report (2009 TIPR), \<www.state.gov>, accessed on 23 February 2012.
  \bibitem{592} US Department of State, 2011 TIPR, 191; In 2008 Indonesian UPR, the GOL breakdowns Java into East and West Java as two of the three provinces with the highest rate in the country for trafficking in persons, the third one being West Kalimantan.; see GOL, 2008 Indonesia UPR, para. 50.
  \bibitem{593} IOM Indonesia, General Information of Trafficked Persons, 2.
  \bibitem{595} US Department of State, 2009 TIPR, 158.
  \bibitem{596} UNICEF, Reversing the Trend: Child Trafficking in East and Southeast Asia, August 2009, 30.
  \bibitem{598} GOL, 2011 IPR-CEDAW, parz. 38; see also IOM estimates in previous paragraph on the number of women migrant women from the overall Indonesia’s work force abroad and their likeliness to fall victim to trafficking quoted in US Department of States, 2011 TIPR, 191.
  \bibitem{599} USAID, 2006 TIP-TA, 2.
  \bibitem{600} \textit{Ibid.}; See also, US Department of State, 2011 TIPR, 192; and ICSW, Trafficking and Related Labour Exploitation in the ASEAN Region, 51.
\end{thebibliography}

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qualified as debt bondage. Some reports suggest that the PPTKIS use these debts as a justification to withhold documents, keep workers in confinement, and to keep these women migrants in a situation of forced labour before they are even deployed to destination countries.601 After their arrival at the destination countries, these women are employed as domestic workers and suffer further abuse, with their status reduced to domestic servitude with long working hours, no time off, poor quality and limited food, physical, psychological and sexual abuse, and no payment.602 Some reports suggest that the recruitment agencies or PPTKIS, both in Indonesia and in destination countries, operate similar to trafficking rings, operating as part of organised criminal networks, utilising debts to keep their victims in bondage and servitude. These labour agents often ignore or reject the victims’ pleas for help and refuse to assist them to return home.603

The 2011 TIPR indicates that there were Indonesian women who migrated to Malaysia, Singapore, and the Middle East who were subsequently forced into prostitution.604 These women were convinced by the agents that they were going to work at karaoke bars and restaurants as singers, hostesses, or even domestic workers. However, they are instead forced to provide sexual services upon arrival.605 In 2008, the GoI banned Indonesian women from travelling to Japan and South Korea as “cultural performers” to curb the possibilities for these women to fall victim to forced prostitution.606 Individual occurrences show these women being severely indebted, wages being withheld for a long time (if paid), experiencing denial of sustenance if they refuse to entertain clients, being forced to service many clients every day, etc.607

KPAI states that in 2007, based on information provided by 23 provinces, more than 2,000 cases of child trafficking were recorded.608 Children between 15 and 18 are usually trafficked to Malaysia, Hong Kong, and Singapore to be employed as sex workers, mainly through Batam and Jakarta (400 cases) from source areas in Java such as Indramayu and Sukoharjo.609 An Indonesian NGO, LBH APIK, notes that it handled 458 cases of child trafficking for sexual exploitation in West Nusa Tenggara alone from 2005 to 2007.610 Individual recruiters, famously known as tekong in Indonesian, are the ones that usually serve as the initial recruiter in rural areas in Indonesia, promising a better job and income to the girl’s family.611 Fake identity cards are often produced to falsify the age of these children to smooth the process of taking them to other countries.612

There are also indications that girls from West Kalimantan and other areas in Indonesia are trafficked as mail-order brides to Taiwan, Hong Kong, and Singapore.613 Most of the trafficked girls come from Chinese-Indonesia communities.614 Some of these mail-order brides are forced to work, usually in factories, for free, or sold into the sex industry.615 Even if these victims are allowed to return to Indonesia, it is based on a condition that they help the mail order bride syndicate, thus increasing the risk of more girls falling victim to trafficking.616

The UN Special Rapporteur on the Sale of Children, Child Prostitution, and Child Pornography states its concern over reports that indicate many Indonesian women are trafficked to Malaysia for the purpose of selling their babies for illegal adoptions.617 The governments of

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601 US Department of State, 2011 TIPR, 192.
602 Ibid; See also GoI, 2011 IPR CEDAW, para. 37.
605 The Protection Project, 2009 RTIP-Indonesia, 3.
607 ICSW, Trafficking and Related Labour Exploitation in the ASEAN Region., 57.
609 Ibid.
610 Ibid.
611 Ibid.
613 Ibid; GoI, 2005 IPR-CEDAW, para. 66; and ICSW, Trafficking and Related Labour Exploitation in the ASEAN Region., 58
614 Ibid.
615 ICSW, Trafficking and Related Labour Exploitation in the ASEAN Region., 58.
616 GoI, 2005 IPR-CEDAW, para. 66.
617 UN OHCHR, 2008 Compilation of UN Documentation, para. 18.
Malaysia and Indonesia confirm this finding.618 Traffickers usually approach pregnant Indonesian migrant workers by offering “milk money”619 to buy milk and other needs of the mothers. The traffickers then separate the babies from the mothers and transport the babies to Johor for adoption by agents that are already waiting at the destination.620 UN report also notes that these babies are also transported to Singapore for adoption. For one trip to Singapore, the trafficking network receive USD 3,000 – 3,500; and to Malaysia, they receive 9,530.621 A 2006 MOWE report identifies a woman who sold 880 Indonesian babies overseas. The Indonesian police managed to prevent 25 babies from being sold by arresting the woman.622 MOWE also identifies two other cases of 80 and 300 babies having been internationally trafficked.623 

b. Internal Trafficking of Women and Children

Apart from cross border trafficking, internal trafficking in Indonesia is also prevalent. According to IOM documentation of trafficking cases since 2005 to 2010, almost all provinces in Indonesia to some degree act as destination area for women and children victims of trafficking, with Java, Kalimantan, Sumatera, Batam, and Bali being the biggest destinations.624 IOM statistics indicates most women and children were trafficked to Riau islands province in Sumatera.625 Women and girls are mainly trafficked into forced prostitution and into servitude as domestic workers.626 Boys are trafficked to fishing platforms (jermals) in Sumatera, and to fishing boats.627 There is also an increasing trend of trafficking in children for the purpose of organised begging.628

Considering the fact that the rights and obligations of domestic workers are yet to be acknowledged and protected under the Indonesian legal system, save for some provisions under the KDRT Law, it is difficult to find out the exact number of domestic workers in Indonesia. Some reports, however, indicate that the number of domestic workers in Indonesia is high and it will likely grow over the years since the workforce participation rate of Indonesian women is on the rise.629 As an illustration of the above notion, some of the estimates on the number of women and girl children working as domestic workers is shown in the following table:

<table>
<thead>
<tr>
<th>No.</th>
<th>Source</th>
<th>Estimate and Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>The National Network for Domestic Workers Advocacy (Jala PRT) – 2010</td>
<td>There are 4 million domestic workers, 30% children.630</td>
</tr>
<tr>
<td>2</td>
<td>UN Special Rapporteur on the Sale of Children, Child Prostitution, and Child Pornography – 2006</td>
<td>Over 680,000 domestic workers in Indonesia are reported to be children under the age of 18, over 90% are girls.631</td>
</tr>
<tr>
<td>3</td>
<td>ILO Jakarta – (unknown, included in ILO 2010 Special Edition on Domestic Workers)</td>
<td>As many as 2.6 million Indonesians, predominantly women, aged 13 to 30, are engaged as domestic workers, serving an approximately 2.5 million Indonesian households.632</td>
</tr>
<tr>
<td>4</td>
<td>ILO – 2005</td>
<td>There are an estimated 700,000 children working as domestic workers in Indonesia.633</td>
</tr>
<tr>
<td>5</td>
<td>University of Indonesia and the International Program on the Elimination of Child Labour – 2003</td>
<td>There are 2.6 million women domestic workers in Indonesia. Close to 35% are below 18.634</td>
</tr>
</tbody>
</table>

Table 16 – Compilation of Estimates on the Number of Women and Children Domestic Workers in Indonesia

---

Ibid.
Ibid.
The National Network for Domestic Workers Advocacy (Jala PRT) – 2010
ILO Jakarta – (unknown, included in ILO 2010 Special Edition on Domestic Workers)
ILO – 2005
University of Indonesia and the International Program on the Elimination of Child Labour – 2003

IOM Indonesia, General Information of Trafficked Persons, 4.
International Catholic Migration Commission (ICMC), When They were Sold: Trafficking of Women and Children in 15 Provinces of Indonesia, November 2006., 27; US Department of State, 2011 TIPR, 193; and ICSW, Trafficking and Related Labour Exploitation in the ASEAN Region., 53.
Ibid.
Ibid; ICSW, Trafficking and Related Labour Exploitation., 53.
In 2006, ICMC concluded that, unlike their cross-border counterpart, “The role of recruiting agents was far less significant in the case of in-country domestic workers.”

Generally, women and girls domestic workers tend to move from poor hinterland, such as East and Central Java, Lampung, north Sumatera, Aceh, West and North Sumatera, to economic hubs, such as Jakarta, Surabaya, Medan, Yogyakarta, Samarinda, Pontianak, and Makassar. A 2006 study by Atmajaya Catholic University shows that it is rather unlikely to identify cases of debt bondage among in-country domestic workers due to the lesser cost needed to be spent for transport. However, there are many domestic worker supplier agencies acting as go-betweens between prospective employers and the job seekers and they are paid by the prospective employers. Many of these agencies targeted rural women and girls arriving in big cities looking for work, recruiting mainly in inter-city bus terminals and train stations. Based on a Human Rights Watch study in 2005, there are high demands for child domestic workers since they cost less than adults and “can be easily managed”.

In relation to sexual exploitation of women and children resulting from internal trafficking in Indonesia, again, it is hard to tell the exact number of women and children that become victims of sexual exploitation. There are estimates put forward by several reports on the number of women and children trafficked for sexual exploitation; however, these reports rarely describe how they arrived at such estimates. Below are some examples of estimates on the number of women and children who have been sexually exploited in Indonesia:

<table>
<thead>
<tr>
<th>No.</th>
<th>Source</th>
<th>Estimate and Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>The Jakarta Post – 2012</td>
<td>At least 40,000 Indonesian children are currently being sexually exploited across the country.</td>
</tr>
<tr>
<td>2</td>
<td>ECPAT International data – 2012</td>
<td>The number of children working in the commercial sex industry could be as high as 150,000.</td>
</tr>
<tr>
<td>3</td>
<td>Unknown</td>
<td>A number of sources estimate that there are 500,000 sex workers in Indonesia.</td>
</tr>
<tr>
<td>4</td>
<td>UNICEF – (date unknown)</td>
<td>It is estimated that 100,000 children and women are trafficked each year in Indonesia and it is estimated that 30% of the women in prostitution in Indonesia are below the age of 18, and 40,000 to 70,000 of Indonesian children are victims of sexual exploitation.</td>
</tr>
<tr>
<td>5</td>
<td>Directorate General of Tourist Destination Development of the Ministry of Culture and Tourism of Indonesia – (unknown, quoted in 2011 TIPR)</td>
<td>An estimated 40,000 to 70,000 Indonesian children have been exploited in prostitution within the country.</td>
</tr>
<tr>
<td>6</td>
<td>ICMC - 2003</td>
<td>There are 140,000 to 230,000 sex workers in Indonesia. This is based on the extrapolation of the number of registered sex workers provided by the Indonesian Coordinating Ministry of Social Affairs in 2001.</td>
</tr>
</tbody>
</table>

In 2011, the Ministry of Social Affairs recorded 50,276 sex workers all over Indonesia. This number, despite...
indicating a significant decrease of the number of sexual workers in Indonesia.\footnote{In 2004, there are 87,543 registered sex workers in Indonesia according to the data provided by the Ministry of Social Welfare; see ICMC, When They Were Sold, 416.} only captures the number of registered sexual workers who work at regulated brothel complexes or \textit{lokalisasi}. It does not, however, represent the number of actual sexual workers in Indonesia who might likely fall victim to internal trafficking. Furthermore, the fact that not all women who are sexually exploited are trafficked makes it more difficult to draw estimates, let alone make approximations that sufficiently represent the number of women and children victims of internal trafficking for sexual exploitation.

Internal trafficking for sexual purpose in Indonesia is widespread, mainly from rural to urban areas, as well as to business and leisure tourist destinations in Indonesia.\footnote{ARTIP Project, Indonesia Country Profile (2010).} Especially for children, the demand factor rises due to, among others, the growing number of both foreign and local paedophiles present in Indonesia, especially in tourism destinations such as Bali, Batam, Lombok, Nusa Tenggara, Central Java, Riau Islands, West Java, and East Java, with Batam and Bali being dubbed as the capitals of sexual tourism in Indonesia.\footnote{The Irrawaddy, \textit{Asia Draws Paedophiles, Experts Ask Why?}, 18 October 2007, \texttt{www.irrawaddy.org}, accessed on 28 February 2012; Trisha Sertori, \textit{Trading on Innocence}; and ECPAT International, \textit{Sex Trafficking on Children in Indonesia}; see also UN OHCHR, 2012 Compilation of UN Reports, para. 27.} Apart from being hubs of sexual tourism in Indonesia, since the 1990s, Batam and other islands such as Bintan and Karimun in Riau also serve as a transit zone for documented and undocumented labour flows to Malaysia and Singapore.\footnote{Michele Ford and Lenore Lyons, \textit{Counter-Trafficking and Migrant Labour Activism in Indonesia’s Periphery}, The University of Sydney and the University of Western Australia, Indonesian Studies Working Paper No. 14., March 2011, 2.} The 2007 IPR-CRC notes that children are also trafficked for prostitution to Jepara (Central Java) and Yogyakarta; however, no estimates of the number of victims are made.\footnote{Gol, 2007 IPR-CRC, para. 176.} In 2008, the Directorate General of Tourist Destination Development of the Ministry of Culture and Tourism stated that, from 1972 – 2008, there were more than 13,703 child victims of sexual exploitation in tourist destination in 40 villages in six provinces: Bali, West Nusa Tenggara, Central Java, Riau Islands, West Java and East Java.\footnote{ICMC, \textit{Behind Locked Gates: An Assessment of Trafficking Women and Girls in Papua}, October 2005, 77.}

Cases of child trafficking for sexual purposes, such as child prostitution and child pornography, are found in Indramayu (West Java) and Semarang (Central Java).\footnote{Ibid.} Additionally, Jakarta and Surabaya are also considered as receiving areas of trafficked victims for sexual exploitation.\footnote{Ibid.} West Java is considered as one of the biggest source area of trafficked women and children.\footnote{Ibid.} In relation to the profile of traffickers, according to ECPAT International, “there is no common profile of perpetrators who sexually exploit children – they may be young, old, married, single; they come from all types of socio-economic backgrounds and work in all kinds of professions.”\footnote{ECPAT International, \textit{Sex Trafficking of Children in Indonesia}.} Returning victims may also be used to recruit future victims from their community.\footnote{Ibid.}

Surprisingly, despite the trend of trafficking women and children from rural to urban areas, a 2005 ICMC report indicates that more than 3,000 women and girls are trafficked to Papua every year, of which, it estimates, 800 – 1,000 women and girls are trafficked for sexual purposes.\footnote{Ibid.} More than 50\% of the women and girls trafficked for sexual purposes were forced to remain in prostitution in Papua.\footnote{Ibid.} The victims were mostly trafficked from Java and North Sulawesi.\footnote{Ibid.} Traffickers usually employ computation of debts to force trafficked women and girls to stay in sexually exploited condition.\footnote{Ibid.} The distance and isolated geographical situation of Papua makes it harder for victims to escape.\footnote{Ibid.}

In 2008, there was an indication of a new trend where girls are trafficked to jungle brothels in illegal mines and logging businesses in Kalimantan.\footnote{ECPAT International, \textit{Sex Trafficking on Children in Indonesia}; Marianne Kearney, \textit{Illegal Logging Trade Forces Jungle Brothel in Indonesia}, The National, 24 May 2008, \texttt{<www.bavmet.com>},} The girls are mainly
between the ages of 13 and 17; they are trafficked from within the island believing that they will be working as waitresses or maids.\textsuperscript{665} However, unfortunately, the Study cannot find further reports or analyses on this trend.

In the case of male children, they are usually internally trafficked to work at fishing platforms or jermals mostly along the eastern coasts of North Sumatera and straits of Malacca situated many kilometres out to the sea.\textsuperscript{666} These children mostly come from various villages in North Sumatera.\textsuperscript{667} On jermals, children are forced to work long hours at sea in a hazardous environment where usually there is only one small shelter in the middle of about 20 by 40 metres of platform without appropriate, if any, sleeping arrangements.\textsuperscript{668} The work that these children do may start as early as 2 am and go on until midnight. There are also reports of emotional, verbal, physical, and sexual abuse by children or by foremen.\textsuperscript{669} A representative of an Indonesian NGO, who specialises in monitoring the operation of these jermals, estimates the average age of workers between 14 to 17 years old.\textsuperscript{670}

According to Rosenberg, children working on jermals can be categorised as trafficked because they went through processes of recruitment, moved from their homes, and then confined in jermals in the ocean.\textsuperscript{671} The jermals’ foremen or individual recruiters (known as calo in Indonesia) usually approach the parents and promise them that their children will be employed for sorting and drying fish on the shore while, in reality, they will be confined in jermals.\textsuperscript{672} The traffickers mostly approach families that live in plantations or urban areas and do not know much about the fishing industry and how jermals works. Some recruiters even resort to kidnapping street children and sell them to jermals’ foremen or owners to work off shore.\textsuperscript{673} Even the boys that already work on jermals can turn out to be traffickers as well: the foremen usually will promise these boys payment between US$ 2.20 to US$ 11 for every friend that they manage to recruit.\textsuperscript{674} Some reports indicate that the number of boys working at jermals is dwindling.\textsuperscript{675} However, in its 2010 observation on the implementation of the ILO Convention on Worst Forms of Child Labour in Indonesia (2010 CEACR Observation), the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) estimates that 7,000 children still work at jermals.\textsuperscript{676}

There are also increasing trends of trafficking in children for the purpose of organised begging rings.\textsuperscript{677} According to 2006 ICMC Report, poor children were being recruited and transferred to other provinces or to other cities to beg by people who take advantage from the earnings of these children.\textsuperscript{678} Some reports cite Bali, East Kalimantan, Riau Islands, and South Sulawesi as some of the destinations in Indonesia.\textsuperscript{679} One of the modus operandi used by organisers in Riau and East Kalimantan is begging for alms for orphanages by children in the age group of 10 – 15 years old.\textsuperscript{680} The 2007 IPR-CRC even

\textsuperscript{665} Ibid.


\textsuperscript{667} ICMC, When They were Sold, 71.

\textsuperscript{668} ICSW, Trafficking and Related Labour Exploitation., 54.


\textsuperscript{671} ICMC, When They were Sold, 70.

\textsuperscript{672} \textit{Ibid}, 71.
highlights the phenomenon of babies for hire, even by the babies’ own parents, for the purpose of begging on the street. The organisers usually offered money to the parents living in the poorest areas in South Sulawesi to allow the children to be taken from them. In Bali, the children are taken from districts such as Karang Asem and Buleleng and transferred to Denpasar to beg. In Makassar, a child beggar is required to acquire IDR 10,000 (US$ 1.05) per day; some are required to collect at least IDR 50,000 (US$ 5.25). The 2006 ICMC Report notes that there are no sufficient information on the extent of the problem and the nature of the exploitation that child beggars are exposed to. However, this does not mean that the problem of organised begging rings should not be taken seriously since the phenomenon of children living and working on the streets can still be seen in Indonesia on a day-to-day basis, especially in big cities.

c. Indonesia as Destination and Transit Country for Trafficking in Persons

To a lesser extent, Indonesia is also dubbed as a destination country, especially for trafficking of women. This is shown from IOM documentation finding that, from 2005 to 2010, 18 women were trafficked to Indonesia to serve as commercial sex workers. According to IOM, they came from Cambodia, Ukraine, Uzbekistan, Moldova, and Colombia. In 2008, the US Department of State established that women and children from China and Eastern Europe are trafficked to Indonesia for sexual purposes. Furthermore, in 2010, the United Nations Inter-Agency Project on Human Trafficking (UNIAP) found that Indonesia has been one of the destination countries for Thai and Vietnamese trafficked women.

Rosenberg indicates that, since 2002, it has been discovered that women from China, Hong Kong, the Netherlands, Ukraine, Norway, Poland, Russia, Spain, Taiwan, Thailand, and Venezuela have worked as sex workers in Indonesia; however it was unclear to what degree these women were trafficked to Indonesia.

d. Re-victimisation of Trafficked Women and Children: National and Regional Legislation

To the knowledge of this Study, there is almost no mention of trafficked women and children who were re-victimised by the law in Indonesia due to the shady professions that are forced upon them. As has been mentioned in previous sections, there are national and regional legislations that render women vulnerable to State violence, especially in relation to Indonesia’s Anti-Pornography Law and regional regulations prohibiting prostitution. As also has been addressed earlier in this Section, especially in relation to internal trafficking, women and children are mostly trafficked for sexual purposes including to work as sex workers. The implication of the implementation of such legislation is that the victims may be re-victimised by the State. If the authorities apprehended trafficked victims working as sex workers, the victims will most likely be treated as offenders under these legislation and not as victims of trafficking.

As an example, in 2010, Komnas Perempuan documented a case in Bandung, West Java, where six erotic dancers were sentenced to 15 months in prison for committing pornography under the Anti-Pornography Law. As it turns out, four of the six dancers were actually victims of internal trafficking. Even though it is not indicated in Komnas Perempuan’s report, the example implies the imminent danger for victims of trafficking to get criminalised and re-victimised under discriminative national and regional legislations. Furthermore, the 2011 TIPR indicates some cases where victims of trafficking in persons were arrested by the Indonesian police through anti-prostitution raids and there were reports that some police officers refused to receive trafficking complaints from victims.

682 ICMC, When They were Sold, 43.
683 Ibid.
685 Ibid.
687 IOM Indonesia, General Information of Trafficked Persons, 2.
688 Ibid. 2.
689 US Department of State, 2008 Trafficking in Persons Report, 141.
691 ICMC, Trafficking of Women and Children in Indonesia, 2003, 98.
693 Ibid.
694 US Department of State, 2011 TIPR, 194.
The Study does not come across any information pertaining to the treatment of victims of external trafficking, who are foreign nationals, in Indonesia. However, Law No. 6 of 2011 on Immigration (Immigration Law) indicates that victims of trafficking who are foreign nationals will receive special treatment and be exempted from penalties for violations of Immigration Law.695 Furthermore, they will also be returned to their countries of origin as soon as possible.696

ii. Exploitation of Women and Girls Domestic Workers in Indonesia

As has been elaborated in the previous Chapter, unfortunately there is only little information provided by the GoI in its UPR Report and Periodic Reports to the treaty bodies concerning the condition and treatment of domestic workers in Indonesia.697 Information from NGOs and other organisation, especially on the number of domestic workers, gender, and age, is also scarce. Since accurate data is close to non-existing, reports concerning the condition of domestic workers in Indonesia rely heavily on estimates. In 2005, ILO estimated there were approximately 2.6 million domestic workers in Indonesia.698 This number is dominated by women and girl workers engaged as domestic workers in 2.5 million households in Indonesia.699 ILO estimates that more than 25% of domestic workers in Indonesia are consisted of children below the age 15.700 The ILO, however, does not provide the exact number nor estimates of women and girls who work as domestic workers. This estimate is still reiterated by ILO in its 2010 campaign on the rights of domestic workers.701 The estimate is also reiterated by other organisations and NGOs such as the UN and the HRW.702 Regrettably, there is no further information on the basis for this estimate or whether it is still valid at present.

Human Rights Watch stated in 2005 that the exploitation of domestic workers, especially underage workers, has become endemic in Indonesia.703 The GoI acknowledges that domestic workers, especially women and children, are prone to exploitation704 as their profession is not yet protected under the law and not treated equally as other professions protected under the Manpower Law. Forms of exploitation of domestic workers include long working hours (14 to 16 hours a day) with no overtime pay, no time for rest and recreation, no access to education for underage domestic workers, salary below minimum standard, and non-payment of salaries.705

iii. Other Worst Forms of Child Labour

Worst Forms of Child Labour in General Setting

According to BPS data, in 2009, there are at least 4.1 million children in the work force in Indonesia.706 Thirty two per cent (32%) of 4.1 million working children in Indonesia were aged 5 – 14 years.707 Twenty two per cent (22%) of male children and 29% of female children were working for more than 45 hours a week.708 BPS adds that if it included children engaged in household activities, which have obvious but indirect economic implication into the equation, then the total working children in Indonesia could reach 5.7 million.709 There were 687,000 children exclusively engaged in employment, while 3.6% of the children in the work force engaged in both employment and schooling and 2.8% were engaged in housekeeping and schooling.710

<table>
<thead>
<tr>
<th>Industry</th>
<th>5-12</th>
<th>13-14</th>
<th>15-17</th>
<th>5-17</th>
<th>Male</th>
<th>Female</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agriculture, forestry, hunting, fishery, and plantation</td>
<td>64.3</td>
<td>64.6</td>
<td>53.8</td>
<td>57.2</td>
<td>66.0</td>
<td>44.6</td>
</tr>
<tr>
<td>Manufacturing industry</td>
<td>10.7</td>
<td>8.4</td>
<td>10.8</td>
<td>10.4</td>
<td>6.1</td>
<td>16.7</td>
</tr>
</tbody>
</table>

---

695 See Tables 30 and 31 below on the preventive and protection measures in the context of migration especially the provisions of the 2011 Immigration Law.

696 Immigration Law, art. 88.

697 See Section B.1.a. above sepcifically on the discussion concerning Violence against Women aDomestic Workers Abroad and in Indonesia.

698 HRW, Always on Call, 3.

699 ILO, Recognising Domestic Workers, 4.

700 HRW, Always on Call, 3.

701 ILO, Recognising Domestic Workers.


703 HRW, Always on Call, 2.


707 Ibid, 40.

708 Ibid, 27.

709 Ibid, 36.

710 Ibid, 38.
Violence, Exploitation, and Abuse and Discrimination in Migration Affecting Women and Children in ASEAN: A Baseline Study

Wholesale trade, retail trade, restaurant and hotels

<table>
<thead>
<tr>
<th>Wholesale trade, retail trade, restaurant and hotels</th>
<th>18.3</th>
<th>18.4</th>
<th>19.3</th>
<th>19.0</th>
<th>12.8</th>
<th>28.0</th>
</tr>
</thead>
</table>

Community, social, and personal services

<table>
<thead>
<tr>
<th>Community, social, and personal services</th>
<th>4.3</th>
<th>3.4</th>
<th>6.1</th>
<th>5.4</th>
<th>3.5</th>
<th>8.2</th>
</tr>
</thead>
</table>

Others

<table>
<thead>
<tr>
<th>Others</th>
<th>2.4</th>
<th>5.3</th>
<th>9.9</th>
<th>7.9</th>
<th>11.6</th>
<th>2.6</th>
</tr>
</thead>
</table>

Total

<table>
<thead>
<tr>
<th>Total</th>
<th>100.0</th>
<th>100.0</th>
<th>100.0</th>
<th>100.0</th>
<th>100.0</th>
<th>100.0</th>
</tr>
</thead>
</table>

In thousands

<table>
<thead>
<tr>
<th>In thousands</th>
<th>674.3</th>
<th>6190.9</th>
<th>2759.4</th>
<th>4052.8</th>
<th>-</th>
<th>-</th>
</tr>
</thead>
</table>

Table 18 – Percentage of Working Children by Industry and Age Group and Sex in Indonesia 2009

BPS report shows that working children who live in urban areas work longer (at least 56 hours a week) than those in rural areas (at least 40 hours a week). In general, most working children are found in three major industries in Indonesia, which are agriculture, trade, and manufacturing. The majority of working children in urban areas work as operators and labourers while, in rural areas, children are mostly engaged as agricultural workers. Around 57% of working children aged 5-17 are employed in agriculture, including forestry, hunting, and fishery. There is also the likelihood that children are also involved in plantation work and the comparison between sexes shows that the percentage is higher for boys than girls. The second industry that attracts many working children is trade, including wholesale and retail trades, restaurants, and hotels. Overall, 19% of working children are engaged in trade and females dominate this line of industry. Another form of work involves production-related industries, including transport equipment operators and labourers. About two third of the working children are mostly unpaid family workers. From the abovementioned industries, places where these children are working include, among others, family dwellings, factories, plantations, construction sites, mines, rivers, shops, houses, restaurants, hotels, mobile places, market stalls, and traffic lights. BPS data shows that the percentage of children working in traffic lights or similar places is higher in the age group of 5-12 years.

In the 2010 CEACR Observation, the CEACR estimates that between 100,000 and 240,000 young persons in Indonesia might be involved in drug trade. CEACR notes that, in 2003, there were 15,000 children involved in the sale, production, and trafficking of drugs in Jakarta alone. GoI report to CEACR states that in the first six months of 2010, 90% of 5,603 children in penitentiaries (mostly boys and street children) were drug users and/or drug dealers.

Worst Forms of Child Labour in Special Situation: the Case of Childcare Institutions

Additionally, the Study would like to bring into attention another condition where worst forms of child labour are prevalent, the exploitation of children living in childcare institutions. In 2007, the Ministry of Social Affairs, together with Save the Children UK and UNICEF, conducted a collaborative study focusing on the treatment of neglected children in childcare institutions (often referred to as orphanages). Due to the lack of data on the number of childcare institutions in Indonesia, the 2007 collaborative study estimates that there are 7,000 childcare institutions spread all over Indonesia. Of these, only about 35 are government-run institutions, three of which are run by the central government through the Ministry of Social Affairs.

According to the data recorded through the Government Subsidy Program for Additional Cost for Social Care Institution (known in Indonesia as the BBM Subsidy),
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in 2007, 4,305 childcare institutions received subsidy for 128,016 children under their care.726 So far, the data gathered through the usage of BBM Subsidy is the only source of information on childcare institutions in Indonesia. Since the first implementation of the BBM Subsidy in 2001, the data gathered by the Ministry of Social Affairs shows that the number of childcare institutions that received the subsidy steadily increased over the years.727 The 2007 Collaborative Study shows that, in 2003, there were 2,865 childcare institutions that had received the BBM Subsidy, the number increased to 3,378 in 2004 and continued to increase to 3,673 in 2006.728

The 2007 Collaborative Study discovered that in all childcare institutions, which it had been studying in six provinces in Indonesia covering 37 childcare institutions,729 all of these childcare institutions require children under their care to work.730 The daily chores given to the children are mostly non-negotiable, ranging from office administration to cleaning bathrooms. The non-execution of these chores would interfere with the running of the institutions and might entail no food and clean environment for the children.731 This means that these children have to juggle performing the chores assigned to them, performing religious practices, while at the same time also attending school.732 This also means that the institutions relied heavily on the children for the day-to-day care and running of the institutions and made the institutions less inclined to recruit enough staff to run and maintain their facilities and take the burden from the children that they were supposed to care.

Apart from the chores given to the children to support the running of the institutions, there are also works given to them for the monetary benefit of the institutions and external works that have nothing to do with the institutions. The 2007 Collaborative Study shows that these children are often employed to support the childcare institutions’ small business schemes such as:

1. Work to Support the Institutions’ Income: there are children working as cooks and bakers for catering and cake businesses. and they usually get paid between IDR 15,000 to IDR 20,000 (USD 1.5 to USD 2). Usually they are required to work once a month after school.733 Children also work as fund raisers to collect alms during Eid (Idul Fitri) holiday to pay for break fasting and other social activities the institutions plan to hold.734
2. Performing as Domestic Helpers: some of the children become baby sitters for the children of the staff, some of them even worked full time.735 There is no information on whether these children get paid for their labour. Some of the children also work as launderer for the staff of the institutions before going to school and get paid between USD 1.5 to USD 2 per week.736 Another form of labour performed by these children is by becoming domestic helpers in the full sense to donor families during Eid holiday. Children were “lent” to take over the work of domestic workers who go home to celebrate Eid.737
3. Construction Work: in some institutions, children do construction works around the facilities to reduce cost. The forms of work include, among others, painting roof tiles and walls; carry bricks and sands; producing concrete and paving blocks; and erecting fences.738 The obligation to work applies to both boys and girls. One example took place in the Darul Aitam child care institution, where every four children were required to produce 100 concrete blocks per day during the Fasting month (Ramadhan).739

The 2007 Collaborative Study also found that child’s works may in fact be the key requirement for these children to be allowed to stay in the institutions. This is indicated through the common main sanction imposed on children who refused to work, which is expulsion from the institution.740 Unfortunately, apart from the practice of the 35 childcare institutions examined by the 2007 Collaborative Study, little is known about the

726 Ibid.
727 Ibid, 18 – 19.
728 Ibid, 19.
729 Ibid, 6 : The provinces are consisted of Aceh, West Nusa Tenggara, North Sulawesi, West Kalimantan, North Maluku, and Central Java.
730 Ibid, 197.
731 Ibid.
732 Ibid.
733 Ibid, 199.
734 Ibid, 200.
735 Ibid, 199.
736 Ibid.
737 Ibid.
738 Ibid, 200.
739 Ibid.
740 Ibid, 201.
practice in other childcare institutions. The prevalence of worst forms of child labour in childcare institutions has not received enough attention from the GoI, this is indicated by the absence of this issue in the GoI’s various reports to the human rights mechanisms.

b. Root Causes of Exploitation and Aggravating Practices

i. Definition of Exploitation under Indonesian Legal System

Exploitation of a person, especially of a woman or a child, is considered as a crime and punishable under Indonesian legal system. Various legislation and regulations in Indonesia contain definitions of exploitation that mainly interlace with the crime of trafficking in persons. However, since 2007, the definitions of exploitation and those related to exploitation are accumulated under one legal umbrella, the 2007 TIP Law.

1. Definition of Exploitation (Article 1(7) of TIP Law):
   An act, with or without the consent of the victim, that includes, but not limited to, prostitution; forced labour or service; slavery or slavery-like practice; subjugation; extortion; physical exploitation, sexual exploitation, or exploitation of reproduction organ; or unlawfully removing or transplanting organ or tissue; or exploiting a person’s skill by another person in order to acquire economic gain both materially and immaterially.

2. Definition of Trafficking in Person (Article 1(1) of TIP Law):
   Any acts to recruit, transport, harbour, deliver, transfer or receipt of a person by means of the threat or use of force, abduction, locking up, fraud, deception, abuse of power or abuse of position of vulnerability, debt bondage or to provide payment or benefit, in order to obtain the consent of a person that holds control over another person, both conducted internally and across the border, with the purpose of exploitation or to cause exploitation of a person.

3. Definition of Sexual Exploitation (Article 1(8) of TIP Law):
   Any form of exploitation of sexual organ or other organs of the victim for the purpose of gaining profit, including, but not limited to, prostitution and sexual abuse.

4. Definition of Debt Bondage (Article 1(15) of TIP Law):
   Any act to put a person in a condition where he/she is required or forced to bind his/herself or his/her family or persons under his/her care or his/her personal services as a form of payment of his/her debt.

ii. Exploitation of Women and Children in General

The Study deems that the root-causes of violence against women and children described in the previous chapter (see section B.1.b above) are also relevant to the issue of exploitation of women and children, since, according to the definition of exploitation given by the CRC Committee, exploitation is also a form of violence. 741 Poverty, patriarchal culture and religious interpretation, discrimination, traditional practice toward women and children, globalisation, and uncontrolled modernisation are considered as root-causes that render women and children vulnerable to violence as well as exploitation. 742

In relation to exploitation of children, the GoI confirms that child labour is caused by poverty, marginalisation, the inability to fulfil basic needs, abandonment, disabilities, destitution, and alienation (geographically, socially, and culturally). 743 The GoI adds in its 2011 IPR-CEDAW that cultural context and increasing consumerism in the community drove women and children into trafficking, which facilitated their exploitation. 744 Tradition and culture that justify ownership, stereotyping and subordination of women and children in the family and society encourage even families and closest people like neighbours, friends, and even spouses to facilitate or encourage the trafficking of women and children. 745

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742 See Section B.1.b. above.
743 GoI, 2008 Indonesian UPR, para. 15.
745 Ibid; See also PNBAI WG, 2015 National Program, 48.
iii. Supply and Demand Sides of Trafficking of Women and Children

Reports indicate that the need to make a better living for their family coupled with rampant poverty and restricted access to basic education and lack of employment opportunities constitute push factors that cause women and children in vulnerable condition to become victims of trafficking and exploitation. According to GoI and ILO, girls are highly vulnerable especially as gender imbalance and inequality often result in daughters being deprived of educational opportunities and forced to contribute to household income at a very young age. Because of this, many girls are willing to be employed anywhere in the country and/or being forced into early marriage. ILO indicates that most early marriages ended up with divorce; divorced girls then usually will find it hard to be accepted by the community and chose to migrate to find a job or resort to prostitution. Together with the growing numbers in the work force, and population, Indonesia presented an abundant supply of cheap labour that traffickers find hard to resist. Adding to this, IOM’s records shows a strong correlation between the abovementioned factors with limited access to education in making women and children vulnerable toward trafficking.

Reports also indicate that the geographical situation in some regions in Indonesia contributes in fostering internal trafficking and it also makes it harder to monitor the safe immigration of women and children to acceptable forms of employment. Some destinations of trafficking in Indonesia, such as Papua, fishing platforms in the bays of Malacca and North Sumatera, and the jungle of Kalimantan, are geographically isolated and hard to reach, making it almost impossible for victims to escape. Additionally, the geographical condition of Indonesia gives more space for traffickers to run their clandestine operation and to avoid law enforcers.

Meanwhile, the demands for cheap labour and sexual service have been the driving force for both cross-border and internal trafficking. Women and children are mostly targeted because they are inherently vulnerable and controllable. ECPAT states that the growing presence of paedophiles in Indonesia, especially in tourist destinations areas, boosts the ever increasing demand for child sex workers and creates the opportunity for internal trafficking of children to bloom.

iv. Aggravating Factors

The Study identifies at least three factors that aggravate the vulnerability of women and children to fall victims to trafficking. The first aggravating factor is related to the lack of birth registration. The 2011 TIPR notes that 60% of children under the age of five do not have official birth certificates. The GoI explains that many women face difficulties getting birth certificates for their children, including women who give birth out of wedlock, women in unregistered religious/traditional marriages, poor or marginalized women who may themselves not have a Birth Certificate or an Identity Card or the money to pay to obtain such documents. This condition is further exacerbated by lack of information on the procedure and bureaucratic obstacles. Without official birth certificates, both children and adults are at higher risk for being trafficked since they are not protected by the laws and they will find difficulties in proving their age and nationality or residency making them prone to...
The second aggravating factor is the lack of capacity of local governments to draft local laws on the prevention and handling of trafficking in women and children. The same also applies to legislation, both at national and regional level, that still discriminate against women and children and can undermine the handling of trafficking. The third aggravating factor is related to the rampant corrupt practices of Indonesian officials, including the police force, which eventually hinder effective enforcement action. The 2011 TIPR indicates that the corruption in the police force even gets police personnel involved in the act of trafficking both directly and indirectly, further denying protection to the victims.

**c. Impact of Exploitation**

In its 2005 IPR-CEDAW, the GoI states that women that were forced into prostitution risk being mentally and physically abused, suffering from sexually transmitted diseases, and obviously risking their future. In 2011, the GoI supports this statement by relying on information on the impact of exploitation provided by IOM based on the data of victims collected in 2005 – 2010. IOM statistics on victims of trafficking show that, from 3,840 victims of trafficking documented by IOM, 3,738 victims received medical recovery and more than 70% suffered sexually transmitted disease. Around 104 victims suffered from physical trauma and 330 victims suffered from psychological disturbance. Furthermore, IOM statistics show that 2,762 suffer various forms of psychological trauma such as depression, anxiety, post-traumatic symptoms, suicidal ideations.

Often, due to traditional values, victims of sexual exploitation are blamed by her family or society and seen as entirely responsible for what happened to them and sometimes are even criminalised. Such social stigma to the victims might push the victims to fall into the same cycle. For example, victims of forced prostitution may resort back to prostitution or, even worse, become traffickers preying on potential victims in their home village or town. The exploitation and trafficking of children destroy children's opportunity to have a normal life and their right to education.

**2. De Jure State Responses**

Part (a) of this section will focus mainly on international conventions that oblige States to protect women and children against exploitation that have not been addressed in the Chapter concerning Violence against Women and Children (Section B.2.a., Table 6) above. The list will mainly include UN Conventions pertaining to protection of women and children against exploitation, ILO Conventions, and regional commitments (ASEAN) either as reflected in the reports or where the Study sees that particular instruments are relevant to be included in this section. The same also applies to parts (b) and (c) on State’s policies setting up the State’s responsibility to protect women and children against exploitation.

Apart from Indonesia’s reports to the HRC and UN Treaty Bodies and the shadow reports and responses, this section will also include reports produced by the IOM, United Nations Office on Drugs and Crimes (UNODC), and ILO that are relevant to the issue of exploitation of women and children, as well as other reports produced by foreign States, NGOs, and thematic projects. However, in the discussion on policies, the Study shall not omit relevant international treaties listed in Table 6 on whether the reports give recommendations on the State’s commitments and reservations in relation to these treaties that are pertinent to the issue of exploitation.

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761 GoI, 2008 Indonesian UPR, para. 37.

762 For examples, see Section C.1.a. above on Re-victimisation of Trafficked Women and Children: National and Regional Legislations.

763 USAID, 2006 TIP TA, 11.

764 Ibid; See also US Department of State, 2011 TIPR, 193.

765 GoI, 2005 IPR-CEDAW, para. 64.

766 GoI, 2011 IPR-CEDAW, para. 41.

767 IOM Indonesia, General Information of Trafficked Persons, 10.

768 Ibid, 10 – 11.

769 Ibid, 11.


772 ICMC, When They were Sold, 70.
a. Bases of State Responsibility

i. International and Regional Treaties and Instruments

<table>
<thead>
<tr>
<th>No</th>
<th>International and Regional Instruments</th>
<th>Date of Signature, Ratification, Accession, or Adoption</th>
<th>Instrument of Ratification</th>
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<tbody>
<tr>
<td>5.</td>
<td>1999 Global Code of Ethics for Tourism</td>
<td>1 October 1999 (Adpt.)</td>
<td>—</td>
</tr>
<tr>
<td>7.</td>
<td>2001 Yokohama Global Commitment against Commercial Sexual Exploitation of Children</td>
<td>20 December 2001 (Adpt.)</td>
<td>—</td>
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</tbody>
</table>

<table>
<thead>
<tr>
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</thead>
<tbody>
<tr>
<td>1.</td>
<td>1930 ILO Convention No. 29 concerning Forced Labour</td>
<td>12 June 1950 (R)</td>
<td>—</td>
</tr>
<tr>
<td>2.</td>
<td>1948 ILO Convention No. 88 concerning the Organisation of the Employment Service</td>
<td>8 August 2002 (R)</td>
<td>Presidential ILO Decree No. 36 of 2002</td>
</tr>
<tr>
<td>3.</td>
<td>1949 ILO Convention No. 98 concerning the Right to Organise and Collective Bargaining</td>
<td>15 July 1957 (R)</td>
<td>Law No. 18 of 1956</td>
</tr>
<tr>
<td>4.</td>
<td>1950 ILO Convention No. 100 concerning Equal Remuneration</td>
<td>11 August 1958 (R)</td>
<td>Law No. 80 of 1957</td>
</tr>
<tr>
<td>5.</td>
<td>1957 ILO Convention No. 105 concerning the Abolition of Forced Labour</td>
<td>07 June 1999 (R)</td>
<td>Law No. 19 of 1999</td>
</tr>
</tbody>
</table>

773 GoI, 2005 IPR-CEDAW, para. 103. The report did not provide information on the instrument of ratification. The most viable explanation that this Study can put forward is the fact that Indonesia was a former Dutch colony until 1945 and the Netherlands ratified ILO Convention No. 29 in 1933. Under international law, the Netherlands’ ratification should also bind Indonesia as its colony at that time. After its independence, in 1950 Indonesia became a member of the ILO and resumed its responsibility under its former coloniser. For Dutch’s ratification of ILO Convention No. 29, see <www.ilo.org>, accessed on 20 October 2011.

774 The ratification of this Convention by Indonesia in 2002 was not mentioned in 2008 Indonesian UPR, 2005 IPR-CEDAW, and 2002 IPR-CRC. However, the Study deems it necessary to include this information since the ratification provides a basis for Indonesia’s responsibility to provide good employment service to its citizens, including women.

775 2005 Indonesia’s Periodic Report to CEDAW Committee, para. 104.

776 Ibid.

777 The ratification of this Convention by Indonesia in 2002 was not mentioned in 2008 Indonesian UPR, 2005 IPR-CEDAW, and 2002 IPR-CRC. However, the Study deems it necessary to include this information since the Convention is greatly relevant to the prevalence of forced labour in Indonesia.

Ranyta Yusran
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</thead>
<tbody>
<tr>
<td>6.</td>
<td>1973 ILO Convention No. 138 concerning Minimum Age for Admission to Employment</td>
<td>7 June 1999 (R)</td>
<td>Law No. 20 of 1999&lt;sup&gt;779&lt;/sup&gt;</td>
</tr>
<tr>
<td>7.</td>
<td>1999 ILO Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour</td>
<td>8 March 2000 (R)</td>
<td>Law No. 1 of 2000&lt;sup&gt;779&lt;/sup&gt;</td>
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</table>

**ASEAN Instruments<sup>780</sup>**

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<thead>
<tr>
<th>No</th>
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<th>Date of Signature, Ratification, Accession, or Adoption</th>
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</thead>
<tbody>
<tr>
<td>1.</td>
<td>1993 Resolution on the ASEAN Plan of Action for Children</td>
<td>2 December 1993 (adpt.)</td>
<td>Ratification is not required</td>
</tr>
<tr>
<td>2.</td>
<td>1997 ASEAN Vision 2020</td>
<td>15 December 1997 (adpt.)</td>
<td>Ratification is not required</td>
</tr>
<tr>
<td>3.</td>
<td>1997 ASEAN Declaration on Transnational Crime</td>
<td>20 December 1997 (adpt.)</td>
<td>Ratification is not required</td>
</tr>
<tr>
<td>4.</td>
<td>1998 Ha Noi Plan of Action</td>
<td>15 December 1998 (adpt.)</td>
<td>Ratification is not required</td>
</tr>
<tr>
<td>5.</td>
<td>1999 ASEAN Plan of Action to Combat Transnational Crime</td>
<td>23 June 1999 (adpt.)</td>
<td>Ratification is not required</td>
</tr>
<tr>
<td>6.</td>
<td>2000 ASEAN Plan of Action for Cooperation on Immigration Matters</td>
<td>18 October 2000 (adpt.)</td>
<td>Ratification is not required</td>
</tr>
<tr>
<td>7.</td>
<td>2002 ASEAN Tourism Agreement</td>
<td>21 February 2007 (R)</td>
<td>Presidential Regulation No. 2 of 2007</td>
</tr>
<tr>
<td>8.</td>
<td>2004 ASEAN Declaration against Trafficking in Persons Particularly Women and Children</td>
<td>29 November 2004 (adpt.)</td>
<td>Ratification is not required</td>
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</tbody>
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<table>
<thead>
<tr>
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<tbody>
<tr>
<td>10.</td>
<td>2007 ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers</td>
<td>13 January 2007 (adpt.)</td>
<td>Ratification is not required</td>
</tr>
<tr>
<td>11.</td>
<td>2009 Terms of Reference of the ASEAN Intergovernmental Commission on Human Rights</td>
<td>20 July 2009 (adpt.)</td>
<td>Ratification is not required</td>
</tr>
<tr>
<td>12.</td>
<td>2009 Terms of Reference of the ASEAN Commission for the Promotion and Protection of the Rights of Women and Children</td>
<td>22 October 2009 (adpt.)</td>
<td>Ratification is not required</td>
</tr>
<tr>
<td>13.</td>
<td>2010 Master Plan on ASEAN Connectivity: One Vision, one Identity, One Community</td>
<td>28 October 2010 (adpt.)</td>
<td>Ratification is not required</td>
</tr>
</tbody>
</table>

Table 19 – Indonesia’s International and Regional Commitments relating to the Elimination of Exploitation of Women and Children

According to the information provided by the UN relating to UNTOC and its protocols, Indonesia has made reservations to UNTOC, the 2000 Trafficking Protocol, and the 2000 Migrant Smuggling Protocol. All of Indonesia’s reservations are related to the non-application of the dispute settlement provisions in the Conventions and its Protocols.<sup>781</sup> Indonesia’s reservations are still in force up to this moment.<sup>782</sup> On the other hand, Indonesia did not make any reservation to any ILO Convention, since ILO does not allow its Member States to make reservation to its Conventions.<sup>783</sup> Likewise, the 2004 Treaty on Mutual Legal Assistance in Criminal Matters, the only relevant regional treaty, also prohibits reservation.<sup>784</sup>

Instruments can be accessed on the ASEAN website <www.asean.org> or can be found in the ASEAN database of the Centre for International Law <www.cil.nus.edu.sg>.

<sup>778</sup> Ibid.
<sup>779</sup> GoI, 2002 IPR-CRC, para. 550.
<sup>780</sup> ASEAN instruments relating to the protection of women and children against exploitation cover binding and non-binding instruments. This entails that not all instruments required signature, ratification/accession by ASEAN Member States. The instruments listed in the table are mainly dealt with the issue of trafficking in women and children. Full version of these
In their responses to Indonesia’s UPR report and periodic reports, the UN Working Group on UPR and UN Treaty Bodies highlight some recommendations to improve Indonesia’s practice to fight exploitation of women and children, especially in relation to the implementation of protection of women and children under CEDAW and CRC. Some of the recommendations for the GoI to consider are:

1. The ratification of the 2000 Optional Protocol on the Sale of Children to realise the commitment Indonesia has made when it signed the two Protocols in 2001;785
2. The full enforcement of anti-trafficking legislation and the national action plan to combat human trafficking.786 CAT Committee stated its concern at the high estimates of victims of trafficking stated by Indonesia as compared to the limited number of investigations and the absence of information on prosecutions and convictions.787 CEDAW Committee in 2012 confirms this concern and recommends the GoI to strengthen mechanisms for the investigation, prosecution, and punishment of perpetrators of trafficking in persons.788 This is in line with the Committee’s previous recommendation in 2007 that required the GoI to provide detailed information, including statistical data, on trends in trafficking and on court cases, prosecutions and victims assisted, as well as the results achieved in prevention;789
3. To address the root causes of trafficking and sexual exploitation of women and girls, particularly women’s economic insecurity.790 The same recommendation is reiterated by CEDAW Committee in 2012, CEDAW Committee adds that in order to address the root causes of trafficking the GoI needs to further enhance the economic potential of women.791
4. To establish an appropriate mechanism on data collection, early identification, referral of, support for, and remedy for women who become victims of trafficking.792
5. To amend Indonesian provisions under the Law on Citizenship and Nationality related to retention or transmission of Indonesian women citizenship as soon as possible to ensure the safety of Indonesian women who migrate or who are trafficked abroad;793
6. To consider to toughen criminal liability for crimes related to trafficking and to study the possibility of inviting the Special Rapporteur on Trafficking in Persons to visit Indonesia.794
7. To intensify international, regional and bilateral cooperation with countries of origin, transit, and destination for trafficked women and girls to further curb this phenomenon by engaging in exchange of information, harmonisation of legal procedures especially those related to prosecution and punishment of perpetrators;795
8. To resolve problems arising from prostitution such as establishing exit programs for women who wish to leave prostitution, rehabilitation programs, and reintegration into society.796
9. To prevent trafficking of children under the guise of adoption, CRC Committee recommended the GoI to amend the current legislation concerning adoption in compliance with CRC provisions, to implement effective monitoring and supervision mechanisms, and to accede to the Hague Convention on the Protection of Children and Cooperation in respect of Inter-Country Adoption;797
10. To develop and apply legislation that protects children from sexual exploitation, including a significant increase in the minimum age of sexual consent;798
11. To address the root causes of economic exploitation of children and child labour through poverty eradication, easy access to education, and developing comprehensive child labour monitoring mechanisms;799 and
12. To develop the national system of data collection to cover all forms of sale, trafficking and abduction of children, and ensure that all data and indicators are used for the formulation, monitoring and evaluation of policies, programmes and projects.800

785 CEDAW Committee, 2007 CC-CEDAW, para. 6; and HRC, 2008 RWG-UPR, para. 77.
786 CEDAW Committee, 2007 CC-CEDAW, para. 25.
787 UN OHCHR, 2012 Compilation of UN Reports, para. 27.
788 CEDAW Committee, 2012 CO-CEDAW, para. 30(c).
789 CEDAW Committee, 2007 CC-CEDAW, para. 25.
790 Ibid.
791 CEDAW Committee, 2012 CO-CEDAW, para. 30(a).
792 CEDAW Committee, 2012 CO-CEDAW, para. 30(b).
793 CEDAW Committee, 2007 CC-CEDAW, para. 29.
794 UN HRC, 2012 RWG-UPR, para. 108.77.
795 CEDAW Committee, 2007 CC-CEDAW, para. 25; and CEDAW Committee, 2012 CO-CEDAW, para. 30(d).
796 CEDAW Committee, 2012 CO-CEDAW, para. 30(e).
797 CRC Committee, 2004 CO-CRC, para. 52.
798 Ibid, para. 83.
799 Ibid, para. 85.
800 Ibid, para. 89.
13. To ensure that the issuance of birth certificate shall be free of charge and establish a monitoring mechanism.  

14. To ratify the ILO Convention No. 189 concerning Descent Work for Domestic Workers and to enact, with a clear timeframe, the draft Law on domestic workers and establish procedures to monitor and safeguard the rights of women domestic workers and to prosecute and punish abusive employers. CEDAW Committee further elaborates that the Law on Domestic Workers should be in compliance with the ILO Convention and should at least incorporate provisions on minimum wage, number of working hours per day, overtime pay, off days, social security, freedom of movement, and access to communication and information.  

15. To establish a complaint mechanism where domestic workers can lodge complaints regarding unfair labour practices and abuses as well as to develop support services and shelters for victims.  

16. To establish proper documentation on domestic workers disaggregated by sex, age, and areas of origin.  

Indonesia is a party to various ILO Conventions as mentioned above. As a party, Indonesia is obliged to report regularly on measures that it has taken to implement ILO Convention domestically in either, depending on the status of the Convention established by ILO, every two or five years. The Committee of Experts on the Application of Conventions and Recommendations (CEACR) was established to examine the reports submitted by governments on ILO Conventions that they have ratified. Below are the recommendations and suggestions that CEACR put forward in relation to the GoI reports on the implementation of several ILO Conventions domestically: 

a. Recommendations related to the implementation of 1999 ILO Convention on Worst Forms of Child Labour.  

1. In relation to the problem of child domestic workers, CEACR urges the GoI to take the necessary steps to ensure that the draft Law on the Protection of Domestic Workers is adopted as soon as possible;  

2. In relation to monitoring mechanisms and the efforts of law enforcers to curb trafficking in persons, CEACR urges the GoI to increase its efforts to investigate and prosecute perpetrators of trafficking, as well as increase the awareness among prosecutors and judges of the 2007 TIP Law. CEACR also requests the GoI to strengthen its efforts to prevent children to become involved in the sale, production, and trafficking of drugs;  

3. In relation to sexual exploitation of children, CEACR requests the GoI to take more concerted measures in accordance with the Time Bound Programme (TBP) and the National Action Plan on the Eradication of Trafficking in Persons and Sexual Exploitation of Children 2009–2014 to:  
   - Prevent the trafficking of children and to provide measures for their removal, rehabilitation, and social reintegration;  
   - Protect children from becoming victims of commercial sexual exploitation, including sex tourism;  
   - Implement vigorously Regulation No. PM 30/HK.201/MKP/2010 on Guidelines on the Prevention of Sexual Exploitation of Children in Tourism; and  

4. In relation to children working in fishing platforms or jermals, CEACR urges the GoI to take necessary measures “to ensure that sufficiently effective and dissuasive penalties are applied in practice to persons who engage children in hazardous work on fishing platforms”.  


1. CEACR urges the GoI to adopt a government
regulation concerning children working outside of an employment relationship as soon as possible to implement relevant provisions of Indonesia's 2003 Manpower Act;

2. In relation to the implementation of Article 9(3) of the Convention, CEACR urges the GoI to ensure that every employer, regardless of the type of work performed, keeps a register indicating the name and age or date of birth of persons whom he/she employs who are less than 18 years of age as soon as possible; and

3. CEACR highlights the fact that there many children below the age of 15 engaged in labour, it urges the GoI to double its efforts to prevent children under minimum age to engage in child labour.

c. Recommendations related to the Implementation of 1930 ILO Forced Labour Convention:

1. CEACR considers the provisions under Law No. 39 of 2004 on the placement and protection of Indonesian workers abroad as vague and have many shortcomings risking Indonesian migrant workers to exploitation;

2. CEACR also notes that other related legislations focus heavily on addressing the shortcomings of workers placement and placement-related procedures rather than on workers' protection;

3. In relation to Indonesian migrant workers in Malaysia, CEACR advises the GoI and the Government of Malaysia to take immediate steps to prevent practices such as withholding workers' passports by the employers, to guarantee standard labour protections, and to provide measures to prevent and respond to cases of worker abuse. Similar safeguards should also be included in all agreements between Indonesia and other receiving countries.

There is no indication in reports considered for this Study on the realisation or implementation of ASEAN instruments related to the prohibition, prevention, and the handling of exploitation of women and children in Indonesia. Hopefully, the ASEAN Intergovernmental Commission on Human Rights (AICHR) and the ASEAN Commission for the Promotion and Protection of the Rights of Women and Children (ACWC) can fill in the lacunae and guard the implementation of ASEAN treaties and instruments.

ii. Bilateral Treaties

Apart from international and regional treaties and instruments that describe Indonesia's responsibility to prohibit and handle the occurrences of exploitation of women and children, Indonesia has also established bilateral agreements with other countries concerning extradition and mutual legal assistance in criminal matters (MLA) with the purpose to enable bilateral or cross border investigation efforts and extradition of offenders in relation to exploitation-related crimes especially trafficking. Below is a list of bilateral agreements that Indonesia has signed and ratified.

<table>
<thead>
<tr>
<th>Country</th>
<th>Title of the Treaty</th>
<th>Signature</th>
<th>Ratification</th>
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<tbody>
<tr>
<td></td>
<td>Treaty between the Republic of Indonesia and the Republic of Korea on Mutual Legal Assistance in Criminal matters</td>
<td>30 March 2002</td>
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</table>

In the case of the implementation of regional commitments, unlike the review mechanism set out for UN treaties as described above, ASEAN has yet to have its own review mechanism to oversee the individual implementation of ASEAN treaties and instruments by ASEAN Member States, especially for treaties and instruments related to the prohibition, prevention, and the handling of exploitation of women and children.

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<tbody>
<tr>
<td>Hong Kong</td>
<td>Agreement between the Government of the Republic of Indonesia and the Government of Hong Kong for the Surrender of Fugitive Offenders</td>
<td>5 May 1997</td>
<td>Ratified by Law No. 1 of 2001 on 8 May 2001</td>
</tr>
<tr>
<td></td>
<td>Agreement between the Government of Indonesia and the Government of Hong Kong Special Administrative Region concerning Mutual Legal Assistance in Criminal Matters</td>
<td>3 April 2008</td>
<td>Ratified by Law No. 3 of 2012 on 28 March 2012</td>
</tr>
<tr>
<td>Australia</td>
<td>Extradition Treaty between the Republic of Indonesia and Australia</td>
<td>22 April 1992</td>
<td>Ratified by Law No. 8 of 1994 on 2 November 1994</td>
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<tr>
<td></td>
<td>Treaty between the Republic of Indonesia and Australia on Mutual Legal Assistance in Criminal Matters</td>
<td>27 October 1995</td>
<td>Ratified by Law No. 1 of 1999 on 27 January 1999</td>
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<th>Country</th>
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<th>Signature</th>
<th>Ratification</th>
</tr>
</thead>
<tbody>
<tr>
<td>People's Republic of China</td>
<td>Extradition Treaty between the Republic of Indonesia and the People's Republic of China</td>
<td>1 July 2009</td>
<td>-</td>
</tr>
<tr>
<td>The Republic of India</td>
<td>Treaty on Extradition between the Republic of Indonesia and the Republic of India</td>
<td>25 January 2011</td>
<td>-</td>
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</tbody>
</table>

Table 20 – Countries to which Indonesia has Extradition and MLA Treaties

Extradition treaties between Indonesia and other countries include trafficking in persons as an extraditable offence. The extradition treaties also apply the *aut dedere aut judicare* principle, meaning that contracting parties have the obligation to extradite an offender of an extraditable offence when there is a request for extradition or to prosecute the offender under its national law if there is no request for extradition or if the requested State refused to grant the extradition request made by the other party. Indonesia has signed extradition treaties with Singapore, China, and India; however, it has not ratified those treaties until now. In a recent meeting between the President of Indonesia and Singapore’s Prime Minister, both Governments stated that they will resume efforts to realise the implementation of extradition arrangements between Indonesia and Singapore.812

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812 Susi Fatimah, SBY: Perjanjian Ekstradisi dengan Singapura Terhenti (SBY: Extradition Treaty with Singapore has been put into a Halt), 13 March 2012, <international.okezone.com>, accessed 14 March 2012.
In relation to mutual legal assistance in criminal matters, Indonesia has only signed and ratified MLA treaties with China and Australia. Indonesia has signed two other MLA Agreements with Hong Kong and South Korea in 2008 and 2002 respectively; however, the DPR only confirmed its plan to ratify the MLA treaty with Hong Kong in 2012. Indonesia finally ratified the MLA Agreement with Hong Kong on 28 March 2012.

b. State Policies against Exploitation

This section will follow the classification of legislations and policies set out in section B.2.b. above, which consists of preventive, protective, and curative legislations and policies relating the prohibition of exploitation of women and children. Furthermore, unlike Section B.2.b. above, this section will not divide the legislation and policies into general and specific legislations and policies related to women and children separately.

The 2008 Indonesian UPR, 2005 and 2011 IPR-CEDAW, and 2002 and 2007 IPR-CRC identified legislation and policies related to the general protection of women and children against exploitation, which consist of:

1. The Criminal Code;
2. KDRT Law;
3. Victim and Witness Protection Law;
4. Law on Child Protection;
5. Law on the Eradication of Trafficking in Persons (TIP Law);
6. Law No. 13 of 2003 on Manpower (Manpower Law),
7. Law No. 11 of 2008 on Information and Electronic Transaction (ITE Law);
8. Law No. 44 of 2008 on Pornography;
9. Law No. 8 of 2010 on the Prevention and Suppression of the Crime of Money Laundering (Anti Money Laundering Law);
10. Law No. 35 of 2009 on Narcotic (Anti Narcotic Law);
11. Government Regulation on Procedures and Methods for Integrated Services for Witnesses and Victims of Trafficking in Persons (Law on Integrated Service for TIP Victims);
12. Government Regulation on the Facilitation, Support, and Recovery of Children as Victim or Subject of Pornography (Government Regulation of Children Recovery from Pornography);
13. Presidential Decrees on the National Action Plan to Combat the Worst Forms of Child Labour;
14. Presidential Decree on the National Action Plan to combat the Commercial Sexual Exploitation of Children;
15. Presidential Decree on the National Action Plan to Combat Trafficking of Women and Children;
16. Presidential Decree on National Committee for

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813 Erwin, RUU Timbal Balik Hukum Pidana Indonesia dengan Hongkong Disahkan (Draft Law on the Ratification of Mutual Legal Assistance between Indonesia and Hong Kong Enacted), <sumbawanews.com>, accessed on 9 March 2012.
816 GOL, 2008 Indonesian UPR, para. 10.
818 GOL, 2002 IPR-CRC, para. 15 and 20; and GOL, 2007 IPR-CRC, para. 2.
825 Government Regulation No. 9 of 2008 on Procedures and Methods for Integrated Services for Witnesses and Victims of Trafficking in Persons, State Gazette 2008:22, 4 February 2008. See the comment on note 162.
826 Government Regulation No. 40 of 2011 on the Facilitation, Support, and Recovery of Children as Victim or Subject of Pornography (Government Regulation of Children Recovery from Pornography), State Gazette 2011:86, 9 September 2011.
the Elimination of Worst Forms of Child Labour (Presidential Decree on KNPBPTA);\(^{830}\)
17. Presidential Regulation on the National Taskforce for the Prevention and Handling of the Crime of Trafficking in Persons (Presidential Regulation on PHCTIP Taskforce);\(^{831}\)
18. Presidential Instruction on Policy Reform for the Placement and Protection of Indonesian Worker;\(^{832}\)
20. MOWE Regulation on Early Awareness against the Crime of Trafficking in Persons;\(^{834}\)
21. MOWE Regulation No. 1 of 2009 on Minimum Service Standard for the Integrated Service for Witness and/or Victim of Trafficking in Persons at the Regency/Municipality Level;\(^{835}\)
22. Minister of Social Affairs Regulation No. 110/HUK/2009 of 2009 on Requirements for Child Adoption;\(^{836}\)
23. MOWE Regulation on Minimum Service Standard for Women and Children Victims of Violence (MOWE Regulation on SPM);
24. Regulation of the Chief of Indonesian National Police Forces on the Organisation and Management of Special Women and Children Unit (CNP Regulation on UPPA);

25. Regulation of the Chief of Indonesian National Police Forces (CNP Regulation) on the Establishment of Special Service Room and Inspection Procedure for Victim and Witness of Violence

Under Indonesia domestic legislation, exploitation and trafficking, as a means to deliver victims to be exploited, is classified as violence especially against women and children. Therefore, many legal measures relating to exploitation and trafficking in women and children have already been discussed in the previous chapter on violence.\(^{837}\) Especially in relation to protective and curative measures for exploitation and trafficking of women and children, most of the legislations have already been described in the Chapter on violence against women and children above except for specific legislations referred in points 5 – 20 above.


\(^{831}\) Presidential Regulation No. 69 of 2008 on the National Taskforce for the Prevention and Handling of the Crime of Trafficking in Persons (Presidential Regulation on PHCTIP Taskforce), 6 November 2008. For further description on the PHCTIP Taskforce, refer to section C.3.a. below.

\(^{832}\) Presidential Instruction No. 6 of 2006 on Policy Reform for the Placement and Protection of Indonesian Worker (Presidential Instruction on Indonesian Worker Policy Reform), 2 August 2006.


\(^{835}\) Unfortunately, the Study does not have any access to this Regulation. To the knowledge of the Study, this Regulation is still in force partially after the adoption of the 2010 MOWE Regulation on SPM.

\(^{836}\) Minister of Social Affairs Regulation No. 110/HUK/2009 of 2009 on Requirements for Child Adoption, 19 October 2009.

\(^{837}\) See Section B.2.b. above.
### a. Preventive Measures

<table>
<thead>
<tr>
<th>No.</th>
<th>Legislation</th>
<th>Relevant Provisions</th>
</tr>
</thead>
</table>
| 1.  | Criminal Code | The Criminal Code has some provisions relating to the prohibition and punishment of sexual exploitation of children and trafficking of women and children (Articles 295 – 297). The acts are as follow:  
   a. Deliberately causing or facilitating the commission of any obscene act between a child under his/her care with another person as a profession/habit;  
   b. Intentionally causing or facilitating any obscene act by other person and doing such act as a profession/habit; and  
   c. Committing trade in women and underage boys.  
   Additionally, Indonesian Criminal Code also applies extraterritorial jurisdiction for Indonesian nationals abroad that commits an act that has been criminalised both by Indonesian and the other State's Criminal Code (Article 5). |
| 2.  | Child Protection Law | Articles 78, 81, 82, and 87 – 88 prohibit and punish the following acts:  
   a. To knowingly and deliberately allow or leave a child to be economically or sexually exploited when the child needs help and must be assisted;  
   b. To force a child to engage in sexual intercourse with him/her or with other person by employing violence or threat of violence or tricks or ruses or persuasions;  
   c. To deliberately force a child to engage in indecent behaviour by employing violence or threat of violence or by employing tricks or ruses or persuasions;  
   d. To unlawfully recruit or use a child for military purposes or to involve children in armed conflict or social unrest, or even that involves violence, or misuse of political activities; and  
   e. To economically or sexually exploit a child with the intent to make profit for himself or others. |
   b. Articles 3 – 6 of the Law prohibits and punishes the following acts:  
      · The act of getting a person into Indonesia with the intention of exploiting him/her in or outside of Indonesia;  
      · The act of taking an Indonesian citizen outside of Indonesia with the intention of exploiting him/her outside of Indonesia;  
      · The act of adopting a child with the intention of exploiting the child; and  
      · The act of sending a child into or outside of Indonesia with any means that cause the exploitation of the child.  
   c. Articles 7 – 8 and 16 – 17 deal with aggravating factors.  
   d. Article 26 stipulates that the consent of a victim will not eliminate the prosecution of a perpetrator.  
   e. The Law prohibits and punishes anyone that directed another person to commit trafficking or become accomplice to commit trafficking or to plan or conspire to commit trafficking (Articles 9 – 12).  
   f. The Law criminalises corporations that are involved in trafficking (Article 13 – 15).  
   g. Central and local governments are responsible in the prevention of trafficking in persons (Articles 56 – 58) |
| 4.  | Anti-Pornography Law | a. The Law defines pornography as: any sexual materials created by human in the form of pictures, sketches, photos, writings, voices, sounds, motion pictures, animations, cartoons, poems, conversations, body movement, or other forms of message communication through various forms of communication media and/or representations in public that cause sexual arousal and/or violates norms in community (Article 1)  
   b. The Law criminalises the act of child pornography and involvement of children in pornography or other exploitation of sexual related acts (Articles 11 and 37) |
| 5.  | Manpower Law | a. Article 74 prohibits employing children in works that constitute worst forms of child labour such as:  
      · Forced labour or slavery;  
      · All types of works that employ, provide, or offer children for prostitution, pornography, porn performance, or gamble;  
      · All types of works that employ, provide, or involve children in the production and trade of alcohol and drugs; and  
      · All types of works that can endanger the health, safety, or moral of children.  
   b. Companies are prohibited to employ a person below the age of 18 (with some exceptions to children above the age of 13 and below the age of 15). |
| 6.  | ITE Law | The Law criminalises the act of distributing or transmitting or to make available or accessible electronic information or document containing immoral/indecent content (Article 27) and the Law increases the penalty of such act if the act includes child exploitation (Article 52). |
| 7.  | Anti Money Laundering Law | According to the Anti money Laundering Law, the proceeds of crimes shall include, among others, assets derived from trafficking in persons and prostitution. Indonesia shall have jurisdiction over these predicate offences when they are perpetrated both within and outside of Indonesia (Article 2(1)). |
| 8.  | Anti Narcotic Law | Articles 133 – 134 criminalise any persons that direct, give or promise to give, provide opportunity, encourage, force, deceive, or persuade a child to using or to get involved in the production and trade of drugs |

Table 21 – List of Preventive Measures Provided under General Legislations and Policies on Exploitation of Women and Children
### b. Protective Measures

<table>
<thead>
<tr>
<th>No.</th>
<th>Legislation</th>
<th>Relevant Provisions</th>
</tr>
</thead>
</table>
| 1.  | TIP Law     | a. Investigation, prosecution, and court examination on child witnesses or victims of trafficking shall be done by taking into consideration the principle of best interest of the child, and the child is entitled to be accompanied by his/her parent, guardian, and/or legal counsel (Articles 38 – 40)  
 b. Protection of witnesses and victims of trafficking shall be conducted in accordance with the provisions under the Victim and Witness Protection Law (Article 43)  
 c. Witnesses and/or victims of trafficking and their family are entitled to have their identity undisclosed and receive police protection during and after the conclusion of the legal process (Articles 44 and 47)  
 d. To give protection to victims and/or witnesses of trafficking during the whole legal process, local governments are obliged to establish special service rooms in every precinct to conduct investigation and integrated service units in every city/regency (Articles 45 – 46).  |
| 2.  | Child Protection Law | The issuance of a birth certificate shall be the responsibility of the government, and be carried out in practice at a level that is not lower than that of the village or sub-district (Article 28) |
| 3.  | Anti-Pornography Law | a. The Law ensures legal certainty and protection to citizens especially women and children (Article 3)  
 b. The Law obliges every person to protect children from pornographic influence and prevent the spread of information related to pornography to reach children (Article 15) |
| 4.  | Manpower Law | a. Minister of Manpower is under the obligation to protect children working in informal sector (Article 75)  
 b. Establishment of designated working hours for women workers to work in particular hours and/or in particular conditions (Articles 76 – 78)  
 c. The rights for women workers to receive annual leaves; maternity leaves; sick leaves; and overtime payment (Articles 79 and 81 – 85)  
 d. The Law sets out special requirements to employ children above the age of 13 and below the age of 15 (Articles 69 -71)  
 e. Separation of children and adults working place (Article 72) |
| 5.  | Government Regulation on Integrated Service for TIP victims | a. The application of integrated services for victims and witnesses of trafficking in persons require cooperation and coordination among relevant government institutions and other relevant institutions (Article 1(1)).  
 b. The scope of the Government Regulation includes services in health rehabilitation, social rehabilitation, return and social reintegration, advocacy, counselling, and legal aid for victims and witnesses of TIP in and outside of Indonesia. In the case of children, the rendering of services will be done in accordance with the best interest of the child (Article 4).  
 c. The Government Regulation ensures the rights of victims and witnesses of trafficking as well as their family to receive health and social rehabilitations, return, social reintegration and legal aid through an Integrated Service Centre (PPT)  
 d. PPT shall be established in every region and city or regency in Indonesia by each regional government. The Centre can also give its services to victims and witnesses of domestic violence (Article 6).  
 e. MOWE is responsible to establish, formulate and adopt minimum standard for service and standard operation procedure on the return and social reintegration to be followed by each PPT (Articles 7 – 8).  
 f. Regional governments are obliged to provide all necessary facilities to accommodate the work of PPT; private owned hospitals may also contribute to provide necessary facilities for PPT (Articles 9 – 10).  
 g. Relevant institutions are obliged to provide medical personnel, psychologist, psychiatrist, and social worker to support the application of integrated services (Article 11). |

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838 For the description of protective measures provided under the victim and witness protection law, see table 9 in section B.2.b. above.  
839 For the description of the function of police women and children unit, see the description on CNP Regulation on the Establishment of Special Service Room and Inspection Procedure for Victim and Witness of Violence and CNP Regulation on PPA in table 9 above.
<table>
<thead>
<tr>
<th>No.</th>
<th>Legislation</th>
<th>Relevant Provisions</th>
</tr>
</thead>
<tbody>
<tr>
<td>6.</td>
<td>National Action Plan to Combat the Worst Forms of Child Labour</td>
<td>a. The national action plan serves as guidelines for the implementation of the national action program to eliminate the worst forms of child labour (Article 2).&lt;br&gt;b. The national action plan contains detailed 20 year planning, describing, in general, the goals that the GoI wants to achieve in relation to the elimination of the worst forms of child labour (Chapter 2):&lt;br&gt;· First Phase (5 years):&lt;br&gt;  - To enhance public awareness to eliminate the worst forms of child labour;&lt;br&gt;  - To map the problems relating to the worst forms of child labour and efforts to eliminate them; and&lt;br&gt;  - To implement the program on the elimination of the worst forms of child labour prioritising on child labour in offshore platforms and deep sea diving, child labour in mines, child labour trafficked into prostitution, child labour in footwear industry, child labour in the production and distribution of narcotics, psychotropic substances, precursors, and other addictive substances.&lt;br&gt;· Second phase (10 years):&lt;br&gt;  - Replication of model practice on the elimination of worst forms of child labour that has been implemented during the first phase;&lt;br&gt;  - Development of program on the elimination of worst forms of child labour; and&lt;br&gt;  - Availability of policies and implementation tools for the elimination of worst forms of child labour.&lt;br&gt;· Third phase (20 years):&lt;br&gt;  - Effective institutionalisation of national movement on the elimination of worst forms of child labour; and&lt;br&gt;  - Mainstreaming of the elimination of worst forms of child labour.</td>
</tr>
<tr>
<td>7.</td>
<td>National Action Plan to combat the Commercial Sexual Exploitation of Children</td>
<td>a. The national action plan serves as a basis and guidelines for the GoI and the public in eradicating trafficking sexual commercial exploitation of children (Article 1).&lt;br&gt;b. To ensure the enhancement of protection efforts for children victims of sexual commercial exploitation; the prevention and handling of trafficking practices; as well as to push for the adoption or refinement of anti sexual commercial exploitation of children (Article 2).&lt;br&gt;c. The task force on the sexual commercial exploitation of children to oversee, report, and coordinate the implementation of the national action plan as well as to engage in international coordination on measures for prevention and the handling of sexual commercial exploitation of children (Article 4).&lt;br&gt;d. MOWE acts as the responsible Minister for the implementation of the national action plan (Article 5).&lt;br&gt;e. A regional task force will also be established in every region in Indonesia to ensure the implementation of the national action plan (Article 6).&lt;br&gt;f. The national action plan contains detailed 5 year planning describing the role of every relevant institution mentioned in the action plan to combat sexual commercial exploitation of children that consist of (Chapters 3 and 4):&lt;br&gt;· Coordination and cooperation among States institutions;&lt;br&gt;· Prevention of sexual commercial exploitation of children;&lt;br&gt;· Protection of children against sexual commercial exploitation;&lt;br&gt;· Rehabilitation and reintegration of children victims to sexual commercial exploitation;&lt;br&gt;· Children participation; and&lt;br&gt;· Monitoring and evaluation.</td>
</tr>
<tr>
<td>8.</td>
<td>National Action Plan to Combat Trafficking of Women and Children</td>
<td>a. The national action plan serves as a basis and guidelines for the GoI and the public in eradicating trafficking in women and children (Article 1).&lt;br&gt;b. To ensure the enhancement of protection efforts for victims of trafficking, especially women and children; the prevention and handling of trafficking practices; as well as to push for the adoption or refinement of anti trafficking legislations (Article 2).&lt;br&gt;c. The task force on trafficking is established to oversee, report, and coordinate the implementation of the national action plan as well as to engage in international coordination on measures for prevention and the handling of trafficking of women and children (Article 4).&lt;br&gt;d. The Ministry of Social Welfare acts as the responsible Minister for the implementation of the national action plan (Article 4).&lt;br&gt;e. A regional task force will also be established in every region in Indonesia to ensure the implementation of the national action plan (Article 6).&lt;br&gt;f. The national action plan contains detailed 5 year planning describing the role of every relevant institution mentioned in the action plan to combat trafficking in women and children that consist of (Chapter 3):&lt;br&gt;· The adoption of legal norms and action against traffickers;&lt;br&gt;· The implementation of rehabilitation and social reintegration for victims of trafficking;&lt;br&gt;· The implementation of preventive measures; and&lt;br&gt;· The establishment of cooperation and coordination in eradicating trafficking in women and children among relevant institutions at the national and regional levels as well as at the international level.</td>
</tr>
<tr>
<td>No.</td>
<td>Legislation</td>
<td>Relevant Provisions</td>
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</tbody>
</table>
| 9.  | Presidential Decree on KNPBPTA | a. Worst forms of child labour include (Article 1):  
  · Any forms of slavery or slavery-like practice such as the sale and trafficking of children, debt bondage, servitude and forced labour, including child soldier;  
  · The use, supply, or offer of children for prostitution, production of pornography, or to perform pornography acts;  
  · The use, supply, or offer of children for criminal acts, especially for the production and trade of drugs; and  
  · Works those are dangerous for children’s health, safety, or moral.  
  b. The KNPBPTA is chaired by the Minister of Manpower and Transmigration (Article 2).  
  c. The Committee is responsible for:  
    · Formulating the national action plan to eliminate the worst forms of child labour;  
    · Conducting monitoring and evaluation on the implementation of the national action plan; and  
    · Identifying and conveying the issues pertinent to the implementation of the national action plan to relevant authorities in order to find solutions in accordance with national legislations. |
| 10. | Presidential Regulation on PHCTIP Taskforce | a. The National Taskforce for the Prevention and Handling of the Crime of Trafficking in Persons (Gugus Tugas Pencegahan dan Penanganan Tindak Pidana Perdagangan Orang, or PHCTIP Taskforce) is established to prevent and handle the crime of trafficking in persons at national and regional levels. Each Taskforce at differing level acts as a coordinating body for the prevention and handling on cases of trafficking in persons (Arts. 1 and 2).  
    b. Apart from being a coordinating body, the Taskforce also has the duty to:  
      · Advocate, train, and garner national and international cooperation on the prevention and handling of trafficking in persons;  
      · Monitor the development on the implementation of protection of victims that include rehabilitation, repatriation, and social reintegration;  
      · Monitor the development on the enforcement of the Law; and  
      · Conduct reporting and evaluation. |
| 11. | Presidential Instruction on Indonesian Worker Policy Reform | In the Annex of this Presidential Instruction, the GoI listed some protective measures provided for Indonesian Migrant Workers against exploitation and violence:  
  a. The GoI to provide legal aid service for Indonesian workers within and outside of Indonesia. Legal aid service abroad will be provided by Indonesian Embassy and Consular;  
  b. The GoI to establish Citizen Service on Labour in 6 Countries (South Korea, Brunei, Singapore, Jordan, Syria, and Qatar).  
  c. The GoI to provide reliable healthcare and psychological services for Indonesian migrant workers. |
| 12. | MOWE Regulation on Early Awareness against the Crime of Trafficking in Persons | a. This Regulation sets out a guideline (Annex) for relevant Government institutions, regional governments, NGOs, and the society to raise awareness in preventing the occurrence of trafficking in persons (Art. 3)  
    b. The early awareness programs include (Art. 5):  
      · Advocating early awareness policies in preventing trafficking in persons;  
      · Campaigning, coordinating, and cooperating at municipality/regency level and Indonesia’s diplomatic representatives abroad; and  
      · Empowering vulnerable groups prone to trafficking in persons |
    b. The Regulation distributes responsibilities on the handling of cases of trafficking in persons and sexual exploitation of children to specific Government institutions:  
      · Ministry of National Education is responsible for prevention and child participation;  
      · Ministry of Health is responsible for rehabilitation of health;  
      · Ministry of Social Affairs is responsible for social rehabilitation, repatriation, and social reintegration;  
      · Ministry of Law and Human Rights is responsible for the development of legal norms;  
      · The National Police is responsible for enforcing relevant legislations; and  
      · The Coordinating Ministry of Welfare is responsible for coordination and cooperation. |

Table 22 – List of Protective Measures Provided under General Legislations and Policies on Exploitation of Women and Children

840 The PHCTIP Taskforce was established by a Presidential Regulation in 2008, see explanation in this Table above.

Ranyta Yusran
c. Curative Measures

<table>
<thead>
<tr>
<th>No.</th>
<th>Legislation</th>
<th>Relevant Provisions</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>TIP Law</td>
<td>Victims of trafficking are entitled to receive restitution and rehabilitation (Articles 48 – 55)</td>
</tr>
<tr>
<td>2.</td>
<td>Anti-Pornography Law</td>
<td>The GoI and other institutions are responsible to provide recovery measures for children that have fallen victims to pornographic acts and shall be regulated further by a Government Regulation</td>
</tr>
</tbody>
</table>
| 3. | Government Regulation on Integrated Service for TIP victims | a. In order for victims and witnesses to access their rights under this Government Regulations they can report directly to a PPT or to the police force and have their rights accommodated (Articles 14 – 15).  
b. Protection houses or trauma centre shall be made available by all regional governments and civil society to provide protection to victims and witnesses of trafficking (Article 16).  
c. In cases where victims and witnesses are located abroad, GoI diplomatic representation shall provide protection and accommodate their return. If necessary, a PPT can also be established abroad attached to Indonesia's diplomatic office (Articles 17 – 18).  
d. In cases where victims and witnesses are found in Indonesia but not in their place of origin, then the head of the region where they are found shall establish coordination with the head of the region of their place of origin and star the return process and accommodate them to the PPT in the place of origin (Article 19).  
e. If the victims and witnesses are not Indonesian nationals, the Ministry of Foreign Affairs are responsible to coordinate with the victims’ or witnesses’ diplomatic representation to assist with their return process (Article 20).  
f. To render assistance to victims and witnesses of trafficking, the PPT can coordinate with government or private-owned hospitals, safe houses or trauma centres to assist the recovery of victims and witnesses (Article 21). |
| 4. | Government Regulation on Recovery of Children from Pornography | a. Parties responsible for providing and ensuring support and recovery for children who are victims or subjects of pornography are consisted of relevant government institutions (both at the central and local level), social institutions, educational institutions, religious institutions, family, and/or society (Article 2).  
b. Facilitation, support, and recovery services for children involved in pornography acts are attainable, among others, at health or medical facilities, social centres, Islamic boarding schools, education centres (Article 8).  
c. The Government Regulation provides a general outline of the responsibilities of each responsible party in the providing facilitation, support, and recovery for children who are victims or subjects of pornography (Chapters II – IV).  
d. Recovery of children includes recovery of mental and physical recovery and social recovery (Chapter IV). |

Table 23 – List of Curative Measures Provided under General Legislations and Policies on Exploitation of Women and Children

c. Assessment of State Policies

i. Trafficking in Persons

Trafficking of women and boys and sexual commercial exploitation of women and children are already considered as crimes and punishable under Indonesia’s Criminal Code.\textsuperscript{841} Unfortunately, the Criminal Code does not provide any definition of trafficking. It was only after the enactment of Law No. 21 of 2007 on the Eradication of Trafficking in Persons (TIP Law) that Indonesia had a definition of the act of trafficking in persons. Article 1(1) of TIP Law defines the act of trafficking in persons as:

\textsuperscript{841} Criminal Code, art. 295 – 297.

Any acts to recruit, transport, harbour, deliver, transfer or receipt of a person by means of the threat or use of force, abduction, locking up, fraud, deception, abuse of power or abuse of position of vulnerability, debt bondage or to provide payment or benefit, in order to obtain the consent of a person that holds control over another person, both conducted internally and across the border, with the purpose of exploitation or to cause exploitation of a person.

The definition implies that Indonesia has jurisdiction of the crime of trafficking in persons that was done either internally or across borders. The definition of trafficking in persons provided under Article 1(1) of
TIP Law is similar to the definition of trafficking in persons provided in Article 3(a) of the 2000 Trafficking Protocol. Indonesia later on ratified UNTOC and its Trafficking Protocol in 2009, affirming its obligation to prevent and combat trafficking occurrences. However, the definition of trafficking in person under Article 2 of the TIP Law differs slightly from the definition given under Article 1(1). While Article 1(1) implies the application of jurisdiction for trafficking in persons in Indonesia and across border, Article 2 of TIP Law, which criminalises the act of trafficking in persons, does not include trafficking that is conducted “across border” in its elements of crime.843

Articles 2 – 6 of TIP law set out the criminalisation of trafficking in persons in and outside of Indonesia, especially in women and children. The penalties for trafficking in persons consist of both fines (US$ 13,000 – US$65,500) and imprisonment (3 – 15 years).844 Furthermore, The TIP Law recognises a number of aggravating factors, which consequently entail heavier punishment for perpetrators, up to one-third of the maximum sentence and fine:845

a) If the crime causes grave bodily or psychological harms, or transmitted disease that may cause threat to the victim's life, pregnancy, or damage to the victim's reproduction organ; or
b) If a government/state official is proven to have abused his/her power to cause the crime to take place; or
c) If the crime is committed by perpetrators as part of an organised group; or
d) If the crime is committed against children

The TIP Law gives special attention to the trafficking of children, by criminalising the act of adoption with the intention of exploiting the child and criminalising the transfer of a child abroad with any means that cause the exploitation of the child.846 Prosecution of the act of trafficking will still be carried out against perpetrators of the crime even if the victim has given his/her consent.847

 Trafficking is an extraditable offence under Indonesian laws. Indonesia has recognised trafficking in women and children as an extraditable offence since 1979 through the enactment of Law No. 1 of 1979 on Extradition. Article 2 of the Extradition Law implies that an extradition of an offender does not necessarily need to be done based on a treaty concluded between Indonesia and a requesting State. Even if an extradition is done based on a treaty, the Law does not imply that the treaty must be concluded strictly on a bilateral basis. Furthermore, Indonesia’s practice is in conformity with the provision reflected in Article 16 of UNTOC, the parent Convention of the Trafficking Protocol, that State Parties should recognise offences under UNTOC as extraditable offences between them.

UNTOC requires a State Party to establish jurisdiction to try an offender that was found in its territory if it does not extradite the offender to another State Party requesting for an extradition, in line with the principle of aut dedere aut ajudicare (to extradite or to prosecute) or quasi-universal jurisdiction. This provision also applies to offenders who are nationals of the requested State. Additionally, one of the aims of the Convention in applying this principle is to avoid a State trying to protect an offender by not extraditing him/her to a requesting State over the crime of trafficking under the sole basis that the offender is a national of the requested State. Indonesia’s legislation has established trafficking as an extraditable offence and ensure that it will submit the offender to the competent authority in the requesting State without undue delay if it decides not to prosecute in its own courts. Since the Indonesian TIP Law applies generally to all nationals who committed the act in Indonesia and to perpetrators of trafficking in persons who committed the crimes outside of Indonesia but got apprehended in Indonesia, the legal framework allows Indonesia to extradite.

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843 TIP Law, art. 2.
844 Ibid, art. 2 – 6.
845 Ibid, art. 7 – 8 and 16 – 17.
846 Ibid, art. 5 – 6.
848 Law No. 1 of 1979 on Extradition (Extradition Law), State Gazette 1979:2. 18 January 1979. Annex
849 Ibid, art. 2(2).
850 Ibid, art. 2(1).
851 UNTOC, art. 16(10).
852 Ibid, art. 15(3) and 16(10).
853 Ibid.
854 TIP Law, Implied in the art. 1(1) and 2(1).
855 Ibid, art. 2(1)
Indonesian laws guarantee protection to victims and witness of trafficking in persons including to provide legal representation, to be heard in Court, to provide medical assistance, to provide social assistance, to provide temporary residence, and to accommodate the return of victims to their place of origin. In relation to a child victim or witness, the State shall provide the assistance of a social worker or probation officer (assigned by the Ministry of Law and Human Rights) and it is compulsory that the child be accompanied by the social worker or probation officer at all stages of the legal process. The Law establishes a special unit at every police precinct to handle victims and witnesses of trafficking in persons and provides that their identity shall remain confidential.

TIP Law only ensures the rights of victims of trafficking in persons to receive restitution, including monetary restitution, and rehabilitation. Restitutions for victims are made by the offenders once the Court decides that they are guilty of trafficking in persons and includes the order for reparation in its judgment. Unfortunately, to the best knowledge of this Study, the Indonesian legal framework does not provide restitution for victims of trafficking in persons in the case where the Court does not prove the alleged perpetrator guilty of the crime. Also, to the knowledge of the Study, there is no provision under the Indonesian legislations dispensing with criminal liability for victims of trafficking in persons if they were discovered or arrested by the authorities under compromising conditions that constitute an offense under Indonesian law. For instance if a victim of trafficking was exploited as a nude dancer and she was caught by the police violating Indonesia’s Anti-Pornography Law, she will still be investigated and prosecuted based on Indonesia’s Anti-Pornography Law.

ii. Exploitation of Women and Children

TIP Law defines exploitation as:

An act, with or without the consent of the victim, that includes, but not limited to, prostitution; forced labour or service; slavery or slavery-like practice; subjugation; extortion; physical exploitation, sexual exploitation, or exploitation of reproduction organ; or unlawfully removing or transplanting organ or tissue; or exploiting a person’s skill by another person in order to acquire economic gain both materially and immaterially.

Sexual exploitation is further defined as any form of exploitation of sexual organ or other organs of the victim for the purpose of gaining profit, including, but not limited to, prostitution and sexual abuse. The act of exploiting or causing a person, especially woman and child, to be exploited is punishable under the law. Sexual commercial exploitation of women and children is also criminalised under the Indonesian Criminal Code and Child Protection Law.

Exploitation of Children

Indonesian legislations provide protection for children against specific forms of exploitation by criminalising any person that involves children in:

1. The use, production, and trade of drugs. The anti-narcotic law even goes as far as stipulating death penalty for a defendant that has been proven to involve children in his/her drug operation.
2. Sexual exploitation of children, especially in engaging children to perform in the production of child pornography and involvement of children in pornography or other sexual-related acts.
3. The distribution of pornographic material that involve children through all kinds of media.

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856 See the list of protective and curative measures described in Tables 9, 10, 22, and 23 above.
857 Law on Juvenile Court System, art. 23. For a clearer description, see table 12 above.
858 TIP Law, art. 44 – 45.
859 Ibid, art. 48 – 50.
860 Ibid, art. 48(3).
861 An example can be found in Komnas Perempuan, 2010 Note., 21 – 22; see also the elaboration of the case in section B.1.a. above.
862 Ibid, art. 1(7).
863 TIP Law, art. 1(8).
864 Ibid, art. 2
865 Criminal Code, art. 295 – 297; and Child Protection Law, art. 78, 81, 82, and 88; See table 21 above.
866 Anti Narcotic Law, art. 133 – 134.
867 Ibid, art. 133.
868 Anti-Pornography Law, art. 11 and 37.
including the Internet.\textsuperscript{869}

4. The unlawful recruitment and use of children for military purposes or to involve children in any way in a situation of armed conflict or social unrest or event that involves violence or misuse of political activities.\textsuperscript{870} Unfortunately, Indonesian legislation does not give a clear definition of child soldier.

5. Any worst forms of child labour, which, among others, by nature or the circumstances in which the works are carried out, will likely harm the health, safety, or moral of children as listed in Article 74 of the Manpower Law.\textsuperscript{871}

6. The unlawful harvesting of child’s organ and/or tissue.\textsuperscript{872}

In section B.1.b. above, it has been established that early marriage constitutes one of the root causes of exploitation and trafficking of girls and eventually women. However, Indonesia’s legal framework is not clear in prohibiting early marriage, as indicated in the previous section. The Marital Law sets a low minimum age for a girl to get married, 16 years old.\textsuperscript{873} Additionally, there is also conflicting provisions regarding the age of consent between the provisions provided under the Criminal Code (15 years old) and the Child Protection Law (18 years old). If it depends on the Criminal Code and Marital Law, early marriage of children between the age of 15 and 16 is still possible.\textsuperscript{874}

Indonesia ensures every child’s right to be registered and have his/her birth certificate issued soon after his/her birth.\textsuperscript{875} The government is responsible for the achievement of this right.\textsuperscript{876} In 2006, Indonesia’s legislation ensured that, in principle, every child can get his/her birth certificate for free.\textsuperscript{877} Both the Law on Child Protection and on Citizenship oblige regional governments to take an active role in providing birth certificates and encouraging parents to have their babies registered.\textsuperscript{878} According to the 2005 Regulation of the Ministry of Home Affairs, a free birth certificate is given to children registered within 60 days since the day of birth.\textsuperscript{879} In 2012, there are at least 283 regencies/municipalities in Indonesia that have issued regional regulations providing free birth certificates.\textsuperscript{880}

Exploitation of Women

In relation to women working as sexual commercial workers, Indonesian legislation does not explicitly prohibit prostitution; however, legislations prohibit any person to facilitate or cause obscene acts or obtain economical gain from obscene acts.\textsuperscript{881} The national legislation does not offer any definition on prostitution nor does it expressly criminalise prostitution. However, at the local level, some municipalities have enacted regional regulation on the banning of prostitution.\textsuperscript{882} Even though such regional regulations do not classify prostitution as a crime, alleged women sexual commercial workers are subject to police raids and potential arrest and even detention.\textsuperscript{883} Furthermore, in Indonesia, to avoid raids, usually female sexual commercial workers operate in registered brothel complexes established based on regional regulations. However, national legislation stays silent on whether such establishments are allowed.\textsuperscript{884}

Regarding the protection of women and children domestic workers, apart from protection against domestic violence,\textsuperscript{885} the Indonesian legal system does not offer protection to the rights of domestic workers

\textsuperscript{869} ITE Law, art. 27 and 52.
\textsuperscript{870} Child Protection Law, art. 87.
\textsuperscript{871} For the list of worst forms of child labour, refer to table 21 above. Additionally, the national Action Plan to Combat Worst Forms of Child Labour and Presidential Decree on national Committee for the Elimination of Worst Forms of Child Labour (table 22 above) also contain lists of worst forms of child labour but lacking penalties.
\textsuperscript{872} Child Protection Law, art. 85(b).
\textsuperscript{873} Marital Law, art. 7.
\textsuperscript{874} See the elaboration in section B.1.b. above.
\textsuperscript{875} Child Protection Law, art. 28.
\textsuperscript{876} Ibid.
\textsuperscript{877} Law No. 27 of 2006 on Citizenship, art. 27.
\textsuperscript{878} Ibid; Child Protection Law, art. 28.
\textsuperscript{879} Regulation of the Minister of Home Affairs No. 28 of 2005 concerning the Guidelines on the Implementation of Regional Population and Civil Registration., art. 15(5).
\textsuperscript{880} Gol, 2012 RIPR-CEDAW, para. 63.
\textsuperscript{881} Criminal Code. Arts. 296 and 506.
\textsuperscript{882} For further discussion on such regional regulations, see section B.1.a.
\textsuperscript{883} For example, see Tangerang Regional Regulation No. 8 of 2005 on Prohibition of Prostitution, 23 November 2005, art. 6.
\textsuperscript{884} UNDP, Legal Environments, Human Rights and HIV Responses among Sex Workers in Asia and the Pacific, Asia Pacific Regional Centre, August 2011, 11 – 12
\textsuperscript{885} KDRT Law. Art. 2(1c).
and the absence of such protection has made domestic workers vulnerable to exploitation. Many reports urge Indonesia to adopt and implement a law on the protection of domestic workers, however until now the GoI and the Parliament have not shown any indication that they will enact the law soon.886

Indonesia’s Manpower Law guarantees equal rights and conditions of employment to all workers and mandates institutions to apply the non-discrimination principle.887 Indonesia also provides legal protection to ensure labour safety by enacting Law No. 1 of 1970 on Labour Safety requiring the GoI and employers to ensure a safe working environment for workers.888 Especially for women and children, the Law provides further affirmative action and protection, such as maternity leave, menstruation leave, social security, and separation of workplace.889 However, as indicated in GoI’s report to CEDAW Committee, the abovementioned guarantees and protections do not extend to workers in the informal sector such as sexual commercial workers.890 Meanwhile, in relation to remuneration of employees, the Law only stipulates that remuneration of workers should be in compliance with relevant legislation and shall not be paid below the established minimum remuneration.891 there is no express provision stating equal remuneration for men and women. The Law leaves it to the agreement achieved between the employer and worker in the work agreement.892

3. Implementation, Monitoring and Enforcement

In 2009, the Coordinating Ministry of Welfare adopted a Ministerial Regulation on the National Action Plan on the Eradication of the Crime of Trafficking in Persons and Child Sexual Exploitation for the period of 2009 – 2014.893 According to the 2012 Indonesian UPR, the National Action Plan consists of comprehensive programs in the prevention, protection, and assistance to victims, including victims of child prostitution.894 Moreover, in the report of the Working Group on UPR, in accordance with the National Action Plan the GoI states that it has established 23 task forces at the provincial level and district-level task forces in 76 regencies/municipalities.895

a. Implementing and Monitoring Mechanisms

The implementation and monitoring of protection of women and children against exploitation in Indonesia engage the participation of various government bodies/agencies. Most State institutions or agencies involved in the implementing and monitoring mechanisms on the protection of women and children against exploitation are basically the same as the institutions or agencies involved in the protection of women and children against violence as discussed in Section B.3.a above.

Particular to the efforts to eradicate trafficking in persons, the GoI has established a National Taskforce for the Prevention and Handling of the Crime of Trafficking in Persons (Gugus Tugas Pencegahan dan Penanganan Tindak Pidana Perdagangan Orang or PHCTIP Taskforce) in 2008 that acts as a coordinating body for the efforts to prevent and handle cases of trafficking in persons.896 The Coordinating State Minister for Welfare is appointed by the President to act as the Chairman of the PHCTIP Taskforce.897 The PHCTIP taskforce is also authorised to conduct evaluation on the implementation of legislations relevant to the eradication of trafficking in persons.898 PHCTIP taskforce is established at the central (in the Capital City of Indonesia), provincial, and city/regency levels.899 The work of PHCTIP has been made accessible since 2008 after MOWE launched the taskforce’s website at www.gugustugastrafficking.org.900

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886 HRW, Workers in the Shadows, 11; CEDAW Committee. 2007 CC-CEDAW, para. 23; and CEACR, 2010 CEACR Observation on Worst Form of Child Labour.
887 Law on Manpower, art. 5 – 6.
889 Ibid, Chapter X, Sections 2 and 3.
890 GoI, 2011 IPR-CEDAW, para. 98.
891 Law on Labour Safety, art. 88 – 90.
892 Ibid, art. 91.
893 See Table 22 above.
894 GoI, 2012 Indonesian UPR, para. 119.
895 UN HRC, 2012 RWG-UPR, para. 74.
896 GoI, 2011 IPR-CEDAW, para. 46; GoI, 2012 RIPR-CEDAW, para. 47; see also Presidential Decree No. 69 of 2008 on the National Taskforce for the Prevention and Handling of the Crime of Trafficking in Persons (Presidential Regulation on PHCTIP Taskforce), 6 November 2008, art. 1.
897 Presidential Regulation on PHCTIP Taskforce, art. 6.
898 GoI, 2012 RIPR-CEDAW, para. 47.
899 GoI, 2011 IPR-CEDAW, para. 46.
900 Ibid.
The PHCTIP Taskforce, in carrying out its mandate, has developed partnerships with various parties including international organisations and NGOs\(^{901}\) as well as various Indonesian National Human Rights Institutions.\(^{902}\) The Taskforce shall establish guidelines to be followed by regional and municipality/regency governments in developing local policies and regulations pertinent to the handling of cases of trafficking in persons.\(^{903}\) The GoI is at present developing a guideline on capacity development for the taskforce, which will be completed in 2012.\(^{904}\)

Apart from MOWE and the Coordinating State Minister for Welfare, the Ministry of Social Affairs also plays an important role in the monitoring of the implementation of legislations against exploitation of women and children. Within its mandate the Ministry of Social Affairs is responsible to follow up cases of trafficking in persons and to carry out capacity building for law enforcement officers to improve their response and capability in handling trafficking cases.\(^{905}\)

NHRIs play a significant role in implementing and monitoring legislation relating to the protection of women and children against exploitation. As in the case of protection of women and children against violence, Komnas HAM, Komnas Perempuan, KPAI are in general tasked to monitor the implementation of rights of women and children guaranteed under Indonesian legislations, including protection against exploitation.\(^{906}\) On a more specific nature, KNPBPTA was established in 2001 with a specific mandate, among others, to conduct monitoring and evaluation on the implementation of the National Action Plan to Combat the Worst Forms of Child Labour adopted in 2002.\(^{907}\)

GoI Report to CEDAW Committee also indicates the role of regional governments in recording and reporting occurrences of trafficking in persons in their respective province or city or regency as mandated under relevant legislation on the eradication of the crime of trafficking in persons.\(^{908}\) In 2012, seven provinces in Indonesia concluded several MoUs providing legal bases for comprehensive cooperation in eradicating trafficking in persons and providing assistance to victims.\(^{909}\) Reports indicate that under the integrated service unit scheme, centres such as P2TP2A, WCC, UPPA, and PPT are also responsible in recording and monitoring occurrences of trafficking in persons.\(^{910}\)

### b. Complaints Process

The 2012 Indonesian UPR stated that the Ministry of Social Affairs has developed a public complaint mechanism,\(^{911}\) however it did not give an explanation on the process of this public complaint mechanism nor did it explain the relevant authorities tasked to receive public complaints. The GoI considers the National Police, according to the 2011 IPR-CEDAW, as the sole body in Indonesia with the authority to handle perpetrators of trafficking in persons.\(^{912}\) Similar to the complaint mechanism provided for women and children victims of violence, women and children victims of exploitation can bring their complaint to the UPPA established by the Indonesian Chief of Police in every precinct.\(^{913}\) After the enactment of TIP Law in 2007, the Flower Operation was established specifically to handle the investigation of cases of trafficking in persons. Additionally, the Indonesian Attorney General Office has established a special taskforce specifically dedicated to investigation and prosecution of perpetrators of trafficking in persons.

Women and children victims of trafficking as well as witnesses, can channel their complaint or report through an Integrated Service Centre (PPT) that deals specifically in rendering services to victims and witnesses of trafficking in persons.\(^{914}\) The PPT is also equipped to provide victims and witnesses with legal aid to help them get through the legal process.\(^{915}\) Witnesses

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902 GoI, 2012 RIPR-CEDAW, para. 47.
903 Ibid, para. 48.
904 Ibid, para. 50.
905 Ibid, para. 46.
906 GoI, 2007 IPR-CRC, para. 8.
907 Presidential Decree on KNPBPTA, art. 4.
908 GoI, 2011 IPR-CEDAW, para. 46.
909 GoI, 2012 RIPR-CEDAW, para. 49.
911 GoI, 2012 Indonesian UPR, para. 123.
912 GoI, IPR-CEDAW, para. 52.
913 For the description on complaint mechanism for victims of violence, refer to Section B.3.b. above.
914 See table 22 in Section C.2.b. above concerning Government Regulation on the Integrated Service Centre (PPT) above.
915 Ibid.
and victims of trafficking and exploitation can also have their complaints and reports conveyed through other integrated service units such as P2TP2A and WCC.  

Similar to the complaint process in cases of children victims of violence, KPAI and KNPBPTA are the two national commissions that can receive and process complaints relating to exploitation of children. KPAI and KNPBPTA are even, to some extent, involved in the investigations of cases of exploitation of children.  

c. Protection and Rehabilitation  

In the PHCTIP Taskforce structure, the Ministry of Social Affairs and Ministry of Health are the responsible State institutions for the recovery of victims of trafficking in persons. In relation to repatriation of victims, the responsibility lies on the collaboration between the taskforce and provincial and regency/municipality governments. Apart from this, the PHCTIP Taskforce has also established a number of Repatriation Taskforce units operating in 12 key regions consisting of: Medan, Tanjung Pinang, Batam, Tanjung Balai Karimun, Dumai, Entikong, Nunukan, Pare Pare, Tanjung Priok, Tanjung Emas, Tanjung Perak, and Mataram. These units aim to assist with the repatriation of victims from Malaysia and to coordinate integrated work with areas of origin of problematic workers and Indonesian representatives in Malaysia. In 2010, Protection Houses were established in cities such as Baturaden, Makassar, Bandung, Mataram, Tanjung Pinang, Lampung, Malang, Pontianak, and Semarang for victims of trafficking in persons.  

Even though it is not mentioned in either of the reports, under the Manpower Law, the Ministry of Labour and Transmigration is responsible to render protection to children working in informal sectors and ensure the implementation of minimum age of employment (age 15 years). Women and children victims or witnesses of trafficking in persons as well as exploitation are entitled to receive protection and rehabilitation provided by LPSK under the Witness and Victim Protection Law in the course of a criminal proceeding against perpetrators. Meanwhile, pertinent to the integrated service unit scheme, service centres such as P2TP2A, WCC, UPPA, and PPT at all levels (provincial and regency/municipality) offer protection and rehabilitation that extend to victims and witnesses of trafficking cases.  

d. Prevention Strategy  

Prevention efforts against trafficking in persons under the structure of PHCTIP Taskforce are entrusted to the Ministry of National Education as the leading institution. The Ministry is tasked to provide guidance and support for the establishment of taskforces and sub-taskforces to prevent trafficking in persons in municipalities/regencies allegedly serving as source areas for trafficking in persons. The Ministry establishes gender mainstreaming working groups in the education sector at every level of governance and ensures the accessibility of education by women, especially those coming from marginal communities. In its 2012 Report, the Gol stated that the Ministry of National Education has established 83 PHCTIP Taskforces in 16 provinces whose mandates include victims’ empowerment through education and special trainings.  

The Gol endeavours to raise stakeholders’ and public’s awareness on the crime of trafficking in persons by conducting prevention campaigns through mass media, advertising, facilitation of prevention programs in regencies/municipalities, development of prevention programs in source regions through women empowerment, integration of trafficking in persons into school curricula as well as through various community

916 MOWE Regulation on SPM. Annex.
917 See Section B.3.b. above.
918 Ibid.
919 Gol, 2011 IPR-CEDAW, para. 46.
920 Ibid.
921 Ibid., para. 111.
922 Ibid.
923 Gol, 2012 Indonesian UPR, para. 120.
924 Manpower Law, art. 69 – 71 and 75.
925 See table 9 above on the description of protection measures provided in the Law on Witness and Victim Protection.
927 Gol, 2011 IPR-CEDAW, para. 46; see also Gol, 2008 Indonesian UPR, para. 78.
928 Gol, 2011 IPR-CEDAW, para. 93.
929 Ibid.
930 Gol, 2012 Indonesian UPR, para. 118.
programs in areas prone to trafficking.\textsuperscript{931} The Ministry of Social Affairs is the responsible institution for these campaigns; it has also established Family Welfare Consultation Institutions in 485 regencies/municipalities in Indonesia.\textsuperscript{932} Furthermore, the GoI, through MOWE, has developed a pilot project called Desa Prima (Perempuan Indonesia Maju Mandiri or Progressive Indonesian Women Village Model) and has been implemented in 33 provinces, 104 regencies, 133 municipalities, and 184 villages in Indonesia.\textsuperscript{933}

On the issue of the lack of birth certificate as an aggravating factor for exploitation and trafficking in persons, the 2011 GoI report to CEDAW Committee commends the positive progress of regencies’ and municipalities’ practice of providing birth certificates free of charge for the poor.\textsuperscript{934} Moreover, in 2011, MOWE adopted a Ministerial Decision on the Establishment of the Coordinating Forum for the Acceleration of the Issuance of Birth Certificates\textsuperscript{935} regulating better coordination among central authorities and NGOs to monitor and ensure the acceleration of the issuance of birth certificates.

4. Role of Non-State Actors

Most Non State Actors involved in rendering assistance to victims, participating in prevention programs, and taking part in monitoring and cooperation in eradicating exploitation of women and children have already been discussed in Chapter B.4 on protection of women and children against violence. This Section will only identify non-state actors and their initiatives that specifically relate to the protection of women and children against exploitation.

a. Assistance to Victims

The GoI notices that Labour Unions have re-emerged as one of the players in advocating workers rights including women workers.\textsuperscript{936} In 1997, the Consortium of Defenders of Indonesian Migrant Workers (KOPBUMI), a coalition of Indonesian NGOs, was established. KOPBUMI aims at encouraging the adoption of legislation guaranteeing the protection of Indonesian migrant workers and their families.\textsuperscript{937} Indonesian migrant workers organisations have also emerged in several countries of destination, such as the Union of Indonesian Migrant Workers (Saudi Arabia) and the Association of Indonesian Migrant Workers (Hong Kong), lending support for Indonesian migrant workers in those countries.\textsuperscript{938}

IOM assisted the GoI in establishing four integrated service centres especially for trafficking victims in Jakarta, Surabaya, Makassar (South Sulawesi), and Pontianak (West Kalimantan).\textsuperscript{939} These shelters provide temporary shelter as well as medical, psychological, social, legal, and recreational services.\textsuperscript{940} Women and children victims of trafficking and exploitation can also access services provided by non-State actors mentioned in the previous section.\textsuperscript{941}

b. Prevention Programs

ILO has been supporting the GoI through various programs to achieve the GoI’s goal to eliminate the worst forms of child labour by 2016.\textsuperscript{942} Several of the programs that it supports pertaining to prevention of exploitation of children involve support for the formulation of the Law on Domestic Workers that gives protection to child domestic workers and prohibits the hiring of children under the age of 15 as domestic workers.\textsuperscript{943} ILO also provides assistance to the GoI to strengthen the program for the eradication of trafficking in children, child exploitation and sexual labour\textsuperscript{944} and the program for the abolishment of the use of child workers on off-shore fish traps in North Sumatera, child workers in shoe factories and child workers in coal mines in Bangka and Belitung.\textsuperscript{945}

\textsuperscript{931} GoI, 2011 IPR-CEDAW, para. 93; see also GoI, 2012 Indonesian UPR, para. 123.
\textsuperscript{932} GoI, 2012 Indonesian UPR, para. 123.
\textsuperscript{933} Ibid.
\textsuperscript{934} GoI, 2011 IPR-CEDAW, para. 134.
\textsuperscript{935} MOWE Decision No. 66 of 2011 on the Establishment of the Coordinating Forum for the Acceleration of the Issuance of Birth Certificates, 26 October 2011.
\textsuperscript{936} GoI, 2011 IPR-CEDAW, para. 111.
\textsuperscript{937} Ibid.
\textsuperscript{938} Ibid.
\textsuperscript{939} Ibid.
\textsuperscript{941} Ibid, para. 28.
\textsuperscript{942} See Section B.4.a. above.
\textsuperscript{943} Ibid, para. 21a.
\textsuperscript{944} Ibid, para. 21c.
\textsuperscript{945} Ibid, para. 21e.
NGOs and UN agencies such as UNICEF are engaged in conducting trainings for teachers, focusing on the prevention of child abuse and exploitation in a number of schools.\textsuperscript{946} ECPAT International in 2009 launched its “Stop Sex Trafficking of Children and Young People” campaign garnering commitments from various parties to contribute to social change to secure a safe world for children.\textsuperscript{947}

UNICEF and its local partners support the GoI initiative to enhance the birth registration system, especially local governments in 18 districts in implementing free-of-charge birth registration.\textsuperscript{948} From a legal framework development perspective, UNICEF supports the development and implementation of legislation, policies, and programs, such as the Child Protection Law, the National Action Plan on Trafficking, and others.\textsuperscript{949} Apart from the above supports, UNICEF also works closely with the GoI and local partners in addressing issues of exploitation of children through trafficking\textsuperscript{950} and sexual exploitation.\textsuperscript{951} UNICEF support in preventing trafficking sexual exploitation of children consists of: conducting advocacy on the implementation of TIP Law and the ratification of the Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography; capacity building; a public campaign to raise awareness against trafficking and sexual exploitation of children.\textsuperscript{952}

Donor institutions such as the Australian Agency for International Development (AusAID) and the United States Agency for International Development (USAID) are rendering assistance in preventing trafficking in persons in Southeast Asian region including Indonesia. AusAID involvement, for example, is realised in the establishment of Asia Regional Trafficking in Persons (ARTIP) Project that centers on the prevention of trafficking in persons by focusing on the criminal justice sector in Southeast Asian Countries including Indonesia.\textsuperscript{953} In terms of elimination of child labour, ILO’s International Program on the Elimination of Child Labour in Indonesia focuses on the elimination of child domestic labour, street children, child labour in plantations, and trafficking in children through provision of education services and supporting the GoI financially to help children to stay in or go back to school and by building the program capacity to combat child labour.\textsuperscript{954}

Local NGOs, such as Solidaritas Perempuan, are well known for their activism in anti-trafficking issues.\textsuperscript{955} At the community level, Solidaritas Perempuan has been very active in conducting public campaigns on the issue of trafficking in persons.\textsuperscript{956} Most importantly, Solidaritas Perempuan is also very active in providing legal training to the public, and especially to women, to produce community paralegals.\textsuperscript{957}

In the recent years, the private sector has also become aware of the prevalence of sexual exploitation of children. In the tourism industry, for example, the Carlson Hotels and Accor Hotels adopted the Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism (the Code).\textsuperscript{958} Accor has implemented the Code across its 40 hotels in Indonesia.\textsuperscript{959} The Code requires those who have adopted it to establish ethical policies on commercial sexual exploitation of children, training their personnel, requiring suppliers to repudiate commercial sexual exploitation of children, provide information for travellers, and annual reporting on implementation.\textsuperscript{960} Microsoft also participated

\begin{footnotesize}
\begin{enumerate}
\item<1> ECPAT International, 2010 Country Progress Card, 11.
\item<2> Ibid, 17.
\item<3> UNICEF Indonesia, Response – Birth Registration for All, www.unicef.org, accessed on 14 April 2012.
\item<7> Ibid, Children in Indonesia: Child Trafficking; Ibid, Children in Indonesia: Sexual Exploitation; see also ECPAT International, ECPAT 2011 Global Monitoring Report, 28.
\end{enumerate}
\end{footnotesize}
in the prevention of child pornography and sexual exploitation of children online by co-developing the Child Exploitation Tracking System.\textsuperscript{961} Indonesia is the second country after Canada to utilise this system.\textsuperscript{962}

\textbf{c. Monitoring and Cooperation}

In May 2007, the Inter-Parliamentarian Union (IPU) and UNICEF launched a handbook entitled “Eliminating Violence against Children”.\textsuperscript{963} The Handbook is specifically designed for Parliamentarians promoting active and effective follow-up to the study on eliminating violence against children, identifying legal reforms to protect children, and suggesting possible parliamentary initiatives relating to the elimination of violence against children.\textsuperscript{964} In 2009, ICMC and USAID in collaboration with MOEW developed and published a handbook that provides guidelines for the PHCTIP taskforce and other relevant government institutions or agencies on understanding the crime of trafficking in persons; protection of victim and witness; and documentation and reporting.\textsuperscript{965}

The GoI and the IOM have been working in close cooperation to maintain a detailed register of identified and resolved cases of trafficking in persons to enable deeper understanding of the trafficking in persons phenomenon in Indonesia.\textsuperscript{966} The aim of this collaboration is to better the assistance that can be rendered to the victims of trafficking to recover and to have access to justice.\textsuperscript{967} Apart from that, IOM is supporting MOEW to follow up trafficking cases and carry out capacity building for the law enforcers\textsuperscript{968} as well as assisting the PHCTIP Taskforce in establishing and maintaining a comprehensive database on victims of trafficking in persons.\textsuperscript{969} IOM also renders its assistance in the handling of cases of trafficking in persons by developing training programmes for law enforcers (police, prosecutors, and judges) aiming at strengthening their capacity in protecting victims of trafficking, to this end IOM published Guidelines for Law Enforcement and the Protection of Victims of Trafficking in Handling Trafficking in Persons Cases.\textsuperscript{970}

UNICEF, ICMC, ACILS, and ECPAT Indonesia (National Coalition for the Elimination of Commercial Sexual Exploitation of Children) collaborated in developing databases for recording and reporting victims of child trafficking and commercial sexual exploitation of children.\textsuperscript{971} The GoI indicates that these non-state actors work closely with Bappenas, MOEW, and local governments.\textsuperscript{972} In the case of monitoring and evaluating Indonesia’s performance in keeping up with its obligations under ILO Conventions, ILO’s CEACR plays an important role in receiving Indonesia’s reports, observing the implementation of ILO Conventions relevant to prohibition of exploitation of women and children, and imparting recommendations urging the GoI to make improvements to better protect women and children from exploitation.\textsuperscript{973}

In 2005, Solidaritas Perempuan came up with a schema that provided specific overviews of the elements of trafficking in persons that were experienced in each stage of migration process, especially migration for the purposes of work, in accordance with stages set out by Indonesia’s formal labour export program.\textsuperscript{974} Solidaritas also conducts monitoring on the implementation of Indonesia’s TIP Law and engages in active dialogue on their findings with the Ministry of Labour and Transmigration and the PHCTIP Taskforce.\textsuperscript{975}

\textsuperscript{962} Ibid.
\textsuperscript{963} Secretary-General of the United Nations (UNSG), Promotion and Protection of the Rights of Children: Note by the Secretary-General (Promotion and Protection of the Rights of Children), A/62/209, 7 August 2007, para. 21.
\textsuperscript{964} Ibid.
\textsuperscript{965} MOEW, Eradication of Trafficking in Persons. MOEW, ICMC, and UDAID, Jakarta, 10 July 2009, <www.menegpp.go.id>, accessed on 4 April 2012.
\textsuperscript{966} GoI, 2011 IPR CEDAW, para. 42.
\textsuperscript{967} Ibid.
\textsuperscript{968} Ibid, para. 45.
\textsuperscript{969} Ibid. para. 38 – 42.
\textsuperscript{971} GoI, 2007 IPR-CRC, para. 13; see also ECPAT International, ECPAT 2011 Global Monitoring Report, 14.
\textsuperscript{972} Ibid, para. 14 – 16.
\textsuperscript{973} The CEACR is tasked to examine the growing number of Government’s reports on ILO Conventions that they have ratified. For further description on CEACR please refer to <www.ilo.org> or for a list of CEACR recommendations to Indonesia please refer to <www.ilo.org/ilolex>, accessed on 14 April 2012.
\textsuperscript{974} Michele Ford and Lenore Lyons, Counter-Trafficking and Migrant Labour Activism, 10.
\textsuperscript{975} Solidaritas Perempuan, Program on Migration and Trafficking in Persons/HIV/AIDS.
5 Progress Indicators and Challenges

a. Progress Indicators

i. Trafficking in Women and Children

At the central level, 14 government institutions have included Programs and Activities for Prevention and Handling of Criminal Act of Trafficking in Persons in their Strategic Plan. In addition, Indonesia has also adopted two National Action Plans relating to eradication of trafficking in persons and exploitation of children. Furthermore, with the support of various organisations, the GoI has developed a database for recording and reporting victims of child trafficking.

In order to realise the instruction contained in Article 45 of TIP Law, by 2011, the GoI had established 305 UPPA in police precincts countrywide to handle and render protection to women and children victims of trafficking. Special instructions relating to investigations involving children have been disseminated among various police stations in each district. Furthermore, by 2008, GoI had established 36 Integrated Service Centres or PPT to render assistance to women and children victims of trafficking in notorious pockets of trafficking in Indonesia. It has also established a hotline specifically dedicated to receive reports that will be dealt directly by the Criminal Investigation Unit (Bareskrim or Badan Reserse Kriminal Polisi). Positive developments in the implementation of TIP Law is also shown through the establishment of the Flower Operation specifically designed to investigate and deal with cases of trafficking in children and women.

To address poverty as one of the main root causes of trafficking in women and children, the GoI strives to improve economic conditions of women, especially those who live in rural areas. To this end, the GoI develops, among others, the National Community Empowerment Programme (PNPM) in trafficking-prone regions. For example, in Aceh, PNPM funds are used to establish P2TP2A in the region to give protection to women and children against violence and exploitation. The PNPM is under the responsibility of the Coordinating State Ministry of Welfare and planned to continue at least until 2015.

The GoI claims that the adoption of regional regulations on eradication of the crime of trafficking in persons has shown positive progress through the decrease in the number of trafficking of persons in some provinces. As seen above, however, uncertainty in regard to trafficking statistics make generalizations about trends difficult to verify. Until 2011, the GoI states that several regions in Indonesia, such as North Sumatera, North Sulawesi, East java, and West Kalimantan, have adopted local regulations on anti-trafficking. Moreover, the report also recorded that there are at least 15 provinces and 242 regencies and cities that have moved up to maintain recording and reporting of occurrences of trafficking in persons.

Pertaining to the issue of providing easy access for birth certificates, regional governments have taken progressive measures to cut down the bureaucracy, which resulted in reducing the cost for citizens to get birth certificates for their children and identity cards.

The Ministry of Education, responsible for the efforts to prevent trafficking in women and children from occurring, established gender-mainstreaming working groups in the education sector both at central and regional levels accessible to women who are handicapped by poverty, geographic, social, and conflict/disaster impediments. At the moment, the Ministry of Education is in the process of formulating guidelines on the prevention of human trafficking, which will contain provisions for coordination at the central and regional levels, prevention campaigns with

976 GoI, 2012 RIPR-CEDAW, para. 50.
979 GoI, 2011 IPR-CEDAW, para. 49.
980 GoI, 2008 Indonesian UPR, para. 54 – 55.
981 Ibid, para. 55.
982 TIP Law, art. 46.
983 GoI, 2008 Indonesian UPR, para. 55.
984 Ibid, para. 52; see also UNICEF, 2008 UNICEF-UPR, 6.
985 GoI, 2011 IPR-CEDAW, para. 51; see also UNICEF, 2008 UNICEF-UPR, 1.
986 Ibid.
987 Ibid, para. 172.
988 Ibid, para. 6.
989 Ibid, para. 19.
990 Ibid, para. 48.
991 Ibid, para. 70.
992 Ibid, para. 93.
the support of mass media, facilitation and prevention programmes administered by municipalities/regencies, women empowerment programs in source areas, and improvement of women’s education and life skills. A pilot program on the prevention of trafficking in women and children is underway in Wonogiri regency aiming at providing services and empowerment for migrant workers and their families as well as former migrant workers.

Since 1999, the GoI has been engaging in international, regional, and bilateral cooperation to eradicate and prevent trafficking in women and children. Most notable is the conclusion of several bilateral treaties on Mutual Assistance in Criminal Matters with Australia and the signing and ratification of the Treaty on Mutual Legal Assistance in Criminal Matters by ASEAN countries, including Indonesia. Indonesia also engages in the overseeing of cross-border migration with its neighbouring countries, Malaysia and Philippines, through the establishment of the General Border Committee.

ii. Protection of Indonesian Migrant Workers Abroad against Exploitation

The enactment of Presidential Instruction No. 2 of 2006 and the establishment of the National Agency for the Placement and Protection of Indonesian Workers (BNP2TKI) marked the reform process in Indonesia’s labour sector. BNP2TKI has developed mechanisms for the effective placement and improved protection of migrant workers including the application of wage standards, revocation of the license of problematic PPTKIS, and others. BNP2TKI endeavours to implement its supervision function over PPTKIS and to promptly close down PPTKIS that are proven to violate the Law in relation to the recruitment and placement of migrant workers or that are not capable in providing sufficient trainings for Indonesian workers. Until 2008, the GoI listed approximately 260 PPTKIS countrywide. PPTKIS are mostly located in Jakarta, Bogor, Tangerang, and Bekasi (all in the vicinity of the Capital).

Meanwhile, relevant to the implementation of the Presidential Instruction on Indonesian Worker Policy Reform for the protection of Indonesian workers abroad, the GoI, through the Ministry of Foreign Affairs, has established citizens’ Advisory Services attached to various Indonesian diplomatic and consular missions abroad, especially in the countries of destination, to render assistance to Indonesian migrant workers especially women abroad that experience violence and exploitation. The reports state that there are at least six Citizens’ Advisory Services established in Brunei, South Korea, Jordan, Qatar, Syria, United Arab Emirates, and Singapore. The GoI is planning to make such services available in at least six other countries. As a continuing effort, the Ministry of Foreign Affairs also provides protection through its diplomats, starting from the most junior level, by applying the rules of thumb: legal, humanitarian, and political approaches. As an indication of the Ministry’s active role in the protection of Indonesians abroad against exploitation, the Indonesian Embassy in Singapore is working closely with local NGOs to identify and prevent cases of trafficking in persons.

Regarding repatriation, Indonesia has established the Coordinating Team for the Repatriation of Problematic Indonesian Migrant Workers and Their Families (TK-PTKIB). According to GoI, the Team has worked effectively in dealing with hundreds of thousands of regular and incidental deportations of Indonesian migrant workers from Malaysia.

iii. Protection of Women and Children against Exploitation in General

In 2007, the GoI developed a database for recording and reporting victims of child sexual exploitation. The
development of such database is supported by various NGOs and organisations. The Government is also in the process of developing a monitoring and evaluation mechanism for the process of adoption to prevent the occurrences of trafficking in children and illegal child adoptions.

Specifically in the case of early marriage and its relation to violence against and exploitation of children, in 2008, the GoI launched a massive campaign to stop early marriages in West Nusa Tenggara and North Coast of Java. Another initiative to prevent exploitation was realised through the production of a video diary documenting cases of sexual violence against children in Indramayu (West Java). The production of the documentary was done with the participation of children victims of sexual violence; the video is going to be used as an advocacy tool to prevent exploitation.

In the same year, the GoI developed and promoted policies and programs for eliminating the worst forms of work for children and established Kutai Kertanegara Regency (East Kalimantan) as a pilot region for “Child Labour Free Zone”. The program includes, among others, the elimination of child domestic workers and the elimination of child trafficking for labour and sexual exploitation.

Regarding protection of domestic workers, MOWE, Ministry of Labour and Transmigration, and the Coordinating State Ministry for Welfare took the initiative to prepare an academic text for a Draft Law to protect domestic workers. The Draft Law was finally included in Indonesia's 2010 Prolegnas to be discussed by the Parliament.

b. Challenges

i. Trafficking in Women and Children

The 2008 Indonesian UPR notes that one of the challenges that the GoI faces in eradicating trafficking in women and children is the lack of capacity of local governments to draft local laws on the prevention of trafficking in women and children. The 2011 IPR CEDAW later on notes that “lack of awareness among the public and law enforcement apparatus is the most basic challenge in prosecuting perpetrators of trafficking in persons.” The same concern was also voiced by the GoI in 2007, putting more emphasis on children, and stating that the government apparatus and the public are lacking an understanding on the danger and impact of trafficking in persons to children.

Komnas Perempuan’s 2010 Note gives the impression that the lack of capability of law enforcers to recognise victims and implement TIP Law will result in the re-victimisation of victims of trafficking in persons, especially women and children, by the State. This concern was best illustrated by a case discussed above, involving female dancers in West Java who were convicted under Indonesia’s Anti-Pornography Law but later on discovered to actually be victims of trafficking. In the opinion of the Study, the illustration put forward by Komnas Perempuan also highlights another challenge to the protection of women and children against trafficking and exploitation: the contradictory and overlapping laws that leave women and children in vulnerable conditions and make law enforcement uncertain and more difficult. To overcome this challenge, harmonisation of laws should be the utmost priority, as should be the training of law enforcement and judicial institutions on the content and implementation of this legal framework. The GoI acknowledges this concern by adding that the adoption of contradicting policies and legislations are also due to the lack of synergy and coordination among decision makers.

The GoI report adds that the handling of trafficking in persons has become more difficult since the TIP Law is not equipped with extra-territorial jurisdiction, which means that it cannot apply to TIP that takes place outside of Indonesia. This condition is further
exacerbated by the lack of accurate data on cases of TIP in Indonesia since TIP is a crime that is clandestine in nature and also because of the lack of uniformity in data collection methodology among relevant government agencies as well as NGOs. Attention is also given to the fact that there is no quantitative data on the extent to which the 2007 TIP Law has been implemented in legal proceedings. The report further highlights that qualitative studies that have been done to scrutinise the implementation of this Law indicate that only in few cases do the law enforcers actually apply the TIP Law. This underscores the point made above about the development of a clear legal framework and the capacity of judicial institutions to apply that framework effectively.

The Report then continues by adding that up to 2008, the regional governments have yet to develop reliable database on the handling cases of trafficking in persons for their respective region. The 2007 GoI report to CRC Committee highlights the importance of PHCTIP Taskforce at the local level so as to enhance the local effort to eradicate trafficking in persons. Meanwhile, in relation to external cooperation, the GoI emphasises the need to intensify international, regional, and bilateral cooperation with other countries that serve as destination and transit countries to eradicate trafficking in persons.

The GoI acknowledges that poverty and lack of job opportunities caused victims of trafficking to be unwilling to go back to their homes. This Study concludes that these two considerations can potentially make victims vulnerable to being re-trafficked. The GoI further acknowledges in 2008 that in order to overcome this challenge, Indonesia’s National Development Programs need to be strengthened and should prioritise the improvement of women’s living standards.

ii. Exploitation of Women and Children

Until now, Indonesia has not realised its commitment to ratify the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography. The GoI acknowledges this as one of the challenges in eradicating sexual exploitation of children. Moreover, in Indonesia the handling of cases of trafficking in persons most of the time overshadows the occurrences of commercial sexual exploitation of children. Adding to the complication of addressing this problem is the lack of reliable and systematic data on the commercial sexual exploitation of children.

The Joint Submission by the National Coalition for the Elimination of Commercial Sexual Exploitation of Children stated that the Indonesian legal framework has failed to criminalise individuals or companies who advertised, promoted, or arranged child sex tourism. Furthermore, the implementation of the National Plan of Action on the Eradication of the Crime of Trafficking in Persons and Child Sexual Exploitation is lacking of proper coordination among and monitoring mechanism at national and local levels.

As has been pointed out in the preceding section, exploitation of babies including for street begging activities is prevalent in Indonesia. The main challenge in addressing this issue, the GoI points out, is, again, the insensitivity and the lack of understanding of law enforcers regarding the rights of the child and child protection. This challenge often resulted in the lack of initiative to rescue children.

Despite the establishment of KNPBPTA in 2001 and the adoption a National Action Plan to eradicate worst forms of labour for children, Indonesia is yet to have an integrated data system on children engaging in worst forms of labour. Challenges to eradicate the worst forms of child labour are posed by the society, which perceives working as a part of the education process for

1026 Ibid.
1027 Ibid, para. 47.
1028 Ibid.
1029 Ibid, para. 55.
1030 GoI, 2007 IPR-CRC, para. 93.
1031 GoI, 2011 IPR-CEDAW, para. 51.
1032 GoI, 2008 Indonesian UPR, para. 55.
1033 Ibid.
1035 Ibid.
1036 UN OHCHR, 2012 Summary of Stakeholders’ Reports, para. 31.
1037 Ibid.
1039 Ibid.
1040 Ibid, para. 176.
 Violence, Exploitation, and Abuse and Discrimination in Migration Affecting Women and Children in ASEAN: A Baseline Study

a child to prepare them to be an adult.\footnote{Ibid, para. 179.}

Shifting to the issue of women and girls domestic workers in Indonesia, the legal status of domestic workers is still uncertain. Under Indonesian legislations, domestic workers are yet to be recognised as workers entitled to legal rights and protections, leaving domestic workers vulnerable various forms to exploitation. Komnas Perempuan notes that the adoption of a Law on Domestic Worker has yet to come to fruition despite the commitment stated by the Indonesian President in 2011 on the protection of domestic workers in Indonesia.\footnote{Komnas Perempuan, 2011 KP-CEDAW, para. 43 – 45.}

Most importantly, the Draft Law is meant to clarify the work relationship between the employers and domestic workers. Komnas Perempuan indicates that the Draft Law has received weak support from the legislative.\footnote{Ibid.}

Finally, according to ECPAT International, despite the progress made by the Government through the adoption of various National Action Plans to eradicate trafficking and exploitation of women and children\footnote{See 1) Presidential Decrees on the National Action Plan to Combat the Worst Forms of Child Labour; 2) Presidential Decree on the National Action Plan to combat the Commercial Sexual Exploitation of Children; 3) Presidential Decree on the National Action Plan to Combat Trafficking of Women and Children; and 4) Coordinating Minister of Welfare Regulation on National Action Plan on the Eradication of the Crime of Trafficking in Persons and Child Sexual Exploitation.} many stakeholders do not use these National Action Plans as guidelines.\footnote{ECPAT International, ECPAT 2011 Global Monitoring Report, 14.} The implementation of these national action plans is very limited and, ECPAT notes, the National Action Plans are lacking focus and prioritisation, minimum standards and benchmarks, and indicators.\footnote{Ibid.} Furthermore, although the GoI has established taskforces at national and regional levels to monitor the implementation of these National Action Plans, ECPAT points out that coordination and cooperation among stakeholders are still weak.\footnote{Ibid.}

\textit{iii. Assistance to Victims of Exploitation}

On the rights of victims, the 2008 Indonesian UPR emphasises the need to establish more crisis centres in areas considered as main sources of trafficking.\footnote{GoI, 2008 Indonesian UPR, para. 55.} Even though the 2008 Indonesian UPR does not mention the need to establish more crisis centres in areas considered as destination areas for trafficking, the Study suggest that the establishment of crisis centres in these areas is also of equal importance. Komnas Perempuan further highlights that the establishment of integrated service centres by the GoI has yet to be supported by appropriate infrastructure and qualified human resources.\footnote{Komnas Perempuan, 2011 KP-CEDAW, para. 17.} Komnas Perempuan points out that, for example, P2TP2A’s membership is structural in nature rather than based on professionalism and experience in related fields.\footnote{Ibid.} Furthermore, the GoI acknowledges that lack of funds and sufficient facilities as well as skill and competent staff are common challenges across all service centres.\footnote{GoI, 2011 IPR-CEDAW, para. 17.} This condition can potentially weaken P2TP2A’s ability to deliver optimal services and can hamper its coordination function with other relevant service centres.\footnote{Ibid.}

Despite having established Advisory Services at the Indonesian Diplomatic Representations’ premises in destination countries for Indonesian migrant workers, Komnas Perempuan notes that the services relating to the handling of cases of violence and exploitation are still limited.\footnote{Ibid.} The services provided by Indonesian Embassies, such as shelters and legal aid, are still considered as insufficient.\footnote{Ibid.} In relation to undocumented migrant workers, particularly in Malaysia, their fates are still uncertain. It is often the case that Indonesian undocumented migrant workers in Malaysia got deported to the border area of Malaysia and Indonesia, leaving them prone to trafficking in persons and re-trafficking.\footnote{Ibid.}

\section*{6. Gaps and Recommendations for Further Studies}

\textit{a. Gaps in Indonesia’s Legal Framework and Policies}

Indonesia has a quite extensive legal framework and...
policies on the protection of women and children against exploitation. The adoption of the TIP Law in 2007 along with its numerous implementing legislation and regulations down to the ministerial level has proven to be the most important step that the GoI has taken to curb trafficking of women and children in and from Indonesia. Regardless of these substantial developments, the Study gathered from existing literatures that there are some gaps that the legal framework has not covered and practices that frustrate the protection of women and children from exploitation and even abuse. These gaps and unfavourable practices include, among others:

1. Except for the protection from domestic violence provided under KDRT Law, Indonesia does not provide legal acknowledgement, let alone protection, of domestic work as a form of labour with rights and obligations protected under the law;

2. Indonesian Marital Law still allows the marriages of girls below the age of 16 with the consent of their parents, making underage girls vulnerable to early and forced marriage and sexual exploitation;

3. Even though the definition of trafficking in persons under the TIP Law hints at the application of cross border jurisdiction, other provisions in the Law stipulate that Indonesia has no jurisdiction on an act of trafficking that is conducted across the border;

4. Many regional regulations in Indonesia promote, condone, or justify discriminative treatment against women, making them vulnerable to violence and exploitation. For example, regional regulations on anti-prostitution often subjected women who are suspected of prostitution to penal sanction even though prostitution is not categorised as a crime under the Criminal Code. The regional regulations do not differentiate between women who are forced into prostitution and women who join the profession by their own volition;

5. To the best knowledge of this Study, the Indonesian legal framework does not provide restitution for victims of trafficking in persons in the case where the Court does not prove the alleged perpetrator guilty of the crime. Also, there is no provision under the Indonesian legislations dispensing criminal liability for victims of trafficking in persons if they were discovered or arrested by the authorities under compromising conditions that constitute an offense under Indonesian law; and

6. For the purpose of prosecution of perpetrators of trafficking in persons, Indonesian legislation only guarantees the prompt return of victims of trafficking who are foreign nationals. The legal framework does not prescribe special protective measure to ensure these victims’ cooperation for the prosecution of perpetrators of trafficking in persons (for example, securing their visa to ensure that they stay legally in Indonesia and providing legal counsel).

b. Gaps in the Literatures

The literatures under review discussed extensively the problem of exploitation of women and children including the phenomenon of trafficking in persons. However, the Study finds that on some subjects related to exploitation of and trafficking in women and children, the existing literature has already been rendered obsolete and needs evaluation and updating. For example, most existing literature on the prevalence of specific forms of exploitation are based on surveys or studies conducted in mid-2000 and late 1990s, which of course need to be revisited in order to assess whether the problems experienced in the past are still prevalent at present time and whether there are new developments and prevalence of other problems that need to be included.

The Study also finds some gaps that have not been addressed in the existing literature. Some of these gaps include:

1. The number of women and children that have become victims of exploitation and trafficking in persons is based on reported cases; however, there is not yet an effort to produce a study that reflects collated data on reported cases of exploitation of and trafficking in women and children from various reliable sources and classifying them based on prevalence of specific forms of exploitation, authorities who received and handled the reports, etc. The problem of under-reporting and its impact on data collection and analysis also deserves serious attention;

2. There is no reliable data on the number of domestic workers in Indonesia, which thus makes it difficult for the Study to determine the number of women and children engaging in that profession. Estimates on the number of domestic workers in Indonesia come without reference to reliable methodologies (see Table 16 above);

3. The official number of sex workers issued by the GoI does not include the number of unregistered sex workers.
workers; to the knowledge of this Study there has been no recent literature on the issue of unregistered sex workers in Indonesia. Furthermore, similar to the nature of estimates made in the case of domestic workers, estimates made on the number of sex workers in Indonesia also do not come with reference or explanation to the methodologies used (see Table 17 above);

4. There is only inadequate information on the demand and supply factors on specific forms of exploitation of women and children such as in the case of commercial sexual exploitation of women and children, and exploitation of children as street beggars;

5. There is little information on women and children involved in the sale, production, and trafficking of drugs in Indonesia;

6. Existing literatures discuss little about exploitation of and trafficking in women and children in the eastern part of Indonesia such as their prevalence in Papua, Maluku, and Gorontalo;

7. Existing literature does not disaggregate data on the number of external and internal trafficking in persons cases handled by the Indonesian authorities;

8. Many reports put forward estimates on the number of women and children that have become victims of sexual exploitation from and in Indonesia as well as estimates on victims of trafficking in persons; however, the methodologies that were used to arrive at such estimates remain obscure;

9. Existing literature lacks information on the prevalence of specific types of exploitation, such as:
   - Organising children as street beggars;
   - Sale of children for the purpose of adoption;
   - Babies for hire for various purposes such as begging;
   - Harvest and sale of body organs;
   - Trafficking of girls and women for the purpose of sexual exploitation to jungles and mines in some provinces in Indonesia;

10. There is not enough information on the prevalence of victims of exploitation, especially sexual exploitation, and trafficking in persons being re-victimised by being identified as violating Indonesian law in the course of their exploitation. There is also little information on Indonesian laws that can potentially re-victimise the victims as well as the legal protection given under the Indonesian legal framework to tackle this problem;

11. There is little information on the prevalence of the involvement of international organised criminal groups in trafficking in women and children or in other forms of exploitation;

12. There is little information on the role of regional regulations in protecting women and children against exploitation including, for example, the number of regional regulations on the protection of women and children against exploitation in general and trafficking in persons, the implementation of such regional regulations, which are already identified, to curb exploitation practices and trafficking in persons, and monitoring and evaluation of such regional regulations;

13. There is no quantitative data on the extent to which the TIP Law has been implemented in legal proceedings;

14. The Study has not managed to find comprehensive information, let alone collated, on the various roles of non-state actors in the subject of protection of women and children against exploitation and trafficking in persons;

15. Little information is known on the success rates of regional efforts to curb cross-border trafficking in women and children in Southeast Asia. For example, little is known on ASEANAPOL’s role in coordinating the cooperation between ASEAN Member States’ police forces, handling of, and preventing the occurrences of trafficking in persons in Southeast Asia or efforts conducted by ASEAN Member States through ASEAN+ forums such as the Bali Process; and

16. No progress report can be found on the implementation of GoI’s plans of actions to:
   - combat worst forms of child labour;
   - combat the commercial sexual exploitation of children; and
   - combat the trafficking of women and children.

**c. Recommended Areas/Subjects for Further Studies**

Based on the gaps in the literature and the legal framework as identified above, the Study suggests stakeholders to consider conducting further studies in the following areas/subjects:

1. Evaluation of the studies on prevalence of trafficking in women and children need to be conducted and updated in accordance with the current developments. The Study deems it necessary to include research and...
analysis on the prevalence of criminal organised groups in trafficking in persons’ phenomenon in Indonesia, including its network, pattern, and scope of work;

2. Prevalence of exploitation of women and children. The Study notes that little study has been done on:
   · Children as street beggars, including babies for hire phenomenon;
   · Child sex tourism;
   · Sale of children for the purpose of adoption;
   · Harvest and sale of body organs;
   · Sexual exploitation of women and children in jungles, mines, and logging sites in some provinces in Indonesia;
   · Women and children involved in the sale, production, and trafficking of drugs in Indonesia;
   · Children living in childcare institutions; and
   · Prevalence of exploitation of women and children in the eastern part of Indonesia, such as Papua, Gorontalo, and Maluku;

3. Integrated statistical study on reported cases of exploitation of and trafficking in women and children based on reports received by various Government’s bodies, police force, NHRIs, international organisations or UN funds/programmes, and non-state actors. The statistical study then needs to be classified in accordance with specific forms of exploitation and the occurrences of internal and external trafficking in persons. In relation to trafficking in persons, disaggregate data on the number of external and internal trafficking in persons cases handled by the Indonesian authorities should be included;

4. Reliable methodologies to decide on reasonable estimates on the number of:
   · Victims of external and internal trafficking in persons, especially women and children;
   · Women and children commercial sex workers;
   · Sexual exploitation of women and children;
   · Domestic workers; and
   · Children engaging in worst forms of labour;

5. Assessment of national legislations and policies, including those adopted at the local level, which might potentially re-victimise victims of trafficking in persons and assessment of other legislations and policies that might offer protection for or exempt victims of trafficking in persons from being re-victimised by the law.

6. Assessment of the role of local governments and their regional regulations in providing protection against exploitation of and trafficking in women and children and in handling such cases, including:
   · The number of regional regulations on the protection of women and children against exploitation in general and trafficking in persons;
   · The challenges faced by provincial and regency/municipal governments in adopting and implementing regional regulations on the protection of women and children against exploitation in general and trafficking in persons;
   · Expected impacts from the adoption and implementation of such regional regulations; and
   · Implementation of such regional regulations that have been identified in curbing exploitation of and trafficking in women and children, and monitoring and evaluation of the regional regulations;

7. Assessment on the performance of Indonesian law enforcers and judiciary in implementing and upholding TIP Law in legal proceedings, including data on the number of trafficking cases handled by the police, prosecuted, and convictions rendered by the Court;

8. Assessment and evaluation on the implementation/fulfilment of Indonesia’s various plans of actions on the protection of women and children against exploitation:
   · National action plan to combat the worst forms of child labour;
   · National action plan to combat the commercial sexual exploitation of children; and
   · National action plan to combat the trafficking of women and children;

9. Extensive mapping of the role of non-state actors in the assistance of women and children victims of exploitation and trafficking in persons, prevention of exploitation and trafficking in women and children, and monitoring and cooperation with the GoI on the protection of women and children against exploitation and trafficking in persons; and

10. Extensive mapping and assessment of regional efforts to curb trafficking in persons in Southeast Asia, including cooperation among ASEAN Member States in exchanging information, investigative efforts, and extraditions as well as the role of ASEAN for example through ASEANAPOL and ASEAN+ forums such as the Bali Process.
D  ABUSE AND DISCRIMINATION IN MIGRATION

1  Description of the Problem

Migration is defined as the movement of a person or group of persons from one geographical unit to another across an administrative or political border, with the intention of settling indefinitely or temporarily in a place other than their place of origin. Included in this definition is the movement of refugees, displaced persons, irregular migrants as well as economic migrants.

IOM, Labour Migration from Indonesia (2010)

a. Prevalence of Abuse and Discrimination in Migration

i. Prevalence of Abuse and Discrimination of Women in Migration

Available Statistics and Data

Indonesia is well known as a major source country of unskilled international migrant workers, especially in sectors such as construction, domestic work, and agriculture. IOM observes that since the GoI started its Government-administered placement of migrant labour from Indonesia in 1969, the number of Indonesian migrant workers increased significantly between 2004 and 2007, from 380,690 in 2004 to 696,746 in 2007 where women constituted 78% of the labour force abroad. In 2011, BNP2TKI, Indonesia’s national authority responsible for the placement and protection of Indonesian workers abroad, records 581,081 Indonesians working abroad, of which 64% of this number is comprised of women.

<table>
<thead>
<tr>
<th>Year</th>
<th>Total Documented Migrant Workers</th>
<th>Female %</th>
<th>Male %</th>
</tr>
</thead>
<tbody>
<tr>
<td>2003</td>
<td>293,865</td>
<td>213,824</td>
<td>80,041</td>
</tr>
<tr>
<td>2004</td>
<td>380,690</td>
<td>296,615</td>
<td>84,075</td>
</tr>
<tr>
<td>2006</td>
<td>680,000</td>
<td>542,000</td>
<td>138,000</td>
</tr>
<tr>
<td>2007</td>
<td>696,746</td>
<td>543,859</td>
<td>152,887</td>
</tr>
<tr>
<td>2008</td>
<td>644,731</td>
<td>437,864</td>
<td>123,241</td>
</tr>
<tr>
<td>2009</td>
<td>632,172</td>
<td>528,984</td>
<td>103,188</td>
</tr>
<tr>
<td>2010</td>
<td>575,804</td>
<td>451,120</td>
<td>124,684</td>
</tr>
</tbody>
</table>

Table 24 – Placement of Indonesian Labour Migrants by Gender

As illustrated in the table above, Indonesian women migrant workers on average comprise more than 77% of Indonesian migrant workers. IOM refers to this phenomenon as the feminisation of labour migration.

The Study found competing and contradictory data on the number of registered Indonesian migrant workers claimed to be cited from BNP2TKI’s or the Ministry of Labour and Transmigration’s data by various organisations. Those data, among others, are reflected in the table below:

<table>
<thead>
<tr>
<th>No.</th>
<th>Source</th>
<th>Number of Indonesian Migrant Workers</th>
<th>Citing Organisation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Ministry of Labour and Transmigration</td>
<td>2,679,536 with 1,5 million workers work in Saudi Arabia alone (as of February 2010)</td>
<td>Statistic Indonesia</td>
</tr>
<tr>
<td>2.</td>
<td>BNP2TKI</td>
<td>4,310,000 (in 2010)</td>
<td>Komnas Perempuan</td>
</tr>
<tr>
<td>3.</td>
<td>BNP2TKI</td>
<td>748,825 in 2008</td>
<td>IOM</td>
</tr>
<tr>
<td>4.</td>
<td>BNP2TKI</td>
<td>1,085,658 Indonesian migrant workers in Malaysia in December 2008</td>
<td>IOM</td>
</tr>
<tr>
<td>5.</td>
<td>Ministry of Labour and Transmigration</td>
<td>2,700,000 in 2006 and 400,000 migrant workers working in the Middle East alone in 2004</td>
<td>Australian AID and IOM</td>
</tr>
</tbody>
</table>

Table 25 – Various Data on the Number of Registered Indonesian Migrant Workers cited by Various Organisations


1059 IOM, Labour Migration from Indonesia, 9.


1061 Komnas Perempuan, 2010 Note, 29.


1063 Ibid, 3.


1065 IOM, Labour Migration from Indonesia, 4.
In comparison with the data presented by BNP2TKI in Table 24 above, the Study finds rather huge discrepancies in the number of registered Indonesian migrant workers. The different data claiming to come from official sources (BNP2TKI and the Ministry of Labour and Transmigration) will prove to cause confusion and bring up the question of reliability of the data provided even by the official authorities. Apart from this issue, there is also data presented by other institutions or organisations that reveal a substantial discrepancy compared to data presented by BNP2TKI. For example, UNICEF presents competing data on the number of Indonesian migrant workers in 2003: while BNP2TKI data shows that there were 293,865 (see Table 24 above) Indonesian workers abroad, UNICEF reported that there were about 670,000 registered Indonesian workers in Peninsular Malaysia alone.

In light of the issue of reliability of data, a dependable methodology of documentation as well as a sound means of dissemination of information to all stakeholders is needed to ensure access to reliable data on the number of registered Indonesian migrant workers.

In relation to the contribution made by Indonesian migrant workers to the Indonesian economy, Bank of Indonesia, the central bank in Indonesia, reports that, in 2009 and 2010, Indonesian migrant workers contributed USD 6.6 (2009) and 5.03 (2010) billion in remittances. In 2009, the largest amount of remittance came from Malaysia (USD 2.3 billion), followed by Saudi Arabia (USD 2.2 billion). Komnas Perempuan provides no gender disaggregated data on remittances; however in 2009, IOM stated that 79% of the registered Indonesian workforce is comprised of women.

Various organisations focusing on migrant labour estimate that the number of Indonesian workers abroad is beyond the number reflected in the BNP2TKI report. Putting irregular migration into the equation, IOM estimates 2.7 million Indonesian migrant workers working abroad in 2007 with destination countries such as Malaysia, Saudi Arabia, Taiwan, Singapore, Hong Kong, Republic of Korea, and United Arab Emirates. From the number of Indonesian migrant workers abroad, IOM notes that women have comprised 68% to 88% of workers officially deployed abroad, and, in 2009, the IOM recorded that nearly 40% of the total outgoing migrant workers worked in Saudi Arabia. Meanwhile, the International Council on Social Welfare (ICSW) estimates that 450,000 Indonesian workers migrate to Southeast Asia alone every year through the Government-sponsored labour export program, particularly to Singapore, Malaysia, Thailand, and, to a lesser extent, Brunei. The most recent estimate was made by Komnas HAM, stating that there are at least 4.5 million Indonesian migrant workers abroad and they are often experiencing physical and sexual violence.

The majority of Indonesian women migrants are employed as domestic workers or caregivers and plantation workers (especially in Malaysia). Domestic work is often not addressed in the Manpower Law of the receiving countries and, since this work is conducted in the private confinement of households, it is difficult for local authorities to monitor and prevent abuses and for the workers to seek assistance when necessary. IOM is of the opinion that this condition heightens the vulnerability of domestic workers to exploitation, physical and psychological abuse, and withholding of payment.

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1067 IOM, International Migration and Migrant Workers’ Remittances in Indonesia, ix ; see also, Komnas Perempuan, 2011 KP-CEDAW, para. 35.

1068 IOM, International Migration and Migrant Workers’ Remittances in Indonesia, 1.

1069 Ibid.

1070 IOM, Labour Migration from Indonesia, 4.

1071 Ibid, 9; see also IOM, Situation Report on International Migration in East and Southeast Asia: Regional Thematic Working Group on International Migration including Human Trafficking, Bangkok: 2008, 34.

1072 IOM, Situation Report on International Migration in East and Southeast Asia, 33.

1073 ICSW, Trafficking and Related Labour Exploitation in the ASEAN Region, 23 and 50.

1074 UN HRC, 2012 Summary of Stakeholders’ Reports, para. 10.

1075 IOM, Labour Migration from Indonesia, 3 and 9.

1076 Ibid.

1077 Ibid.
Abuse and discrimination against Indonesian women migrant workers are prevalent. The GoI acknowledged that abuse of women migrant workers even starts from pre-departure stages in Indonesia.\footnote{GoI, 2005 IPR-CRC, para. 108.} CEDAW Committee expressed its concern over the high fees and burdensome administrative requirements imposed in Indonesia on its departing and returning migrant workers.\footnote{CEDAW Committee, 2007 CC-CEDAW, para. 32.} Moreover, based on the research made by the Department of Indonesian Studies at the University of Sydney in 2011, the authors identified the forms of abuses suffered by women migrant workers at pre-departure stage to cover restriction on their freedom of movement, sexual harassment, physical assault, and debt bondage.\footnote{Michele Ford and Lenore Lyons, Counter-Trafficking and Migrant Labour Activism, 11; see also Palmira Permata Bachtiar, The Governance of Indonesian Overseas Employment in the Context of Decentralization, Discussion Paper Series No. 2011-25, Philippine Institute for Development Studies, December 2011, vi.} The impact of the abuse during pre-departure stage is often extended to the placement of women migrant workers in the destination countries. CAT, for example, expressed its concern at the reports of ill treatment by Indonesian recruiting agencies, which placed these women in debt bondage, forced labour, and other abusive situations in the destination countries.\footnote{UN HRC, 2012 Compilation of UN Documentations, para. 58.} The abuses are generally committed by recruiting agencies and local authorities.\footnote{Ibid.} Upon their return to Indonesia, women migrant workers also face abuse, such as sexual harassment, extortion, and deception at airports or other transportation transit areas.\footnote{Ibid.} Perpetrators of these abuses include Government officers, policeman, airport authorities, and brokers.\footnote{Ibid.} However, so far the Study has not found any information pertaining to the number of Indonesian women migrant workers that have experienced abuses during pre-departure and arrival stages.

Abuse against Indonesian migrant workers also indicates the involvement of the Government. This is shown through the lack of protection provisions under the Indonesian legal system for migrant workers and the power that the law grants to private recruitment agencies to handle the placement and protection of migrant workers, especially those who work as domestic workers.\footnote{CARAM Asia, Reality Check! – Rights and Legislations for Migrant Workers across Asia, 2011, 17 – 18.} As an illustration, the table below will show fees and salary deductions faced by Indonesian migrant domestic workers based on destination countries legalised by the GoI:
Table 26 – Compilation on the Fees and Salary Deduction faced by Indonesian Workers (Source: CARAM Asia)\(^{1086}\)

According to regulations listed in Table 26, before they can work as migrant domestic workers, these workers are obliged to pay their recruitment and placement fees to PPTKIS.\(^{1087}\) Usually, the payment of these fees are done after they start working and this leads to, as indicated in Table 26, 2 – 15 months of work without pay.\(^{1088}\) It is a similar situation to debt bondage\(^{1089}\) and, in a way, indicating State violence against migrant workers.

BNP2TKI reported that 59,821 cases of violence against Indonesian women migrant workers took place in the destination countries in 2010.\(^{1090}\) Violence against these women takes the forms of physical abuse (4,341 cases); sexual abuse (2,979 cases); employer-related problems (4,380 cases); and unpaid salaries (2,821 cases).\(^{1091}\) BNP2TKI discovered that most cases of abuses against Indonesian women domestic workers (5,563) took place in Saudi Arabia.\(^{1092}\) The number of Indonesian migrant workers who experienced abuse in destination countries decreased in 2011, with BNP2TKI documenting 44,526 migrant workers who suffered abuse in the hands of their employers.\(^{1093}\) Unfortunately, the Study does not come across any age disaggregated data of the victims.

According to GoI reports, these women suffer from very long work hours without rest, forced labour, mistreatment, and sexual abuse.\(^{1094}\) The Indonesian Embassy in Malaysia recorded the highest number of deportation of Indonesian irregular migrant workers at 261,789 cases, of which women comprised the majority of those deported.\(^{1095}\) Since 2004, the Malaysian Government have conducted sweeping operations to capture irregular immigrants; those who were captured were often subjected to detention, fine, and flogging.\(^{1096}\) In Singapore, the majority of cases of abuse take the form of wage deduction (2,362 cases)\(^{1097}\) and physical abuse and harsh working conditions that resulted in the death of 154 Indonesian migrant workers between 1999 and 2007.\(^{1098}\)

There are even accounts of Indonesian women migrant workers being convicted for practicing witchcraft against

\(^{1086}\) Ibid, 18.  
\(^{1087}\) Ibid.  
\(^{1088}\) Ibid.  
\(^{1089}\) Ibid.  
\(^{1090}\) Komnas Perempuan, 2010 Note, 29; see also Komnas Perempuan, 2011 KP-CEDAW, para. 37.  
\(^{1091}\) Ibid.  
\(^{1092}\) Komnas Perempuan, 2011 KP-CEDAW, para. 37.
their employer’s family. One charge of witchcraft was brought to the Court against an Indonesian woman domestic worker in Saudi Arabia and she was convicted and sentenced to 10 years in prison and 200 lashes. Another case also took place in Saudi Arabia where four Indonesian domestic workers were beaten up by their Saudi employers after being accused of practicing witchcraft against the employer’s family. Two of the four women died because of the beating and the other two were admitted to the intensive care unit in Riyadh. Later on, these two women were convicted and sentenced to 150 strokes of canning before getting deported back to Indonesia.

In Saudi Arabia, Indonesian women migrant workers continue to have their rights violated by the judiciary. For instance, in 2011, an Indonesian domestic worker in Riyadh was found guilty of murdering her employer and was sentenced to death by decapitation. The execution was carried out without informing the Indonesian Embassy or giving the opportunity to the defendant to appeal her case. Another case involved an Indonesian domestic worker who was tried in Riyadh. The woman was also convicted and sentenced to death for murdering her employer but later on was saved from the execution room after the GoI paid “blood money” to the family of the deceased. Both women claimed that they acted in self-defence because both employers were abusive.

Apart from government officials, the judiciary of the receiving countries, and their employers, individual accounts from Indonesian women migrant workers also indicate that the employment agency in the receiving countries also take part in the abuse of these women. The victims’ testimonies revealed that, whenever they sought refuge at their employment agencies in the Middle East, for example, instead of offering protection, most of these agencies subjected them to further physical abuse, confinement, or illegally transferred them to new employer in another country, even to war-torn countries such as Iraq and Palestine.

Komnas Perempuan reports that Indonesian migrant women are also prone to becoming drug mules or couriers and some ended up facing heavy penalties in Malaysia. Ministry of Foreign Affairs’ data shows that, until December 2011, there were 210 Indonesian citizens facing the possibility of death penalty, 132 cases of which are related to drugs and 64 cases are related to murder. Unfortunately, disaggregated data is not available in Komnas Perempuan 2011 report; however, if the trend from 2011 still prevails, then there is a possibility that women comprise nearly 10% of the alleged perpetrators.

Migration and Decentralisation

Some reports criticise the Indonesian legal regime on the governance of placement and protection of migrant workers, especially in relation to the lack of regional regulations regulating the protection of migrant workers coming from specific regions. From 2006 up to 2011, the reports identified only one provincial regional regulation and six regional regulations at the regency/municipal level that regulate the protection of migrant workers originating from the said province and regencies/municipalities.

The lack of protection on provincial and regency/municipal levels is exacerbated by the “centralistic” approach of the governance of Indonesia's overseas

1099 GoI, 2011 IPR-CEDAW, para. 37; see also ICSW, Trafficking and Related Labour Exploitation in the ASEAN Region, 56.
1100 ICSW, Trafficking and Related Labour Exploitation in the ASEAN Region, 56; The initial sentence was death penalty before commuted to imprisonment and flogging.
1101 Ibid.
1102 Ibid; see also, ILO.
1104 Ibid.
1105 Ibid.
1106 ILO, Tales of Survival: Migrant Domestic Workers’ Stories in Their Own Words, 24 September 2011.
employment, where the responsibility for the placement of migrant workers mainly lies on the shoulders of the central Government but the protection of migrant workers is still lacking adequate attention.1113 Even BNP2TKI acknowledged that this centralistic approach proves to be problematic since 80% of problems faced by migrant workers occur in their place of origin.1114 Those problems range from identity fraud, extortion, to illegal recruitment and mostly happened at the local level, far from the reach of the central authorities.1115

The lack of regional regulations rendering protection to migrant workers is attributed to a gap in the Indonesian legal system related to the unsynchronised legislations on decentralisation and migrant workers-related laws.1116 There is no clear definition of the role of local governments in the issue of overseas employment and the laws leave this issue as a grey area.1117 Some local governments used this window to adopt regional regulations imposing local taxes on migrant workers who are going to work overseas or who are transiting in their regions.1118 These local governments base the adoption of such regional regulations on the principle of autonomy, even though their actions actually violate the Manpower Law and Indonesia’s ratification of ILO Convention No. 88 on Organisation of Employment Service.1119

ii. Prevalence of Abuse and Discrimination of Children in Migration

Indonesian Stateless Children

The issue of Indonesian stateless children in Sabah, Malaysia, is prevalent. SOS Children’s Villages Canada (SCVC) estimates there are more than 50,000 stateless Indonesian children in Sabah.1120 These children are the offspring of Indonesian plantation workers in Sabah. They become stateless because they do not have birth certificates and, in Malaysia, the absence of birth certificates has caused these children to live in a legal limbo and unable to access government services in Malaysia, including health and education, or to return legally to Indonesia.1121 The unavailability of access for birth certificates for these children is usually caused by the legal status of the migrant workers who entered Malaysia illegally or the non-recognition of the marriage of migrant workers under Malaysian law.1122

SCVC observes that these children usually become child labourers in plantations or street children, where they are potentially vulnerable to drug abuse, petty crimes, or child abuse.1123 A survey has proven that more than 50% of these children end up working as child labourers.1124 In 2008, Komnas Anak’s Commissioner, Arist Merdeka Sirait, told the media that about 72,000 children of Indonesian migrant workers in Sabah were forced to work at plantations without regulated employment hours.1125 These children were placed in isolated barracks with no access to transportation.1126 The Commissioner later on added that the practice of bonded labour is very common at all plantations in Sabah and nothing significant had been done by the Malaysian Government to rectify the condition of the children of Indonesian migrant workers.1127 Unfortunately, despite the gravity of the issue of stateless Indonesian children abroad, none of the GoI reports to the UN Treaty Bodies addressed the prevalence of this problem.

Children of Migrant Workers Left behind in Indonesia

As for the issue of the relationship between migrating parents, especially women migrant workers, and their children living in Indonesia, so far, unfortunately, the Study has not found any report that sufficiently

1113 Palmira Permata Bachtiar, The Governance of Indonesian Overseas Employment, 7.
1114 Ibid, 1.
1115 Ibid.
1116 Ibid, 34.
1117 Ibid.
1118 Ibid.
1119 Ibid.
1122 SCVC, Stateless Children Live an Uncertain Life.
1123 Ibid.
1124 Anthea Mulakala, Sabah’s Stateless Children.
1126 Ibid.
1127 Ibid.
addressed the issue. According to a 2005 UNICEF study among Philippines, Indonesia, and Thailand, it is only the Philippines that maintains reliable data on all aspects of international migration of its nationals, including data on children of migrants.\textsuperscript{1128} Despite the lack of data, the 2005 UNICEF study tries to make reasonable estimates of the number of children that are left by their parents to work abroad based on the average duration of labour contract, the total number of workers working abroad in a given year, and the recent fertility rate.\textsuperscript{1129} Using these categories, the Study estimates that, in 2002, there were around 1 million children who were left behind by their parents in Indonesia. However, this figure does not include children left behind by irregular migrants.\textsuperscript{1130} Furthermore, the tendency of Indonesian migrant workers to take their children with them also plays a detrimental role in producing a reliable estimate. For instance, Indonesian migrant workers are more inclined to take their children to work in Malaysia compared to taking them to the Middle East.\textsuperscript{1131} As has been confirmed by data provided by BNP2TKI above, the 2005 UNICEF study is of the opinion that, overall, children left behind by regular migrants are more likely live without their mothers.\textsuperscript{1132}

To this Study’s opinion, literature on the effect of migration on migrant workers’ children left behind Indonesia are next to non existent and this fact makes it hard for the Study to determine problems that are prevalent at present. There is, however, a report on children of migrant workers who are left in Indonesia under the care of older family relatives experiencing serious cases of malnutrition in West Nusa Tenggara Province.\textsuperscript{1133} West Nusa Tenggara’s health agency discovered in early 2011 that there are 756 cases of children suffering from malnutrition and most of those children come from the families of migrant workers.\textsuperscript{1134} According to the health agency’s record, the primary cause of malnutrition is “inadequate or total lack of feeding by grandmothers or elderly aunts, who have been left to care for the children by parents who are working abroad.”\textsuperscript{1135} The Study cannot confirm whether this problem is also prevalent among other Indonesian migrant workers’ children in other areas of Indonesia. However, considering the fact that at least 7.6 million Indonesian children under the age of five suffered stunted growth as a primary manifestation of malnutrition,\textsuperscript{1136} the Study is of the opinion that further studies on the relation between children of migrant workers who are left behind in Indonesia and malnutrition should constitute a national priority.

iii. Irregular Migration

Irregular migration from Indonesia is prevalent. The UN Special Rapporteur on Human Rights of Migrants notes that the largest outflow of Indonesian irregular migrants is to Malaysia followed by migration to Saudi Arabia, Singapore, Taiwan, and Republic of Korea.\textsuperscript{1137} Again, there is no official data on the number of irregular Indonesian migrant workers abroad. The Director General of BNP2TKI estimated that in 2005 there were more than one million illegal Indonesian migrant workers where 80% from that number is equally concentrated in Malaysia and Saudi Arabia.\textsuperscript{1138}

Concerning the specific case of irregular migration from Indonesia to Malaysia, IOM indicated an increase of irregular migration from Indonesia to Malaysia due to conflicting policies of the GoI and the Malaysian Government.\textsuperscript{1139} In June 2009, the GoI issued a moratorium on the placement of Indonesian migrant workers in Malaysia as a reaction against increasing numbers of cases of abuse suffered by Indonesian women migrant workers in Malaysia. The Malaysian Government, however, continued to issue permits for Indonesian foreign domestic workers.\textsuperscript{1140} These conflicting policies had caused tension between the two countries and an increase of irregular migrants to Malaysia.\textsuperscript{1141}

\begin{thebibliography}{1}
\bibitem{1128} John Bryant, Children of International Migrants in Indonesia, 1.
\bibitem{1129} Ibid, 3.
\bibitem{1130} Ibid, 4.
\bibitem{1131} Ibid.
\bibitem{1132} Ibid.
\bibitem{1134} Ibid.
\bibitem{1135} Ibid.
\bibitem{1136} Ibid.
\bibitem{1137} Jorge Bustamante, 2007 HRM Report, para. 5.
\bibitem{1139} IOM, Labour Migration from Indonesia,. 46.
\bibitem{1140} Ibid.
\bibitem{1141} Ibid.
\end{thebibliography}
Many of these irregular migrants departed from Indonesia through Batam and Nunukan ports to enter Malaysia by using falsified documents. Little was known to them that irregular immigration to Malaysia is considered as a crime under Malaysian law and those who got caught were treated as criminals. To better describe the prevalence of irregular migration from Indonesia to Malaysia, IOM stated that the number of irregular migration from Indonesia to Malaysia is only surpassed by the number of irregular migration from Mexico to the United States.

Smuggling of Migrants

The prevalence of irregular migration cannot be separated from the booming business of Smuggling of Migrant (SOM). Regrettably, none of the reports made by the GoI refer to this SOM phenomenon. However, news coverage and UNODC Country Programme for Indonesia (2012 – 2015) indicate that SOM is indeed prevalent in Indonesia and it is contributing to the rise of irregular migration from Indonesia to its neighbouring countries. According to some reports, Indonesia is a major zone for SOM mostly to Australia. Indonesia serves as a transit country especially for irregular migrants coming from the Middle East, Pakistan, and Sri Lanka with Australia as the final destination. Most of them are refugees fleeing from war-torn territories and asylum seekers. UNODC dubbed Indonesia as the key transit country for SOM to Australia via sea.

Most of SOM operations departed from West Java (Sukabumi Regency), East Java, and Nusa Tenggara Timur (Kupang Municipality) to the nearest entry points in Australia such as Darwin. Individual reports from regional police documentation in some regions stated that, in 2009 – May 2011, there were nine cases involving 341 illegal migrants in Sukabumi and 200 migrants were discovered as their effort to cross to Australia failed due to sea accident in December 2011. Recently, 67 asylum seekers are missing after their departure from Indonesia to Australia in July 2012 and, earlier in June 2012, 90 people are believed to have drowned when two smuggling boats were reported missing in the rough sea passage between Indonesia and Australia. The Study has not managed to get the latest number of people being smuggled to Australia from Indonesia or gender disaggregates data on the number of women being smuggled, let alone the number of children. However, this does not mean that women and children are completely excluded from the SOM phenomenon.

These migrants usually used the service of smugglers, who sometimes act as parts of an international organised criminal group. Around 500 Indonesians were captured and detained by Australian authorities in 2011 for smuggling these migrants. Most of these people chose to cross to Australia by using rickety boats as their mode of transportation; safety is most likely out of the question since often times these boats sailed with overcapacity. Many of these migrants become victims of sea accidents during the passage to Australia due to the usage of ships that were not sea worthy.

Trafficking in Persons

The crime of trafficking in persons especially in women and children cannot be separated from migration

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1142 Ibid.
1143 Ibid.
1144 Ibid, 17, see also Frances Barnes, Indonesia Country Report, 60.
1148 Seputar Indonesia, Jalur Sutra Imigran Gelap Menuju Australia (Irregular Immigrants’ Silk Road to Australia), 19 December 2011, <www.seputar-indonesia.com>, accessed on 27 April 2012; and Khasan Ashari, Why We Need a Law on People Smuggling.
1149 Ibid.
phenomenon. IOM considered trafficking in persons as a part of the irregular migration phenomenon and as the worst form of exploitation in migration.\textsuperscript{1157} The Study has discussed and described the prevalence of trafficking in women and children as well as exploitation entailing from migration in Section C.I.a above.

b. Root Causes of Abuse and Discrimination in Migration and Aggravating Practices

i. Definition of Abuse and Discrimination in the Context of Migration

A definition of abuse and discrimination specifically in the context of migration does not exist under Indonesian legislations and regulations. All definitions related to violence and exploitation as described in the previous two sections of this Study under Indonesian legal system should also apply to Indonesian nationals in the context of migration as Indonesian laws does not make any special requirements on the application of the said definitions for any specific contexts or situations.

ii. Root Causes

In its report, IOM said that women migrant workers are vulnerable to abuse and discrimination in receiving countries because many of them work as domestic workers and caregivers and these occupations are often not covered or protected under the law of many destination countries.\textsuperscript{1158} Furthermore, the private nature of the location where these workers perform their duties, in the confinement of private households, exacerbate the vulnerability of the workers for it will be extremely challenging for the authorities to monitor and for the workers to seek assistance.\textsuperscript{1159}

Komnas Perempuan concluded that Indonesian women migrant workers face exploitation and abuse systematically in all stages, including during pre-departure and placement processes.\textsuperscript{1160} These systematic threats are caused by both the GoI and the destination countries’ biased policies toward migrant workers, as well as bad drafting of bilateral agreements guaranteeing the protection migrant workers.\textsuperscript{1161} CARAM Asia added that, generally, there is no standard contract for migrant workers, especially domestic migrant workers, this proves to be a bad practice since most of the time the terms in the contract do not benefit migrant workers and curtail their freedom of movement.\textsuperscript{1162}

IOM also noted that there are several root causes that make Indonesian irregular migrants prone to abuses and discrimination: 1) high number of brokers and unregistered recruitment agencies in rural areas; 2) lack of knowledge among migrant workers on the procedures for migration and their basic human rights; 3) weak government involvement in disseminating crucial information and protection for migrant workers and weak enforcement capacity; and 4) failure to prosecute perpetrators of illicit or unscrupulous recruitment practice.\textsuperscript{1163}

On the specific issue of children of Indonesian migrant workers born in Malaysia, the Study concludes that the root cause of abuse and discrimination, including exploitation, is the denial of access to get birth certificate.\textsuperscript{1164} Without access for Indonesian migrant workers to register their children who are born in Malaysia, the children will be denied access to public services including education and, more gravely, legal status that can grant them national protection against violence and exploitation.

iii. Aggravating Factors

Prejudice toward foreigners and their culture by the society in the destination countries as well as their sense of superiority over low-skilled foreign workers can aggravate the possibilities of Indonesian migrant workers for being abused. This is reflected in cases of abuses suffered by Indonesian migrant workers especially in Malaysia and in the Middle East where most of cases of abuse against Indonesian women migrant workers took

\textsuperscript{1157} IOM, Labour Migration from Indonesia, 18.
\textsuperscript{1158} Ibid, 9.
\textsuperscript{1159} Ibid.
\textsuperscript{1160} Komnas Perempuan, Buruh Migran Indonesia: Penyiksaan Sistematis di Dalam dan Luar Negeri (Indonesian Migrant Workers: Internal and External Systematic Abuse) – Laporan Indonesia kepada Pelapor Khusus PBB untuk Hak Asasi Migran (Indonesian Report to the UN Special Rapporteur for the Rights of Migrants), Jakarta: December 2003, 33.
\textsuperscript{1161} Ibid.
\textsuperscript{1162} CARAM Asia, Reality Check!, 18 – 19.
\textsuperscript{1163} IOM, Labour Migration from Indonesia, 17.
\textsuperscript{1164} Erwida Maulia, RI Workers, Children ‘Enslaved’ in Malaysia; SCVC, Stateless Children Live an Uncertain Life; and Anthea Mulakala, Sabah’s Stateless Children.
The supply and demand sides of migration might constitute as the aggravating factors that push irregular migrations and eventually abuse and discrimination of Indonesian migrant workers in receiving countries. IOM’s report shows that Indonesian workers are more inclined to opt to migrate and find jobs outside of Indonesia due to poverty, lack of education, and lack of employment opportunities in Indonesia as well as the difference of wage standards between Indonesia and the destinations countries. Additionally, Indonesia constitutes one of the countries in the world with a large supply of workers. Most of them sought their way abroad through irregular means because of the high demand for low-skilled labour and the limited or expensive legal channels for regular migration. These factors combined will create lucrative opportunities for illegal recruitment practices to facilitate irregular migration from Indonesia and further put the migrant workers in disadvantageous situations.

Adding to the aggravating factors that push irregular migrations, IOM’s report revealed that Indonesia’s current policies on migration management, recruitment, and protection of migrants are costly and weak (in terms of protection and placement of migrant workers). Most disconcerting is that the law regulating Indonesian migrant workers devolves much power and responsibility to PPTKIS and its supervision mechanism is weak; this inevitably opens further prospects of abuse. This condition prompts Indonesian migrant workers to opt for migration through irregular means and render them more vulnerable to abuse.

As in the case of exploitation of women and children, the imbedded culture of corruption of the Indonesian authorities has aggravated the abuse of women migrant workers especially during the pre-departure and return stages. Unfortunately, corrupt practice also stained the performance of some staff in Indonesian Embassies in some receiving countries, eventually subjecting Indonesian migrant workers to further abuse and exploitation.

Lastly, Indonesia’s geographical position and condition (see the map of Indonesia above) constitutes an aggravating factor that contribute in facilitating human traffickers and smugglers to conduct their operation fairly undetected. Indonesia’s thousands of islands and the lack of human resource as well as appropriate security means make it hard for the Indonesian authorities to monitor their borders. The vast land border, between Indonesia and Malaysia for instance, also poses another problem since there are so many “mouse paths” that traffickers and smugglers can use to export their commodities across the Indonesian land border.

c. Impact of Abuse and Discrimination in Migration

GoI report to the CEDAW Committee in 2005 indicated that women migrant workers who had been sexually exploited at their workplace found that they have lost their social status when they returned home; they might even be socially excluded. Most of these women became emotionally and physiologically disturbed. There are cases where women migrant workers who were already married when they went abroad discovered that their husbands have remarried and spent the hard-earned money they sent home. GoI report in 2011 highlights the rising number of domestic problems and divorce experienced by families of migrant workers due to the absence of spouses who work abroad.

Those women migrant workers who experienced rape at their workplace, and especially those that worked

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1165 IOM, Labour Migration from Indonesia, 46 – 47, 66 – 68, and 75.
1166 Ibid, 9; see also GoI, 2011 IPR-CEDAW, para. 38.
1167 IOM, Labour Migration from Indonesia, 18.
1168 Ibid.
1169 Ibid.
1170 Ibid, 17.
1171 Ibid, IOM; see also Palmira Permata Bachtiar, The Governance of Indonesian Overseas Employment., 34; and CARAM ASIA, Reality Check!, 17.
in domestic setting or were being sexually exploited, face high risk of experiencing disturbances of their reproduction health and are exposed to the possibilities of contacting sexually transmitted diseases and/or HIV/AIDS. Another impact of abuses suffered by Indonesian women migrant workers is unwanted pregnancy as a result of rape that they suffered in the hands of their employers or sexual exploitation. Further impact of unwanted pregnancies affects the fate of the children born afterwards; most of these children were abandoned by their mothers when they returned to Indonesia, yet contributing to the prevalence of neglected children especially in Jakarta.

Due to the unavailability of birth certificates for children of Indonesian migrant workers that were born in Malaysia, these children cannot enjoy basic education and other public services. Furthermore, many of these children ended up exploited as plantation workers since they do not enjoy any legal protection under Malaysian law. Child neglect is another impact that might occur on children of migrant workers who are left behind in Indonesia, however; further studies are needed to verify this consequence of migration.

2. De Jure State Responses

a. Bases of State Responsibility

This section will consist of a list of international and regional instruments, as well as bilateral arrangements relating to Indonesia’s international responsibilities in providing protection in the context of migration, particularly in relation to women and children. This list will mainly include UN Conventions, ILO Conventions, and ASEAN instruments relating to labour standards, migration and immigration policies, protection of migrant workers, and instruments granting protection against violence and exploitation in the context of migration. For the sake of clarity, the list of international and regional instruments in this section will also include some instruments that are already listed in the previous section of this Study (Section on Exploitation, Table 19 above).

Aside from the list, this section will also include recommendations made by the HRC and UN Treaty Bodies relating to Indonesia’s international obligation. Additionally, the Study will also include relevant recommendations made by other supervisory or relevant bodies to Indonesia. However, the Study will not repeat recommendations that have been mentioned in the previous Section on Exploitation. To avoid confusion, the Study will make sure to indicate the recommendations that have been made in Section C.2.a above that are relevant to the discussion in this Section.
### UN Conventions and Instruments

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<td>6.</td>
<td>1967 Protocol relating to the Status of Refugees</td>
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<td>7.</td>
<td>1954 Convention relating to the Status of Stateless Persons</td>
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### ILO Conventions

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<tr>
<td>1.</td>
<td>1925 ILO Convention concerning Equality of Treatment for National and Foreign Workers as regards Workmen's Compensation for Accidents</td>
<td>12 June 1950 (R)</td>
<td>___</td>
</tr>
<tr>
<td>2.</td>
<td>1929 ILO Convention concerning the Marking of the Weight on Heavy Packages Transported by Vessels</td>
<td>12 June 1950 (R)</td>
<td>___</td>
</tr>
<tr>
<td>3.</td>
<td>1930 ILO Convention No. 29 concerning Forced Labour</td>
<td>12 June 1950 (R)</td>
<td>___</td>
</tr>
<tr>
<td>4.</td>
<td>1935 ILO Convention No. 45 concerning the Employment of Women on Underground Works in Mines of all Kinds</td>
<td>12 June 1950 (R)</td>
<td>___</td>
</tr>
<tr>
<td>7.</td>
<td>1948 ILO Convention No. 88 concerning the Organisation of the Employment Service</td>
<td>8 August 2002 (R)</td>
<td>Presidential Decree No. 36 of 2002</td>
</tr>
<tr>
<td>8.</td>
<td>1949 ILO Convention No. 98 concerning the Right to Organise and Collective Bargaining</td>
<td>15 July 1957 (R)</td>
<td>Law No. 18 of 1956</td>
</tr>
<tr>
<td>9.</td>
<td>1950 ILO Convention No. 100 concerning Equal Remuneration</td>
<td>11 August 1958 (R)</td>
<td>Law No. 80 of 1957</td>
</tr>
<tr>
<td>10.</td>
<td>1957 ILO Convention No. 105 concerning the Abolition of Forced Labour</td>
<td>07 June 1999 (R)</td>
<td>Law No. 19 of 1999</td>
</tr>
<tr>
<td>11.</td>
<td>1959 ILO Convention No. 106 concerning Weekly Rest in Commerce and Offices</td>
<td>23 August 1972 (R)</td>
<td>___</td>
</tr>
<tr>
<td>12.</td>
<td>1958 ILO Convention No. 111 concerning Discrimination in Respect of Employment and Occupation</td>
<td>7 June 1999 (R)</td>
<td>Law No. 21 of 1999</td>
</tr>
<tr>
<td>13.</td>
<td>1973 ILO Convention No. 138 concerning Minimum Age for Admission to Employment</td>
<td>7 June 1999 (R)</td>
<td>Law No. 20 of 1999</td>
</tr>
<tr>
<td>15.</td>
<td>1999 ILO Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour</td>
<td>8 March 2000 (R)</td>
<td>Law No. 1 of 2000</td>
</tr>
<tr>
<td>No.</td>
<td>International, Regional, and Bilateral Instruments/Arrangements</td>
<td>Date of Signature, Ratification, Accession, or Adoption</td>
<td>Instrument of Ratification</td>
</tr>
<tr>
<td>-----</td>
<td>---------------------------------------------------------------</td>
<td>-------------------------------------------------</td>
<td>----------------------------</td>
</tr>
<tr>
<td><strong>ASEAN and ASEAN+ Instruments</strong>&lt;sup&gt;1185&lt;/sup&gt;</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.</td>
<td>1997 ASEAN Vision 2020</td>
<td>15 December 1997 (adpt.)</td>
<td>Ratification is not required</td>
</tr>
<tr>
<td>2.</td>
<td>1998 Ha Noi Plan of Action</td>
<td>16 December 1998 (adpt.)</td>
<td>Ratification is not required</td>
</tr>
<tr>
<td>3.</td>
<td>1999 Bangkok Declaration on Irregular Migration (ASEAN +)</td>
<td>23 April 1999 (adpt.)</td>
<td>Ratification is not required</td>
</tr>
<tr>
<td>4.</td>
<td>2003 Declaration of ASEAN Concord II (Bali Concord II)</td>
<td>7 October 2003 (adpt.)</td>
<td>Ratification is not Required</td>
</tr>
<tr>
<td>5.</td>
<td>2004 ASEAN Declaration against Trafficking in Persons Particularly Women and Children</td>
<td>29 November 2004 (adpt.)</td>
<td>Ratification is not required</td>
</tr>
<tr>
<td>6.</td>
<td>2004 Vientiane Action Programme</td>
<td>29 November 2004 (adpt.)</td>
<td>Ratification is not required</td>
</tr>
<tr>
<td>7.</td>
<td>2007 ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers</td>
<td>13 January 2007 (adpt.)</td>
<td>Ratification is not required</td>
</tr>
<tr>
<td>8.</td>
<td>2007 Statement of the Establishment of the ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers</td>
<td>30 July 2007 (adpt.)</td>
<td>Ratification is not required</td>
</tr>
<tr>
<td>9.</td>
<td>2008 Work Plan of the ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (ACMW Work Plan)</td>
<td>2008</td>
<td>Ratification is not required</td>
</tr>
<tr>
<td><strong>Bilateral Arrangements</strong>&lt;sup&gt;1186&lt;/sup&gt;</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.</td>
<td>Memorandum of Understanding Between the Government of the Republic of Indonesia and the Government of the Hashemite Kingdom of Jordan Concerning Placement of Manpower.</td>
<td>2 May 2001 (S)</td>
<td>Ratification is not required</td>
</tr>
<tr>
<td>2.</td>
<td>Memorandum of Understanding Between the Department of Manpower and Transmigration of the Republic of Indonesia and the Department of Labour and Employment of the Republic of the Philippines Concerning Migrant Workers</td>
<td>18 January 2003 (S)</td>
<td>Indonesian has not ratified</td>
</tr>
<tr>
<td>3.</td>
<td>Memorandum of Understanding Between the Department of Manpower and Transmigration of the Republic of Indonesia and the Ministry of Labour of the Republic of Korea on the Sending of Indonesian Workers to the Republic of Korea.</td>
<td>13 July 2004 (S)</td>
<td>Ratification is not required</td>
</tr>
<tr>
<td>4.</td>
<td>Agreement for the Extension of the Validity of the Memorandum of Understanding Between the Department of Manpower and Transmigration of the Republic of Indonesia and the Ministry of Labour of the Republic of Korea on the Sending of the Workers to the Republic of Korea on 13 July 2004</td>
<td>12 July 2006 (S)</td>
<td>Ratification is not required</td>
</tr>
<tr>
<td>5.</td>
<td>Memorandum of Understanding Between the Department of Manpower and Transmigration of the Republic of Indonesia and the Ministry of Labour of the Republic of Korea on the Sending of Workers to the Republic of Korea Under the Employment Permit System.</td>
<td>9 October 2006 (S)</td>
<td>Ratification is not required</td>
</tr>
<tr>
<td>6.</td>
<td>Agreement on Supply of Workers between the Republic of Indonesia and Malaysia</td>
<td>12 May 1984 (S)</td>
<td>Ratification is not required</td>
</tr>
</tbody>
</table>
Violence, Exploitation, and Abuse and Discrimination in Migration Affecting Women and Children in ASEAN: A Baseline Study

<table>
<thead>
<tr>
<th>No.</th>
<th>International, Regional, and Bilateral Instruments/Arrangements</th>
<th>Date of Signature, Ratification, Accession, or Adoption</th>
<th>Instrument of Ratification</th>
</tr>
</thead>
<tbody>
<tr>
<td>7.</td>
<td>Memorandum of Agreement on Recruitment of Indonesian Workers between the Government of the Republic of Indonesia and the Government of the Kingdom of Malaysia.</td>
<td>15 December 1993 (S)</td>
<td>Ratification is not required</td>
</tr>
<tr>
<td>8.</td>
<td>Memorandum of Understanding on the Recruitment of Indonesian Workers between the Government of the Republic of Indonesia and the Government of Malaysia</td>
<td>10 May 2004 (S)</td>
<td>Ratification is not required</td>
</tr>
<tr>
<td>9.</td>
<td>Memorandum of Understanding Between the Government of the Republic of Indonesia and the Government of Malaysia on the Recruitment and Placement of Indonesian Domestic Workers 1187</td>
<td>13 May 2006 (S)</td>
<td>Ratification is not required</td>
</tr>
<tr>
<td>10.</td>
<td>Memorandum of Understanding Between the Government of the Republic of Indonesia and the Government of the Kingdom of Qatar on Indonesia’s Labour Regulations in Qatar</td>
<td>20 January 2008 (S)</td>
<td>Indonesia has not ratified</td>
</tr>
<tr>
<td>11.</td>
<td>Apart from the MoUs listed above, the GoI has also signed MoUs on the sending and placement of migrant workers with Taiwan, Japan, Kuwait, United Arab Emirates, Syria, Libya, and Qatar. 1188 However these MoUs are not reflected in the Indonesian Ministry of Foreign Affairs bilateral agreements database.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Table 27 – Indonesia’s International, Regional, and Bilateral Commitments/Arrangements relating to the Protection of People in the Context of Migration

Indonesia made reservations to UNTOC and its protocols including the 2000 Migrant Smuggling Protocol. The reservations are related to the application of the dispute settlement provisions in UNTOC and its Protocols. 1189 No reservation is made by Indonesia to all ILO Conventions that it has ratified. The reason for Indonesia’s non-reservation to all ILO Conventions had been discussed in the previous Section (See Section C.2.a above).

HRC, UN Treaty Bodies, UN Special Procedures and other relevant bodies, including ILO’s CEACR had delivered their recommendation to the GoI with regard to the implementation of some of the international instruments listed above as well as on the issue of protection of women and children against violence, discrimination, and exploitation in the context of migration. Unfortunately, some recent GoI reports such as GoI reports to CEDAW Committee (2011) and to the HRC (2012) are not yet conclusive, meaning that the HRC and the Treaty Body have not yet to make their concluding comments. In that case, the Study will refer to the last concluding comments that these bodies had made on the issue, i.e., the 2008 Concluding Comments on Indonesian UPR and the 2007 Concluding Comments on Indonesia’s Periodic Report to CEDAW Committee. Below are some recommendations given responding to GoI’s report to the various bodies:

1185 ASEAN instruments relating to the protection of women and children against exploitation cover binding and non-binding instruments. This entails that not all instruments required signature, ratification/accession by ASEAN Member States. The instruments listed in the table are mainly dealt with the issue of trafficking in women and children. Full version of these instruments can be accessed on the ASEAN website <www.asean.org> or can be found in the ASEAN database of the Centre for International Law <www.cil.nus.edu.sg>.

1186 Apart from Indonesia – Malaysia relation on migrant workers, the Study finds it difficult to get hold of information relation to Indonesia’s cooperation with other countries relating to migrant workers. The list included in Table 26 is based on the information gathered from various tables of bilateral instruments that Indonesia has with various countries gathered by the Ministry of Foreign Affairs <www.kemlu.go.id>. The Study cannot guarantee if the list created based on the information provided by Indonesia’s Ministry of Foreign Affairs is exhaustible.

1187 A moratorium is placed by the GoI on this MoU in 2009 due to the high number of abuse suffered by Indonesian migrant workers in the hands of their Malaysian employers.

1188 CARAM ASIA, Reality Check!, 19.

<table>
<thead>
<tr>
<th>Recommending Body</th>
<th>Recommendations</th>
</tr>
</thead>
</table>
| **CEDAW Committee**<sup>1190</sup> | a. To engage into bilateral agreements and Memorandum of Understandings with destination countries to which Indonesian workers migrate in search of work. Indonesia has to make sure that such agreements should be in compliance with human rights and CEDAW. Furthermore, there is also a need to establish a mechanism in the country of destination to handle violation of the rights of women migrant workers.  

b. To develop policies and measures to protect women migrant workers who migrate through regular and irregular channels from all forms of violations of their rights, including firmer monitoring on recruitment agencies and expanding the services provided for the workers abroad.  

c. To reduce the fees and administrative burdens imposed on migrant workers at pre-departure stage and when they return back to Indonesia.  

d. To address the root causes of women’s migration coherently and comprehensively through, among others, addressing the problem of women unemployment in Indonesia.  

e. To provide assistance to women migrant workers who seek redress.  

f. To strengthen the assessment of recruitment agencies and training centres; impose substantial penalties to companies that violate the rights of workers that they recruited; and to prosecute and punish anyone who is involved in illegal recruitment of migrant workers, including perpetrators of trafficking of women migrant workers for forced labour and sexual exploitation. |

| **CAT Committee**<sup>1191</sup> | a. To develop “a comprehensive and effective policy framework and implementation mechanism for safe migration”. Additionally, the United Nations Country Team (UNCT) recommended the GoI to provide better protection services to migrant workers both when they are in destination countries and when they return home.  

b. Indonesia should adopt appropriate legislations in accordance with Article 3 of CAT. Recommend the GoI to protect the rights of asylum seekers and increase coordination in handling asylum matters. |

| **IOM**<sup>1192</sup> | a. To revise relevant legislations to include more provisions on the rights and protections of migrant workers and the inclusion of gender perspective. Recommend that MOWE should play a key role in the revision process.  

b. To establish a monitoring authority responsible for the supervision of the implementation of recruitment, placement, and protection of migrant workers. Through the improvement of monitoring mechanism, it is hoped that it can eliminate illegal recruitments.  

c. To increase the role of regional governments in the implementation and enforcement of legislations relating to the rights and protection of migrant workers.  

d. To clarify the recruitment process and certify the departure of migrant workers through a professional agency.  

e. To enhance the quality of documents issued by the Directorate General of Immigration and the National Police to migrant workers in order to reduce the possibilities of falsified documents (e.g., by issuing ID card with microchips).  

f. To shorten recruitment process and ensure recruitments are done locally to dispense migrant workers from expensive costs. Local governments need to be more involved to establish a more efficient placement service through a “one-roof” service centre at local level.  

g. To ensure information on recruitment process is accessible by prospective migrant workers. A hotline aiming at disseminating such information might be useful to establish.  

h. To develop and implement a standardised education system for Indonesian migrant workers.  

i. To ensure all departing migrant workers hold valid employment contracts signed before departure, stipulating clear conditions of employment. The contracts shall be drafted in languages that the prospective workers can easily understand.  

j. To reduce fees and levies of migration for workers. To this end, the GoI should establish clear guidelines on the fees that can be charged to workers by private employment agencies.  

k. To establish MoUs or agreements with destination countries and set out mutually agreed costs for migrant workers to avoid practices of debt bondage.  

l. To improve data collection on migrant workers by the GoI. |

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1190 CEDAW Committee, 2012 CO-CEDAW, para 43 – 44; CEDAW Committee, 2007 CC-CEDAW, para. 33 and 44.  
1192 IOM, Migration from Indonesia, 81 – 84.
m. To strengthen the role of labour attaches at Indonesian Embassies in destination countries in conducting monitoring on recruitment agencies, job placements, site visits, etc. to provide better protection for migrant workers. This also includes capacity building of labour attaches; ensuring that the attaches hold diplomatic status; increase the number of labour attaches; and strengthening internal relation among GoI and Indonesian Embassies and consulates in destination countries.

n. To provide economic assistance, protection, training opportunities, and reintegration program for returning migrant workers.

o. To provide legal services for migrant workers who are involved in legal cases.

p. To shift the responsibility of placement of migrant workers, especially women, from recruitment agency to the GoI control.

q. To ratify the Migrant Workers Convention.

For CEACR recommendations to the GoI, please see the discussion in Section C.2.a above, especially those concerning CEACR’s recommendations related to the Implementation of 1930 ILO Forced Labour Convention.

Table 28 – List of Recommendations given by UN Treaty Bodies/Special Procedures and Other Bodies related to Implementation of Indonesia’s International Obligations Pertaining to Protection of Migrant Workers

b. National Policies against Abuse and Discrimination in Migration

Indonesian national policies against abuse and discrimination against women and children described in Sections B.2.b and C.2.b above also apply to women and children in the context of migration. However, there are critiques stating that Indonesian legal framework on giving protection to its migrant workers is generally weak. In this section, the Study will only summarise general protection given specifically to Indonesian migrant workers under Law No. 39 of 2004 concerning the Placement and Protection of Indonesian Workers Abroad (Migrant Workers Law) and Law No. 6 of 2011 on Immigration (Immigration Law). In addition to that, the Study has listed relevant legislation and regulations related to the implementation of the protection set out in the Migrant Workers Law.

<table>
<thead>
<tr>
<th>No.</th>
<th>Implementing Legislation and Regulations</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Government Regulation No. 92 of 2000 on Types of Valid Non-Tax State Revenues in the Ministry of Labour and Transmigration</td>
</tr>
<tr>
<td>2.</td>
<td>Government Regulation No. 38 of 2007 on the Distribution of Power among Central, Provincial, and Regency/Municipal Government</td>
</tr>
<tr>
<td>3.</td>
<td>Presidential Decree No. 106 of 2004 on the Coordination Team for the Repatriation of Problematic Indonesian Migrant Workers and Family from Malaysia (Presidential Decree on TK-PTKIB)</td>
</tr>
<tr>
<td>4.</td>
<td>Presidential Decree No. 17 of 2011 on the Task Force for the Handling of Indonesian Citizen or Migrant Workers who Face Death Penalty Abroad</td>
</tr>
<tr>
<td>5.</td>
<td>Presidential Instruction No. 6 of 2006 on Reforming the System of Place ment and Protection of Indonesian Migrant Workers</td>
</tr>
<tr>
<td>6.</td>
<td>Presidential Regulation No. 81 of 2006 on the National Authority for the Placement and Protection of Indonesian Overseas Workers (Presidential Decree on BNP2TKI)</td>
</tr>
<tr>
<td>7.</td>
<td>Ministry of Labour and Transmigration Decree No. KEP-14/MEN/I/2005 on the Prevention of Non-procedural Departures of Indonesian Labour Migrants and Repatriation Services for Indonesian Labour Migrants</td>
</tr>
<tr>
<td>8.</td>
<td>Ministry of Labour and Transmigration Decree No. PER-04/MEN/III/2005 on Implementation of the Pre-departure Briefing of Indonesian Migrant Workers Abroad</td>
</tr>
<tr>
<td>10.</td>
<td>Ministry of Labour and Transmigration Decree No. PER-07/MEN/IV/2005 on Accommodation Standards for Prospective Migrant Workers</td>
</tr>
</tbody>
</table>


1194 IOM, Labour Migration from Indonesia, 17; see also Palmira Permata Bachtiar, The Governance of Indonesian Overseas Employment, 34.


Table 29 – List of Legislations and Regulations relevant to the Implementation of Migrant Workers Protection under the Migrant Workers Law

<table>
<thead>
<tr>
<th>No.</th>
<th>Implementing Legislation and Regulations</th>
</tr>
</thead>
<tbody>
<tr>
<td>11.</td>
<td>Ministry of Labour and Transmigration Decree No. PER-19/MEN/V/2006 on Managing the Placement and Protection of Indonesian Overseas Workers</td>
</tr>
<tr>
<td>12.</td>
<td>Ministry of Labour and Transmigration Regulation No. PER-23/MEN/V/2006 on Insurance for Indonesian Migrant Workers</td>
</tr>
</tbody>
</table>

Table 30 – Preventive Measures Provided under the Migrant Workers Law

<table>
<thead>
<tr>
<th>Legislation</th>
<th>Relevant Provisions</th>
</tr>
</thead>
<tbody>
<tr>
<td>a. Preventive Measures</td>
<td></td>
</tr>
<tr>
<td>Migrant Workers Law</td>
<td>a. The Ministry of Labour and Transmigration to revoke the permit of recruitment agencies that violates the rights of migrant workers protected under this legislation (Article 18).</td>
</tr>
<tr>
<td></td>
<td>b. Any person is prohibited to place an Indonesian citizen to work abroad (Article 4).</td>
</tr>
<tr>
<td></td>
<td>c. Any person who personally places an Indonesian citizen to work abroad or placed a worker without the appropriate permits or placed a worker in an inhumane or indecent working condition will be punished by imprisonment and/or fine (Article 102).</td>
</tr>
<tr>
<td>Immigration Law</td>
<td>a. The Minister of Law and Human Rights or authorised immigration official is responsible to conduct preventive measures in the following forms (Article 89):</td>
</tr>
<tr>
<td></td>
<td>· Exchange of information with other countries and other relevant institutions within Indonesia on the modus operandi and the supervision on the validity and originality of travel documents; and</td>
</tr>
<tr>
<td></td>
<td>· Technical cooperation and trainings with other countries on humane treatment of victims, verification of travel document, detection of fraud document, exchange of information, and monitoring and detection of conventional and non-conventional smuggling of migrant;</td>
</tr>
<tr>
<td></td>
<td>· Commence immigration investigation toward suspected traffickers and smugglers;</td>
</tr>
<tr>
<td></td>
<td>· Impose immigration administrative sanction to the perpetrators;</td>
</tr>
<tr>
<td></td>
<td>· Cooperation with other law enforcement institutions in conducting the investigation.</td>
</tr>
<tr>
<td></td>
<td>b. Any person who is found guilty of the crime of smuggling of migrants or attempted to commit smuggling of migrants shall be punished by imprisonment (5 – 15 years) and fine (IDR 500 million – IDR 1.5 billion) (Article 120).</td>
</tr>
</tbody>
</table>


1199 Presidential Decree No. 106 of 2004 on the Coordination Team for the Repatriation of Problematic Indonesian Migrant Workers and Family from Malaysia, 18 October 2004.

1200 Presidential Decree No. 17 of 2011 on the Task Force for the Handling of Indonesian Citizen or Migrant Workers who Face Death Penalty Abroad, 7 July 2011

1201 Presidential Regulation No. 81 of 2006 on the National Authority for the Placement and Protection of Indonesian Overseas Workers, 8 September 2006.

## b. Protective Measures

<table>
<thead>
<tr>
<th>Legislation</th>
<th>Relevant Provisions</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Migrant Workers Law</strong></td>
<td>a. The placement and protection of migrant workers is implemented based on, among others, anti-discrimination, gender justice, equality, social justice, and anti-trafficking in persons (Article 2).&lt;br&gt;b. The protection to migrant workers starts from pre-departure, in the destination countries, until they return to Indonesia (Article 3).&lt;br&gt;c. The GoI is responsible for the protection of migrant workers, including protection in the destination countries (Articles 5 – 6).&lt;br&gt;d. Rights of migrant workers guaranteed by the State (Article 8):&lt;br&gt;   - Rights to work abroad&lt;br&gt;   - Right to information related to work opportunities and placement procedures&lt;br&gt;   - Right to receive equal treatment and services during their placement abroad&lt;br&gt;   - Freedom of religion and to practice their beliefs&lt;br&gt;   - Right to receive equal remuneration in accordance with the standard applies in the destination country&lt;br&gt;   - Right to receive equal treatment in the destination country&lt;br&gt;   - Right to receive legal protection in the destination country&lt;br&gt;   - Right to receive protection for their safety and security upon their return&lt;br&gt;   - Right to receive the original copy of their work contract&lt;br&gt;e. The Ministry of Labour and Transmigration to revoke the permit of PPTKIS that violates the rights of migrant workers protected under this legislation (Article 18).&lt;br&gt;f. The placement of Indonesian migrant worker can only be done in a country which government has established an agreement with the GoI (Article 27).&lt;br&gt;g. Any person is prohibited from placing a migrant worker in a works condition, which violates human rights and propriety as well as the Law applicable in Indonesia and in the destination country (Article 30).&lt;br&gt;h. The minimum age for migrant worker is 18 years. Except for individual employer, the minimum age of a migrant worker is 21 years. Especially for women, they are not eligible to be migrant workers if they are conceiving (Article 35).&lt;br&gt;i. Prospective migrant workers are entitled to receive trainings and preparation in accordance with their future profession abroad, including information on condition, culture, religion and the risks that they might face in the country of destination (Article 42).&lt;br&gt;j. Physical and psychological check up for migrant workers before their departure (Articles 48 – 50).&lt;br&gt;k. Migrant worker's placement contract is made and signed by the concerned migrant worker and PPTKIS. The contract should include, among other, the rights and obligations of each party; guarantee on migrant worker's placement in case the prospective employer does not fulfil his/her contract obligation (Article 52).&lt;br&gt;l. Migrant worker's work contract is signed by the migrant worker containing provisions on, among other, particulars of the migrant worker and employer; and work condition including working hours, remuneration, paid leave, social security, etc. (Article 55).&lt;br&gt;m. The GoI to provide migrant workers' sufficient services points in ports of departure and ports of return (Article 66).&lt;br&gt;n. PPTKIS are obliged to instruct migrant workers to join insurance programs (Article 68) and to inform the workers on the law of the destinations countries and the content of their work contract (Article 69).&lt;br&gt;o. PPTKIS are allowed to house migrant worker prior to departure in their premises and shall treat the workers humanely (Article 70).&lt;br&gt;p. PPTKIS are obliged to report the arrival of migrant workers who use their services (Article 71).&lt;br&gt;q. PPTKIS are not allowed to place a migrant worker in profession that is not described in his/her work contract (Article 72).&lt;br&gt;r. PPTKIS are responsible for the return of migrant workers until they are safely returned to their place of origin (Articles 74 – 75).&lt;br&gt;s. Migrant workers are entitled for legal protections during pre-departure, placement, and post-return periods (Article 77).&lt;br&gt;t. Indonesia's representatives abroad shall render protection to migrant workers in destination countries in accordance with Indonesia's domestic legislations and international law. Protection of migrant workers will be carried out by labour attaches at every Indonesian Embassy (Article 78). The protection rendered by Indonesian Embassies includes legal assistance and defending the rights of migrant workers as stipulated in the work contract (Article 80).&lt;br&gt;u. Indonesian Embassies are responsible to supervise the conduct of placement agencies' representatives in destination countries (Article 79).&lt;br&gt;v. The GoI can place a moratorium on the sending and placing of Indonesian migrant workers or prohibit the placement of migrant workers for certain professions in order to protect the rights of Indonesian migrant workers (Article 81).</td>
</tr>
</tbody>
</table>
b. Protective Measures

<table>
<thead>
<tr>
<th>Legislation</th>
<th>Relevant Provisions</th>
</tr>
</thead>
<tbody>
<tr>
<td>w.</td>
<td>Supervision on the placement and protection of migrant abroad is carried out by government institutions responsible for labour issues at the central, provincial, and regency/municipal levels (Articles 92 – 93).</td>
</tr>
<tr>
<td>x.</td>
<td>BNP2TKI is established to coordinate the placement and protection of Indonesian migrant workers. Service Centre on the Placement and Protection of Indonesian Migrant Workers (Balai Pelayanan, Penempatan, dan Perlindungan Tenaga Kerja Indonesia, BP3TKI) is established in every province to assist in the processing of all necessary documents to facilitate the placement of migrant workers (Article 94 – 99).</td>
</tr>
<tr>
<td>y.</td>
<td>Any migrant worker who works abroad without using the service of a PPTKIS is entitled to protection provided by the GoI (Article 106).</td>
</tr>
</tbody>
</table>

Immigration Law

| 1         | TK-PTKIB was established to assist in coordinating policies and programs on repatriation of Indonesian irregular migrant workers and their families from Malaysia (Article 3). |
| 2         | Some of the protection measures provided by TK-PTKIB include (Article 4): |
|           | · To conduct and provide health services; |
|           | · To conduct inspection and process the settlement of the workers' remuneration, assets, credits, etc.; |
|           | · To provide travel documents; |
|           | · To arrange the transport from Malaysia to the workers' place of origin; |
|           | · To ensure the security of the entourage until it reaches the workers' place of origin; |
|           | · To provide basic needs for the workers during the whole repatriation process; and |
|           | · To prepare the repatriated migrant workers to be qualified workers. |

Table 31 – Protective Measures for Indonesian Migrant Workers

c. Curative Measures

The Migrant Workers Law does not have any provisions on curative measures for women and children victims of violence and discrimination in the context of migration. However, general curative measures provided for women and children victims of violence and exploitation as discussed in Sections B2.b and C.2.b above also apply in the context of migration.

c. Assessment of State Policies

The Migrant Workers Law is the only Parliamentary Act that deals with the protection of Indonesian workers in the context of migration. There are some lower legislative provisions and regulations put in place for the implementation of placement and protection of migrant workers as listed in Table 30 above. Nothing in the present Law grants specific protection on the rights of children and women migrant workers. Reports have criticised the Migrant Workers Law as focusing heavily on the subject of placement of migrant workers instead of on the protection of their rights. As a reflection of this, of 109 Articles stipulated in the Migrant Workers law only eight Articles are specifically dedicated to the protection the rights of migrant workers.

Regarding the issue of whether the Law prohibits sex-specific bans, the Migrant Workers Law prohibits the recruitment and placement of pregnant women migrant workers. The Law also requires women migrant workers, to be eligible for a placement abroad, to

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1203 Labour Migration from Indonesia, 17; see also Palmira Permata Bachtiar, The Governance of Indonesian Overseas Employment, 34; and CARAM ASIA, Reality Check!, 17.

1204 Chapter VI (Articles 77 – 84) of the Migrant Workers Law is the only Section dedicated to the protection of the rights of migrant workers.

1205 Migrant Workers Law, art. 35(c).
present to the placement agencies a letter expressing the permission of their husband, or parents, or guardian, as well as a marriage certificate for those who are married.1206 The requirement for a woman migrant worker to secure a written permission from her husband, or parents, or guardian is further reinforced by MUI (Indonesian Council of Ulama) in one of their fatwas issued in 2000, stating that it is considered as haram under Islamic law if a married woman went abroad to work without her husband’s consent.1207

The Law does not expressly define the term “irregular recruitment”, however violations of the terms of recruitment and placement of migrant workers stipulated in the Law are considered as crimes or felonies punishable by imprisonment and/or fine.1208 Crimes or felonies punishable under the Migrant Workers Law apply to an individual who conducts illegal recruitment or abuse of GoI license or violates the terms set out under the Law in relation to the placement of migrant workers.1209 Indonesia also imposes administrative sanctions on private recruitment and placement agencies that violate the terms and conditions of placement of migrant workers set out under the Law. These penalties include: 1) written warning; 2) suspension of their license to recruit and place migrant workers; 3) revocation of license; 4) cancellation of migrant workers’ departure; and 5) repatriation of migrant workers.1210

The GoI guarantees the right of regular migrant workers to return to Indonesia in general.1211 There is no specific provision indicating special treatment for women and children in this regard. To the knowledge of this Study, there is also no clear provision to secure the right of irregular migrant workers to return to Indonesia. According to practice, the issue of repatriation of irregular migrant workers is handled on a case-by-case basis. So far, Indonesia has established one task force to specifically deal with the repatriation of Indonesian irregular migrant workers and their families from Malaysia where this issue has become a major political problem for the GoI.1212

Nothing in the Migrant Workers Law condones the restriction of migrant workers’ freedom of movement. However, national laws of some destination countries, such as Malaysia, have enacted provisions enabling the retention of migrant workers’ travel documents during the duration of their employment.1213 In the past, it was completely an acceptable practice in Kuwait for the employer to keep migrant workers’ travel documents, but recent developments show that the practice is no longer maintained. Instead, the right to retain migrant workers’ passports now lies in the hands of Kuwait Home Helper Operating Company.1214 The domestic law of the destination countries which legalise the withholding of migrant workers’ travel documents and set out the requirement for the sponsorship system has severely curtailed migrant workers’ freedom of movement and makes them vulnerable to abuse and exploitation.1215

In relation to protection of migrant workers in destination countries, the Migrant Workers Law acknowledges the rights of migrant workers to: 1) receive equal remuneration in accordance with the standard applicable in the destination country; 2) receive rights, opportunities, and treatment equivalent to those received by migrant workers coming from other countries in accordance with the legislation of the destination country; and 3) receive legal protection against violations of their human rights and dignity in accordance with the legislation in the destination country.1216 One significant gap in these protections, however, arises from the fact that most of Indonesian women migrant workers are domestic workers or caregivers in destination countries and, as in the case in Indonesia, these professions are not acknowledged and protected under the law of many destination countries.1217 Therefore, in many destination countries, migrant domestic workers do not receive equal protection compared to workers who are nationals of the destination countries.

1206 Ibid, art. 51.
1207 Martha Thertina, TKW Haram Bekerja Jika… (Women Migrant Workers are Haram to Work if…), Tempo, 1 July 2011. <www.tempo.co>, accessed on 1 May 2012.
1208 Migrant Workers Law, art. 102 – 104.
1209 Ibid.
1210 Ibid, art. 100.
1211 Ibid, art. 8(h).
1212 See the summary of Presidential Decree on TK-PTKIB in Table 31 above.
1213 IOM, Migration from Indonesia, 42 and 45; see also CARAM Asia, Reality Check, 18.
1214 Ibid, 69.
1215 Ibid.
1216 Migrant Workers Law, art. 8 (e – g).
1217 IOM, Migration from Indonesia, 18.
It is very unfortunate the under Indonesian legislation, to the knowledge of this Study, there is no mentioning of protection of the rights of children in the context of migration, including child migrant workers and children left behind by their migrant workers parents. Even though, for example, reports and news coverage have brought up the problem of Indonesian migrant workers’ children in Malaysia who are stateless and have no access to basic protection, the GoI has not taken up any measures to ensure their protection abroad.

3. Implementation, Monitoring and Enforcement

Apart from the Government’s institutions that will be discussed in the following paragraphs, Government institutions that are involved in the monitoring, complaint, protection, rehabilitation, and prevention mechanisms and processes as discussed in the Sections on Violence (Section B.3 and Exploitation (Section C.3) above are also relevant to the protection of women and children against abuse and discrimination in the context of migration, especially upon their return to Indonesia. Particularly on the issue of irregular migration, SOM, and TIP, the GoI indicates that both Indonesia and Australia have been engaging in cooperation aiming at building closer cooperation to address the said issues.

a. Monitoring Mechanisms

According to Migrant Workers Law, the Labour and Transmigration Minister is responsible for matters concerning migrant workers. The GoI instituted BNP2TKI with the coordinating function as one of its main responsibilities. The members of BNP2TKI are constituted by representatives of various government institutions, including the Ministry of Foreign Affairs. At the local level, BNP2TKI’s subsidiary, the BP3TKI, operates in 19 migrant source provinces. BP3TKI is acting as BNP2TKI’s representative at the provincial level.

In relation to monitoring of migrants while abroad, none of the reports consider monitoring mechanisms in destination countries. However, in the case of Malaysia, the Study found that, based on the 2006 MoU concluded with Indonesia, there is a clause on the establishment of a joint committee, consisting of representatives from both countries, which shall be responsible for, among other things, monitoring the implementation of services and protection of migrant workers. Government institutions that are involved in the Joint Committee consist of: the Ministry of Foreign Affairs, the Ministry of Labour and Transmigration, BNP2TKI, and MOWE.

b. Complaints Process

In responding to the issue of death penalty faced by many Indonesian migrant workers over the years, the Indonesian President adopted Presidential Decree No. 17 of 2011 on the Task Force for the Handling of Indonesian Citizen or Migrant Workers who Face Death Penalty Abroad (Task Force for Migrant Worker). The Task force is responsible for the following: to inventorise all cases of death penalty faced by Indonesians abroad, to do advocacies, to evaluate the handling of the cases that arrived at the pronouncement of the death penalties; to recommend to the President steps that could be taken in the handling of legal problems faced by Indonesian/migrant workers abroad.

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1218 SCVC, Stateless Children Live an Uncertain Life; see also Anthea Mulakal, Sabah’s Stateless Children; and The Star, Society’s Learning Centres Teaching Stateless Children for Past 20 Years.
1219 UN HRC, 2012 RWG UPR, para. 75.
1220 Migrant Workers Law, art. 1(17).
1222 Palmira Permata Bachtiar, The Governance of Indonesian Overseas Employment, 1.
1223 Ibid.
1225 Ibid.
1226 Komnas Perempuan, 2011 Note, 34.
1227 Ibid.
1228 GoI, 2008 Indonesian UPR, para. 53.
1229 Ibid; see also GoI, 2011 UPR-CEDAW, para. 106.
Upon their return to Indonesia, migrant workers who experienced problems during their placement in destination countries can bring complaints to the Directorate of Protection of Indonesian Citizens and Legal Bodies of Ministry of Foreign Affairs in Jakarta. The services provided by the Directorate include legal aid, assistance to repatriate Indonesian migrant workers who are experiencing problems in destination countries, and assisting with the retrieval of bodies of migrant workers who passed away in destination countries. The GoI also established a special terminal at Sukarno-Hatta International Airport for migrant workers with a special desk (Worker’s Lounge) to receive complaints and document reports about work-related issues including abuses such as unpaid wages, violations of work contracts, and physical and sexual abuse.

### c. Protection and Rehabilitation

Apart from its main role as a coordinating body for issues involving Indonesian migrant workers, BNP2TKI is also responsible for providing adequate protection for Indonesian migrant workers. The protection provided by BNP2TKI includes the application of wage standards, and the suspension and revocation of licenses of problematic PPTKIS. The Worker’s Lounge established in several international airports in Indonesia also deals with the initiation of compensation process upon receiving reports on abuses during the workers’ placement in destination countries.

In response to the massive deportation of Indonesian irregular migrants from Malaysia, the GoI established the Coordination Team for the Repatriation of Problematic Indonesian Migrant Workers and Family from Malaysia (TK-PTKIB) in 2004 to handle cases of regular or incidental deportation of Indonesia migrant workers from Malaysia. The TK-PTKIB has units operating in 12 regions, which comprised of Medan, Tanjung Pinang, Batam, Tanjung Balai Karimun, Dumai, Entikong, Nunukan, Pare-Pare, Tanjung Priok, Tanjung Perak, Tanjung Emas, and Mataram. Also in response to deportation of Indonesian migrants from Malaysia, the Ministry of Social Affairs created a special directorate, the Directorate of Social Assistance for Victims of Violence and Migrant Workers. This Directorate is responsible for providing psychological rehabilitation programs and overseeing the reintegration of migrant workers back into their community.

In the case of stateless children of Indonesian migrant workers, the Ministry of National Education is the responsible Ministry for providing education services for these children. The GoI stated that the Ministry of Education is assisted by other relevant ministries to carry out this task.

### d. Prevention Measures

None of the reports assessed any prevention measures, education and awareness programs, or the Government institutions responsible for conducting prevention measures. To the knowledge of the Study, there has also been no consideration of public awareness campaigns on the risks of migration and the procedures for the recruitment and placement of migrant workers. In relation to migrant workers, however, the reports did indicate that, according to the Migrant Workers Law, it is the PPTKIS (private-owned recruitment and placement agencies) that are tasked to facilitate the training of migrant workers, inform them of their rights, report the arrival and return of migrant workers to and from destination countries, and to act as a mediator in case a dispute arises between an employer and a migrant worker, etc.
4. Role of Non-State Actors

Indonesian reports for UPR and to UN Treaty Bodies have hardly mentioned the role of non-state actors in the context of migration. The sole exception is the role of PPTKIS in the protection of Indonesian migrant workers during all stages of placement, which include rendering assistance to victims, involve in prevention efforts, and participating in monitoring and cooperation strategies. The role of PPTKIS in the context of protection of Indonesian migrant workers is rather unique since this role is imposed by the GoI based on the Migrant Workers Law. This fact has been criticised as creating opportunities of abuse by PPTKIS against migrant workers. Based on its observation, the Study believes that many of the non-state organisations discussed in the previous Sections also play relevant roles in the protection of women and children against violence and discrimination in the context of migration (especially those non-state actors identified in Section C.4 above). The sub-sections below describe a number of non-state actors relevant in rendering protection to women and children in the context of migration.

a. Assistance to Victims

In recent years, the GoI has seen the rise of new NGOs focusing on advocating and defending migrant workers’ rights as well as rendering assistance to migrant workers. Among those NGOs, the GoI has recognised the role of KOPBUMI in encouraging the creation of legislation pertaining to the issue of protection of Indonesian migrant workers and their families. In destination countries, there are also NGOs concentrating on assisting with the fulfilment of Indonesian migrant workers’ rights, such as the Union of Indonesian Migrant Workers (Saudi Arabia) and the Association of Indonesian Migrant Workers (Hong Kong).

In the province of Riau Islands, the Commission for Migrants (Komisi Migran dan Perantau, Karya Migran) participates in the protection of migrant workers by providing shelter, counselling, and repatriation. Solidaritas Perempuan is an NGO with representation in eight provinces, equally divided among Indonesia’s biggest islands. This NGO provides legal assistance to migrant workers who have become victims of trafficking in persons.

The IOM, in collaboration with other actors, continues to provide health services to Indonesians in the context of migration. Some of the services covered by IOM include migration health assessments for migrants and refugees and health and psychological services for irregular migrants and victims of trafficking.

b. Prevention Programs

From the GoI reports to UN human rights mechanisms, little is mentioned on the role of non-state actors in the prevention of violence and discrimination against women and children in the context of migration. So far, the Study has not come across any reports that discuss the role of non-state actors in prevention programs on a national scale. However, in 2011 a report on a series of joint projects funded by the USAID on the development of Indonesia’s anti-trafficking strategies revealed the role of several non-state actors in the prevention of violence and discrimination against women migrant workers in specific areas where the projects were carried out.

The report on this program focuses on efforts conducted in areas where trafficking in persons is rampant, such as the Riau Islands. The Service Centre for Female Overseas Migrants in Batam (Pusat Pelayanan Tenaga Kerja Wanita di Batam, PP Nakerwan) carries out awareness raising campaigns aiming to improve migrant

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1244 See Table 31 above.
1245 Labour Migration from Indonesia, 17; see also Table 31 above; Palmira Permata Bachtir, The Governance of Indonesian Overseas Employment, 34; and CARAM ASIA, Reality Check!, 17.
1246 Ibid.
1247 Gol, 2011 IPR-CEDAW, para. 111.
1248 Ibid.
1249 Ibid.

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workers’ conditions during training period, when they have to stay at PPTKIS shelters/holding centres, and to prevent trafficking-like practices. Solidaritas Perempuan is also one of the local NGOs engaging in prevention programs. For instance, Solidaritas Perempuan has produced a documentary movie on the experience of migrant workers arriving at the workers’ special terminal at Sukarno-Hatta as a part of their campaign to raise public awareness.

**c. Monitoring and Cooperation**

In 2007 – 2009, the IOM has assisted the GoI in capacity building for the Indonesia Directorate General of Immigration to care and manage irregular immigrants in Indonesia, enhancement of management capabilities for returnees, and renovation of two detention facilities. This collaboration was conducted through the Management and Care of Irregular Immigrants Project (MCIIP). Apart from that, IOM also worked closely with the GoI and the Australian government to regulate the movement of irregular migrants to Australia through Indonesia. The cooperation also engaged the active role of UNHCR.

At the local level, for instance, Yayasan Sirih Besar is a local NGO that managed to cooperate with local governments and IOM to improve the conditions of irregular migrant workers that were deported to Tanjung Pinang. Meanwhile, at the national level, Solidaritas Perempuan has been very active in advocating policies in favour of migrant workers’ rights, especially in urging the GoI to ratify the 1990 Migrant Workers Convention.

5. **Progress Indicators and Challenges**

   **a. Progress Indicators**

   **i. Progress Indicators related to Women Migrant Workers Protection in Destination Countries**

   Since 2007, GoI has established 24 Citizen Service Units, hotline services, and associations of Indonesians living abroad that can be empowered to assist Indonesian migrant workers who are facing problems or abuse. They also provide shelters for migrant workers including access to education, health services, and assisting with the return process of migrant workers. Under the instruction stipulated in Presidential Instruction No. 6 of 2006, the Ministry of Foreign Affairs has set up a Mandatory Consular Notification Agreement in relation to criminal cases which involve Indonesian citizens, including the execution of an Indonesian in destination countries. So far, the Ministry has concluded such Agreements with the Governments of Abu Dhabi, Qatar, and Kuwait.

   In relation to the moratorium that Indonesia imposed on the sending of migrant workers from Indonesia to Malaysia, in 2009, the new draft of an Indonesia-Malaysia MoU on the sending and placement of migrant workers has included new provisions in favour of migrant workers’ rights. The new draft allows Indonesian workers to keep their passports and sets out standards on salary, working hours, and leave. The GoI intends to make the provisions pertaining to migrant workers’ rights as standard clauses to be applied to other MoUs with other destination countries.

   **National Legal Framework**

   The GoI in its 2012 report to the HRC stated that it is still pushing vigorously for the ratification of the 1990 Migrant Workers Convention by the Indonesian

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1257 Ibid, 4.
1258 Ibid, 10.
1259 Solidaritas Perempuan, Program Migrasi dan Trafficking/HIV/AIDS.
1260 IOM, 2009 Annual Report, 64
1261 Ibid.
1262 Ibid, 66.
1263 Ibid.
1264 Michele Ford and Lenore Lyons, Counter-Trafficking and Migrant Labour Activism, 7.
1265 Solidaritas Perempuan, Program Migrasi dan Trafficking/HIV/AIDS.
1266 GoI, 2012 Indonesian UPR, para. 115; see also GoI, 2012 RIPR-CEDAW, para. 100.
1267 Ibid.
1268 Ibid, para. 107.
1269 Ibid, para. 104.
1270 Ibid, para. 106.
1271 Ibid.
1272 Ibid.
Parliament.\textsuperscript{1273} In early April 2012, the Indonesian Parliament finally approved, without reservations, the GoI’s plan to ratify the 1990 Migrant Workers Convention that it had signed back in 2004.\textsuperscript{1274} Further, on 2 May 2012, Indonesia’s Parliament enacted Law No. 6 of 2012 concerning Indonesia’s ratification of the 1990 Migrant Workers Convention.\textsuperscript{1275}

To realise its long-standing commitment to extend protection to migrant workers abroad, Indonesia at present is in the process of amending the Migrant Workers Law and it has enacted Presidential Instruction No. 1 of 2010 on the Acceleration of National Development Priority and establishment of Integrated Team for the Protection of Indonesian Migrant Workers Overseas.\textsuperscript{1276} Meanwhile, in order to address the issue of Indonesian migrant workers facing death penalty in destination countries such as Saudi Arabia and Malaysia, the GoI enacted Presidential Decree No. 17 of 2011 on the Task Force for the Handling of Indonesian Citizen or Migrant Workers who Face Death Penalty Abroad to take inventory of all cases sentencing Indonesians abroad with death penalty, to monitor the legal process, and to make recommendations to the President on steps that Indonesia can take to handle such cases.\textsuperscript{1277} Lastly, The GoI is also conducting reviews of the existing legal frameworks on the protection of migrant workers in destination countries and improving MoUs between Indonesia and destination countries.\textsuperscript{1278}

The GoI realises that it is very crucial to reform the management system of migrant workers. The GoI has taken a cross-department approach to conduct this reform, involving the Ministry of Labour and Transmigration, Ministry of Home Affairs, Ministry of Law and Human Rights, Ministry of Foreign Affairs, Ministry of Transportation, and Ministry of State Enterprise to simplify the bureaucracy of placement and protection of migrant workers.\textsuperscript{1279} One of the strategies that GoI aims to implement is decentralisation of permits for PPTKIS to regional governments so that potential workers need not go to other cities.\textsuperscript{1280}

\textbf{Dealing with the Impacts of Migration}

Domestic problems followed by the rise of divorce rate in migrant workers’ families have been common issues affecting migrant workers.\textsuperscript{1281} To overcome this problem, capacity building programs have been carried out in various Marriage Advisory Bodies (Badan Penasehat Perkawinan, Perselisihan, dan Perceraian, BP4) by the Ministry of Religious Affairs to empower them to counsel migrant workers and their families.\textsuperscript{1282} Regional development programs have included programs to improve health services, controls on population movements in border regions, and empowering migrant workers in their places of origin.\textsuperscript{1283}

Women’s empowerment programs have been carried out to empower women’s economic participation in rural areas. The GoI also gives women access to microcredit/venture capital to support the development of women’s economic participation.\textsuperscript{1284} Furthermore, the Indonesian Ministry of Trade has included gender consideration in establishing “creative industry”.\textsuperscript{1285} These are some of the efforts conducted to induce growth of employment opportunities in Indonesia, including self-employment.\textsuperscript{1286}

\textbf{ii. Progress Indicators related to Children in the Context of Migration}

According to the latest report to the CEDAW Committee, the GoI stated its concern over the neglect of access to education for children in migrant workers’ families.\textsuperscript{1287} To overcome this problem, the GoI has been working with various stakeholders to improve access to education for children in migrant workers’ families, including by providing scholarships and other forms of financial assistance to support children in migrant workers’ families to attend school.\textsuperscript{1288} These efforts are part of the GoI’s broader commitment to ensure that children in migrant workers’ families have access to education regardless of their country of origin or destination.

\begin{itemize}
  \item \textsuperscript{1273} GoI, 2012 Indonesian UPR, para. 116.
  \item \textsuperscript{1274} Ruslan Burhani, DPR Setujui Ratifikasi Konvensi Buruh Migran (DPR Approves the Ratification of Migrant Workers Convention), Antaranews, 9 April 2012, accessible on 16 April 2012; see also The Jakarta Globe, Indonesia Approves Migrant Workers Convention, 12 April 2012, accessible on 16 April 2012; HRW, Indonesia: Parliament Approves Migrant Workers Convention, 12 April 2012, accessible on 16 April 2012.
  \item \textsuperscript{1275} Law No. 6 of 2012 on the Ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, State Gazette 2012:115, 2 May 2012.
  \item \textsuperscript{1276} GoI, 2012 Indonesian UPR, para. 114; see also GoI, 2011 IPR-CEDAW-Response, para. 98.
  \item \textsuperscript{1277} Komnas Perempuan, 2011 Note, 34.
  \item \textsuperscript{1278} GoI, 2012 Indonesian UPR, para. 114; see also GoI, 2011 IPR-CEDAW-Response, para. 98.
  \item \textsuperscript{1279} GoI, 2011 IPR-CEDAW, para. 122.
  \item \textsuperscript{1280} Ibid.
  \item \textsuperscript{1281} GoI, 2011 IPR-CEDAW, para. 119.
  \item \textsuperscript{1282} Ibid.
  \item \textsuperscript{1283} Ibid.
  \item \textsuperscript{1284} GoI, 2011 IPR-CEDAW-Response, para. 103.
  \item \textsuperscript{1285} Ibid, para. 105.
  \item \textsuperscript{1286} Ibid, para. 103 – 104.
\end{itemize}
to education for undocumented migrant workers.\textsuperscript{1287} To rectify this situation, the Ministry of National Education has engaged the cooperation of various ministries to open services for undocumented children of Indonesian migrant workers who live in Malaysia and areas bordering Indonesia and Malaysia.\textsuperscript{1288}

b. Challenges

i. Regional Challenge

Recently, the GoI urged ASEAN Member States to implement the 2007 Cebu Declaration concerning the protection of migrant workers in Southeast Asia.\textsuperscript{1289} Both sending and destination countries in Southeast Asia have yet to uphold their commitment under the 2007 Cebu Declaration to take into account the fundamental rights of migrant workers and their families.\textsuperscript{1290} This has caused a disharmonious relation between sending and destination countries in the region, as reflected in the banning of sending workers from Cambodia and Indonesia to Malaysia.\textsuperscript{1291}

ii. Protection of Women Migrant Workers

The GoI has acknowledged that one of the biggest challenges in the protection of the rights of migrant workers, especially women migrant workers, is that many existing national legislative and policy frameworks are incapable of providing sufficient protection for migrant workers.\textsuperscript{1292} Furthermore, the GoI has also claimed that Indonesia’s bargaining position with destination countries is weak, which resulted in ineffective policies to protect Indonesian migrant workers during transit, placement in destination countries, and upon return to Indonesia.\textsuperscript{1293}

The UN Special Rapporteur on the Human Rights of Migrant noted in 2007 that limited information on movements to and from Indonesia, including the substantial flow of undocumented people in and out of Indonesia, have posed a big challenge in quantifying the scale of migration movements from and to Indonesia.\textsuperscript{1294} Furthermore, Komnas Perempuan has argued that Indonesia needs to develop a comprehensive case-handling system to keep track of occurrences of violence and exploitation of migrant workers, especially migrant domestic workers.\textsuperscript{1295}

CARAM Asia reports that many migrant workers are not well informed of their rights to get insurance coverage or that they can initiate obtaining it by submitting a report to the Worker’s Lounge at the special terminal for migrant workers in several international airports in Indonesia.\textsuperscript{1296} Most of them do not possess the necessary documents to initiate the compensation process.\textsuperscript{1297} CARAM Asia observed that this occurs due to PPTKIS’ negligence in not properly informing migrant workers to apply for insurance and not giving them original copies of all documentation related to their employment, including insurance policies.\textsuperscript{1298}

In relation to Indonesia’s recent ratification of the 1990 Migrant Workers Convention, the Study notes that Indonesia stands to face another huge challenge as an impact of this ratification: the obligation to harmonise its migrant worker-related legislation to be in compliance with the provisions. The Study also considers another possible challenge with regard to the issue of effective implementation of the 1990 Migrant Workers Convention, which is the long-standing debate on the issue of direct implementation of international law in Indonesia’s domestic legal system. If the GoI does not address this challenge in a swift manner then, as in the case of many other international treaties that Indonesia has ratified or acceded to, effective internal implementation of the 1990 Migrant Workers Convention will be hard to realise.

The role of local governments is vital to the protection of migrant workers.\textsuperscript{1299} There are only seven regional regulations out of 530 provinces and regencies/municipalities in Indonesia on the protection of migrant

\textsuperscript{1287} GoI, 2011 IPR-CEDAW, para. 119.
\textsuperscript{1288} Ibid.
\textsuperscript{1290} Ibid.
\textsuperscript{1291} Ibid.
\textsuperscript{1292} GoI, 2011 IPR-CEDAW, para. 99.
\textsuperscript{1293} Ibid.
\textsuperscript{1294} Jorge Bustamante, 2007 HRM Report, para. 4.
\textsuperscript{1295} GoI, 2012 Indonesian UPR, para. 59.
\textsuperscript{1296} CARAM Asia, Reality Check!, 23.
\textsuperscript{1297} Ibid.
\textsuperscript{1298} Ibid.
\textsuperscript{1299} Ibid, para. 119.
workers. Komnas Perempuan stated that Regional Regulations on the protection of migrant workers are strongly needed to ensure that migrant workers have a legal umbrella on the protection of their rights, starting from their place of origin. Additionally, according to BNP2TKI, 80% of the problems faced by migrant workers happened in their place of origin; yet the present central monitoring mechanism is at a disadvantage when it comes to monitoring at the local level. Moreover, the role of regional governments remain largely undefined under the current legal framework.

iii. Protection of Children in the Context of Migration

In Indonesia, children of migrants that are left behind currently receive little attention. Here, there may be reason to put children of labour migrants on to the agenda of governmental and non-governmental organizations. Any decision to do so should preferably be based on more information than is currently available.

6. Gaps and Recommendations for Further Studies

a. Gaps in Indonesia’s Legal Framework and Policies

Despite GoI’s endeavours to tackle the issue of migration, existing literature on migration affecting Indonesian women and children shows that Indonesia’s national legal framework on migration focuses heavily on labour migration phenomenon. Being one of the biggest source countries for unskilled labour, this course of action is understandable; however, the existing legal framework is lacking in substance to provide comprehensive protection to Indonesian migrant workers in all stages of migration.

b. Gaps in the Literatures

The reports presented by the GoI to UN human rights mechanisms and other studies on migration are mostly concentrated on labour migration from Indonesia. Existing studies take into account issues such as abuse and discrimination against migrant workers in some destination countries, irregular migration, legal framework and the role of government’s institutions in providing protection to migrant workers, remittances, and the role of decentralisation.

Notwithstanding the growing body of literatures in the context of migration in Indonesia, some information is still lacking. Based on the literature surveyed by this Study, the Study identifies a number of points that are not yet known:

1. Studies related to abuse of migrant workers allocate considerable attention to the abuse of women migrant workers, however little is known on abuse of children in the context of migration. Furthermore, whilst data and estimates are available on women migrant workers, the data on children migrating for work or to follow their parents is scanty at best. Information is also scarce in relation to the treatment of migrant workers’ children who are born in destination countries (Malaysia might not be the only place where violations of the rights of children of migrant workers occurs);

2. Literature on irregular migration, policies and legal framework studies, and decentralisation generally lack a gender-disaggregate focus;

3. Especially on decentralisation, little is explained by existing studies on what would be the positive/negative effects of the role of local governments, specifically in the protection of women and children in the context of migration;

4. Information on the laws and policies of destination countries concerning the treatment and protection of migrant workers is scarce;

5. Little attention is given to the impact of migration on children left by their migrant parents. Information is also lacking with regard to women migrant workers’ children who were conceived because of rape. Most importantly, there is little information on whether children left by their parents suffered abuse and neglect during the absence of their parents or whether this phenomenon contributes to children living in the streets;

6. Many reports put forward estimates on the number of irregular migrants from Indonesia, but the methodologies that they used to arrive at such estimates are unknown;

7. The Study found it difficult to identify comprehensive information on the various roles of non-state actors in regard to the protection of women and children in

1300 Palmira Permata Bachtiar, The Governance of Indonesian Overseas Employment, 45
1301 Ibid.
1302 Ibid, 34.
1303 John Bryant, Children of International Migrants, 15.
the context of migration;

8. Apart from the focus on labour migration, little attention has been given to migration of women and children for other purposes. For example, there is little information available on women migrating for marriage (and not being victims of trafficking in persons) or children migrating for the purpose of adoption or following their parents;

9. Literature on SOM through Indonesia is scant and little is known from the Indonesian perspective about the journey of asylum seekers and refugees who flee through Malaysia and Indonesia to find refuge in Australia. Additionally, nowhere in the literature reviewed did the Study come across information of SOM from Indonesia to other countries nor information on whether or not the SOM through and from Indonesia involves the service of international organised groups of migrant smugglers;

10. The subjects of regional and bilateral cooperation are hardly discussed in the existing literature.

c. **Recommended Areas/Subjects for Further Studies**

Mindful of the gaps in the literatures as identified above, the Study suggests stakeholders or other interested parties to undertake further studies in the following areas/subjects:

1. Reliable methodologies to ground reasonable estimates of the number of irregular migrants from Indonesia, focusing on women and children;

2. Information on Indonesian migrant women and children who are involved in legal cases in the destination countries and the treatment they received during the legal process, both from the authorities of the destination countries and from the Indonesian Embassies/Consulates;

3. Children migrating from Indonesia for the purpose of labour migration or children who migrate on their own;

4. Women and children migrants who migrate for purposes other than labour migration (e.g., Indonesian women migrating for the purpose of marrying foreigners, children migrating for the purpose of following their parents or to be united with their foreign parents or for the purpose of adoption);

5. Treatment of children of Indonesian migrants, especially Indonesian migrant workers, who were born abroad, both from Indonesian parents and mixed nationalities, and the prevalence of violence and discrimination against these children;

6. Treatment of children of women migrant workers who were conceived as a result of rape in all types of scenarios and the prevalence of violence and discrimination against these children;

7. Prevalence of violence, neglect, and discrimination against children of Indonesian migrant workers’ who are left behind and impacts of migration on the children of Indonesian migrant workers’ left in Indonesia;

8. Prevalence of violence and discrimination against asylum seekers and refugees smuggled to Australia and prevalence of SOM from Indonesia to other countries. Future studies can investigate, among other things, the Indonesian legal framework to prevent and protect victims of SOM, the prevalence of international organised groups of migrant smugglers, assessment of the implementation of Indonesian legislations and policies to tackle and prevent SOM, and assessment on international and regional collaboration to tackle and prevent SOM, etc.;

9. Review of the Indonesian legal framework and policies relating to migration, not only limited to the subject of labour migration, but also including updates on Indonesia’s endeavours in protecting women and children in the context of migration;

10. Review of the destination countries’ legal framework and policies in providing protection to migrants including guarantees to access to justice;

11. Review of regional and bilateral efforts on the protection of women and children in the context of migration;

12. Review of national legislations on regional autonomy/decentralisation and the role that regional governments can play in providing protection to migrant workers, especially women and children in the context of migration. This includes research on the importance of adopting provincial and Municipality/Regency regulations on the protection of migrant workers and the impacts of such regional regulations; and

13. Extensive mapping of the role of non-state actors in assistance to women and children victims of violence and discrimination in the context of migration, prevention of violence and discrimination against women and children in the context of migration, and monitoring and cooperation with the GoI on the protection of women and children in the context of migration.
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