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# **Indonesia**

**Briefing to the UN Committee on the  
Elimination of Discrimination against  
Women: Women and girl domestic  
workers**



16 July 2007  
AI Index: ASA 21/007/2007

INTERNATIONAL SECRETARIAT, 1 EASTON STREET, LONDON WC1X 0DW, UNITED KINGDOM

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Summary

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This briefing to the Committee on the Elimination of Discrimination against Women focuses on the lack of protection of women and girl domestic workers from gender-based violence and their discrimination in the field of employment, health and education in Indonesia. While both male and female domestic workers suffer from discrimination, it affects women and girls disproportionately, as women and girls form the overwhelming majority of Indonesia's estimated 2.6 million domestic workers - about 95%. Many of them suffer from economic exploitation and poor working conditions as well as gender-based discrimination. Many are subjected to physical, psychological and sexual violence. Some are even killed. This situation partly results from discriminatory employment legislation and a lack of sufficient state mechanisms to prevent and punish violence against women domestic workers.

In February 2007, Amnesty International issued a report entitled "*Exploitation and abuse: the plight of women domestic workers*" (AI Index: ASA 21/001/2007), where it highlighted cases of physical, sexual and psychological violence against women and girl domestic workers in Indonesia. Such cases of abuse are under-reported to the police, mirroring a pattern which is prevalent in cases of violence against women in Indonesia, and rarely reach the public eye. Isolated from their family and friends, women domestic workers risk losing their jobs if they speak out, a risk most of them do not feel in a position to face. Their fear, coupled with the failure of government authorities to protect domestic workers' rights and to prevent, investigate and punish abuses committed against them leaves much of the violence and other abuses perpetrated against such women and girls in the shadows.

Women domestic workers are not protected by current legislation safeguarding workers' rights, in particular the 2003 Manpower Act (No.13/2003, *Undang-Undang tentang Ketenagakerjaan*). The Manpower Act itself discriminates against domestic workers - virtually all women and girls - and leaves them without legal protection of their workers' rights, such as reasonable limitation on working hours, remuneration adequate to secure a life

with dignity, and standards providing for rest and holidays. It results in women and girl domestic workers living and working in abusive and inadequate conditions.

This submission does not address all of Amnesty International's concerns related to the Convention, but focuses particularly on:

1. The obligation of the state party to prevent and punish all forms of violence against women, as set out in the Committee's General Recommendation 19, including violence against women domestic workers by non state actors which the state has failed to exercise due diligence, including in preventing, investigating and prosecuting suspected perpetrators;
2. The obligation of the state party to take all appropriate measures to eliminate discrimination against women and girl domestic workers in the field of employment, health and education, as set out in CEDAW articles 10, 11 and 12.

<b>KEYWORDS:</b>
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This report summarizes a 15-page document (5,446 words): *Indonesia, Briefing to the UN Committee on the Elimination of Discrimination against Women: Women and girl domestic workers* (AI Index: 21/007/2007) issued by Amnesty International in July 2007. Anyone wishing further details or to take action on this issue should consult the full document. An extensive range of our materials on this and other subjects is available at <http://www.amnesty.org> and Amnesty International news releases can be received by email:

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## TABLE OF CONTENTS

1. Child Labour and right to education (Article 10) .....	2
2. Violence against women domestic workers by non state actors which the State has failed to prevent or punish with due diligence (General Recommendation 19)..	4
2.1 State failure to prosecute cases of violence against domestic workers.....	5
2.2 Limited victim protection mechanisms under criminal law .....	7
3. Discrimination against women and girl domestic workers in the field of employment (Article 11).....	9
3.1 Lack of legal protection under national legislation.....	10
4. Lack of access to information about sexual and reproductive rights (Article 12 – access to health) .....	13



# Indonesia

## Briefing to the UN Committee on the Elimination of Discrimination against Women: Women and girl domestic workers

Amnesty International welcomes the steps taken by the Government of Indonesia to fulfil its treaty obligations as a state party to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW or the Convention), including the submission of its combined 4th and 5th periodic report to the Committee on the Elimination of Discrimination against Women (the Committee). The organization sees it as an integral part of the country's commitment "*to actively support national, regional and international processes that promote and protect women's rights and (...) to intensify its attempts in eliminating discrimination against women and in applying zero tolerance for violence against women.*"<sup>1</sup>

Amnesty International welcomes the progress made by the Indonesian government to fulfil its pledge to combat violence against women especially through the recent passing of important legislations - a Domestic Violence Law and anti-trafficking legislation<sup>2</sup> were passed respectively in 2004 and 2007. However, the organization remains concerned that state officials are still failing to act with due diligence and to take appropriate measures to prevent and punish all forms of violence against women.

This briefing focuses on the lack of protection of women and girl domestic workers from gender-based violence and their discrimination in the field of employment, health and education. It also highlights their restricted access to education especially when they start work at the age of 12 or 13, and their lack of information on sexual and reproductive rights. While both male and female domestic workers suffer from discrimination, it affects women and girls disproportionately, as women and girls form the overwhelming majority of Indonesia's estimated 2.6 million domestic workers - about 95%.<sup>3</sup> Many of them suffer from economic exploitation, poor working conditions as well as gender-based discrimination. Many are subjected to physical, psychological and sexual violence. Some are even killed. This situation partly results from discriminatory employment legislation and a lack of sufficient state mechanisms to prevent and punish violence against women domestic workers.

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<sup>1</sup> Note verbale dated 12 April 2007 from the Permanent Mission of Indonesia to the United Nations addressed to the President of the General Assembly, UN Doc. A/61/855. 13 April 2007.

<sup>2</sup> Local non governmental organizations welcomed the participative dialogue around the passing of the law and the inclusion of a number of important aspects including a definition of sexual exploitation, the inclusion of provisions on trafficking abroad and impunity for victims. They however pointed out at the lack of sufficient provisions on child trafficking. See: <http://www.lbh-apik.or.id/konpers%20trafficking.htm>.

<sup>3</sup> The percentage of male domestic workers remains marginal. See ILO, Bunga-bunga di Atas Padas: Fenomena Pekerja Rumah Tangga Anak Di Indonesia (Flowers on the Rock: Phenomenon of Child Domestic Workers in Indonesia), 2004.

This submission does not address all of Amnesty International's concerns related to the Convention, but focuses particularly on:

1. The obligation of the state party to prevent and punish all forms of violence against women, as set out in the Committee's General Recommendation 19, including violence against women domestic workers by non state actors;
2. The obligation of the state party to take all appropriate measures to eliminate discrimination against women and girl domestic workers in the field of employment, health and education, as set out in CEDAW articles 10, 11 and 12.

## **1. Child Labour and right to education (Article 10)**

Domestic workers tend to start very young – when they are 12 or 13 years old. According to the Javanese or “*ngenger*” tradition, it is normal to send children from poorer backgrounds to wealthier members of their extended family, or to people who will commit to providing the child with a decent education and a place to live.<sup>4</sup> In exchange, the child helps with household work. In public perception, domestic workers are considered members of the family and not employees.

Although some of the girls and women interviewed by Amnesty International<sup>5</sup> wanted to continue secondary schooling, they were forced to drop out at the age of 12 or 13, due to limited financial means. Many told Amnesty International that their families could no longer pay the required tuition fees and other related costs.<sup>6</sup> A few of them reported that the 1998 economic crisis had further worsened their situation and compelled them to work earlier than expected to help their parents or allow their younger siblings to go to school.

Indonesia is a state party to the Convention on the Rights of the Child (CRC) which guarantees the right to education regardless of a child's sex.<sup>7</sup> Indonesia's own law recognizes

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<sup>4</sup> See Indonesian Ministry of Women's Empowerment, *Panduan Kebijakan Perlindungan Pekerja Rumah Tangga Anak* (Policy pilot for the protection of child domestic workers), 2006, p. 16.

<sup>5</sup> An Amnesty International delegation visited the province of Java, Indonesia in February-March 2006, and met 40 women domestic workers, community representatives, medical and legal practitioners, civil society organizations, local and international NGOs, UN agencies, and representatives of the police and local government. During their visit to Indonesia Amnesty International delegates also met government representatives in Jakarta.

<sup>6</sup> In Indonesia, there is no legal guarantee of free education. The government acknowledges that not all children are able to attend secondary school because of relatively high schooling fees, inaccessibility and a selection system based on catchment areas. See Committee on the Right of the Child, Second Periodic Report of State Parties due in 1997: Indonesia, UN Doc. CRC /C/65/Add.23, 7 July 2003, para. 321.

<sup>7</sup> See art 2(1) and 28.

the equal right of boys and girls to education.<sup>8</sup> However, a common belief that boys have a higher status than girls and will be better able to make use of the education they receive means that low attendance rates for girls are not necessarily regarded as a problem. Although Indonesian figures on gender parity in education compare favourably with the global average,<sup>9</sup> the Indonesian government acknowledges in their combined fourth and fifth periodic report to CEDAW that girls have higher rates of illiteracy (on average girls and women are twice as much likely to suffer from illiteracy than men<sup>10</sup>) and lower enrolment and participation in higher education than boys. They also admit that the curriculum and teaching methods reflect gender bias. The Indonesian government reports that they have launched a few initiatives in the field of education to counter this trend, which Amnesty International welcomes. They have taken special measures such as quotas, fellowships, subsidies and guaranteed admission for girls to schools and institutions of higher education. They have also undertaken to revise textbooks, curricula, teaching and learning methods to make them more sensitive to gender.

Many girls are forced by their economic condition and other factors to work before they reach the age of 15, losing – sometimes for life – opportunities for education. Similarly, women who marry young are likely to end their education early, thereby limiting their job opportunities. This situation is further worsened by the high level of unemployment in Indonesia<sup>11</sup> which strikes girls and women more than men. According to government statistics, the unemployment rate was of almost 14% for women and girls in 2006 against almost 9% for men and boys.<sup>12</sup> Once women and girls have started to work as domestic workers, they will find few other job prospects along the way.

That women and girls in Indonesia start work at such an early age clearly violates international treaties to which Indonesia is a state party. In 1999, Indonesia ratified ILO Convention No. 138 concerning Minimum Age for Admission to Employment, and declared the minimum age for employment in the country be 15 years old.<sup>13</sup> Although, according to the declaration which Indonesia made upon ratifying that Convention, free and compulsory education should be guaranteed in Indonesia until the general minimum age of employment,

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<sup>8</sup> Art 5 of Law No. 20/2003 on the National Education System.

<sup>9</sup> See: <http://millenniumindicators.un.org/unsd/mdg/SeriesDetail.aspx?srid=611&crd=>

<sup>10</sup> Indonesian bureau of statistics (BPS, *Statistik Kesejahteraan Rakyat*), Percentage of illiteracy population 10 years above by province and sex, 2004.

<sup>11</sup> In February 2005, the unemployment rate was over 10 per cent, and over 28 per cent for 15-24 year olds. See Preliminary results from a National Labour Force Survey reported in: World Bank, *Indonesia: Economic and Social Update*, October 2005, p.16.

<sup>12</sup> Data – Baseline and Development Program Achievement 2000-2009, BPS, in “*Indonesia: Annexes to the responses to the list of issues and questions with regards to the consideration of the fourth and fifth period report*”, CEDAW/C/IDN/Q/5/Add.1, 2007.

<sup>13</sup> The Convention provides for state parties to declare a minimum age so that “no one under that age shall be admitted to employment or work in any occupation” (Art 1).

which is 15,<sup>14</sup> an estimated 1.8 million children of primary school age (7-12 years old), and 4.8 million children age 13-15 years, remain outside schools.<sup>15</sup>

Amnesty International recommends the following to the Indonesian authorities:

- *Ensure that the law explicitly prohibits the employment of children below the age of 15 as domestic workers;*
- *Take measures to ensure that education is free and compulsory for all until the age of 15 years old;*
- *Take measures to ensure employers respect domestic workers' enjoyment of the right to education;*
- *Take positive measures to enable and assist domestic workers to enjoy the right to education.*

## **2. Violence against women domestic workers by non state actors which the State has failed to prevent or punish with due diligence (General Recommendation 19)**

In its report entitled "*Exploitation and abuse: the plight of women domestic workers*" (AI Index: ASA 21/001/2007), Amnesty International highlighted cases of physical, sexual and psychological violence against women and girl domestic workers in Indonesia. Cases were documented in which domestic workers reported being sexually harassed or raped by their employer. Many domestic workers who live with their employer do not have their own room to sleep in, or their room does not have a lock, or sometimes even a door. Domestic workers report being subjected to physical violence, such as being beaten with a stick, a broom, or an iron bar. In some cases domestic workers have been killed by their employers. In May 2006, a man was arrested for "torturing to death" a 20-year-old domestic worker in his employment.

Such cases of abuse are under-reported to the police, mirroring a pattern which is prevalent in cases of violence against women in Indonesia, and rarely reach the public eye.<sup>16</sup> Isolated from

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<sup>14</sup> Article 2(3) of ILO Convention 138 provides that "[T]he minimum age specified... shall not be less than the age of completion of compulsory schooling and, in any case, shall not be less than 15 years." When Indonesia ratified ILO Convention 138, it specified 15 as that age, which means that the general minimum age of employment is 15 and free and compulsory education should be guaranteed in Indonesia until the age of 15.

<sup>15</sup> The National Economic Survey, 2002, quoted in UNICEF, "Fact sheet – girls' education in Indonesia", 2003, available at [http://www.unicef.org/indonesia/girls\\_education\\_fact\\_sheet\\_final\\_ENG\\_1\\_.pdf#search=%22girls%20indonesia%20education%2015%20years%20old%22](http://www.unicef.org/indonesia/girls_education_fact_sheet_final_ENG_1_.pdf#search=%22girls%20indonesia%20education%2015%20years%20old%22).

their family and friends, women domestic workers risk losing their jobs if they speak out, a risk most of them do not feel in a position to face. Their fear, coupled with the failure of government authorities to protect domestic workers' rights and to prevent, investigate and punish abuses committed against them leaves much of the violence and other abuses perpetrated against such women and girls in the shadows.

## 2.1 State failure to prosecute cases of violence against domestic workers

Successful prosecutions of domestic violence and other forms of gender-based violence against women are relatively rare considering the scale of the phenomenon.<sup>17</sup> Many women are reluctant to file formal complaints. The few who do frequently retract their statements so that many cases never reach the courts. Women domestic workers' reluctance to report incidents to the police is grounded in cultural, economic and educational factors.

First, women may be ashamed to disclose incidents, especially of sexual harassment or violence, to the police. One domestic worker interviewed explained that she did not go to the police because she thought they were all male. In Indonesia, it is still taboo to speak openly about sex, and attitudes women and girls should adopt about sexual relationships are carefully coded. Extra-marital relationships are criminalised in law. Article 254 of the Criminal code provides that any married man or woman who commits adultery or who takes direct part in a sexual act knowing that the partner is married is to be punished by a maximum imprisonment of nine months. This means that women domestic workers may be reluctant to report sexual abuse if they are married themselves or if the perpetrator of the abuse was married him/herself at the time of the incident for fear of being themselves accused of breaking the law. Although recent discussions over the controversial pornography law have shown an increased divide within Indonesian society over these issues, a conservative attitude nurturing gender stereotypes whereby a woman is confined in the private sphere and should refrain from having sexual relationships before marriage still prevails, especially among the least educated. In this context, female domestic workers may feel too intimidated to disclose particularly intimate incidents to the police, a male dominated institution. Amnesty International notes that this reluctance by women domestic workers to testify may be overcome, or reduced, if

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<sup>16</sup> In the 2007 study of the National Commission on Violence against Women (Komnas Perempuan), 74 per cent of reported cases of violence against women occurred in the household environment, and over 82 per cent of victims were housewives. Violence against domestic workers remains poorly documented and reported; only 0.4 per cent of total reported cases of domestic violence were reported. See Komnas Perempuan, "*Di rumah, pengungsian dan peradilan: KTP dari wilayah ke wilayah*", <http://www.komnasperempuan.or.id/public/Catatan%20Tahunan%20Kekerasan%20Terhadap%20Perempuan%202007.pdf>.

<sup>17</sup> *Ibid.*

there was more awareness about the recently established gender desks exclusively staffed by female police officers in police stations.<sup>18</sup>

As recommended by CEDAW General Recommendation 19, effective measures should be taken by the government to overcome attitudes and practices that perpetuate violence against women. In particular the government should introduce education and public information programs that reach out to domestic workers.

Secondly, domestic workers may fear losing their jobs or not finding other jobs afterwards if they speak out. This is especially true if the case goes to court, as the process may take a long time and discredit the worker in the eyes of her current and any potential future employers. Additionally, the legal process can be time consuming, making it difficult for the domestic worker to continue working while going through court proceedings.

Lastly, victims may not be aware that domestic violence is a crime. Article 12 of the Law Regarding Elimination of Violence in the Household (Domestic Violence Act) (Law 23/2004) provides that the government is to “*organize communication, information, and education regarding violence in household; organize socialization and advocacy regarding violence in household; and organize gender-sensitive education and training on the issue of violence in household and shall establish gender sensitive service standard and accreditation*”. However, much remains to be done to publicize the law and to implement its awareness-raising provisions. The Domestic Violence Act remains poorly known, even among judges, and domestic workers are among the last to be informed about their rights in this regard. An overwhelming majority of the domestic workers interviewed by Amnesty International delegates had not heard about the Domestic Violence Act and did not know it was applicable to their situations.

Cases of violence and other abuses against domestic workers reported to the police rarely make it to court. Most are instead settled through “mediation” outside the scope of the legal system. Domestic workers and employers come to an agreement, usually financial, to resolve the matter in private and any criminal charges pending against the perpetrator are dropped. Amnesty International was told that these practices are facilitated to some degree by the higher status and financial weight of employers compared to those of domestic workers. While employers are often in a strong position to bargain on a financial amount to settle the case and thereby avoid criminal punishment, domestic workers have little option but to accept what their employer offers. With corruption rife across the judiciary and police system, these practices mean impunity for perpetrators and lack of access to justice for victims, potentially fuelling a cycle of abuse whereby perpetrators go free and commit abuses over again.

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<sup>18</sup> The police have established 237 “special treatment units” or “women's desks” throughout the country where female officers receive reports from women and child victims of sexual assault and trafficking and where victims find temporary shelter. See answer 12 in CEDAW/C/IDN/Q/5/Add.1, 2007.

If a case goes to court, domestic workers may still face obstacles. There may be some reluctance among police, prosecutor's offices, judges and lawyers to tackle the case due to a persistent belief that domestic violence remains a private issue which does not require state intervention. Many believe that the victim herself, rather than the perpetrator, is responsible for the violence she endured, having provoked such violence by not carrying out her work properly.<sup>19</sup> According to local NGOs these obstacles to victims' access to justice are further exacerbated by a lack of respect for domestic workers within the judiciary itself. Domestic workers are victims of their low status within Indonesian society. Poorly educated, unskilled, from poor backgrounds, conducting menial tasks and without career prospects, they are often considered and treated as second-class citizens. Their lower status in Indonesian society is also explained by gender prejudices and stereotypes which exist in relation to their work. Domestic work is seen as less important than other types of work as women have been doing it without formal payment for centuries.<sup>20</sup>

In its concluding observations to the consideration of Indonesia's second and third periodic report at its 18<sup>th</sup> session in February 1998, the Committee on the Elimination of Discrimination against Women emphasised "the need for the gender sensitization of authorities, including the judiciary, law enforcement officers, lawyers, social workers, health professionals and other who are directly involved in combating violence against women".<sup>21</sup>

Amnesty International recommends the following to the Indonesian authorities:

- ***Publicize the Domestic Violence Law and relevant services, such as the recently established gender desks in police stations, to domestic workers, their employers and recruitment agents, including through the media;***
- ***Conduct training to ensure that legal practitioners, including judges and prosecutors, and police are fully briefed about the content and applicability of the Domestic Violence Law;***
- ***Make police aware that their decisions to pursue an investigation should not be affected by whether or not compensation has been offered or accepted.***

## **2.2 Limited victim protection mechanisms under criminal law**

Until very recently, the absence under Indonesian law of protections for victims and witnesses during the investigation of a criminal offence and before, during, and after trial, has proved a substantial impediment to the effective investigation and prosecution of crimes involving

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<sup>19</sup> See Legal Aid Foundation Apik website, at <http://www.lbh-apik.or.id/gd-legislative%20advocacy.htm>.

<sup>20</sup> See 2.1 Social and Cultural Context in AI document "Exploitation and abuse: the plight of women domestic workers" AI Index ASA 021/001/2007.

<sup>21</sup> Report of the Committee on the Elimination of Discrimination against Women, UN Doc. A/53/38/Rev.1 (1998), para. 303.

violence against women. These crimes have been difficult to prosecute successfully in the past because, among other things, they often occur in private where no witnesses are present, and victims are often reluctant to report the crime or to testify in court for fear of reprisals and stigmatization.

Protections available to victims and witnesses have significantly increased in the wake of the passing of a Witness Protection Act (Law 13/2006), and of the Domestic Violence Act. The Domestic Violence Act details extensively the protections and services to be provided to victims of domestic violence. The Witness Protection Act and the Domestic Violence Act may be used in conjunction with one another.<sup>22</sup>

However, there are still deficiencies in the legislation in Indonesia in addressing the particular challenges of investigating gender-based crimes, including crimes involving sexual violence. These, in conjunction with limitations in the provisions of services, will negatively impact on the ability of a victim or witness to avail themselves of protection and services.

The Criminal Procedure Code (Kitab Undang-Undang Hukum Acara Pidana – KUHAP) was under revision at time of writing this briefing. Amnesty International is concerned that the current draft of the revised KUHAP requires that a victim or witness be present in court to make their testimony, in contradiction with the provisions in the Witness Protection Act abovementioned. The Witness Protection Act will remain applicable despite this incongruity, but nevertheless the revised KUHAP must be amended to avoid any contradiction and confusion between the two laws. In particular, the revised KUHAP must follow the Witness Protection Act in permitting victims or witnesses, where a court has determined that this is necessary for their protection or for other valid reasons, including in cases of sexual violence, to give their evidence *in camera* or via video or audio-link in a manner that fully respects the right of the accused to a fair trial.

In addition, the revised KUHAP must be amended to contain sufficient provisions designed to address the challenges of investigating gender-based crimes, including crimes involving sexual violence. For example the revision of the KUHAP must include provisions banning courts from drawing inferences about the credibility, character or predisposition to sexual availability of a victim based on prior or subsequent sexual conduct of the victim. The revision must also include provisions that regulate the admission of evidence regarding the consent or lack thereof of the victim in a crime of sexual violence. A closed hearing to consider the admissibility or relevance of such evidence should be available as of right. Furthermore the revision should expressly provide that, while a court must not convict a defendant unless satisfied of his or her guilt beyond reasonable doubt, corroboration is not required for any crime, particularly crimes of sexual violence.

The Domestic Violence Act provides that various services be offered to victims or witnesses

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<sup>22</sup> Should they contradict each other, the most specific law relevant to that crime will take precedence.

of domestic violence, including that they be provided with health care and taken to a safe house or an alternative dwelling. Although government-sponsored and NGO-run crisis centres and shelters providing support and secure accommodation for domestic worker victims of violence are available in Jakarta and other major cities they are not widely available in more isolated areas, especially outside Java. There are also only a limited number of hospitals which have expertise in dealing with violence against women, especially outside major cities. Health providers Amnesty International met in Jakarta explained that currently treatment and counselling are available for free in some hospitals for victims of domestic violence. Although these are positive steps, Amnesty International is concerned that the limited provision of the services required by victims of domestic violence may mean that many domestic workers do not have access to these services. Domestic worker victims of domestic violence may also be impeded in accessing these services due to their geographical isolation, or may simply not know that the services exist.

Amnesty International recommends the following to the Indonesian authorities:

- *Courts must employ all relevant provisions available in the Witness Protection Act and the Domestic Violence Act to minimise the trauma and fear experienced by victims and witnesses, and to provide appropriate protection for victims and witnesses;*
- *Ensure that treatment and counselling services for victims of violence against women are available in hospitals and other medical institutions throughout the country, and that these services are well publicised and accessible to domestic workers.*

### **3. Discrimination against women and girl domestic workers in the field of employment (Article 11)**

In its 2007 report on women domestic workers, Amnesty International compiled information on a number of aspects whereby Indonesia does not fulfil its duty to protect these women from discrimination in the field of employment.

Women domestic workers are not protected by current legislation safeguarding workers' rights, in particular the 2003 Manpower Act (No.13/2003, *Undang-Undang tentang Ketenagakerjaan*). The Manpower Act itself discriminates against domestic workers - virtually all women and girls - and leaves them without legal protection of their workers' rights, such as reasonable limitation on working hours, remuneration adequate to secure a life with dignity, and standards providing for rest and holidays. It results in women and girl domestic workers living and working in abusive and inadequate conditions.

Domestic workers often work very long hours and are allowed little or no rest. The workers interviewed by Amnesty International worked an average of 70 hours a week, but many

worked a lot more. The majority of domestic workers do not have a day off during the week. Many domestic workers are not permitted to take holiday leave, including days off to observe public holidays. Despite these very long hours of work, with little rest, domestic workers frequently report that their employer has withheld their salary, often for months at a time, and, even more frequently, has paid them significantly less than was agreed at the time of employment. Even the agreed salaries are usually much less than the minimum wage in Indonesia. Many domestic workers also reported severe restrictions to their freedom of association. Some are prevented from joining meetings and other social events outside the home.<sup>23</sup>

### **3.1 Lack of legal protection under national legislation**

#### ***Manpower Act***

In 2003 the Indonesian government passed the Act Concerning Manpower (Manpower Act, Law 13/2003) to protect the rights and interests of both employers and employees. The Act contains provisions for key workers' rights including minimum wage and equal remuneration, limitations on working hours, leave, and the right to join a trade union. It also contains provisions for the specific needs of women, including maternity leave, and the regulation of child labour. It enunciates arrangements for termination of employment and for industrial dispute resolution, and specifies criminal and administrative sanctions for the violation of provisions in the Act. However, despite the welcome expansiveness of the sentiments in the preamble,<sup>24</sup> the rights provided for in the Act are not extended to all workers in Indonesia, and domestic workers are among those excluded from its protections. Similarly, the provisions in the Manpower Act relating to dispute resolution mechanisms do not apply to domestic workers.

The Manpower Act makes a distinction between two entities which employ people – “employers” (*pemberi kerja*) and “entrepreneurs” (*pengusaha*). An “employer” is defined as

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<sup>23</sup> This situation is often compounded by restrictions on freedom of movement. Some domestic workers were not permitted to leave their employers' house, and some reported being locked into their rooms at night by their employer.

<sup>24</sup> “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Protection of workers is intended to safeguard the fundamental rights of workers and to secure the implementation of equal opportunity and equal treatment without discrimination on whatever basis in order to realize the welfare of workers/labourers and their family by continuing to observe the development of progress made by the world of business.” Act of the Republic of Indonesia No. 13/2003 Concerning Manpower (Manpower Act), 25 March 2003. English translation available at the Ministry of Manpower and Transmigration website, [http://www.nakertrans.go.id/perundangan/undang-undang/UU-13\\_eng.pdf](http://www.nakertrans.go.id/perundangan/undang-undang/UU-13_eng.pdf).

“individual, entrepreneur, legal entities or other entity that employ manpower by paying them wages or other forms of remuneration.” This definition clearly would include employers of domestic workers. An “entrepreneur” is then defined as “an individual, a partnership or a legal entity that operates a self-owned enterprise... [or] a non-self-owned enterprise,” and an enterprise is “every form of business” or “social or other undertakings with officials in charge.”<sup>25</sup> A domestic household would not fall into the definition of an enterprise, and therefore domestic workers do not qualify as being employed by entrepreneurs.

All protections of key workers’ rights in the Manpower Act, such as the rights listed above, are specified to apply only to the employees of “entrepreneurs”. Therefore, domestic workers, and other workers whose manner of employment does not fall within the definition of employment by “entrepreneurs”, are excluded from the protections of fundamental workers rights which are extended to other workers in Indonesia. Domestic workers - of which the overwhelming majority are women and girls - are consequently left with little or no legal protections of their employment rights.<sup>26</sup>

The Manpower Act does contain a small number of provisions relating to the obligations of “employers”, but most of these do not provide for the rights of any worker they employ. Only one sub-section of one provision, Article 35(3), describes the obligations of an “employer” *vis a vis* an employee, stipulating that in employing people, the employers are “under an obligation to provide protection which shall include protection for their welfare, safety and health, both mental and physical.” Violation of this provision does carry a specified penalty of “a criminal sanction in jail for a minimum of one month and a maximum of four years and/or a fine of a minimum of Rp10,000,000 and a maximum of Rp400,000,000.”<sup>27</sup> However, without any clear benchmarks or details, these vague concepts are open to varying interpretations and signify a huge and discriminatory divide from the wide range of specific provisions protecting the rights of the employees of “entrepreneurs” under other articles of the Act. Furthermore, in practice this provision has meant little to the daily reality of Indonesia’s domestic workers. Amnesty International is concerned that the limitations and vagueness of article 35(3) does not provide domestic workers with a solid legal basis on which to claim minimum wage, reasonable working hours and other benefits and conditions guaranteed to other workers in Indonesia under the Manpower Act.

### ***Draft law on domestic workers***

Amnesty International has been informed that the Ministry of Manpower and Transmigration drafted a law on domestic workers in June 2006 to better regulate the conditions of domestic

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<sup>25</sup> Manpower Act, Art 1 (4-6).

<sup>26</sup> During interviews with officials from the Ministry of Manpower, Amnesty International was told that domestic workers are not covered at all by the Manpower Act and do not fall under the responsibility of the Ministry.

<sup>27</sup> Manpower Act, Art 186 (1).

workers. The draft law<sup>28</sup> includes provisions pertaining to the age of domestic workers (Article 6),<sup>29</sup> their rights (Article 9),<sup>30</sup> and employers' responsibilities and duties (Articles 13 and 14).<sup>31</sup> It also provides that a written contract between a domestic worker and the employer must contain certain elements<sup>32</sup> and that contracts may be oral or written (Article 20). Salary will be regulated by local authorities (Article 21.1). It also provides that domestic workers have the right to rest one day per week (Article 22.5) and have 12 days annual leave. Provisions on termination of employment are contained in Article 25. Sanctions against employers who fail to abide by this law are administrative (Article 28).

Despite the positive aspects of the draft law, Amnesty International is concerned that some of the ILO minimum standards on domestic workers<sup>33</sup> are missing. In particular, there is no mention of minimum wage, clearly defined daily hours of work and minimum rest periods; of provisions on night work and on overtime, including adequate compensation and subsequent and appropriate rest time; of provisions on public holidays, sick leave and maternity leave. Provisions for the special needs of women, which are included in the Manpower Act, are also missing.

Amnesty International was recently informed that the Ministry of Manpower and Transmigration, which is responsible for the bill, is prioritising a review of the Manpower Act and that the domestic worker legislation drafting process has been suspended until next year. This delay means that domestic workers will not have access to even the minimal legal protection offered under the draft domestic workers law for a very long time. However, the exploitation and abuse faced by domestic workers in Indonesia is happening every day, and the adequate protection of domestic workers is a matter of urgency. In light of this new

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<sup>28</sup> See "Rancangan Undang-Undang Republik Indonesia Nomor: ... Tahun... Tentang Perlindungan Pekerja Rumah Tangga" (Draft Law on domestic workers), Ministry of Manpower and Transmigration.

<sup>29</sup> A number of conditions must be filled before a recruitment agency or a private employer is authorised to recruit a domestic worker between the age of 15 and 17 years old (e.g. they must obtain prior parents' authorization, ensure the domestic worker can read and write, that she will not work at night, that she will have the opportunity to continue studying etc).

<sup>30</sup> It includes the right to adequate breaks, the right to a healthy and safe working environment, the right to form or join a union, the right to practice their own faith, and the right to be free from discrimination and violence in the home.

<sup>31</sup> Employers must pay wages in accordance with the work contract and on a monthly basis; grant adequate breaks; provide adequate time to conduct acts of devotion in accordance with their religion and other beliefs; provide due protection to ensure adequate health and welfare conditions in the workplace; provide *halal* and nutritious food; provide minimum facilities including clothes, and a place to sleep; and not make domestic workers conduct work which may be harmful.

<sup>32</sup> A written contract must include the identity of both parties, their rights and duties, the type of work which will be conducted by the domestic worker, the working conditions (breaks etc), working hours, religious aspects, health and welfare protection, dispute resolution mechanisms, place and date of the agreement and signature of both parties.

<sup>33</sup> See ILO, *The Regulation of Domestic Workers in Indonesia: Current Laws, International Standards and Best Practice*, June 2006, Chapters 3 and 4.

context, Amnesty International hopes that the current review of the Manpower Act will be considered as an opportunity to extend key workers rights to all workers in Indonesia, including domestic workers. The draft legislation on domestic workers should also be prioritised along with this review to guarantee that the specific needs of domestic workers are fully protected in Law.

Amnesty International recommends the following to the Indonesian authorities:

- *Ensure that the revised Manpower Act extends provisions on workers rights to all workers in Indonesia, including domestic workers, regardless of the status of their employer, and makes access to formal dispute mechanisms systems available to all;*
- *Ensure that specific legislation regulating the labour rights of domestic workers contains provisions which are consistent with international law and not less favourable than what is provided for in the Manpower Act;*
- *Ensure that the drafting and passing of such a legislation is given the highest priority by the Ministry of Manpower and Transmigration and other relevant parties;*
- *Actively seek the participation of domestic workers and their representatives as well as of recruitment agencies and employers' representatives in the drafting process.*

Such legislation should contain provisions ensuring the equal protection of domestic workers' rights in relation to:

- *Reasonable limitation on working hours through clearly defined maximum hours of work per 24 hours and per week;*
- *Clear standards to ensure remuneration adequate to secure a life with dignity;*
- *Conditions for night work and overtime, including adequate compensation and subsequent appropriate rest time;*
- *Clearly defined weekly rest and leave periods (annual leave, public holidays, sick leave and maternity leave);*
- *Standards on termination of employment;*
- *Access to dispute resolution mechanisms, including courts.*

#### **4. Lack of access to information about sexual and reproductive rights (Article 12 – access to health)**

Most adult women domestic workers Amnesty International met appeared to have little or no knowledge of their sexual and reproductive rights which can be defined as a state of complete physical, mental and social well-being with regard to a person's sexuality and capability to reproduce, including the rights to: access sexual and reproductive health services; seek,

receive and impart information in relation to sexuality and reproduction; and sexuality education.

They often replied 'I don't know' when asked what they knew about women's health, family planning and safe sexual relationships. They did not appear to know anything about sexually transmitted diseases and how to protect themselves against them. Nor did they seem to know about contraception methods and how to prevent unwanted pregnancy. When questioned about their sexual and reproductive rights, many responded: "dua anak cukup" ("no more than two children"), echoing former President Soeharto's family planning policy of the 1960s and 1970s to decrease birth rates in Indonesia. However, few seemed to know how to access relevant sexual and reproductive health services. Amnesty International is concerned that the Indonesian government fails to provide domestic workers with adequate access to information and services on sexually transmitted diseases including HIV/AIDS, as well as on contraception methods. This lack of knowledge and information may well place women and girl domestic workers at greater risk of maternal mortality, unsafe sex and unwanted pregnancy.

According to a survey conducted by the Demography Institute in 1999 in four provinces (East Java, Central Java, West Java and Lampung) and cited in Indonesia's report to the Committee, 61% of women and girls aged between 15 and 19 years old in Indonesia had unwanted pregnancies.<sup>34</sup> Twelve per cent of them underwent abortion and 70 percent of those performed the abortion by themselves.<sup>35</sup> In Indonesia, abortion is authorized by law under strict circumstances. It is only allowed if it is performed by official health practitioners to preserve a woman's life or health. Otherwise, it is severely punished by law.<sup>36</sup> The periodic report to CEDAW also acknowledges adolescent reproductive health problems, including HIV/AIDS and other sexually transmitted diseases, and a high rate of maternal morbidity and mortality, as issues of particular concern.<sup>37</sup>

The Indonesian government has set up service delivery points that provide counselling to adolescents on sexual and reproductive health, and disseminated an education package for adolescents through schools, universities, out of school programs and forums for peer education and parents. Programs have also been undertaken to provide information on

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<sup>34</sup> It is unclear from the report whether almost two thirds of those who took part in this survey went through an unwanted pregnancy or whether 61% of those who fell pregnant did not want to be.

<sup>35</sup> Combined fourth and fifth periodic reports of State parties to CEDAW: Indonesia, UN Doc. CEDAW/C/IDN/4-5, 27 July 2005, para 131.

<sup>36</sup> Under section 348 of the Criminal Code, any person performing an abortion is subject to imprisonment for up to five and a half years. Under section 346, a woman wilfully inducing her own miscarriage is subject to imprisonment for up to four years. See UN Population Division, Department of Economic and Social Affairs, 'Abortion Policies: A Global Review 2002', [www.un.org/esa/population/publications/abortion/index.htm](http://www.un.org/esa/population/publications/abortion/index.htm).

<sup>37</sup> See Indonesia's report CEDAW/C/IDN/4-5, for example paras 130, 135, and 124.

sexually transmitted diseases in family planning and maternal health programs.<sup>38</sup> Despite these efforts, Amnesty International is concerned that these actions may not reach women and girl domestic workers, as they live in isolated environments and do not have access to public forums.

Amnesty International has recommended to the Indonesian government that a large scale education program on sexual and reproductive rights be undertaken to ensure that domestic workers have full access to information on family planning and contraceptives, forced marriage, early marriage and pregnancy, the prevention of HIV/AIDS and other sexually transmitted diseases, in light of the vulnerability of women and girl domestic workers to gender-based violence including rape, sexual harassment and trafficking. Information about sexual and reproductive rights is important to enable victims of sexual abuse to better understand what has happened to them and where to obtain medical services and other forms of support.

Amnesty International recommends the following to the Indonesian authorities:

- ***Devise an education programme on sexual and reproductive rights to provide domestic workers with access to information on family planning and contraceptives, forced marriage, early marriage and pregnancy, the prevention of HIV/AIDS and other sexually transmitted diseases.***

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<sup>38</sup> *Ibid*, paras. 129, 135 and 139.