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移徙者人权问题特别报告员豪尔赫·布斯塔曼特的报告

增 编

出访印度尼西亚 *

* 本文件摘要以所有正式语文分发。摘要后所附报告正文，仅以提交语文分发。

内容提要

应印度尼西亚政府邀请，移徙者人权问题特别报告员于 2006 年 12 月 12 日至 21 日访问了该国。

出访的主要目的是审查印度尼西亚移徙进程的各个方面，特别关注女性帮佣工人的状况，各方都向特别报告员表述了她们的困境。在印度尼西亚期间，特别报告员还有机会访问了非法进入印度尼西亚的无证移徙者拘留中心，并会晤了一些被拘留者。

一些女性帮佣工人是穿越丛林逃离或从她们受雇的国家遭驱逐后返回印度尼西亚的，她们给出了一些令人震惊的证言。这些妇女在移徙过程中的经历非常可怕，许多人描述了她们在国外就业时遭受的骇人听闻的身心虐待。

特别报告员借助本报告，意在强调印度尼西亚女性帮佣工人的困境，鼓励印度尼西亚恪守其保护国内外所有移徙者(即国内和国际移徙者)的国际和国内承诺。特别报告员希望，印度尼西亚政府将特别重视修订 2006 年 5 月与马来西亚签署的《谅解备忘录》，以改进对招募工作的管理和监测，同时批准《保护所有移徙工人及其家属国际公约》。

Annex

**REPORT OF THE SPECIAL RAPPORTEUR ON THE HUMAN RIGHTS OF
MIGRANTS, JORGE BUSTAMANTE, ON HIS MISSION TO INDONESIA
(12-20 DECEMBER 2006)**

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I. INTRODUCTION

1. At the invitation of the Government of Indonesia, the Special Rapporteur on the human rights of migrants visited the country from 12 to 21 December 2006. The purpose of this visit was to establish an accurate and realistic assessment of the situation regarding Indonesian migrants living abroad. He was able to visit all the locations he hoped to visit and to meet with all relevant government authorities and non-governmental organizations (NGOs). The Special Rapporteur was pleased to spend International Migrants Day (18 December) in Jakarta with a coalition of over 60 NGOs who had organized events at which he was able to meet with migrants themselves.

2. The mission focused on three main areas: the situation of female domestic workers leaving Indonesia, the responsibilities of Indonesia as a sending country, and the ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW) of 1990.

3. The Special Rapporteur recognizes that a large number of Indonesian migrants are at risk of abuse in other sectors such as construction and agriculture, as well as concerns facing migrants living in Indonesia. However, due to the multifaceted dimensions of the problem, the Special Rapporteur will not address these issues in the present report.

II. BACKGROUND

4. Indonesia is one of the world's major sources of unskilled international migrant labour, particularly in sectors such as construction, domestic work and agriculture. Its overseas labour contract programme was developed in the 1980s.¹ The programme maintained a modest flow of migrating workers for many years (fewer than 100,000); these mostly consisted of domestic workers to the Middle East, Hong Kong, Taiwan, Singapore and Malaysia.² The number of migrants and their destinations increased in the 1990s, surpassing some 500,000 workers in 2006. This movement of labourers, many migrating in response to the effects of the economic downturn after 1997, has become a significant migration pattern. Quantifying the scale of the movement, however, is made difficult by the limited information on movements to and from the country, and the fact that there are substantial undocumented flows in and out of Indonesia.

5. Since 1999, an average of 387,304 Indonesians per year have left the country in search of work abroad.³ This average does not include undocumented workers, and it is widely accepted that the actual number is much higher. The largest outflow is to Malaysia, where the Indonesian

¹ See apmrn.anu.edu.au/publications/UNConvFinal.

² Ibid.

³ Ibid.

community numbers approximately 1.4 million people (many of whom are undocumented), followed by migration to Saudi Arabia, Singapore, Taiwan, the Republic of Korea, and other destinations in the Middle East and Asia.⁴

6. Domestic workers from Indonesia constitute the fastest-growing group of migrant workers. But it is not only the steep rise in numbers that is dramatic; it is also the reversal of gender. During the 1970s male migrant workers outnumbered females by 3 to 1. Increased rural poverty occasioned by economic crises and the devastation of the agricultural sector in Indonesia pushed women and girls into the domestic labour market. By the early 1990s, amongst legal migrants, almost twice as many women were placed overseas as men. Currently, 70 per cent of documented Indonesian migrant workers are women.⁵ Due to limited employment opportunities in Indonesia, many Indonesian women and girls with families to support have no other choice than to migrate for domestic work, typically very far from their homes and at great personal and economic cost. In some cases they are young girls using false travel documents.

7. Domestic workers may find responsible employers who treat them well, pay them regularly and ensure appropriate working conditions - these workers fuel the widespread perception in Indonesia of lucrative and exciting jobs abroad. Unfortunately, finding decent work is often a matter of luck and is not guaranteed, and those who are not so fortunate may risk becoming trapped in highly exploitative situations with few exit options.

8. According to official estimates there are at least 60,000 Indonesian migrant domestic workers in Singapore, 250,000 in Malaysia and 600,000 in Saudi Arabia.⁶ However, many women and girls migrate outside legal channels. Incidents of abuse are widespread, but estimating their prevalence is difficult given the lack of reporting mechanisms and restrictions on the freedom of movement of domestic workers. Nevertheless, Indonesian embassies and consulates in receiving countries report thousands of such complaints per year.

III. VISITS TO BATAM AND ENTIKONG

9. During his visit, the Special Rapporteur observed first hand the situation in border areas on the island of Batam, the area of Tanjung Pinang in Riau Island Province and Entikong in West Kalimantan Province. The Special Rapporteur had the opportunity to meet and interview female migrant workers who had returned to Indonesia. Most reported that they had escaped and/or been deported after instances of severe abuse at the hands of employers and employment agencies in the receiving countries. These abuses include confiscation of passports and/or personal belongings, as well as threats, physical abuse and corporal punishment. The Special Rapporteur was provided with privately filmed footage of whippings inflicted by employment agents in receiving countries.

⁴ See www.bu.edu/econ/ied/dp/papers/dp120.pdf.

⁵ Cf. workspace.fse-esf.org/mem/Act2130/doc185.

⁶ See www.ibiblio.org/obl/reg.burma/archives/199801/msg00260.html.

10. The Special Rapporteur noted that the ongoing migratory movements in Tanjung Pinang and Entikong were conducted in a very orderly fashion, whether as organized departures or as spontaneous ones.

A. Tanjung Pinang

11. In Tanjung Pinang, migratory flows in both directions were observed, i.e. pre-departure Government-sponsored training centres, with language and cookery courses, as well as reception centres for returnees - mainly deportees - who showed signs of severe abuse such as cigarette burns and scars from beatings.

12. Deportees arrive from Malaysia on a weekly basis at Batam and Tanjung Pinang, which are also areas of departure via migration programmes implemented by the Government. Batam also houses detention centres for undocumented foreign migrants or those found in illegal circumstances on the high seas belonging to Indonesian territory, namely a group of Vietnamese Montagnards rescued from a capsized boat on the shores of West Kalimantan Province, as well as a group of undocumented Sri Lankans. The Special Rapporteur had the opportunity to interview undocumented migrants during his visit to the detention centres and was able to observe first hand the living conditions in those centres.

13. The departure and arrival movements in Tanjung Pinang were more orderly, while in Entikong, departures seem to occur spontaneously, early in the morning, with queues of mostly female workers forming to cross the border.

B. Entikong

14. Entikong's special position as the main crossing point on a 400-km⁷ porous border with Malaysia makes it one of many frequently used locations for undocumented migratory movements between Indonesia and the Province of Sarawak in Malaysia. Victims of abuse often take these routes to escape through the jungles of West Kalimantan to return to Indonesia. Pontianak, the capital city of West Kalimantan Province,⁸ has therefore established crisis centres that accommodate and rehabilitate women migrant workers who have suffered sexual abuse, torture and a range of labour abuses at the hands of employers. Some women experience extreme anxiety while others exhibit intense fear. Most have had no access to trauma counselling.

15. The following findings and recommendations of the Special Rapporteur are based on interviews with female migrant workers and meetings with the Indonesian authorities as well as reports received from national and international NGOs in Batam, Pontianak and Jakarta.

⁷ See www.solidaritycenter.org/files/IndoTraffickingAssessment.

⁸ See www.fire.uni-freiburg.de/current/archive/sea/2000/03/sea_03132000.htm.

C. The migration process

The pre-departure stage and the role of labour agents

16. The large numbers of Indonesian women and girls migrating for work, as well as the demand for cheap domestic labour, has created a lucrative market for employment agencies in Indonesia and in receiving countries.⁹ A significant characteristic of this type of labour migration is that it is short-term and contract-bound. Women migrating in this way do so of their own free will, whether through networks or organized through intermediaries. Once a labour agency has been granted a licence, it does not have to undergo any further periodic reviews to have it renewed, and even though the Indonesian Ministry of Manpower and Transmigration has the power to cancel or suspend such licences, recourse to these measures is rare as the Ministry does not monitor labour suppliers regularly or rigorously.

17. Indonesian women migrating for domestic work often first come into contact with a local labour recruiter from their village. These recruiters do not usually receive a regular salary but may charge the migrant worker or work on commission for several different employment agencies, sometimes for both licensed agencies and illegal agents simultaneously. Many documented workers have to pay hefty fees - agency fees, insurance fees - and provide a bank guarantee, both in Indonesia and in receiving countries.¹⁰

18. The heavy administrative burden of legal migration - including payment to labour agencies and the lengthy time involved - has led many workers to migrate through irregular channels. In some cases prospective migrant workers may think they are migrating through legal channels but may actually be given fraudulent or inaccurate documents at some point in the process. Irregular migration puts workers at higher risk of abuse at all stages of the process, may involve higher fees, and severely limits their access to redress. With over 400 licensed domestic employment agencies - and countless more illegal ones - the lack of effective government oversight and the bureaucratic processes concerned with labour recruitment increase the risks of exploitation of prospective migrant domestic workers.

19. Labour agents often give incomplete or false information about the terms of employment, and migrant domestic workers are subject to deception and abuse by labour agencies prior to their departure from Indonesia. Labour agencies are typically involved in recruitment, training, transportation and placement of domestic workers. In many cases, as the intermediaries between employers and workers, the agencies set the terms of employment, including wages and holidays. Inadequate regulation and inadequate government oversight combine to give employment agencies enormous influence over the fate of migrant domestic workers. The lack of transparency in the management and use of payments officially required by the Government seems to support anecdotal evidence of collusion between some officials and recruitment agencies.

⁹ Human Rights Watch, "Swept Under the Rug: Abuses Against Domestic Workers Around the World".

¹⁰ Ibid.

Debt bondage

20. Migrant domestic workers commonly become heavily indebted trying to pay exorbitant, unregulated recruitment-agency fees, which are either paid through long-term salary deductions or by a large fee paid up front to the local recruiter - often financed through loans with high interest rates. In Singapore and Hong Kong, deductions of 8-10 months' salary on a 2-year contract are common. Most domestic workers pay up front fees by borrowing money from their agent, village moneylenders, family, or friends, often at usurious interest rates. Exorbitant initial fees and long debt repayment periods place migrant workers in a highly vulnerable position. Migrant domestic workers feel enormous pressure to keep working as long as they can in order to repay their debt and start earning a salary, even when faced with intolerable situations.

21. Employment agents similarly have a strong interest in workers remaining in a job until they have repaid their debt, and thus are less likely to help workers out of abusive situations. Sometimes they may be the first to condemn domestic workers to isolation by stripping them of contact information and supporting employer restrictions on their movements and their ability to communicate. Sometimes agents are directly responsible for abuse. Many of the female migrant domestic workers interviewed had experienced severe abuse at the hands of Indonesian employment agents. These abuses included confiscation of passports and/or personal belongings, as well as threats, beatings and other physical abuse.

22. Already in debt, migrant workers typically face further fees and salary deductions if they attempt to transfer to another employer or seek to return to their home country before their employment contract expires.

Labour-related abuses

23. NGOs and Indonesian embassies/consulates abroad have reported that unpaid wages, long working hours without rest days and forced confinement at the workplace are among the most common complaints made by female migrant workers. Domestic workers are excluded from the labour laws of most countries, leaving them at particularly high risk of exploitation with few avenues for seeking redress.

24. Several factors contribute to the further isolation of female migrant domestic workers, including financial hardship, limited access to assistance, and the confiscation of passports by the employer and/or the labour agency.¹¹ This last practice in particular creates a strong power imbalance. The denial of freedom of movement dramatically increases the vulnerability of domestic workers to exploitation, forced labour, intimidation and sexual abuse. Employers typically impose severe restrictions on the ability of domestic workers to communicate with the outside world, and are even known to prevent domestic workers from talking to neighbours or

¹¹ Ibid., for more information, see the Human Rights Watch series of reports on Indonesian domestic workers available at http://hrw.org/campaigns/women/2006/domestic_workers/reports.htm.

from leaving the place of employment unaccompanied. Many female domestic workers see no way out of such abusive situations, and their isolation and desperation may be contributing to the high number of suicides.

25. Since they are desperate to earn a much-needed income, one of the main fears expressed by the domestic workers interviewed was to be sent back to Indonesia by their employers, even where they are being exploited. Leaving or losing one's job may mean immediate repatriation because work permits are tied to the individual employer and, transferring employment is difficult.

26. Migrant workers who escape from their employers without valid identification documents face the risk of arrest, immigration detention and, in some receiving countries, corporal punishment. Even in cases where the abuse is reported to police, migrant workers will often drop criminal charges against their employer and settle for less than full payment of their salary because it takes months or years for most criminal cases to be concluded.

Return process

27. Institutional exploitation of returning migrants also takes place at points of entry/return to Indonesia: at borders, ports and airports. Migrants, mostly women, have to pay separate fees at various points during customs and immigration clearance for "services" which they are not free to refuse, e.g. transportation to local villages is prearranged at more than double the usual exchange rate. There is no legal basis for demanding such sums from returnees.

28. Recently, the Government of Indonesia and NGO representatives have attempted to establish monitoring systems to screen returning migrant workers, to inform them of their rights, and to identify those needing medical attention. The impact of Indonesia's efforts to meet its obligations and to provide protection to migrants has been limited, in part because many recruitment agencies, employers and officials perceive the protection of migrants' rights as being against their own personal interests.

IV. GENERAL PROTECTION FRAMEWORK

A. Introductory remarks

29. The devastating experiences reported by migrant domestic workers interviewed by the Special Rapporteur reinforce the need for the Government of Indonesia and civil society to continue to prioritize the protection of migrants' rights and freedoms, especially given the particular vulnerability of female domestic workers. Indonesia has a duty to accurately inform domestic workers of what to expect abroad.

30. Some 4 million Indonesians now work abroad,¹² many of them from very poor areas, and they are often forced to pay substantial sums to reach their destinations. Most Indonesian migrants abroad send remittances home which are critical to the country's economy.

¹² See <http://ipsnews.net/migration/stories/entrepreneur.html>.

Remittances have grown steadily over the past three decades and constitute the single largest source of foreign exchange, exceeding export revenues and foreign direct investment.¹³

Government policies on labour migration are mainly concerned with reducing local unemployment - which according to unofficial sources stands at around 40 per cent¹⁴ - and as such its policies have focused more on facilitating the outflow of migrant labour, rather than setting up protection mechanisms. Thus, Indonesian migrants, whose labour greatly benefits the economy, remain underprotected in foreign countries and are subject to abusive practices at all three stages of the migration process: in the pre-departure phase, while working abroad, and upon their return.

31. Indonesia views labour migration as a means of addressing domestic unemployment, generating foreign exchange and promoting economic growth. The emergence of unregulated “labour export businesses” is facilitated by the current political transition.

32. The fact that several million Indonesians have benefited, and continue to benefit, from international labour migration in no way justifies the exploitation and abuse of many others. Protective mechanisms should be in place to help ensure that all migrants have guarantees of migration in safety and dignity.

33. High-profile cases of abuse of migrant domestic workers in receiving countries have prompted some national-level reforms. Currently, the pronounced visibility of Indonesian migrant workers has led to moves to legalize irregular departures from Indonesia.

B. International protection framework

34. The Government of Indonesia through its Plan of Action is making significant efforts to prioritize its commitments to human rights. Its recent ratification of the main core conventions is a concrete step towards achieving this aim. The ratification of CMW is said to be a priority in the Ministry for Foreign Affairs Second National Plan of Action of Human Rights (2004-2009). During his meeting with the Special Rapporteur, the Minister for Foreign Affairs personally pledged Indonesia’s commitment to expedite the process of ratification.

35. While Indonesia has ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (1984), the Convention on the Rights of the Child (1990), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1998), the International Convention on the Elimination of All Forms of Racial Discrimination (1999), the International Covenant on Economic, Social and Cultural Rights (ICESCR) (2006) and the International Covenant on Civil and Political Rights (ICCPR) (2006), the main issue now is the implementation of their provisions.

¹³ See: www.imf.org/external/pubs/ft/irb/2005/eng/04/index.pdf.

¹⁴ Cf. ksghome.harvard.edu/~drodrik/nuts.pdf.

36. The Government has negotiated several bilateral agreements with labour-receiving countries, including most recently a Memorandum of Understanding (MOU) with Malaysia on migrant domestic workers which was signed on 13 May 2006 in Bali. The combination of an unhealthy level of competition among labour-sending countries and Indonesia's allegedly weak bargaining position during negotiations for the MOU has led to an agreement that fails to provide adequate protection to domestic migrant workers in accordance with the international standards to which Indonesia is committed.

C. Bilateral agreements: the Memorandum of Understanding between Indonesia and Malaysia

37. The MOU with Malaysia covers procedural matters regarding recruitment, but makes little mention of employees' rights. However, by ignoring international legal standards the MOU allows human rights violations by (i) denying Indonesian workers the right to freedom of association, as stipulated in article 20 of the Universal Declaration of Human Rights and article 22 of ICCPR; (ii) the right to freedom of movement stated in article 13 of the Universal Declaration and article 12 ICCPR; and (iii) the right to marriage under article 16 of the Universal Declaration.

38. This long-awaited agreement leaves migrants in a vulnerable situation as it does not guarantee standard labour protections, nor does it include measures to prevent and respond to cases of abuse. Furthermore, the signing of the MOU was not advertised publicly and none of the Indonesian migrants interviewed by the Special Rapporteur was aware of its existence. Appendix A.xii (Responsibilities of the Employer) of the MOU provides: "The Employer shall be responsible for the safe keeping of the Domestic Worker's passport and to surrender such passport to the Indonesian Mission in the event of abscondment or death of the Domestic Worker." There is no mention of any receipt to be given for retention of the passport. This provision contravenes CMW, to which Indonesia is a signatory, article 21 of which states:

"It shall be unlawful for anyone, other than a public official duly authorized by law, to confiscate, destroy or attempt to destroy identity documents, documents authorizing entry to or stay, residence or establishment in the national territory or work permits. No authorized confiscation of such documents shall take place without delivery of a detailed receipt. In no case shall it be permitted to destroy the passport or equivalent document of a migrant worker or a member of his or her family."

39. Although Indonesia has not yet ratified CMW, as a signatory it is nonetheless bound by the Vienna Convention on the Law of Treaties, article 18 of which states:

"A State is obliged to refrain from acts which would defeat the object and purpose of a treaty when:

"(a) It has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance or approval, until it shall have made its intention clear not to become a party to the treaty; or

"(b) It has expressed its consent to be bound by the treaty, pending the entry into force of the treaty and provided that such entry into force is not unduly delayed."

40. Further, the MOU between Indonesia and Malaysia, contains many articles and appendices which do not guarantee the basic rights to migrant workers. For example:

(a) There are no guarantees of just and favourable conditions of work, including adequate periods of rest and remuneration, protected by articles 23 and 24 of the Universal Declaration. There are restrictions on marriage rights which are in violation of CEDAW and ICESCR;

(b) There are restrictions on the right to family life, a fundamental right: Indonesian migrant workers in Malaysia are prohibited from marrying local citizens, and the MOU limits the age of female domestic workers to between 21 and 45 years old and prohibits them from marrying or from bringing their spouses to Malaysia, or even from being joined by their families. This basic human right is reiterated in articles 12, 16 and 25 of the Universal Declaration. Moreover, the right to family life is enunciated both in article 10 (1) ICESCR and articles 17 and 23 ICCPR;

(c) Several terms used in the MOU commodify Indonesian domestic workers, e.g. “conveyance”, “servant” and “offered”. The MOU also places more emphasis on mechanisms for placement and less attention to worker protection, for example by providing migrants with a Malaysian ID card. The MOU may end up encouraging irregular migration because of the long, complicated and expensive documentation process.

41. On policy matters, the MOU does not state who shall be responsible for the repatriation of female migrant workers if their employers abuse them.

D. Actions taken at the national level

42. Since May 1998, Indonesia has launched several initiatives to reform the system of workers living abroad in order to provide them with more protection. Most notably, Indonesia passed in 2004 a national Law on the Placement and Protection of Indonesian Migrant Workers Overseas. These reforms, however, have been ad hoc in nature and have not constituted a coherent and comprehensive strategy for the promotion and protection of migrants' rights.

43. This is due to the fact that within Indonesia those in charge of managing the migration of female domestic workers, particularly labour recruiters, use both legal and illegal means. These procedures entail for the most part exorbitant departure fees which create long-term debt bondage, ill-treatment and confinement, and false information and documentation, especially with regard to under-age female workers. The process also lacks simplicity and involves high costs, whether through official or unofficial channels, inadequate preparation, and a lack of support from Indonesian embassies and consulates in the receiving countries.

Legal steps

44. In an effort to promote concerted action on this matter, various steps have been taken through the issuance of several presidential decrees, in particular Presidential Decrees No. 106 of 2004 on the Establishment of a Coordinating Team to Handle Undocumented Migrants and No. 81 of 2006 on the Establishment of the National Body for Placement and Protection for Indonesian Migrant Workers and, more recently, Presidential Instruction No. 6 of 2006 on the

Policy on Reform in the System of Placement and Protection for Indonesian Migrant Workers, which involves 11 departments, including the National Police, governors, regents and mayors. As a consequence of the last Presidential Instruction, the Coordinating Minister for Economic Affairs has established three task forces, namely the Task Force on Placement, the Task Force on Protection and the Task Force on Finance.

45. As noted above, in 2004, Indonesia passed Law No. 39/2004 on Overseas Placement and Protection of Indonesian Migrant Workers. This legislation represented an effort to begin regulating migration more closely and to provide stronger support through national legislation rather than ministerial decrees, though it focused more on recruitment procedures than on protection for migrants.

46. To overcome a lack of coordination between sectors and ministries, a problem compounded by ministers representing different parties, a National Coordinating Body involving all concerned ministries was put in place in 2002. However, it does not meet regularly. The two main ministries concerned, the Ministry for Foreign Affairs and the Ministry of Manpower and Transmigration, are currently undergoing restructuring and have already established new departments to protect, and to receive complaints from, migrant workers.

Government agencies

47. The Government of Indonesia has also established a single company (PT BIJAK) to oversee the labour recruitment business and provide a measure of control over recruitment arrangements. For instance, the role of local authorities is crucial in ensuring that passports are valid and contain accurate personal data, including the real ages of the female migrant workers.

48. The Indonesian authorities continue to take steps to raise awareness among Indonesians living abroad about their rights through information campaigns such as radio programmes. In Batam, an independent radio station has established a weekly programme for people to listen to complaints from domestic workers in Singapore and for the Indonesian authorities to respond to their queries.

Consular protection abroad

49. Indonesia gives help to migrant domestic workers who have suffered abuses in foreign countries, although the level and quality of assistance vary greatly. Indonesian embassies and consulates in receiving countries typically provide aid to migrant domestic workers who flee abusive situations and some have temporary shelters where workers can live while the embassy or consulate assists them in returning home or in pressing charges against their employers.

50. However, the Indonesian embassies and consulates in receiving countries are too understaffed and under-resourced to adequately address the large volume of complaints received from migrant workers. For example, one of the main problems in handling and following up on cases of abuse or non-payment of salaries is the insufficient number of appropriately trained and competent labour attachés and social welfare officers.

51. In most receiving countries, Indonesian embassies and consulates have created shelters to handle the huge number of domestic workers seeking assistance for unpaid wages, physical or

sexual abuse, or poor working conditions. These shelters are often overcrowded. Although most embassies are able to help abused workers obtain medical care, other forms of assistance such as professional trauma and mental health counselling are typically absent.

52. Embassies and consulates must also deal on a regular basis with the obstacles preventing migrant workers from reporting abuses in receiving countries. For example, immigration policies in receiving countries can discourage migrant workers from reporting abuse. In Malaysia, immigration offences can result in penalties of up to five years of imprisonment, heavy fines, indefinite detention and corporal punishment including whipping for men. Embassies and consulates can be more accessible by keeping the labour section open on migrants' days off and operating hotlines, including through the use of text messaging.

The role of NGOs

53. The number of NGOs has been on the increase since the mid-1990s. They have undertaken many laudable initiatives, including the formulation and promotion of a draft law on the protection of migrant workers, modelled on CMW. More comprehensive and broad-based strategies, however, are hampered by a lack of funding and resources.

V. RATIFICATION OF THE INTERNATIONAL CONVENTION ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES

54. During meetings between the Special Rapporteur and government officials, most interlocutors agreed that it is in the interest of the Government of Indonesia to ratify the Convention as it will increase Indonesia's bargaining power with their counterparts on immigration issues. Indonesian officials claim that migrants are not protected abroad because none of the receiving countries has ratified this Convention, which raises the issue of reciprocity.

55. However, reluctance to ratify CMW stems from the belief that ratification will oblige Indonesia to protect migrant workers coming into the country by providing services such as education for their children and welfare services. The authorities argue that this would be too costly for a country struggling to raise standards for its own citizens and would create the impression that foreign migrants residing in Indonesia were being given special treatment. Incoming migrants and their rights and conditions do not seem to attract much attention from policymakers. Fears were expressed that ratification would entail administrative burdens, especially at a time when Indonesia is experiencing a large budget deficit. Indonesia sees the ratification and implementation processes as expensive undertakings in a context where governmental budgets, and staff assigned to such matters, are very limited.

56. The Special Rapporteur also notes that the alleged direct or indirect involvement of some officials with recruitment agencies is an ongoing problem. Ratification of CMW would increase the protection of migrant workers and deter illegal practices, as migrant worker services would be treated as a public matter. The allegedly high level of collusion between officials and those involved in the export business would be subject to closer scrutiny and broader reforms.

VI. CONCLUSIONS

57. The Special Rapporteur conveys his gratitude to the Government of Indonesia for the invitation extended to him to visit the country. The Special Rapporteur would also like to express his appreciation for the cooperative and constructive dialogue he was able to have with the legislative, executive and judicial authorities and other State organs.
58. The Special Rapporteur would also like to praise the dynamism and work of civil society in advocating, promoting and protecting the rights of migrants.
59. During his visit to Indonesia, the Special Rapporteur collected information on the condition of Indonesian workers living abroad as well as on the role of recruitment companies and their impact on the enjoyment and exercise of the human rights of migrant workers.
60. As a general principle, the Special Rapporteur wishes to stress the primary responsibility of the Government of Indonesia for ensuring that private recruitment companies with legal personality in Indonesia are adequately monitored. The Special Rapporteur received information from various sources indicating that migrant workers recruited by private companies in Indonesia to work abroad often have inadequate or misleading information about their work arrangements, must pay excessive recruitment fees, and may suffer threats or abuse from agents. These problems also put them at extra risk when facing abuses during employment abroad, such as poor working conditions, excessive working hours, partial or non-payment of salaries, ill-treatment and isolation, and neglect of basic needs.
61. The Special Rapporteur is concerned at the failure of State bodies to act, especially the Ministry of Manpower and Transmigration, since this is a widely known and growing phenomenon. The Ministry should (a) improve the regulation of labour recruitment practices, including greater transparency and caps on recruitment fees; (b) create mechanisms to ensure that contracts signed in Indonesia will be respected abroad; and (c) inspect recruitment agencies and training centres to monitor human rights abuses. It should also impose substantial penalties on companies that fail to respect the rights of the employees they recruit.
62. The Special Rapporteur has observed that insufficient national legislation, as well as inadequate regulation and control of private recruiting companies permit these profit-seeking companies to act without consideration of the rights of migrants. The absence of robust measures to control private companies and the recruitment process has enabled a wide range of recruitment-related abuses.
63. Although the Special Rapporteur is aware that the Indonesian authorities have taken steps to enact national legislation aimed at protecting the rights of migrant workers and has also made efforts to engage in bilateral agreements with neighbouring countries, he remains concerned that this legislation is not fully implemented and that the bilateral agreement falls short of international human rights and labour standards. The Special Rapporteur notes that negotiation of the MOU between Indonesia and Malaysia has been a closed process, with no opportunity for civil society groups, or international organizations with expertise on labour migration, to comment on the draft.

64. The Special Rapporteur regrets that provisions clearly defining work responsibilities and regulating hours of work, rest days, regular payment of wages and compensation for injuries are absent from the MOU. As it stands, the provisions included in the MOU do not meet labour standards as outlined in international labour laws and treaties, especially regarding the right of workers to hold their own passports. Under the current MOU, employers are entitled to hold workers' passports, thus making it difficult for workers to leave abusive conditions or to negotiate better working conditions and full payment of their wages. The retention of international travel documents by employers also contributes to the creation of networks of traffickers in persons, forced labour and undocumented migration.

VII. RECOMMENDATIONS

65. **In the light of the above, the Special Rapporteur wishes to present the following recommendations to the Government of Indonesia.**

66. **The Government should pursue its efforts towards rapid ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 1990. Ratification of the Convention would provide a useful tool for the protection of migrant workers and create a legal framework within which other regional and bilateral agreements may be signed.**

67. **The Government should incorporate the Convention and other international human rights and labour standards into national legislation. In doing so, it would be important to involve the various ministries and government bodies concerned, as well as sectors of civil society working to protect human rights.**

68. **The Government should increase the transparency and monitoring of private recruitment companies, including regulation and capping of recruitment fees, maintenance of publicly available registers of recruitment agencies, a system of regular and unannounced inspections, and imposition of substantial penalties for violations.**

69. **The Government should create a framework to improve employment conditions for migrant workers, including a standard contract that ensures a weekly day of rest, and regulations that require employers to pay most of the costs associated with recruitment and placement. Indonesia should work with receiving countries to make sure these contracts are respected abroad.**

70. **The Government should put in place mechanisms to blacklist employment agencies that break the law, identify and blacklist abusive employers and screen returning migrant domestic workers, which currently are *in statu nascendi*.**

71. **The Government should improve coordination at the ministerial level. Given the existing presidential decrees, Indonesia has the required institutional structure for such coordination and concerted efforts are required for implementation.**

72. The Special Rapporteur encourages the international community, in particular the specialized agencies of the United Nations, to work with the Indonesian authorities in amending recruitment procedures and immigration laws to comply with internationally accepted standards, and to assist in establishing complaint mechanisms and standard contracts for migrants.

73. As a matter of priority, the Government of Indonesia should review the content of the May 2006 MOU with Malaysia and revise it with a view to enhancing the protection of the rights of migrant workers.

74. The Special Rapporteur recommends that the Indonesian authorities, prior to enacting national legislation on migrants and when engaging in bilateral or other types of agreements, engage in a transparent process with broad public discussion and debate, including with civil society organizations.

75. The Special Rapporteur encourages the Government of Indonesia to increase awareness about the situation of migrants in general by developing mass public information campaigns with a specific focus on educating both the domestic workers themselves and the labour recruiters about domestic workers' rights. The Government should also spread awareness among potential migrants about their rights when dealing with recruitment agents and create mechanisms to receive complaints.

76. The Government of Indonesia should expand existing pre-departure training programmes in order to empower prospective female migrant workers by educating them about their rights under international law and the labour and penal laws of the countries of destination.

77. The Special Rapporteur requests the Government of Indonesia, in cooperation with donors, to improve and expand the services provided to abused migrant workers at its consulates abroad. This includes providing adequate staffing to follow up on individual complaints and outreach to the Indonesian migrant worker population. Provision of legal aid, translation services during legal proceedings, medical care and professional psychological health care is also critical. The last is especially important considering the trauma experienced by many abused workers.

78. Finally, the Special Rapporteur recommends further pursuing the recently established policy of tracking and making publicly available data on types of abuses, the number of formal complaints, the time involved in resolving cases, and the final outcome. This would facilitate the collection of detailed information on all abuse cases and complaints made by migrant domestic workers as a way of strengthening the mechanism whereby complaints can be received and investigated to ensure that data on employment agencies found to use unethical or abusive practices are made available to the public.
