



INDONESIA

SUBMISSION TO THE UNITED NATIONS COMMITTEE ON
THE ELIMINATION OF DISCRIMINATION AGAINST
WOMEN

78TH PRE-SESSIONAL WORKING GROUP, 13-17 JULY 2020

AMNESTY
INTERNATIONAL



Amnesty International is a global movement of more than 7 million people who campaign for a world where human rights are enjoyed by all.

Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards.

We are independent of any government, political ideology, economic interest or religion and are funded mainly by our membership and public donations.

© Amnesty International 2020

Except where otherwise noted, content in this document is licensed under a Creative Commons (attribution, non-commercial, no derivatives, international 4.0) licence.

<https://creativecommons.org/licenses/by-nc-nd/4.0/legalcode>

For more information please visit the permissions page on our website: www.amnesty.org

Where material is attributed to a copyright owner other than Amnesty International this material is not subject to the Creative Commons licence.

First published in 2020

by Amnesty International Ltd

Peter Benenson House, 1 Easton Street

London WC1X 0DW, UK

Index: ASA 21/2516/2020

Original language: English

amnesty.org

AMNESTY
INTERNATIONAL



CONTENTS

1. INTRODUCTION	4
2. DISCRIMINATION IN PALM OIL BUSINESSES (ARTICLE 11, SDG 5.1, 8.5)	4
3. GENDER-BASED DISCRIMINATION IN LOCAL REGULATIONS (ARTICLE 1, 5, SDG 5.1, 5.2)	6
3.1 THE IMPLEMENTATION OF SHARI'A LAW IN ACEH	7
3.2 DRESS CODE FOR WOMEN	7
4. ABORTION AND THREAT OF CRIMINALISATION (ARTICLES 5 AND 12, SDG 5.6)	8
5. LACK OF PROTECTION FOR DOMESTIC WORKERS (ARTICLES 5, 11 AND 15, SDG 5.1, 5.4)	9
6. POTENTIAL DISCRIMINATION IN THE OMNIBUS BILL ON JOB CREATION (ARTICLES 11 AND 12, SDG 5.1, 8.5)	11

1. INTRODUCTION

Amnesty International provides this submission ahead of the adoption of the list of issues for Indonesia by the UN Committee on the Elimination of Discrimination against Women at the 78th pre-session July 2020.

Although the Indonesian government has taken positive steps to fulfil its pledge to combat violence against women and eliminate prejudice against women, Amnesty International is concerned that women and girls in Indonesia continue to face barriers in fully exercising their human rights in law, policy and practice.

In this briefing Amnesty International provides information on the implementation by Indonesia of the Convention, and will set out ways in which the Indonesian government could better comply with its obligations under the Convention. In this document, Amnesty International highlights five areas of concern. They include discrimination in palm oil businesses, decentralisation and gender-based discrimination, abortion and threat of criminalisation, lack of protection for domestic workers, and regressive steps towards women workers in the Omnibus Bill on job creation. It should not be seen as an exhaustive list of concerns, but draws on Amnesty International's ongoing research programme on Indonesia.

2. DISCRIMINATION IN PALM OIL BUSINESSES (ARTICLE 11, SDG 5.1, 8.5)

In November 2016, Amnesty International published a report with the title, *“The Great Palm Oil Scandal: Labour Abuses Behind Big Brand Names.”*¹ Amnesty International found serious human rights abuses on the palm oil plantations supplying a leading palm oil t processor and merchandiser. These included forced labour and child labour, gender discrimination, as well as exploitative and dangerous working practices that put the health of workers at risk.

The report highlights a discriminatory pattern of hiring women as casual daily labourers, denying them permanent employment and social security benefits such as health insurance and pensions. Workers in plant maintenance units, who mostly comprised of women workers at the time of the 2016 report, continued to be casual even when they had worked for the company for several years.

During the course of the research, a worker whose wife, worked as a casual daily labourer, had never asked to be made permanent as: “it is impossible for a woman to be a permanent worker in Wilmar.” This was

¹ Amnesty International, *The Great Palm Oil Scandal: Labour Abuses Behind Big Brand Names* (Index: ASA 21/5184/2016, <<https://www.amnesty.org/en/documents/asa21/5184/2016/en/>>)

repeated by women workers who said that they never asked for a permanent contract because they didn't think they could get one.²

The pattern of hiring women on plantations as casual daily labourers and not offering them permanent employment amounts to differential treatment. Amnesty International's investigation found that the majority of women were only offered employment on plantations in units where they can work as casual daily labourers rather than in units where they can be hired as or eventually made permanent employees.

In addition, Amnesty International also found that women workers, are also prone to hazardous chemical exposure since most women workers are employed as sprayers in the plant maintenance unit. A temporary employment contract often excludes guarantee of health insurance schemes for women. Treatment for women casual daily labourers who were injured was paid from their husbands' insurance.³

Even if there is no clear policy in this regard, the fact that women are greatly overrepresented amongst casual daily labourers can amount to indirect discrimination. Wilmar and two of its suppliers which were covered by AI's research have not offered any reasonable and objective justification for their failure to offer permanent employment to the majority of women workers employed on their plantations. This differential treatment impairs women's rights to and at work, to health and to social security and results in discrimination against women workers.

Improvements have been made by Wilmar over the years, including changing the status of all temporary women workers to permanent as reiterated by the Human Capital of company W earlier in 2020 and confirmed by the labour union Serbundo, the labour union in Wilmar. Changes also include ensuring the women workers have access to maternity benefits, along with other benefits that are on par with male workforce.⁴

In addition, menstrual leave application is also easier and less intrusive for women workers.⁵ Women sprayers only work for approximately five hours and they are allowed to go home, and they are given condensed milk to maintain their health and minimize the impact of the chemicals exposure. Also, special place to breastfeed is provided by the company, allowing women workers to breastfeed their children while working in the plantations. Day care centre is also available in all plantations, and people working in the day care centre are provided with accommodation, food, and monthly wage.⁶

Widowed and divorced women workers will receive subsidies from the company after submitting a letter from the court or the Religious Affairs Office stating that they are divorced. If not possible, the labour union (Serbundo) will help the women workers to get the letter from the head of village. This is a positive development since it shows that Wilmar acknowledges widowed and divorced workers as head of families, and such letter ensures that all widowed and divorced workers receive benefits as heads of families. Subsidies received by women workers include water allowances, rice allowances for up to 3 children, houses/accommodations, and electricity allowances. For pregnant workers, they are entitled to 3 months of maternity leave, 1.5 months prior to and after giving birth.⁷

Despite the progress being made, exploitation against women workers in palm oil plantations remain ongoing in other plantations. The Palm Oil Labour Coalition⁸ stated that at least 60% of the total number of palm oil workers are women, and most of them are still casual daily labourers.⁹ They are still excluded from taking leaves, including maternity leaves as well as from health insurance.¹⁰

² Amnesty International interviews with S and other workers, dates and locations withheld to protect identity.

³ See Amnesty International, *The Great Palm Oil Scandal: Labour Abuses Behind Big Brand Names*, P. 63

⁴ Amnesty International Interview with Organisasi Penguatan dan Pengembangan Usaha-Usaha Kerakyatan (OPPUK), 24 April 2020.

⁵ Wilmar, Strengthening Labour Practices: Two Year Progress Report, <<https://ir-media.wilmar-international.com/app/uploads/2019/06/wilmar-2-year-progress-update-in-strengthening-labour-practices-9Nov2018.pdf>>, accessed on 12 June 2020. Reaffirmed by Amnesty International Interview with Organisasi Penguatan dan Pengembangan Usaha-Usaha Kerakyatan (OPPUK), 24 April 2020.

⁶ See Amnesty International Interview with Organisasi Penguatan dan Pengembangan Usaha-Usaha Kerakyatan.

⁷ *Ibid.*

⁸ Palm Oil Labour Coalition (*Koalisi Buruh Sawit*, KBS) is a coalition of labour unions in various palm oil plantations and civil society organizations in Indonesia.

⁹ Info Sawit, *Koalisi Buruh Sawit: Hilangkan Diskriminasi Buruh Perempuan di Perkebunan Kelapa Sawit*, <<https://www.infosawit.com/news/9740/koalisi-buruh-sawit-hilangkan-diskriminasi-buruh-perempuan-di-perkebunan-kelapa-sawit>>, accessed on 5 June 2020.

¹⁰ World Rainforest Movement, *Kekerasan Terhadap Buruh Perempuan di Perkebunan Sawit Indonesia*, <<https://wrm.org.uy/articles-from-the-wrm-bulletin/section1/kekerasan-terhadap-buruh-perempuan-di-perkebunan-sawit-indonesia/>>

Amnesty International recommends the following to the Indonesian authorities:

- Amend Decree No. 100/2004 to put in appropriate time-limits for casual work arrangements, in consultation with trade unions and workers. These time-limits should not exceed those in place for other fixed-term contracts;
- Amend Decree No. 100/2004 and initiate an amendment to the Manpower Act to establish stricter criteria for use of such arrangements, including explicit safeguards to ensure that there is no direct or indirect discrimination in the use of 'work agreements for free daily work' (*perjanjian kerja harian lepas*);
- Take steps to ensure that women workers receive wage according to decent living standards and equal remuneration and benefits with their male counterparts according to the recommendation of the UN Committee on Economic, Social and Cultural Rights.
- Increase the number of labour inspectors and strengthen the capacity of labour inspectors to monitor and enforce breaches of labour laws, including in the case of women across the country; and
- Make disaggregated information publicly available on the number of inspectors employed by the Ministry, inspections, investigations, prosecutions, convictions and other penalties imposed for breaches of labour laws, with a break down per sector, including for palm oil plantations.
- Take measures to resolve the overrepresentation of women as casual workers, especially in the palm oil plantation, including by ensuring that companies fulfil their obligations to convert temporary women workers to permanent after working for a certain period and fulfilling other conditions under Article 59(2) of the 2003 Manpower Law.

3. GENDER-BASED DISCRIMINATION IN LOCAL REGULATIONS (ARTICLE 1, 5, SDG 5.1, 5.2)

As part of the decentralization process which started in 1999–2000, and special autonomy packages for certain provinces in Indonesia, there has been an increase in locally enacted bylaws and regulations on a number of issues, such as health, education, and family affairs. Some of these laws and regulations do not conform to international law and standards, nor do they respect provisions in Indonesia's Constitution and Human Rights Law (No. 39 of 1999). A study published by the National Commission on Violence against Women (Komnas Perempuan) recorded over 60 local regulations which discriminate against women.

3.1 THE IMPLEMENTATION OF SHARI'A LAW IN ACEH

Aceh is the only Muslim-majority province that implements Islamic bylaw. The Aceh Criminal Code was passed by the Aceh parliament (DPRA) in 2014 and came into effect throughout Aceh Province on 23 October 2015. Islamic bylaw has been in force in Aceh since the enactment of the province's Special Autonomy Law in 2001 and are enforced by religious courts. The law, in some cases, provides for up to 200 lashes as punishment.

Punishable offences include same-sex relations, premarital sex and other sexual relations outside marriage (adultery or *zina*), consumption of alcohol (*khamar*), gambling (*maisir*), being alone with someone of the opposite sex who is not a marriage partner or relative (*khalwat*), committing sexual intimacy outside marriage (*ikhtilath*), sexual abuse, rape, and accusing a person of adultery without providing four witnesses.

Based on monitoring conducted by Amnesty International, there have been at least 120 individuals flogged in 2020 so far. (There were 309 in 2019, and 235 in 2018.) The most common offences were consensual sexual relations outside marriage, being alone with someone of the opposite sex and gambling.

Women and girls are often disproportionately affected by these laws, due to discriminatory gender stereotyped views of sexuality, for example, pregnancy outside marriage can be interpreted as proof that a woman has committed a crime. Further, Shari'a bylaws in Aceh have had a chilling effect on women human rights defenders there. Many expressed fears that they would be targeted by religious groups and the community at large, without adequate protection from local authorities, if they advocated openly on issues surrounding dress codes, *khalwat*, and caning.¹¹

Amnesty International recommends the following to the Indonesian authorities:

- Undertake a review of all local regulations and bylaws throughout Indonesia that discriminate against women in law, policy and practice, including to ensure that they are in full conformity with Indonesia's obligations under the Convention;
- Take immediate measures to ensure that the Aceh Shari'a bylaw, which contain caning as punishment and which are discriminatory towards women, such as the Aceh Criminal Code (*Qanun Hukum Jinayat*), are repealed immediately; and
- Take effective measures to ensure that all national and local government officials and lawmakers are sensitized to Indonesia's obligations under the Convention to ensure that the decentralization process does not result in Indonesia breaching its obligations under the Convention.

3.2 DRESS CODE FOR WOMEN

In addition, according to the National Commission on Violence against Women in Indonesia, supposed dress codes infractions are wrongly cited to excuse crime, perpetuating the impunity of the criminals because women victims are considered the responsible party in the sexual violence they experience.¹² The said Commission identified at least 21 regional regulations on dress codes which "directly discriminate against women" in intent or impact.¹³

In Aceh province, the Shari'a police (called *Wilayatul Hisbah*), and in some cases members of the public, conduct raids to ensure women comply; non-compliance can lead to warnings or temporary detention.

Dress codes can be a manifestation of underlying discriminatory attitudes and reflect a desire to control women's sexuality, objectifying women and denying their personal autonomy. Amnesty International is concerned that statements by government representatives perpetuate such discriminatory attitudes. The Indonesian government has an obligation to respect, protect and fulfil every individual's right to express their

¹¹ Amnesty International interviews with human rights activists in Aceh, dates and exact locations withheld to protect identity.

¹² National Commission on Violence against Women (Komnas Perempuan), *In the name of Regional Autonomy: The Institutionalization of Discrimination in Indonesia*, p.33.

¹³ *Ibid.*, p.19.

beliefs or personal convictions or identity. It must create an environment in which every person can make that choice free from coercion.

Amnesty International recommends the following to the Indonesian authorities:

- Repeal laws imposing mandatory dress codes; and
- Take effective measures to protect women from violence, threats, or coercion by law enforcement officials in order to compel them to wear particular forms of dress.
- Take effective measures to ensure all forms of gender-based violence and violence against women are criminalised, prosecuted and prevented, and that survivors of violence have a timely access to justice and redress.

4. ABORTION AND THREAT OF CRIMINALISATION (ARTICLES 5 AND 12, SDG 5.6)

Abortion is criminalized in most cases in Indonesia. A woman or girl seeking an abortion, or a health worker providing one, may be sentenced to up to four or 10 years of imprisonment respectively. As a result of this law, abortions in Indonesia are often performed clandestinely in unsafe conditions.

Under the 2009 Health Law, there are only two exceptions under Indonesian Law in which a woman may legally seek and health providers perform an abortion: if the health of the pregnant woman or the foetus is endangered or in the case of pregnancy resulting from rape. A woman who is pregnant as a result of rape, or a woman experiencing life-threatening complications as a result of pregnancy, has to meet several criteria to access abortion services.

Legal abortion provisions for rape victims are only permitted within the first six weeks of pregnancy. This limited timeframe means that most rape victims may not be able to access safe abortion within the required timeframe as they may not know they are pregnant by then.

The above situation is worsened in the Indonesia's draft criminal code, which is currently being deliberated in parliament. Under the draft criminal code, only doctors will have the right to decide to perform an abortion on health grounds. This contradicts the 2009 Health Law, according to which a woman can opt in an abortion in "a medical emergency." A woman who have had an abortion could be sentenced to up to four years in prison. Anyone who helps a pregnant woman get an abortion could be sentenced to up to five years in prison. These articles might also be interpreted to prosecute those selling or using emergency contraception with punishments of up to a six-month jail term.

Amnesty International recommends the following to the Indonesian authorities:

- Decriminalize abortion in all circumstances and ensure women and girls can have an effective and timely access to safe abortion services, at minimum when pregnancy as a result of rape;
- Revise the Health Law, in particular:
 - Extend the time limit for accessing legal abortion by rape victims; and
 - Revise legal provisions in the Health Law to ensure that women who suffer post-abortion complications can receive timely post-abortion care regardless of the legality of abortion.
- Ensure that all women and girls can access timely post-abortion care;
- Ensure that women and girls can receive timely and accurate information about the available safe and legal abortion services; and
- Health providers should provide timely and accurate information about available safe and legal safe abortion services and perform timely referrals regardless of their personal or religious convictions. Monitoring mechanisms should be in place to ensure that these services are available and accessible in practice to all women and girls who need them.

5. LACK OF PROTECTION FOR DOMESTIC WORKERS (ARTICLES 5, 11 AND 15, SDG 5.1, 5.4)

In its briefing to the Committee in 2012, Amnesty International highlighted the lack of protection of women and girls domestic workers from gender-based violence and discrimination in the field of employment, health and education. Eight years later many of these concerns remain, leaving domestic workers at risk of exploitation and abuse and Indonesia failing to meet its obligations.

Millions of domestic workers in Indonesia are at risk of economic exploitation and routine abuse while living in legal limbo without protection. Domestic workers in Indonesia are not protected by legislation safeguarding workers' rights, leaving them at risk of economic exploitation and the denial of their rights to fair conditions of work, health and education.

Existing domestic legislation – in particular the Manpower Law (No. 13 of 2003) discriminates against domestic workers, because it does not afford them the same protection which other workers receive under its provisions, for example reasonable limitation on working hours, remuneration adequate to secure a life with dignity, and standards providing for rest and holidays. This lack of legal protection disproportionately affects women and girls who comprise the vast majority of domestic workers in Indonesia .

Furthermore, women and girls who are domestic workers are also exposed to gender-based violence including rape and sexual harassment, due to the isolation in which they live, in combination with their low

social status.¹⁴ Although violence against domestic workers is criminalized in the 2004 Domestic Violence Law, many domestic workers are still unaware of this law in part due to their lack of education and access to information. Furthermore, fear of losing their job means many domestic workers may be unwilling to make a complaint.

Provisions in the Manpower Act which guarantee specific protection for women workers do not apply to domestic workers, meaning that their treatment – for example during pregnancy and at the time of birth – depends solely on the goodwill of their employer. Interviews with domestic workers conducted by Amnesty International found that domestic workers who are pregnant risk losing their job as a result of their pregnancy, without any form of compensation. Others may be forced to work long hours without adequate time to rest if they want to keep their job. In 2016, some of the domestic workers told Amnesty International that they were forced to work even if they did not feel well or they felt the work they were doing was too heavy for their condition and put their health and pregnancy at risk.¹⁵

Their exposure to discrimination and human rights abuses is worsened by the pending discussion of the Domestic Workers Bill, which can provide safeguarding provisions to protect the rights of domestic workers, including their minimum wage, leave and holiday, as well as maximum working hours.¹⁶

Amnesty International recommends the following to the Indonesian authorities:

- Pass specific legislation regulating the labour conditions of domestic workers in accordance with international human rights law and standards, and in particular provisions contained in the legislation should not be less favourable than what is provided for other workers in the Manpower Act;
- Ratify the ILO Domestic Workers Convention (No. 189) and ILO Maternity Protection Convention (No.183), and incorporate their provisions into domestic law and implement them in policy and practice; and
- Ensure domestic workers have access to information and health care, including sexual and reproductive health services.

¹⁴ Amnesty International, *Exploitation and abuse: the plight of women domestic workers* (Index: ASA 21/001/2007) <<https://www.amnesty.org/en/documents/ASA21/001/2007/en/>>

¹⁵ Amnesty International interviews with several domestic workers, dates and locations withheld to protect identity.

¹⁶ Tirto, *Nasib Pekerja Rumah Tangga dan Mengapa Mereka Perlu Dilindungi*, <<https://tirto.id/nasib-pekerja-rumah-tangga-dan-mengapa-mereka-perlu-dilindungi-ehpT>>, accessed on 5 June 2020.

6. POTENTIAL DISCRIMINATION IN THE OMNIBUS BILL ON JOB CREATION (ARTICLES 11 AND 12, SDG 5.1, 8.5)

The Government of Indonesia is undergoing a process of formulating an Omnibus Bill on Job Creation (Omnibus Bill), which, Amnesty International believes, will weaken protection of existing workers' rights. Aimed to boost investment and the ease of doing business, the Government of Indonesia, along with the parliament has decided to use the Omnibus Bill to revise 79 laws deemed as a hindrance to the investment and reorganise them into 11 clusters and 1,244 articles, including the three laws mentioned above related to labour. Amnesty International is concerned that the process involved in formulating the Omnibus Bill has not been sufficiently participatory and that some parts of it may not be in keeping with Indonesia's obligations under international human rights law.

The Omnibus Bill changes provision of paid leave in Article 93(2) of the Manpower Law. This amendment eliminates some forms of paid leave including menstruation leave, leave for family occasions (marriage, circumcision, baptism, or death of family members), parental leave, and religious holidays). It is currently unclear whether women workers will be entitled to paid menstruation or maternity leave, and there is concern that this will not only constitute a regressive step from the 2003 Manpower Law but also a violation of the right to just and favourable conditions of work.

Besides, the Bill revokes Article 59 of the Manpower Law, which eliminates the maximum period for a temporary work agreement, the maximum period of extensions, and other conditions which currently outline conditions which lead to the conversion of a temporary work arrangement to a permanent work arrangement. Amnesty International is concerned that this will disproportionately impact women workers as a large majority of them are employed under temporary work agreements. As temporary workers they will also be excluded from social protection such as health insurance schemes and other benefits.

Amnesty International recommends the following to the Indonesian authorities:

- Ensure that changes to labour law through the Omnibus Bill do not undermine workers' rights, including the rights of women workers, as guaranteed by international human rights standards.
- Consult with labour unions on the substance before passing the Omnibus Bill and enacting them as law, especially on the practice in the field.
- Conduct a thorough assessment of the "Manpower Chapter" in the Omnibus Bill and ensure that its provisions are in accordance with relevant international human rights standards, including the International Covenant for Economic, Social and Cultural Rights (ICESCR) and General Comment No. 23 of 2016 on the Right to Just and Favourable Conditions of Work.

**AMNESTY INTERNATIONAL
IS A GLOBAL MOVEMENT
FOR HUMAN RIGHTS.
WHEN INJUSTICE HAPPENS
TO ONE PERSON, IT
MATTERS TO US ALL.**

CONTACT US



info@amnesty.org



+44 (0)20 7413 5500

JOIN THE CONVERSATION



www.facebook.com/AmnestyGlobal



[@Amnesty](https://twitter.com/Amnesty)

INDONESIA

SUBMISSION TO THE UNITED NATIONS COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN

78TH PRE-SESSIONAL WORKING GROUP, 13-17 JULY 2020

Amnesty International provides this submission ahead of the adoption of the list of issues for Indonesia by the UN Committee on the Elimination of Discrimination against Women at the 78th pre-session July 2020.

Although the Indonesian government has taken positive steps to fulfil its pledge to combat violence against women and eliminate prejudice against women, Amnesty International is concerned that women and girls in Indonesia continue to face barriers in fully exercising their human rights in law, policy and practice.

In this briefing Amnesty International provides information on the implementation by Indonesia of the Convention, and will set out ways in which the Indonesian government could better comply with its obligations under the Convention. In this document, Amnesty International highlights five areas of concern. They include discrimination in palm oil businesses, decentralisation and gender-based discrimination, abortion and threat of criminalisation, lack of protection for domestic workers, and regressive steps towards women workers in the Omnibus Bill on job creation. It should not be seen as an exhaustive list of concerns, but draws on Amnesty International's ongoing research programme on Indonesia.