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**INTERNATIONAL COMMISSION OF JURISTS (ICJ) SUBMISSION FOR THE
PREPARATION BY THE COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL
RIGHTS OF A LIST OF ISSUES FOR THE EXAMINATION OF THE INITIAL
REPORT OF INDONESIA**

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ICJ's submission for the Committee on Economic, Social and Cultural Rights for the preparation of a List of Issues on Indonesia

1. During its 52nd session, from 28 April to 23 May 2014, the Committee on Economic, Social and Cultural Rights (the Committee) will examine the initial report of Indonesia under the International Covenant on Economic, Social and Cultural Rights (ICESCR). Ahead of this, in the context of its 52nd pre-sessional Working Group, the Committee will prepare and adopt a List of Issues.
2. The International Commission of Jurists (ICJ) welcomes the opportunity to contribute to the Committee's preparation of the List of Issues. In this submission, the ICJ brings to the attention of the Committee issues related to articles 2, 6, 7, 8, 11, 12 and 15 of the ICESCR.

**ARTICLE 6 AND 7 (IN CONJUNCTION WITH ARTICLE 2):
RIGHT TO FREELY CHOOSE WORK, AND JUST AND FAVOURABLE WORKING
CONDITIONS**

- (i) Case of Tangerang
3. Article 6 of the ICESCR provides "...the right of everyone ...to gain his living by work which he freely chooses or accepts..." In addition to being a party to the ICESCR, Indonesia is also a party to the International Labour Organization's (ILO) 1930 Forced Labour Convention (No. 29), Article 2 of which defines forced or compulsory labour as "all work...exacted from any person under the menace of any penalty...not offered...voluntarily". Indonesia is also a party to the 1957 Abolition of Forced Labour Convention (ILO Convention No. 105).¹ Being a party to the 1957 Convention, the Government of Indonesia has the obligation to undertake "effective measures to secure the immediate and complete abolition of forced or compulsory labour".²
4. On 4 May 2013, the Commission for Missing Persons and Victims of Violence (KontraS)³ revealed a case of forced labour involving 30 workers and four children at a kitchen utensils factory in Tangerang.⁴ They were crammed in a 40 by 40 meter room with only one bathroom and no windows and forced to work there 18 hours per day.⁵ Only two meals were provided daily, with no pay, and several workers complained of serious skin burns due to working too closely to a furnace used to boil tin.⁶ Most of the people concerned were found to be suffering from malnutrition and

¹ "Principles embodied in the ILO forced labour Conventions Nos. 29 and 105 have found practically universal acceptance and endorsement and have become an unalienable part of the fundamental rights of human beings. They have been incorporated in various international instruments, both universal and regional. The prohibition of the use of forced or compulsory labour in all its forms is considered now as a peremptory norm of modern international law on human rights. These two fundamental ILO Conventions are the most widely ratified of all the ILO instruments, and further ratifications are envisaged in the near future", ILO, *Eradication of Forced Labour*, 2007, http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_089199.pdf, para. 1

² Abolition of Forced Labour Convention of 1957, Article 2

³ KontraS was founded on 20 March 1998 and is a non-governmental organization working on the issues of enforced disappearances, extrajudicial killings, arbitrary detentions and torture. See: <http://www.kontras.org/eng/index.php>

⁴ KontraS, 'Tentang Kerja Paksa 28 Buruh di Tangerang', 4 May 2013, http://www.kontras.org/index.php?hal=siaran_pers&id=1701 (Accessed 19 October 2013)

⁵ Ibid. See also Sita W. Dewi, 'Officials could be involved in Tangerang slavery', *Jakarta Post*, 6 May 2013, <http://www.thejakartapost.com/news/2013/05/06/officials-could-be-involved-tangerang-slavery-case.html> (Accessed 5 October 2013)

⁶ *Ibid*

anemia.⁷ Both the police and the Ministry of Manpower are said to be currently investigating the case.⁸ To date, five persons have been detained by the police, including Mr. Yuki Irawan, the owner of the factory.⁹ Nonetheless, despite KontraS' report of a member of the Indonesian Army's¹⁰ involvement in the case, the ICJ is concerned that there appears to have been no investigation to date of the alleged involvement of the said individual.¹¹ There have also been allegations that several police officers had been seen providing protection to the factory despite its illegal labour practices.¹² There has been no adequate investigation in respect of such allegations.¹³

5. Based on the facts of the Tangerang case, it appears that the Government of Indonesia has also not acted in line with at least three of the State's obligations under Article 7 of the ICESCR. Under Article 7(a)(ii) provides that remuneration provided should, at the minimum, be adequate to ensure a decent living for workers and their families, while Article 7(b) provides that working conditions should be safe and healthy. Furthermore, Article 7(d) provides that employers have to recognize a worker's right to "rest, leisure and reasonable limitation of working hours..."
6. The 34 individuals were not remunerated for their four months of work and worked approximately 18 hours everyday, without any entitlement to rest, leisure or remuneration for public holidays. It is also clear that the working environment the workers were placed in was hazardous and not in compliance with the ILO's Occupational Safety and Health Convention of 1981, as it was reported that some of the workers suffered burns from the furnace. Moreover, it is unclear whether the factory had an adequate and appropriate inspection system, as required under Article 9 of the 1981 Convention.
7. With regard to the general labour inspection laws in Indonesia, there are several relevant pieces of domestic legislation. These include Law No.3 of 1951 concerning Bringing the Labour Inspection Law No.23 of 1948 of the Republic Indonesia into operation for the whole territory of Indonesia; Law No.1 of 1970 concerning Occupational Safety; Law No.7 of 1981 concerning Compulsory Reporting for Companies; Law No. 4 of 1992 concerning Social Security for Workers; Law No. 13 of 2003 concerning Manpower; Law No.21 of 2003 concerning the Ratification of ILO Convention No. 81 on Labour Inspection in Industry and Trade; and Presidential Decree No.21 of 2010 concerning Labour Inspection, and Manpower and Transmigration Ministerial Decree No. 9/V/2005 concerning Procedure for Labour Inspection Reporting. In 2010, there were approximately 1275 labour inspectorates and 317 specialists within various departments, including occupational health, working environment, and wages and working hours.¹⁴

⁷ *Ibid*

⁸ *Ibid*

⁹ Interview with Mr. Chris Biantoro, Lawyer of KontraS, 14 October 2013

¹⁰ A branch of the Indonesian National Armed Forces

¹¹ Interview with Mr. Chris Biantoro, Lawyer of KontraS, 16 October 2013

¹² 'Indonesia slave factory shocks many', *Straits Times*, 10 May 2013, <http://www.straitstimes.com/the-big-story/asia-report/indonesia/story/indon-slave-factory-shocks-many-20130510> (Accessed 1 November 2013)

¹³ KontraS, 'Korban dan Tim Advokasi Buruh Kualii: Mendesak Aluntabilitas dan Profesionalisme Aparat Penegak Hukum dalam Penanganan Kasus Buruh Kualii, Tangerang', 23 September 2013, http://www.kontras.org/index.php?hal=siaran_pers&id=1775 (Accessed 1 November 2013)

¹⁴ ILO, 'Factsheet on Labour Inspection in Indonesia', 1 November 2011, http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-jakarta/documents/publication/wcms_166445.pdf (Accessed 24 October 2013)

8. The ICJ makes the following suggestions for the List of Issues for the examination of Indonesia:
- ***What steps has the Government of Indonesia taken to undertake an effective investigation and hold accountable the perpetrators, and provide for adequate redress for the victims, in the Tangerang slavery case?***
 - ***What legal remedies are available in cases of forced or compulsory labour? Can you provide examples of cases in which these violations have been recognized and sanctioned by courts or other legal mechanisms?***
 - ***What legal remedies are available in cases where Article 7 of the ICESCR has been violated? Can you provide examples of cases in which these violations have been recognized and sanctioned by courts or other legal mechanisms?***
 - ***What steps has the Government of Indonesia taken to facilitate and ensure that the labour inspectorates aimed at preventing further violations of rights under Article 7 of the ICESCR are efficient in monitoring and inspecting work sites?***
 - ***What other steps has the Government of Indonesia undertaken to ensure more effective enforcement of the rights and entitlements as stipulated under Article 7 of the ICESCR?***

(ii) Draft domestic workers protection law

9. In 2011, the ILO adopted the Convention Concerning Decent Work for Domestic Workers (Domestic Workers Convention, No. 189), which provides international standards for domestic workers, including minimum age,¹⁵ right to decent working conditions,¹⁶ right to normal working hours, overtime compensation, paid annual leave and rest of at least 24 consecutive hours.¹⁷ It also provides that every domestic worker is entitled to a safe and healthy working environment¹⁸ and should receive social security benefits.¹⁹
10. However, in Indonesia, the rights of domestic workers continue to go substantially unrecognized as the draft domestic workers protection law, for several years now under debate, still faces delays in the Indonesian House of People's Representatives.²⁰ In 2010, it was estimated that there were about 2.4 million domestic workers in the country and many of them encounter poor working conditions with inadequate legal protection.²¹ Some of these workers have complained of having to work seven days per week for up to 12 hours each day, without days off.²² It has also been reported that female workers, even those below 18, very often become victims of violence, including rape or sexual harassment.²³

¹⁵ Convention Concerning Decent Work for Domestic Workers 2011, Article 4

¹⁶ *Ibid*, Article 6

¹⁷ *Ibid*, Article 10

¹⁸ *Ibid*, Article 13

¹⁹ *Ibid*, Article 14

²⁰ Amnesty International, 'Indonesia: Ensure legal protection for domestic workers', 18 June 2013, <http://www.amnesty.org.au/news/comments/32079/> (Accessed 7 October 2013)

²¹ Isabelle Arradon, 'Bringing Indonesian domestic workers out of legal limbo', *Jakarta Post*, 15 February 2013, <http://www.thejakartapost.com/news/2013/02/15/bringing-indonesian-domestic-workers-out-legal-limbo.html> (Accessed 7 October 2013)

²² *Ibid*

²³ *Ibid*

11. The ICJ makes the following suggestions for the List of Issues for the examination of Indonesia:

- ***What measures has the Government of Indonesia taken to provide interim protection to current domestic workers victims of, or facing violations, at their workplace and as a precautionary step to prevent similar cases from happening in future? What specific measures have the authorities taken to address violations suffered by women domestic workers who are victims of sexual violence?***
- ***What steps has the Government of Indonesia taken to ratify the 2011 Convention Concerning Decent Work for Domestic Workers?***
- ***What measures has the Government of Indonesia taken towards the formalization of labour or domestic work so as to give all workers adequate protection without discrimination?***
- ***What steps has the Government of Indonesia taken to facilitate and ensure that the labour inspectorates are efficient in monitoring and inspecting work sites of domestic workers?***
- ***What legal remedies are available in cases where the rights of domestic workers, including women domestic workers who are victims of sexual violence, have been violated? Can you provide examples of cases in which these violations have been recognized and sanctioned by courts or other legal mechanisms?***

(iii) Fair wages and equal remuneration for work of equal value

12. Article 7(a)(i) of the ICESCR provides that all workers are to enjoy "fair wages and equal remuneration for work of equal value without distinction of any kind..." Indonesia has ratified the ILO Convention No. 100 on the Equal Remuneration for Men and Women Workers for Work of Equal Value (Law No. 80 of 1957). Further, under Article 6 of Law No.13 Year 2003 concerning Manpower, an employer must treat his or her employees equally without discrimination.

13. Despite these legal obligations, according to the Global Gender Gap Report of 2012, Indonesia scored 0.67 out of a total 1.00 on female-to-male ratio wage equality.²⁴ This means that for every 100 male workers, only 67 female workers are given equal remuneration for work of equal value.²⁵ In a 2012 analysis by Australian Aid, it was also noted that women are likely to earn as much as 25 percent less than their male colleagues in the same occupation.²⁶

14. The ICJ makes the following suggestions for the List of Issues for the examination of Indonesia:

- ***What measures has the Government of Indonesia undertaken to ensure equal remuneration for work of equal value and to reduce the female-to-male ratio wage equality?***
- ***In particular, what remedies, including judicial, are available in cases of violations of the right to equal pay for equal work? Can you provide examples of cases in which these violations have been recognized and sanctioned by courts or other legal mechanisms?***

²⁴ World Economic Forum, *The Global Gender Gap Report 2012*, http://www3.weforum.org/docs/WEF_GenderGap_Report_2012.pdf, pp 204

²⁵ *Ibid*, page 46. The report also estimated that the general average earned income for males is approximately USD 6,567 a year, while women earned only an approximate USD 2,780 per annum.

²⁶ Australian Aid, *Empowering Indonesia Women for Poverty Reduction*, September 2012, <http://www.ausaid.gov.au/countries/eastasia/indonesia/Documents/mampu-part-a.pdf>, page 10

- ***What steps has the Government of Indonesia taken to facilitate and ensure that the labour inspectors are efficient in monitoring fair wages for work of equal value?***

(iv) Working hours

15. Article 7(d) of the ICESCR provides that there must be "...reasonable limitation of working hours..." Article 77 of Law No.13 Year 2003 concerning Manpower stipulates that the maximum working hours allowed in a week is 40 hours. If a worker clocks in overtime, he or she should not exceed a figure of 14 hours per week,²⁷ and employers are obliged to pay them for their additional hours.²⁸
16. Based on ILO Decent Work Report, in 2010 alone, 36.4 per cent of the men and 25.9 per cent of women in the labour force worked more than 48 hours per week.²⁹ In 1996, these figures stood at only 29.4 for men and 17.5 for women. The report also provided statistics from 1996 to 2010, where it clearly showed a constant rise in the number of hours worked.
17. In another study conducted by Better Work Indonesia, it emerged that none of the eight garment factories surveyed were applying the correct hourly formula when compensating overtime work.³⁰ Two of the factories were not paying the workers the correct rate for all overtime hours worked on public holidays and three were giving the wrong remuneration rate for overtime hours worked on weekly rest days.³¹ The calculations were not in compliance with domestic statutory laws, thus constituting potentially unlawful deductions.
18. The ICJ makes the following suggestions for the List of Issues for the examination of Indonesia:
- ***What steps has the Government of Indonesia taken to ensure that employers better respect and enforce working hours that are permitted by law?***
 - ***What programs has the Government of Indonesia established aimed at training employers and managers to ensure better compliance with labour law?***
 - ***What legal remedies are available in cases where employers breach the number of permitted working hours of their employees? What steps has the Government of Indonesia undertaken to prevent the occurrence of future unlawful deduction cases? Can you provide examples of cases in which these violations have been recognized and sanctioned by courts or other legal mechanisms?***
 - ***What steps has the Government of Indonesia taken to facilitate and ensure that the labour inspectorates are efficient in monitoring and inspecting work sites?***

²⁷ Law No.13 Year 2003 concerning Manpower, Article 78(1)(b)

²⁸ *Ibid*, Article 78(2)

²⁹ ILO, *Decent Work Country Profile Indonesia*, 2012 <http://webcache.googleusercontent.com/search?q=cache:iJOxRw9SIkoJ:unieropa.org/eng/down/2313072012153828/+decent+work+country+profile+indonesia+2012&cd=7&hl=en&ct=clnk#67>, page 37

³⁰ Better Work Indonesia, *Better Work Indonesia: Garment Industry 1st Compliance Synthesis Report*, 11 October 2012, <http://betterwork.com/global/wp-content/uploads/Better-Work-Indonesia-Synthesis-Report-EN.pdf>, page 12

³¹ *Ibid*

**ARTICLE 8 (IN CONJUNCTION WITH ARTICLE 2)
FREEDOM OF ASSOCIATION & TRADE UNIONS**

(i) Freedom to form and join trade unions

19. Article 8(1)(a) of the ICESCR provides that everyone has the right to "...form trade unions and join the trade union of his choice...No restriction may be placed on the exercise of this right other than those prescribed by law and necessary in a democratic society in the interest of national security or public order or for the protection of the rights and freedoms of others." While the Government of Indonesia has ratified ILO's 1948 Convention No.87 concerning Freedom of Association and Protection of the Right to Organise and recognizes that trade union memberships must be open to people without discrimination, regardless of political allegiance, religion, ethnicity and sex,³² this right is not extended to private security guards.
20. In 2012, the police issued a circular letter No. Pol. 28/IV/2002 PENSAT, prohibiting security guards (SATPAM) from becoming members of trade unions.³³ SATPAM are private security guards and their services are provided to the government and to private companies or individuals.³⁴ ILO Case No. 2299 concerned the denial of legal personality by the Government of El Salvador of the Private Security Services Industry Workers' Trade Union.³⁵ Security personnel were not allowed to join or establish trade unions.³⁶ The ILO Committee of Experts concluded that workers from private security companies should be free to establish trade unions of their choice, in accordance with the "principles of freedom of association".³⁷ In light of this conclusion as well as Indonesia's general obligations under article 8, the ICJ considers that circular letter No. Pol. 28/IV/2002 PENSAT should be reviewed by the Government of Indonesia and SATPAM workers should be permitted to join trade unions of their choice.
21. In practice, it is also not uncommon for workers to be dismissed or subject to criminal sanction for their involvement with trade unions. For instance, Luviana Ariyanti was dismissed from her job of nine years as a journalist at Metro TV after she had started a worker's union at her workplace to call for better remuneration practices.³⁸ Similarly, Djody Soegiharto, an employee at the PT Kertas Leces, was dismissed and accused of defamation against the company's directors for supporting his workplace's workers' union in its efforts to secure unpaid wages and benefits.³⁹ In its General Comment No. 20 on "Non-discrimination in economic, social and cultural rights", the Committee, in

³² Act No. 21 Year 2000 concerning Trade Unions, Article 12

³³ Change.org, 'Bapak President Republik Indonesia, KOMISI III DPR RI, KOMPOLNAS, KAPOLRI: Mencabut Surat Edaran Bahuman Polri No. Pol: 28/IV/2002 PENSAT', <http://www.change.org/id/petisi/bapak-presiden-republik-indonesia-komisi-iii-dpr-ri-kompolnas-kapolri-mencabut-surat-edaran-se-bahumas-polri-no-pol-28-iv-2002-pensat> (Accessed 9 October 2013)

³⁴ Center for Security and Peace Studies, *Police Reform from Below: Examples from Indonesia's Transition to Democracy*, http://www.idea.int/publications/dchs/upload/dchs_vol2_sec2_2.pdf, pg 56

³⁵ ILO, *Report in which the committee requests to be kept informed of development (Report No.333)*, March 2004, Case No. 2299 (El Salvador), http://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:2908236, para 548

³⁶ *Ibid*, para 553

³⁷ *Ibid*, para 562

³⁸ 'Luviana Ariyanti: The Struggle of a Female Journalist for Labour Rights in Indonesia', 20 September 2012, <http://www.amrc.org.hk/text/node/1278> (Accessed 7 October 2013)

³⁹ 'Paper union leader is criminalized in Indonesia', 29 January 2013, <http://www.industrialunion.org/paper-union-leader-is-criminalized-in-indonesia> (Accessed 7 October 2013)

commenting on 'political or other opinion' as a discrimination ground, affirms that "[p]olitical and other opinions are often grounds for discriminatory treatment and include both the holding and not-holding of opinions, as well as expression of views or membership within opinion-based associations, trade unions or political parties...."⁴⁰ In this regard, the ICJ is concerned that the above-mentioned cases of dismissal and criminal prosecution likely constitute discrimination on the ground of trade union membership.

22. Moreover, under Article 43 of Act No. 21 Year 2000 concerning Trade Unions, a person who hampers trade union membership or forces a worker not to form or be a member of a trade union, is liable to be prosecuted for a criminal offence, which carries a sentence of up to five years' imprisonment and/or a maximum fine of Rp500,000,000 (USD 435,000). This criminal sanction is important to ensure the full enjoyment of the rights provided in Article 8(1)(a) of the ICESCR. However, according to LBH Jakarta, it appears that this provision has not been enforced despite the fact that workers have submitted hundreds of reports to the police and labour inspectors detailing union busting practices. Lack of effective enforcement coupled with undue delays in investigating those practices foster a climate of impunity for perpetrators.⁴¹ Since the introduction of the Trade Unions Act, only one case has resulted in a conviction on union busting charges in 2009.⁴²

23. The ICJ makes the following suggestions for the List of Issues for the examination of Indonesia:

- **What steps has the Government of Indonesia taken to review and revoke circular letter Pol. 28/IV/2002 PENSAT?**
- **What steps has the Government of Indonesia undertaken to ensure that petitions or complaints filed under Article 43 of Act No. 21 Year 2000 concerning Trade Unions will be handled in an expeditious and competent manner?**
- **What steps has the Government of Indonesia taken to ensure that Article 43 of Act No. 21 Year 2000 is enforced, including in respect of undertaking investigations and prosecutions where warranted by the evidence?**

(ii) Right to strike

24. Article 8(1)(d) of the ICESCR provides for a worker's right to strike. However, in Indonesia this right, which is part and parcel of the right to freedom of association and expression, is limited by Ministerial regulation No. KEP.232/MEN/2003 and Standard Operating Procedure No. 1/X/2010 concerning the Combat against Anarchy.

25. Under Article 1(3)(a) of Ministerial regulation No. KEP.232/MEN/2003 concerning Legal Consequences of Illegal Strikes, strikes are considered illegal whenever they are undertaken outside the context of "failed negotiations". This gives employers great leeway to obstruct a union's decision to strike because "failure" is defined as negotiations that have reached deadlock as declared by both sides.⁴³ Further, it means in practice that if the employer does not declare that the negotiations are at an end and have failed, any strike action taken by the workers can easily be characterized as illegal. However, according to the ILO's Principles concerning the Right to Strike, compulsory arbitration should only be employed where essential

⁴⁰ General Comment No. 20, E/C.12/GC/20, 2 July 2009, paragraph 23.

⁴¹ Interview with Ms. Restaria Hurabarat, Deputy Director of LBH Jakarta, 4 October 2013

⁴² Ibid

⁴³ Ministerial regulation No. KEP.232/MEN/2003, article 4

services are involved, i.e. in the case of either acute national crisis or where an interruption in public services could threaten to endanger a part of or the population as a whole.⁴⁴ Indeed, in the Concluding Observations of the Committee on Economic, Social and Cultural Rights on the Russian Federation in May 2011, the Committee raised concern over Russia's compulsory arbitration and recommended that such restriction be limited to essential services.⁴⁵

26. The Standard Operating Procedure No. 1/X/2010 concerning Combating Anarchy confers powers to the police to stop or prevent the act of a person or a group considered to cause chaos, danger to the general public, or threaten the safety of persons or property.⁴⁶ The ICJ is concerned at the vagueness and breadth of the notions employed in the above-mentioned Standard Operating Procedure (such as anarchy and chaos).
27. On 23 September 2013, during a workers' demonstration calling for permanent contracts, two workers were shot by police with tear gas shells.⁴⁷ Both were shot at close range and suffered head injuries.⁴⁸ The coordinator of the demonstration, Mr. Khamid Istakhori, stated that the demonstration became chaotic once the police forcibly dispersed off the crowd with tear gas.⁴⁹ The police provided no explanation for the incident.⁵⁰ The security authorities have not invoked or justified their actions on the basis of the Standard Operating Procedure.
28. According to the ILO Principles on the Right to Strike, interventions by the police should be restricted to the maintenance of public order and only where there is a serious threat to law and order.⁵¹ Any use of force must be proportionate to the threat and any excessive violence should be avoided when trying to control such demonstrations.⁵² These principles are also consistent with Articles 13 and 14 of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, which read as follows:
- "13. In the dispersal of assemblies that are unlawful but non-violent, law enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict such force to the minimum extent necessary.
14. In the dispersal of violent assemblies, law enforcement officials may use firearms only when less dangerous means are not practicable and only to the

⁴⁴ ILO, *ILO Principles Concerning the Right to Strike* (2000), http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_087987.pdf, pp 26

⁴⁵ CESCR, Concluding Observations for Russian Federation, UN Doc E/C.12/RUS/CO/5, 20 May 2011, http://webcache.googleusercontent.com/search?q=cache:riNHX49koAJ:www2.ohchr.org/english/bodies/cescr/docs/E.C.12.RUS.CO.5_en.doc+concluding+observation+compulsory+arbitration+trade+union+cescr&cd=2&hl=en&ct=clnk&client=safari, para 20

⁴⁶ Standard Operating Procedure No. 1/X/2010 concerning the Combating Anarchy, Para 5(c)

⁴⁷ Mang Raka, '2 buruh bocor kena selongsong peluru'. Radar Karawang, 24 September 2013, <http://www.radar-karawang.com/2013/09/2-buruh-bocor-kena-selongsong-peluru.html> (Accessed 7 October 2013)

⁴⁸ *Ibid*

⁴⁹ Indra Wijaya, 'Demo, dua buruh Karawang kena tembak gas air mata', Tempo.co, 24 September 2013, <http://www.tempo.co/read/news/2013/09/24/214516078/Demo-Dua-Buruh-Karawang-Kena-Tembak-Gas-Air-Mata> (Accessed 7 October 2013)

⁵⁰ *Ibid*

⁵¹ ILO, *ILO Principles Concerning the Right to Strike* (2000), http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_087987.pdf, page 47

⁵² *Ibid*

minimum extent necessary. Law enforcement officials shall not use firearms in such cases, except under the conditions stipulated in principle 9."

29. In light of the above, the ICJ makes the following suggestions for the List of Issues for the examination of Indonesia:

- ***What measures has the Government of Indonesia taken to ensure that compulsory arbitration applies only to essential services and efforts to amend Article 1(3)(a) of Ministerial regulation No. KEP.232/MEN/2003 concerning Legal Consequences of Illegal Strikes?***
- ***How does the Government of Indonesia reconcile the Standard Operating Procedure with the right of trade union members to take collective action, including the right to strike as protected under the ICESCR?***
- ***In light of the alleged excessive use of force by the police in the workers' demonstration case, what forms of investigations, if any, have been carried out? If none, why were the police's actions not investigated?***
- ***What steps has the Government of Indonesia taken to ensure that police officers are properly trained to manage trade union strikes in a manner consistent with Indonesia's obligations under relevant international law and standards?***

ARTICLE 11 AND 12 (IN CONJUNCTION WITH ARTICLE 2) RIGHT TO WATER

30. According to the Committee's General Comment No.15, the right to water is an indispensable right recognized and included under Article 11(1) and Article 12(1) of the ICESCR and affirmed by the UN General Assembly.⁵³ This right is well recognized by the Indonesia⁵⁴ and Article 33(3) of the Constitution of Indonesia states that: "The land, the waters and the natural resources for the country as well as the natural riches therein are to be controlled by the State and to be exploited to the greatest benefit of the people."

31. The Committee has set out three essential obligations under the Covenant that States must discharge at all times. They are as follows:

- (i) States must ensure that the availability of water for a wide variety of purposes be provided sufficiently and continuously to every person and to consider supplying extra to certain affected groups.⁵⁵ According to a study carried out by the World Health Organization (WHO), the minimum amount of water needed for the protection of a person's basic health is approximately 7.5 litres of daily;⁵⁶
- (ii) States must ensure that the quality of water provided does not contain harmful substances that could pose a threat to a person's health and comply with international standards established by WHO;⁵⁷ and
- (iii) States must ensure the accessibility of water, including the physical reach to water facilities and services, the affordability of water, the supply of water based on non-discrimination and the right to information regarding water

⁵³ ICESCR, General Comment No. 15, *The right to water (arts. 11 and 12 of CESCR)*, UN Doc E/C.12/2002/11, para 3

⁵⁴ The Government of Indonesia voted in favor of the General Assembly resolution A/64/L.63/Rev.1 entitled "The human right to water and sanitation". See http://www.un.org/en/ga/search/view_doc.asp?symbol=A/64/PV.108, page 9

⁵⁵ *Ibid*, para 12(a)

⁵⁶ WHO, *Domestic Water Quantity, Service, Level and Health*, 2003, http://www.who.int/water_sanitation_health/diseases/WSH0302.pdf, pg 23

⁵⁷ *Ibid*, para 12(b)

issues.⁵⁸

32. In Jakarta, two private operators, namely, Palyja, a subsidiary of Suez International, and Aetra, acquired in 2006 by the Singapore-based consortium Acuatico from Thames Water, manage the distribution of water collectively throughout the city. Jakarta's entire water system was first privatized in 1997, when the companies were awarded 25-year contracts under the Suharto regime.⁵⁹ Several key concerns arise in connection with water management and distribution by those private companies, as well as the role of the Indonesian authorities in ensuring compliance with Indonesia's obligations under the above-mentioned provisions of the Covenant. The following paragraphs outline specific concerns in respect of (i) water availability (ii) its safety and (iii) its accessibility.
33. First, the water infrastructure is poor and inadequate. It is estimated that approximately 40 per cent of its population, about 10 million persons, in the capital do not have water pipelines.⁶⁰ In Penjaringan, one of the poorest areas in Jakarta, according to credible reports the water connection runs only from 2:00am to 3:00am daily and water pressure is frequently low.⁶¹ Other areas in the capital sometimes experience water disruptions for days.⁶² The irregular and inadequate water supply does not comport with the obligation concerning availability, as identified above, as member States have the obligation to provide sufficient and continuous supply to every person.⁶³
34. Second, the quality of water provided is low. According to a freshwater researcher at the Indonesian Research Institute, Indonesia has the worst drinking water quality in the whole of Southeast Asia.⁶⁴ The tap water provided by both foreign operators is not drinkable and residents typically have to spend extra to purchase bottled water for personal consumption.⁶⁵ In accordance with the CESCR's General Comment and WHO's Guidelines for drinking water quality, in order for water to be safe for personal or domestic use, the Government of Indonesia must provide water that is free from substances that could threaten a person's health and be of acceptable colour, odour and taste.⁶⁶

⁵⁸ *Ibid*, para 12(c)

⁵⁹ The Center for Public Integrity, 'Water and politics in the fall of Suharto', <http://www.publicintegrity.org/2003/02/10/5725/water-and-politics-fall-suharto> (Accessed 7 October 2013)

⁶⁰ IRIN, 'Asia: Too much water lost to urban leaks', 12 September 2012, <http://www.irinnews.org/report/96290/asia-too-much-water-lost-to-urban-leaks> (Accessed 7 October 2013)

⁶¹ Kruha, 'Water Privatization: No pro-poor agenda in Jakarta water concession', 7 December 2011 http://www.kruha.org/page/en/dinamic_detil/37/222/Campaign/No_Pro_poor_Agenda_in_Jakarta_Water_Concession.html (Accessed 7 October 2013)

⁶² Jakarta Post, 'Jakarta water privatization a major failure: NGOs', 21 January 2010 <http://www.thejakartapost.com/news/2010/01/21/jakarta-water-privatization-a-major-failure-ngos.html> (Accessed 7 October 2013)

⁶³ ICESCR, General Comment No. 15, *The right to water (arts. 11 and 12 of CESCR)*, UN Doc E/C.12/2002/11, para 12(a)

⁶⁴ The Jakarta Globe, 'Indonesia's clean drinking water crisis worst in Southeast Asia: Expert', 5 July 2012, <http://www.thejakartaglobe.com/archive/indonesias-clean-drinking-water-crisis-worst-in-southeast-asia-expert/> (Accessed 7 October 2013)

⁶⁵ Jakarta Post, 'Jakarta water privatization a major failure: NGOs', 21 January 2010 <http://www.thejakartapost.com/news/2010/01/21/jakarta-water-privatization-a-major-failure-ngos.html> (Accessed 7 October 2013)

⁶⁶ ICESCR, General Comment No. 15, *The right to water (arts. 11 and 12 of CESCR)*, UN Doc E/C.12/2002/11, para 12(b). See also WHO, Guidelines for Drinking - Water Quality, 2nd Edition, Volume 2, para 1.1, http://www.who.int/water_sanitation_health/dwg/2edvol2p1.pdf

35. Third, despite the poor water quality, Jakarta presently has the highest water tariff in Southeast Asia.⁶⁷ Due to privatization, tariffs have increased ten times in the last 16 years.⁶⁸ The average tariffs offered by both companies are in the range of between Rp 6,000 (USD 0.50) to Rp 7,000 (USD 0.60) per cubic metre.⁶⁹ The Committee's General Comment No. 15 makes clear that "water, and water facilities and services, must be affordable for all". Indonesia has an obligation to use a range of low-cost techniques and technologies, as well as adopt appropriate pricing policies such as free or low-cost water.⁷⁰ Regardless as to whether water is provided publicly or privately, the service has to be based on the principle of equity and made affordable to all.⁷¹ The accessibility of water must also "...not compromise or threaten the realization of other Covenant rights", particularly those fundamental to the right to an adequate standard of living which includes the right to adequate food, clothing and housing.⁷²
36. The ICJ notes that where third parties, or in this case, corporations are in control of the waterworks, States have an additional obligation to ensure that third parties do not compromise "equal, affordable and physical access to sufficient, safe and acceptable water."⁷³ States must take steps to set up regulatory and sanctioning systems that would effectively prevent abuse and non-compliance by third parties.⁷⁴
37. On 21 November 2012, The Coalition of Society Resisting Jakarta Water Privatization (KMMSAJ) filed a lawsuit against the President, the Vice President, Finance Minister, Public Works Minister, the Governor of Jakarta, the Jakarta House of Representatives, Jakarta Water Company's President Director and the two foreign water companies.⁷⁵ KMMSAJ has petitioned for the termination of the 1997 agreements and to ensure that the implementation of water services in Jakarta is in line with Article 11 and 12 of the ICESCR.⁷⁶ The case is ongoing in court.
38. The ICJ makes the following suggestions for the List of Issues for the examination of Indonesia:
- ***What measures has the Government of Indonesia taken to improve Jakarta's availability of water to each person in the city for personal and domestic uses in accordance with WHO's guidelines?***
 - ***What steps has the Government of Indonesia taken to improve the quality of water to ensure that it is safe for personal and domestic use, in compliance with WHO's standards?***
 - ***What steps has the Government of Indonesia taken to improve the***

⁶⁷ Transnational Institute, 'Jakarta Water Privatization Today: Dried water tap or change', 28 March 2012 <http://www.tni.org/article/jakarta-water-privatization-today-dried-water-tap-or-change> (Accessed 7 October 2013)

⁶⁸ *Ibid*

⁶⁹ Indonesia Infrastructure Initiative, 'Public Services: Water for generations, not for the benefit of five years', 5 March 2013 http://www.indii.co.id/news_daily_detail.php?id=5867 (Accessed 7 October 2013)

⁷⁰ ICESCR, General Comment No. 15, *The right to water (arts. 11 and 12 of CESCR)*, UN Doc E/C.12/2002/11, para 27

⁷¹ *Ibid*

⁷² *Ibid*, para 12(c)(ii). See also ICESCR, General Comment No. 12, *The right to adequate food (art. 11)*, UN Doc E/C.12/1999/5, para 13

⁷³ ICESCR, General Comment No. 15, *The right to water (arts. 11 and 12 of CESCR)*, UN Doc E/C.12/2002/11, para 24

⁷⁴ *Ibid*

⁷⁵ Citizen Law Suit No. 527/Pdt.G/2012/PN.JKT.PST. See also Kruha, 'Taking back public water in Jakarta: Citizen lawsuit filed against water privatization', 21 November 2012 http://www.kruha.org/page/en/dinamic_detil/50/278/Press_Releases/Citizen_Lawsuit_Filed_Against_Water_Privatization.html (Accessed 7 October 2013)

⁷⁶ Citizen Law Suit No. 527/Pdt.G/2012/PN.JKT.PST, page 8

- accessibility of water facilities and services to everyone within the safe physical reach of all sections of the population, affordable, accessible to all, and in a manner that respects the right to information?***
- ***What steps has the Government of Indonesia taken to establish an effective regulatory system, which includes independent monitoring, genuine public participation and imposition of penalties for non-compliance, for purposes of preventing abuses by Palyja and Aetra?***
 - ***What steps has the Government of Indonesia undertaken to review the 1997 agreements in light of its obligations under the above-mentioned provisions of the ICESCR?***

ARTICLE 15 (TAKEN TOGETHER WITH ARTICLE 2) RIGHT TO CULTURAL LIFE

39. Article 15(1)(a) of the ICESCR provides that everyone has the right "to take part in cultural life" and Article 15(2) states that State Parties have to take steps necessary for the development and diffusion of science and culture "...to achieve the full realization of this right..." As explained by the Committee in its General Comment No. 21, States have the obligation "...to recognize, respect and protect minority cultures as an essential component of the identity of the States themselves...Minorities have the right to their cultural diversity, traditions, customs, religion, forms of education, languages, communication media and other manifestation of their cultural identity and membership."⁷⁷ State Parties should also "...take measures to guarantee that the exercise of the right to take part in cultural life takes due account of the values of cultural life, which may be strongly communal or...expressed and enjoyed as a community by indigenous peoples."⁷⁸ Rights enjoyed by indigenous people recognized by Committee include the right to "...maintain, control, protect and develop their cultural heritage, traditional knowledge...traditional cultural expressions...designs...and performing arts."⁷⁹
40. Pursuant to Article 1 of Act No.44 Year 2008 concerning Pornography, the term "pornography" has been defined as "pictures, sketches, illustrations, photos, writings, voices, sounds, videos, animations, cartoons, speeches, body movements or other forms of messages through various types of media and/or performances in public that contains obscenity or sexual exploitation that violates norms of morality in society."
41. This broad definition poses a threat to the many traditional arts and performances practiced by various ethnic and religious groups. One traditional folk dance that has come under attack is the West Java's dance known as *jaipong*. In 2009, Governor Ahmad Heryawan publicly warned *jaipong* dancers to tone down their erotic moves and hide their underarms during official ceremonies and cultural festivals, in order to comply with the above-mentioned law concerning "pornography".⁸⁰ The leader of West Java's Ulama Council, Hafizh Utsman, commented that "we are trying to eliminate the non-Islamic parts of West Java's traditional culture, to make it more

⁷⁷ ICESCR, General Comment No. 21, *Right of everyone to take part in cultural life (art. 15, para. 1a of CESCR)*, UN Doc E/C.12/GC/21, para 32

⁷⁸ *Ibid*, para 36

⁷⁹ *Ibid*, para 37

⁸⁰ 'Indonesian jaipong dance deemed too erotic', *news.com.au*, 11 March 2009, <http://www.news.com.au/breaking-news/anti-porn-law-threatens-folk-dance/story-e6frfkp9-1111119098356> (Accessed 7 October 2013)

Islamic."⁸¹

42. Further, Article 10 of the above-mentioned Act adds that "Any person is prohibited from displaying his or herself or other persons in a performance or in public that depicts nudity, sexual exploitation, intercourse or other pornographic contents." The wording of the provision risks outlawing certain customary clothing found among indigenous communities. For example, in Papua, it is common for men to wear only a *koteka*, a penis gourd, and for the women, a *sali*, a tree bark skirt worn topless.⁸²
43. . The application of Articles 1 and 10 of the Pornography Act is inconsistent with Article 8(2)(a) of the UN Declaration on the Rights of Indigenous Peoples, the adoption of which Indonesia supported at the UN General Assembly in 2007, particularly, where States are to establish a mechanism for the prevention of "Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities".
44. The ICJ makes the following suggestions for the List of Issues for the examination of Indonesia:
- ***What steps has the Government of Indonesia taken to review and amend the 2008 Pornography Law to ensure that the rights of indigenous people and minority groups as protected under Article 15 of the ICESCR and Article 8 of the UN Declaration on the Rights of Indigenous Peoples are properly safeguarded?***

⁸¹ Centre for Human Rights and Humanitarian Law, 'Morality Law threatens Indonesia unity', 12 February 2010, <http://hrbrief.org/2010/02/morality-law-threatens-indonesian-unity/> (Accessed 7 October 2013)

⁸² Nethy Dharma Somba, 'Papua's lambast useless anti-porn law', *Jakarta Post*, 30 March 2010, <http://www.thejakartapost.com/news/2010/03/30/papuans-lambast-'useless'-antiporn-law.html> (Accessed 7 October 2013)