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AMBASSADOR OF THE REPUBLIC OF INDONESIA
TO THE UNITED NATIONS, WTO AND OTHER
INTERNATIONAL ORGANIZATIONS IN
GENEVA

Geneva, October 2017

No. 160 /POLII/X/2017

Excellencies,

With reference to your joint communication No. AL IDN 4/2017 dated 31st July 2017 and my letter No. 103/POL-II/VIII/2017 dated 2nd August 2017, please find below further information, explanations, and clarifications regarding allegations of abusive labor practice of a Saudi construction operator (United Seemac Co.) involving Indonesian migrant workers:

1. Provide any additional information and/or comments you may have on the above-mentioned allegations

The Government of Indonesia attaches great priority on the protection of Indonesian Migrant Workers abroad. With regard to the Seemac Co. case, the Indonesian Embassy in Riyadh and Consulate General in Jeddah have received and processed complaints from 14 Indonesian Migrant Workers working in the United Seemac Co. regarding unpaid wage for period varying from 12-18 months. Before I elaborate further on our efforts in handling this specific case in point 3 and 4, allow me to first inform you on the Indonesian Government's general policies towards the protection of migrant workers.

Ensuring the presence of the State in every aspect of Indonesian's life is among our national priority, as it is mandated not only by our Constitution but also President Joko Widodo's Nine Priorities (*Nawa Cita*). In relation to migrant workers, this priority focuses on two main targets: (i) enhancing the quality of protection of Indonesian citizens and legal entities abroad and (ii) protecting the rights and safety of migrant workers.

In enhancing the quality of protection for Indonesian citizens and legal entities abroad, the Government has laid out several policy directions and strategies:

- a. Protection of Indonesian citizens as the focus of Indonesia's diplomacy;
- b. Citizen protection and services are carried out for the citizens' best interest;
- c. Enhancing the number and content quality of bilateral agreements related to citizen protection;
- d. Clear division of labour and strong coordination among institutions carrying out citizen protection.

To:

Mr. Philip Alston, Special Rapporteur on extreme poverty and human rights
Mr. Surya Deva, Chair Rapporteur of the Working Group on the issue of human rights and transnational corporations and other business enterprises
Mr. Francois Crépeau, Special Rapporteur on the human rights of migrants
Ms. Urmila Bhoola, Special Rapporteur on contemporary forms of slavery, including its causes and consequences
(Fax: +4122 9179008, email: registry@ohchr.org)

Meanwhile, the second target, namely ensuring protection of the rights and safety of migrant workers which in the long run aims at reducing legal difficulties faced by migrant workers abroad, will be achieved through:

- a. Enhancing national, bilateral, regional, and international cooperation in protecting migrant workers;
- b. Improving placement system of migrant workers;
- c. Providing migrant workers with knowledge and skill, not only to work in destination countries, but also about their rights and obligation as a migrant worker;
- d. Increasing access to financial services for migrant workers,
- e. Repatriating Indonesian Migrant Workers during emergency situations, such as during conflict.

Furthermore, Indonesia is among the only 51 countries who have ratified the International Convention on the Protection of the Rights of Migrant Workers and Members of their Families (ICMW). We continue to urge universal ratification of ICMW and urge all countries, particularly those of destination countries, to ratify the Convention to strengthen commitment and obligation of all countries in protecting migrant workers.

I also have the honor to inform you that we are currently finalizing the draft revision of our law No.39/2004 on the Placement and Protection of Indonesian Migrant Workers Abroad to harmonize it with the provisions of the Convention, and even more go beyond the Convention. This revised law reflects the *shifting paradigm* of our migration regime from placement to the protection aspect of migrant workers.

In addition, our initial report on the implementation of ICMW has just been considered by the Committee last September during the 27th session of the Committee on Migrant Workers. The Committee recognized that Indonesia has made some progresses in protecting the rights of its migrant workers abroad despite numerous challenges. The Committee also noted that many countries in which Indonesian migrant workers are employed are not parties to the CMW, which may constitute an obstacle to the migrant workers' enjoyment of their rights under the Convention. In this regard, The Committee considered Indonesia's initial report as 'satisfactory' and further encouraged international cooperation in ensuring the protection of migrant workers.

2. Please indicate what policies, measures, and procedures (e.g., registration of workers, hotlines, and dissemination of information) your Excellency's Government has in place to prevent violation of human and labour rights of migrant workers.

We strongly believe that protection starts from home. In this regard, the Government has put protection measures since pre-departure of migrant workers until their return to Indonesia. These include among others:

- a. Pre-departure trainings
The Government through Law No. 39/2004 and the Minister of Manpower's Regulation No. 22/2014 on the Procedure of Placement and Protection of Indonesian Migrant Workers have provided a complete curriculum in the final pre-departure trainings,

including legal system and culture in the country of employment; rights and obligations as migrant workers; remittance; as well as the menace of HIV/AIDS and narcotics. Such trainings also provide information on requirements for prospective migrant workers to be placed abroad, such as travel documents, insurance, working contract, and good health condition.

b. Prevention mechanism

The Indonesian Government also endeavors to find comprehensive solution to resolve irregular migration and illegal recruitment. At the national level, the Government continues strengthening cooperation among Ministries/Institutions, local government, and law enforcement authorities, especially on the supervision of the migration. In this light, the Government has established task force (Satgas) on the Prevention of Non-Procedural Migrant Workers. Until today, there are 21 task forces assigned at the migrant worker embarkation points and they have succeeded in preventing 4.000 embarkation of illegal migrant workers in January-May 2017.

In addition, our immigration authority has denied entry of 29 Saudi Arabia citizens to Indonesia as they do not fulfill obligation as Indonesian Migrant Workers' employer in their country.

c. Monitoring Private Employment Agencies

The Government closely and regularly supervises the performance of around 570 registered agencies all over the country and takes firm actions to those who violated the recruitment and placement of migrant workers' Code. In 2016, we have revoked the license of 49 private Indonesian manpower supplier companies and suspended 199 companies. We regularly monitor such private agencies, including its administrative paperwork, field inspection related to training infrastructure, as well as investigation of their violations of relevant laws and regulations.

Furthermore, the Indonesia National Agency for the Placement and Protection of Migrant Workers (NAPPIMW) in cooperation with the Demographic Institution from the University of Indonesia and the Association of the Placement of Indonesia Migrant Workers developed rating system to private employment agencies in Indonesia. There are thirty-eight indicators to the rating system which represent four aspects: legality, input (facilities and infrastructures), process, and output (legal problems facing migrant workers). Later the process will be conducted every six months.

Private employment agencies which did not or not able to participate in the rating process will be further investigated to prevent illegal conducts. Those that are rated below average will be given assistance to improve their services.

d. Citizen Service missions

Ministry of Foreign Affairs Regulations No. 8 Year 2008 on Citizen Service in Indonesian Missions abroad established a legal basis for various Indonesian Diplomatic Missions with Citizen Service which provides an integrated service for Indonesian Citizen, including citizen registration, consular assistance and protection for Indonesian Citizen (including services for Indonesian Migrant Workers and Indonesian Seafarers), shelters and counseling, updates on Indonesian citizen database, and administration services.

Missions with citizen services may equip themselves with in-house/retainer lawyers to provide better assistance for Indonesian citizens abroad. Until 2016, there are 12 missions with retainer lawyers, including in Riyadh and Jeddah. In addition to retainer lawyers, the government also assigns technical attaches such as Manpower Attaches, Legal Attaches, and Police Attaches to improve our efforts in protecting migrant workers.

e. Complaint Mechanism

The government has established various complaint channels for Indonesian Migrant Workers and their families who face problem abroad and requires assistance: visiting nearest Indonesian Mission abroad; Indonesian Mission's hotline; NAPPIMW 24/7 call center; national on-line complaint system (<https://lapor.go.id/>); public communication service by Ministry of Law and Human Rights; or visiting the Directorate of the Protection of Indonesian Citizen and Legal Entities Abroad. Development of case will be reported regularly to the complainants.

In addition, Indonesian missions abroad take active steps in monitoring Indonesian citizens' social media and engaging closely with Indonesian communities and migrant workers' associations abroad to improve early detection and provide immediate assistance.

f. Disemination of the International Convention on the Protection of the Rights of Migrant Workers and Members of Their Family

The government utilizes various channel to raise public awareness on safe migration and to counter misleading information on migration. Among them are monthly nationwide radio broadcast through Indonesia National Radio; TV documentary; handbooks and guides on safe migration and how to be successful Indonesian migrant workers that is available via Ministry of Manpower and NAPPIMW's website; regular publication on the protection of Indonesian Citizens abroad for stakeholders outside Indonesia (Majalah Peduli); and public awareness campaigns, both in various provinces in Indonesia as well as in the migrant workers' pocket areas abroad. These campaigns held by the government in cooperation with CSO and migrant workers' groups/associations.

In addition, we utilize information technology to send an SMS Blast containing contact information on the nearest Indonesian mission to all Indonesian citizens who have just arrived abroad. In January 2017, the Government also launched the "SafeTravel" application which contains various information on destination countries, address of nearest Indonesian mission, online registration, and tips for traveling safely.

g. Repatriation and reintegration to community

The Government plays a role in facilitating the return of migrant workers facing problems abroad through, among others, providing them with shelter, social rehabilitation; repatriation; and reintegration.

In addition, the Government also recently launched "Productive Migrant Workers Village" to improve the protection, productivity, and welfare of migrant workers. Among the main pillars of this program is productive business training and financing service to equip migrant workers and their families with skills and financial support so they can start their own productive business upon return.

Allow me to refer your Excellencies to our initial report to the Committee on Migrant Workers on the implementation of ICMW where we comprehensively elaborate all our efforts in the protection and promotion of the rights of migrant workers and members of their families.

3. Please indicate what measures your Excellency's Government has undertaken to rapidly and accurately identify, assist, and protect the affected nationals in this case and offer them necessary consular assistance;

Through its mission in Saudi Arabia (Riyadh and Jeddah), Indonesia has taken several measures to assist our nationals facing problem in country of destination as well as to ensure the protection of the rights during the process, among other through:

- a. Informal mechanism, i.e through persuasive, cultural, and religious approach;
- b. Legal formal mechanism, i.e through police and courts;
- c. Bilateral mechanism through joint working group and diplomatic note;
- d. Establishment of taskforce in Saudi Arabia's provinces as first responders to ensure early detection and immediate assistance towards migrant workers;
- e. Engagement with civil society organizations, migrant workers association, and prominent figures to support the protection and promotions of the rights of Migrant Workers.

As citizen service units, Indonesian missions always provide assistance to all Indonesian citizens – including migrant workers – facing trouble abroad i.e through facilitation to relevant institutions in Saudi Arabia (police, labor office, courts); provision of in-house lawyer; and shelter.

With regard to the Seemac Co. case, the Indonesian Embassy in Riyadh and Consulate General in Jeddah have received and processed complaints from 14 Indonesian Migrant Workers working in United Seemac Co. regarding unpaid wage varying from 12-18 months. These migrant workers first came to Saudi Arabia through Riyadh and then placed in the city of Khamis Mushait, Aseer Province.

4. Please indicate any assistance measures that your Excellency's Government intends to take or has already provided in order to ensure that the affected nationals in this case have access to effective remedies, including adequate compensation

The protection unit of the Embassy has assisted the workers in pursuing judicial measures, namely through Manpower Authority (*Maktab Amaal*) Khamis Musait and local labor court. The court, in its decision in 2016 ruled the company to fulfill their obligations. However, the company refused to obey the court's decision.

In September 2017, however, the protection team has contacted the manager of United Seemac Co. and was informed by the Company that the case has been resolved through non-judicial measures with only one remaining case awaiting resolution. All other complainants have returned to Indonesia. This information has been confirmed by their colleagues who still stay in Arab Saudi. The Government through its missions will continue to assist the remaining worker currently awaiting for resolution.

During January-July 2017, the Indonesian mission in Riyadh has facilitated 714 Indonesian citizen cases worth for SAR 7.298.323 (approximately 1.950.000 USD).

As has been mentioned previously, the Indonesian Missions in Saudi Arabia have implemented several measures to protect its nationals facing troubles abroad, namely informal approach; legal formal assistance; bilateral mechanism; establishment of taskforces; and engagement with CSOs and migrant workers associations.

We have handled and resolved several similar cases (unpaid wage for extended time, workers being laid off, and/or inadequate living condition) involving, in total, more than 6000 Indonesian migrant workers working in construction sectors in Saudi Arabia. During these cases, the Government has:

- Appointed the nearest protection taskforce as a contact person for affected migrant workers to provide consultation and immediate assistance;
- Established close contact with affected migrant workers reminded the migrant workers to not violate the law as it can invalidate their rights;
- Supplied logistics to workers' camp;
- Through our Embassy in Riyadh and Consulate General in Jeddah, carried out mediation function between workers and the company, including when there was a demonstration by workers;
- Cooperated with other countries whose migrant workers are also involved in the case (e.g Philippines) to work together in resolving the case;
- Conducted meetings/corresponded with relevant high level officials in destination countries to discuss about the issue;
- Considering the psychological situation of the workers (depression), it was decided that repatriation was the most feasible way in dealing with the issue.
- In doing so, the Government offered 2 (two) options for compensation/remediation for the workers whose rights are still being processed:
 - a. By giving power of attorney to the mission's in-house lawyer, so that the attorney can continue fighting for the compensation after the migrant workers has returned to Indonesia. However with this option, the migrant workers faced the challenge of *Mukhalasah* –, a letter that must be signed by persons leaving Saudi Arabia which stated that they do not have any outstanding/pending cases in Saudi Arabia – which means that they will not be able to pursue this case once they have returned. In this light, the Government negotiated with local immigration authority to enable migrant workers to still claim their rights upon return.
 - b. Repatriation with compensation paid by insurance, social assistance from local office of Ministry of Manpower, and company contribution with amount close to their unpaid wage. In line with the spirit of business and human rights, the Government is coordinating closely with insurance companies to ensure the payment of migrant workers' insurance.

There are cases where the Saudi Arabia Government decided to provide financial support to the construction companies to pay their obligation towards unpaid migrant workers.

6. Challenges and Way Forward

In handling cases, the Government of Indonesia respects the national law of destination country. Assistance is given to ensure that the applicable rules and regulations are implemented fairly, particularly in litigation measures. However, several challenges persist, including:

- a. **Kafalah/Kafil System**
In general, the system requires a sponsor to be fully responsible for its dependent, from arranging the dependent's residence permit, paying their immigration fee, health insurance, and pay the workers' wage in a timely manner. If implemented correctly, the system is actually supporting the protection of migrant workers. However, violation of migrant workers' rights often occurs when the sponsor fails to fulfill their obligations;
- b. There are laws and regulations regarding the protection of migrant workers, however, the implementation of such laws and regulations remain a challenge;
- c. There is no *Mandatory Consular Mechanism* from destination country which often results in late information and consequently, delay of assistance.
- d. Saudi Arabia has not ratified the International Convention on the Protection of the Rights of Migrant Workers and Members of their Families;
- e. There is no bilateral agreement between Indonesia and Saudi Arabia regarding formal workers.

To overcome such challenges, the Indonesian Government has discussed the possibility to establish MoU regarding formal workers with Saudi Arabian Government. The Government will continue its effort to establish the MoU.

Furthermore, as I have mentioned earlier, we are currently finalizing the draft revision of our law No.39/2004 on the Placement and Protection of Indonesian Migrant Workers Abroad which is in line with the provision of the convention, and even more go beyond the convention. This revised law shifted the paradigm of our migrant workers regime from its previous focus on the placement process to the protection aspect. We reduced the dominating role of private recruitment agency to marketing and placement only to avoid unauthorized levy and illegal placement practices. We also took step beyond the Convention, in which the revised law also contains empowerment and protection mechanism for migrant workers' families who are being left in the sending country.

In addition, starting 1 August 2017, all Indonesia migrant workers shall be covered by social security provided by the State through "Manpower Social Security Institution" (BPJS Ketenagakerjaan). Migrant Workers are obliged to enroll in two programmes, namely the Workplace Incident Insurance and Workplace Fatality Insurance. The coverage of Workplace Fatality Insurance comprises IDR 85.000.000 (around USD 7500) and education fund for one child. The draft revision of Law 39/2004 also obliges sponsor/employers to enroll their employees/workers in destination countries' social security scheme

I trust that the explanation above has addressed the salient points raised in your letter. Allow me to once again reiterate our commitment to protect all of our Indonesian migrant workers abroad and members of their families throughout the migration process. We stand ready to collaborate constructively towards this end.

Yours sincerely,



Hasan Kleib

Ambassador/Permanent Representative