



Migrant Forum in Asia

and

The International Service for Human Rights



Creating an Enabling Environment for the Protection of Migrant Rights in Indonesia

Submission for the Initial Review of Indonesia by the UN Committee on the Protection of the Rights of All Migrant Workers and Members of their Families

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The following members and partners of MFA contributed to this compilation: Jaringan Buruh Migran (JBM), Indonesia; Migrant Care, Indonesia; Serikat Buruh Migran Indonesia (SBMI), Indonesia; Migration Working Group (MWG), Malaysia; North South Initiative (NSI), Malaysia; Humanitarian Organisation for Migration Economics (HOME), Singapore; Transient Workers Count, Too (TWC2), Singapore; Hsinchu Migrants and Immigrants Services Center (HMICS), Taiwan; Hope Workers Center (HWC), Taiwan

Introduction

Indonesia is the second largest sending country with some 700,000 documented Indonesian migrant workers leaving the country for work abroad, primarily in East and South East Asia as well as the Middle East¹, 78% of whom are domestic workers.² Malaysia has the largest numbers of Indonesian migrant workers, followed by Taiwan³, Saudi Arabia, Hong Kong, and Singapore.

Indonesia's ratification of the Migrant Workers Convention four years ago signified the commitment of the government to protecting its migrant citizens, both abroad and in their home country. Migrants' rights groups in the country had actively campaigned for the Indonesian government to ratify the convention, viewing it as a means to guarantee migrants' human rights and to hold the government accountable in protecting migrant workers against abuse.

As a network, Migrant Forum in Asia (MFA)⁴ has been working on the promotion and protection of the rights of migrant workers throughout Asia, including in Indonesia. The International Service for Human Rights⁵ (ISHR) focuses on the promotion and protection of human rights defenders at the international, regional and national level.

ISHR drafted a questionnaire, which MFA circulated to its members and partners in Indonesia as well as to sites of destination such as Singapore, Taiwan and Malaysia in an effort to collect responses reflective of the situation on the ground.

In recognition of the key role for civil society organisations and defenders working in the area of migrant rights – and the risks and challenges they face in supporting migrant workers – both organisations submit this report highlighting **the need to recognize and protect migrant rights defenders** as a key part of ensuring that the obligations in the Convention are fully and effectively implemented and translate into real change for migrants on the ground.

There is growing jurisprudence on this issue, including from the Committee in CMW/C/MEX/CO/2 and CMW/C/TUR/CO/1.⁶

¹ http://www.ilo.org/jakarta/info/public/pr/WCMS_212738/lang--en/index.htm

² According to statistics obtained from the Minister of Home Affairs report in Parliament on July 2017, there are 728,870 Indonesia migrant workers of the 1.78 million documented workers) - <http://www.thestar.com.my/news/nation/2017/07/27/zahid-1point78-million-foreign-workers-in-malaysia/>

³ The authors recognise that the UN's official geographic designation is 'Taiwan, Province of China'. However, for ease of reading and for accurate reflection of MFA partner organisation responses, this will be shortened to 'Taiwan' throughout the text.

⁴ Migrant Forum in Asia (MFA) is a network of civil society organisations, trade unions, and individuals in Asia working together to advocate for social justice for migrant workers and members of their families. The network is guided by a vision of an alternative world system based on respect for human rights and dignity, social justice, and gender equality for all. To date, MFA is represented in 16 nations by 48 civil society and trade union groups, and 6 key partners in the MENA region. The members and partners are also coalitions and networks, bringing MFA membership in Asia close to 200, and growing each year.

⁵ The International Service for Human Rights is an independent, non-governmental organisation dedicated to promoting and protecting human rights. We achieve this by supporting human rights defenders, strengthening human rights systems, and leading and participating in coalitions for human rights change.

⁶ For a summary of relevant UN decisions up to March 2017, please see ISHR submission on migrant rights defenders and protection against non-refoulement: <http://www.ishr.ch/news/migration-and-human-rights-judicial-harassment-defenders-must-stop>

Recommendations to the Committee

The submission draws from these responses. The organisations respectfully submit the following recommendations for the Committee's consideration:

- In light of the OHCHR report on National Mechanisms for Reporting and Follow-up (NMRFs), the Government should ensure that efforts to implement the Convention and Committee recommendations are properly resourced and supported, including with regard to migrant rights' defenders. Specifically, the Government should:
 - Strengthen its work with civil society organisations in countries of origin and destination, for example through adoption of comprehensive and inclusive practices across ministries to regularize its efforts to cooperate with civil society and the media and assist migrant workers and their families in seeking remedies.
 - Ensure an independent judicial and legal profession, as well as adequate resourcing and authority to legal aid offices and other relevant structures, in order to improve effectiveness of assistance to migrant workers and their families in seeking remedy.
- The Committee should urge efforts to ensure that the development, implementation and monitoring of laws and policies relevant to migrant workers and those who support them include consultation with and participation by individuals and organisation directly affected. In particular, the Government should:
 - Ensure the full and systemic participation of civil society and non-governmental organisations in the development, monitoring and implementation of policies relevant to the protection of migrants' rights, including implementation of the Convention and negotiation and monitoring of bilateral agreements, both in Indonesia and in jurisdictions where Indonesian migrant workers are employed.⁷
 - The implementation and monitoring of the National Action Plan on Business and Human Rights should take into consideration the role of CSOs and human rights defenders, including in identifying and mitigating risks of private sector abuses of migrant workers, especially when practices include passport withholding and placement or recruitment fees that in many cases constitute modern slavery.
- In line with its obligations, the Government of Indonesia should seek to ensure that governments of destination countries guarantee of migrants' and migrant workers' rights, including the right to freedom of association,⁸ as well as an enabling environment for civil society without barriers to funding (including from foreign sources) or burdensome registration requirements.⁹
- The Committee should reiterate the need for the Government of Indonesia to respect the right of migrants and others to protect and promote all human rights, including migrants' rights, in line with the UN Declaration on Human Rights Defenders. In this regard, the Government should consider adopting laws and policies to protect human rights defenders and to ensure a safe and enabling environment for their work. It should also take active steps to ensure that Indonesians defending migrants' rights abroad are supported and protected.

⁷ Adapted from CMW/C/BGD/CO/1, para 24a

⁸ Ibid, para 26a and b.

⁹ Adapted and expanded from CMW/C/BGD/CO/1, para 22c

Domestic legal frameworks for compliance with the Convention on Migrant Workers

This responds to LOIPR Paragraphs 1b and 9

With ratification, the government adopted Law No. 39 of 2004 Placement and Protection of Indonesian Migrant Workers Abroad. This law is currently under revision, and civil society organisations have concerns.

The House of Representatives of Indonesia, through the Working Group of Commission IX and lead by the Ministry of Manpower, has been discussing amendments to Law 39/2004, which intends to ensure compliance to the Convention on the Rights of All Migrant Workers and Members of their Families (henceforth, 'the Convention'). The current draft improves general application of the Convention¹⁰, but retains some problematic elements.

- a. It limits protections to documented migrant workers, neglecting undocumented migrant workers.¹¹
- b. It stipulates that the placement of migrant workers must be through the placement/recruitment agencies, who require workers to pay significant fees.
- c. It does not guarantee any protections to the workers who travel independently.¹²
- d. It continues to be used to prosecute offenders of trafficking crimes when the victim is a migrant worker, despite providing weaker sanctions than the Law on Trafficking (21/2007).¹³
- e. It does not recognize the existence or role in policymaking of migrant workers' unions in destination countries.¹⁴
- f. It addresses civil society participation only in the article on 'monitoring', and does not make such participation and consultation mandatory.¹⁵

Indeed, Indonesian civil society organisation raised their concerns on the process of preparing the draft amendments, wherein there was little if any space for civil society participation, including representation of migrant workers, without whom it is highly unlikely that the aims of the law¹⁶ – to protect the rights of migrant workers – will be effectively met.

Civil society organizations in three destination countries also noted that the proposed amendments were insufficient to ensure the protection and promotion of the rights of its citizens working abroad specifically in dealing with the recruitment agents. North South Initiative (NSI) strongly advocated for amendments to the Law to reduce the influence of profiteering recruitment agencies and instead

¹⁰ Response from JBM. More rights of migrant workers are listed such as social security, strengthening labor attaches, providing legal assistance and resolving labor disputes.

¹¹ Response from Jaringan Buruh Migran (JBM)

¹² In other words, for workers who do not avail themselves of formal mechanisms for employment: Government-to-Government; Business-to-Business; and Corporate-to-Corporate.

¹³ Response from JBM. Additionally, only individual trafficking offenders can be arrested or charged under this law; it excludes companies or legal entities. Lastly, victims of trafficking face barriers in obtaining remedy or restitution: trafficking offenders often choose to be jailed for a year rather than to pay restitution to their victims.

¹⁴ Response from Serikat Buruh Migran Indonesia (SBMI)

¹⁵ Response from JBM.

¹⁶ Response of Solidaritas Perempuan, member of JBM. Aside from the revision of Law No. 39/2004, the moratorium policy permanently (MOM decree No. 260/2015) that only applies for domestic workers who are to work in Middle East Countries discriminates women (mostly domestic workers). Instead of providing protection system, the government issues policies that are contrary to the convention affecting women's right to work and such policies increases the vulnerability of women being trafficked.

adopt a stronger and efficient Government-to-Government placement mechanism. Migration Working Group urges Indonesia to study recommendations put forth by ILO on the “Review of the government –to-government mechanism for the employment of Bangladesgi workers in the Malaysian plantation sector.”¹⁷

Additional government policy processes could have some benefit for migrant workers, including the National Action Plan on Business and Human Rights (NAP), developed through the National Commission on Human Rights in collaboration with Indonesian CSOs.¹⁸ Considering the power and the role recruitment agencies and companies play in the migration process and on the migrant workers themselves, the NAP could be a mechanism to protect Indonesian migrants from violations and abuses by governments and corporations. However, some organisations remained unclear as to how such a NAP could positively impact the protection of migrant workers’ rights.¹⁹

Government Engagement with Civil Society Organisations

CSOs in Indonesia have varying experience working or collaborating with the Indonesian government. Often, non-governmental and civil society organisations are central to the training provided to officials and to the production of effective regulations, yet there is not a whole-of-government approach to civil society organisations that ensures that all ministries should act in good faith to cooperate with these groups.

Policy development – LOIPR Paragraph 8

SBMI has been involved in the drafting of regulations on migrant workers under the Ministry of Foreign Affairs and the Ministry of Women and Children Empowerment, and notes that their role ensured that obligations in the Convention were brought to the fore. However, they noted that some ministries were reluctant to include direct reference to the Convention, a significant challenge to civil society and particularly to groups conducting advocacy on migrants’ rights.

Migrant Care shared that most of their collaboration with the government is done with the Ministry of Foreign Affairs. This consists in disseminating information on the Convention, and since 2015 has included six different programmes for dissemination.

Policy implementation – LOIPR Paragraph 8

JBM stated that the Indonesian government has been working quite closely with CSOs specifically on coordinating the implementation of the Convention. This is best demonstrated by the special unit in the Directorate of Indonesian Migrant Workers Protection and Legal Aid and the crisis center of the Agency for Placement and Protection of Indonesian Migrant Workers. Nonetheless, problems with internal consistency remain, including the willingness of embassies and consulates to adopt a human rights-based approach to their work and to build deeper relationships with civil society organisations in the country.

This comment was echoed by partners working with the Indonesian government through their missions and representations abroad, whose experience varied from cooperative to non-accommodating.

¹⁷ http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_459065.pdf

¹⁸ Response from JBM

¹⁹ Responses from Migrant Care and SBMI.

- Malaysia

CSOs remarked that the Indonesian government, through their embassy in Malaysia, has been cooperative to a certain degree and in this regard, conforms generally to the principles of the Convention. In the context of cooperation with the ILO's TRIANGLE project, for example, MWG reported that the Labor Attaché had regularly attended consultations organized by ILO and the Malaysian Bar, and assisted in the dissemination of human rights information to migrant workers.²⁰

The Indonesian embassy has actively participated in some activities organized by CSOs, including consultations²¹ organized by civil society in the country, and has met with members of the civil society to discuss possible collaboration. They have also facilitated access to migrant worker communities, including domestic workers, so that CSOs in Malaysia can better understand their needs. However, many of these services are restricted to documented workers, leaving a large population of Indonesian migrant workers underserved.

Nonetheless, some noted that that much more needs to be done in terms of effective collaborations towards the welfare and protection of Indonesian migrant workers in Malaysia. This includes sharpening the focus on rights-based education²² and support from the Embassy to a broad range of Indonesian migrant groups – not only those aligned with a humanitarian mission.

MWG urge the Indonesian government to formalize collaborations with CSOs for better implementation of its policies and assistance rendered to Indonesian migrant workers.

- Taiwan

Hope Workers Center (HWC) has sheltered several distressed Indonesian migrant workers. HWC accompanies the workers whenever they need any services/assistance from their Government such as passport renewal and others.

However, it has been difficult to establish collaboration with the Indonesian Economic and Trade Office to Taipei (IETO). Without this, they must proceed through the normal/standard procedure, resulting in sometimes lengthy delays in document renewal and thus, delays in employment that can render the worker vulnerable. This contrasts starkly with the collaborative relationship HWC maintains with some other major countries of origin, such as Thailand.

Bilateral Agreements – LOIPR Paragraph 1d

With regard to bilateral agreements, few organisations felt that they were effective in ensuring human rights of migrant workers were protected. It was also apparent that this could be partly attributed to the absence of civil society organisations in such negotiations and the lack of transparency: these issues resonated with most if not all of the civil society organisations consulted for this report.

²⁰ Response from Migrant Working Group (MWG)

²¹ Response from NSI. This included "TOWARDS A COMPREHENSIVE NATIONAL POLICY ON LABOUR MIGRATION FOR MALAYSIA" organized by Migrant Workers Right to Redress Coalition where the Indonesian Embassy talked about the "Immigration Scams" that are victimizing Indonesian migrant workers.

²² Currently, classes are exclusively non-rights based community classes such as dancing, cooking, etc

Most of the ten bilateral agreements signed by Indonesia fail to provide protection for Indonesian migrant workers.²³ Some groups remain concerned that the bilateral agreements may in fact contain some clauses in violation of the Convention, e.g., allowing employers to keep migrant worker travel documents.²⁴ Migrant Care stated that these agreements undercut human rights in their emphasis on the mutually beneficial relationship between states.

CSOs are not able to engage with the government, but nonetheless find ways of informing the government of their recommendations.²⁵

The failure to consult civil society in this case is exacerbated by what appears to be a lack of coordination among line agencies that has some impact in the formulation and implementation of agreements that are meant to protect and support migrant workers. One example highlighted was the visit of the Minister of Manpower to Malaysia without, evidently, sufficient consultation with other relevant ministries.

Again, some of the same critiques around access and participation of civil society also arose from non-Indonesian groups and those based in destination countries. In contrast to the Philippine government, which advocated for a standard contract for domestic workers in Malaysia, the Indonesian government has failed to negotiate a rights-based agreement for its domestic workers.²⁶ Strong political will power is necessary, but NSI felt that their Indonesia government contacts are more interested in rescue or humanitarian approaches, rather than a holistic approach.

MWG reiterated that the failure to make such agreements public, or to consult civil society organisations and other relevant stakeholders, result in agreements that are ineffective and unsound with regard to protection of migrant workers' rights.

Humanitarian Organisation for Migration Economics (HOME) and Transient Workers Count, Too (TWC2) stated that despite existing bilateral agreements with Singapore, Indonesia has not negotiated one in relation to the protection of migrant workers' rights. There are an estimated 120,000 Indonesian domestic workers in Singapore.²⁷

Reporting under the Convention – LOIPR Paragraph 8

Collaboration on the drafting of the State Party report was decidedly hit or miss. Despite civil society engagement in the early stages of ratification, some networks in the country assessed that there was no real consultation with CSOs in the production of the initial report of Indonesia.²⁸ The work of the MOFA and the Ministry of Human Rights and Law did not appear to solicit comprehensive or formal civil society inputs to the preparation of the State report.

²³ Response from JBMI

²⁴ Response from SBMI and MWG. Also, by way of example, the MoU between Indonesia and Malaysia stipulates that the employer can hold the passport of the domestic worker with the written consent, and must return the same when requested in contrary to the Malaysia Passport Act 1966.

²⁵ Response from JBMI

²⁶ Response from MWG. The Memorandum of Understanding (MoU) between Indonesia and Malaysia on the Recruitment and Placement of Indonesian Domestic Workers which was signed on 13 May 2006, further amended by an Amendment Protocol, signed on 30 May 2011 has expired in 2016 and both parties are currently negotiating the renewal of the MoU. This MoU however, only refers to domestic workers and not all migrant workers.

²⁷ <http://www.straitstimes.com/singapore/manpower/cap-on-fees-paid-by-indonesian-maids>

²⁸ Response from SBMI

However, others reported collaboration with MOFA not just in the writing of the State report but in organizing forums for civil society and the government during the writing of the report.²⁹ Such differing views may point to a lack of consistent approaches from the government. It has also prompted civil society, particularly those who felt excluded from the process, to work together on a CSO parallel report highlighting realities on the ground.³⁰

The role of CSOs in defending migrants' rights

This corresponds to LOIPR Paragraphs 5, 10c, 10e and 17

SBMI and Migrant Care expressed that legal assistance is provided by both CSOs and the government, in some areas through crisis centers. While facilities and systems are in place, whether appropriate actions or measures were taken as well as the accessibility to these facilities are hard to determine. In both Indonesia and destination countries, the Convention itself is not directly cited in courts, with organisations choosing to use domestic legislation in the respective jurisdiction, often laws against trafficking-in-persons or labour laws.

North South Initiative (NSI) confirmed that the Indonesian Embassy in Malaysia does provide legal assistance for criminal cases and labor violation cases, including collecting of unpaid wages. MWG collaborates with the embassy and the Malaysian Bar legal aid centres in providing legal representation for detained Indonesian migrant workers as well as those on death row. However, such legal assistance is sporadic and not guaranteed due to the sheer number of cases and lack of awareness amongst Indonesian workers to seek assistance.

HOME and TWC2, to the contrary, expressed that the Indonesian Embassy in Singapore has not been helpful in assisting the women migrant domestic workers with their claims. Embassy staff seem to prefer sending domestic workers to their employment agencies rather than supervising mediations, and often prioritize resolving disputes quickly, rather than seeking justice. Women who have stayed at the Embassy's shelter report that there is not enough food; that the women are not allowed to use their mobile phones; and that their movements are restricted (they are not allowed to leave the premises).³¹

It is worth noting that few organisations saw a clear role for national human rights institutions – whether in origin or destination countries - in the protection and promotion of migrants' rights or the implementation of the Convention. Some noted that this is because their functions is often to receive complaints, but merely to pass them on to other government ministries.³² It would be more effective to empower the NRHI with enforcement capacity and to encourage more proactive roles in documenting abuses, for example in places of detention, and in dissemination of information.³³

²⁹ Response from Migrant Care

³⁰ JBM stated that through their network, Migrant Workers Union (MWU), they have worked together with the Human Rights Working Group and other organisations to prepare a CSO report.

³¹ HOME and TWC2 had a consultation with Indonesian migrant domestic workers in preparation for their report on the State Review of Indonesia by the CMW.

³² Responses from Migrant Care, SBMI and NSI

³³ Response from NSI

Freedom of association and civil society space

This responds to LOIPR Paragraphs 19 and 25

Indonesian organisations nearly all recognised that registration is a key component of improving their effectiveness – and that in the context of Indonesia, this did not generally pose challenges. In one case, registration with the Embassy of Indonesia in Saudi Arabia significantly improved communication on cases.³⁴ In Hong Kong, there are over 200 Indonesian migrant organisations registered, providing a range of legal assistance. However, registration directly with the host governments in destination countries often remains a challenge as some organisations are not ‘accepted’; these organisations may also face challenges in registering with the Indonesian government while based abroad due to ‘technical issues’.³⁵

It was widely acknowledged that even without formal registration, organisations that are recognised by the Indonesian government and its diplomatic missions can work on specific projects in partnership with the government, such as consultation, trainings, and focus group discussions.³⁶ However, the quality of this collaboration may depend on relationships, rather than on a principled or comprehensive approach by the Indonesian government representatives. Rights-based trainings pose additional challenges to this recognition and collaboration, when compared to humanitarian or lifeskills oriented work.

As to funding, the government could do more to facilitate access to funding for those organisations working to protect migrants’ rights. Decisions to approve funding, for example through partnerships with international organisations, were sometimes seen as arbitrary, and in one case the refusal of registration permission resulted in the questioning of the organisation concerns and the eventual cancellation of the program.³⁷ The international organisation in question has since shifted its focus from migrant workers to women, children and other issues.³⁸

While reiterating the relative ease of registration, the bureaucracy surrounding NGO funding in Indonesia was seen as a barrier to effective work to safeguard migrants’ rights.³⁹

With regard to migrant workers specifically, organisations noted that within Indonesia, the right to freely associate was protected in Law 21/2000, but that union-busting was common throughout the country and that labour activists are often criminalized.⁴⁰ Law 39/2004, which largely serves to implement the provisions of the Convention, does not explicitly protect a right for migrant workers to unionise in countries of destination.

In the view of the groups surveyed, bilateral agreements do not stipulate specific articles protecting the freedoms of expression and association.⁴¹ The Indonesian government has not, in the eyes of one group, done a sufficient job to fight for the rights of its migrant workers. These are entirely up to the destination country, and thus there are a range of experiences.⁴² In Hong Kong, for example, migrant domestic workers can join unions; in most countries in the Gulf, domestic workers receive no labour

³⁴ Response from SBMI

³⁵ Response from JBM

³⁶ Responses from JBM, NSI.

³⁷ Response from SBMI.

³⁸ Ibid.

³⁹ Response from Migrant Care

⁴⁰ Response from SBMI.

⁴¹ Responses from JBM, SBMI, and MWG

⁴² Ibid.

protections and any worker involved in labour organising activities risks threats and deportation. For some Indonesian migrant workers in Malaysia, their contracts have provisions prohibiting joining associations, while others – for example, in the electronics sector – are increasingly accepted into unions and engaging in collective bargaining.⁴³

Stepping up ratification campaigns for the Convention, and for ILO Convention 189, were seen as an important step in improving enforcement in destination countries.

The environment for migrant rights defenders

This responds, in a limited fashion, to LOIPR Paragraph 14.

As in many countries, xenophobic speech fuels intolerance and discrimination, and occasionally violence, against migrant workers. For example, in Malaysia, politicians accuse migrant workers of stealing jobs; being phantom voters; and causing crime. This peaks during election campaigns, as a result of nationalist (and anti-foreign) sentiment. Such biased rhetoric fuels xenophobia among the broader Malaysian public and undermines respect for migrant workers' human rights.⁴⁴ Private sector actors, such as brokers, can also affect the overall public sentiment, particularly when they react to allegations of labor abuse with smear campaigns against migrant workers.⁴⁵

One result of such rhetoric is that authorities turn a blind eye to migrant rights issues or give in to pressure to adopt anti-migrant legislation. This was the case with the implementation of the Minimum Wage Law in Indonesia in 2012, when the government buckled under pressure and gave employers a one year grace period to implement the minimum wage for migrant workers. When migrant workers were finally included in the minimum wage, the government imposed a levy on the workers and allowed deductions of RM50 for accommodation.⁴⁶ The role of migrant rights organisations in pushing back on these kinds of problematic policies, through quiet and public advocacy, is essential – but also increasingly challenging given the operating and rhetorical environment in which they conduct their work.

Other times, governments view press coverage of migrant workers as reflecting negatively on their reputations; in Malaysia, for example, the Ministry of Home Affairs reportedly keeps a tight watch on public media to report positively (or not at all) on migration.⁴⁷

However, these negative public discourses and political statements against migration and derogatory towards migrant workers have clear impacts on the ability of civil society organisations and defenders to protect migrants' rights.⁴⁸ In Malaysia, an increase in arrests and detentions, harassment of migrants in public, and labour violations can increase the organisations' workloads and strain their resources. Similar challenges exist in Taiwanese society, with employers or brokers stalling or refusing to cooperate with organisations seeking to support migrants, or accusing them of assisting migrants only as a means of making money.⁴⁹ Some organisations reported being regularly questioned, by members of the public and by officials, about the nature of their advocacy work and being asked to provide additional information about migrant worker issues – including as a prerequisite for financial

⁴³ Response from NSI

⁴⁴ Responses from NSI and MWG.

⁴⁵ Response from HMICS.

⁴⁶ Response from SBMI

⁴⁷ Response from NSI.

⁴⁸ Response from Migrant Care

⁴⁹ Ibid.

support.⁵⁰ In addition, the frequency with which migration is used for political agendas means that organisations who work on the issue also risk being politicized.⁵¹

Although freedom of opinion is respected in Indonesian law, retaliation and harassment in various forms still exist and there are no laws that protect human rights defenders, much less migrant rights defenders.⁵² The Law on Witness and Victim Protection (Law No. 13/2006) and the Anti-Corruption Law offer protection to whistle-blowers and some witnesses who reveal information leading to criminal prosecution, but implementation is flawed.

The climate in destination countries also affects the overall protection of Indonesia migrant workers' rights. In Malaysia, although there is a law on whistleblowers, it is relatively untested at protecting human rights defenders. By contrast, the Sedition Act and other security laws being used against individuals and human rights defenders who question corrupt practices in the Malaysian government.⁵³

It is clear that migrant rights defenders can be targets – migrant labour is a profitable business for vested economic and political interests; big 'mafia'-like entities and sometimes even officials in government are involved in efforts to ensure that migrant rights defenders do not stir up trouble. Taiwanese brokers use their outsized influence to make verbal threats, including of judicial harassment.⁵⁴

Executive Director of Migrant Care and award-winning activist Anis Hidayah has spoken out against problematic government policies, including migration bans and the use of the death penalty. As a result, she has been stigmatized in the media and judicially harassed. A legal process begun against her in 2014 took two years before it was resolved. And the attention has not been only on the leadership: Migrant Care's system was hacked and their data and the computers stolen when the organisation raised the issue of corruption in migration involving embassies.⁵⁵

When Irene Fernandez, at the time Director of Tenaganita in Malaysia, spoke on the conditions of detention centres and the abuses that took place, she was targeted by the government.⁵⁶

Migrant Forum Asia: testimony

As a migrant organisation advocating the rights of migrant workers, MFA has had many people share about their struggles as they provide services and defend the rights of migrants, in both countries of destination and of origin. A few examples are included below:

- **Registration and formal recognition:** There is no support system recognized either by countries of origin and destination for individuals or groups providing assistance to migrant workers. MFA has for a long time called for countries of origin to use the Embassy's authority to give some kind of recognition, accreditation or identity at the embassy level to the individual or group doing social work towards their migrant nationals. This gives some security for those providing recourse and assistance to migrant workers. It is an opportunity as well for collaboration

⁵⁰ Ibid, referring to 2009 incident linked to funding.

⁵¹ <http://migrationworks.org/wp-content/uploads/ILO-study-on-public-attitudes-to-migrant-workers.pdf>

⁵² Response from SBMI and Migrant Care

⁵³ Response from MWG

⁵⁴ Response from HMICS

⁵⁵ Response from Migrant Care

⁵⁶ Response from NSI. Sadly, Ms Fernandez passed away in 2014.

between destination and origin countries considering the language constraints and other issues where assistance from the origin country is deemed necessary.

- **Credibility and respect:** In most diplomatic missions at the countries of destination, however, there is very little recognition to those who provide social services to migrants. Missions may question social workers on the purpose and legitimacy of their work. Despite their important cooperative and information-sharing role, the situation of migrants advocate is very precarious. Such conditions can cause an advocate to constantly wonder whether to be more visible, or be discreet to avoid jeopardizing their work or deportation.
- **Risks of migrant rights defenders overseas:** One of MFA's partners in the Gulf, a journalist in our network, was suddenly asked to pack his belongings and leave the country. It is clear that this is a result of his writing and attention on issues of migrant workers in Oman. This is illustrative of the unstable and risky situation advocates of migrants' rights are facing in destination countries where they can be easily picked up, detained, questioned and be deported simply because they are doing their work. Formal recognition by governments of origin may help deter this harassment.
- **Risks of migrant rights defenders at home:** Restricting civic space is habitually deployed by governments in origin countries, through strict registration processes, limits on access to foreign funding, and other laws aiming to confine as much as possible actions and movement of CSOs. Officials involved with fraudulent and corrupt practices in the also create challenges. For example, one migrant rights activist in Bangladesh was contacted on her personal mobile phone and threatened by government officials with deregistration of her NGO. The reason? She had given a media interview about the harsh situation of Bangladeshi migrant workers in Lebanon; they suggested alternative talking points. As a result, the organisation ceased their migration-related public media work for two to three months. She and her colleagues continue to risk questioning, surveillance and harassment to support migrants' rights.