



Submission to the Universal Periodic Review of the Republic of Indonesia

China Labor Watch

March 2022

Introduction

China Labor Watch (CLW) submits the following information regarding Indonesia's implementation of the recommendations from its 2017 Universal Periodic Review (UPR). In the context of Chinese nationals working and living in Indonesia, this report focuses on human trafficking, violations of labor rights, migrant workers' rights, the right to freedom of expression, and the right to freedom of movement.

In addition to its national laws, Indonesia has human rights obligations as a result of accession to¹ or ratification of the International Covenant on Civil and Political Rights (ICCPR),² the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW), the United Nations Convention against Transnational Organized Crime (UNTOC),³ and the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (TIP Protocol)⁴ and the Forced Labor Convention.⁵

In the third UPR cycle, Indonesia committed to deliberate the revision of Law No. 39/1999 on Human Rights and include the revised draft in the 2015-2019 national legislation programs.⁶ This law lacks specific protections for workers and migrants,⁷ and there is no evidence that Indonesia has made progress in revising it, despite its initial commitment.

CLW commends Indonesia for: its promotion of justice and accountability for the offenders and survivors of trafficking⁸; its stated commitment to ensure full implementation of the UNTOC and the TIP Protocol⁹; its involvement in the Bali Process mechanism on people smuggling, trafficking in person, and related transnational crimes;¹⁰ its implementation of Anti-Trafficking Law of No. 21/2007;¹¹ and its establishment of the National Taskforce on Trafficking in

¹ "accession" is "whereby a State establishes on the international plane its consent to be bound by a treaty." United Nations, Vienna Convention on the Law of Treaties, 23 May 1969, United Nations, Treaty Series, vol. 1155, p. 331, Articles 2(1)(b) and 15

² UN Treaty Body Database, Ratification Status for Indonesia, available at: https://tbineternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=80&Lang=EN (accessed December 17, 2021)

³ UN Treaty Collection, CHAPTER XVIII PENAL MATTERS, available at: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12&chapter=18&clang=en (accessed December 17, 2021)

⁴ UN Treaty Collection, CHAPTER XVIII PENAL MATTERS, https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-a&chapter=18 (accessed December 17, 2021)

⁵ Ratifications of C029 - Forced Labour Convention, 1930 (No. 29), available at: https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312174 (accessed January 3, 2022)

⁶ UNGA, National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21 Indonesia, UN Doc A/HRC/WG.6/27/IDN/1, para 28

⁷ Republic of Indonesia, Law No. 39 Year 1999 - Concerning Human Rights

⁸ A/HRC/WG.6/27/IDN/1, para 108

⁹ Ibid, para 104

¹⁰ Ibid, para 111

¹¹ Ibid, paras 105-106

¹² Ibid, para 107

Persons¹²

Nevertheless, CLW found that many Chinese migrant workers in Indonesia have experienced indicators of human trafficking as well as violations of workers' rights, including breaches of labor contracts, confiscation of passports, illegal visas, unpaid wages, no medical compensation or sick leave, physical violence, verbal abuse, detention, and restrictions to freedom of movement and expression. Due to a combination of COVID-19 restrictions and company-specific policies, many Chinese workers are now stranded in Indonesia, without access to assistance from either Indonesian or Chinese authorities.

Human Trafficking

Indonesia has obligations to implement protection measures for victims of human trafficking, support their recovery, and establish comprehensive measures to prevent and combat human trafficking. The government has obligations to prohibit companies operating in Indonesia from hiring individuals through coercion, abduction, fraud or deception.¹³

Based on the International Labor Organization (ILO)'s indicators of trafficking of adults for labor exploitation,¹⁴ CLW has found evidence of all six dimensions of labor trafficking among Chinese migrant workers in Indonesia: deceptive recruitment, coercive recruitment, recruitment by abuse of vulnerability, exploitation, coercion at destination, and abuse of vulnerability at destination.

Indonesia's National Taskforce on Trafficking in Persons cooperates with the International Organization for Migration at the national and sub-national level, focusing on the "3P Approach" – Prevention, Protection, Prosecution. However, the workers that CLW interviewed had not heard of this agency, nor did they receive any assistance from the Indonesian government. Indonesia has not made sufficient efforts to promote the taskforce and make it accessible to victims.

Deceptive recruitment, a key indicator of trafficking, is pervasive in the recruitment process for Chinese nationals bound for Indonesia. Official data indicates that approximately 30,000 Chinese nationals are working in Indonesia with valid work visas.¹⁵ However, based on CLW's research and investigation, it is likely that the total number of Chinese workers in Indonesia is far greater than the official data. Of the 200 Chinese migrant workers in steel and mining sectors contacted by CLW, most of these workers are actually unwitting illegal migrants, working on business or travel visas that were arranged by their employer or labor dispatch intermediary.

¹² Ibid, para 107

¹³ International Labour Organization, C029 - Forced Labour Convention, 1930 (No. 29), available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C029 (accessed January 3, 2022)

¹⁴ International Labour Organization, 4 May 2009, Operational indicators of trafficking in human beings, available at: https://www.ilo.org/global/topics/forced-labour/publications/WCMS_105023/lang--en/index.htm (accessed January 3, 2022)

¹⁵ BBC, 13 April 2019, Indonesia 2019 elections: How many Chinese workers are there?

Unaware of the actual working conditions within the sprawling and gated industrial complexes which hire many Chinese migrants, workers travel to their worksites, often without the proper documentation which employers are responsible for obtaining. Workers in this position are extremely vulnerable to labor exploitation.

Recruiters often exploit the migrant workers' inexperience with working in foreign countries and deliberately lie about the working conditions and wage levels. Many workers interviewed by CLW arrived in Indonesia before they had signed any written labor contracts, and by the time they realized they had been deceived about the working conditions, it was too late to receive contractual protections. Many employers of Chinese migrants refuse to fulfill verbal and written promises regarding wages, working hours, and travel expenses. For migrants unable to receive assistance from their employers or Indonesian authorities, workers often become victims of forced labor.

Labor Rights

According to the ICESCR and national law, workers in Indonesia have the right to: the opportunity to earn a living through work which can be freely chosen or accepted,¹⁶ remuneration¹⁷ including for public holidays,¹⁸ safe and healthy working conditions,¹⁹ equal opportunity,²⁰ and rest, leisure and reasonable limitations of working hours.²¹ Workers also have the right to form and join the trade union of their choice²² and to take part in meetings and activities of trade unions and of any other associations established in accordance with law.²³ Workers have the right to strike.²⁴

CLW discovered a pattern of violations to the right to safe and healthy working conditions. One Chinese worker at Bindan, Riau Island worksite told CLW that he was hit by a 66-pound falling tarpaulin when he was preparing construction tools. He had severe leg fractures and a high fever, but the employer refused to pay for his surgery, instead pressuring his colleagues to co-pay medical expenses. The worker told CLW that his legs became infected and decayed and did not receive any healthcare compensation or even wages during his work injury leave.²⁵ At the Virtue Dragon Nickel Industry (VDNI) worksite in Kendari, Sulawesi, some workers with severe or mild work injuries reported that they did not receive any medical compensation from their employer. Instead, Chinese migrant workers did not receive pay while on sick leave and were forced to pay for medical care for injuries received in the course of their employment.

¹⁶ UN General Assembly, International Covenant on Economic, Social and Cultural Rights (ICESCR), 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, Article 6

¹⁷ Ibid, Article 7(a)

¹⁸ Ibid, Article 7(d)

¹⁹ Ibid, Article 7(b)

²⁰ Ibid, Article 7(c)

²¹ Ibid, Article 7(d)

²² Ibid, Article 8(a), (b), (c)

²³ UN General Assembly, International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW), 18 December 1990, A/RES/45/158,, Article 26(a), (b)

²⁴ Ibid, Article 8(d)

²⁵ Interview with worker Fei was conducted by China Labor Watch through Wechat on Oct. 28th, 2021

In mid-July 2020 in Morowali Regency, Central Sulawesi Province, a migrant worker fell at work and lost function in one leg. His employer, Tsingshan Steel, did not provide any medical treatment to the injured worker for three months. In the first month, the injured worker was unable to take care of himself, walk, or bathe. Without any treatment, the injured leg gradually shriveled and shrank, and he could only walk on crutches. Even if this worker could return home to China, he is now permanently disabled and distressed and anxious about his future.²⁶

Some migrant workers have died on Indonesian worksites due to these dangerous conditions. In November 2020, a worker at Tsingshan Steel's plant in Weda Bay Industrial Park was killed by a ladle truck. In a video provided by a coworker, the on-site management staff can be heard demanding that the person recording the incident stop immediately and leave the scene.²⁷

After a worker from a Chinese mining company in Indonesia tested positive for Covid-19 in November 2020, he was put in isolation and left in an empty dormitory room for more than 20 days without any medical treatment, and workers found his dead body.²⁸ These are clear violations of the right to life and urgent medical care.²⁹

Furthermore, Chinese workers in Indonesia are routinely denied their fundamental right to strike, to form and join unions of their choice, and to take part in relevant activities. The employers often resorted to coercion to compel workers to accept their absolute authority at work sites. The use of force by security guards, directed by work site managers, was a common tactic to silence workers' dissent and to end strikes.

In May 2021, after workers at Weda Bay Industrial Park went on a five-day strike protesting their employer's refusal to fulfill its contractual obligations to cover workers' travel expenses, the company hired Indonesian security guards to force striking workers to return to work. Some workers were even arrested by local authorities.³⁰ Workers at VNDI industrial park launched a small-scale strike after their employer refused to send a worker having a heart attack to the hospital. The VNDI's security guards collaborated with armed Indonesian police, who entered the industrial complex and pointed guns at workers to coerce them to resume production activities.³¹

Without effective oversight from the Indonesian government, private corporations can violate its workers' labor rights with impunity. The likelihood of corruption and collusion between businesses and authorities aggravates the treatment of Chinese migrants within gated industrial complexes. When government regulators do not exert their legal authority by routinely supervising, investigating, and punishing industrial parks for illegal practices, workers are particularly vulnerable to exploitation through the unequal payment of wages, wage arrears,

²⁶ China Labor Watch, *Silent Victims of Labor Trafficking: China's Belt and Road workers stranded overseas amid Covid-19 pandemic* (Silent Victims of Labor Trafficking), p23

²⁷ *Ibid*, p13

²⁸ *Ibid*, p15

²⁹ ICRMW, Article 28

³⁰ Interview with worker X was conducted by China Labor Watch through WhatsApp on Aug. 26th, 2021

³¹ Interview with worker Chen was conducted by China Labor Watch through WeChat on Sep. 30th, 2021

unsafe working conditions, unreasonable overtime works, and the lack of paid sick leave or holidays.

Rights of Migrant Workers

According to the ICRMW and national law, migrant workers' right to life shall be protected by law.³² They have the right to liberty and security of person,³³ urgent medical care,³⁴ freedom to leave or enter any State of origin at any time³⁵, effective protection by the State against violence, physical injury, threats and intimidation,³⁶ and compulsory labor.³⁷ The state shall also prevent unlawful actions for anyone to confiscate, destroy or attempt to destroy identity documents³⁸, and address migrant workers' claims that their work contracts have been violated by their employers. ³⁹Additionally, employers need written permission from the Minister of Manpower before hiring foreign citizens⁴⁰ and have an obligation to repatriate migrant workers to their countries of origin after their employment comes to an end.⁴¹

Migrant workers are vulnerable to labor exploitation because their isolation from the local community reinforces their dependency on their employers. Almost all Chinese migrant workers in Indonesia interviewed by CLW have experienced at least one of the ILO's indicators of forced labor.⁴² While workers have complained to Indonesian police and other official agencies, calls for rescue were ignored by local authorities.

On July 27, 2020, a Chinese subcontracted worker's left eye was injured at work. He went to his manager and asked to see a doctor. Not only was he refused medical treatment, the manager also called the factory security guards and detained the injured worker for more than three hours. Though the injured worker was sent to the hospital afterwards, his eye injuries could not be treated due to the limited capabilities of the local medical services. The next day, the worker asked the subcontractor to arrange for him to return to China for treatment, but the subcontractor said that the general contractor would not allow anyone to return to China, even saying "If you become blind, it is what it is." The worker was forced to continue working even though he was injured and had not been sufficiently treated. He is now blind in his left eye.⁴³

³² *ibid*, Article 9

³³ *Ibid*, Article 16(1)

³⁴ *Ibid*, Article 28

³⁵ *Ibid*, Article 8 (1), (2)

³⁶ *Ibid*, Article 16(2)

³⁷ *Ibid*, Article 11(1), (2)

³⁸ *Ibid*, Article 21

³⁹ *Ibid*, Article 54(2)

⁴⁰ State Gazette of the Republic of Indonesia, Act of the Republic of Indonesia Number 13 Year 2003 Concerning Manpower (ILO Translation), available at: <https://www.ilo.org/dyn/travail/docs/760/Indonesian+Labour+Law+-+Act+13+of+2003.pdf> (accessed December 18, 2021), Articles 33, 42(1)

⁴¹ *Ibid*, Article 48

⁴² See: Operational indicators of trafficking in human beings

⁴³ *Ibid*, p26

One interviewee reported that verbal abuse and harassment were commonplace from the military-style management. Workers at Delong and Tsingshan industrial complexes told CLW that if they requested to return home for family emergencies, employers would issue fines and blame the workers.⁴⁴ Two interviewees said the workers would be fined up to 50,000 yuan (approximately US\$ 7,740) if they were found to have violated the factory's regulations, which includes gambling and fighting.⁴⁵ If a safety belt is not utilized, the worker would be fined 10,000 yuan (approximately US\$1,550), which would be doubled if the worker failed to pay in cash within three days. Migrant workers told CLW that none of the Indonesian government agencies had investigated or responded to their complaints.⁴⁶

Almost all Chinese migrant workers' passports were confiscated once they arrived in Indonesia. The confiscation of foreign workers' personal identity documents, as well as the widespread use of illegal visas, prevents the victims of forced labor from seeking and receiving help from government authorities. Violence, draconian fines, medical care denial, identity document ransoming, and workplace confinement serve to reinforce workers' dependency on their employer, subjecting Chinese migrant workers in Indonesia to the labor trafficking indicators of "coercion at destination" and "abuse of vulnerability at destination."

Freedom of Expression

According to the ICCPR, ICRMW, and national law, migrant workers shall have the right to hold opinions without interference, including the right to freedom of expression (freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice).⁴⁷ National laws provide for the freedom of expression in the forms of association and assembly,⁴⁸ the right to express his opinion in public, including the right to strike,⁴⁹ freedom of delivering opinion in public,⁵⁰ and the right to freedom of information.⁵¹ Indonesia has also expressed its commitment to upholding freedom of opinion and expression.⁵² Although Chinese-funded companies are violating these rights for Chinese workers, the Indonesian government still has an obligation to protect the rights of all workers in their jurisdiction.

CLW's investigation discovered violations of Chinese migrant workers' right to freedom of expression. A worker informed CLW that after the outbreak of the Covid-19 pandemic, symptomatic workers were blocked from sharing news of the health and safety conditions at

⁴⁴ Ibid, p17

⁴⁵ Silent Victims of Labor Trafficking, April 30, 2021, p17

⁴⁶ Ibid, p22-23

⁴⁷ UN General Assembly, International Covenant on Civil and Political Rights (ICCPR), 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, Article 19(1), (2)

⁴⁸ The 1945 Constitution of the Republic of Indonesia, Article 28

⁴⁹ Law No. 39 Year 1999, Article 25

⁵⁰ Law No. 9/1998 and Article 15 (1) of Law No. 2/2002 on the Indonesian Police and the Regulation of the National Police Chief No. 7/2012 on Procedures for Implementation, Service, Security and Case Management Delivery

⁵¹ Law No. 11/2008 on Public Information Transparency

⁵² A/HRC/36/7, para 20

several Chinese steel companies' industrial parks in Indonesia. These companies also encouraged employees to turn in anyone who spoke out online. Workers were afraid to send messages in the WeChat group about the actual number of coronavirus infections, because if they were caught, their phones would be confiscated and locked up.⁵³

In 2020, there were many demonstrations by Indonesian workers and local Indonesian residents against Chinese steel and mining companies. One company forced Chinese workers to guard the factory, issued steel pipes and stones as weapons, and ordered them to use them to attack Indonesian demonstrators who tried to breach the factory. Chinese workers were forced to get involved in the conflict and had no right to refuse the order from companies, despite the dangers. More than a dozen Chinese workers were injured in the conflict.⁵⁴

Freedom of Movement

As per the ICCPR, everyone lawfully within the territory of a State shall have the right to liberty of movement and freedom to choose his residence, including freedom to leave the country, and the right to enter his own country.⁵⁵ National laws only guarantee freedom of movement to Indonesian citizens,⁵⁶ so the obligations under the ICCPR are not met and migrant workers are not adequately protected. While the Indonesian government is not the one violating migrant workers' rights, it still has an obligation to protect the rights of workers who are employed in Indonesia.

Many workers in Delong and Tsingshan worksites reported that they cannot leave their industrial parks even during their off-duty hours. Migrants are detained within the industrial parks, and their movement is restricted, without access to local communities or rescue teams. Also, due to the language barrier and restricted freedom of the internet, Chinese migrant workers are unable to seek local and international aid.

Recommendations

- Sign and ratify the ILO Private Employment Agencies Convention, 1997 (No. 181) and amendments thereto.
- Ratify and fully implement the following: Protocol of 2014 to the Forced Labour Convention, 1930; the International Covenant on Economic, Social and Cultural Rights (ICESCR); the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW); the International Covenant on Civil and Political Rights (ICCPR); the United Nations Convention against Transnational Organized Crime (UNTOC); the TIP Protocol; Anti-Trafficking Law No. 21/2007.

⁵³ Silent Victims of Labor Trafficking, p17

⁵⁴ Ibid, p25-26

⁵⁵ ICCPR, Article 12(1)-(4)

⁵⁶ Law No. 39 Year 1999, Article 27(1),(2)

- Routinely monitor industrial parks, especially those with high concentrations of migrant workers, to inspect for victims of human trafficking and to ensure the enjoyment of labor rights, migrant workers' rights, freedom of expression, and freedom of movement.
- Conduct investigations into workplaces with complaints of rights violations against migrant workers and mediate the conflicts between local and migrant workers through official agencies and legal assistance.
- Ensure the National Taskforce on TIPs' accessibility to victims, by creating worker hotlines or other anonymous reporting systems, which should have Mandarin-speaking staff.
- Create an independent organization focused on educating and strengthening the capacities of Indonesian police, Immigration, and Labor officials in preventing and handling trafficking cases.
- Ensure that passports are held by migrant workers' during their work period and take legal action against employers who illegally confiscate workers' ID.
- Prohibit and take legal action against companies who routinely apply for illegal business and travel visas for their foreign workers.
- Ensure that migrant workers are given sufficient medical care and protections against COVID-19 by their employer and take legal action against companies who deny workers medical care.
- Provide support for victims and survivors who are trafficked to Indonesia, including the repatriation of survivors and the provision of free and affordable short-term shelter and services.