

Indonesia Accession Report

Based on a TUAC survey of trade union representatives in Indonesia, this note reports on the state of affairs regarding several core principles used by the Employment, Labour and Social Affairs Committee and the Investment Committee in the OECD's accession review of Indonesia. The focus is on fundamental labour rights, social dialogue and industrial relations systems in line with the 2018 OECD Jobs Strategy, as well as on the commitment and effective measures to promote responsible business conduct.

Labour Rights

- Freedom of association and the right to organise

The freedom of workers to organise in trade unions in Indonesia requires improvement. A major issue is that employers frequently threaten to terminate employment contracts when workers attempt to organise.

The 2020 Omnibus law on Job Creation intensified this problem, as it provided employers with increased opportunities to resort to unstable and insecure forms of employment: fixed-term contracts may now last up to five years (previously two years). Moreover, the Omnibus law also allows businesses to outsource not just non-core but also core activities. Such outsourcing puts workers in a fragile position when exercising their right to organise; employers can easily undermine an existing trade union of directly-hired workers performing core functions, by simply hiring new workers through a labour agency.

In legal terms, the right to organise is formally recognised by Indonesian law. At the same time, it is heavily regulated. Unions must recognise the State ideology of Pancasila (a concept dating back to Indonesian independence in 1945, stressing monotheism, civilised humanity, national unity, deliberative democracy and social justice) in their constitution. The administration has a unilateral right to dissolve, de-register or suspend a trade union organisation, while provisions on “instigation” and “unpleasant acts” against the employer can be abusively used as a pretext for the arbitrary arrest and detention of trade unionists.

Furthermore, there are significant gaps in law and practice regarding the protection against anti-union discrimination.

These numerous obstacles to worker organising give rise to an estimated trade union density rate of only 3.7 percent, which is extremely low by international standards.

- Right to collective bargaining

As with the right to organise, the right to collective bargaining is strictly regulated.

First, trade unions must be registered to exercise their right to statutory bargaining, and must gain the support of more than 50 percent of the workers in a workplace ballot. However, workers are not always likely to be able to vote independently, as both employers and government representatives can be present during voting procedures.

Moreover, collective agreements must be concluded within a period of 30 days after the start of negotiations, or be submitted to statutory mediation and arbitration. The latter can potentially be used by employers to avoid free and voluntary collective bargaining.

The duration of collective agreements is limited to two years and may be extended for a third year, after which they are no longer valid.

In addition, trade union representatives claim that the right to collective bargaining is often denied in export processing and similar zones.

Furthermore, the 2020 Omnibus law on Job Creation also directly impacts wage formation in a number of ways:

- It significantly reduces the role of the tripartite Wage Council and trade unions' ability to negotiate minimum wages by introducing a formula that sets the minimum wage based on data provided by the statistics agency (this formula may not sufficiently take into account productivity growth and yield a fair distribution of the incomes).
- It limits the possibility of lower bargaining levels (district or sector level) to negotiate a higher wage than the one set by provincial government.
- Importantly, under the new law, small and micro businesses are exempted from the wage regulation, effectively taking the wage floor out of the labour market for the vast majority (93%) of employees, and leaving it up to the employer and workers themselves to come to an agreement determining wages.
- In addition, enforcement is significantly weakened by the Omnibus law decriminalising the non-payment of minimum wages.
- Finally, article 81 of the Omnibus Law grants the police significant discretion to label legitimate trade union activities as criminal acts, including the right to organise strikes. If a strike is deemed illegal, workers and organisers can receive a fine and a prison sentence ranging from one month to four years.

In October 2024, the Constitutional Court of Indonesia granted several lawsuits related to the Omnibus Law filed by trade unions. The ruling of the Constitutional Court ordered the government to introduce a new employment law. Changes were called for in several areas. These included improvements to the role of the Wage Council and its right to propose wage increases, allowing for the negotiation of sectoral wages above the minimum wage, and

limits on employers' ability to outsource work (the ruling requested the re-establishment of the previous order which limited outsourcing to only five sectors; security services, catering, transportation, supporting supplier in the mining industry, and cleaning services).

- Right to a safe and healthy workplace and effective labour inspection

Workplaces with more than 100 workers, or workplaces with less than 100 workers but with a high risk of potential hazard, are required to have an occupational health and safety committee. Trade union representatives, however, report that many companies do not have such committees in practice and that the quality of committees in many cases is insufficient.

- Other labour rights

Estimates from the U.S. Department of Labor indicate that 816,000 Indonesian children between the ages of 10 and 14 (approximately 3.7 percent of the population) are involved in child labour, including 60 percent in agriculture alone. A large number of children are subjected to the worst forms of child labour, sometimes as a result of human trafficking. Migrant children (both internal and external), particularly girls, are especially vulnerable to child labour. Some children also perform dangerous tasks in plantation agriculture, including in the production of palm oil and tobacco.

While Indonesia has ratified all key international conventions on child labour, its laws do not meet international standards. Indonesia's prohibitions against child trafficking are inconsistent with international law because the Law on the Eradication of the Criminal Act of Trafficking in Persons requires that a demonstration of threats, the use of force, or coercion is established for the crime of child trafficking to have occurred.

According to Walk Free's Global Slavery Index on Indonesia, forced labour exploitation is prevalent in several sectors, including fishing and fish processing, the palm oil industry, mining, construction and manufacturing, while women and girls face additional risks of forced labour in domestic services.

Moreover, there is a substantial gender income gap in Indonesia. The gender pay gap has been increasing during the last decade and stands at approximately 23 percent, meaning that an average male worker earns a sizable higher amount of what a female worker receives every year. Some concrete actions that should be taken by the government to reduce the gender pay gap include increasing the number of women in government decision-making and in legislative elections, increasing the participation of girls in Indonesia's 12 years of compulsory education, and improving maternal and child health services.

Furthermore, access to social protection is severely hampered by the fact that 60 percent of all workers work in the informal economy. Informal work and exclusion from social protection programmes place workers in vulnerable and highly dependent situations which are easily exploited by irresponsible employers.

Social dialogue and industrial relations in line with the 2018 OECD Jobs Strategy

The OECD's 2018 Jobs Strategy calls for the promotion of quality industrial relations systems based on inclusive collective bargaining, i.e. collective bargaining that achieves a high coverage of workers. The Jobs Strategy considers the existence of well-organised social partners based on broad membership as the best way to achieve such high coverage and, in the absence of the latter, the extension of sectoral agreements.

Social dialogue in Indonesia faces the challenge of increasing the representativeness of industrial relations actors. Apindo, the main employer organisation, only has a small share of all employers affiliated to it and consequently, social conflicts may emerge due to poor understanding of the concept of industrial relations by employers.

On the workers' side, awareness of the need to organise, and its benefits, is also lacking, with trade unions experiencing representation gaps as workers fail to join trade unions. The fact that the majority of businesses in Indonesia are micro and small enterprises exacerbates these challenges.

Trade unions are involved in the governance of the labour market through taking part in the tripartite council. However, there is often a lack of consultation, with labour issues not being adequately discussed or resolved.

Promoting responsible business conduct

The OECD's accession roadmap for Indonesia requests evidence of commitment and effective measures to promote Responsible Business Conduct in relation to, among other things, respect by businesses for human rights; employment and industrial relations; the environment; and anti-corruption. This includes the implementation of the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, including the establishment of a National Contact Point, as well as an adequate legal and regulatory due diligence framework in the different areas covered by the Guidelines.

However, as pointed out by the OECD's Investment Policy Review for 2020, Indonesia faces major challenges with regard to creating and enabling frameworks for businesses to act responsibly. Child labour, forced labour, jobs paying below minimum wage, poor occupational health and safety, together with the lack of access to grievance mechanisms and meaningful engagement with trade unions as key stakeholders are systemic issues, particularly in, but not limited to, the agriculture and palm oil industries.

Key demands for the accession process of Indonesia

Trade union representatives in Indonesia and TUAC consider the following key actions essential for Indonesia to join the OECD:

- Ensure, in accordance with the October 2024 ruling of the Constitutional Court, the development of a new employment law replacing the Omnibus Act within the next two years, to be developed through and with respect for tripartite social dialogue.
- Reform laws and practices to strengthen protection against anti-union discrimination, including the arbitrary arrest and detention of trade union representatives.
- Take action to improve the coverage and quality of occupational health and safety committees.
- Reform the Law on the Eradication of the Criminal Act of Trafficking in Persons, in accordance with international standards, so that the demonstration of threats, use of force or coercion no longer has to be established for the crime of child trafficking to have occurred.
- Take comprehensive measures to reduce the extreme gender pay gap, including increasing the number of women in public functions, expanding access to education, and improving maternal and child health services.
- Take decisive action to formalise work, as well as to improve social protection coverage.
- Adhere to the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct and, in accordance with the Guidelines, establish a National Contact Point (NCP) and meaningfully engage with trade unions, either by setting up and involving trade unions in an advisory body to the NCP or by making the NCP tri- or quadripartite.
- Widely promote in all sectors the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, and ensure their implementation.