

## INDONESIA

Global Detention Project Submission to the Universal Periodic Review  
27<sup>th</sup> session of the UPR Working Group, April-May 2017

Submitted on 22 September 2016

*UPR Guidelines: Word document, numbered paragraphs. Total word length limit: 2815 words – not counting the introductory paragraph, footnotes and annexes. We must describe the main activities of the organization, and date of establishment, especially for organisations which interrelate for the first with with the UN. Endnotes should be used for reference and **should not** include substantive information as it will not be taken into consideration in the OHCHR summary of stakeholders' submissions. Include information on follow-up to preceding reviews, assessment of implementation. First hand information and stakeholder's own view to be given priority. Second hand information referenced in endnotes and included only if necessary. Refs to information by UN HR mechanisms: keep short, do not copy concluding observations and SP reports ad ONNCHR will reflect this in UN Compilation. Clearly identify recommendations: HRC report, cycle, paragraph number, rec number and recommending country!!!*

*Submissions to be sent through on-line UPR Submissions registration System: MG registered GDP, and the GDP website and Mike as the official representative and herself as contact person with email and password. So that for us to get into the system to make a submission <http://uprdoc.ohchr.org/> – Username: MarietteGDP – password: gdupr2016 (no caps)*

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### Submitting organisation

The Global Detention Project (GDP) was initially founded in 2005 developed in 2005 in Geneva as a result of research undertaken by students at the Graduate Institute of International and Development Studies in Geneva. In May 2014, it was launched as an independent non-profit research centre. The GDP investigates the use of immigration-related detention as a response to global migration. Its objectives are to improve transparency in the treatment of detainees, to encourage adherence to fundamental norms, to reinforce advocacy aimed at reforming detention practices, and to promote scholarship and comparative analysis of immigration control regimes. As per

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the GDP's mandate, this UPR submission focuses on the review of Indonesia's human rights record concerning detention for immigration-related reasons.<sup>1</sup>

### Protection of asylum-seekers and migrants

1. According to the UN Population Division Indonesia hosted 328,000 international migrants in 2015.<sup>2</sup> Although Indonesia is not a party to the 1951 Refugee Convention or its 1967 Protocol it enables ~~UNHCR assistance to access~~ of refugees and asylum ~~seekers~~ ~~seekers~~ ~~to UNHCR~~. UNHCR ~~indicated~~ ~~reported~~ on 29 February 2016 that 13,829 "persons of concern" were registered with ~~the~~ refugee agency (6,269 refugees and 7,560 asylum seekers) and that ~~some~~ 4,273 of them, including women and children, were detained at that ~~date~~ ~~time~~.<sup>3</sup>

2. As of 2015, Indonesia had a detention estate comprised of 13 long-term immigration detention centres (*rudenim* or *karantina* in Indonesian) and 20 temporary detention facilities located in 12 of the 33 provinces of the archipelago, which had a combined capacity of roughly 3,000. Like transit countries in other regions of the world, the growth of Indonesia's detention capacities ~~to use detention~~ as a deterrent to irregular movement has been largely ~~driven in part~~ ~~driven~~ by the policies and practices of nearby destination countries, principally Australia.

### Legal and policy framework

3. Law Number 6 of 2011 "Concerning Immigration" provides that foreigners can be placed in immigration detention to prevent unauthorized entry, stay or exit and to effect removal. There is virtually no limit to detention as Article 85 of the law allows detention for up to ten years without judicial review. There is also no legal framework regulating the detention of persons of concern to UNHCR. Nearly 6,000 refugees and asylum seekers were detained in Indonesia in 2014.

<sup>1</sup>This submission is based on the Global Detention Project "Indonesia Immigration Detention Profile," available at <https://www.globaldetentionproject.org/countries/asia-pacific/indonesia>

<sup>2</sup>International Migration, Wall Chart 2015, UN Population, Department of Economic and Social Affairs, <http://www.un.org/en/development/desa/population/migration/publications/wallchart/index.shtml>

<sup>3</sup>UNHCR, Indonesia Factsheet, February 2016, <http://www.unhcr.org/50001bda9.pdf>

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4. **Criminalisation.** Under [Article](#) 113 of the Immigration Law, unauthorized entry and exit can be punished by imprisonment of up to one year and/or a fine of up to 100 million rupiah (circa 6,700 Euros, or 7,500 USD).

5. **Procedural [Safeguards](#).** Indonesian laws and regulations provide a number of procedural safeguards. [For instance](#), immigration detainees must be informed of their rights.<sup>4</sup> They have the right to legal counsel and consular assistance.<sup>5</sup> Immigration detainees are also entitled to access asylum procedures<sup>6</sup> and to file complaints regarding detention conditions.<sup>7</sup> However, numerous organizations have raised concern about whether many of the safeguards are provided in practice, especially in cases where detention appears to be employed without an adequate legal basis.

6. **Children.** Children can be detained under Indonesian immigration law and hundreds of children are detained every year, including unaccompanied children, who are often detained with unrelated adults.<sup>8</sup> In [2014](#), 1,284 children were detained and 838 in 2015.<sup>9</sup> The Committee on the Rights of the Child has called on Indonesia to end ~~to~~ the detention of asylum-seeking and refugee children.<sup>10</sup> UNHCR and numerous NGOs have pressured the country to end the detention of children and ensure that alternatives to detention that meet international standards are adopted and implemented.<sup>11</sup>

### 7. Detention infrastructure and external assistance for detention operations.

According to academic research findings, from 2011 to 2013 Australia [channeled provided](#) more than \$90 million through the International Organization for Migration (IOM) for programmes in the region, “including the upgrade and refurbishment of

<sup>4</sup>Articles 2 and 13 of the Regulation from the Director General of Immigration Number F-1002.PR.02.10 Year 2006 concerning Procedures for the Detention of Foreigners.

<sup>5</sup>Article 10(1) of the Regulation from the Minister of Law and Human Rights of the Republic Indonesia Number M.05.II.L.02.01 Year 2006 about Immigration Detention House

<sup>6</sup>Directive from the Director General of Immigration No: IMI-1489.UM.08.05\_2010 – Article 2(2)

<sup>7</sup>Agency for Developing Human Rights and Ministry of Justice and Human Rights of the Republic of Indonesia. Handbook on Human Rights Guidelines for IDC staff, Chapter B, part C.1.g. October 2011.

<sup>8</sup>Human Rights Watch, “Barely Surviving: Detention, Abuse, Neglect of Migrant Children in Indonesia,” HRW, 24 June 2013, <https://www.hrw.org/report/2013/06/23/barely-surviving/detention-abuse-and-neglect-migrant-children-indonesia>

<sup>9</sup>UNHCR, Indonesia – Progress under the Global Strategy Beyond Detention 2014-2019, Mid-2016

<sup>10</sup>Committee on the Rights of the Child, “Concluding observations on the combined third and fourth periodic reports of Indonesia,” United Nations, CRC/C/IDN/CO/3-4, 10 July 2014, <http://uhri.ohchr.org/document/index4cbccb2b-753b-47f5-8f0e-ab50707146f9>

<sup>11</sup>UNHCR, Global Strategy Beyond Detention 2014-2019 National Action Plan Indonesia.

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existing detention facilities” in Indonesia.<sup>12</sup> As part of the Management and Care of Irregular Immigrants Project (MCIP I) launched in 2007, the IOM assisted in the refurbishment of detention centres in Tanjung Pinang (capacity was increased from 100 to 400 people with a surge capacity of 600 people) and Jakarta.<sup>13</sup> Likewise, among the activities included in MCIP II (2011-12) was “Quarantine Facility Renovation” in Batam, Balikpapan, and Semarang, as well as “Updating of the Standard Operations Procedures and Guidelines for Human Rights in Immigration Detention Centres.”<sup>14</sup>

#### *Conditions in detention*

8. Overcrowding in detention centres is a recurrent complaint. Conditions at facilities can also vary considerably across the archipelago. In some detention centres, migrants can freely move about while in others detainees remain locked up in cells. Human Rights Watch has described conditions as “appalling” and denounced the lack of basic sanitation and bedding. There have been numerous reports of guards’ physical violence and abusing-abuse of detainees, including unaccompanied migrant children.<sup>15</sup>

#### **Follow up to the previous review**

9. Despite the presence of a substantive population of migrants, asylum-seekers and refugees in Indonesia, the growing detention estate, and concerns about conditions of detention, migrant related recommendations to Indonesia during the last UPR focused on protection and consular assistance for Indonesian migrant workers abroad. <sup>16</sup> None of the recommendations made by states dealt with the issue of immigration detention.

#### **Key priorities for Indonesia with regards to immigration detention**

<sup>12</sup>Amy Nethery, Brynna Rafferty-Brown, and Savitri Taylor. “At the discretion of management – Immigration detention in Indonesia,” in Immigration Detention - The migration of a policy and its human impact, Nethery and Silverman (eds), 2015; Australian Immigration Department, “Answer to Question Taken on Notice, Additional Estimates Hearings,” 11 February 2013, (AE13/0279); Australian Immigration Department, “Answer to Question Taken on Notice, Budget Estimates Hearings,” 27-28 May 2013, BE13/0316.

<sup>13</sup>Australian Immigration Department, “Answer to Question Taken on Notice, Additional Estimates Hearings,” 11 February 2013, AE13/0279.

<sup>14</sup>IOM Indonesia, “Management & Care of Intercepted Irregular Migrants Project – MCIP 2,” <http://www.iom.or.id/what-we-do/immigration-and-border-management/mcip-2>

<sup>15</sup>Human Rights Watch, “Barely Surviving: Detention, Abuse, Neglect of Migrant Children in Indonesia,” HRW, 24 June 2013, <https://www.hrw.org/report/2013/06/23/barely-surviving/detention-abuse-and-neglect-migrant-children-indonesia>.

<sup>16</sup>Report of the Working Group on the Universal Periodic Review, Indonesia, Human Rights Council, A/HRC/21/7, recommendations 108.137 by the Islamic Republic of Iran and 108.138 by Lebanon

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- To ensure that immigration detention is not unlimited and is used on a case by case basis, as a last resort and for the shortest time possible time;
- To ensure that immigration detention is not arbitrary and to protect the rights of migrants, asylum-seekers and refugees;
- To ensure that detention is reviewed and detainees can challenge detention before a court;
- To ensure that unauthorized entry and exit are not criminalized and punished by imprisonment or fines;
- To ensure that alternatives to detention are available in law and implemented in practice;
- To ensure that CRC and UNHCR recommendations on ending detention of asylum-seeking and refugee children are implemented;
- To ensure that conditions of administrative detention meet international standards for the treatment of persons deprived of liberty.

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