

**Global Detention Project Submission to the  
UN Committee on Migrant Workers (CMW)**

**24 Session (11-22 April 2016)**

**List of issues prior to reporting – Indonesia**

**Geneva, March 2016**

**Issues concerning immigration detention**

The Global Detention Project (GDP) welcomes the opportunity to provide information relevant to the list of issues prior to the presentation of the initial report of Indonesia with respect to the implementation of the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (ICRMW), ratified by Indonesia in 2012.

The GDP is an independent research centre based in Geneva that investigates immigration-related detention. As per the GDP's mandate, this submission focuses on the State party's laws and practices concerning detention for immigration-related reasons.<sup>1</sup>

[ICRMW Articles 16 and 17](#)

## **I. RELEVANT LAWS AND PRACTICES**

**Grounds and length of administrative immigration detention.** The principal norm governing immigration detention Law Number 6 "Concerning Immigration" (Immigration law) was adopted in 2011.<sup>2</sup> Articles 83 and 113 provide 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.

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<sup>1</sup> This submission is based on GDP research related on immigration detention policies and practices available at: <http://www.globaldetentionproject.org/countries/asia-pacific/indonesia>.

<sup>2</sup> Law of the Republic of Indonesia Number 6 of 2011 Concerning Immigration, (Undang-Undang No. 6 tahun 2011 tentang Keimigrasian), <http://www.imigrasi.go.id/phocadownloadpap/Undang-Undang/uu%20nomor%206%20tahun%202011%20-%20%20english%20version.pdf>.

As per (ICRMW) Articles 16 (§1-4) and 17 migrant workers and members of their families have the right to liberty and security and shall not be subjected to arbitrary arrest and detention.

According to CMW General Comment 2, detention should be used as a measure of last resort, for the shortest time possible and state parties should consider alternatives to administrative detention. Additionally, "Administrative detention of migrants that is initially lawful and non-arbitrary may become arbitrary if it continues beyond the period for which a State party can provide proper justification" and that justification for administrative detention should be periodically reviewed (GC2 § 27).

**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).

It is worth recalling that the CMW, in its General Comment 2, states that "Criminalizing irregular entry into a country exceeds the legitimate interest of States parties to control and regulate irregular migration, and leads to unnecessary detention" (GC2 § 24).

**Procedural Safeguards.** Indonesian laws and regulations provide a number of procedural standards. For instance, immigration detainees must be informed of their rights.<sup>3</sup> They have the right to legal counsel and consular assistance.<sup>4</sup> Immigration detainees are also entitled to access asylum procedures<sup>5</sup> and to file complaints regarding detention conditions.<sup>6</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. For instance, according to the UN High Commissioner for Refugees (UNHCR), there is no legal framework regulating the detention of persons of concern to UNHCR. Nearly 6,000 refugees and asylum seekers were reportedly detained in Indonesia in 2014.<sup>7</sup>

It is important to recall in this regards that ICRMW\_Article 16 (§5-7-9) provides that migrants in immigration detention have a right to procedural guarantees, including the right to be informed of the reasons for their arrest (as far as possible in a language they understand), and of the charges against them; the right to consular assistance; the right to challenge the lawfulness of their detention, with assistance to an interpreter if necessary; and the right to compensation for unlawful arrest.

**Children.** Children can be detained under Indonesian immigration law and hundreds of children are detained every year, including unaccompanied children, who are often detained

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<sup>3</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>4</sup> Article 10(1) of the Regulation from the Minister of Law and Human Rights of the Republic Indonesia Number M.05.I.L.02.01 Year 2006 about Immigration Detention House.

<sup>5</sup> Directive from the Director General of Immigration No: IMI-1489.UM.08.05, 2010 – Article 2(2).

<sup>6</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>7</sup> United Nations High Commissioner for Refugees, "Beyond Detention 2014-2019 – National Action Plan Indonesia," UNHCR, November 2015, <http://www.unhcr.org/5666a2ea9.pdf>.

with unrelated adults.<sup>8</sup> The Committee on the Rights of the Child has called on Indonesia to “Cease the administrative practice of detaining asylum-seeking and refugee children.”<sup>9</sup> UNHCR and numerous non-governmental organisations have pressured the country to end the detention of children and to ensure that alternatives to detention that meet international standards are adopted and implemented. The CMW’s GC2 ¶ 33 states, “Children, and in particular unaccompanied or separated children, should never be detained solely for immigration purposes.”<sup>10</sup>

**Conditions of detention.** 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 abusing detainees, including unaccompanied migrant children.

**Detention infrastructure and external assistance for detention operations.** According to academic research findings, from 2011 to 2013 Australia channelled more than \$90 million through the International Organization for Migration (IOM) for programmes in the region, “including the upgrade and refurbishment of existing detention facilities” in Indonesia.<sup>11</sup> As part of the Management and Care of Irregular Immigrants Project (MCIIP 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>12</sup> Likewise, among the activities included in MCIIP 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>13</sup>

## REPORTING REQUIREMENTS & PRIORITY QUESTIONS

According to the Committee on Migrant Workers’ (CMW) reporting guidelines, States parties are to provide information on “the legislative, judicial and administrative framework governing the implementation of the Convention, and any bilateral, regional or multilateral agreements

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<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> 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/index/4cbccb2b-753b-47f5-8f0e-ab50707146f9>.

<sup>10</sup> Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, “General comment No. 2 on the rights of migrant workers in an irregular situation and members of their families,” United Nations, CMW/C/GC/2, 28 August 2013. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/464/60/PDF/G1346460.pdf?OpenElement>.

<sup>11</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>12</sup> Australian Immigration Department, “Answer to Question Taken on Notice, Additional Estimates Hearings,” 11 February 2013, AE13/0279.

<sup>13</sup> IOM Indonesia, “Management & Care of Intercepted Irregular Migrants Project – MCIIP 2,” <http://www.iom.or.id/what-we-do/immigration-and-border-management/mciip-2>.

in the field of migration.” They also are to “Provide quantitative and qualitative information, as disaggregated as possible, on the characteristics and nature of the migration flows;” to “Describe the actual situation as regards the practical implementation of the Convention”; and to “indicate the circumstances affecting the fulfillment of the obligations” under the Convention.<sup>14</sup>

With the above considerations in mind, the GDP urges the Committee to address the following questions to the State party to the Convention:

- How many migrants are placed in immigration-related detention each year in Indonesia (disaggregated along age and gender lines)?
- How many asylum-seekers and refugees are placed in immigration detention (provide disaggregated along age and gender lines)?
- How many persons are imprisoned and/or fined every year for unauthorized entry and/or exit?
- What is the average length of immigration-related detention?
- Where are children, including unaccompanied minors, detained?
- Do immigration detainees have access in practice to procedural safeguards provided for in Indonesian laws and regulations (see above)?
- Is there an independent review of the immigration detention order? Can immigration detainees appeal the lawfulness of detention? Do detainees have access to translation/immigration services?
- Please indicate the names and addresses of all places used for immigration-related detention (“immigration detention houses”), including their respective capacity. Please indicate if age and gender segregation is implemented, as well as segregation of criminals and immigration detainees. Please indicate if removal centres include family units.
- Are there non-custodial alternatives to detention (in law and in practice)? If there are, when are they used and what the impact do they have had on the numbers of people detained in the country.
- Are complaints mechanisms in place for immigration detainees to report ill-treatment? Have there been investigations into ill-treatment and abuse of detainees?
- Which authorities are responsible for detention and management of immigration detention facilities?
- What role does the International Organization for Migration currently play in relation to immigration detention in Indonesia?

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<sup>14</sup> United Nations, “Compilation of Guidelines on the Forms and Content of Reports to be Submitted by State Parties to the International Human Rights Treaties,” HRI/GEN/2/Rev.2/Add.1 6 May 2005. <http://www2.ohchr.org/english/bodies/cmw/docs/reporting-guidelines.pdf>.