

**Submission by the United Nations High Commissioner for Refugees**  
**For the Office of the High Commissioner for Human Rights' Compilation Report**  
**Universal Periodic Review: 4th Cycle, 41st Session**

**INDONESIA**

**I. BACKGROUND INFORMATION**

Indonesia is not a State party to the *1951 Convention relating to the Status of Refugees* or its *1967 Protocol* (hereinafter jointly referred to as the *1951 Convention*), nor has it signed the *1954 Convention relating to the Status of Stateless Person* (the *1954 Convention*) or the *1961 Convention on the Reduction of Statelessness* (the *1961 Convention*).

Refugees and asylum-seekers: As of December 2021, Indonesia hosts 13,149 refugees and asylum-seekers from 49 different countries, of whom 4,182 are female and 8,967 are male. UNHCR conducts registration and refugee status determination (RSD) and seeks durable solutions for refugees on behalf of the Government. In December 2016, Indonesia issued its first comprehensive national law on refugees: Presidential Regulation 125/2016 on the Handling of Foreign Refugees. At the same time, since end 2019 the Government has been drafting a revision to Immigration Law No 6 Year 2011, with plans to include coordination of refugees and asylum-seekers in the revision.

Stateless persons: As of December 2021, UNHCR Indonesia recorded 627 asylum seekers and refugees with stateless status from Myanmar, Islamic Republic of Iran, Iraq, Japan, Kuwait, and Saudi Arabia. The Indonesian Government does not have accurate data on the country's actual stateless populations, though there is a general assumption that groups concentrated near the borders of Papua New Guinea, Timor-Leste, Malaysia, and the Philippines may have unclear nationality. UNHCR Indonesia has conducted baseline research of the population in the aforementioned border area, with conclusion that 1,462 individuals are found stateless in Indonesia. Identified in-situ stateless persons are former migrant workers population in North Kalimantan and Filipino descent population in North Sulawesi.

**II. ACHIEVEMENTS AND POSITIVE DEVELOPMENTS**

Linked to 3rd cycle UPR recommendation no. 139.18: "Step up its efforts to protect vulnerable groups in society in accordance with the 2015-2019 National Legislative Programme (United Arab Emirates)"

Despite Indonesia not being a State party to the 1951 Convention, UNHCR is generally provided access to register those who wish to seek asylum, issue formal documentation of their status, process their claims for refugee status, and refer their cases for durable solutions, including third-country resettlement. UNHCR appreciates the commitment of the Government of Indonesia to ensure rescue at sea, safe disembarkation, and access to territory and to asylum procedures, and commends the Government for taking the lead among countries in the region to protect the safety and rights of refugees and asylum-seekers. In particular, UNHCR applauds the Government's decision to allow the disembarkation of some 600 Myanmar Rohingya refugees during the COVID19 pandemic in 2020 – 2021.

UNHCR also commends the Government on the issuance of Presidential Regulation 125/2016 on the Handling of Foreign Refugees, that regulates search and rescue at sea,

referral of people claiming to be refugees to UNHCR, and alternatives for detention.<sup>1</sup> The Regulation and the 2018 Directorate General of Immigration circular on non-detention led to the release of all detainees into community accommodations and stopped the practice of mass detention for refugees and asylum-seekers in Indonesia. The Presidential Regulation also administers interagency coordination for refugee issues and assigns some responsibilities to the local governments of refugee-hosting areas.<sup>2</sup> This brought about the creation of local refugee task forces in several areas, resulting in more effective coordination and particularly progressive decisions, including in Pekanbaru and East Aceh access to COVID19 vaccination for refugees despite the absence of a national Circular at the time.

UNHCR equally applauds the creation of new circulars to govern refugees' access to basic rights and services, *inter alia*: the 2019 Ministry of Education and Culture circular to allow enrolment of refugee children in public schools, the 2020 Ministry of Health circular on inclusion of refugees into the free COVID treatment and hospitalisation scheme, that was applicable until May 2021, and the 2021 Ministry of Health circular to grant refugees throughout Indonesia access to COVID vaccination.

Furthermore, UNHCR appreciates the Government's commitments made in the December 2019 Global Refugee Forum, which includes a commitment to design a refugee empowerment programme in collaboration with UNHCR, indicating a first step to acknowledge the need to provide opportunities for refugees to use their skills and gain income in Indonesia pending durable solutions.

**Linked to 3rd cycle UPR recommendation no. 139.148:** "Intensify efforts to prevent statelessness, including through ensuring proper, affordable and accessible birth registration of all children born in Indonesia (Slovakia)"

UNHCR recognizes efforts taken by the Government of Indonesia to provide access for birth certificates to asylum-seekers and refugees in Indonesia. In 2021, the Director of the Directorate General of Population and Civil Registry of the Ministry of Home Affairs has announced that refugee children should be able to attain birth certificates, in accordance with Presidential Regulation No. 96 Year 2018 and the Ministry of Home Affairs Regulation No. 108 Year 2019.<sup>3</sup>

### III. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS

#### Challenges linked to outstanding 3rd cycle UPR recommendations

##### Issue 1: Respect for minority rights

**Linked to 3rd cycle UPR recommendation no. 141.41:** "Guarantee the rights of minority groups, particularly those of religious minorities and lesbian, gay, bisexual and transgender persons, through effective legal action against incitement to hatred and violent acts, as well as by revising legislation that can have discriminatory effects (Brazil)"

Most refugees and asylum-seekers in Indonesia belong to minority religions, particularly Shia Islam and Christianity, and discrimination against religious minorities impacts these refugees and asylum-seekers. Anti-Shia sentiments towards refugees and asylum-seekers in some refugee-hosting areas, including Balikpapan and Tanjung Pinang, continued in the form of planned protests against these populations, although these dissatisfactions were

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<sup>1</sup> Presidential Regulation 125/2016, Articles 5 – 9, 20 (2), and 26 - 27

<sup>2</sup> Presidential Regulation 125/2016, Articles 24 - 26

<sup>3</sup> Statement during UNHCR and Diponegoro University's research public dissemination event on 21 December 2022

mediated by the local police.

UNHCR is also concerned with increasing intolerance toward other minority groups, particularly LGBTI individuals. Although the Indonesia Constitution<sup>4</sup> and Law No 12 Year 2005 on the Ratification of the ICCPR<sup>5</sup> guarantee legal and human rights protection to everyone, no law exists to protect individuals from discrimination or harassment based on their sexual orientation or gender identity. While sexual activity between two consenting same-sex adults is not criminalized under the *Criminal Code* of Indonesia,<sup>6</sup> such activity is criminalized under some local bylaws and ordinances.<sup>7</sup> Discrimination against LGBTI individuals is also supported by such laws and policies as the *2008 Pornography Law*, which defines anal sex, oral sex, lesbianism and homosexuality as “deviant sexual intercourse”.<sup>8</sup> Such policies have led to increasing discrimination, intolerance, assaults, and raids against LGBTI individuals, groups, and organizations that defend their rights. Currently, two cities in West Java province, Depok and Bogor are drafting local ordinances to prohibit same-sex activities in their area.<sup>9</sup> In the past years, UNHCR received several reports of verbal or physical assaults from locals to LGBTI refugees living independently in Bogor and surrounding areas. In addition, UNHCR is concerned of the implications of anti-LGBTI bylaws for refugees residing in Aceh, Depok, and Bogor.

### **Recommendations:**

UNHCR recommends that the Government of Indonesia:

- a) Observe and enforce the *1945 Constitution*, in order to prevent and eradicate intolerance and all forms of discrimination against minority groups and enact legislation that protects the civil liberties of all minority groups;
- b) Promote initiatives aimed at raising awareness on the rights of refugees, asylum-seekers and unaccompanied and separated children belonging to religious minorities,
- c) Ensure that alternatives to immigration detention are available in law and in practice; and
- d) Decriminalize same-sex relationships in bylaws and ordinances throughout the country and amend its *2008 Pornography Law* with a view to declassifying same-sex relations.

### **Additional protection challenges**

#### **Issue 2: Compliance with the principle of *non-refoulement* and access to fundamental rights**

While Indonesia has generally respected the principle of non-refoulement, UNHCR is alarmed by further declining respect to the principle. In a landmark case in 2018, two Afghan asylum-seekers were jailed for entering the country irregularly, in violation of their Constitutional right to seek asylum. In addition to the three reported refoulement incidents of asylum-seekers in 2013 – 2016, five incidents of asylum-seekers or refugees being returned to countries where they could face persecution have been reported in 2016 - 2022. In two incidents, the individuals were already recognised as refugees by UNHCR, and in one particularly serious incident in 2022, an asylum seeker registered with UNHCR who was in

<sup>4</sup> *The 1945 Constitution of the Republic of Indonesia*, Article 28D (1)

<sup>5</sup> *Law of the Republic of Indonesia No 12 Year 2005 on Ratification of the ICCPR*

<sup>6</sup> Ministry of Justice, Directorate General of Law and Legislation, Penal Code of Indonesia, 1999

<sup>7</sup> For example, in 2014 Aceh introduced a Sharia Law prohibiting same-sex sexual activities, with punishment of 100 lashes and imprisonment of up to 8 years (Government of Aceh, *Qanun No.6 Year 2014 on Jinayat*, Articles 63 and 64). In 2018, Pariaman city in West Sumatera passed a bylaw criminalizing same-sex sexual activities with punishment of a 1 million Rupiah fine (“Perda Disahkan, LGBT di Pariaman Sumbar Didenda Rp 1 Juta,” *Suara.com*, 29 November 2018)

<sup>8</sup> *Law of the Republic of Indonesia No. 44 Year 2008 on Pornography*.

<sup>9</sup> “Rencana Perda LGBT Depok, DPRD: Masih Tunggu Usulan,” *Tempo.co*, 3 February 2020, “BREAKING NEWS - DPRD Kota Bogor Ajukan Raperda LGBT, Cegah Penyebaran HIV/AIDS,” *TribunNewsBogor.com*, 26 November 2019

her ninth month of pregnancy was detained at the airport, denied access to medical care, and deported despite her already reporting her pregnancy and intention to seek asylum in Indonesia, and despite appeals made to high-level Immigration officials,<sup>10</sup> including by the National Commission on Violence Against Women. At least two other asylum-seekers were at risk of deportation, though their refoulement has thus far been prevented through UNHCR interventions.

Despite the right to seek asylum being guaranteed in Indonesia's 1945 Constitution<sup>11</sup> and 1999 Human Rights Law<sup>12</sup>, the 2011 Immigration Law does not include provisions relating to asylum and provides authority for immigration officials to refuse access to territory to anyone without valid travel documents and visas without requiring a protection assessment or providing access to UNHCR; the law also provides for deportation as a sanction for foreigners who do not possess valid passports and visas though they may be in need of international protection.<sup>13</sup> Furthermore, the Government has no national asylum system in place and denies refugees and asylum-seekers the right to work. From December 2016, Presidential Regulation 125/2016, which is derived from Law No. 37 Year 1999 on Foreign Relations,<sup>14</sup> is widely considered as the main law regulating refugees and asylum-seekers, replacing the 2010 and 2016 Regulations of the Director General of Immigration.

While Presidential Regulation 125/2016 sets out provisions for search and rescue at sea, and referral of asylum-seekers to UNHCR, Immigration authorities are still often of the opinion that the 2011 Immigration Law ranks above the Presidential Regulation and may prevail in case of contradictory stipulations on access to asylum. Despite its overarching success in creating a better protection environment for refugees in Indonesia, the Regulation contains gaps, including inadequate guarantee of the right to asylum and to basic rights such as education, healthcare, and livelihoods, and inadequate accompanying implementing laws, regulations, and funding. In an interagency government meeting in 2021, the Government agreed on the need to review and revise the Presidential Regulation. At the same time, the Government has started revision of the Immigration Law since 2019, with plans to regulate refugees and asylum-seekers in the revised law.<sup>15</sup>

Despite the Government's commitment to design a refugee empowerment programme in the 2019 Global Refugee Forum (GRF), the implementation is yet to be seen, and an agreement to create a legal product allowing the engagement of refugees in income-generating activities has not been reached. As such, while refugees continue to engage in informal labour and income-generating activities out of survival, they remain at risk of arbitrary arrest and detention. The need for refugees to find independent income sources increased since Australia announced their decision to not assist asylum-seekers arriving on or after mid-March 2018. While several universities have allowed for informal enrolment of refugees, the national legislation does not provide a formal mechanism for adult refugees to enrol in universities.

### **Recommendations:**

UNHCR recommends that the Government of Indonesia:

- a) Accede to the *1951 Convention relating to the Status of Refugees* and its *1967 Protocol*;

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<sup>10</sup> "Amnesty: Wanita Hamil asal Somalia Ditolak Masuk RI Pengungsi Berdokumen Resmi," Tempo. Co, 15 January 2022

<sup>11</sup> *The 1945 Constitution of the Republic of Indonesia*, Article 28G

<sup>12</sup> *Law of the Republic of Indonesia No. 39 Year 1999 Concerning Human Rights*, Article 28

<sup>13</sup> *Law of the Republic of Indonesia No. 6 Year 2011 on Immigration*, Articles 13 and 75

<sup>14</sup> *Presidential Regulation 125/2016*, Preamble

<sup>15</sup> Imigrasi Kawal Pembahasan RUU Keimigrasian Pengganti UU No. 6 Tahun 2011 Oleh Badan Keahlian DPR dan Akademisi Bidang Hukum, <https://www.imigrasi.go.id/en/2021/08/31/imigrasi-kawal-pembahasan-ruu-keimigrasian-pengganti-uu-no-6-tahun-2011-oleh-badan-keahlian-dpr-dan-akademisi-bidang-hukum/>, 31 August 2020

- b) Comply with its obligation to act in accordance with the principle of *non-refoulement*, including by putting in place procedures to assess an individual's needs for international protection prior to deportation, in line with customary international law, Article 7 of the International Covenant on Civil and Political Rights, and Article 3 of the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment;
- c) Review and follow up on the planned revision of the Presidential Regulation to more strongly guarantee the right to asylum and the other basic rights, and to add necessary accompanying implementing laws, regulations, and funding, and harmonise the Presidential Regulation and the revised Immigration Law, including by regulating access to asylum in the revised Immigration Law;
- d) Ensure all relevant stakeholders are consulted in the revision of the Immigration Law and Presidential Regulation, drawing on the expertise of UNHCR, civil society, and academics;
- e) As a step toward establishing an asylum system, and to facilitate the inclusion of refugees in national protection and service delivery systems, consider undertaking registration of asylum-seekers jointly with UNHCR;
- f) In order to provide a pathway to durable solutions and to additionally guarantee family unity and protection for the Indonesian spouse and children, consider adopting measures to legalize the status of refugees married to Indonesians;
- g) Ensure effective access of refugees to income-generating activities in joint schemes with Indonesian citizens, as a necessary component for finding comprehensive solutions, in line with Indonesia's pledge on self-reliance at the 2019 Global Refugee Forum pledge on self-reliance;
- h) Accommodate the formal registration of refugee children to public schools, which would enable issuance of formal diplomas for graduated children; and
- i) Provide access for refugees to formally attend higher education.

### **Issue 3: Birth registration to prevent statelessness**

Despite the enactment of the 2006 Citizenship Law that removed ethnic and gender discrimination related to nationality matters and introduced safeguards against statelessness for certain groups, a significant number of Indonesians continue to be at risk of statelessness due to a range of administrative barriers that prevent access to the birth registration process. According to the Ministry of Women Empowerment and Child Protection, Indonesian children living without birth certificates reached 6 percent of the population under 18 years of age, or over 5 million children. This is due to the lack of service coverage in remote areas in Indonesia and complicated requirements stipulated in the Presidential and Ministerial Regulation enacted in 2018 and 2019.<sup>16</sup> Despite the enactment of regulations that enable refugee children to obtain birth certificates, the actual number of refugee children who have received them is still very low. As of now, only three cities in Indonesia have in practice provided access to birth certificates for refugee children.

#### **Recommendations:**

UNHCR recommends that the Government of Indonesia:

- a) Accede to the *1954 Convention relating to the Status of Stateless Persons* and the *1961 Convention on the Reduction of Statelessness*;
- b) Establish safeguards to prevent statelessness at birth by removing administrative obstacles, simplifying birth registration procedures, and reducing documentation requirements;
- c) Implement a comprehensive legal framework and procedures to prevent statelessness, particularly for children born of stateless parents and children of mixed

<sup>16</sup> "PERCEPATAN KEPEMILIKAN AKTA KELAHIRAN ANAK, KEMEN PPPA PERKUAT SINERGI BERSAMA KEMENTERIAN/LEMBAGA DAN ORGANISASI MASYARAKAT," <https://www.kemenpppa.go.id/index.php/page/read/29/3047/percepatan-kepemilikan-akta-kelahiran-anak-kemen-pppa-perkuat-sinerji-bersama-kementerian-lembaga-dan-organisasi-masyarakat>, 10 February 20



**UNHCR**

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- marriages between refugees or asylum-seekers and Indonesian nationals; and
- d) Expand outreach to rural areas and lower-income families to raise awareness on the importance of birth registration as a mechanism for the protection of children's rights.

**UNHCR**  
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