



Cornell Law School

Cornell Center on the
Death Penalty Worldwide

**Indonesia's Compliance with the Convention on the Elimination of All Forms of
Discrimination Against Women
Suggested List of Issues Relating to the Death Penalty**

Submitted by

The Advocates for Human Rights

a non-governmental organization in special consultative status with ECOSOC since 1996

The World Coalition Against the Death Penalty

Institute for Criminal Justice Reform

the Commission for the Disappeared and Victims of Violence (KontraS)

Anti-Death Penalty Asia Network

Harm Reduction International

a non-governmental organization in special consultative status

Ensemble contre la peine de mort

a non-governmental organization in special consultative status

and

The Cornell Center on the Death Penalty Worldwide

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The Advocates for Human Rights (The Advocates) is a volunteer-based non-governmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law. Established in 1983, The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact finding, direct legal representation, education and training, and publications. The Advocates is the primary provider of legal services to low-income asylum seekers in the Upper Midwest region of the United States. In 1991, The Advocates adopted a formal commitment to oppose the

death penalty worldwide and organized a Death Penalty Project to provide pro bono assistance on postconviction appeals, as well as education and advocacy to end capital punishment. The Advocates currently holds a seat on the Steering Committee of the World Coalition against the Death Penalty.

The World Coalition Against the Death Penalty, an alliance of more than 150 NGOs, bar associations, local authorities and unions, was created in Rome on May 13, 2002. The aim of the World Coalition is to strengthen the international dimension of the fight against the death penalty. Its ultimate objective is to obtain the universal abolition of the death penalty. To achieve its goal, the World Coalition advocates for a definitive end to death sentences and executions in those countries where the death penalty is in force. In some countries, it is seeking to obtain a reduction in the use of capital punishment as a first step towards abolition.

Institute for Criminal Justice Reform (ICJR) is an independent research institute established in 2007. ICJR focuses on criminal law and justice reform, and general law reform in Indonesia. ICJR has three major programs: research and advocacy, training, and strategic litigation. ICJR has built our capacity on criminal policy research. ICJR actively has a major role in the reformation of criminal policy in Indonesia. ICJR regularly provides advice for both government and parliament as an input into proposed policy. ICJR is also involved in several litigation cases both of direct litigation (as a party at trial) or indirect litigation (amicus curiae/ friend of the court). All work carried out by ICJR is aimed towards supporting criminal policy in Indonesia in order to keep it in line with the protection of human right principles and rule of law frameworks.

KontraS (the Commission for the Disappeared and Victims of Violence) is a prominent national human rights non-governmental organization based in Jakarta, Indonesia. Its main activities are geared towards support for the victims of human rights violations. It seeks to improve respect and protection for human rights within Indonesia through advocacy, investigations, campaigns, and lobbying activities. KontraS monitors several issues such as enforced disappearances, torture, death penalty, impunity, and violations of civil, political, economic, social, and cultural rights.

Anti-Death Penalty Asia Network (ADPAN) is a regional network of organizations and individuals committed to working towards abolition of the death penalty in the Asia Pacific. Its role is to create wider societal support for abolition of the death penalty in the Asia Pacific region through advocacy, education and network building.

Harm Reduction International (HRI) is a leading NGO dedicated to reducing the negative health, social and legal impacts of drug use and drug policy. HRI promotes the rights of people who use drugs and their communities through research and advocacy to help achieve a world where drug policies and laws contribute to healthier, safer societies. The organisation is an NGO in Special Consultative Status with the Economic and Social Council of the United Nations.

Ensemble contre la peine de mort (ECPM / Together against the Death Penalty) is a French non-governmental organisation that fights against the death penalty worldwide and in all circumstances by uniting and rallying abolitionist forces across the world. The organisation advocates with international bodies and encourages universal abolition through education,

information, local partnerships and public awareness campaigns. ECPM earned its legitimacy as a unifying group of the abolitionist movement because of its strong sense of ethics and values. ECPM is the organiser of the World Congresses Against the Death Penalty and a founding member of the World Coalition Against the Death Penalty. In 2016, ECPM was granted consultative status with ECOSOC.

The Cornell Center on the Death Penalty Worldwide is a US-based research, advocacy, and training center focused on capital punishment and international law. It publishes reports and manuals on death penalty issues, provides transparent data on death penalty laws and practices around the world, trains capital lawyers in best practices, and engages in targeted advocacy and litigation. Its staff and faculty advisors have collectively spent more than eight decades representing hundreds of prisoners facing the death penalty. In 2019 it was awarded the World Justice Challenge Award in recognition for its work on behalf of death-sentenced prisoners in Malawi.

EXECUTIVE SUMMARY

1. Indonesian authorities have jeopardized women's right to due process during the COVID-19 pandemic by conducting trials and sentencings in death penalty cases by video conferencing. Restrictions on prison access during the pandemic have impeded efforts to monitor detention conditions. Efforts to reduce prison crowding do not take into account the vulnerabilities of women who are incarcerated and instead are based solely on the duration of imprisonment.
2. Women are disproportionately affected by the death penalty for drug offenses, and they experience multiple layers of gender inequality and discrimination in this context. Drug offenses are the most common crime of conviction for women sentenced to death in Indonesia, but the law does not clearly define drug crimes and does not distinguish between "drug dealers" and people who possess drugs for personal use. Four of the seven women on death row were sentenced to death for non-violent drug-related offenses, and they were all either drug "mules" who were tricked or coerced into smuggling drugs or were arrested with their husbands and denied involvement in their husband's drug-related activities.
3. Women accused of capital offenses often experience gender inequality in exercising their rights to a fair trial. Some are denied the right to trial by an impartial tribunal, some are not provided with a competent interpreter, and in several cases the court failed to call key witnesses to testify. Some received inadequate legal representation. Two women sentenced to death report experiencing gender-based violence during coercive interrogations. The Supreme Court denied a second petition for review submitted by one woman sentenced to death, in contravention of a judgment by the Constitutional Court. The Indonesian criminal legal system fails to take into consideration mitigating evidence that is particularly relevant to women, including gender-based violence and issues of relative culpability, duress, and intent. One woman is on death row for a crime she committed while she was 17 years old.
4. Detention conditions for women are crowded, and a recent report documented inadequate food, particularly for foreign nationals and for people with medical conditions requiring special dietary accommodations. Women in detention lack adequate access to water, creating conditions that are dangerously unhygienic. Moreover, pregnant women who have to give birth in two women's prison facilities are forced to make payments for their medical care.

Indonesia fails to uphold its obligations under the Convention on the Elimination of All Forms of Discrimination Against Women

I. The Indonesian Government's response to the COVID-19 pandemic has undermined the rights of women at risk of being sentenced to death as well as women on death row.

5. During the COVID-19 pandemic, Indonesian authorities have stepped up trials and sentencings in death penalty cases with the use of video conferencing. According to the Institute for Criminal Justice Reform, during the pandemic period from 27 March to 8 June 2020, proceedings in at least 40 death penalty cases with a total of 49 defendants were conducted through video conferencing. Of these 40 cases, 18 were trial or prosecution proceedings and 22 were sentencings. The majority of these death penalty cases (38) were for drug-related offenses and the remaining (2) were for premeditated murder. Out of the 49

defendants, three were women: (1) Ms. ES (a 22-year-old tried on 18 May, who was only a drug courier); (2) Ms. AK (tried on 4 June for murder); and (3) Ms. AS (tried and sentenced on 6 April for drug-related offenses). By comparison, over the same period in 2019, there were only 21 death penalty cases recorded.

6. KontraS reports difficulty monitoring death row cases during the pandemic. KontraS communicated with the Head of Prisons or Officers about prison policy during the COVID-19 pandemic and was informed that in-person visits by lawyers and family members to people on death row are not permitted; they must communicate by video conference.¹
7. As discussed below, Indonesian prisons are overcrowded, and as a result they are high-risk environments for the spread of COVID-19.² Under a March 2020 decision from the Ministry of Law and Human Rights authorizing early release for persons sentenced to less than five years in prison, over 38,000 persons have been released.³ But women sentenced to death are not eligible for release.⁴ The release mechanism is based only on the duration of imprisonment, and does not take into account the vulnerabilities of people who are incarcerated.

II. In the context of the death penalty, women in Indonesia are not accorded equality with men before the law. (Articles 2, 15)

A. An overview of the death penalty in Indonesia

8. Indonesian law authorizes the death penalty for aggravated murder, drug-related offenses, terrorism-related offenses, sexual abuse of children, treason, aviation crimes, corruption, and subversion.⁵ Despite the breadth of crimes eligible for the death penalty, in practice people are sentenced to death for aggravated murder, drug-related offenses, and terrorism-related offenses.⁶
9. Drug offenses are the most common crime of conviction for women sentenced to death in Indonesia.⁷ The 2009 Law on Narcotics expanded the number of drug-related offenses that are eligible for the death penalty.⁸ Eligibility is based on the general nature of the criminal act as well as the quantity of drugs, but, as the Institute for Criminal Justice Reform observed in a May 2019 report, the law does not clearly define drug crimes, and does not clearly distinguish between “drug dealers” and people who possess drugs for personal use.⁹ The

¹ Electronic Communication with KontraS (10 June 2020), on file with The Advocates for Human Rights.

² Harm Reduction International, Institute for Criminal Justice Reform, and Lembaga Bantuan Hukum Masyarakat, *Submission to The Human Rights Committee*, 129th Session (1 June 2020), ¶ 4.

³ *Ibid.*

⁴ *Ibid.*

⁵ Anti-Death Penalty Asia Network, ECPM, and KontraS, *Dehumanized: The Prison Conditions of People Sentenced to Death in Indonesia* (2019), at 14, available at http://www.ecpm.org/wp-content/uploads/rapportindon%C3%A9sie_gb.pdf.

⁶ *Id.* at 42..

⁷ Institute for Criminal Justice Reform, *Analyzing Fair Trial Aspect of Death Penalty for Drug Cases in Indonesia: Policy and Implementation: Special Cases on Women* (May 2019), at 4.

⁸ Anti-Death Penalty Asia Network, ECPM, and KontraS, *Dehumanized: The Prison Conditions of People Sentenced to Death in Indonesia* (2019), at 43.

⁹ Institute for Criminal Justice Reform, *Analyzing Fair Trial Aspect of Death Penalty for Drug Cases in Indonesia: Policy and Implementation: Special Cases on Women* (May 2019), at 4.

definition of drug trafficking is so broad that people who use drugs or are drug dependent are often prosecuted as traffickers.

10. Indonesian law prohibits execution of pregnant women until 40 days after they give birth.¹⁰
11. In 2015, the Government of Indonesia proposed a new draft Criminal Code that would include the death penalty for at least 15 offenses, including drug-related offenses, terrorism, corruption, and treason.¹¹ The draft law included a 10-year moratorium on executions and also authorized death sentences to be commuted to life imprisonment or a term of 20 years under certain circumstances.¹² The bill has been under review since 2015.¹³ In the latest draft of September 2019, however, the government had removed the guarantee of commutation of sentence after 10 years on death row, and the availability of a commutation would depend on a court decision.¹⁴ In the wake of terrorist attacks in 2016 and 2018, the legislature adopted a new Anti-Terrorism Law in 2018 that expanded the number of crimes eligible for the death penalty.¹⁵

B. Women are disproportionately affected by the death penalty for drug offenses and experience multiple layers of gender inequality and discrimination in this context.

12. According to a report by Harm Reduction International, the Institute for Criminal Justice Reform, and Lembaga Bantuan Hukum Masyarakat, “[w]omen are disproportionately impacted by the death penalty for drug offences: of the 22 women charged with capital offences between 2000 and 2018, 18 were convicted of a drug offence.”¹⁶ As of April 2020, seven women were on death row in Indonesia, four of whom had been sentenced to death for non-violent drug-related offenses and the remaining three for murder.¹⁷ One of the three is currently 23 years old and had been sentenced to death at the age of 19 for a murder committed at the age of 17. ICJR conducted an in-depth review of five cases against women sentenced to death for drug-related offenses and concluded that none of them “had held a major role in the drug activity that led to their conviction.”¹⁸ The Cornell Center similarly concluded that three “were drug mules who were tricked or coerced into smuggling drugs and two more were arrested with their husbands and denied any involvement in their

¹⁰ Anti-Death Penalty Asia Network, ECPM, and KontraS, *Dehumanized: The Prison Conditions of People Sentenced to Death in Indonesia* (2019), at 14.

¹¹ *Id.* at 51.

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ Institute for Criminal Justice Reform, *A Game of Fate: Report on Indonesia Death Penalty Policy in 2019*, (2019), at 12, available at <https://icjr.or.id/a-game-of-fate-report-on-indonesia-death-penalty-policy-in-2019/>.

¹⁵ Anti-Death Penalty Asia Network, ECPM, and KontraS, *Dehumanized: The Prison Conditions of People Sentenced to Death in Indonesia* (2019), at 51.

¹⁶ Harm Reduction International, Institute for Criminal Justice Reform, and Lembaga Bantuan Hukum Masyarakat, *Submission to The Human Rights Committee*, 129th Session (1 June 2020), ¶ 1.1; Institute for Criminal Justice Reform, *Analyzing Fair Trial Aspect of Death Penalty for Drug Cases in Indonesia: Policy and Implementation: Special Cases on Women* (May 2019), at 4.

¹⁷ Institute for Criminal Justice Reform, internal database, updated regularly.

¹⁸ Harm Reduction International, Institute for Criminal Justice Reform, and Lembaga Bantuan Hukum Masyarakat, *Submission to The Human Rights Committee*, 129th Session (1 June 2020), ¶ 1.1.

partners' drug dealing.”¹⁹ Women at risk of being sentenced to death “are among the most vulnerable and marginalised both in society and in the drug hierarchy.”²⁰ According to ICJR, “women as offenders often face discrimination . . . , women comparably . . . mostly [commit] poverty[-]driven crimes, such as theft, fraud, and minor drug offences without involving violence.”²¹

13. From 2009 through 2012, Indonesia did not carry out any executions. Since 2013, however, it has carried out executions of 23 people (18 of whom were executed in 2015 and 2016 in the wake of a new “war on drugs”), most of whom were foreign nationals and all of whom had been convicted and sentenced to death for drug-related offenses.²² Indonesia executed two women in January 2015.²³ Ms. T, a citizen of Vietnam, was executed for drug smuggling. According to the Cornell Center on the Death Penalty Worldwide, she had “claimed that she was duped by a drug cartel to transport a suitcase from Malaysia—containing 2.4 pounds of methamphetamine—into Indonesia.”²⁴
14. Later in 2015, authorities granted a temporary stay of execution to a Filipina citizen named Ms. M, who was a migrant worker and trafficking victim sentenced to death in 2010 after authorities discovered 2.6 kilograms of heroin in her suitcase when she arrived in the country. Her recruiter subsequently confessed his crime and Ms. M was issued the stay of execution so she could testify against her alleged recruiters at trial.²⁵
15. As the Cornell Center on the Death Penalty Worldwide observed in its groundbreaking September 2018 report: *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty*:

Gender inequality . . . permeates prosecutions of women for capital drug offenses. . . . Many women engage in drug smuggling to counteract their marginalization and improve their socioeconomic status. . . . Drug traffickers employ women as low-level drug mules because they are less likely to be caught than men and do not have the resources to buy and traffic drugs for their own profit, exposing them to exploitation by drug trafficking rings. Researchers have concluded that some women smuggle drugs to please or help someone, usually a male figure, in their lives. . . . Female migrant workers are easy targets

¹⁹ The Cornell Center on the Death Penalty Worldwide, *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty*, (Sept. 2018), 26, available at <http://www.deathpenaltyworldwide.org/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>.

²⁰ Harm Reduction International, Institute for Criminal Justice Reform, and Lembaga Bantuan Hukum Masyarakat, *Submission to The Human Rights Committee*, 129th Session (1 June 2020), ¶ 1.1.

²¹ Institute for Criminal Justice Reform, *Analyzing Fair Trial Aspect of Death Penalty for Drug Cases in Indonesia: Policy and Implementation: Special Cases on Women* (May 2019), at 5.

²² Anti-Death Penalty Asia Network, ECPM, and KontraS, *Dehumanized: The Prison Conditions of People Sentenced to Death in Indonesia* (2019), at 18, 42, available at http://www.ecpm.org/wp-content/uploads/rapportindon%C3%A9sie_gb.pdf.

²³ *Id.* at 47 & n.164.

²⁴ The Cornell Center on the Death Penalty Worldwide, *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty*, (Sept. 2018), 13, available at <http://www.deathpenaltyworldwide.org/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>.

²⁵ Anti-Death Penalty Asia Network, ECPM, and KontraS, *Dehumanized: The Prison Conditions of People Sentenced to Death in Indonesia* (2019), at 47 & n.164.

for drug trafficking rings because they are typically poor and uneducated, but hold passports.²⁶

C. Women accused of capital offenses experience gender inequality in exercising their rights to a fair trial.

16. The Indonesian Government’s harsh “war on drugs” policy has a disproportionate effect on women, including with respect to their right to a fair trial.²⁷ ICJR conducted a careful analysis of the complete case files of five capital cases in which women were charged with drug-related offenses.²⁸ ICJR concluded that “the current Indonesian criminal justice system . . . does not accommodate specific regulation to consider the vulnerability experienced by . . . women who face the death penalty.”²⁹ Three of the women came from relatively disadvantaged socio-economic backgrounds and three were lured into transporting drugs by men who promised them other employment.³⁰ None of the women played a major role in the drug trade.³¹ All five women experienced violations of their fair trial rights. One was not provided with a competent interpreter, impeding her ability to communicate with counsel, prepare her defense, and examine witnesses.³² The judge in that case asserted without evidence that she might have been “frequently involved in drug trafficking.”³³ The judge stated the intent to sentence her to death in part “to deter the other foreign national[s] not to do their drug transaction here in Indonesia.”³⁴ In another case, the judge was not impartial and stated that the defendant’s “denial is the sign that she was guilty.”³⁵ In four of the cases, the court failed to call key witnesses to testify, instead relying on unreliable hearsay documents.³⁶
17. Some women suspected of having committed capital offenses experience gender-based violence in the context of coercive interrogations. One woman reported “that she was sexually harassed and that the police told her that if ‘[she] refused to do what they asked for, the sentence would be even more severe.’” She was subjected to a preliminary investigation at a hotel, without access to a lawyer.³⁷ She was ultimately sentenced to death.³⁸ Another woman, Ms. MU, experienced physical and sexual violence during the investigation phase of

²⁶ The Cornell Center on the Death Penalty Worldwide, *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty*, (Sept. 2018), 12, available at <http://www.deathpenaltyworldwide.org/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>.

²⁷ Institute for Criminal Justice Reform, *Analyzing Fair Trial Aspect of Death Penalty for Drug Cases in Indonesia: Policy and Implementation: Special Cases on Women* (May 2019), at 5.

²⁸ *Id.* at 6-12.

²⁹ *Id.* at 13.

³⁰ *Id.* at 8-9.

³¹ *Id.* at 9.

³² *Id.* at 10-11.

³³ *Id.* at 11.

³⁴ *Ibid.*

³⁵ *Ibid.*

³⁶ *Ibid.*

³⁷ Anti-Death Penalty Asia Network, ECPM, and KontraS, *Dehumanized: The Prison Conditions of People Sentenced to Death in Indonesia* (2019), at 58, available at http://www.ecpm.org/wp-content/uploads/rapporindon%C3%A9sie_gb.pdf.

³⁸ *Id.* at 57.

her proceedings.³⁹ Nonetheless, these statements made under duress are admitted as evidence in capital proceedings.⁴⁰ Authorities have yet to respond to Ms. MU's request for clemency, submitted in 2016.

18. Women accused of capital crimes often receive inadequate legal representation. Three of the five women examined by ICJR faced barriers to accessing their right to adequate counsel. For example, the court-appointed lawyer representing one of the women failed to file any defense documents and orally conceded in court that the defendant was guilty.⁴¹ One woman reported that her court-appointed lawyer failed to secure a doctor to provide a medical report and generally did not even try to produce evidence at trial.⁴² "Many defendants only have access to a lawyer at the trial stages, while they are left unassisted in the investigation state, when they are particularly vulnerable to till-treatment and torture."⁴³
19. The Supreme Court has constrained the right to appeal, in contravention of a decision of the Constitutional Court. In Decree No. 34/PUU-XI/2013, the Constitutional Court emphasized that defendants should not be limited to making one request for case review. The Constitutional Court thereby overruled Article 268, paragraph 3 of Law No. 8 of 1981 on the Criminal Procedure Code, which states that case reviews may be done only once. Under this ruling, a person sentenced to death may apply for more than one case review. Yet the Supreme Court has not accepted this judgment. In Circulating Letter of the Supreme Court No. 7/2014, the Supreme Court attempts to prevent defendants from filing more than one case review. These conflicting decisions are particularly problematic in capital cases. For example, the Supreme Court in decision No. 02/Pid.PK/2015/PN rejected Ms. M's second petition for review, neglecting the Constitutional Court's decree.
20. Some foreign nationals, including Ms. M, also report not being provided with a competent interpreter during the police investigation and court proceedings.⁴⁴ ICJR found that in at least four drug-related cases, "the assistance of an interpreter was denied."⁴⁵ Moreover, under Law No. 24 of 2003 on MKRI (Indonesia's Constitutional Court), foreign nationals are barred from presenting constitutional challenges to legislation, even if that legislation played a role in their conviction or sentencing.⁴⁶
21. The Cornell Center for Death Penalty Worldwide observed that, "[i]n general, the Indonesian criminal justice system fails to take into consideration gender violence and other mitigating

³⁹ Harm Reduction International, Institute for Criminal Justice Reform, and Lembaga Bantuan Hukum Masyarakat, *Submission to The Human Rights Committee*, 129th Session (1 June 2020), ¶ 1.6.

⁴⁰ *Ibid.*

⁴¹ Institute for Criminal Justice Reform, *Analyzing Fair Trial Aspect of Death Penalty for Drug Cases in Indonesia: Policy and Implementation: Special Cases on Women* (May 2019), at 12.

⁴² Anti-Death Penalty Asia Network, ECPM, and KontraS, *Dehumanized: The Prison Conditions of People Sentenced to Death in Indonesia* (2019), at 59.

⁴³ Harm Reduction International, Institute for Criminal Justice Reform, and Lembaga Bantuan Hukum Masyarakat, *Submission to The Human Rights Committee*, 129th Session (1 June 2020), ¶ 3.

⁴⁴ Anti-Death Penalty Asia Network, ECPM, and KontraS, *Dehumanized: The Prison Conditions of People Sentenced to Death in Indonesia* (2019), at 60, 77.

⁴⁵ Harm Reduction International, Institute for Criminal Justice Reform, and Lembaga Bantuan Hukum Masyarakat, *Submission to The Human Rights Committee*, 129th Session (1 June 2020), ¶ 1.5.

⁴⁶ Anti-Death Penalty Asia Network, ECPM, and KontraS, *Dehumanized: The Prison Conditions of People Sentenced to Death in Indonesia* (2019), at 62-63; Harm Reduction International, Institute for Criminal Justice Reform, and Lembaga Bantuan Hukum Masyarakat, *Submission to The Human Rights Committee*, 129th Session (1 June 2020), ¶ 1.4.

evidence to effectively deal with issues of relative culpability, duress, and intent.”⁴⁷ For example, in contravention of Articles 2 and 5(a) of the Convention, it appears that for purposes of criminal liability, under the previous law, Law Number 3/1997 on Juvenile Justice System, Indonesian criminal courts treated girls under the age of 18 as adults if they are married, in a strikingly gendered violation of the prohibition on sentencing juveniles to death. According to the Cornell Center for the Death Penalty Worldwide, and as mentioned in paragraph 12 above, one woman on death row in Indonesia was 17 years old at the time of her offense.⁴⁸ The court found her guilty of killing a child under the orders of her abusive husband.⁴⁹ The court acknowledged that she had repeatedly resisted her older husband’s orders to kill the child and obeyed only when he threatened to kill her as well. The court nonetheless sentenced her and her husband to death for premeditated murder.⁵⁰ Although this juvenile justice provision has since been repealed, authorities have provided no relief to this child victim of gender-based violence. The Cornell Center found that nearly all cases of people who had been sentenced to death for offenses committed as girls “involve gender-based violence, child marriage, and/or sexual abuse,” and “[t]rial courts around the world largely fail to take into account gender-based violence as a mitigating factor to reduce sentences, even in the context of child marriage.”⁵¹

22. As a sign of progress, in July 2017, the Chief of the Supreme Court issued Supreme Court Regulation (“Perma”) Number 3 of 2017 on the Guidelines for Trial Involving Women.⁵² ICJR views the “Perma” as “a breakthrough” in moving Indonesia toward compliance with its obligations under the Convention on the Elimination of All Forms of Discrimination Against Women.⁵³ The regulation calls on trial judges to take into account principles of dignity, non-discrimination, gender equality, equality before the law, justice, expediency, and legal certainty.⁵⁴ It further calls on judges to “identify unequal treatment situations resulting in discrimination against women” and to “guarantee the rights of women to equal access to justice.”⁵⁵ The regulation requires judges to consider gender equality and non-discrimination by identifying certain salient facts, including “a. inequality of social status between the parties in the trial; b. inequality that impacts access to justice; c. discrimination; d. psychological impact experienced by victims; e. victim’s physical and psychological condition; f. power of relation which results in inequality and g. history of violence from perpetrators against victims/witnesses.”⁵⁶
23. ICJR notes that the guideline has yet to be implemented in cases in which female defendants could be sentenced to death. And in cases in which women are charged with drug-related offenses, judges often use language suggesting that a harsh penalty is warranted due to the

⁴⁷ The Cornell Center on the Death Penalty Worldwide, *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty*, (Sept. 2018), 27, available at <http://www.deathpenaltyworldwide.org/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>.

⁴⁸ *Id.* at 16.

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*

⁵¹ *Id.* at 15.

⁵² Institute for Criminal Justice Reform, *Analyzing Fair Trial Aspect of Death Penalty for Drug Cases in Indonesia: Policy and Implementation: Special Cases on Women* (May 2019), at 13.

⁵³ *Ibid.*

⁵⁴ *Id.* at 14.

⁵⁵ *Ibid.*

⁵⁶ *Ibid.* (some capitalization omitted).

seriousness of the “war on drugs” or the need to send a message to others involved in the drug trade.⁵⁷

III. The Indonesian Government has failed to improve conditions of detention for women. (Concluding Observations, paragraph 207)

24. In its 2012 Concluding Observations, the Committee recommended that Indonesia:

Improve the conditions of women in detention facilities in accordance with international standards to: (i) solve the problems of overcrowding in the prisons; (ii) guarantee separate accommodation for men and women inmates; (iii) ensure the provision of adequate health facilities and services, in particular for pregnant women; and (iv) ensure that women are able to file reports of misconduct against police officers, including with respect to sexual violence, intimidation or harassment, and that these are promptly, independently and impartially investigated and prosecuted and the perpetrators punished; and consider setting up an independent mechanism for receiving and dealing with complaints about the police from the public.⁵⁸

25. In its Eighth Periodic Report, the only response the Government of Indonesia offers to this recommendation is a passing reference to “a Blueprint for Corrections Service Reform maps out reform objectives and capacity building, such as: (i) separation of female prisoners”⁵⁹

26. As of February 2020, over 130,000 of the 268,967 people incarcerated in Indonesia were detained for mostly minor drug-related offences, including 7,584 women.⁶⁰ 55% of incarcerated women are detained for drug-related offenses. From 2011 to 2019, the increase in the number of women incarcerated (158%) was greater than the increase in the number of men incarcerated (132%). On average, prisons are operating at over 200% of capacity.⁶¹

27. A 2019 joint report by KontraS, the Anti Death Penalty Asia Network, and Ensemble Contre la Peine de Mort, noted that the quantity of food in prisons is limited and the food is not sufficiently nutritious, but family members may visit prisons and bring food for the people who are detained.⁶² One woman on death row has diabetes and “reports that the prison refuses to provide her with appropriate food for her condition, and she lacks the means to buy her own food.”⁶³ Foreign nationals are unlikely to receive food from the outside.⁶⁴ Foreign

⁵⁷ *Id.* at 14-15.

⁵⁸ Committee on the Elimination of Discrimination against Women, *Concluding Observations of the Committee on the Elimination of Discrimination against Women: Indonesia*, ¶ 46(c), U.N. Doc. CEDAW/C/IDN/CO/6-7 (Aug. 7, 2012).

⁵⁹ Committee on the Elimination of Discrimination against Women, *Eighth periodic report submitted by Indonesia under article 18 of the Convention*, ¶ 207, U.N. Doc. CEDAW/C/IND/8 (8 Jan. 2020).

⁶⁰ Harm Reduction International, Institute for Criminal Justice Reform, and Lembaga Bantuan Hukum Masyarakat, *Submission to The Human Rights Committee*, 129th Session (1 June 2020), ¶ 4.

⁶¹ *Ibid.*

⁶² Anti-Death Penalty Asia Network, ECPM, and KontraS, *Dehumanized: The Prison Conditions of People Sentenced to Death in Indonesia* (2019), at 95.

⁶³ The Cornell Center on the Death Penalty Worldwide, *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty*, (Sept. 2018), 27, available at <http://www.deathpenaltyworldwide.org/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>.

nationals also face difficulties communicating with their family members; in one prison the telephone booths were restricted to domestic calls.⁶⁵

28. According to the Cornell Center on the Death Penalty Worldwide, “[i]n Indonesia, water is restricted even during the dry seasons, when prisons can become extremely hot and humid.”⁶⁶ Coupled with overcrowding, these conditions can be “dangerously unhygienic.”⁶⁷ In one women’s prison, “30 inmates live together in a single five-by-six meter cell” with only one toilet.⁶⁸ The Cornell Center also found that “[i]n Indonesia, female prisoners must buy [sanitary] pads from the prison commissary store, but these are of poor quality and often lead to discomfort or complications.”⁶⁹ ICJR research in 2019 also found that in two prison facilities for women in Jakarta, women who have to give birth in the prison facilities must make payments for their medical care.

IV. Suggested questions for the Government of Indonesia:

- What measures has the State Party taken to prevent and control the spread of COVID-19 in prisons? Please provide current information on the number of women released and not released (including disaggregation according to pre-trial status, crime of charge/conviction, and nature of penalty).
- How is the State Party ensuring that entities are able to continue to monitor conditions of detention during the COVID-19 global pandemic?
- What steps is the State Party taking to abolish or restrict application of the death penalty for drug-related offenses?
- What is the status of the draft Criminal Code introduced in 2015, and what steps are being taken to reduce the number of crimes that are eligible for a death sentence?
- What steps are being taken in the discussion of the draft Criminal Code to guarantee the automatic commutation of sentences for persons who have been on death row for 10 years or more?
- Please provide information on the number of women under sentence of death, broken down by current age, age at the time of the criminal act giving rise to the sentence of death, nationality, crime of conviction, and location of detention.
- What measures does the State Party take to ensure that courts do not impose death sentences on women who are vulnerable drug couriers coerced or tricked into trafficking drugs?

⁶⁴ Anti-Death Penalty Asia Network, ECPM, and KontraS, *Dehumanized: The Prison Conditions of People Sentenced to Death in Indonesia* (2019), at 96.

⁶⁵ *Id.* at 99.

⁶⁶ The Cornell Center on the Death Penalty Worldwide, *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty*, (Sept. 2018), 21, available at <http://www.deathpenaltyworldwide.org/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>.

⁶⁷ *Ibid.*

⁶⁸ *Id.* at 27.

⁶⁹ *Id.* at 22.

- How do courts ensure that no woman is sentenced to death for a crime she allegedly committed while under the age of 18, regardless of marital status? Does the repeal of Law Number 3/1997 on the Juvenile Justice System apply retroactively?
- How do prison authorities ensure that no woman is executed for a crime she allegedly committed while under the age of 18, regardless of marital status?
- How does the State Party ensure that women do not face discrimination based on nationality with respect to their ability to challenge legislation affecting their conviction before the Constitutional Court?
- What remedies are available to women who allege that they experienced gender-based violence during the investigation stage of criminal proceedings?
- What procedures and policies are in place to ensure the fair trial rights of women who are foreign nationals, including their right to timely and competent interpretation throughout all stages of the proceedings?
- What steps has the State Party taken to review its drug control legislation to ensure that penalties for drug-related offenses are proportionate, reasonable, and necessary, so as to reduce prison crowding?
- What steps has the State Party taken to codify gender-specific defenses and mitigation, so as to require that courts take into account women's experiences of trauma, poverty, child marriage, and gender-based violence?
- How does the State Party ensure that judges are knowledgeable about gender-based discrimination, domestic violence, and tactics of coercive control that may lead women to commit death-eligible offenses?
- How does the State Party ensure that women who are suspected of committing death-eligible offenses have access to free and qualified legal counsel specialized in capital representation at all points in the proceedings, including the investigation stage and on appeal?
- What measures have been taken to ensure that Mary Jane Veloso be permitted to have a second or successive case review, in accordance with the Constitutional Court's Decree No. 34/PUU-XI/2013, despite the Supreme Court's Circulating Letter 7/2014 to the contrary?
- How does the State Party address the problem of inconsistent rulings on the right to appeal in a case review between the Constitutional Court's Decree No. 34/PUU-XI/2013 and the Circulating Letter of the Supreme Court Number 7/2014?
- What is the status of implementation of Supreme Court Regulation ("Perma") Number 3 of 2017 on the Guidelines for Trial Involving Women, particularly with respect to trials of women charged with offenses that may be subject to the death penalty?

- What policies are in place to ensure that women under sentence of death have timely access to general and female-specific healthcare and counseling, including mental health care, free of charge, and that menstruating women have access to sanitary products, soap, and water free of charge?