

Joint Submission to Committee on Economic Social and Cultural – 75th Session
(12 Feb 2024 - 01 Mar 2024)

Country Review of Indonesia



Yayasan Aksi Keadilan Indonesia (AKSI) (*in english: Indonesia Act for Justice*) is a non-profit organization based in Bogor, West Java, established to provide community-based legal assistance to poor and marginalised communities seeking justice. Since 2018, AKSI has provided legal education and legal assistance in drugs cases, both in litigation and non-litigation, including for women and young people who use drugs, whose rights are often violated.



Lembaga Bantuan Hukum Masyarakat (LBH Masyarakat) is a not-for-profit non-governmental organisation that provides free legal services for the poor and victims of human rights abuses in Indonesia. We advocate for the promotion of the rule of law and human rights protection through strategic litigation, research and analysis, campaign and public education, and community legal empowerment. We focus on the abolition of the death penalty, drug policy reform, HIV and human rights, mental health, and the protection of LGBT rights.



Harm Reduction International (HRI) is a leading NGO that envisions a world in which drug policies uphold dignity, health and rights. We use data and advocacy to promote harm reduction and drug policy reforms. We show how rights-based, evidence-informed responses to drugs contribute to healthier, safer societies, and why investing in harm reduction makes sense.. HRI is an NGO in Special Consultative Status with the Economic and Social Council of the United Nations.

Introduction

Harm Reduction International (HRI), Lembaga Bantuan Hukum Masyarakat, and Yayasan Aksi Keadilan Indonesia (AKSI), welcome the opportunity to report to the Committee on Economic, Social and Cultural Rights (CESCR) ahead of the review of Indonesia, at its 75th Session. This submission will assess the performance of Indonesia regarding its obligations under the International Covenant on Economic, Social and Cultural Rights (ICESCR) with reference to issues raised by this Committee in its List of Issues, and with a specific focus on the country's obligation to protect the economic, social and cultural rights of marginalised group; specifically in this context are people who use drugs and LGBTIQ+ individuals. Accordingly, it will cover the topics of non-discrimination (Paragraph 11 of the List of Issues) and right to physical and mental health (Paragraph 25 of the List of Issues).

Paragraph 11 (c) of the List of Issues

“Please provide information on: (c) the cases of discrimination in the enjoyment of economic, social and cultural rights, filed with relevant authorities, as regards the main grounds and areas of discrimination, the penalties imposed on perpetrators, and the remedies provided to victims.”

In its reply to the List of Issues, the government of Indonesia mentioned the Constitution, which guarantees the protection of human rights – including against discrimination –, as well as a few laws that prohibit discrimination based on various grounds. The government also mentioned guiding and monitoring mechanisms to prevent intolerant, discriminatory by-laws; and the fact that efforts have been made by the government to analyse and provide guidance to local government to revise or revoke discriminative by-laws.

However, civil society monitoring shows that intolerant and discriminatory by-laws still exist in the country, especially against groups that are highly stigmatised. For example, in December 2021 the local government of District of Bogor City Government (West Java) established a Regional Regulation for the Prevention and Regulation of Sexual Deviant Behaviour (P4S).¹ This regulation's brittle complexity and stigmatisation of sexual and gender minority groups (LGBT) are the reasons it has become a contentious issue and drawn condemnation from a range of activist and human rights watchdog groups.² Despite so, the regulation eventually was approved by the Bogor City Council and was officially implemented throughout the city.³

The regulation characterises LGBT individuals as forms of “sexually deviant”⁴, regarded in the same category as pedophiles, that negatively impact social life and further alter mental attitudes that could undermine the foundations of social life.⁵ The regulation further regulates the need for public security management, forced rehabilitation and conversion therapy for people who are deemed to

¹ The regulation can be downloaded here (in Bahasa Indonesia):

<https://peraturan.bpk.go.id/Details/207080/perda-kota-bogor-no-10-tahun-2021>.

² See, for example, press release from Indonesian coalition of civil society for gender and sexual diversity, highlighting the impact of the said Regional Regulation on, among others, the right to health of LGBT individuals : <https://lbhmasyarakat.org/peraturan-daerah-kota-bogor-no-10-tahun-2021-tentang-pencegahan-dan-penanggulangan-perilaku-penyimpangan-seksual-pelanggaran-hak-asasi-manusia/>, <https://en.tempo.co/read/1573580/coalition-fear-bogors-local-law-p4s-will-discredit-lgbt-community>.

³ The Head Section of Law and Human Rights of Bogor City Council claimed that the main objective of the said regulation is to protect public health by prohibiting sexual deviant behaviour. See the statement on Bogor City Council official website here: <https://baghukum-setda.kotabogor.go.id/index.php/Home/Home/detail/164>.

⁴ See Article 6, Regional Regulation for the Prevention and Regulation of Sexual Deviant Behaviour (P4S).

⁵ Ibid, Article 3.

have “sexually deviant” behaviour⁶ – a clear violation of the right to health. Finally, being identified as LGBT could also potentially lead to sanctions, including imprisonment (criminal), fines, and/or other sanctions pursuant to other the regulations in force in Indonesia.⁷

Para 25(c) of the List of Issues

“Please provide information on: c) the steps taken to review the legislative and policy framework on drugs; the progress made in improving the availability, accessibility and quality of harm reduction programmes and in making specialized health-care services available to drug users; and the measures taken to curb the high prevalence of HIV and hepatitis C infection among those who inject drugs and to address discrimination faced by drug users in accessing health-care services.”

a) Legislative and Policy Framework on Drugs

In its reply to the list of issues, the government of Indonesia provides sparse information on steps implemented to align domestic drug policy with international standards. In fact, most information on drugs in either the State Report or the Reply to the List of Issues is framed only in the context of mental health.

On December 6, 2022, Indonesia's House of Representatives passed a long-debated New Criminal Code (Law Number 1 Year 2023 Regarding the Criminal Code),⁸ which includes articles regarding drug-related crimes,⁹ notwithstanding the existence of specific rules in the Law Number 35 Year 2009 regarding Narcotics (Narcotic Bill). Policymakers claim that the criminal regulations within the new Criminal Code represent an improvement.¹⁰ Similarly, Indonesia's Deputy Minister of Law and Human Rights, Edward Omar Sharif Hiariej, stated that the new Criminal Code can reduce the number of people who use drugs in Indonesia.¹¹ This is because the Criminal Code is claimed to outline a better approach to managing the use and supply of drugs.

Rather than aligning domestic policy with international standards, this new criminal code represents another challenge for drug policy reform in Indonesia, as it can potentially have wide-ranging negative impacts on people who use drugs. Despite civil society’s criticism since the beginning of the reform discussion to remove the drug regulations from the criminal code, the government continued with this codification process by justifying the placement of narcotic articles in the Penal Code as “bridging articles”,¹² a concept which remains unclear.

The drug regulations outlined in the New Criminal Code in fact fail to address significant issues related to drug policy (if not making them worse), including the issue of harm reduction. Not only the Criminal

⁶ Ibid, Article 14 – 18.

⁷ Ibid, Article 25.

⁸ Public Relations, Law and Cooperation Bureau (6 December 2022), *The DPR RI Plenary Ratifies the Criminal Code Bill into Law*. <https://www.kemenkumham.go.id/berita-utama/paripurna-dpr-sahkan-ruu-kuhp-menjadi-undang-undang>.

⁹ See Article 609 – 611 of Indonesia Criminal Code.

¹⁰ Dahlia Irawati (25 May 2023), *Wamenkumha: KUHP Tidak Lagi menekankan “Balas Dendam”*, Kompas.id. <https://www.kompas.id/baca/nusantara/2023/05/25/wamenkumham-kuhp-tidak-lagi-menekankan-balas-dendam>.

¹¹ Muhammad Aminudin (26 May 2023), *Wamenkumham Sebut KUHP Baru Cegah Lapas Over Kapasitas*, Detik.com <https://www.detik.com/jatim/hukum-dan-kriminal/d-6739350/wamenkumham-sebut-kuhp-baru-cegah-lapas-over-kapasitas>.

¹² Explanation of Article 187 of New Criminal Code.

Code does not mention harm reduction at all – it in fact continues criminalising people who use drugs, as it fails to discriminate between drug use and drug trafficking; hence representing an often insurmountable obstacle to the provision of essential services, and to the enjoyment of economic, social and cultural rights by people who use drugs.¹³

Indonesia's punitive approach to drugs transpires from most related policies and laws. One example is the National Narcotic Board's regulation on the implementation of rehabilitation services of 2014.¹⁴ The regulation creates a mechanism known as 'Integrated Assessment Team' (Tim Asesmen Terpadu/TAT), whose role is to determine whether individuals arrested for violating drug laws qualify as a 'people who use drugs', in which case rehabilitation would be recommended instead of incarceration. However, the assessment can only be undertaken if the police officers responsible for the case refer the arrested individuals to the TAT.¹⁵ In practice, according to people arrested, this has become a chance for the police to ask for bribes. And in many cases, the referral simply does not happen; resulting in higher sentences and a lack of access to healthcare for arrested persons who use drugs.

In addition, although most of these regulations acknowledge the concept of drug use and drug dependency – the terms used in the laws are 'drug abuse' and 'drug addict', its flawed implementation means that people who use drugs still have to undergo criminal proceedings and in many cases be sentenced to imprisonment, or undergo forced rehabilitation as a mean to avoid imprisonment regardless of their level of dependency. On this, we recall previous CESCR jurisprudence as well as the conclusion by the Working Group on Arbitrary Detention that

“the threat of imprisonment should not be used as a coercive tool to incentivize people into drug treatment. While some defendants, when given a choice, have refused drug treatment and accepted a prison sentence as an outcome, the measure of coercion involved in such a choice is too great and is an unacceptable infringement on the right to choose one's treatment freely, to refuse treatment or to discontinue it at any time.¹⁷⁴ Courts should also not order compulsory or forced drug treatment. Drug treatment should always be voluntary, based on informed consent, and left exclusively to health professionals.”¹⁶

As mentioned in the government of Indonesia's Reply to the List of Issues, the draft revision of the Narcotic Laws has been put into the Legislative Priority List (Prolegnas) of 2019-2024. It should be noted that the government has given space to civil society coalitions to provide inputs and monitor the progress. The coalition seeks to advocate policy that decriminalise small possession for personal use, drug use for medical purposes, and scientific research on drugs- all of them are in line with the promotion and protection of economic, social and cultural rights. However, this progress might be put in jeopardy due to the 2024 General Election. All presidential candidates have vowed to continue the hard stance against drug-related crimes, using languages such as “applying harshest

¹³ One clear example is access to medical marijuana. A coalition of civil society organisations, together with three mothers whose children suffer from cerebral palsy and in dire need to marijuana to medicate the disease, submitted a petition to the Constitutional Court in 2020. See a media coverage on the issue here: <https://www.bbc.com/indonesia/indonesia-61956811>

¹⁴ See National Narcotics Board Regulation No. 11/2014 and National Narcotics Board Regulation 1/2019

¹⁵ Ricky Gunawan, et al (2021), *'Perbaikan Tata Kelola Narkotika Indonesia: Mencari Alternatif Non Peminadaan Bagi Pengguna Narkotika'*, (Jakarta: ICJR), 26.

¹⁶ UN Working Group on Arbitrary Detention, *'Arbitrary detention relating to drug policies: Study of the Working Group on Arbitrary Detention'*. A/HRC/47/40.

punishment” and “eradicating”.¹⁷ No candidate has committed to drug policy or prison reform in line with international standards, i.e. towards decriminalisation of drug use and reduction of prison overcrowding.

b) Harm Reduction, HIV, and Hepatitis C

People who use drugs are adversely affected by HIV and viral hepatitis. In September 2023, the Report of the United Nations Office of the High Commissioner on Human Rights (OHCHR) outlined human rights challenges in addressing and countering current attitudes to drugs; highlighted the lack of, and unequal access to, drug treatment and harm reduction services which result in nearly 600,000 drug-related deaths each year from viral hepatitis, HIV, overdose, and injuries.

The World Health Organization (WHO), OHCHR, UNAIDS, and UNODC recognise Needle and Syringe Programs (NSPs) and Opioid Agonist Therapy (OAT) as key components of an effective HIV and viral hepatitis response for injecting drug use.¹⁸ These interventions have also been endorsed by the UN General Assembly, the Economic and Social Council, and the Commission on Narcotic Drugs (CND). In its State Report, the government of Indonesia stated that combating HIV is a national program, which implementation includes effort to prevent its transmission. The government further described, in its Reply to the List of Issues, other measures they have been taken to reduce AIDS, including the provision of HIV testing and treatment, capacity building of health professionals, ensuring availability of pharmaceutical and medical devices, among others.

Latest available estimates indicate there are at least 34,500 people who inject drugs in Indonesia, with a national HIV prevalence estimated at 39.11% (HIV prevalence among prisoners is estimated at 0.7%), and an estimated Hepatitis C prevalence among people who inject drugs of 89.2%.¹⁹

Some harm reduction services are available, although limited, in the country;²⁰ mostly government-run.²¹ For example, OAT is available in several regions, and the number of Needle and Syringe Programs (NSPs) increased from 53 to 56 between 2018 and 2020. However, the acceptability and quality of such services is reportedly poor; for example, 216 syringes per person per year are reportedly distributed, against the WHO target of 300, and OAT coverage is reportedly particularly

¹⁷ See “Visi, Misi & Program Anies & Muhaimin: Indonesia Adil Makmur untuk Semua”, “Visi, Misi dan Program Calon Presiden dan Wakil Presiden 2024-2029: H. Prabowo Subianto & Gibran Rakabuming Raka”, “Visi dan Misi Calon Presiden dan Wakil Presiden Ganjar Pranowo & Mahfud MD 2024-2029”.

¹⁸ In July 2023, the World Health Organization (WHO) updated the Consolidated guidelines on HIV, viral hepatitis and STI prevention, diagnosis, treatment, and care for key populations which outlines a public health response in 5 key population categories, including people who inject drugs, people in prisons and other closed settings.

Additionally, the Global Fund to Fight AIDS, Tuberculosis and Malaria (The Global Fund)’s harm reduction technical brief in 2022 updated parameters for harm reduction funding within Grant Cycle 7 (2023-2025), including for hepatitis programming. It considered harm reduction as a ‘program essential’, allowed funding requests for programmes for people who use drugs and their sexual partners, rather than only people who inject drugs, increased the scope for stimulant harm reduction and hepatitis B and C treatment for people who inject drugs regardless of HIV status.

¹⁹ Harm Reduction International, ‘Harm Reduction Information Note – Indonesia’, p.2. Available here: <https://hri.global/publications/harm-reduction-information-note-indonesia/>.

²⁰ Harm Reduction International, ‘Global State of Harm Reduction: 2023 Update to Key Data’. Available here: <https://hri.global/publications/global-state-of-harm-reduction-2023-update-to-key-data/>

²¹ Opcit. ‘Harm Reduction Information Note – Indonesia’

low, with only 1.6% of people who could benefit from these programmes receiving methadone. Other essential services, such as peer distribution of naloxone or drug consumption facilities, are absent.²²

HIV testing among people who inject drugs is also very limited at 26.9%;²³ while there are no known HBV and HCV testing and treatment programmes targeted to people who use and inject drugs, although it is reported that they can access the treatment.²⁴ This is despite the updated WHO Consolidated guidelines on HIV, viral hepatitis and STI prevention, diagnosis, treatment, and care for key populations that include people who inject drugs, people in prisons and other closed settings as part of a public health response, and the Global Fund to Fight AIDS, Tuberculosis and Malaria (The Global Fund)'s harm reduction technical brief in 2022 that considered harm reduction as a 'program essential'; further allowing funding requests for programmes for people who use drugs and their sexual partners, rather than only people who inject drugs, increased the scope for stimulant harm reduction and hepatitis B and C treatment for people who inject drugs regardless of HIV status.²⁵

The situation is even more dire in prisons. Although prisoners have the right to the same standard of care as people in the broader community – including harm reduction services - no NSPs, condoms distribution, nor distribution of naloxone are available in Indonesian prisons. The only intervention to be present in detention is OAT, which in 2018 was only reported in 11 prisons in the country, most of them located in big cities.²⁶ In other cases, people in prison who were enrolled in an OAT programme outside of prison access methadone only through their family members or lawyers.

Funding for harm reduction and hepatitis C is heavily tied to grant from international donors. There has been no domestic public financing directed towards community or civil society organisations to date. While social contracting is permitted within government regulations this has not been used as a mechanism for funding the HIV or harm reduction response in Indonesia. Unfortunately, the Indonesian government has not shown commitment to transitioning from international donor funded to domestically funded harm reduction programmes.²⁷

Furthermore, the ongoing effort to revise Indonesia' narcotic law possesses a threat to the continuation of harm reduction programme in the country due to a push to remove the article regulating medical rehabilitation for people with drug dependency.

Conclusions and recommendations

We encourage the Committee on Economic, Social and Cultural Rights to recommend to Indonesia to:

- a) Undertake a comprehensive assessment of all laws and policies that are discriminatory in nature or in practice, and that promote intolerance, with an aim to repeal such laws and regulations;

²² Ibid. p 2- 3.

²³ Ibid.

²⁴ Ibid. p.3.

²⁵ Harm Reduction International, '*The Global State of Harm Reduction 2022*'. Available here:

https://hri.global/wp-content/uploads/2022/11/HRI_GSHR-2022_Full-Report_Final.pdf

²⁶ Harm Reduction International, '*The Global State of Harm Reduction 2018*', p.38. Available here:

https://hri.global/wp-content/uploads/2022/10/Global_State_HRI_2020_BOOK_FA_Web-1.pdf

²⁷ Opcit. '*Harm Reduction Information Note – Indonesia*'

- b) Take urgent steps to introduce a specific anti-discrimination law;
- c) Ban all kind of forced rehabilitation and “conversion therapies” for LGBT individuals that further violate economic, social and cultural rights, including but not limited to the right to health, the right to education, and the right to work;
- d) Taking advantage of the national process of revising the Narcotic Laws, to fully align domestic legislation with international standards, including by adopting “alternatives to criminalization, “zero tolerance” and elimination of drugs, by considering decriminalization of usage; and adopt responsible regulation that promotes human rights;”
- e) “Adopt drug policies that recognize and advance the rights of people who use drugs, including by ensuring access to medical care for people who inject drugs and develop HIV, viral hepatitis and other blood-borne infectious diseases;” and by ensuring drug treatment is only pursued with the consent of the person, and never as an alternative to incarceration;
- f) “Ensure that drug-dependent treatment is voluntary, and informed consent is a precondition for any medical treatment or intervention;”
- g) Scale up provision of harm reduction services, including in prison settings as a matter of priority to ensure availability, accessibility and quality access to services;
- h) Implement and fund a programme for the roll-out of the International Guidelines on Human Rights and Drug Policy at the domestic level, including training for policymakers, healthcare professionals, and service providers.