Submission to The Human Rights Committee

129th Session – (29 June – 4 July 2020)

INDONESIA

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Reporting Organisations:

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.

The **Institute for Criminal Justice Reform (ICJR)** s an independent research institute established in 2007. ICJR focuses on criminal law and justice reform, and general law reform in Indonesia. ICJR takes initiative by providing support in the context of establishing respect for the Rule of Law and at the same time establishing a fervent human rights culture in criminal justice system.

Lembaga Bantuan Hukum Masyarakat (LBH Masyarakat) is a 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.

Introduction

1. Harm Reduction International, the Institute for Criminal Justice Reform (ICJR) and LBH Masyarakat welcome the opportunity of reporting to the Human Rights Committee ahead of its adoption of the List of Issues Prior to Reporting for the review of Indonesia, at its 129th Session. This submission will assess the performance of Indonesia regarding its obligations under the International Covenant on Civil and Political Rights (ICCPR), with a specific focus on the country's drug policy. Accordingly, it will cover developments since the last review regarding:

    1. The imposition of the death penalty for drug offences (Art. 6, 7, 14, 26);
    2. Extrajudicial killings in the context of anti-drug operations and lack of accountability (Art. 2, 6, 7);
    3. Torture and ill-treatment in drug-related cases (Art. 7, 14);
    4. Disproportionate punishment for drug offences, and conditions of detention in prison (Art. 7, 9, 10, 14);
    5. Compulsory drug detention and treatment (Art. 7, 9, 10); and
    6. Ill-treatment in private drug detention centres and lack of monitoring (Art. 2, 7, 9, 10).

1. The imposition of the death penalty for drug offences (Art. 6, 7, 14, 26)

Indonesia retains the death penalty for a range of drug-related offences, including manufacturing, trafficking, "offering" and selling illicit substances.[1]

Despite the Government of Indonesia stating the contrary,[2] drug offences do not meet the threshold of 'most serious crimes' to which Article 6(2) of the ICCPR mandates that the death penalty be restricted, in countries which have not abolished this measure. This was most recently reiterated in General Comment 36 on the Right to Life published by this Committee.[3]

Accordingly, in its Concluding Observations on the initial report of Indonesia this Committee recommended that the country reinstates the de facto moratorium on the death penalty and consider abolishing this punishment.[4]

1.1 Executions and death sentences for drug offences between 2015 and 2019

Shortly after assuming the Presidency in 2014, Joko Widodo intensified the 'war on drugs' in the country, and advocated for the resumption of executions. In January 2015, six people were executed for drug offences; in April of the same year, eight more individuals were executed for drug trafficking.[5] This was a significant shift for Indonesia, which had only carried out four executions for drug offences between 2008 and 2014, with a hiatus between 2009 and 2012. Four more executions were carried out in 2016 in Indonesia, all for drug offences.[6] Authorities have since denied that a moratorium is in place.[7]

The imposition of death sentences for drug offences has been increasing:

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[1] Article 59, Law of the Republic of Indonesia No 5 of 1997 on Psychotropic Substances; articles 74, 113, 114, 116, 118, 119, 121, 132, 133 and 144, Law No 35 of 2009 on Narcotics.

[2] Human Rights Committee, Concluding observations on the initial report on Indonesia – Addendum. UN Doc. CCPR/C/IND/CO/1/Add.1 (9 March 2015)

[3] Human Rights Committee, General Comment No. 36 (2018) on Article 6 of the International Covenant on Civil and Political Rights, on the Right to Life. UN Doc CCPR/C/ GC/36, Para. 26

[4] Human Rights Committee, Concluding observations on the initial report on Indonesia – Addendum. UN Doc. CCPR/C/IND/CO/1 (21 August 2013). Para. 10-11

[5] ICJR (2017) Death Penalty Policy in Indonesia, 167. Jakarta: Institute for Criminal Justice Reform. Available from: http://icjr.or.id/data/wp-content/uploads/2018/08/DEATHPENALTY-POLICY-final-1.pdf

[6] Quiano K (2016) 'Indonesia executes four convicted drug offenders.' CNN. Available from: https://edition.cnn.com/2016/07/28/asia/indonesia-drug-executions/index.html

[7] Rizki Saputra R (2018) 'The attorney general calls death execution just waiting time,' CNN Indonesia. Available from: https://www.cnnindonesia.com/ nasional/20180523072741-12-300518/jaksa-agung-sebut-eksekusi-mati-tinggal-tungguwaktu.; Azizah, 'Attorney general: death penalty must be done.' DetikNews. Available from: https://news.detik.com/berita/4250433/jaksa-agung-hukuman-mati-harus-dilakukan

- Thirty-four death sentences for drug offences were pronounced in 2018 (64% of the total) and 130 individuals were on death row for drug offences at the end of 2018.[8] The country's death row population increased by 43% between October 2017 and December 2018, driven by drug-related sentences.[9]

- Between October 2018 and October 2019, 70 new death sentences were handed down by either first instance or appellate courts, more than double those pronounced in 2018.[10] Of these, 77% were for drug offences. In total, 61% of the 271 people on death row in October 2019 were there for drug offences.[11]

Women 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. In an in-depth review of five judicial procedures against women sentenced to death for drugs, ICJR found that none had held a major role in the drug activity that led to their conviction.[12] Notably, women facing the death penalty are among the most vulnerable and marginalised both in society and in the drug hierarchy. The Indonesia National Commission on Violence Against Women (Komnas Perempuan) found that

> "Mary Jane Veloso (Filipino citizen) & Merri Utami (Indonesian citizen) are two former migrant workers who were entrapped in drug smuggling rings and are currently on death row in Indonesia after being sentenced to be executed for smuggling drugs. These two impoverished female migrant workers represent the outermost layers of trafficking syndicates."[13]

1.2 Lack of effective legal assistance in death penalty cases (Art.6 and 14)

The right to effective and competent legal counsel is a central component of the right to fair trial, and is particularly important in capital cases. General Comment No.32 of this Committee acknowledges that capital defendants have adequate assistance of counsel at every stage of the proceedings "above and beyond" the protection afforded in non-capital cases[14] - thus failure to uphold this obligation substantiates a violation of Article 14, but also Article 6.[15]

Although the right to legal counsel is guaranteed by Indonesia's Criminal Procedure Code (KUHAP), non-governmental organisations have reported systematic violations. Amnesty International noted in its 2015 report that people arrested for drug offences are often either not permitted nor provided access to a lawyer until weeks or months after their arrest.[16] Out of 100 death penalty cases analysed by ICJR between 2017 and 2019, legal assistance at the investigation phase has only been confirmed in 11.[17] Concerns are also expressed regarding the quality of the assistance received, especially by state-appointed lawyers[18] and the lack of resources allocated to legal aid.[19] Lack of adequate legal assistance was also found in the cases of Humphrey Jefferson, executed in 2016.

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[8] Napitupulu EAT, et al. (2018) Perpetuating Lies: 2018 Indonesian Death Penalty Report, 27.
[9] Girelli G (2019), The Death Penalty for Drug Offences: Global Overview 2018. London: Harm Reduction International. Available at: https://www.hri.global/files/2019/02/22/HRI_DeathPenaltyReport_2019.pdf
[10] Sander et al. (2020), The Death Penalty for Drug Offences: Global Overview 2019. London: Harm Reduction International. Available at: https://www.hri.global/death-penalty-2019
[11] Ibid.
[12] Ibid.
[13] Indonesian National Commission on Violence Against Women Komnas Perempuan (2017), Independent NHRI Report Regarding the implementation of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families in Indonesia, para. 27. Available at: https://tbinternet.ohchr.org/Treaties/CMW/Shared%20Documents/IDN/INT_CMW_IFN_IDN_28693_E.pdf
[14] See, for example UN Human Rights Committee (23 August 2007) General Comment 32 on the Right to Fair Trial, UN Doc. CCPR/C/GC32, para 11, which cites Economic and Social Council (24 May 1989) Resolution 1989/64, para 1(a)
[15] Human Rights Committee, General Comment No. 36 (2018) on Article 6 of the International Covenant on Civil and Political Rights, on the Right to Life. UN Doc CCPR/C/ GC/36
[16] Amnesty International (2015) Flawed Justice: Unfair Trials and the Death Penalty in Indonesia, 25. London: Amnesty International.
[17] Sander et al. (2020), The Death Penalty for Drug Offences: Global Overview 2019. London: Harm Reduction International.
[18] Among others: Berrih, C. (October 2019) Dehumanized: The Prison Conditions of People Sentenced to Death in Indonesia, ADPAN, ECPM, Kontras. Komnas HAM 2010 Report (2010) Laporan Pemantauan Terpidana Mati (Monitoring Death Row Inmates), 19; as told to Amnesty International (2015) Flawed Justice: Unfair Trials and the Death Penalty in Indonesia, 7, 28-9. London: Amnesty International
[19] Amnesty International (2015) Flawed Justice: Unfair Trials and the Death Penalty in Indonesia, 31. London: Amnesty International

1.3 Violations of the right to appeal a sentence of death (Art. 6 and 14)

The right to appeal has become a crucial issue in death penalty cases, due to problematic provisions (most notably Circulating Letter of the Supreme Court Number 7/2014) which prevent the defendant from filing case reviews more than once, regardless of the circumstances. ICJR found at least two cases where the District Court refused the petition of second case review by arguing that the case review is only permitted once, therefore the second or later submission of case review will not be sent to Supreme Court.[20]

Violations of the right to appeal have been recorded in several cases, including that of Zainal Abidin.[21] Mr. Abidin had applied for a case review to the Palembang District Court in 2005. Due to errors in administration the petition had gone "missing".[22] When the petition was eventually found, the examination was initiated in a rush and lasted only for a couple of days before the verdict was rendered on 27 April 2015. Mr. Abidin was executed on 29 April 2015, in violation of international standards as well as Indonesian Law Number 2 PNPS 1965 on the Procedure of Execution; which stipulates that execution may be performed at least 72 hours after the notification of execution has been received by the prisoner.

1.4 Violations of the right to seek pardon and commutation in death penalty cases (Art. 6)

A right to seek pardon and commutation of death sentences has been recognised as implicit in the right to life. This Committee has clarified that that dedicated procedures must be envisaged in domestic legislation and offer certain "essential guarantees" with regard to certainty of process and transparency. Additionally, conditions for pardon or commutation cannot be "ineffective, unnecessarily burdensome, discriminatory in nature or applied in an arbitrary manner". This right is individual to the person, therefore automatic denials or exclusions of clemency based on categories of offence are incompatible with the state's obligations.[23]

Violations of this right have taken place in Indonesia, on three levels:

1) National law stipulates that an application for a constitutional review of any provisions in law can only be made by an Indonesian national.[24] This has resulted in the Constitutional Court rejecting applications for constitutional review submitted by foreign nationals facing the death penalty.[25]

2) President Widodo singled out individuals convicted of and sentenced to death for drug crimes, expressing that they would not be granted clemency.[26]

3) Executions have taken place pending a request for clemency (in violation of international standards), in the cases of Humprey Ejike Jefferson[27] and Seck Osmane. The blatant disregard for the process of clemency in these cases was also denounced by Indonesia Ombudsman.[28]

[20] Zainal Abidin et. al. (2019), Menyelisik Keadilan yang Rentan: Hukuman Mati dan Penerapan Fair Trial di Indonesia, Jakarta: Institute for Criminal Justice Reform), 136-138. Available at: http://icjr.or.id/data/wp-content/uploads/2019/01/Menyelisik-Keadilan-Yang-Rentan.pdf
[21] Agus Maryono (30 April 2015), *Zainal Buried in Cilacap after rejection,* Jakarta Post. https://www.thejakartapost.com/news/2015/04/30/zainal-buried-cilacap-after-rejection.html
[22] Zainal Abidin et. al. (2019), Menyelisik Keadilan yang Rentan: Hukuman Mati dan Penerapan Fair Trial di Indonesia, Jakarta: Institute for Criminal Justice Reform), 145. Available at: http://icjr.or.id/data/wp-content/uploads/2019/01/Menyelisik-Keadilan-Yang-Rentan.pdf
[23] Sander et al. (2020), The Death Penalty for Drug Offences: Global Overview 2019. London: Harm Reduction International. Available at: https://www.hri.global/death-penalty-2019.
[24] Ibid.
[25] Ibid.
[26] BBC News (27 January 2015) 'Indonesia's Widodo vows no amnesty for death row drug traffickers.' BBC News. Available from: https://www.bbc.com/news/ world-asia-30996233.
[27] M. Rizki (28 July 2017), *Ombudsman: Eksekusi Mati Humprey Jefferson Melanggar Hukum*, Kumparan News. Available at: https://kumparan.com/kumparannews/ombudsman-eksekusi-mati-humprey-jefferson-melanggar-hukum/full
[28] lihat Hasil Akhir Pemeriksaan Ombudsman Republik Indonesia Nomor Laporan Nomor 0793/LM/VIII/2016/JKT. Available at: https://www.ombudsman.go.id/news/r/kelalaian-dan-perbedaan-perlakuan-yang-dilakukan-oleh-instansi-kejaksaan-agung-dan-mahkamah-agung-terhadap-humprey-ejike-jefferson-tergolong-tindakan-maladministrasi

1.5 Violations of the rights of foreign nationals and discrimination (Art. 6, 26)

Foreign nationals are particularly disadvantaged, and sometimes discriminated against, in the criminal justice systems of retentionist countries around the world that retain the death penalty – and overrepresented on death row. As of 2019, 29% of death row prisoners were non-citizens, and all are facing the death penalty for drug-related crimes.[29]

This disproportionate impact is rooted in the heightened vulnerability and lack of resources of many foreign nationals, but also in a denial of fair trial rights; including the right to competent translation and interpretation.[30]

For example, Mary Jane Veloso – a Filipino woman sentenced to death for drug smuggling in 2010 - was assisted during the trial by an unqualified interpreter (a student of a private English school); Ms. Veloso does not understand Bahasa and has a very limited understanding of the English language.[31]

In other cases, the assistance of an interpreter was denied. ICJR found a violation of this right in at least four drug-related cases.[32]

Foreign nationals also appear to be discriminated against in death penalty cases. As mentioned above, applications for constitutional reviews by foreign nationals are routinely rejected. Evidence of discrimination has also been found in judicial proceedings: in the case of Humphrey Jefferson, the verdict included the racist consideration that "black people coming from Nigeria are often police surveillance targets [for drug trafficking]."[33] Such consideration was one of the basis for the decision by the court to impose a death sentence.

1.6 Torture and ill-treatment in death penalty cases (Art. 6 and 7)

Research by ICJR on the implementation of fair trial rights in death penalty cases in Indonesia has confirmed that a number of individuals tried for drug-related offences, and witnesses in the cases, experienced torture as well as inhuman and degrading treatment during police interrogation. At least eight defendants and nine witnesses in drug-related cases were forced by police officers to confess and provide incriminating statements through physical violence and psychological abuse.[34] Exemplary cases are those of Merri Utami, who experienced physical and sexual violence during the investigation phase, and Zulfiqar Ali, who was repeatedly beaten into confessing a crime he did not commit.[35]

According to ICJR, statements made under duress continue to be admitted as evidence in proceedings, including in capital drug cases.[36]

[29] Sander et al. (2020), The Death Penalty for Drug Offences: Global Overview 2019. London: Harm Reduction International. Available at: https://www.hri.global/death-penalty-2019

[30] See, for example Article 14(3)(f) of the International Covenant on Civil and Political Rights; Article 40(2)(b)(vi) of the Convention on the Rights of the Child; Articles 18(3)(f) and 16(8) of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families; Article 8(2)(a) of the American Convention on Human Rights; Article 16(4) of the Arab Charter on Human Rights; Article 6(3)(e) of the European Convention on Human Rights; Guideline 3, para 43(f) of the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems; Section N(4) of the Principles and Guidelines on the Right to Fair Trial and Legal Assistance in Africa; and Principle V of the Principles and Best Practices on the Protections of Persons Deprived of Liberty in the Americas. For more details, see Amnesty International (2014) Fair Trial Manual: Second Edition, chapter 17. London: Amnesty Internationa

[31] Zainal Abidin et. al. (2019), Menyelisik Keadilan yang Rentan: Hukuman Mati dan Penerapan Fair Trial di Indonesia, Jakarta: Institute for Criminal Justice Reform, 155. Available at: http://icjr.or.id/data/wp-content/uploads/2019/01/Menyelisik-Keadilan-Yang-Rentan.pdf

[32] Zainal Abidin et. al. (2019), Menyelisik Keadilan yang Rentan: Hukuman Mati dan Penerapan Fair Trial di Indonesia Jakarta: Institute for Criminal Justice Reform, 152-153. Available at: http://icjr.or.id/data/wp-content/uploads/2019/01/Menyelisik-Keadilan-Yang-Rentan.pdf

[33] Putusan Pengadilan Negeri Jakarta Pusat Nomor: 2152/Pid.B/2003/PN.JKT.PST, 6 April 2004

[34] Zainal Abidin et. al. (2019), Menyelisik Keadilan yang Rentan: Hukuman Mati dan Penerapan Fair Trial di Indonesia, Jakarta: Institute for Criminal Justice Reform, 165-169. Available at: http://icjr.or.id/data/wp-content/uploads/2019/01/Menyelisik-Keadilan-Yang-Rentan.pdf

[35] Among others, see: (27 January 2018), *Terminally Ill and on Death Row in Indonesia – Pakistani National Zulfiqar Ali Requests to be Sent Home,* Jakarta Post. https://www.thejakartapost.com/news/2018/01/27/terminally-ill-and-on-death-row-in-indonesiapakistani-national-zulfikar-ali-requests-to-be-sent-home.html

[36] ICJR (January 2019) Menyelisik Keadilan Yang Rentan: Hukuman Mati dan Penerapan Fair Trial di Indonesia, 11. Jakarta: Institute for Criminal Justice Reform. Available from: http://icjr.or.id/data/wp-content/uploads/2019/01/ Menyelisik-Keadilan-Yang-Rentan.pdf

1.7 Conditions of detention on death row (Art. 7)

Prisoners are typically held on death row for excessive periods of time. A review of the time spent on death row by sixteen of the eighteen individuals who were executed in 2015 and 2016 found an average death row detention of ten years.[37]

No	Death Row Prisoners	Time on Death Row	Year of Execution
1	Rani Andriani	13 years	2015
2	Marco Archer Cardoso Moreira	11 years	2015
3	Myuran Sukumaran	8 years	2015
4	Tran Thi Bich Hanh	2 years	2015
5	Andrew Chan	8 years	2015
6	Namaona Denis	12 years	2015
7	Ang Kim Soe	11 years	2015
8	Daniel Eneumo	9 years	2015
9	Raheem Agbaje Salami	16 years	2015
10	Sylvester Obiekwe Nwolise	10 years	2015
11	Okwudili Oyatanze	13 years	2015
12	Martin Anderson	11 years	2015
13	Zainal Abidin	13 years	2015
14	Rodrigo Gularte	10 years	2015
15	Seck Osmane	12 years	2016
16	Humphrey Ejike	12 years	2016

Besides the long and uncertain waiting time, many death row prisoners are held in inhumane conditions. For example, LBH Masyarakat reports that Merri Utami, who has been on death row for 19 years, has to face the following:

a. In 2016 her execution was stayed at the last minute, causing her and her family a grave amount of stress;
b. After her execution was stayed she was placed in Cilacap Prison, a prison that is not built for death row prisoners and not for women. The remote location of the Prison also distances her from her family and her lawyers;
c. Since Cilacap Prison is close to Nusakambangan Island, where executions take place, Merri Utami is in constant fear of being executed, while constantly reminded of the night when she was almost executed. This situation has gravely impacted her psychological condition.

A total of 58 death row convicts have been detained for more than 10 years; with five of them languishing on death row for more than 20 years, in complete uncertainty about their fate. The draft Criminal Code (currently under disucssion) envisages the mechanism of commutation - stipulating that a death sentence may be commuted (to life imprisonment or imprisonment for certain period of time) after a person has been on death row for 10 years. However, these 10-years threshold is denounced as arbitrary. Furthermore, the provision is criticised in that the commutation would not be automatically performed after 10 years, rather the courts should state beforehand – at the time of the verdict - that the defendant is applicable for commutation of sentence.

[37] Institute for Criminal Justice Reform (June 2016), 'Torture remains a part of Criminal Law Enforcement in Indonesia. Available at: https://icjr.or.id/torture-remains-a-part-of-criminal-law-enforcement-in-indonesia/

Suggestions for List of Issues Prior to Reporting

In light of the above, we respectfully suggest that the Committee raises the following issues with the Government of Indonesia:

1) Which steps is the Government taking to abolish the death penalty for drug offences, in line with its obligations under Article 6(2) of the Covenant?

2) Which steps is the Government taking to avoid death sentences being imposed against vulnerable drug couriers which were coerced or tricked into trafficking drugs, such as in the cases denounced by Komnas Perempuan?

3) How does the Government respond to evidence that capital defendants are denied effective legal assistance in all stages of the proceedings?

4) Which steps has the Government taken to abandon its practice of refusing clemency applications submitted by foreign nationals?

5) Is the President meaningfully considering clemency applications submitted by individuals sentenced to death for drug offences? Please provide updated and disaggregated information on clemency applications reviewed in the reporting period and the outcome of such reviews;

6) Which steps has the Government taken to ensure the fair trial rights of foreign nationals – including the right to competent interpretation – is upheld at all stages of the proceeding?

7) Please provide information on investigations into allegations of torture and ill-treatment of defendants in capital cases, on the outcome of such investigations, and on the measures in place to prevent confessions under duress from being admitted to trial;

8) Which steps is the Government taking to ensure that legal aid is adequately funded in Indonesia?

2. Extrajudicial killings in the context of antidrug operations and lack of accountability (Art. 2, 6, 7)

Reports of extrajudicial killings in the context of anti-drug operations emerged in 2016 and 2017,[38] with President Widodo and the Head of the National Police[39] publicly inciting law enforcement to "shoot drug traffickers".[40] Between January and December 2017, 80 people suspected of selling drugs have been killed by police.[41] Human Rights Watch reported that more than a third of the killings between January and June 2017 occurred after the suspects had surrendered to police.[42]

Based on media monitoring, LBHM recorded 199 cases of police shooting in drug cases which resulted in 130 persons injured and 68 persons killed. The police was involved in 156 of those cases, the National Narcotic Board (BNN) in 39 cases, and multiple law enforcement agencies in 4 cases.[43]

[38] Jewel Topsfield and Karuni Rompies (6 August 2017), *Facing Narcotics 'emergency', Indonesia ramps up war on drugs,* The Sydney Morning Herald. https://www.smh.com.au/world/facing-narcotics-emergency-indonesia-ramps-up-war-on-drugs-20170806-gxqahn.html

[39] Jakarta Post (21 July 2017), *Capital punishment an effective way to combat drug dealers: Tito.* https://www.thejakartapost.com/news/2017/07/20/capital-punishment-an-effective-way-to-combat-drug-dealers-tito.html

[40] Reuters (22 July 2017), *Indonesian President orders officers to shoot drug traffickers.* https://www.reuters.com/article/us-indonesia-drugs/indonesian-president-orders-officers-to-shoot-drug-traffickers-idUSKBN1A708P

[41] Ivany Atina Arbi (20 December 2017), *Sandiaga threatens 'shoot to kill' for drug dealers fleeing arrest,* Jakarta Post, https://www.thejakartapost.com/news/2017/12/20/sandiaga-threatens-shoot-to-kill-for-drug-dealers-fleeing-arrest.html. Indonesia at Melbourne (8 August 2017), *Is Indonesia embarking on a Philippines-style war on drugs?,* https://indonesiaatmelbourne.unimelb.edu.au/is-indonesia-embarking-on-a-philippines-style-war-on-drugs/

[42] Phelim Kine (23 August 2017), *Duterte's 'Drug War' Migrates to Indonesia,* Human Rights Watch, https://www.hrw.org/news/2017/08/23/dutertes-drug-war-migrates-indonesia

[43] Maruf Bajammal (2020), Tembag Mati di Tempat: Membunuh Negara Hukum Indonesia, Jakarta: LBH Masyarakat. Available at: https://lbhmasyarakat.org/wp-content/uploads/2020/02/Mondok-Tembak-di-Tempat-2019.pdf

Suggestions for List of Issues Prior to Reporting

In light of the above, we respectfully suggest that the Committee raises the following issues with the Government of Indonesia:

1) How does the Government respond to reports that law enforcement agencies have killed people found or suspected of using or dealing drugs? Please provide information about the prevalence of extrajudicial killings in the State party in the reporting period;

2) What steps has the Government taken to investigate allegations of extrajudicial killings? Please provide updated and disaggregated information on:

- The numbers of investigations, prosecutions and convictions for all extrajudicial killings that have taken place in the reporting period;

- Reports that senior Government officials have publicly encouraged the extrajudicial killings of those suspected of using or dealing drugs.

3. Torture and ill-treatment in drug-related cases (Art. 7, 14)

Despite repeated calls by civil society as well as international mechanisms, Indonesia has not criminalised torture under its domestic law – although obliged to do so under the Convention Against Torture (CAT) of which the country is a signatory. Indonesia has not signed the CAT Optional Protocol.

Torture and ill-treatment are routinely reported against people imprisoned for drug-related offences in Indonesia, both at the pre-trial stage – often with the aim of eliciting confessions - and after conviction.[44] In August 2015, a person accused of drug trafficking was kicked and beaten by police officers seeking a confession, until death. A judicial investigation found the officers responsible for his death and imposed a three years' sentence, while no reparations for the victim's family nor further investigations were decided.[45]

A 2012 study by LBH Masyarakat focusing on individuals imprisoned for drug offences found that 79% of interviewees experienced abuse in the arrest phase; while 86.6% (336 persons) reported torture and ill-treatment in detention.[46]

Torture and ill-treatment towards defendants and witnesses in the investigation phase are enabled by a lack of fair trial rights. For instance, the right to legal counsel is only guaranteed when the defendant faces more than fifteen years' imprisonment or death penalty.[47] Many defendants only have access to a lawyer at the trial stages, while they are left unassisted in the investigation stage, when they are particularly vulnerable to ill-treatment and torture.[48]

Monitoring and reporting procedures are also not in line with international standards.[49] Acts of alleged ill-treatment or torture by police officers are to be reported to the police itself – which prevents many from reporting for fear of repercussions and perpetuates impunity. When defendants or witnesses claim at trial that they were subject to ill-treatment at the investigation stage, in many cases the judges do not order a separate

[44] Among others, see Asian Human Rights Commission, 'Indonesia: Torture occurs repeatedly as perpetrators enjoy impunity (Press Release, 23 June 2017). Available at: http://www.humanrights.asia/news/ahrc-news/AHRC-STM-060-2017/

[45] Asian Human Rights Commission, 'Indonesia: Light punishment for four police officers who tortured to death a victim' (Press Release, 1 March 2016). Available at: http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-014-2016/?searchterm=

[46] LBH Masyarakat (2012), Reality Behind Bars: A Brief Report on Documentation of Human Rights Violations of Drug Suspects at the Investigation Stage in Jakarta. Available at: http://lbhmasyarakat.org/wp-content/uploads/2016/04/Reality-Behind-Bars.pdf

[47] Law of the Republic of Indonesia No. 8 of 1981 concerning the Law of Criminal Procedure, Article 56

[48] Sander et al. (2020), *The Death Penalty for Drug Offences: Global overview 2019,* London: Harm Reduction International.

[49] Institute for Criminal Justice Reform (June 2016), 'Torture remains a part of Criminal Law Enforcement in Indonesia, https://icjr.or.id/torture-remains-a-part-of-criminal-law-enforcement-in-indonesia/

investigation, but rather merely interrogate the police officers involved. If no physical evidence is available (maybe because the signs of the ill-treatment disappeared and were not recorded in time) the claim is dropped. There is no specific provision under the Criminal Procedure Law requiring judges to rule out evidence illegally obtained.[50]

Suggestions for List of Issues Prior to Reporting

In light of the above, we respectfully suggest that the Committee raises the following issues with the Government of Indonesia:

1) Which steps is the Government taking to criminalise torture under domestic law, in line with its obligations under the Covenant, as well as the Convention Against Torture?

2) What steps has the Government taken to investigate allegations of torture and ill-treatment by law enforcement upon arrest and during the investigation phase? Please provide updated and disaggregated information on the numbers of investigations, prosecutions and convictions for all cases of torture and ill-treatment during investigations that have taken place in the reporting period;

3) How does the Government plan to ensure effective and independent monitoring of law enforcement, and that individuals can report ill-treatment by police officers without fear of harassment and reprisals?

4. Disproportionate punishment of drug offences, and conditions of detention in prison (Art. 7, 9, 10, 14)

International human rights law requires that deprivation of liberty be lawful, necessary, imposed as a measure of last resort, and reasonable. This Committee has reiterated that "arbitrariness is not to be equated with 'against the law', but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law".[51] The prohibition of arbitrariness means that the underlying rationale for detention cannot be discrimination,[52] and various UN human rights mechanisms have concluded that drug consumption or dependence are not sufficient justification for detention.[53] The Working Group on Arbitrary Detention in particular expressed concern at "the use of criminal detention as a measure of drug control following charges for drug use, possession, production and trafficking",[54] and its incompatibility with the central principles of legality, proportionality, necessity, and appropriateness.

Indonesia's drug policy is markedly punitive.[55] Narcotics Law 35/2009 envisages harsh and disproportionate penalties for drug use, possession for personal use, and trafficking. As an example, possession of heroin and methamphetamine (among others) is punished with minimum four to maximum twelve years' imprisonment and a fine;[56] while manufacturing and trafficking of minimum five grams of the same substances can be punished with imprisonment from five to twenty years, life imprisonment, or death.[57] Drug use is punished with one, two, or four years' imprisonment based on the substance (with mandatory treatment prescribed as a possible alternative).[58]

[50] Zainal Abidin et. al. (2019), Menyelisik Keadilan yang Rentan: Hukuman Mati dan Penerapan Fair Trial di Indonesia, Jakarta: Institute for Criminal Justice Reform
[51] *Mukong v Cameroon,* Communication No. 458/1991, UN Doc. CCPR/C/51/D/458/1991 (1994) para. 9.8
[52] Aee for example *Fongum Gorji-Dinka v. Cameroon*, Communication No. 1134/2002, U.N. Doc. CCPR/C/83/D/1134/2002 (2005), para. 5.1
[53] Among others, see Human Rights Council, Report of the Working Group on Arbitrary Detention. Un Doc. A/HRC/30/36 (2015), Para. 60.
[54] Ibid., Para. 61.
[55] See for example, Inside Indonesia, *Drugs and Drug Policy,* ed. 137: Jul-Sep 2019, https://www.insideindonesia.org/drugs-and-drug-policy
[56] Law of the Republic of Indonesia No. 35 of 2009 on Narcotics, Article 112. Available at: http://www.flevin.com/id/lgso/translations/JICA%20Mirror/english/4868_UU_35_2009_e.html
[57] Ibid., Article 113
[58] Ibid., Article 127

As of February 2020 there were 268,967 people incarcerated in Indonesia, against an official prison capacity of 131,931. Of these, over 130,000 were detained for drug offences (one third for mere "drug use").[59] 14,204 prisoners were women,[60] of whom 7,584, were imprisoned for drug-related offences.

The number of persons in detention for drug offences has been steadily increasing between 2015 and 2018, and driving the surge in prison population.

Prisons are structurally overcrowded – some over 800% -[61] under-resourced, and understaffed. This situation exposes prisoners to inhumane conditions of detention, lack of adequate healthcare, psychological abuse, and violence.[62]

Response to COVID-19 in prison

Being dramatically overcrowded and lacking in essential services, including adequate healthcare, Indonesian prisons are high-risk environments for the spread of the virus. A range of UN agencies, including OHCHR and the High Commissioner for Human Rights, UNODC, WHO, and UNAIDS have urged governments to adopt measures to curb the spread of COVID-19 in detention settings, including by depopulating prisons and detention centres.

In late March 2020, the Ministry of Law and Human Rights issued a Decision Letter about the Release of Prisoners to cut the chain of COVID-19T. According to the decision letter, only prisoners sentenced to less than five years in prison who met certain criteria qualify for early release. As of May 2020, over 38,000 persons have been released pursuant to this decision,[63] including at least 64 drug-related prisoners in Papua[64] and at least 100 in Central Java[65]. However, hundreds of people who use drugs or have been convicted of minor drug offences are arbitrarily excluded, because of disproportionate sentences above five years.[66]

Suggestions for List of Issues Prior to Reporting

In light of the above, we respectfully suggest that the Committee raises the following issues with the Government of Indonesia:

1) Which steps is the Government taking to review its drug control legislation, to ensure that penalties meet the standards of proportionality, reasonableness, and necessity of punishment; and with an eye to reducing prison overcrowding?

2) What measures has the Government adopted to prevent and control the spread of COVID-19 in prisons? Please provide updated and disaggregated information on the number of persons released (including disaggregation by gender, pre-trial status, and crime for which they are charged or convicted), and alternatives to imprisonment.

[59] Figures from the Department of Correctional Service of the Ministry of Law and Human Rights, accessible at http://smslap.ditjenpas.go.id/). Official data does not disaggregate based on sexual orientation or HIV status.
[60] Data received by the Institute of Criminal Justice Reform on 24 March 2020 through correspondence with the Department of Correctional Service of the Ministry of Law and Human Rights.
[61] Ibid.
[62] Ibid. Also Penal Reform International and Institute for Criminal Justice Reform (November 2019), EU-Indonesia Human Rights Dialogue: 8 November 2019 – Policy Briefing. Available at: http://icjr.or.id/data/wp-content/uploads/2019/11/EU-Indonesia-HR-Dialogue-Policy-brief-PRI-and-ICJR.pdf
[63] Diana Mariska (20 April 2020), *Police to Increase Patrols Fearing Crime Spike After 38,000 prisoners Are Released,* Jakarta Globe. https://jakartaglobe.id/news/police-to-increase-patrols-fearing-crime-spike-after-38000-prisoners-are-released
[64] Gilang Akbar Prambadi (7 April 2020), *Puluhan Napi Narkotika Lapas Jayapura Dibebaskan*, Republika.co.id. : https://republika.co.id/berita/q8ek9j456/puluhan-napi-narkotika-lapas-jayapura-dibebaskan
[65] Fariz Fardianto (16 April 2020), *100 Napi Narkoba Dibebaskan dari 7 Lapas di Jawa Tengah*, IDN Times Jateng. https://jateng.idntimes.com/news/jateng/fariz-fardianto/napi-narkoba-di-dibebaskan-di-jawa-tengah/4
[66] CNN Indonesia (11 April 2020), Kemenkumham Telah Bebaskan 36.554 Napi di Tengah Wabah Corona. https://www.cnnindonesia.com/nasional/20200411155847-20-492629/kemenkumham-telah-bebaskan-36554-napi-di-tengah-wabah-corona

5. Compulsory drug detention and treatment (Art. 7, 9, 10)

Compulsory drug treatment and rehabilitation have been unanimously recognised by human rights bodies as contravening the prohibition against inhuman and degrading treatment and the prohibition of arbitrary detention, in addition to the right to health.[67] This Committee has repeatedly expressed concerns about the conditions of detention in drug rehabilitation centres[68] and in 2012 twelve UN agencies – including OHCHR - called upon 'States that operate compulsory drug detention and rehabilitation centres to close them without delay and to release the individuals detained'.[69]

Indonesia operates compulsory drug detention centres. Narcotics Law 35/2009 and the Criminal Procedure Code envisage compulsory drug detention and rehabilitation ("medical rehabilitation and social rehabilitation") for people (a) convicted of drug use, (b) self-reporting to the authorities as drug users (compulsory since 2011), or (c) reported by their families.[70] No distinction is made between drug use and drug dependence. The latest available data indicates that in 2017 over 18,000 people were detained in these centres.[71]

A 2018 regulation has also led to an increase in the detention of people who use drugs, who undergo a criminal trial for drug offences while an 'integrative assessment team' decides on their rehabilitation. The institutionalisation of integrative assessment teams is expected to reduce the capacity of such teams – thus impacting on the assessment process. As a consequence, the Indonesia Ombudsman concluded that that the decision of placing people who use drugs in the rehabilitation centres will be subject to the risk of maladministration.[72]

In 2015, the Indonesian Anti-Drug Agency (BNN) pledged to 'rehabilitate' 100,000 drug users, aiming to double these numbers every year.[73] Accordingly, the BNN also pushes families to report people who use drugs to the authorities.[74]

"Treatment" in drug detention centres is non-evidence based and centred around abstinence and punishment, while essential medicines – such as methadone and antiretroviral treatment – are often unavailable or withheld. In addition, inhuman and degrading treatment was reported in these centres, in the form of "forced urine testing, corruption, extortion, intimidation, and confidentiality breaches". Physical and verbal abuse – although not widespread – have also been reported, often as part of 'treatment'.[75]

Drug rehabilitation centres also operate within prisons and police and military training academies – against international human rights standards.[76]

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[67] Among others, see: Human Rights Council, Report of the United Nations High Commissioner for Human Rights: Study on the impact of the world drug problem on the enjoyment of human rights (4 September 2015), para. 46-49. UN Doc. A/HRC/30/65; ILO, UNDP, UNESCO, UNFPA, UNHCR, UNICEF, UNODC, UN WOMEN, WFP, WHO, and UNAIDS, Joint Statement: Compulsory drug detention and rehabilitation centres (March 2012)

[68] Among others, see Human Rights Committee, Concluding Observations on the third periodic report of Viet Nam, UN Doc. CCPR/C/VNM/CO/3, 29 August 2019

[69] ILO, UNDP, UNESCO, UNFPA, UNHCR, UNICEF, UNODC, UN WOMEN, WFP, WHO, and UNAIDS, Joint Statement: Compulsory drug detention and rehabilitation centres (March 2012)

[70] Law of the Republic of Indonesia No. 35 of 2009 on Narcotics, Articles 54, 103 and 127; Law of the Republic of Indonesia No. 8 of 1981 concerning the Law of Criminal Procedure, Article 21(4)b. Other technical provisions regulating drug treatment are: Circular Letter of Supreme Court Number 3/2011; Joint Decree of the Chief Justice of the Supreme Court, the Minister of Law and Human Rights, the Minister of Health, the Minister of Social Affairs, the Attorney General, the Chief of Indonesia National Police Agency, and the Head of National Narcotics Board Number 01/PB/MA/III/2014 a.k.a. Number 03/2014 a.k.a. Number 11/2014 a.k.a. Number 3/2014 a.k.a. Number PER-005/A/JA/03/2014 a.k.a. Number 1/2014 a.k.a. Number PERBER/01/III/2014/BNN; Regulation by the Head of National Narcotics Board Number 11/2014; Attorney General Rule Number PER-29/A/JA/12/2015; Circular Letter of the Criminal Division of the Indonesia National Police Agency Number SE/01/II/2018/Bareskrim.

[71] Unpublished research. Source available with the submitting organisations and available upon request

[72] https://ombudsman.go.id/news/r/ombudsman-peluang-rehabilitasi-pengguna-narkotika-dipersulit

[73] Claudia Stoicescu (12 July 2015), *Forced Rehabilitation of Drug Users in Indonesia Not a Solution*, The Conversation. Available at: https://theconversation.com/forced-rehabilitation-of-drug-users-in-indonesia-not-a-solution-43184

[74] Republika (23 May 2015), *BNN: Drug Addicts Must Have Rehabilitation*, https://www.republika.co.id/berita/nasional/hukum/15/05/23/norwnd-bnn-pecandu-narkoba-wajib-jalani-rehabilitasi

[75] Wyria and Misero (2016), The Trip to Nobody Knows Where, Jakarta: LBH Masyarakat, Pag. 33 and 59. Available at https://lbhmasyarakat.org/en/the-trip-to-nobody-knows-where/.

[76] Claudia Stoicescu (12 July 2015), *Forced Rehabilitation of Drug Users in Indonesia Not a Solution, The Conversation.*

Suggestions for List of Issues Prior to Reporting

In light of the above, we respectfully suggest that the Committee raises the following issues with the Government of Indonesia:

1) Please provide updated and disaggregated information (including by gender) on the number of people in compulsory drug detention centres;

2) Which steps is the Government taking permanently close CDDCs, in line with its obligations under international law?

3) What measures has the Government adopted to prevent and control the spread of COVID-19 in compulsory drug detention centres?

4) What steps has the Government taken to investigate allegations of torture and ill-treatment in compulsory drug detention centres? Please provide updated and disaggregated information on the numbers of investigations, prosecutions and convictions for all cases of torture and ill-treatment in drug detention centres that have taken place in the reporting period.

6. Ill-treatment in private drug detention centres and lack of monitoring (Art. 2, 7, 9, 10)

When drug treatment is provided by private institutions, governments retain obligations to regulate and monitor such institutions, ensuring that patients are treated with dignity and in conformity with their fundamental rights, and hold perpetrators of abuses accountable.

In addition to public compulsory detention and drug rehabilitation centres, dozens of private rehabilitation centres operate in Indonesia.[77] Although little information exists on these centres, non-governmental actors report varying degrees of quality of the infrastructures and the treatment provided. Most centres are focused on abstinence and impose non-evidence based forms of treatment which are often degrading, including "magic, prayer, beatings, and shackling drug users in cages with a ball and chain."[78]

Suggestions for List of Issues Prior to Reporting

In light of the above, we respectfully suggest that the Committee raises the following issues with the Government of Indonesia:

1) What system does the Government have in place to monitor that:

- no one is arbitrarily detained in private drug rehabilitation centres?

- drug treatment in private rehabilitation centres follows free and informed consent and is in line with best scientific evidence and practice?

- conditions in private rehabilitation centres are adequate?

2) What steps has the Government taken to investigate allegations of ill-treatment in private drug rehabilitation centres, and to avoid repetition of such abuses? Please provide updated and disaggregated information on the numbers of investigations, prosecutions and convictions for all cases of ill-treatment in private drug rehabilitation centres that have taken place in the reporting period.

[77] Slank (25 March 2015), Free Drug Rehabilitation Registration and Reporting Places, available at http://slank.com/2015/03/25/tempat-pendaftaran-pelaporan-rehabilitasi-narkoba-gratis/
[78] Claudia Stoicescu (12 July 2015), *Forced Rehabilitation of Drug Users in Indonesia Not a Solution, The Conversation*.