



Indonesia

Submission of LBH Masyarakat, Harm Reduction International and Asian Harm Reduction Network

UN Universal Periodic Review

Thirteenth session of the UPR Working Group of the Human Rights Council Human rights violations associated with Indonesia's anti-drug laws

Executive Summary

Human rights violations committed in the name of drug control are common in Indonesia, including the unlawful application of the death penalty, freedom from cruel inhuman and degrading treatment, the denial of the highest attainable standard of health and numerous concerns with respect to compulsory treatment.

The Death Penalty and the Right to Life

Chapter XV, Law of the Republic of Indonesia No. 35 of 2009 regarding Narcotics allows for a discretionary penalty of death for certain categories of drug crimes in violation of international human rights law.

Capital punishment is significantly restricted under international law to those offences termed 'most serious crimes'.ⁱ For more than two decades UN human rights bodies have interpreted this article in a manner that limits the number and type of offences for which execution is allowable under international human rights law explicitly excluding drug offences.ⁱⁱ This principle has been articulated in the International Covenant on Civil and Political Rights, to which Indonesia acceded in 2006ⁱⁱⁱ and has been supported by the highest political bodies of the United Nations. The Economic and Social Council of the United Nations (ECOSOC) endorsed a resolution in 1984 upholding nine safeguards on the application of the death penalty, which affirmed that capital punishment should be used 'only for the most serious crimes'.^{iv} The 'most serious crimes' provision was specified to mean crimes that were limited to those 'with lethal or other extremely grave consequences'^v and was also endorsed by the UN General Assembly.^{vi}

The last known execution for a drug offence was carried out in 2008, however, death sentences continue. There are reportedly approximately 100 people on death row – 58 of them for drug offences.^{vii} In 2009, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions wrote, 'international law, specifically your Government's obligations under the Covenant, requires that capital punishment for drugs trafficking (and for robbery) be abolished and that death sentences already imposed for drug trafficking and robbery ... be commuted to prison terms.'^{viii} The UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

also wrote in a recommendation to Indonesia in 2008 that, 'The death penalty should be abolished.'^{ix}

- To date these recommendations have not been carried out and the authors of this submission would like to reiterate that the government must abolish its capital drug laws and commute the sentences of those on death row to bring its national policies in line with Article 6(2) of the International Covenant on Civil and Political Rights.

Drug Treatment

In addition, the narcotics law prescribes treatment to people who use drugs. It is written under Article 4(d), that the aim of the law is to ensure medical and social rehabilitation for people who use illegal drugs and drug dependent people.^x Under the Article 4(d), people who use of both legal and illegal drugs can be placed in drug treatment. Furthermore, under Article 54, the law states that people addicted to drugs and victims of illegal drug use must go through medical and social rehabilitation.^{xi}

While there are articles ensuring and recalling the needs of drug users to undergo drug treatment, based on the law, only judges are authorised to send drug users to rehabilitation centres. Under article 103, judges are empowered to send the accused person to drug treatment if it is proven that s/he is a drug addict. However, it can take approximately four to six months to get from the investigative phase to trial and approximately two more months until the trial is completed. Yet throughout critical phases of withdrawal, these people are offered no treatment.

The Committee on Economic Social and Cultural Rights has found that lack of provision of harm reduction measures conflict with state obligations under Article 12 of the Covenant. The Committee has called on State parties to take measure to improve services to people in detention including 'drug substitution therapy and other HIV prevention services more accessible for drug users'.^{xii} The Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment also wrote that, '[W]ithdrawal symptoms can cause severe pain and suffering if not alleviated by appropriate medical treatment' and that 'denial of medical treatment and/or absence of access to medical care in custodial situations may constitute cruel, inhuman or degrading treatment or punishment and is therefore prohibited under international human rights law.'^{xiii}

Should the accused be assessed as dependent on drugs, a judge may sentence her/him to rehabilitation, either medical and/or social. However, it also common for judges to additionally apply a sentence of imprisonment along with rehabilitation. Since there is no regulation regarding the execution of rehabilitation as a verdict, the imprisonment always comes first. The decision of a period of rehabilitation is not appropriately undertaken. Without having a medical background or undertaking any medical assessment, judges can send the people who use drugs to lengthy periods of 'rehabilitation'.

This is contrary to an ethical requirement which improves treatment outcomes, according to the World Health Organization (WHO) and UNODC.^{xiv} If the period of rehabilitation is decided by someone who lacks medical knowledge, the outcomes of the treatment will never be truly achieved. Drug dependence treatment is a form of medical care, and therefore must comply with the same standards as other forms of health care. In developing and implementing effective drug dependence treatment programs, human rights must be respected and protected. These rights include the right of people who use drugs to enjoy the highest attainable standard of physical and

mental health; patient rights, including confidentiality and the right to receive information regarding one's state of health; the human rights principle of informed consent (including the ability to withdraw from treatment); and the right to non-discrimination in health care and to be free from torture or other cruel, inhuman or degrading treatment.

According to the CESCR, 'The right to health contains both freedoms and entitlements. The freedoms include the right to control one's health and body... and the right to be free from interference, such as the right to be free from torture, nonconsensual medical treatment and experimentation... obligations to respect [the right to health] include a State's obligation to refrain (...) from applying coercive medical treatments, unless on an exceptional basis for the treatment of mental illness or the prevention and control of communicable diseases. Such exceptional cases should be subject to specific and restrictive conditions, respecting best practices and applicable international standards, including the Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care.'^{xv}

UN agencies (including UNAIDS, WHO, UNICEF and UNDP), and the Global Fund for AIDS, Tuberculosis and Malaria have acknowledged reports of illegal detention and human rights abuses in several countries. They have called for the closure of compulsory drug detention centers and their replacement with community and evidence-based, voluntary drug treatment that respects human rights standards.^{xvi}

Government Regulation No. 25 Year 2011 regulates compulsory reporting for drug users. Based in the regulation, people who are considered drug users must report themselves in an appointed compulsory report to a recipient organisation. The report can also be made by the family of drug users. Even though the purpose of this regulation is to provide treatment for drug users, it has the potential to violate the right to health of drug users. By reporting themselves as a drug user, they have to undergo drug treatment. Since the report can also be made by their family, there is a chance that drug users can be forced into treatment without their consent.

- The stakeholders submitting this report recommend that treatment should be consensual. Compulsory treatment should be abolished and replaced with community and evidence-based, voluntary drug treatment services that respect human rights standards. Moreover, drug dependent people in detention should have access to opioid substitution therapy.

Injecting Drug Use, HIV/AIDS, and the Right to Health

Guidelines from the World Health Organization, UNAIDS and the United Nations Office on Drugs and Crime emphasise the importance of harm reduction within a comprehensive package for people who inject drugs.^{xvii} The commitment of UN member states to key harm reduction interventions such as HIV prevention measures is enshrined in political declarations on HIV/AIDS adopted by the General Assembly in 2001 and 2006,^{xviii} as well as most recently in the Millennium Development Goals summit outcome document.^{xix} In late 2009, the General Assembly also adopted a Political Declaration on drug control which yet again reaffirmed the importance of measures to address injection driven HIV epidemics.^{xx}

Current and former UN Special Rapporteurs on the right to health have stated that harm reduction is essential in realising the right to the highest attainable standard of health for people who use drugs.^{xxi} Two of the core HIV-related harm reduction interventions are needle and syringe programmes and opioid substitution therapy (e.g. with methadone or buprenorphine).^{xxii}

There are approximately 562,000 people who inject drugs in Indonesia.^{xxiii} HIV prevalence among people who inject drugs is between 15-47 percent, while adult HCV prevalence is between 60 and 98 percent.^{xxiv} By the Indonesian Health Minister's Decision No. 567/Menkes/SK/VIII/2006, the government has started to provide harm reduction services. Harm reduction programmes undertaken by the government include needle and syringe programmes (NSP), prevention of mother-to-child transmission (PMTCT), and methadone treatment. Methadone and PMTCT are integrated within Primary Health Center services.

Needle and syringe programmes are conducted through outreach, where outreach staff visit targeted areas to provide clean needles. However, many outreach workers have been arrested over concerns raised by their possession of these needles. The arrest of outreach officers impedes the fulfilment of the right to health of injecting drug users.

Starting in late 2010, following the centralisation of public health services, needle and syringe programmes were integrated within the Primary Health Center service. No studies have ever been undertaken to analyse the drug user participation in these services or the effectiveness of this new method of NSP. But it is possible that this new approach reaches fewer participants of NSP because of the reluctance of injecting drug users to come and exchange their needles at the Primary Health Center.

- The government's commitment to harm reduction in recent years is an important step toward realising the right to the highest attainable standard of health. However, the State party must ensure that outreach workers are able to deliver services and that services are effective. For this reason, the stakeholders recommend the government ensure that outreach workers are not prevented from providing vital services. We also recommend that the government review the effectiveness of service delivery as a means of fulfilling its obligation under Article 12 of the Covenant on Economic Social and Cultural Rights.^{xxv}

Torture and other Cruel Inhuman and Degrading Treatment: Corporal Punishment

Although the central government of Indonesia clearly bans the use of torture at any level^{xxvi} and has incorporated the Convention against Torture into its domestic legislation in Law No. 5 of 1998^{xxvii}, in certain parts of the country such practices are tolerated.

For example, Aceh region has long enjoyed relative autonomy from the central government, including a semi-independent legal system. The Acehnese have the power to enact their own laws, although all laws governing citizens and residents of Indonesia must be consistent with the Indonesian Constitution.^{xxviii} However, the Indonesian government has accepted the application of Shari'a law interpretation in the Aceh province,^{xxix} which permits the use of flogging and whipping for number of crimes, including alcohol related offences. Upon the enactment of the Special Autonomy Law in 2001, Aceh's provincial legislature (Dewan Perwakilan Rakyat Aceh, DPRA) enacted a series of Qanuns (local laws), one of which sets whipping/caning for alcohol offences. In particular, Qanun 12/2003 prohibits the consumption and sale of alcohol.^{xxx}

In his visit to Indonesia and Aceh, the UN Special Rapporteur on Torture expressed concern about penalties provided in Shari'a law. Public flogging has been incorporated into the 2005 Aceh Criminal Code. The Special Rapporteur noted that local regulations criminalise the consumption of alcohol, and penalise it by flogging. In the recommendations to the Indonesian government, it was

indicated that any type of corporal punishment constitutes degrading and inhuman treatment in violation of article 7 of the Covenant on Civil and Political Rights and article 16 of Convention against Torture and should therefore be abolished.^{xxxix} The Special Rapporteur also raised the concern that such 'morality offences' under Shari'a law are normally tried in public hearings, at which the audience can shout at the defendant, rendering the presumption of innocence meaningless.^{xxxix}

In 2008, the Committee against Torture specifically discussed the introduction of corporal punishment in Aceh, commenting that 'the execution of punishment in public and the use of physically abusive methods (such as flogging or caning) ... contravene the Convention', and therefore recommended that Indonesia should review laws in Aceh 'that authorize the use of corporal punishment as criminal sanctions, with a view to abolishing them immediately, as such punishments constitute a breach of the obligations imposed by the Convention.'^{xxxix}

The prohibition of torture and other cruel, inhuman or degrading treatment or punishment is not just a prohibition contained in the Convention, but is also part of customary international law, and is considered to be *jus cogens*. International courts have recognised the customary nature of the prohibition on corporal punishment in a number of cases and established an absolute ban on the use of such treatment.^{xxxix}

- All laws prescribing corporal punishment must be abolished.

Recommendations:

- Capital drug laws must be abolished in order to bring national legislation into line with the right to life enshrined in the International Covenant on Civil and Political Rights.
- Compulsory treatment should be abolished and replaced with community and evidence-based, voluntary drug treatment services that respect human rights standards in order to ensure that laws are consistent with State party obligations under Article 12 of the Covenant on Economic Social and Cultural Rights.
- The government should ensure that harm reduction service providers are not prevented from delivering life-saving programmes as well as review the effectiveness of service delivery as a means of fulfilling its obligation under Article 12 of the Covenant on Economic Social and Cultural Rights.
- All laws prescribing corporal punishment must be abolished.

ⁱ Article 6(2), International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171; ECOSOC (25 May 1984) Implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty Resolution 1984/50; UN General Assembly (14 December 1984) Human rights in the administration of justice. Resolution A/RES/39/118.

ⁱⁱ See for example, UN Human Rights Committee (8 July 2005), Concluding observations: Thailand. CCPR/CO/84/THA, para. 14; UN Human Rights Committee (29 August 2007) Concluding observations: Sudan. CCPR/C/SDN/CO/3, para. 19; UN Commission on Human Rights, Extrajudicial, summary or arbitrary executions: Report by the Special Rapporteur, submitted pursuant to Commission on Human Rights resolution 1996/74, 24 December 1996, E/CN.4/1997/60; UN Human Rights Council (29 January 2007) Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions. A/HRC/4/20, para. 51-52; UN Human Rights Council (14 January 2009) Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. A/HRC/10/44, para. 66.

ⁱⁱⁱ United Nations Treaty Collection (date of last access: 27 January 2011) available at:

http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en

^{iv} ECOSOC (25 May 1984) Implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty. Resolution 1984/50.

^v *ibid*

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- ^{vi} UN General Assembly (14 December 1984) Human rights in the administration of justice. Resolution A/RES/39/118.
- ^{vii} ABC News (17 June 2011) Bali Nine ringleader loses final appeal
- ^{viii} Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, A/HRC/11/2/Add.1, 29 May 2009, p. 174
- ^{ix} Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, A/HRC/7/3/Add.7, 10 March 2008, para. 89
- ^x Under Article 1, the law defines a drug user as someone who misuses drugs, whereas it defines a drug addict as a person using illicit or legal drugs who develops a physical dependence.
- ^{xi} The distinction here appears to be made between those who wilfully use drugs and 'victims' who use drugs through trickery, deceit, force, persuasion or coercion.
- ^{xii} UN Committee on Economic, Social and Cultural Rights "Concluding Observations: Ukraine," 4 January 2008, UN Doc. No. E/C.12/UKR/CO/5 para 51.
- ^{xiii} UN Human Rights Council, Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak, 14 January 2009, A/HRC/10/44, para. 71.
- ^{xiv} UNODC, WHO, Principles of Drug Dependence Treatment: Discussion Paper, pp. 5, 9. See also: [U.S.] National Institute of Drug Abuse, Principles of Drug Addiction Treatment: A Research-Based Guide, 1999, online at www.nida.nih.gov/PODAT/PODATIndex.html
- ^{xv} U.N. Committee on Economic, Social and Cultural Rights, General Comment No. 14: The right to the highest attainable standard of health, November 8, 2000, para. 12, paras 8 and 34
- ^{xvi} Letter from Michel Sidibé, Executive Director, UNAIDS, to Rebecca Schleifer, Human Rights Watch, March 30, 2010; Email from Gottfried Hirschall, Director of HIV/AIDS, Department Cluster on HIV/AIDS, TB, Malaria and Neglected Tropical Diseases, World Health Organization, May 6, 2010; UNICEF East Asia & Pacific Regional Office, Statement on the care and protection of children in institutions in Cambodia, June 8, 2010, http://www.unicef.org/eapro/UNICEF_Statement_on_HRW.pdf (accessed June 14, 2010); Mandeep Dhaliwal, Cluster Leader: Human Rights, Gender & Sexual Diversities, HIV/AIDS Practice, Bureau for Development Policy, United Nations Development Programme, "Harm Reduction 2010 The Next Generation: Addressing the Development Dimensions," presentation at the International Harm Reduction Association Annual Conference, April 29, 2010; Michel Kazatchkine, Executive Director, The Global Fund to Fight AIDS, TB and Malaria, "From Evidence and Principle to Policy and Practice," Keynote address, Canadian HIV/AIDS Legal Network 2nd Annual Symposium on HIV, Law and Human Rights, Toronto, 11 June 2010.
- ^{xvii} Cook C (2010) Global State of Harm Reduction 2010
- ^{xviii} See GA Special Session on AIDS Res S-26/2, adopting the Declaration of Commitment on HIV/AIDS (2001) A/RES/S-26/2 Para. 52, and GA Res 60/262, Political Declaration on HIV/AIDS, A/RES/60/262 (2006) Para. 22
- ^{xix} United Nations Development Programme, 2010 MDG Summit Outcome, A/65/L.1 (17 September 2010)
- ^{xx} UNGA res 64/182, 30 March 2010.
- ^{xxi} Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Report to the General Assembly (main focus: the right to health and international drug control, compulsory treatment for drug dependence and access to controlled medicines), UN doc. A/65/255; Foreword, "Harm Reduction and Human Rights: The Global Response to Drug Related HIV Epidemics," <http://www.ihra.net/GlobalResponse>.
- ^{xxii} <http://www.unaids.org/en/PolicyAndPractice/KeyPopulations/InjectDrugUsers/default.asp>.
- ^{xxiii} Cook C (2010) Global State of Harm Reduction 2010
- ^{xxiv} Thai AIDS Treatment Action Group, Projects: Harm Reduction, available at: <http://www.ttag.info/harmreduction.php#> (1st accessed 9 February 2011)
- ^{xxv} International Covenant on Economic, Social and Cultural Rights New York, 16 December 1966, A/RES/2200, No. 14531 1, Indonesia acceded to the treaty in 2006. UN Treaty Collection available at: http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&lang=en
- ^{xxvi} Article 28I (1): "The right to life, the right not to be tortured, the right of freedom of thought and conscience, the right to have a religion, the right not to be enslaved, the right to be recognized as a person before the law, and the right not to be prosecuted based on retroactive law and regulation are non-derogable human rights.": Indonesian Law on Human Rights (No. 39), 1999, Article 4, inserted in 'country reports of REDRESS on Indonesia', available at: <http://www.redress.org/downloads/country-reports/Indonesia.pdf> [accessed 9 November 2010]; Indonesian Law on Human Rights (No. 39), 1999, article 66, inserted in 'country reports of REDRESS on Indonesia', available at: <http://www.redress.org/downloads/country-reports/Indonesia.pdf> [accessed 9 November 2010]
- ^{xxvii} Banda Aceh Public Court No. 11/PID.B/KONEKS/2000/PN-BNA.; UN Committee against Torture (16 July 2001), Initial reports of States parties due in 1999: Indonesia, CAT/C/47/Add.3, para 91.
- ^{xxviii} Human Rights Watch (11 October 2009) Press release: 'Indonesia: New Aceh Law Imposes Torture', available at: <http://www.hrw.org/news/2009/10/11/indonesia-new-aceh-law-imposes-torture> [accessed 4 November 2010]
- ^{xxix} Indonesia State Report on Corporal Punishment, available at: <http://www.endcorporalpunishment.org/pages/frame.html> [accessed 8 November 2010]
- ^{xxx} Human Rights Watch (11 October 2009) Press release: 'Indonesia: New Aceh Law Imposes Torture', available at: <http://www.hrw.org/news/2009/10/11/indonesia-new-aceh-law-imposes-torture> [accessed on 14 October 2010]
- ^{xxxi} UN Human Rights Council (10 March 2008) Report of the Special Rapporteur on torture, A/HRC/7/3/Add.7, para. 75

xxxii *ibid*

xxxiii UN Committee against Torture (2 July 2008) Concluding Observations: Indonesia, CAT/C/IDN/CO/2, paras. 15-17

xxxiv *Prosecutor v. Furundzija*, 10 December 1998, case no. IT-95-17/I-T; *Prosecutor v. Delacic and Others*, 16 November 1998, case no. IT-96-21-T, §454; and *Prosecutor v. Kunarac*, 22 February 2001, case no. IT 96-23-T and IT-96-23/1, §466.