



Reorienting Drug Policy in Indonesia:

Pathways to the Sustainable Development Goals



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George Havenhand
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www.lbhmasyarakat.org
Tebet Timur Dalam VI E No.3, Jakarta Selatan 12820
Tel: +62 21 837 897 66
Email: contact@lbhmasyarakat.org
Twitter: @LBHMasyarakat

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www.reprieve.org.uk
PO Box 72054, London, EC3P 3BZ
Tel: +44 (0)20 7553 8140
Email: info@reprieve.org.uk
Twitter: @Reprieve

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Executive Summary

In September 2015, all Member States of the United Nations (UN) adopted a global development programme: ‘Transforming our World: the 2030 Agenda for Sustainable Development’. The 2030 Agenda includes 17 Sustainable Development Goals (SDGs) and 169 targets to achieve by 2030. It is underpinned by a joint commitment to “*leave no one behind*” and to reach the furthest behind first.

Few countries have presented a firmer commitment to the SDGs than Indonesia. The administration that took office in 2014 helped to formulate the 2030 Agenda, aligned an ambitious 5-year development programme with the SDGs and many of the targets, and pursued a central role in supporting development at a global level. A national SDG team, set up by Presidential Decree in 2017, underlined the high-level commitment and gave civil society an important role in evaluating Indonesia’s progress towards the SDGs.

The 2030 Agenda requires governments to ensure that their policies support, rather than impede, progress towards the SDGs. Despite Indonesia’s enthusiasm to achieve the goals, a national campaign to eradicate illicit drugs has severely impeded development, undermined public health, security and justice, fuelled poverty, inequalities, violence and discrimination, caused significantly more harm to individuals and society than the substances it seeks to control, and ‘left behind’ some of the most vulnerable people.

The 2009 Narcotics Law has not eradicated drug trafficking from Indonesia or achieved its other objectives over the past decade. Indeed, the campaign escalated in the years after adoption of the 2030 Agenda but use and availability of illicit drugs are at record levels. There is a corresponding lack of investment in the health and social services needed to address this complex public health issue, and as a result there has been a major increase in drug-related harms.

The lack of coherence between development planning and drug policy casts a shadow over the social, economic and environmental achievements that the government has twice volunteered to present at the UN. The government’s aim to be recognised as a “*pioneer and role model*” of sustainable development will not be fully realised, and realisation of the SDGs for all people will not be achieved, without an evidence-based policy framework for dealing with drug-related harms.

This civil society report identifies who is ‘left behind’ and why, evaluates the impact of Indonesia’s drug policies and criminal justice system on efforts to achieve the SDGs and the principle of ‘leave no one behind’, and constructively explores an alternative approach. Evidence-based reforms to advance the 2030 Agenda are recommended. These include laws that exist in Indonesia but are breached in practice or need to be strengthened or elaborated, and the implementation of international standards that Indonesia has committed to.

A sustainable development-led approach to drug policy would have considerable benefits for individuals and society, and would tackle some of the obstacles faced by Indonesia before it can realise the SDGs and targets for all people without distinction. It would also enhance Indonesia’s reputation as a world leader of sustainable development, as the country seeks global partnerships for the goals and formulates programmes that look ahead to 2030.

Indonesia’s government and law enforcement agencies should rethink the status of the ‘drug emergency’ and improve national data-gathering to promote healthy lives and well-being, reduce the prevalence of infectious blood-borne diseases, implement suitable rehabilitation and harm reduction measures, and increase health coverage and the availability of controlled drugs for medical use.

Indonesia has firmly committed to reducing poverty but the mainly punitive response to illicit drugs, and associated drug control laws and practices, are obstacles to tackling poverty and inequalities. They have fuelled discrimination, stigmatisation and marginalisation among some of the most vulnerable people in the country. Suitable reforms would lead to significant social and economic advances.

Changes to the criminal justice system would help to promote access to justice and the rule of law and to end violence, discrimination, and corruption. Enhancing domestic – and implementing a range of international – standards would help tackle discriminatory law enforcement, torture and extrajudicial killings, lack of fair trial safeguards and poor implementation of existing safeguards, disproportionate sentencing and use of the death penalty for drug offences.

The drug control regime has caused extensive problems in Indonesia’s prison system: from overcrowding and poor provision of health services through to limited and overlooked rehabilitation and reintegration programmes. Prison conditions need to be improved but Indonesia should go further in tackling the causes of poverty and inequalities.

Noting that gender equality is central to all of the SDGs, Indonesia’s drug policy and criminal justice system have disproportionate and wide-ranging negative impacts on women and girls, and reforms need to be gender-sensitive

Indonesia’s government will not meet its national and global development commitments, or be recognised as an SDG pioneer and role model, without reconsidering the drug eradication strategy, reforming the Narcotics Law, and integrating national human rights policies with the national development framework. An approach that is compatible with the 2030 Agenda would help Indonesia achieve the SDGs for all people and ensure that no one is ‘left behind’.





1 Introduction

1.1 Indonesia and the Sustainable Development Goals

In September 2015, Indonesia and the other UN Member States adopted a global development agenda, ‘Transforming our World: the 2030 Agenda for Sustainable Development’.¹ The 2030 Agenda includes 17 SDGs, which cover a broad range of social, economic and environmental issues. The goals have 169 targets and each target has 1-3 indicators.

A joint commitment that no one will be ‘left behind’ is at the heart of the 2030 Agenda and the emphasis is on reaching “*the furthest behind first*”.² Indonesia should be trying to achieve the SDGs and targets by 2030 for all people, without distinction, starting with the most vulnerable and excluded.³ No SDG or target will be considered met unless it is met for all social and economic groups.⁴ Policies or practices that ‘leave people behind’, that enable discrimination, exclusion, or inequality, are not compatible with the 2030 Agenda.

Indonesia played a central role in the negotiations that led to the 2030 Agenda and remains at the forefront of global development. The country hosted a development dialogue in

2011, for example, the first time the SDGs were presented at a UN event, and a former Indonesian president co-chaired a panel that examined the global development framework after the Millennium Development Goals expired in 2015.

Indonesia’s government has committed to being one of the “*foremost pioneers and role models*” to achieve the SDGs.⁵ Indeed, few countries have gone further in incorporating the 2030 Agenda into regional and national development frameworks and foreign policy objectives. The high-level, targeted approach towards poverty reduction and other development priorities in Indonesia has contributed to significant achievements since September 2015.⁶

The government volunteered to have progress towards selected SDGs reviewed at the UN in 2017 and 2019, a process known as a Voluntary National Review (VNR). Indonesia was one of only a handful of countries to volunteer for a second review. The review in 2019 was seen by the government as a way to promote accountability to Indonesian citizens and the international community.⁷ The reports submitted for the VNRs identified many development achievements alongside implementation challenges.



united by the state ideology, the *Pancasila*, or five principles, which include social justice for all of Indonesia and a just and civilised humanity.

Indonesia's long history of development planning predates the SDGs. National plans formulated in five-year terms from the 1960s, specified by guidelines on the direction for national development, sought to achieve the ideals in the Preamble to the 1945 Constitution. These include improving public welfare and contributing to a world order based on freedom, peace and social justice.¹⁵ Indonesia's development objectives continue to derive from the Preamble.¹⁶

Agreement that a longer-term framework was needed to achieve the visions of *Pancasila* and the Constitution led to creation of the Long-Term National Development Plan (RPJPN) 2005-2025: an ambitious framework for national development, divided into four 5-year national plans, supplemented by the Long-Term Regional Development Plan.¹⁷

The RPJPN recognises that Indonesia must respect the rights of its citizens, reflect justice and prosperity in all aspects of life, and be free from discrimination of any kind. It contains eight objectives to achieve the vision of “*an Indonesia that is self-reliant, advanced, just and prosperous*”. These include realising a society that has noble morals and ethics, an Indonesia that is based on the rule of law and is secure and peaceful, development that is equitable and just, and a duty to be active in international relations.

After taking office in October 2014, the administration of President Joko Widodo initiated reforms based on the President's nine national development priorities, *Nawacita*. Those priorities include corruption-free law enforcement, clean and effective governance, promoting the protection of human rights, and improving quality of life. This programme was formalised in the third National Medium-Term Development Plan 2015-2019 (RPJMN).¹⁸

The RPJMN 2015-2019 was aligned with the 17 SDGs and 94 of the 169 SDG targets.¹⁹ It aimed to achieve development that is consistent with the vision of *Nawacita*, the Constitution, the RPJPN and the SDGs.²⁰ Among other things, the programme sought to improve quality of life, governance, and equality, to strengthen unity and diversity, and to achieve social and law enforcement reform.

The RPJMN 2020-2024 looks set to build on the many development achievements over the past five years. It seeks to achieve a society that is independent, advanced, fair and prosperous by accelerating development in various fields.²¹ The RPJMN 2020-2024 frames illicit drugs as a non-traditional threat to national security but does not refer to the socioeconomic implications of (or provide a cost-benefit analysis for) the punitive drug control regime.²² The Government Work Plan for 2020 similarly approaches drug control as a national priority for defence and security.²³

Sustainable development and international human rights standards are interdependent: the 2030 Agenda is based on universal human rights, and over 90% of the SDGs and targets correspond with commitments in human rights treaties.²⁴

In 2017, the President passed an important Decree to implement the SDGs.⁸ This saw the launch of a 2017-2019 National Action Plan⁹ supplemented by the Indonesian Vision 2045.¹⁰ The Decree articulated an important role for civil society in planning, implementing, monitoring, and evaluating Indonesia's progress towards the SDGs.¹¹

The 2030 Agenda also plays a significant role in Indonesia's engagement with the international community. The government was instrumental in the inclusion of an SDG for global partnerships, and later pledged to develop global partnerships for the SDGs to improve world peace for their seat on the UN Security Council 2019-2020.¹² In 2019, the Vice President chaired an SDG Summit at the UN¹³ and the government said that implementation of the SDGs is Indonesia's contribution to the global community.¹⁴

National development framework

Indonesia is the world's largest archipelago and fourth most populous country. An estimated 264 million people, from hundreds of diverse ethnic groups, inhabit over 7,000 sub-districts across more than 17,000 islands. Indonesian society is

The SDGs and drug policies

The relationship between the SDGs and drug policies has been clearly established.³⁶ The scale of illicit drug markets, and the cost and consequences of drug control strategies, cut across the 2030 Agenda. The SDGs cannot be achieved where policies undermine global partnerships and security, strain criminal justice systems and impede access to justice, fuel violence, drive poverty and inequality, marginalise and stigmatise those furthest behind, and where people cannot fulfil their potential in dignity and equality in a healthy environment.³⁷ Drug policies must not undermine the SDGs but should play a role in achieving them.³⁸ Illicit drugs can cause harm but the vast majority of people who use drugs do so without causing harm to others, developing dependence, requiring treatment, or breaking laws other than ones that prohibit drug use and possession.³⁹ Similarly, empirical data show that most harms associated with illicit drugs stem from, or are exacerbated by, punitive control strategies coupled with a lack of health and social services.⁴⁰ Criminalisation and incarceration drive poverty, inequalities, and marginalisation; and yet for many people in poverty, illicit economies provide employment, security, and access to essential services.⁴¹

Incorporating the SDGs and targets into national development plans is a positive step, and in that respect Indonesia is a pioneer. To achieve the vision of the 2030 Agenda and 'leave no one behind', however, human rights obligations need to be applied, protected, and integrated into sustainable development policies and programmes.²⁵

Indonesia's government formulated a National Action Plan for Human Rights 2015-2019 to regulate the implementation of human rights and the development of human rights protection systems.²⁶ At the time of writing, a draft to cover the period 2020-2024 is being deliberated by the House of Representatives. National human rights policies are not yet integrated with the government's Regulation to implement the SDGs.²⁷ The two policy frameworks are separate and not mutually reinforcing.²⁸

In the first speech after re-election in 2019, President Widodo articulated his vision of an advanced Indonesia where "*no one is left behind*" and where everyone is equal before the law.²⁹ The government has acknowledged difficulties in realising the 'no one left behind' principle to ensure that the SDGs benefit all

people,³⁰ invited constructive deliberation and solutions to implementation challenges,³¹ and identified an important role for civil society in evaluating, monitoring and planning for the SDGs.³²

Each section of this civil society report is based on one or more of the interconnected SDGs. For each section, this report considers the impact of Indonesia's drug policies and criminal justice system on efforts to achieve the SDGs and targets, and the systemic causes and drivers of inequalities, discrimination and exclusion, to help policymakers understand who is 'left behind' and why, and to support sustainable development-led programmes.³³

Section 2: Good health and well-being (SDG 3)

Section 3: Poverty and inequalities (SDGs 1 and 10)

Section 4: Access to justice and the rule of law (SDG 16)

Section 5: Prison overcrowding (various SDGs)

Section 6: Gender inequality (SDG 5)

Section 7: Civil society and global partnerships (SDG 17)



The 2030 Agenda seeks holistic, coherent and integrated policies.³⁴ To that end, this report recommends a wide range of reforms. These include strengthening and elaborating existing Indonesian legal standards; aligning the national strategies on sustainable development, human rights, and drug control; implementing international standards that Indonesia has committed to; and giving effect to the recommendations that Indonesia has supported at the UN Universal Periodic Review.³⁵ This development-led approach would bolster Indonesia's widely respected progress towards the 2030 Agenda while helping to ensure that no one is 'left behind'.

1.2 Indonesia's framework for controlling illegal drugs

In 1973, the People's Consultative Assembly suggested a public health response to illicit drugs as part of the national development framework, with the focus on *"protecting the public from the harm of narcotics"*.⁴² The prevailing narrative, however, in the broader social hygienic approach to public health at the time, was that illicit drugs were a threat to society and a potential tool for subversion.⁴³ A law passed in 1976 introduced strict penalties for drug offences, including the death penalty, and a basic rehabilitation framework.⁴⁴

Laws passed in 1997 set out to improve and align the domestic legislation with the global drug control framework and, in particular, the 'war on drugs' approach then sponsored by the United States.⁴⁵ Policymakers claimed, without evidence, that expanding the application of the death penalty for drug offences would deter the use and supply of illicit drugs. In 2002, the People's Consultative Assembly recommended that the President review the laws to address morality, the growing numbers of people living with HIV, and public anxiety.⁴⁶

This eventually led to the Narcotics Law, Indonesia's current law for controlling illicit drugs.⁴⁷ It came into force on 12 October 2009 with four objectives: ensure the availability of drugs for health services, science and technology development; prevent, protect and save the nation from drug abuse; eradicate illicit trafficking of drugs and precursors; and control medical and social rehabilitation. Over the past decade, the Narcotics Law has failed to achieve these objectives - and made matters worse while undermining Indonesia's progress towards the SDGs.

The Narcotics Law, one of the world's most punitive drug control regimes, takes a law enforcement-led approach to drug-related problems. It is at odds with the 2030 Agenda, which instead focus on the underlying and root causes of development challenges.⁴⁸ Drug use and possession for personal use are punishable with extremely high fines and lengthy prison terms, whilst trafficking five grams or more of certain drugs can result in a death sentence.⁴⁹

The main agency for enforcing the regime is the *Badan Narkotika Nasional* or BNN (the National Narcotics Board). The Indonesian National Police shares drug interdiction responsibilities with the BNN and focuses on drug-related arrests, while the Ministry of Law and Human Rights is responsible for interventions inside the prison system.

The considerable cost of the drug control strategy in Indonesia, levels of drug use and availability, scale of drug-related harms,

and the prison population for drug-related offences, are now at record levels. Funds have been diverted towards law enforcement and away from tackling public health, poverty, inequality and other priorities. Between 2006 and 2009, the government allocated 200 billion rupiah to the 'war on drugs' (roughly US \$14 million).⁵⁰ Between 2016 and 2017, the BNN's budget tripled to 2.1 trillion rupiah (roughly US \$150 million).⁵¹ The Government Work Plan 2020 allocates 1.08 trillion rupiah (roughly US \$80 million) to the anti-drug campaign.⁵²

In parallel, there has been a corresponding lack of investment in evidence-based health and social services, including harm reduction services, needed to address this complex public health issue. The UN Office on Drugs and Crime (UNODC) describes 'drug dependence' as *"a complex, multifactorial health disorder characterised by a chronic and relapsing nature with social causes and consequences"*.⁵³ Vulnerability factors are largely out of the individuals' control and linked to multiple social, environmental and health-related issues.⁵⁴

The overwhelming majority of people who use drugs do not do so problematically.⁵⁵ UNODC describe 'problematic drug use' as high-risk consumption of drugs, which might include injecting drugs, using drugs on a daily basis, or drug dependence.⁵⁶ High-risk use of drugs can cause harm to individuals and society, but a mainly law enforcement-led approach makes those harms worse, has not succeeded on its own terms, undermines health and social measures, means that the people who most need those services do not receive them, and is responsible for many more harms than the substances it tries to control.

The Narcotics Law and political debate about strengthening the punitive approach have undermined progress towards the SDGs.⁵⁷ Proposed reforms to the Criminal Code, that do not distinguish between recreational drug use and trafficking, and fail to recognise drug dependence as a health issue, risk moving Indonesia further from the 2030 Agenda.⁵⁸

International framework for controlling illegal drugs

Indonesia ratified the 1961 Single Convention on Narcotic Drugs,⁵⁹ the 1971 Convention on Psychotropic substances,⁶⁰ and the 1988 Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.⁶¹ The 1961 Convention aimed to promote the *"health and welfare of mankind"*⁶² by establishing a dual obligation: making controlled drugs available for medical and scientific purposes but preventing non-medical use.⁶³

In June 1998, the UN General Assembly adopted a new Political Declaration that obliged States to *"eliminate or reduce significantly"* the supply of illicit drugs by 2008.⁶⁴ In 2008, UNODC announced that the strategy had failed. Instead of eliminating illicit drugs, it led to new trafficking routes, more types and amounts of drugs, increased violence, crime, marginalisation, stigmatisation and other harmful outcomes for vulnerable people.⁶⁵ Despite these fundamental, longstanding, and widely held concerns, a new Declaration adopted in 2009 set 2019 as the target date for UN Member States to eliminate or reduce significantly the use and supply of illicit drugs.⁶⁶

Regional drug-eradication targets

In July 1998, the Association of Southeast Asian Nations (ASEAN) pledged to achieve a drug-free region by 2020. In 2000, the deadline was brought forwards to 2015 and ASEAN members developed national plans to achieve the target, but without a shared strategy. The drug-free regional objective was formalised in 2007 as “a vision of a drug-free ASEAN”, which sought significant and sustainable reductions in the manufacture, trafficking, cultivation, and use of illicit drugs.⁶⁷ In 2016, having failed to achieve the target, ASEAN members concluded that a more “holistic approach” was necessary, but at the same time reiterated the goal to achieve a drug-free ASEAN.⁶⁸ The strategy incorporated alternative development for crop cultivation but did not integrate the SDGs. Despite the regional drug-free strategy, illicit drug markets have significantly expanded and diversified, as summarised below.⁶⁹

In 2016, months after adopting the 2030 Agenda,⁷⁰ UN States gathered for a General Assembly Special Session to review progress towards the 1998 and 2009 Declarations.⁷¹ The result was the ‘Outcome Document of the 2016 UN General Assembly Special Session on the World Drug Problem’.⁷²

The Outcome Document: broadened the global approach of reducing supply and demand of illicit drugs to include sustainable development, harm reduction, access to controlled medicines, human rights, and evolving realities; emphasised that efforts to achieve the SDGs and address illicit drug issues are complementary and mutually reinforcing; and reaffirmed the need to respect human rights and the dignity of all people in drug-related programmes, strategies, and policies.⁷³

“We reiterate our commitment to promoting the health, welfare and well-being of all individuals, families, communities and society as a whole, and facilitating healthy lifestyles through effective, comprehensive, scientific evidence-based demand reduction initiatives...”

Outcome Document, paragraph 1

In 2017, the UN Secretary-General urged Member States to honour the commitment they made to the Outcome Document to, “ensure that our approach promotes equality, human rights, sustainable development, and greater peace and security.”⁷⁴ The government of Indonesia recognises this and has reaffirmed its commitment to the Outcome Document.⁷⁵

In 2019, civil society demonstrated that the eradication strategy failed to achieve the goals to “eliminate or reduce significantly” illicit drug cultivation, demand, production, manufacture, distribution, trafficking, or diversion.⁷⁶ The situation in respect of each goal has deteriorated since 2009. By way of illustration, the amount of methamphetamine seized in Southeast Asia in 2018 alone exceeded the total in the previous five years combined;⁷⁷ the methamphetamine trade in Asia Pacific increased from around \$15 billion in 2013 to more than \$61 billion in 2019; and yet retail prices of illicit drugs in the region are at historic lows.⁷⁸

In March 2019, UN Member States adopted a Ministerial Declaration at a Ministerial Segment held at the 62nd session of the UN Commission on Narcotic Drugs (CND).⁷⁹ The Declaration summarised the failure of the drug eradication strategy over the past decade: the range of drugs and drug markets are expanding and diversifying; links between drug trafficking, corruption and other forms of organised crime are increasing; use, illicit cultivation and production and manufacture of narcotics, psychotropic substances, and illicit trafficking, have reached record levels; the value of confiscated proceeds of crime related to drug trafficking is low; availability of controlled substances for medical and scientific purposes is low to non-existent in many parts of the world; drug treatment and health services do not meet needs; deaths related to drug use have increased; and transmission rates of HIV and other blood-borne diseases associated with use of illicit drugs remain high.

The expensive global strategy to eradicate illicit drugs, like the Narcotics Law, is ineffective and counterproductive. It has significantly undermined development, damaged public health, caused harms to peace, security, stability, individuals and society, led to and fuelled poverty, inequalities, violence, and compounded the stigmatisation and marginalisation of some of the most vulnerable people in society.⁸⁰

The 2019 CND Ministerial Declaration reaffirmed the goal of “actively promoting a society free of drug abuse”. However, it also recognised that efforts to achieve the SDGs and control illicit drugs are complementary and mutually reinforcing, and it underlined the global commitment towards the Outcome Document.⁸¹ This report incorporates recommendations from the Outcome Document (and other internationally agreed standards) to help Indonesia achieve the SDGs and UN drug control commitments while leaving ‘no one behind’. Many of the standards advocated in this report exist in Indonesia but could be enhanced or are breached in practice.



2

Rethink the status of the drug emergency to improve healthy lives and well-being

The SDGs include a commitment to “ensure healthy lives and promote well-being for all at all ages” (SDG 3).

Improving quality of life has long been a central objective of development planning in Indonesia. There have been significant advances in the public health and social welfare infrastructure in the country since September 2015, with an emphasis on the

welfare of poorer sections of the population and people living in remote regions.⁸²

Illicit drug control laws and practices have, however, impeded efforts to realise SDGs and targets, caused widespread denial of essential health services, driven up rates of infectious blood-borne diseases amongst key groups, led to mass

incarceration of people who use drugs and minor offenders, and disproportionately affected those furthest behind. As well as undermining public health, the punitive eradication campaign overshadows Indonesia's many development achievements.

2.1 The status of the 'drug emergency'

In December 2014, President Joko Widodo declared a 'drug emergency' on the basis that 4.5 million Indonesians use drugs and that *"every day up to 40-50 young people die because of drugs."*⁸³ These figures came from a 2011 study by the BNN and Indonesian public health researchers.⁸⁴

The research is widely criticised by independent drug policy and public health experts.⁸⁵ They describe the study as ambiguous and inaccurate,⁸⁶ relying on unreliable methods to estimate drug-related mortality, with vague definitions and a non-representative sample, and a lack of transparency over the details and methodology.⁸⁷ The study used imprecise classifications – conflating *"ever used drugs"* with drug dependence in order to report the largest possible estimate – and wildly overestimated forward growth.⁸⁸ Years later, another flawed study by the BNN set the mortality rate at 33 per day.⁸⁹ If the same numbers were calculated using reliable methods, this would still not constitute a 'drug emergency' by regional or international standards.⁹⁰ Regardless of whether these numbers are correct or precise, they still do not justify the punitive policies that have been adopted.

In their 2017 VNR report, Indonesia's government identified that, *"the availability of sufficient data and information is a key requirement for proper decision-making for poverty alleviation and welfare improvement, as well as ensuring that no one is left behind."*⁹¹ Specifically, the report identified that improving the quality of data about illicit drugs is a key challenge for health development.⁹² The 2019 VNR report highlighted that the lack of reliable data, as a basis for inclusive development planning, is one of the main challenges to implementing the SDGs in Indonesia.⁹³

Due to the lack of high-quality, independent research or records from law enforcement and health agencies, policymakers in Indonesia do not have sufficient, reliable data about how many people in the country use illicit drugs, how many people have drug dependence, the number of drug-related deaths, or the causes of mortality, including deaths resulting from the punitive campaign that could be prevented with suitable policy interventions.

Objective, high-quality data on drug-related harms are required to evaluate the impact of existing policies, and to implement policies that are coherent with and support progress towards the SDGs. These should be harmonised with national data-gathering on progress towards the SDGs.⁹⁴

The UN Special Rapporteur on the right to health, an independent expert, recommended that Indonesia improve the availability and quality of health-related data to form policies and services.⁹⁵ UNODC recommended that Indonesia integrate its data with internationally recognised standards of collection and analysis.⁹⁶ The UN High Commissioner for Human Rights encouraged Member States to collect data on drug control strategies to analyse the impact on human rights and compliance with international standards.⁹⁷ The UN Development Programme (UNDP) said better data are required to examine why people are 'left behind'.⁹⁸ The CND called for UN entities to work with Member States to identify gaps in drug statistics and strengthen data collection and analysis.⁹⁹

The disputed estimates of drug use serve as an acknowledgement, from the agency tasked with enforcing the campaign, that the Narcotics Law failed to *"eradicate illicit drug trafficking"*, which it set out to achieve in 2009. In 2011, the BNN said 3.6-4.6 million people use drugs in Indonesia, although the resulting policies do not reflect the fact that the majority of people who use drugs do not develop dependence or require treatment.¹⁰⁰ A 2013 study projected 5.1-5.6 million by 2015.¹⁰¹ The estimate was 6 million in 2017.¹⁰² UNODC record a steady increase in illicit drug use.¹⁰³ The number of

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Recommendations

Improve the gathering of reliable and comparable data on the scale and nature of drug use and drug-related harms, including social, economic and other risk factors (Outcome Document para 1(h)), as well as on access to these services, through a transparent and peer-reviewed process that involves both health and law enforcement agencies.

Form a committee, comprising the Ministry of Health, BNN, Ministry of Social Affairs, Ministry of Law and Human Rights, service providers, community representatives, civil society, affected groups, and independent experts in drug policy and public health, to review drug-related data, and develop rehabilitation, social reintegration, and harm reduction measures and programmes

aimed at minimising the adverse public health and social consequences of drug dependence (Outcome Document para 1(o)).

Promote the well-being of society through scientific, evidence-based prevention strategies centred on and tailored to the needs of individuals and communities as part of a balanced and non-discriminatory national drug policy (Outcome Document para 1(d)) by rethinking the status of the 'drug emergency' and the drug eradication strategy.

Ensure that revisions to the Criminal Procedure Code, Narcotics Law, Corrections Law, Criminal Code, and other laws and regulations takes place in an evidence-based and sustainable development-led framework.

drug-related arrests increased by 58% each year from 1999 to 2004 and the number has continued to climb.¹⁰⁴ Between 2016 and 2017, the BNN reported substantial increases in seizures of all illicit drugs.¹⁰⁵

The costly anti-drug campaign has failed on its own terms, exerted considerable influence over national health policies, contributed to a lack of investment in health and social programmes, and strained the criminal justice system to breaking point.¹⁰⁶ Rethinking the ‘drug emergency’ in a development context would support Indonesia’s progress towards many of the SDGs, enhance the framework in which data are gathered, and underpin evidence-based policies.

A balanced approach based on development, evidence and public health – rather than punishment and incarceration – would address many of the harms associated with drug dependence.¹⁰⁷ Increasingly, governments are adopting policy frameworks in response to the evidence. In 2019, for example, Malaysia’s government acknowledged that criminal enforcement is ineffective, expensive, and endangers public health, and committed to a science-based drug policy.¹⁰⁸

Prevalence of infectious blood-borne diseases

The SDGs include a target to end AIDS and tuberculosis (TB) and combat hepatitis and other diseases by 2030 (SDG target 3.3). The Outcome Document set a target to end HIV “among people who use drugs” by 2030. In 2016, the UN General Assembly adopted a Political Declaration that reaffirmed a global commitment to end AIDS by 2030.¹⁰⁹ The 2019 CND Ministerial Declaration considers the spread of HIV, hepatitis C, and TB to be a significant ongoing challenge.¹¹⁰

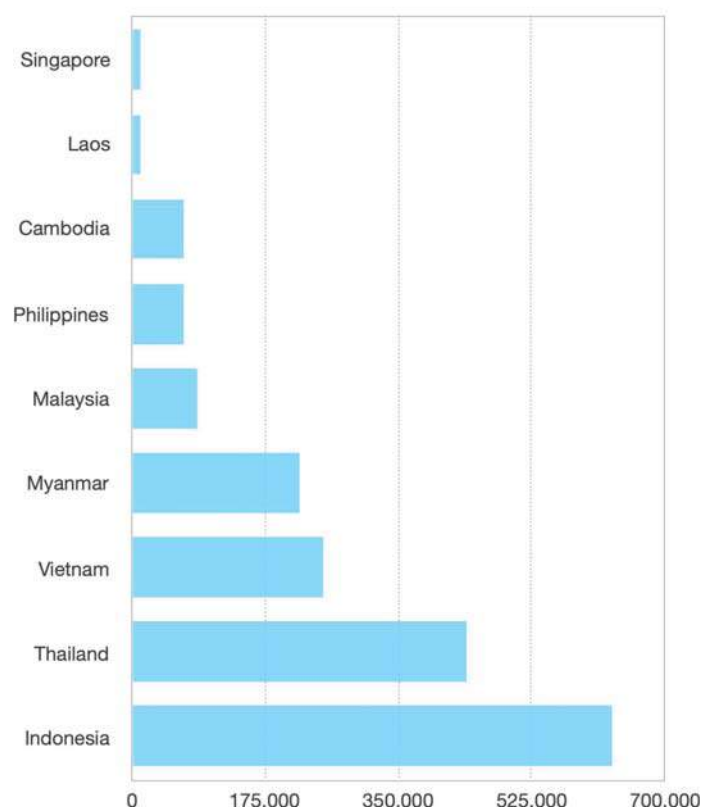
In Indonesia, the RPJMN 2015-2019 contained a shorter-term goal of improving public health by reducing the rate of HIV by 2019, preventing new cases of HIV and TB, and increasing access to and quality of health services.¹¹¹ The RPJMN 2020-2024 seeks improved disease control for HIV/AIDS and TB.¹¹²

People who use drugs, particularly those who use drugs intravenously, are vulnerable to infections like HIV,¹¹³ hepatitis C,¹¹⁴ and TB – significantly more so than people who do not inject drugs. There is clear and unequivocal evidence that unrestricted access to suitable harm reduction services (some of which are described in section 2.3 of this report) can prevent and control these diseases,¹¹⁵ and that such services are highly cost-effective for governments.¹¹⁶

In the mid-2000s, the Ministry of Health estimated that over one third of the 124,000-169,000 people who inject drugs in Indonesia were living with HIV.¹¹⁷ In 2007, the Joint UN Programme on HIV/AIDS (UNAIDS) identified a concentrated HIV epidemic, with high rates among people who inject drugs.¹¹⁸ In 2010, the National AIDS Commission estimated that between 200,000 and 270,000 people lived with HIV in the country; HIV prevalence among people who inject drugs was 40-45%. By 2014, HIV prevalence among people who inject drugs had reached 55% in Jakarta.¹¹⁹ In 2015, there were 75,000 new infections, the highest rate in the region.¹²⁰

Indonesia’s National AIDS Strategy and Action Plan 2015-2019

Prevalence of HIV in Southeast Asia
Source: WHO Global Health Observatory - 2017



aimed to achieve zero new HIV infections, zero stigma, and zero discrimination. The ambition was stymied by the national anti-drug campaign, which has fuelled a concentrated HIV epidemic amongst people who inject drugs.¹²¹ This group faces criminalisation, barriers in accessing vital treatment, inadequate preventive education and prohibitive costs for treatment and testing, as well as stigma and discrimination in access to healthcare settings.¹²²

Indonesia set a target to increase the number of people living with HIV who are on antiretroviral treatment from 8% in 2014 to 42% in 2019.¹²³ In 2018, coverage of people receiving the treatment remained low at around 14%.¹²⁴ This is among the lowest in the region.¹²⁵ Indeed, Indonesia is one of a few countries in Asia where the number of new HIV infections is increasing.¹²⁶ In 2018, the UN Special Rapporteur on the right to health reported that 28.7% of people who inject drugs in Indonesia were living with HIV, and only 35% of persons with HIV knew their status.¹²⁷ Indonesia’s 2017 VNR report¹²⁸ and the RPJMN 2020-2024¹²⁹ both acknowledge that prevalence of HIV/AIDS in Indonesia is still high.

Prevalence of other infectious blood-borne diseases is also high. In 2014, hepatitis C among people who inject drugs in the country was 63.5%, one of the highest rates in the region.¹³⁰ In 2015, 12.1% of people who inject drugs in the country were estimated to have TB.¹³¹ Indonesia has the third-highest rate of TB infections globally: 110,000 people died from the disease in 2017 and 842,000 cases were recorded. Only 53% of cases are reported and the government recognises that many people do not report due to stigma.¹³² TB develops in prisons and mandatory treatment centres. These settings do not provide screening or treatment services and are populated by people who use drugs and low-level, non-violent offenders.

Indonesia will not meet its development commitments to improve public health and reduce infectious blood-borne diseases without scaling up health and social services and removing barriers to accessing those services. The national

response to HIV provides an opportunity for Indonesia to strengthen the social fabric, tackle inequality, and improve social justice for the most vulnerable members of society.¹³³

R

Recommendations

Integrate the technical guide to targets for universal access to HIV prevention, treatment and care for people who inject drugs, issued by the World Health Organisation (WHO), UNODC and UNAIDS; and ensure access to interventions, including in treatment, outreach services and in custodial settings (Outcome Document para 1(o)).

Scale up evidence-based harm reduction programmes and remove barriers to accessing those programmes through awareness-raising campaigns. Treatment and rehabilitation services should follow international scientific standards as set out in the UNODC guidance on community-based treatment and care services in Southeast Asia.¹³⁴

2.2 Improve rehabilitation and treatment services

SDG 3 includes targets to, “*Strengthen the prevention and treatment of substance abuse, including narcotic drug abuse and harmful use of alcohol*” (SDG target 3.5), to increase health financing and the health workforce (SDG target 3.C), and to ensure access to quality essential healthcare services and effective, quality, affordable medicines (SDG target 3.8).

One of the four objectives in the Narcotics Law is “*to guarantee medical and social rehabilitation for drug abusers and drug dependants*”.¹³⁵ The Narcotics Law introduced processes to divert people who use drugs from the criminal justice system towards medical and social rehabilitation. The Law describes medical rehabilitation as “*an integrated process of treatment activity to release the addict from narcotics dependence*”. This abstinence-only model is not supported by evidence, does not focus on the needs of each individual, and could be interpreted to exclude vital harm reduction measures.¹³⁶

The Narcotics Law distinguished medical rehabilitation, under the remit of the Ministry of Health,¹³⁷ and social rehabilitation services, overseen by the Ministry of Social Affairs. A 2011 Presidential Instruction said that all treatment services should be evidence-based and high-quality.¹³⁸ In 2012, the Ministry of Health¹³⁹ and Ministry of Social Affairs¹⁴⁰ published guidance on rehabilitation standards. The BNN, which is responsible for improving rehabilitation institutions, has developed its own treatment standards.¹⁴¹ The involvement of so many stakeholders, and the decentralisation of health services, has resulted in inconsistent rehabilitation services.¹⁴²

There are around 549 treatment and rehabilitation centres in Indonesia overseen by the Ministry of Health, 166 by the Ministry of Social Affairs, and 160 by the BNN.¹⁴³ This includes one-stop centres that provide inpatient and aftercare services, outreach centres, and community-based centres. All services managed by government agencies pursue the goal of abstinence from illicit drugs.¹⁴⁴ The focus on abstinence and rehabilitation is scientifically questionable, as it is not always consistent with

the health of the individual. Rather, the main goal of treatment should be to allow a person to attain, as far as possible, physical and mental health.¹⁴⁵ Indonesia should offer a wide range of services, including rehabilitation, psychosocial support and substitution therapy, to suit individual needs.

The right to development

Everyone is “*entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realised*”¹⁶¹ and to benefit from a rights-based, non-discriminatory, equitable and just development process,¹⁶² regardless of their gender, or whether they use drugs, have a disease, a criminal conviction, are in detention, come from a minority group, or any other distinction.¹⁶³ States have a responsibility to create conditions that are favourable to the realisation of the right to development.¹⁶⁴

A 2014 Regulation established that an assessment committee could decide the course of action for people who use drugs,¹⁴⁶ which enabled referral to community services rather than incarceration or compulsory treatment.¹⁴⁷ However, only one in ten people who use drugs globally develop dependence and require treatment.¹⁴⁸ In a 2017 survey, 7% of people who use methamphetamine in Indonesia were found to have problematic use. Most could manage their use and 85% said they did not need rehabilitation.¹⁴⁹

In 2014, 8,168 people received treatment for substance dependence in Indonesia.¹⁵⁰ In 2016, 94% of drug-related arrests resulted in imprisonment and 6% were referred to rehabilitation.¹⁵¹ In 2016, President Widodo wanted 100,000 people who use drugs to be rehabilitated but the BNN reported that only 1,523 people received therapy in 2017 due to limited space in rehabilitation centres.¹⁵² In 2017, the BNN said that

18,077 “*drug abusers*” received therapy and rehabilitation.¹⁵³ The Government Work Plan 2020 projects that 21,714 people who use drugs will receive rehabilitation in 2020.¹⁵⁴

Rehabilitation is presented as an easy, permanent solution to drug use, but drug dependence is a complex health disorder characterised by its chronic and relapsing nature.¹⁵⁵ Many people will go in and out of treatment their entire lives and many people do not want or need treatment.

The Ministry of Social Affairs aimed to rehabilitate 15,000 people who use drugs in 2016 with a budget of 87 billion rupiah (US \$6.6 million). In 2017, it was funded to help 9,000 people, while the BNN’s budget was tripled to 2.1 trillion rupiah (US \$160 million).¹⁵⁶ The BNN should be encouraged to prioritise diverting their funds towards public health measures that are proven to reduce the harms associated with illicit drugs (and thereby support progress towards the SDGs) and to scale back

ineffective punitive strategies.

UN entities, including the International Narcotics Control Board (INCB), called on Member States to invest in evidence-based treatment and rehabilitation.¹⁵⁷ In Indonesia, district level funding is insufficient and restrictive¹⁵⁸ and, even though the vast majority of people who use drugs do not require any treatment services, rehabilitation centres provide insufficient coverage for the widely dispersed population.

In 2018, the BNN called for more rehabilitation centres, so more people with problematic drug use and low-level drug offenders could be diverted into rehabilitation centres rather than overcrowded prisons. It also called for better integration of existing facilities.¹⁵⁹ The BNN recognises that people with problematic drug use need care and support.¹⁶⁰ The BNN could play an important role in developing a wide range of health services that go beyond the abstinence-only model.

Case study: harm reduction in Switzerland

Switzerland has pursued a scientific, rigorous, evidence-based approach to controlling the harms of injecting drugs through public health programmes. Since 1991 a range of measures were introduced under the four pillars of policing, prevention of drug use, treatment of drug use (which means offering a range of options for doctors and patients to choose what is suitable in each case), and harm reduction. The strategy has achieved many successful outcomes: the number of new heroin users fell from 850 in 1990 to 150 in 2002; drug-related deaths fell by over 50% from 1991-2004; there was a 90% reduction in property crime by people who use drugs. The country now has the lowest prevalence of HIV in the region.¹⁶⁵ 70-80% of people in Switzerland who use opioids are enrolled in opioid substitution therapy, one of the highest levels of coverage globally.

End compulsory rehabilitation

The vast majority of people who use drugs do so without developing dependence, but those requiring treatment services usually require more than one round to overcome dependence.¹⁶⁶ The Outcome Document recognises that drug dependence can be prevented and treated through scientific, evidence-based drug treatment, care and rehabilitation.

The Narcotics Law enables Indonesian judges to impose drug dependence treatment in rehabilitation centres, instead of prison terms, on people who are reported for using drugs and assessed as dependent.¹⁶⁷ Periods vary from six months to one year and - while preferable to prison terms - are imposed without consent and not based on evidence.¹⁶⁸ People who use drugs and not deemed dependent by the courts are imprisoned. Research by LBH Masyarakat in 2016 found that, out of 151 cases where diversion could have been ordered, 41 (27%) were given a rehabilitation sentence.¹⁶⁹

The SDGs are founded on international human rights norms and drug treatment without informed consent contravenes human rights protections.¹⁷⁰ Human rights treaty bodies and UN agencies have condemned compulsory drug rehabilitation as a violation of the prohibition of inhuman and degrading treatment, the right to health, the prohibition of arbitrary detention,¹⁷¹ and the right to be free from non-consensual medical treatment.¹⁷² Human rights violations are reported in Indonesian treatment centres.¹⁷³

In 2017, the UN Special Rapporteur on the right to health identified that barriers to accessing treatment and services negatively impact the effectiveness of Indonesia’s response to HIV. He emphasised that prioritising quality, evidence-led, community-based services over ineffective and compulsory services is a requirement under the right to health.¹⁷⁴

Studies have demonstrated that long-term change in drug use is more likely to be achieved through a free choice than through enforced rehabilitation.¹⁷⁵ Compulsory treatment is expensive, which takes funding away from other services, and there is no evidence that it leads to positive health outcomes.¹⁷⁶

Twelve UN entities have called on countries to close compulsory drug detention and rehabilitation centres.¹⁷⁷ UNODC recommended closing such centres and establishing community-based voluntary programmes as alternatives to prison.¹⁷⁸ The UN Committee on Economic, Social and Cultural Rights called on countries to make available evidence-based treatment that respects the rights of people who use drugs.¹⁷⁹

Compulsory rehabilitation of people who use drugs is not evidence-based, violates human rights, undermines health protection, is not in line with the Outcome Document,¹⁸⁰ drives poverty, and does not constitute treatment for the purposes of SDG 3. Compulsory rehabilitation is oppressive and ineffective, but any alternatives should be sustainable development-led and not increase levels of imprisonment or other forms of detention.

Recommendations

Expand the public health-based diversion policy and provide systematic training to health and law enforcement officials to ensure consistently high-levels of diversion to non-coercive rehabilitation, as part of a development-led, structural reorientation of drug dependence and treatment away from the criminal justice system.

Develop and implement effective, evidence-based health services, offering a wide range of treatment and harm reduction services, to allow patients and their doctors to choose the most appropriate and efficient strategy to suit their needs. Guarantee the consent of all individuals seeking drug treatment in

voluntary, evidence-based treatment programmes as an alternative to imprisonment or compulsory rehabilitation. Consolidate the regulations for rehabilitation services with international standards to ensure consistent best practice.²¹⁵

Monitor treatment centres to ensure that treatment takes place on a voluntary basis with informed consent and is delivered only by suitably qualified health personnel,²¹⁶ and ensure adequate quality of drug treatment and rehabilitation services (Outcome Document para 4(c)) and end arbitrary detention (Outcome Document para 4(o)).

2.3 Enhance and expand harm reduction services

‘Harm reduction’ refers to policies or programmes that aim to reduce negative health, social and other harms associated with problematic use of illicit drugs. Such measures are vital to preventing HIV and other infectious blood-borne diseases amongst people who inject drugs,¹⁸¹ and reducing problematic drug use and dependence, overdose deaths and other drug-related harms.¹⁸² As well as reducing risk and improving quality of life, harm reduction is relatively inexpensive to implement and highly cost-effective.¹⁸³

“The challenges for ending infectious disease epidemics are: 1) scaling up proven interventions for preventing and controlling HIV/AIDS, TB, malaria... 2) increasing screening coverage especially for high risk groups; 3) increasing effective drug treatment... and 5) increasing logistical needs, human resources and funding for HIV/AIDS, TB and malaria.”

Indonesia's 2019 VNR report

Indonesia's government provides some basic harm reduction measures, which differ from the abstinence model of most rehabilitation programmes in the country.¹⁸⁴

In 2004, the National AIDS Commission supported harm reduction programmes in six priority provinces.¹⁸⁵ The agency was restructured in 2006 and the participation of government and civil society expanded.¹⁸⁶ In 2007, the Coordinating Ministry of People's Welfare issued a Regulation for harm reduction in response to HIV/AIDS.¹⁸⁷ Two years later, the Narcotics Law established that harm reduction could be provided as an aspect of medical rehabilitation, to prevent the transmission of HIV and other infectious diseases, under the Ministry of Health.¹⁸⁸ The National Strategic Plan for 2010-14 scaled up harm reduction and coverage of evidence-

based interventions has expanded.¹⁸⁹ The Ministry of Health elaborated its mandate to provide harm reduction services in a 2015 Regulation.¹⁹⁰ In 2018, the functions of the National AIDS Commission transferred to the Ministry of Health.

Community-based rehabilitation programmes are available in areas considered to be at risk based on HIV infection rates and numbers of people who inject drugs.¹⁹¹ But the geographic coverage of harm reduction services is limited, with 194 needle and syringe programmes,¹⁹² 92 opioid substitution therapy sites,¹⁹³ and less than 4% people known to be injecting opiates can access methadone maintenance treatment (i.e. treatment for drug dependency or prevention for HIV).¹⁹⁴ The few methadone clinics are in big cities and opioid substitution services are available in only 11 prisons in the country.¹⁹⁵

There is a lack of evidence-based treatment for people who use amphetamine-type substances (ATS) in Indonesia, despite the significant upward trend in the use of ATS in the country¹⁹⁶ and the connection between ATS use and the transmission of HIV.¹⁹⁷ A 2017 study found that many people who inject drugs had moved from heroin and other opioids to ATS, and 65% of the respondents to the survey were living with HIV.¹⁹⁸ The potentially significant impact of community-led projects is undermined by the hostile legal environment and law enforcement practices.¹⁹⁹

The UN's General Assembly,²⁰⁰ Human Rights Council,²⁰¹ Committee on Economic, Social and Cultural Rights,²⁰² Committee on the Rights of the Child,²⁰³ Committee on the Elimination of Discrimination against Women,²⁰⁴ Special Rapporteurs on the right to mental health²⁰⁵ and on torture,²⁰⁶ and the World Health Assembly²⁰⁷ all agree that harm reduction is essential. In November 2018, 30 UN agencies committed to promote measures aimed at minimising adverse public health consequences of problematic drug use, which reduce HIV infections, improve health outcomes, and deliver social benefits by reducing pressure on health and justice systems.²⁰⁸

In 2009, UNODC, UNAIDS, and WHO published a Technical Guide (updated in 2012) for countries to set targets for universal access to HIV prevention, treatment and care for people who inject drugs.²⁰⁹ It identified a package of nine interventions for the prevention, treatment and care of HIV,²¹⁰ which is recognised and promoted in the Outcome Document. Increasing the unrestricted availability of these services depends on reducing stigmatisation and discrimination against people who use drugs.²¹¹ To that end, WHO promote enablers: supportive legislation, addressing stigma and discrimination, community empowerment, and addressing violence against people who use drugs.²¹²

While the RPJMN 2015-2019 included a target to increase the availability of therapy and rehabilitation for people who use drugs, it was in the context of the national strategy to eradicate illicit drugs.²¹³ The RPJMN 2020-2024 restates the drug eradication strategy but introduces a call for drug prevention, focuses on increasing rehabilitation services, tackling human trafficking and crimes against vulnerable groups, and enhancing the service and professionalism of the police.²¹⁴ Future laws, regulations, and plans should rethink drug-free targets and, like the Outcome Document, embrace evidence-based treatment, harm reduction, and sustainable development.

Recommendations

Work with civil society and affected communities (see section 7.1 of this report) to expand and develop harm reduction services and drug dependence treatments that are proven to reduce the harms associated with problematic drug use. Ensure that programmes and services have wide coverage, are available to people without restrictions, meet international standards, and are reviewed to achieve consistently high standards.

The dual medical and social rehabilitation system in the Narcotics Law should be replaced with one system of integrated and comprehensive rehabilitation, and harm reduction measures should be incorporated into existing programmes.²³⁶ Voluntary and evidence-based schemes should replace compulsory drug and HIV testing and compulsory treatment.²³⁷

2.4 Increase access to controlled drugs for medical purposes

The international drug treaties aim to make controlled drugs available for medical and scientific use. Controlled drugs are indispensable for those purposes and accessing them is fundamental to the right to health,²¹⁷ but their availability across most of the world is limited.²¹⁸ It is crucial to quantify the needs of the health system of these substances – for use in therapy, palliative care, pain relief, anaesthesia, treating and managing health conditions – for sufficient quantities to be produced or imported to meet medical needs.²¹⁹

SDG target 3.8 calls for Indonesia to, “Achieve universal health coverage, including financial risk protection, access to quality essential health-care services and access to safe, effective, quality and affordable essential medicines and vaccines for all”. Similarly, the RPJMN 2015-2019 sought increases in the availability, affordability, and quality of drugs for health personnel, to improve public health.²²⁰ The Ministry of Home Affairs has a mandate, through regulations and the 2017 Decree on implementing the SDGs, in relation to the availability of drugs for medical purposes.

Under the Constitution, every Indonesian has the right to develop themselves by fulfilling their basic needs, to obtain benefits from science and technology, to increase their quality of life and further the wellbeing of humankind.²²¹ There is a constitutional right to physical and mental wellbeing, a place of residence, a healthy environment, and healthcare.²²² Indonesian law also provides the rights to: receive special

treatment and protection for vulnerable members of the community;²²³ life, to sustain life and livelihood, peace, happiness and wellbeing, and a healthy environment;²²⁴ self-development, an education, and obtain benefits from science and technology;²²⁵ freedom from torture and inhumane treatment;²²⁶ social security necessary for an adequate existence;²²⁷ and care, education, training, and special assistance at the state’s expense to guarantee quality of life (for the elderly and people with a disability).²²⁸

A 2005 survey by the Ministry of Health found that availability of medicines in Indonesia was poor, prices were high, and many medicines for common treatments were unaffordable.²²⁹ In 2009, the Narcotics Law set out to “ensure the availability of drugs for health services, science and technology development” but it has not succeeded. The RPJMN 2020-2024 identifies that there are shortages of medicines and vaccines and a high dependence on importing pharmaceutical raw materials, and calls for wide-ranging improvements.²³⁰ This was underlined in 2019 with reports of widespread drug shortages.²³¹

Political dialogue and drug control laws have undermined access to controlled substances. In 2011, the WHO suggested that policymakers should go beyond relaxing regulatory restrictions to availability of controlled drugs, and devise and implement policies that promote understanding about the therapeutic value of controlled substances and their rational use, and sensitise drug control and law enforcement personnel to their medical and scientific necessity.²³²

In 2018, the WHO Expert Committee on Drug Dependence recommended that the UN remove cannabis from the

schedule in the 1961 Convention, which lists drugs that are purportedly without medical value.²³³ A growing number of governments, including in Thailand, the Philippines, and South Korea, recognise its medical value. A licence was granted in Indonesia to research cannabis treatment for

certain illnesses in 2015,²³⁴ but cannabis remains in the most restrictive schedule in the Narcotics Law. In the same year that the licence was granted, an Indonesian national was executed for a cannabis-related offence²³⁵ and death sentences are still imposed.

Recommendations

Review legislation and regulatory and administrative mechanisms and procedures to simplify and streamline processes that enable access to controlled substances for medical and scientific purposes, and remove restrictive regulations and impediments (Outcome Document para 2(a)). Such substances should be of a high-quality, safety and efficacy, and should be available and affordable to all (Outcome Document para 2(d)).

High-quality health services, materials and information should be available and accessible to all, health workers should be properly trained and equipped,²⁵⁰ and law enforcement personnel should be sensitised to the medical and scientific necessity of controlled substances.

2.5 Achieve universal health coverage

There are three main objectives to universal health coverage: equity in access to health services for those who need them, the standard of health services should improve the health of those receiving services, and people should be protected against financial risk.²³⁸ The WHO advise that all people and communities should be able to use the health services they need, of sufficient quality to be effective, while ensuring that this does not expose the user to financial hardship.²³⁹ In November 2018, 30 UN entities called for universal health coverage for people with problematic drug use.²⁴⁰

Despite significant geographic challenges in the delivery of health services, Indonesia is leading the way towards financial universal health coverage (SDG target 3.8). This illustrates political will and shows that the government understands the link between sustainable development and the need to invest in the right to health, including an equitable health system.²⁴¹ However, until systemic barriers like criminalisation and stigmatisation are removed, and access to harm reduction services is improved, health coverage will not be universal.

As noted above, the Constitution provides the right for people to develop by fulfilling their basic needs, obtain benefits from

science and technology, increase quality of life, a healthy environment, and health care.²⁴² National laws set out the government's responsibility to realise the highest possible level of health for citizens.²⁴³ The government said that the Social Security System, which supports the health system, covered 66.4% of the population (171.9m people) by the end of 2016, including 40% on the lowest income.²⁴⁴

Indonesia has a health strategy for 2005-2025 and public health was at the core of the RPJMN 2015-2019. The health system focuses on people living in or at risk of poverty and without health insurance.²⁴⁵ The Ministry of Health oversees the system but policy and funding is decentralised to local governments. The government committed to an affordable system that can be accessed by all by 2019.²⁴⁶ The RPJMN 2020-2024 seeks improvements in access to, and the quality of, health services to achieve universal coverage.²⁴⁷

Notwithstanding Indonesia's progress towards the financial aspect of universal health coverage, the level of investment could be increased. In 2015, Indonesia's total health expenditure was 3.3% of the gross domestic product.²⁴⁸ Only three other countries in Southeast Asia allocated less. This amounted to expenditure of US \$111.8 per person on health, significantly lower than many other countries in the region.²⁴⁹

Recommendations

To achieve universal coverage and ensure that no one is 'left behind', Indonesia should guarantee adequate financing by increasing budget allocations for health, and improve the quality, availability and accessibility of health services, without barriers, to people who

use drugs.²⁵¹ Regulations in the health insurance system that deny access to medical benefits for people who use drugs (for example, treatment for hepatitis and tests for HIV²⁵²) should be removed in order to increase access to health services.

3

Reform policies that cause poverty, inequalities and stigmatisation

The 2030 Agenda seeks “a world of universal respect for equality and non-discrimination”. SDG 1 requires Member States to “end poverty in all its forms everywhere” and SDG 10 requires them to “reduce inequality within and among countries.”

When negotiating the 2030 Agenda, the Indonesian government said that, “eradicating poverty is the greatest global challenge and is an indispensable requirement for sustainable development. Therefore poverty eradication, including extreme poverty, is the pathway towards sustainable development.”²⁵³ The RPJPN underlines the principles of equality and non-discrimination, the need to reduce poverty by respecting, protecting and meeting the rights of all people, and calls for equitable and just development.

Implementation of the anti-drug campaign most harms the poorest people in society. The arbitrary nature of the policy has had a profound impact on some of the most vulnerable: driving poverty, inequality, discrimination, marginalisation and stigmatisation, failing to promote social, economic and political inclusion, and creating systemic barriers to development. Indonesia should address the causes of poverty and inequality and prioritise support for all vulnerable groups.

3.1 End poverty of vulnerable people involved with illicit drugs

Over 28 million Indonesians live below the poverty line and 40% of the population are on the national poverty line, around US\$22.60 per month.²⁵⁴ 43.5% of the population (103 million people) live on under US \$2 per day.²⁵⁵ The national poverty rate dropped from 24% in 1999 to 9.8% in 2018 due to sustained economic growth.²⁵⁶ The RPJMN 2015-2019 included a target to reduce the level of poverty to 7-8% by 2019.²⁵⁷ Indonesia’s VNR reports recognised that integrated efforts are needed to achieve zero poverty by 2030 and that poverty reduction has slowed.

The expensive national drug eradication strategy has caused and entrenched inequalities and high levels of poverty, poor health, violence, marginalisation, stigmatisation, injustice, and resulted in some of the most vulnerable people being ‘left behind’. The

National Action Plan for Human Rights 2015-2019 focused on protecting vulnerable groups but did not refer to people with drug dependence or people living with HIV.²⁵⁸ The failure to improve social and economic inclusion for all vulnerable groups, including those affected by the ‘war against drugs’, is at odds with the government’s commitment to tackle poverty.

“Poverty is not only related to lack of income or consumption, but is also related to multidimensional problems, such as education, health and living standards, that cause persons to remain in deprived conditions. ... population groups and regions bound by poverty need special policy interventions.”

Indonesia’s 2017 VNR report

Cannabis has traditionally been cultivated in Indonesia, notably in Aceh, and is the most widely consumed drug in the country. Crystal methamphetamine is the second most widely consumed and the amounts seized have increased in recent years.²⁵⁹ There has been a corresponding growth in the domestic production of methamphetamine and ATS.²⁶⁰ Indonesia has grown to be one of the largest regional producers and exporters of kratom, a tropical tree leaf, and the government has increasingly discussed criminalising it.²⁶¹

Socioeconomic deprivation and marginalisation can lead to involvement in the supply of illicit drugs.²⁶² For many, it can provide an income and access to basic services.²⁶³ These groups are targeted by law enforcement and less able to pay fines, lawyers or bribes, and fill prisons in large numbers.²⁶⁴ Imprisoning people who use drugs and non-violent low-level offenders does not address the causes of poverty or have any impact on the scale of the illicit drug market. Rather, it fuels cycles of poverty, exclusion and marginalisation.²⁶⁵

Indonesia committed in the Outcome Document to address the socioeconomic aspects of the cultivation, manufacture, production, and trafficking in illicit drugs through long-term, comprehensive, balanced, sustainable development-oriented

drug control strategies in urban and rural settings.²⁶⁶ Effective crime prevention requires social policies that target the root causes of engagement in the illicit drug trade.²⁶⁷

Indonesia's commitment to reduce poverty reflects the poverty reduction target under SDG 1: *"By 2030, reduce at least by half the proportion of men, women and children of all ages living in poverty in all its dimensions according to national definitions"* (SDG target 1.2) but is undermined by policies that cause and fuel poverty throughout society.

Policies that drive poverty of vulnerable groups and fail to tackle the root causes of inequality should be reviewed. A wide range of factors should be assessed when trying to understand why people are 'left behind' and to shape effective responses.²⁶⁸ Research in 2019 identified at least nine inter-related dimensions to consider (including disempowerment, institutional maltreatment, social maltreatment, lack of decent work, insufficient and insecure income, and material and social deprivation) to measure poverty and devise appropriate alleviation strategies.²⁶⁹

Recommendations

To bolster efforts to ensure that no one is 'left behind' and to reach the furthest behind first: use human rights-based development indicators in all areas of public policy; integrate the National Action Plan for Human Rights with the national development framework; develop policies that respect human rights and freedoms and protect the health, safety and well-being of all people (Outcome Document para 4(a)); support initiatives that contribute to poverty eradication and the sustainability of social and economic development, and improve social inclusion

and protection (Outcome Document para 7(b)); tackle the causes and consequences of illicit cultivation, manufacture, production of and trafficking in illicit drugs by addressing risk factors affecting individuals, communities and society (Outcome Document para 7(h)); and progress long-term and sustainable development-led programmes to address drug-related socioeconomic factors, including unemployment and social marginalisation (Outcome Document para 5(v)).

3.2 Stop discrimination and stigmatisation

Indonesia committed to *"ensure that all men and women, in particular the poor and the vulnerable, have equal rights to economic resources, as well as access to basic services..."* (SDG target 1.4) and to *"empower and promote the social, economic and political inclusion of all, irrespective of age, sex, disability, race, ethnicity, origin, religion or economic or other status"* (SDG target 10.2). This includes people who use drugs, people with problematic drug use, people living with HIV, vulnerable groups involved with illicit drugs, and others.

The Constitution provides the right to protection against discriminatory treatment.²⁷⁰ Likewise, Indonesian law confers the rights to obtain justice without discrimination,²⁷¹ equal treatment before the law,²⁷² and equality before the law.²⁷³ The Law on the Elimination of Racial and Ethnic Discrimination defines discrimination narrowly as differentiation, exception, limitation, or preference based on race and ethnicity that leads to a revocation (or impaired acknowledgement, acquisition, or implementation) of human rights, freedoms, or equality, in various sectors.²⁷⁴

The Narcotics Law criminalises use and possession of small amounts of illicit drugs for personal use, with substantial minimum fines and prison terms.²⁷⁵ This is not an effective way of curbing drug use or drug trafficking and undercuts government efforts to achieve the SDGs.²⁷⁶ It has resulted in systemic discrimination against people who use drugs and people living with HIV, mass incarceration of people who use drugs and low-level drug offenders, widespread denial of

essential health services, and a prison overcrowding crisis. The national development framework has not stopped these stigmatised and criminalised groups from being 'left behind'.

The Narcotics Law does not distinguish between people who use illicit drugs casually, those who are dependent or drug traffickers, or between the types of trafficking offences and levels of agency. People who use drugs on a recreational basis and people with drug dependence therefore face a severe law enforcement response. In most cases, people found in possession of illicit drugs are prosecuted using trafficking charges. A 2016 study found that 61% of people who use drugs were charged with articles that specify a minimum 4-year sentence.²⁷⁷ Section 5.5 of this report considers the development impacts of criminalisation and incarceration.

Minority, vulnerable and marginalised groups are generally unable to pay bribes, legal costs, or substantial fines: the minimum fine for possession in the Narcotics Law is 400 million rupiah (US \$24,000). The maximum fine for possession is 3 billion rupiah (around US \$180,000). If that cannot be paid, a 2-7 year prison sentence is imposed.

Advocates are reluctant to represent people in drug-related cases due to the stigma. In 2011, LBH Masyarakat found that more than 60% of drug offenders are not represented by lawyers.²⁷⁸ In a 2016 survey of 275 defendants facing charges eligible for a death sentence, 85% were not assisted by a lawyer, despite the right to legal aid.²⁷⁹ Access to high-quality legal aid without barriers can improve compliance with due process guarantees and help reduce prison overcrowding.

A 2018 study underlined that imprisoning people who use drugs in Indonesia, without investing in health services, was not effective in combating illicit drug use.²⁸⁰ The study noted that the government allocates 6.5 billion rupiah (US \$460,000) of the total 'war on drugs' budget of 1.9 trillion rupiah (US \$135 million) to public health programmes, but no evidence that the 'war on drugs' was achieving its objectives. The study proposed increasing public health spending for people who use drugs from 0.3% of the counter-narcotics budget to 10% by 2020, but this was not taken up by the government.

The RPJMN 2020-2024 recognises that changes in perspectives, and attitudes orientated towards progress and modernity are central aspect of national development.²⁸¹ Indonesia's government acknowledges that improving access to, and the quality of, health services for all groups is needed to end poverty,²⁸² that not enough attention is given to whether vulnerable groups are deprived of services, and that equitable welfare will not be possible where certain groups are excluded.²⁸³ To truly 'leave no one behind', Indonesia should promote societal changes to stop discrimination against people who use drugs, particularly in health services.²⁸⁴

Decriminalise minor, non-violent drug offences

The UN drug control treaties do not require Member States to criminalise illicit drug use or possession for personal use.²⁸⁵ Indeed, the INCB,²⁸⁶ the UN Special Rapporteur on the right to health,²⁸⁷ the UN Committee on Economic, Social and Cultural Rights,²⁸⁸ and the UN High Commissioner for Human Rights²⁸⁹ recommend decriminalising personal use and possession. In June 2017, 12 UN entities recommended repealing laws that criminalise drug use or personal possession.²⁹⁰ In March 2019, 30 UN entities endorsed decriminalisation, calling for evidence-based policies centred

on people, health, and human rights, in the UN System's Common Position on Drug Policy.²⁹¹

Criminalisation of drug use and possession for personal use deters people from accessing essential health services, which increases exposure to risky drug-taking practices.²⁹² It fuels stigmatisation and discrimination (barriers to key populations accessing health services) impedes efforts to reduce prevalence rates of diseases, and causes economic, health, and social inequalities. Stigmatisation also undermines relationships with families, friends, health professionals²⁹³ and the criminal justice system. This undercuts the RPJPN's long-term goals of equal opportunities to enhance standards of living, access to work, to social, education and health services, to obtain protection and equal treatment before the law, and an Indonesian nation that does not allow any form of discrimination.

As well as driving poverty amongst the most vulnerable, criminalising people who use drugs has contributed to a prison-overcrowding crisis (considered in section 5.1 of this report) that is putting a huge strain on Indonesian society and the criminal justice system. People with criminal records for drug offences are less likely to obtain decent work, access education, housing, health and social services, and so enter a cycle of poverty²⁹⁴ with negative impacts on their families, communities, and society. During a high-level dialogue at the start of 2020, the Ministry of Law and Human Rights underlined a commitment to address prison overcrowding caused by incarceration of people who use drugs.²⁹⁵

Decriminalising drug use and personal possession, along with effective prevention and treatment, can reduce drug use and mortality rates.²⁹⁶ It can also reduce pressure on law enforcement agencies, enabling them to focus on violence, organised crime, corruption, and money laundering. It would help address overcrowded prisons, freeing up resources to develop social and health measures and good governance.

Case study: decriminalisation in Portugal

In 2001, to tackle the deteriorating health of people who use drugs in Portugal, the government decriminalised drug consumption and possession for personal below certain quantity thresholds, and scaled up harm reduction and treatment service availability and access. Possession for personal use is now an administrative offence, with regional panels of health, legal and social professionals deciding on possible penalties (including fines and community service) as well as voluntary referrals to health and social services. Among other improvements following the changes, illicit drug use declined among those aged 15-24, the number of new cases of HIV and AIDS declined, deaths due to drug use decreased significantly, and the proportion of drug-related offenders in prisons decreased.²⁹⁷

At least 26 countries have decriminalised drug use and possession for personal use and others plan to follow. In June 2019, Malaysia's government announced plans to remove criminal penalties for use and possession of small amounts, *"as a critical next step towards achieving a rational drug policy that puts science and public health before punishment and incarceration"*.²⁹⁸ Countries that have decriminalised drug use and possession for personal use, and invested in harm reduction services, have lower prevalence of new HIV diagnoses among people who inject drugs and lower rates of drug-related deaths²⁹⁹ – two key objectives in Indonesia.

Restorative justice focuses on repairing harms caused by crime through communication and reintegration. The approach has emerged in Indonesia as a way of tackling prison overcrowding. It is part of the National Strategy for Access to Justice, the National Action Plan for Human Rights 2015-2019, and a focus of the RPJMN 2020-2024.³⁰⁰ The criminal justice system is not suitable for dealing with the harms associated with problematic drug use, but the emphasis on restorative justice in Indonesia is a step towards non-punitive mechanisms that can achieve more effective outcomes and a fairer and more just society.

Recommendations

Revise the Narcotics Law to remove criminal penalties for use of illicit drugs and possession for personal use and release from prison - and expunge the sentence of - anyone convicted of those offences.

Expand the range of non-custodial alternatives to imprisonment through revisions to the Criminal Code, and include referral to health services, voluntary and community-based rehabilitation programmes and other interventions founded on evidence, human rights, and development.³⁰¹ Scale up the number of law enforcers certified to provide restorative justice.

Amend Law 40 of 2008 on the Elimination of Racial and Ethnic Discrimination so the definition of 'discrimination' includes, among others, people who

use drugs and people living with HIV. Introduce public awareness-raising campaigns to combat discrimination against people who use drugs and people living with HIV.³⁰² Work to eliminate discrimination experienced by people who use drugs, including while accessing health, legal, education, employment and social protection services, or when interacting with law enforcement.³⁰³

Involve people who use drugs in the development and implementation of outreach programmes and campaigns that seek to prevent social marginalisation, promote non-stigmatising attitudes, encourage people who use drugs to seek treatment and care, and facilitate access to treatment and expand capacity (Outcome Document para 1(j)).

3.3 End mandatory reporting of people who use drugs

The Narcotics Law established a framework for compulsory registration, self-reporting and reporting of people who use drugs.³⁰⁴ This obliges people over the age of 18 who use illicit drugs to report themselves or others for enrolment in compulsory rehabilitation. Family members who fail to report a "drug abuser" face up to six months in detention.³⁰⁵

Mandatory reporting, and fear of arrest for drug use, makes people hide their use from families and friends, fuelling marginalisation and driving people from essential health services and towards poor health and poverty. The Narcotics Law does not define "drug abuser" or "drug dependent" or

distinguish between casual drug use and use that could be considered clinically dependent.³⁰⁶ This substantially widens the net of people who could be subject to mandatory reporting and compulsory treatment, further undermining social and economic development. In a 2016 study, many people reported feeling forced or manipulated into reporting by staff deployed by facilities that receive government funding based on the numbers of people who report.³⁰⁷

Mandatory reporting infringes fundamental rights, including the right to privacy, and undermines progress towards ensuring that all people, particularly the poor and vulnerable, have equal rights and access to basic services (SDG target 1.4). It drives poverty and inequalities, damages public health, and is not a sound policy framework based on a pro-poor development strategy (as required by SDG target 1.B).

Recommendations

Amend the Narcotics Law to distinguish drug dependence from non-problematic drug use, according to internationally agreed scientific standards, and remove the framework for compulsory registration, reporting and self-

reporting of people who use drugs. Ensure that people with drug dependency can access effective, evidence-based treatment options, to suit their individual needs, without the involvement of law enforcement agencies.

3.4 Human trafficking and drug couriers

Drug couriers are people who carry drugs for someone else, usually across international borders, and play a relatively minor role in drug trafficking. The position is characterised by significant risk, little reward, high levels of exploitation, and a lack of control over one's actions or opportunity for decision-making.³⁰⁸ In some cases, drug couriers are very vulnerable and

fulfil the criteria for human trafficking. People are sentenced to death in Indonesia for minor, non-violent, courier roles. Some are victims of human trafficking or otherwise exploited, and either misled about the risks of trafficking drugs or sufficiently vulnerable to accept the risk of being executed, and in some cases, ingesting drugs.

The ASEAN Plan of Action Against Trafficking in Persons, Especially Women and Children, calls for victims of human

trafficking to be protected and not held criminally liable for offences related to their trafficking.³⁰⁹

International bodies that have identified that victims of human trafficking should not be criminally liable for offences relating to their trafficking, and that Member States should take steps to identify and protect victims include: the UN Office of the High Commissioner for Human Rights,³¹⁰ UN General Assembly,³¹¹ UN Working Group on Trafficking in Persons,³¹² Council of Europe,³¹³ Group of Experts on Action against Trafficking in Human Beings,³¹⁴ European Union,³¹⁵ and Organisation for Security and Co-operation in Europe.³¹⁶

Indonesia has a commitment to combat all forms of organised crime (SDG target 16.4). However, drug crime prevention and law enforcement in the country focuses mainly on people who use drugs, couriers, and other low-level, non-violent offenders, rather than social policies that tackle the root causes of involvement in drug-related crime, or law enforcement focused on violent or organised crime.

Indonesia also committed in the Outcome Document to, *“long-term and sustainable development programmes to address the most pressing drug-related socioeconomic factors, including unemployment and social marginalisation, conducive to their subsequent exploitation by criminal organisations involved in drug-related crime”*³¹⁷ and to develop viable economic alternatives for communities affected by, or at risk of, illicit drug-related activities in both urban and rural settings.³¹⁸

Indonesian police, courts and prosecutors do not distinguish couriers from those with responsibility for drug trafficking operations, or consider their socioeconomic vulnerability, level of education, caretaking responsibilities, or susceptibility to coercion. In October 2017, the government recorded 165 death row prisoners who had exhausted their legal appeals.³¹⁹ 20 (12%) had no education. 42 (25.5%) left school between the ages of 6 and 11. 84 (51%) had left school by the age of 14. Over 91% had no higher education.

All 18 people executed in 2015-16 were convicted of drug offences: 11 (61%) were allegedly couriers apprehended at transport hubs, 4 of whom allegedly took the potentially fatal risk of carrying drugs in their stomachs. They were poor and vulnerable, and yet many were reportedly in possession of drugs worth hundreds of thousands of US dollars. They could not afford bribes or legal fees, and suffered unfair trials. The UN

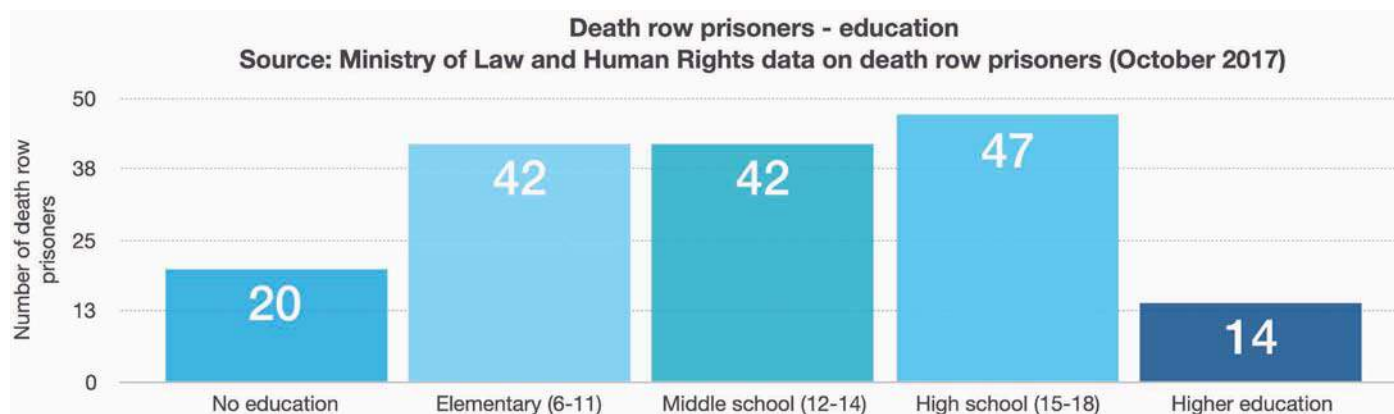
High Commissioner for Human Rights underlined the link between SDGs, poverty, rule of law, and the death penalty.³²⁰

In 2011, Indonesia’s government established a taskforce to coordinate assistance for Indonesians facing death sentences overseas. The taskforce’s achievements are considerable. Between 2011 and 2014, 240 Indonesians facing death sentences overseas had their sentences reduced.³²¹ The RPJMN 2015-2019 included a target to further increase the quality of protection of Indonesians abroad.³²² In March 2018, the government confirmed that 392 of the 583 Indonesian nationals sentenced to death between 2011 and 2018 had been released.³²³

The government recognises the vulnerability of, and provides assistance to, those facing death sentences overseas, but treats vulnerable and coerced drug couriers differently at home. Blaming the illicit drug market on couriers and executing them is counterproductive, particularly when the government takes a different approach to Indonesian couriers overseas. Until the socioeconomic factors conducive to exploitation by criminal organisations are properly addressed, there will be no reduction in the scale of drug trafficking, and couriers and trafficking victims will continue to be ‘left behind’ in Indonesia and on death rows around the world.

Recommendations

In line with the ASEAN Plan of Action Against Trafficking in Persons, Especially Women and Children, ensure that victims of human trafficking are identified and protected and that they are not held criminally liable for offences, including drug-related offences, related to their trafficking.³²⁴ Issue guidelines to the courts and law enforcement agencies to ensure that drug couriers are not given sentences that are disproportionate to their minor roles, and to focus police resources on violent organised crime and the confiscation of assets and proceeds of crime, rather than on drug couriers.





4 End violence and discrimination, and improve access to justice and the rule of law

SDG 16 requires Indonesia to “Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.”

At the national level, the RPJPN strives for a nation based on the rule of law, by upholding human rights, non-discriminatory law enforcement that respects human rights, truth, and justice, and by applying principles of good governance at all levels. The RPJMN 2015-2019 aimed to increase the quality and fairness of law enforcement, to make it efficient, effective, transparent and accountable for vulnerable groups and those seeking justice.³²⁵

The government has ratified key conventions and committed to human rights principles, sought to uphold human rights as a principle of development, given effect to the National Human Rights Commission, and adopted a National Action Plan on Human Rights. A Code of Conduct and 2002 Police Law improved the responsiveness of criminal justice agencies to human rights issues.³²⁶ Improved governance and equitable access to justice for all is a government priority for 2016-2020.³²⁷

However, the punitive drug eradication strategy has increased violence and discrimination, caused the rule of law, governance, and national institutions to deteriorate, led to disproportionate sentences (often imposed following trials that fall short of international standards), and caused extensive prison overcrowding and other strains on the criminal justice system.

4.1 Address discriminatory practices in drug law enforcement

Indonesia has committed to, “Promote and enforce non-discriminatory laws and policies for sustainable development” (SDG target 16.B) and to “Ensure equal opportunity and reduce inequalities of outcome, including by eliminating discriminatory

laws, policies and practices and promoting appropriate legislation, policies and action in this regard” (SDG target 10.3).

The Constitution provides rights to: just legal recognition, guarantees, protection, and certainty, and equal treatment;³²⁸ and to equal treatment before the law.³²⁹ Constitutional guarantees are wider than the definition of discrimination in Law 40 of 2008 on the Elimination of Racial and Ethnic Discrimination. Indonesian law further provides rights to: justice without discrimination;³³⁰ life, not to be tortured, to be recognised as an individual, equality before the law;³³¹ equal treatment and just support and protection from an objective and impartial judiciary.³³²

Discrimination is prohibited in various treaties ratified by Indonesia, including the International Covenant on Civil and Political Rights (ICCPR), and the International Convention on the Elimination of All Forms of Racial Discrimination in 1999. Despite Indonesia’s commitment to the 2030 Agenda, the RPJPN’s pursuit of an Indonesia free from discrimination, and obligations accepted under international law, the drug eradication strategy is marked by discrimination.

There is a widely held misperception in Indonesia, fuelled by the media and application of death sentences and executions, that foreign nationals are disproportionately responsible for illicit drug-related activities.³³³ Comments by senior parliamentarians and law enforcement officers on the ‘drug emergency’ reinforce the perspective that drugs are a corrupting influence brought into the country and that a severe national response will end supply and demand. In fact, drugs have a long indigenous history and their production and trafficking are well-established domestic industries.³³⁴

Practices that include the criminalisation of drug use, mandatory reporting, focusing on the apprehension of couriers (i.e. those most visible but also most vulnerable in

the illicit drug trade), and unaffordable fines, mean that socioeconomically deprived, vulnerable, and marginalised groups are often arrested, given disproportionate sentences, and sometimes executed. Stigma renders them more vulnerable to torture and ill-treatment.

By way of example, the number of foreign nationals arrested as suspects in police drug investigations is around 0.4% of total arrests each year.³³⁵ However, research by Reprieve shows that they account for around two thirds of people sentenced to death in Indonesia for drug offences between 1999 and 2017, and half of people on death row for drug offences as at December 2018. Executions of drug offenders have also disproportionately affected foreign nationals, including couriers unable to pay fines, bribes or lawyers. All of the executions since 2015 were of alleged drug offenders and 15

of the 18 people executed in 2015-16 were foreign nationals, predominantly couriers.

Certain groups in Indonesia have received disproportionately more death sentences. Between 1999 and 2016, at least 30 Nigerian nationals were sentenced to death in the country, roughly one third of all drug-related death sentences given to foreign nationals in the period. Twelve Nigerian nationals were executed since 2008: 20% of the people executed in 2008 and 2013 were Nigerian, 33% in January 2015, 50% in April 2015, and 75% in 2016. As well as disproportionate death sentences and executions relative to the reported rate and scale of offences, there is evidence of bias in the justice system.³³⁶

In 2008, the then UN Special Rapporteur on extrajudicial, summary or arbitrary executions wrote to the Indonesian government to question the disproportionate number of foreign nationals, particularly from Africa, on death row for drug offences.³³⁷ Another letter sent in 2017 raised concerns about unfair trials and disproportionate targeting of Nigerian nationals for death sentences and executions.³³⁸ The reportedly lower number of Nigerian nationals arrested for drug-related offences since 2017 appears to have followed constructive engagement by the authorities in Indonesia and Nigeria

Instead of taking action to eliminate conditions that cause or perpetuate discrimination,³³⁹ some authorities have supported police violence against suspected foreign drug offenders.³⁴⁰ State-sanctioned targeting of vulnerable and marginalised groups does not ensure equal access to justice, promote and enforce non-discriminatory policies, or reduce violence, poverty or inequalities, as required by the SDGs.

Number of suspects arrested in drug investigations			
	Indonesian nationals	Foreign nationals	Percentage foreign nationals
2011	36,571	161	0.44%
2012	35,524	116	0.33%
2013	43,885	127	0.30%
2014	43,264	195	0.45%
2015	51,158	174	0.34%

Source: BNN (2016) Data Analysis on the Prevention and Eradication of Illicit Narcotics Trafficking and Abuse

Recommendations

As part of the programme to sensitive law enforcement personnel, prosecutors, and the judiciary to balanced, sustainable development-led responses to the use and supply of illicit drugs: provide systematic and continuous training to ensure that drug law enforcement is not discriminatory, starting from basic human rights principles to more complex and specific issues.

Data on investigations, arrests, prosecutions, and sentences should be monitored by a body that is independent of law enforcement agencies, to ensure that foreign nationals are not disproportionately targeted or sentenced, and to help address any racial disparities in the criminal justice system and ingrained narratives about the illicit drug market.

4.2 Stop torture and other forms of ill-treatment

SDG 16 seeks a peaceful and inclusive society, promotion of the rule of law (SDG target 16.3), significant reductions of all forms of violence (SDG target 16.1) and the strengthening of national institutions, including through international cooperation, for building capacity at all levels, to prevent violence, terrorism and crime (SDG target 16.A).

The Outcome Document promotes the implementation of measures to “uphold the prohibition...of torture and other cruel, inhuman or degrading treatment or punishment”.³⁴¹

In 2007, a former UN Special Rapporteur on torture concluded that torture was “*routine practice*” in police stations in and around Jakarta.³⁴² In 2008, the UN Committee Against Torture raised concerns about numerous, credible, consistent allegations of routine, widespread use of torture and ill-treatment of suspects in police custody, particularly to extract confessions.³⁴³ In a 2015 review of 42 people sentenced to death, at least 11 had experienced police intimidation or torture.³⁴⁴ In 2018, 84% of responding police officers said torture is common during investigations.³⁴⁵

There are also reports of police violence against people who use drugs. In a 2008 survey, 667 of 1,106 people who

inject drugs (60% of those interviewed) reported physical abuse by police. The figure was 95% in Jakarta, 94% in Denpasar, and 85% in Medan.³⁴⁶ In a 2009 survey, almost all people who injected drugs, across nine cities, had suffered police abuse.³⁴⁷ As section 6 of this report identifies, women are particularly affected and more likely to be targeted by the police.

The Convention Against Torture (CAT), which Indonesia has ratified,³⁴⁸ obliges the country to evaluate interrogation methods and procedures to avoid torture, and statements obtained through torture must not be used as evidence. The Constitution and national law guarantee a right to freedom from torture and degrading treatment.³⁴⁹ The Criminal Procedure Code prohibits the use of coerced confessions³⁵⁰ but it does not include strict regulations to ensure the exclusion of evidence obtained through torture from court proceedings.³⁵¹ Nor does it include safeguards to protect against torture³⁵² or regulate in detail the process for substantiating allegations of torture and coercion.³⁵³

The system to investigate complaints of torture by police in Indonesia is opaque and inaccessible, with high levels of impunity. Police or security forces perpetrating torture would be charged with assault or subject to disciplinary actions and, if they are found guilty in court, the sentence would be relatively low. The RPJMN 2015-2019 recognised the need to improve

the handling of complaints of human rights violations.³⁵⁴ This is a requirement of the CAT, and essential both for the rule of law and to have in place effective, accountable and transparent institutions (SDG target 16.6).

Progress has been made on setting up a national authority to prevent, manage or investigate torture cases, one of the requirements of the CAT. Five state institutions have an agreement to monitor places of detention using the framework of a national preventive mechanism.³⁵⁵ Monitoring is important for Indonesia to gather data on SDG indicators, for example, the proportion of the population subjected to violence in the past 12 months (16.1.3) or proportion of victims of violence in the past 12 months who reported to authorities (16.3.1).

The RPJMN 2015-2019 called for law enforcement that is equitable, free from corruption, and that protects children, women and marginalised groups.³⁵⁶ To achieve these and other aims, torture and other forms of ill-treatment by law enforcement agencies must stop. The RPJMN 2020-2024 points towards important reforms, and underlines the need to improve the criminal law system and give restitution to victims of human rights violations.³⁵⁷

Recommendations

Adopt a national anti-torture action plan that implements awareness raising programmes and training for all police, prosecutors and judges.³⁵⁸ As part of that plan, implement a policy that requires prosecutors and judges to ask persons arriving from police custody about their treatment, without police present, and order an independent medical examination in accordance with the Istanbul Protocol if they are known or suspected to have suffered ill-treatment.³⁵⁹

Align the Criminal Code with the provisions of the CAT and regulate all forms of torture. Ratify the Optional Protocol to the CAT and expedite progress towards setting up an effective national preventive mechanism.³⁶⁰ Establish a framework for prompt, independent, impartial, effective investigations into any claims of coercion, torture, inhuman and degrading treatment.³⁶¹ Ensure that evidence obtained through these actions is inadmissible in court proceedings by enhancing safeguards in the Criminal Procedure Code.

4.3 End extrajudicial killings of alleged drug suspects

Indonesia committed to “Significantly reduce all forms of violence and related death rates everywhere” (SDG target 16.1), “Promote the rule of law at the national and international levels and ensure equal access to justice for all” (SDG target 16.3), protect fundamental freedoms (SDG target 16.10), and strengthen national institutions for building capacities to prevent violence and crime (SDG target 16.A).

In spite of those commitments, there has been an increase in killings of alleged drug suspects by Indonesian law enforcement since 2015. In recent years, a number of senior political and law enforcement officials have endorsed the killing of alleged drug suspects: encouraging officers to shoot suspected drug traffickers, particularly foreign nationals, who resist arrest;³⁶²

prioritising the killing of drug suspects over arrests and prosecutions;³⁶³ instructing officers not to hesitate to shoot drug dealers who resist arrest;³⁶⁴ hoping suspects resist arrest so they could be shot;³⁶⁵ declaring a shoot to kill policy for suspects who resist arrest;³⁶⁶ supporting the killings because legal proceedings can take a long time;³⁶⁷ and framing extrajudicial killings of suspected drug offenders as “measurable and decisive actions”.³⁶⁸

“Discriminatory practices against vulnerable groups can hinder inclusive development. Peaceful society will not be reached if violence still prevails and in the absence of safety.”

Indonesia's 2019 VNR report

At least 49 drug suspects were killed by police in the first 6 months of 2017 (an increase from 14 in 2016 and 10 in 2015), with over one third occurring after suspects surrendered to the police.³⁶⁹ Another study recorded 97 killings in 2017 and suggested that police may have interpreted orders to shoot on sight.³⁷⁰ In September 2017, the Ombudsman raised concerns about an informal policy implemented by police.³⁷¹ In 2019, one provincial police division confirmed they had shot and killed 40 alleged drug suspects over the previous two years.³⁷² The BNN claimed to have shot and killed 35 suspected drug traffickers in 2019, 32 of whom were Indonesian nationals.³⁷³

The Constitution provides that Indonesia is a state based on law not force.³⁷⁴ It also guarantees fundamental rights to: life;³⁷⁵ protection against torture or degrading treatment;³⁷⁶ just legal recognition, guarantees, protection, and certainty, and to equal treatment before the law.³⁷⁷ The RPJPN includes targets to ensure impartial law enforcement that respects human rights, truth and justice, and recognises that human rights must be respected in drug law enforcement.³⁷⁸ The RPJMN 2015-2019 aimed to build a professional police department and increase trust in the police.³⁷⁹ It called for law enforcers to be given human rights training³⁸⁰ to end violence and extrajudicial killings. The RPJMN 2020-2024 calls for a more professional police service. Use of lethal force by law enforcement officers must be within the national framework and in accordance with human rights law and standards of strict necessity,³⁸¹ which includes proportionality and reasonableness.³⁸²

Extrajudicial killings contravene the 2030 Agenda and call into question commitments to development and international law. The illicit drug market is not inherently violent³⁸³ but drug law enforcement has caused and sustained violence. Each killing, whether extrajudicial or judicially and politically sanctioned, is a violent manifestation of the anti-drug campaign, a blow to Indonesia's ambition to be a pioneer of development, and has no impact on the scale of the illicit drug market.

The UN General Assembly has called for respect for human rights in efforts to control illicit drugs,³⁸⁴ a position that is reflected in the Outcome Document. The UN High Commissioner for Human Rights said the right to life should be respected and protected by law enforcement agencies in drug control efforts, and only proportionate force used when necessary.³⁸⁵ Special Rapporteurs have echoed the need to judge drug trafficking offences in court.³⁸⁶ State-sponsored violence against those suspected of involvement in drug-related activities has also been criticised by, among others, the INCB,³⁸⁷ UNODC,³⁸⁸ and the Human Rights Council.³⁸⁹

Sustainable development depends on effective rule of law as well as peaceful, just, inclusive societies, with equal access to justice, respect for human rights, good governance, and transparent, effective and accountable institutions.³⁹⁰ The Doha Declaration described the rule of law and sustainable development as interrelated and mutually reinforcing.³⁹¹

Recommendations

Senior politicians and law enforcement personnel should end the rhetoric and tacit acceptance around the killing of drug suspects by publicly declaring the primacy of rule of law and due process rights for all criminal suspects, including in drug-related cases.

Law enforcement officials should always adhere to the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. All killings by public officials need to be investigated promptly and thoroughly by an independent and impartial body, and contravening officials should be held accountable and prosecuted in a proportionate way.

4.4 Improve fair trial safeguards and implementation of existing safeguards

The lack of fair trial safeguards and poor implementation of existing safeguards in Indonesia have impeded development. Domestic legal standards need to be strengthened and developed and any breaches in practice addressed. Aligning other areas of Indonesian law with international standards (including the ICCPR³⁹² and the Outcome Document) would further support development. Indonesia committed in the Outcome Document to implement a criminal justice response to drug offences that ensures legal guarantees, due process safeguards and fair trial rights (paragraph 4.o).

SDG 16 requires Indonesia to “Promote the rule of law at the national and international levels and ensure equal access to justice for all” (SDG target 16.3) and “Develop effective,

accountable and transparent institutions at all levels” (SDG target 16.6). Gender-specific measures that the UN has called on Member States to integrate into crime prevention and criminal justice systems³⁹³ are considered in section 6 of this report.

Pre-trial detention of drug suspects

One of the indicators to achieving SDG target 16.3 (promote the rule of law and ensure equal access to justice) is the number of unsentenced detainees as a proportion of the prison population (SDG indicator 16.3.2). While the number of people held in pre-trial detention has increased in Indonesia, the proportion of the overall prison population has decreased since 2005, amounting to 27% of the prison population in 2019.³⁹⁴

The Criminal Procedure Code allows law enforcement agencies to arrest persons suspected of a crime where there is “sufficient preliminary evidence” of an offence,³⁹⁵ although what constitutes

“sufficient” is open to interpretation. The Narcotics Law turned vaguely defined drug-related activities into serious offences and some acts may fall within more than one offence. This ambiguity gives the authorities broad discretion when bringing charges and sentencing.³⁹⁶

Under international standards that Indonesia has committed to, anyone arrested or detained on a criminal charge should be brought promptly before a judge or other official with judicial powers, and will be entitled to trial or release within a reasonable time.³⁹⁷ Delays should not exceed a few days from the date of arrest.³⁹⁸ Pre-trial detention should be a last resort for the shortest possible time and only for the most serious offences.³⁹⁹ Indonesian law does not stipulate how long investigations or prosecutions can last and there is no mechanism to challenge detention periods. Challenges to the legality of arrest or detention can be made at a pre-trial hearing,⁴⁰⁰ but otherwise cannot be raised in the trial.⁴⁰¹ Any complaint about arrest or detention is logged with the police, the body that is the subject of the complaint.⁴⁰²

In 2007, the UN Special Procedures said it was “standard procedure” among Indonesian police to detain suspects for the full 61 days provided by law, and recommended that Indonesia reduce the maximum pre-trial detention period to 48 hours - this was not taken up.⁴⁰³ Some people are detained for up to 9 months before sentencing, although in most cases between 2 and 4 months.⁴⁰⁴ The proportion of pre-trial detainees who exceeded the maximum period increased from 2.6% in 2015 to 3.1% in 2017.⁴⁰⁵ Pre-trial detention of drug suspects can lead to bribery, harassment and abuse from the police.⁴⁰⁶

Long periods of pre-trial detention have compounded the prison-overcrowding crisis (considered in section 5.1 of this report), raising concerns for a strained system.⁴⁰⁷ It also undermines the presumption of innocence. Defendants freely awaiting trial have a better chance of acquittal than those in pre-trial detention.⁴⁰⁸ Arbitrary detention for drug-related offences has a disproportionate impact on women, children, minority groups and people who use drugs.⁴⁰⁹

Year	Number in pre-trial / remand imprisonment	% of total prison population	Pre-trial / remand rate (per 100,000 of population)
2000	20,980	39.3%	10
2005	41,863	41.9%	18
2010	47,048	39.9%	20
2015	57,547	32.6%	22
2018	70,160	28.5%	26
2019	69,407	27%	26

Source: World Prison Brief (31 December 2019) Indonesia, <http://www.prisonstudies.org/country/indonesia>

Access to an impartial tribunal

Equal access to justice, and effective, accountable and transparent institutions, are both central to human rights protection and SDG 16. International law guarantees rights that aim to ensure the proper administration of justice, including the rights to be presumed innocent until proven guilty and the right to a “fair and public hearing by a competent, independent and impartial tribunal.”⁴¹⁰

Indonesian law provides the presumption of innocence to all persons arrested, detained, or prosecuted on suspicion of committing a crime, until otherwise proven guilty in court.⁴¹¹ The law also provides that every person suspected, arrested, detained, prosecuted, or summoned before the courts should not be considered guilty without a binding judicial decision.⁴¹²

The Criminal Procedure Code places the burden of proof on prosecutors to establish guilt.⁴¹³ In some instances that is reversed. This is true, for example, for defendants charged under Article 98 of the Narcotics Law, who are responsible for demonstrating that certain assets are not proceeds of drug-related crime. The Narcotics Law also presumes that individuals found with certain amounts of drugs were committing the act of drug trafficking.⁴¹⁴ In 2019, Malaysia’s Federal Court found a similar presumption to be unconstitutional.⁴¹⁵

Drug-related judgments typically include, as an aggravating factor, the supposed national impact of an offence and how it contravenes the anti-drug strategy. The Indonesian Supreme Court has held that being a foreign national is an aggravating factor in sentencing for narcotics offences.⁴¹⁶ All of this raises questions of impartiality and whether drug-related judgments reflect justice, as required by the RPJPN and the SDGs.⁴¹⁷

Access to competent legal representation

Indonesian law gives a defendant the right to a lawyer of their choosing during an investigation and trial⁴¹⁸ and recognises that legal assistance must be effective.⁴¹⁹ Lawyers reported for not carrying out their duties are often not investigated. The Advocate Law and Advocate Code of Ethics regulate professional guidelines for lawyers, but there is no effective oversight and enforcement of those guidelines by the judiciary in court proceedings or by the Bar Association.⁴²⁰

In practice, many detainees report having no lawyer present during policy questioning. This is partly because police do not have to inform them of this right so many are not aware of it. The Criminal Procedure Code contains no clear, comprehensive articulation of a defendant’s fundamental rights or the principles

that underpin the criminal justice system. Law enforcers also report a lack of available funds to procure suitable lawyers and interpreters for defendants.⁴²¹

The law provides that people who could be sentenced to death or imprisonment for at least 15 years, or are considered 'poor' and could be sentenced to 5 years, should be appointed counsel free of charge.⁴²² Suitably qualified lawyers are not always provided during investigations or court proceedings, and legal aid lawyers are usually junior. Lawyers have additional responsibilities in capital cases⁴²³ but the counsel allocated often fall short of international standards.

In 2011, the National Commission on Human Rights concluded that out of 56 cases of people sentenced to death, 10 did not receive legal counsel at the beginning of the police interrogation or the investigation.⁴²⁴ A 2015 report found that in 42 death penalty cases, 11 defendants were denied counsel in the police investigation and court proceedings.⁴²⁵ Another report from the same year documented 12 death penalty cases where the defendants were deprived of legal counsel.⁴²⁶

The RPJMN 2015-2019 aimed to optimise legal aid and judicial services, motivated by a commitment to increase the fairness of law enforcement and provide free legal assistance to the poor.⁴²⁷ It identified the need to increase the availability of legal aid services for marginalised groups but did not refer expressly to foreign nationals or people who use drugs.⁴²⁸ Similarly, the National Action Plan for Human Rights 2015-2019 sought to increase legal assistance and advocacy for vaguely defined 'vulnerable groups'.⁴²⁹

The legal aid system, launched in 2013, is designed to provide free legal assistance to all poor people in criminal, civil and administrative matters.⁴³⁰ The Ministry of Law and Human Rights oversees the funding and delivery of legal aid.⁴³¹ The government is required to allocate a portion of the annual budget to legal aid⁴³² but the law does not specify how the amount should be calculated and the funds distributed. The relatively small budget and complex accreditation and reimbursement systems reduced its impact, with funding available, on average, for six cases per accredited organisation each year.⁴³³ In 2013, the government allocated \$3 million to legal aid but used less than one third of it.⁴³⁴ Legal aid organisations are not evenly distributed: in 2016, 22% of Indonesia's 508 districts had one.⁴³⁵ By 2018, there were only 405 legal aid offices in the country.⁴³⁶

There have been some improvements in the range of work funded. In 2017, the number of people receiving legal aid for non-litigation and litigation activities was 3,255 and 14,981 respectively. In 2018, that increased to 78,557 and 18,733.⁴³⁷

Access to a suitably qualified interpreter

Under international standards, foreign nationals, or those who do not understand the language used in court, are entitled to the assistance of an interpreter, free of charge, following arrest, including during questioning, and at all other stages of the proceedings.⁴³⁸ Defendants have the right to be informed of the nature and cause of charges in a language they understand.

The Criminal Procedure Code gives suspects or defendants

who do not understand Bahasa Indonesia the right to the assistance of an interpreter, "*at the stages of investigation and adjudication*".⁴³⁹ It does not, however, regulate their competency or ensure a suitably qualified interpreter free of charge. Suitable translators frequently are not provided in proceedings to enable defendants to overcome the language barrier, and the range of languages available is limited. A comprehensive solution is required to overhaul and regulate the system.

Reconsideration and appeal

A right of appeal must be adequate and effective.⁴⁴⁰ In addition to the basis of the conviction, an appeal must provide "*for a full evaluation of the evidence and the conduct of the trial*".⁴⁴¹ The substance of convictions and sufficiency of evidence should be reviewable.⁴⁴² For an appeal to be effective, an appellant has to be given the practical means - including access to the court record, the reasons for the verdict, and the assistance of suitably qualified counsel.

Indonesian law requires written judgments to include the articles of legislation forming the basis for the imposition of the penalty and for the basis of the judgment.⁴⁴³ Indonesian judicial decisions relating to drug-related crimes are often short, inconsistent with other judgments, lack substantive legal reasoning or analysis and, as noted above, identify the presumed impact of a drug offence as an aggravating factor.

The right to clemency

The right to pardon or clemency must be available in all cases.⁴⁴⁴ A clemency procedure serves as a final safety valve when new evidence emerges, enables account to be taken of post-conviction developments, and provides an opportunity for the political process to show mercy to someone whose life would otherwise be forfeited.⁴⁴⁵ A clemency procedure should not "*effectively negate the right enshrined*".⁴⁴⁶

In Indonesia, there is a right to individual consideration, by the President, of the merits of a clemency application.⁴⁴⁷ Indonesian law provides that in issuing a Presidential Decree on clemency, the President should reasonably consider each application.⁴⁴⁸ Since December 2014, however, President Widodo made it clear that clemency petitions from drug offenders will be rejected on a uniform basis.⁴⁴⁹ This lack of a reasoned consideration negates the right, means that important evidence may be ignored after appeals have been exhausted, and may lead to arbitrary executions.⁴⁵⁰

On 15 June 2016, the one-year limitation in which to apply for clemency after a decision becomes 'final and binding'⁴⁵¹ was overturned by the Constitutional Court.⁴⁵² The Court held that clemency is important for prisoners and the state: it can be used to reduce overcrowding, and it may provide a way out for elderly prisoners or those suffering from illness. The denial of clemency in Indonesia does not ensure access to justice or promote the rule of law in accordance with the SDGs. In 2017, the Ombudsman identified systemic and institutional failings by government agencies and others in the July 2016 executions, in part because the right to clemency has not been respected.⁴⁵³ At least half of the 18 people executed in 2015-16 had not concluded all legal challenges or their clemency process.

Recommendations

Ensure procedural safeguards and legal guarantees for all persons investigated, arrested and tried (Outcome Document para 4(o)) by enhancing and strengthening safeguards in the Criminal Procedure Code and aligning it with standards in the ICCPR. As part of the holistic national response to prison overcrowding, focus on practices that give rise to unfair trials, and in particular capital cases, use pre-trial detention as a last resort and only where absolutely necessary, and prohibit arbitrary arrest.

Pending abolition of the death penalty, all persons facing death sentences should be treated in line with international minimum fair trial standards. Allocate extra funding in capital cases to ensure that suitable translation and high-quality legal aid services are available for providers at the legal aid posts in the courts. Compile, publish, and make available to law enforcement and court officials a list of translators with language skills. Clemency requests should receive meaningful consideration on an individual basis.

4.5 End disproportionate sentencing

Proportionate sentencing is an essential part of an effective and fair criminal justice system, and custodial measures should be applied proportionately and as a last resort.⁴⁵⁴ In 2019, 31 UN agencies promoted alternatives to conviction and punishment, to advance the principle of proportionality, address prison overcrowding, and support effective criminal justice responses that ensure legal guarantees and due process safeguards.⁴⁵⁵ Under the international drug control treaties, Indonesia is entitled to apply alternatives to conviction or punishment for drug-related offences.⁴⁵⁶

The Outcome Document promotes “*proportionate national sentencing policies, practices and guidelines for drug-related offences whereby the severity of penalties is proportionate to the gravity of offences and whereby both mitigating and aggravating factors are taken into account...*”⁴⁵⁷

The Narcotics Law includes substantial fines and long prison sentences for minor drug offences. Indonesian law

offers judges limited regulatory guidance on when to impose the maximum and minimum sentences, and sentencing is left largely to judicial discretion, resulting in inconsistency in sentences for similar crimes, usually to the benefit of wealthier defendants. Vulnerable people who use drugs, and low-level offenders, many of whom sell drugs to satisfy drug dependence, are unable to pay fines, bribes, or legal services, and are more likely to be deprived access to justice and face disproportionate sentences, fuelling cycles of poverty in families and in society. This could be addressed, in part, by developing and consistently applying detailed sentencing guidelines based on internationally recognised standards.

Indonesian prisons are overcrowded to breaking point with people who use drugs and low-level, non-violent offenders, despite the fact that most people who use drugs do not harm other people or commit other offences.⁴⁵⁸ As at December 2019, 265,000 were in detention and the overcrowding rate was more than 200%.⁴⁵⁹ Imprisoning people does not stop them from continuing to use drugs in the long-term⁴⁶⁰ and often exposes them to risky drug use practices. As section 6 of this report explains, women are disproportionately

Recommendations

Replace mandatory minimum fines and prison terms for drug-related offences with detailed sentencing guidelines. The guidelines should be gender-sensitive, provide judges with flexibility in sentencing decisions, help to ensure fair trial standards and robust evidentiary procedures, underpin a proportionate sentencing framework, and reflect socioeconomic vulnerabilities often experienced by people in the illicit drug trade (Outcome Document para 4 (l)).

Implement the measures in the UN Standard Minimum Rules for Non-custodial Measures (known as ‘the Nelson Mandela Rules’). Alternative or additional non-custodial measures should be further developed, through revisions to the Criminal Code, to address the multidimensional causes of offending (Outcome Document para 4(j)).

incarcerated for drug-related offences in Indonesia.

Application of the death penalty for drug offences

The most disproportionate sentence, the death penalty, is a rejection of the SDGs and the principles of the 2030 Agenda. Death sentences and executions have been a high profile part of Indonesia's anti-drug strategy, overshadowing progress towards and commitment to the SDGs, undermining efforts to promote a peaceful and inclusive society with access to justice for all (SDG 16), to reduce violence (SDG target 16.1), and to protect fundamental freedoms (SDG target 16.10).

Other sections of this report identify how the death penalty in Indonesia has a disproportionate impact on the socioeconomically vulnerable (including drug couriers and those unable to pay bribes or legal costs), is applied in a discriminatory way, is often associated with unfair trials and other human rights abuses, and undermines global partnerships and efforts to combat transnational crime.

The death penalty also undermines many of the objectives of the RPJPN, including a society with noble morals and ethics, an Indonesia based on the rule of law, that upholds human rights, is secure, peaceful, achieves more just and equitable development, and international engagement to achieve a world order based on freedom, peace and social justice.

In October 2017, 75 of 165 (45%) death row prisoners, listed in government data had been convicted of drug offences.⁴⁶¹ The proportion is steadily increasing: in October 2018 it was 112 of 219 people (51%);⁴⁶² in October 2019 it was 166 out of 271 people (61%).⁴⁶³ Reprieve's data shows that as of December 2018, half of the 186 people convicted of drug offences were foreign nationals, and many were couriers.

Between 1998 and 2018, there were 393 death sentences in Indonesia, a significant proportion in the years after adoption of the 2030 Agenda.⁴⁶⁴ In 2017, 47 people were sentenced to death (33 were for drug-related offences). In 2018, 48 people were sentenced to death (39 were for drug-related offences).⁴⁶⁵ In 2019, 69 people were sentenced to death (48 were drug-related).⁴⁶⁶ Of the 221 people sentenced to death during Joko Widodo's first 5-year term as President, 166 (75%) were for drug-related offences.⁴⁶⁷

There was an informal moratorium on executions between 2009 and 2012.⁴⁶⁸ In 2012, the government said they were seeking to end the use of the death penalty⁴⁶⁹ and in one case, the Supreme Court said it violated the Constitution.⁴⁷⁰ Since March 2013, however, 23 people have been executed: 5 in 2013,⁴⁷¹ 14 in 2015⁴⁷² (2 suspended), and 4 in 2016⁴⁷³ (10 suspended). Everyone executed or listed for execution since 2015 was an alleged drug offender and the executions were justified as a necessary response to the 'drug emergency'.

The 18 people executed in Indonesia since 2015 were 'left behind' in a way that conflicts directly with the vision of the 2030 Agenda. Many were vulnerable, victims of police or other violence, drug couriers, mentally impaired, targeted because of the colour of their skin, or tortured into making a confession

in the absence of any evidence. Fair trial abuses have also been noted as a feature of capital cases.⁴⁷⁴

The 14th UN Congress on Crime Prevention and Criminal Justice in 2020 will focus on 'advancing crime prevention, criminal justice and the rule of law: towards the achievement of the 2030 Agenda'.⁴⁷⁵ With the international community focusing on ten years left to achieve the SDGs, 2020 presents an opportunity for Indonesia to demonstrate its position as role model and pioneer of the SDGs by ending the death penalty.

The lack of evidence to support the death penalty

Indonesia has a development commitment to consider the effectiveness of the death penalty and the broader drug control regime. An evidence-based approach is required to achieve SDG targets 16.4 *"By 2030, significantly reduce illicit financial and arms flows, strengthen the recovery and return of stolen assets and combat all forms of organised crime"* and 16.A *"... prevent violence and combat terrorism and crime"*.

The deterrent effect of the death penalty in Indonesia was first expressed in a 1959 law concerning economic crimes.⁴⁷⁶ This was later elaborated, and the increasing number of drug-related offences eligible for the death penalty was justified by claims that the sentence deters illicit drug-related activity.⁴⁷⁷

The BNN estimate that the number of people who use drugs in Indonesia increased from 3.3 million people in 2013 to 6 million in 2017. The data has been questioned, as summarised in section 2.1 of this report, but in the absence of more accurate records, the evidence relied upon by the agency tasked with enforcing the anti-drug campaign contradicts the alleged deterrence effect. The quantity of illicit drugs seized also rose in this period notable for numerous death sentences and executions.⁴⁷⁸ The number of drug-related crimes and people incarcerated for drug offences increased after each set of executions in 2015,⁴⁷⁹ and continued to grow after the executions in 2016 and at the height of extrajudicial killings in 2017 and 2018.⁴⁸⁰ Indeed, the failure of the death penalty to decrease the availability of illicit drugs was recognised by the BNN,⁴⁸¹ President Widodo,⁴⁸² and the National Police.⁴⁸³

Punitive drug policies have little influence on the prevalence of drug use.⁴⁸⁴ Countries with harsh drug laws do not have lower levels of drug use than more tolerant countries, but levels of drug-related harms tend to be higher under punitive regimes.⁴⁸⁵ A 2004 study of the results of 74 research projects between 1952 and 2003 concluded that the death penalty does not have more of a deterrent effect than other penalties.⁴⁸⁶ The same conclusion was reached by almost all criminologists involved in a 2009 study,⁴⁸⁷ constitutional courts,⁴⁸⁸ an Indonesian Constitutional Justice,⁴⁸⁹ UN Special Procedures,⁴⁹⁰ the National Research Council,⁴⁹¹ and the government of Malaysia in 2018.⁴⁹²

Economists have demonstrated that suppressing the supply of illicit drugs increases prices, which increases incentives for engaging in drug supply, causing prices to lower and return to the same level.⁴⁹³ The risk of being sentenced to death causes the price of drugs to increase and so fuels the market that the death penalty seeks to end.⁴⁹⁴ In 2018, a former head of the BNN

suggested seizing traffickers' assets instead of targeting drug couriers.⁴⁹⁵ The UN Convention on Transnational Organised Crime, which Indonesia has ratified, suggests a range of economic sanctions and other measures.⁴⁹⁶

The Outcome Document includes a commitment to increase international cooperation for drug control.⁴⁹⁷ However, the death penalty undermines international information sharing and efforts to combat transnational crime, and impedes effective cross-border and international judicial cooperation to tackle drug trafficking.⁴⁹⁸ Many countries are prohibited from extraditing accused offenders to countries where the death penalty may be imposed, and drug-related executions may lead UN agencies to freeze or withdraw support.⁴⁹⁹

Reconsidering the death penalty for drug offences

The ICCPR, which Indonesia has ratified, provides that the death penalty is only lawful for the “*most serious crimes*” and prohibits the arbitrary deprivation of life.⁵⁰⁰ The UN Human Rights Committee,⁵⁰¹ Secretary General,⁵⁰² Human Rights Council,⁵⁰³ Special Procedures,⁵⁰⁴ and Human Rights Commission⁵⁰⁵ confirm that “*most serious crimes*” are limited to intentional crimes with lethal or other extremely grave consequences, and do not include drug or other non-violent offences.⁵⁰⁶ The view is shared by drug control bodies, including UNODC⁵⁰⁷ and the INCB,⁵⁰⁸ which have called upon countries to abolish the death penalty for drug offences.⁵⁰⁹

Indonesia's Constitution recognises that every person has the right to life⁵¹⁰ and that right must not be derogated from under any circumstances.⁵¹¹ In 2007, the Constitutional Court narrowly found that the death penalty for drug offences was constitutional and compatible with the right to life.⁵¹² Some executions in Indonesia may be arbitrary regardless of that finding and the reasoning on which it was based.

The imposition of the death penalty may be arbitrary⁵¹³ where the objective is unreasonable or unnecessary, or where it is a disproportionate, irrational, or unfair means of achieving that objective.⁵¹⁴ The main objectives in Indonesia - deterring drug-related crime and addressing the ‘drug emergency’ - depend on unreliable data and assumptions that are not borne out by the evidence. Imposition of the death penalty may also be arbitrary where it is discriminatory or procedurally unfair.⁵¹⁵

In November 2016, President Widodo expressed openness to abolition of the death penalty⁵¹⁶ and in March 2017 that he would consider a moratorium.⁵¹⁷ In 2017, Indonesia supported recommendations by UN Member States to consider: a moratorium on executions with a view to abolishing the death penalty, commuting death sentences, and taking steps towards the abolition of the death penalty.⁵¹⁸ Senior Indonesian law enforcement officials have recognised that imprisonment is more suitable than the death penalty⁵¹⁹ and that “*the drug problem is also a health problem*”.⁵²⁰

At the time of writing, the draft bill to amend the Criminal Code would establish a 10-year probationary period for death sentences. Judges would be able to order a suspended sentence if the defendant exhibits remorse, played a minor role in the offence, there are mitigating factors, and the public reaction to the crime is not too great.⁵²¹ If a death row prisoner demonstrates good behaviour during the 10-year period, the sentence could be changed to life in prison.⁵²²

Notwithstanding the positive reduction in the scope of the death penalty and a mechanism to reduce sentences, life imprisonment without parole is unnecessarily punitive, does not satisfy the principle of proportionality, raises issues of cruel, inhuman and degrading punishment, and undermines the right to human dignity by removing any prospect of rehabilitation.⁵²³ Indonesia should take the opportunity to articulate its commitment to the SDGs - to be a role model of sustainable development - and abolish the death penalty.

R

Recommendations

Revise the proposed remission of death sentences in the draft Criminal Code so that it has retroactive effect over all existing death sentences rather than only when new sentences are given, regulate a shorter period than 10 years, and work towards abolition.

Establish an independent and impartial body to review all death sentences to identify breaches of the right to a fair trial and other due process safeguards, and provide a corresponding mechanism for commutations.

Implement the measures recommended in the Outcome Document as part of a sustainable development-led approach to law enforcement, including: prevention of drug-related violence and victimisation; promote a culture of lawfulness among law enforcement agencies;⁵²⁴ enhance capacity to counter money laundering and illicit financial flows; and develop concrete measures to tackle corruption in drug-related crime (Outcome Document para 3).



5 Tackle prison overcrowding and other problems in the penal system

Indonesian prisons and detention centres are overcrowded to the point of a national crisis. This is due to a combination of factors, including: disproportionate penalties in the Narcotics Law, criminalisation of people who use drugs, extensive use of pre-trial detention, lack of fair trial safeguards and poor implementation of existing safeguards, insufficient investment in health and social services, poor rehabilitation and reintegration services, and the strategy of drug eradication.

Prisons in Indonesia contain large numbers of people who use drugs and low-level, non-violent drug offenders, many of whom sell drugs to satisfy drug dependence or basic needs. The UN Special Rapporteurs have condemned the penalisation of poverty by criminalising drug use and low-level supply.⁵²⁵ Their detention puts a strain on the criminal justice system and fuels poverty, inequality, stigma and marginalisation, with insidious effects on individuals and wider society.

Overuse of incarceration for drug offences has led to a deterioration of the conditions of detention.⁵²⁶ Prisons in Indonesia suffer from a catalogue of problems that undermine the government's efforts to realise development commitments: from peace, justice and strong institutions, to health services, nutrition, employment, education, and equality.⁵²⁷

5.1 Prison overcrowding due to punitive drug policies

Globally, one in five prisoners are in prison for drug offences.⁵²⁸ Of these, 21% are in prison for drug possession for personal use.⁵²⁹ Mass arrests have caused significant social and health problems and failed to have any impact on the scale of illicit drug markets.⁵³⁰ This has had a profound impact on social and economic development throughout the world, and in Indonesia in particular.

UN human rights bodies have expressed concern about the unnecessary and disproportionate criminal justice system

response to drugs.⁵³¹ The UN High Commissioner for Human Rights recommends measures to address over-incarceration and overcrowding, considered in the recommendations below. In the Outcome Document, States committed to address and eliminate prison overcrowding and violence.⁵³²

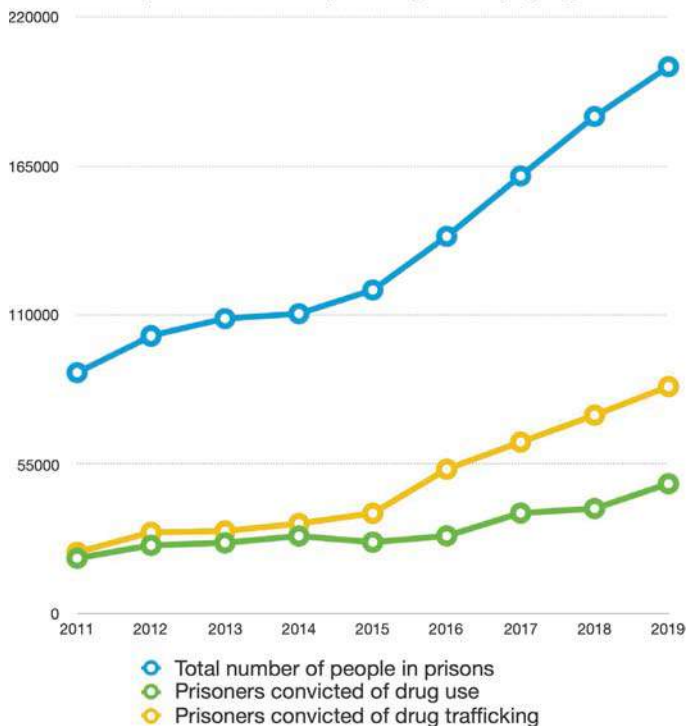
The prison population has ballooned in Indonesia due to efforts to eradicate drug use and supply with incarceration. In 2000, there were around 53,000 people in Indonesian prisons and detention centres.⁵³³ As at May 2019, according to the Directorate General of Corrections, 265,574 people were in detention facilities in Indonesia.⁵³⁴ Those facilities can only accommodate 130,599 people. The occupancy level is 203% and steadily rising,⁵³⁵ reaching 800% in some centres.⁵³⁶ Given the extensive use of pre-trial detention, pre-trial detainees amount to 24% of all people in Indonesian prisons and detention centres, down from 41.9% in 2005.⁵³⁷

The number of people in prisons for drug-related offences increased from 7,122 (10% of all prisoners) in 2002 to more than 130,000 (65% of all prisoners) in 2019.⁵³⁸ A substantial number are in prisons because they used drugs (around 48,000 people in 2019) and many others are for minor, non-violent offences, including possession and small-scale supply.

Maintaining the situation comes at considerable cost to the government.⁵³⁹ Between 2014 and 2017, the state budget for meals and necessities in detention centres and correctional institutions grew from 513 billion rupiah (roughly US \$36 million) to 1.2 trillion rupiah (roughly US \$87 million), a figure that does not include operational and other costs.⁵⁴⁰ In 2019, there were 473 prisons in Indonesia to maintain.⁵⁴¹

As well as overcrowding and poor health facilities, there are frequent reports of prison riots and escapes.⁵⁴² These conditions breach a number of constitutional rights, including the rights to: freedom from torture or degrading treatment,⁵⁴³ to physical and mental wellbeing, a place of residence, a healthy environment, and to health care.⁵⁴⁴

Number of people in prisons in Indonesia Source: Direktorat Jenderal Pemasyarakatan, Kementerian Hukum dan HAM Republic Indonesia <http://smlapwww.ditjenpas.go.id/>



In September 2017, the BNN and Directorate General of Corrections announced plans to set up three special prisons for death row prisoners convicted of drug offences.⁵⁴⁵ This sought to address the BNN's concerns about drug distribution being coordinated from inside prisons.⁵⁴⁶ In December 2017, the government announced that they would operate two “super-maximum security prisons”.⁵⁴⁷

A 2018 Ministerial Decree separated prisons into four security categories; the highest are the new super-maximum-security

facilities.⁵⁴⁸ These high-security institutions are intended for prisoners who are considered to endanger the security of the state and society.⁵⁴⁹ Disturbing reports have emerged of prisoners being held in almost permanent isolation, blindfolded, under 24-hour CCTV surveillance, with limited contact from visitors, and severely restricted activities, access to books, or opportunities to leave cells.⁵⁵⁰

The consequences of building more and bigger prisons are a bigger prison population and a diversion of resources away from development-led alternatives. Between 2010 and 2015, prison construction costs reportedly reached 4.2 trillion rupiah (roughly US \$300 million), with a further 715 billion rupiah in 2016 (roughly US \$50 million).⁵⁵¹ This endless, costly expansion fails to tackle the drivers of poverty and inequality associated with problematic use of illicit drugs. There has been a corresponding increase in penal provisions: aside from the Criminal Code, 145 laws specify prison terms.⁵⁵²

In 2017, the Ministry of Law and Human Rights formulated the ‘Grand Design’ to help address overcrowded prisons.⁵⁵³ In August 2017, 90,372 prisoners had their terms reduced and 2,444 were freed for Indonesia’s Independence Day. The remission included almost half of the prisoners on Nusakambangan, the ‘execution island’, but none of the prisoners on death row.⁵⁵⁴ In 2018, the Ministry of Law and Human Rights issued a Decree to improve correctional facilities and reduce overcrowding.⁵⁵⁵ The Directorate General of Corrections developed proposals to reduce the number of prisoners through legislative and regulatory reforms, with low-level offenders released to community supervision.⁵⁵⁶ In November 2019, the Directorate General announced plans to reduce prison overcrowding by releasing or moving to rehabilitation centres some of the 50,000 people in prison for using drugs.⁵⁵⁷ These initiatives have unfortunately not yet had much impact given the scale of, and resources directed towards, the ‘war against drugs’.

Recommendations

Establish an impartial and independent taskforce, comprised of experts in the fields of law, human rights, public health, psychology and sociology, with access to prisons and other custodial settings, to oversee conditions, ensure fulfilment of prisoners’ rights, and support the formulation of measures consistent with international standards that tackle prison overcrowding and its causes.⁵⁵⁸

Revise the Criminal Code within the framework of the 2030 Agenda, to further develop alternative and

additional measures to incarceration that help tackle prison overcrowding (Outcome Document paras 4(j)-(k)).

Scale up awareness-training, funding, and other infrastructure to enable full implementation of the Nelson Mandela Rules and the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (known as ‘the Bangkok Rules’).

5.2 Mental health and consequences of prolonged detention on death row

In 2017, the UN Secretary-General said that people with mental or intellectual disabilities should never be sentenced to death, and that laws and guidelines must be developed or amended

to prohibit death sentences and executions of such persons.⁵⁵⁹ Indonesian law provides that people with mental health impairments, who cannot be held criminally liable, should not be prosecuted.⁵⁶⁰ The law does not expand on psychosocial or intellectual disability or the threshold for exclusion from punishment. Mental health assessments are not routinely carried out in capital cases and the execution of people with psychosocial disabilities is not prohibited.

The ICCPR contains provisions to protect the dignity and physical and mental integrity of individuals and prohibits acts that cause mental suffering.⁵⁶¹ Prolonged periods on death row can constitute cruel, inhuman or degrading treatment⁵⁶² and violate the CAT and ICCPR.⁵⁶³ The practice of the death penalty itself amounts to cruel, inhuman and degrading treatment or torture.⁵⁶⁴ Courts around the world recognise that the mental suffering of prolonged detention on death row should lead to a commutation in some circumstances.⁵⁶⁵

The periods of detention and circumstances under which death

row prisoners are detained in Indonesia may amount to torture. As of October 2019, at least 58 death row prisoners had spent 10 years or more in detention.⁵⁶⁶ Some of those listed for execution in July 2016 had already spent over 15 years on death row. The conditions of their incarceration, and continual rumours of executions by the authorities, resulted in extreme mental anguish. People given 72-hours' notice of their execution in July 2016 have waited for years to find out if or when they will be killed. Death row and other prisoners are not provided with psychiatric or psychological support.

Recommendations

Provide a suitably qualified professional, independent of the prosecutor, police, or court, to carry out a mental health assessment of defendants eligible for a death sentence, and – pending abolition of the death penalty – of all death row prisoners at least once

each year. Offer high-quality physical and mental examinations to death row prisoners who enter or move between prisons, and ensure the availability of competent mental health professionals who can service prisoners in prisons and detention centres.

5.3 Improve access to treatment and harm reduction in prisons and other custodial settings

Indonesia's prison system is neglected and suffers from poor health facilities, weak governance, and corruption. Prison staff are not properly trained to supervise prisoners and there are no

legal provisions to ensure the oversight of prison conditions in accordance with international standards. At least 116 suicides were reported in prisons in 2018⁵⁶⁷ and hundreds of prisoners die each year from diseases.⁵⁶⁸

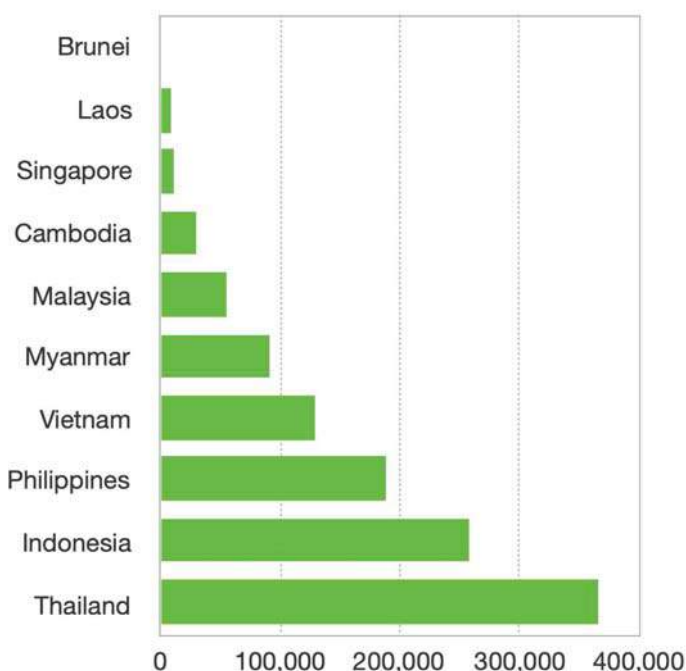
Large numbers of vulnerable and marginalised people who inject drugs in Indonesia are incarcerated and exposed to an overcrowded prison setting with limited health services. This has fuelled problematic drug use and compounded the high-risk environment for infectious blood-borne diseases.⁵⁶⁹ As discussed above, these conditions are in breach of various rights guaranteed to all Indonesians by the Constitution.

Inequality, hunger and disease are concentrated in the poorest and most vulnerable groups in society.⁵⁷⁰ The availability of illicit drugs in Indonesian prisons, and lack of harm reduction measures, makes prisoners vulnerable to transmission of HIV and other diseases.⁵⁷¹ In 2010, 37% of women and 25% of men in Indonesian prisons reported using illicit drugs, mostly by injection.⁵⁷² In 2013, 37.83% of people in prisons in the country reported having used drugs within the previous 12 months.⁵⁷³

In 2010, HIV prevalence among prisoners who inject drugs in Indonesia was estimated at 12% for women and 8% for men.⁵⁷⁴ In a 2010 survey, over 33% of prisoners in narcotics prisons with a history of injecting drug use reported living with HIV, and a 2016 screening study of people who inject drugs found 37.4% were HIV positive.⁵⁷⁵ 73% of people who use drugs in Indonesian prisons report sharing needles.⁵⁷⁶

There are also high levels of hepatitis C in prisons in Indonesia.⁵⁷⁷ A 2013 study of 375 people who use drugs in four prisons in Central Java found that 34% had hepatitis C.⁵⁷⁸ Government data shows that HIV, TB and other diseases were associated with high mortality rates in prisons between 2005

Prison populations in Southeast Asia
Source: World Prison Brief - 2018
<https://www.prisonstudies.org/world-prison-brief-data>



and 2009.⁵⁷⁹ Over one third of the 813 people who died in prisons in 2006 were convicted of drug offences.⁵⁸⁰

Indonesia has taken steps towards responding to this enduring public health challenge. In 2005, the government launched a strategy to prevent and control AIDS in prisons,⁵⁸¹ including national guidelines for HIV prevention and establishing prison-based teams.⁵⁸² The Ministry of Health runs limited opioid substitution and antiretroviral therapy in some prisons. Although in January 2012, only 200 prisoners in Indonesia were reportedly receiving antiretroviral therapy.⁵⁸³

Domestic laws and regulations govern the handling of prisoners in Indonesia.⁵⁸⁴ The laws provide for a polyclinic in each prison with a doctor and another health worker.⁵⁸⁵ However, the obligation only requires medical examinations to be conducted at least once a month, not to provide prison doctors every day, and the competency of doctors is not regulated. The regulations do not specifically cover the protection of the rights of death row inmates in prisons.

UN entities recognise that detention settings are high-risk environments for HIV, hepatitis C and TB transmission and recommend that Member States make harm reduction services available in prisons.⁵⁸⁶ UNAIDS said that prisoners are being 'left behind' in the AIDS epidemic.⁵⁸⁷ In 2019, UNODC noted inadequate prevention and treatment in prisons: *"This gap represents a major impediment to achieving the Sustainable*

*Development Goals and fulfilling the international community's pledge to leave no one behind."*⁵⁸⁸

The WHO has identified inadequate nutrition as the most immediate and critical need of HIV / AIDS patients.⁵⁸⁹ However, prisons in Indonesia do not ensure a basic level of nutrition, contrary to Indonesia's commitment to *"end hunger and ensure access by all people, in particular the poor and people in vulnerable situations ... to safe, nutritious and sufficient food all year round"* (SDG target 2.1).

The UN Office of the High Commissioner for Human Rights has called for effective medically assisted treatment in detention centres.⁵⁹⁰ In 2019, the UN Chief Executives Board, representing 31 UN agencies, committed to the provision of drug prevention, treatment, rehabilitation and support services in prisons.⁵⁹¹ UNODC, UN Development Programme, International Labour Organisation, WHO, and UNAIDS have suggested 11 principles and 100 actions for HIV/AIDS prevention, care, treatment and support in prison settings.⁵⁹²

For Indonesia to meet its commitments to end AIDS, TB and other diseases (SDG target 3.3) and to *"strengthen the prevention and treatment of substance abuse..."* (SDG target 3.5), harm reduction services and drug dependence treatment should be scaled up in prisons and other custodial settings. To satisfy constitutional requirements and the SDGs, prisoners should be receiving healthcare without barriers and to the same standard as people in the community.⁵⁹³

Recommendations

A range of harm reduction services should be available and accessible to the prison population in Indonesia and considerably scaled up.⁵⁹⁴ Recruit more healthcare professionals to work in prisons and provide training on issues related to drug use and health, and improve health services in prison in accordance with the Nelson Mandela Rules and the Bangkok Rules. Prisons and community healthcare providers should coordinate to ensure integrated continuity of care inside and out of prisons.

Ensure non-discriminatory access to health, care and social services in prison and pre-trial detention (Outcome Document para 4(b)) and enhance access to treatment for those incarcerated with problematic drug use. Implement treatment in prisons and other custodial settings (Outcome Document paras 1(k) and (o)) and access to health care, social services and treatment for those in prison or pre-trial detention (Outcome Document para 4(m)).

5.4 Corruption, transparency, and unaccountable institutions

Indonesia committed to, *"Substantially reduce corruption and bribery in all their forms"* (SDG target 16.5), promote the rule of law (SDG target 16.3), reduce illicit financial flows (SDG target 16.4), develop effective, accountable and transparent institutions (SDG target 16.6) and strengthen national institutions to prevent violence and combat crime (SDG target 16.A).

Improving governance and reducing corruption is central to Indonesia's national development framework and *Nawacita*. The RPJMN 2015-2019 had a vision of clean, effective, democratic

and reliable governance,⁵⁹⁵ law enforcement free from corruption,⁵⁹⁶ preventing and eradicating corruption.⁵⁹⁷

The RPJMN 2015-2019 recognised that corruption is a major impediment to sustainable development in Indonesia, whilst the US State Department identified corruption as a barrier to reducing the use and supply of illicit drugs in the country.⁵⁹⁸ The RPJMN 2020-2024 notes that Indonesia's position on the global Rule of Law Index declined between 2013 and 2018.⁵⁹⁹ Research from 2014 in 38 districts in Indonesia and extensive interviews identified that transactional politics in the country is pervasive.⁶⁰⁰ Transparency International's 2018 Corruption Perceptions Index ranked Indonesia as 89 out of 180 countries, scoring 39/100 (where 0 is very corrupt).⁶⁰¹

Corruption is reportedly endemic in Indonesia's policing, judicial and prison systems.⁶⁰² The RPJMN 2020-2024 recognises that bribery is rife in law enforcement.⁶⁰³ A fair and effective criminal justice system should build trust between people and the state, which is essential for a peaceful and inclusive society and realisation of the SDGs.⁶⁰⁴ Sufficient resources for prison staffing and working conditions would reduce corruption, but a development-led approach is needed for more effective and lasting solutions.

In a 2016 study, 87% of women with a history of drug-related arrest reported that they and/or their families experienced police extortion during the arrest process (section 6 of this report focuses on gender inequality in more detail). In most cases, extortion involved solicitation of substantial sums by the police in exchange for a lesser charge, a referral to drug dependence treatment, or having charges dropped. Several women reported being forced by authorities to report their drug-using peers in order to have their charge reduced or dropped.⁶⁰⁵

Reforms have sought to tackle corruption with, among other things, enhanced laws and a regulatory framework, ratification of the UN Convention Against Corruption,⁶⁰⁶ anti-corruption strategies (including the National Strategy on Corruption Prevention and Eradication, and the National Strategy for Preventing and Combating Money Laundering), and anti-corruption institutions like the Corruption Eradication Commission establishing anti-corruption infrastructure.⁶⁰⁷ There have been some improvements but progress is slow and challenges remain.⁶⁰⁸ For the years ahead, the RPJMN 2020-2024 acknowledges that corruption is a problem⁶⁰⁹ and seeks to strengthen anti-corruption efforts through a range of measures.⁶¹⁰

In December 2019, on International Anti-Corruption Day, President Widodo indicated that the legal framework of the death penalty for corruption offences could be expanded if it is supported by the public.⁶¹¹ In response, UNODC and civil society experts reiterated that there is no evidence the death penalty deters any crime.⁶¹² The Corruption Eradication Commission added that it would make it harder to cooperate with other countries on transnational corruption cases.⁶¹³

Recommendations

Take measures to more effectively implement the UN Convention Against Transnational Organised Crime and the UN Convention Against Corruption (Outcome Document para 3(n)), improve the framework in which assets and proceeds of corruption are seized, and continue to play an active role in the Open Government Partnership.

Promote effective measures capable of addressing the links between drug-related crime and corruption, as well as obstruction of justice, including through the intimidation of justice officials, as part of the national anti-corruption strategy (Outcome Document para 3(t)).

5.5 Enhance rehabilitation and reintegration services

The principal aim of the prison system is reformation and social rehabilitation.⁶¹⁴ Rehabilitation and reintegration into communities can incorporate a broader development perspective and contribute to the SDGs, by looking at the impacts on individuals, communities, and society.⁶¹⁵

Many people arrested or imprisoned for low-level drug-related offences suffer from socioeconomic vulnerability and social exclusion.⁶¹⁶ A criminal record makes it harder to find employment,⁶¹⁷ training, education, housing, to support a family, to develop personally, achieve good health, and other basic needs. It leads to additional stigmatisation and discrimination, which increases the risk of reoffending, and presents a significant cost to individuals and society.⁶¹⁸ Spending time in prison compounds and multiplies those problems. It deprives people of employment and families of sources of income, with additional costs of fines, bribes and

legal fees. This creates cycles of poverty, stigmatisation and marginalisation for prisoners and their families.

Poor rehabilitation and reintegration support increase the likelihood of reoffending,⁶¹⁹ whereas providing work, support services, practical skills and training opportunities in prisons increases the likelihood of finding employment on release, and the social and economic contribution that former detainees can make to their communities and wider society.

Various reforms are being pursued. The Directorate General of Corrections is trying to improve services for prisoners, including counselling and guidance, to reduce rates of reoffending.⁶²⁰ Indonesia's government has focused on the regulatory framework for prison-based work programmes, and taken stock of national and regional prison-based work programmes, recognising that the core objective of such programmes should be to maintain or increase ability to earn money on release.⁶²¹ The RPJMN 2020-2024 seeks more use of restorative justice, and the draft Criminal Code regulates alternatives to imprisonment and use of restorative justice.

Case study: prison reforms in Thailand

Initiatives in the Thai prison system have sought to improve rehabilitation and reintegration. These include the 2018 'Model Prison + Project' designed to improve prisoners' skills and knowledge through training, to help people return to work on release and reduce rates of reoffending.⁶²⁵ Another scheme provides work to female prisoners and vocational training before release, to help improve reintegration into society and to reduce levels of unemployment amongst former detainees.⁶²⁶ In 2018, Thailand's Office of the Narcotics Control Board announced a drug rehabilitation programme, with a view to moving people who use drugs away from poverty and the stigma of convictions, and thereby boost employment, productivity, equality. Those who register and attend 7 rehabilitation sessions would have their arrest records expunged. 70,000 arrested people who use drugs reportedly signed up.⁶²⁷ In 2019, the government agreed to give a range of tax incentives to companies that hire former prisoners.⁶²⁸

"In 2019-2023, Indonesia's Government will continue to revitalise the correctional system as part of a broader criminal justice reform goal through strengthening the ability of correctional institutions to ensure social reintegration for criminal offenders, and policy reform to support alternative measures to reduce the number of people being detained or imprisoned."

Indonesia's 2019 VNR report

The criminal justice sector needs to work collaboratively with health and social agencies, the private sector, educational institutions, civil society, and affected communities, to improve rehabilitation and reintegration. Suitable interventions should be developed for vulnerable and marginalised groups, which reflect the drivers of exclusion and socioeconomic inequality.

Suitable rehabilitation and reintegration programmes are needed to "substantially increase the number of youth and adults who have relevant skills, including technical and vocational skills, for employment, decent jobs and entrepreneurship" (SDG target 4.4) and to "achieve full and productive employment and decent work for all women and men, including for young people and persons with disabilities, and equal pay for work of equal value" (SDG target 8.5).

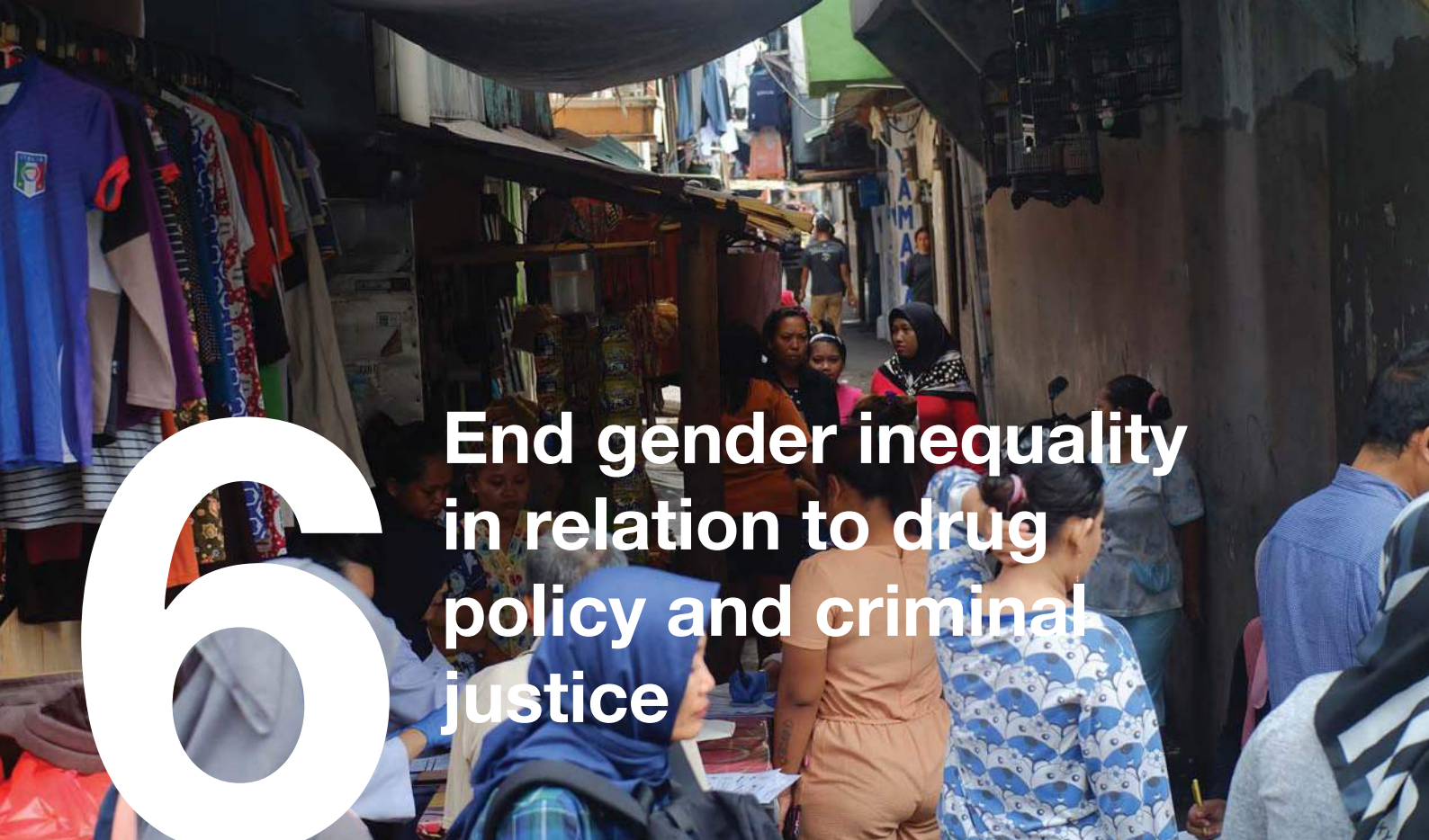
Such strategies would support a broad range of development commitments, help to ensure inclusive and equitable quality education and promote lifelong learning opportunities for all (SDG 4), promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all (SDG 8), and reduce inequalities (SDG 10). They would also bolster Indonesia's efforts to end poverty by increasing access to basic services for vulnerable people (SDG target 1.4), build the resilience of the poor and those in vulnerable situation (SDG target 1.5), ensure mobilisation of resources towards programmes and policies to end poverty (SDG target 1.a), and help to create a sound policy framework based on a pro-poor development strategy (SDG target 1.b) and a social protection system with substantial coverage for the poor and vulnerable (SDG target 1.3).

Indonesia's Social Protection System includes programmes to support rehabilitation and social assistance for people with drug dependence, and social assistance for vulnerable people, including former prisoners and people living with HIV. However, in 2015 it supported only 7,430 "socially vulnerable people", a drop from 7,967 in 2011.⁶²² The RPJMN 2020-2024 recognises that progress is needed to achieve target poverty levels through social protection⁶²³ and that the government will economically empower vulnerable groups.⁶²⁴ Rehabilitation programmes should be scaled up significantly to help reduce Indonesia's prison population.

Recommendations

Establish a national action plan that guarantees full protection of vulnerable groups, including prisoners and people with drug dependence. Promote and strengthen rehabilitation, social reintegration and recovery-support programmes, including access to such services in prisons and after imprisonment (Outcome Document para 1(k)).

Implement rehabilitation and reintegration programmes that address the underlying causes of poverty, inequality, and offending, that seek to reduce rates of reoffending, and that empower vulnerable and marginalised segments of society. Scale up and develop programmes in the Social Protection System with the goal of supporting vulnerable people and reducing the prison population.



6 End gender inequality in relation to drug policy and criminal justice

SDG 5 requires Member States to “*achieve gender equality and empower all women and girls*”. Gender inequality manifests in every dimension of development and, despite being a discrete SDG, cuts across the 2030 Agenda.⁶²⁹

Indonesia has made progress towards promoting gender equality. Some measures in the 1995 Beijing Declaration and the Convention on the Elimination of All Forms of Discrimination against Women have been implemented. Efforts to achieve gender equality are guided by regulations on Gender Mainstreaming and Gender Responsive Budgeting.⁶³⁰

The 2017 Gender Inequality Index ranks Indonesia 116 out of 160 countries (where 1 is most unequal) and there have been gradual improvements each year since 2010.⁶³¹ Gender inequality nonetheless remains a serious problem in the country, both in law and in practice. In 2018, 421 national and regional regulations discriminated against women, children and vulnerable groups.⁶³²

Indonesia committed in the Outcome Document to mainstreaming a gender perspective in the development, implementation, monitoring and evaluation of drug policies and programmes.⁶³³ The RPJMN 2020-2024 mainstreams gender equality into national development and seeks an acceleration in mainstreaming at central, regional and local levels.⁶³⁴

6.1 Increase gender equality in relation to policies targeting drug use

The 2030 Agenda requires Indonesia to “*End all forms of discrimination against all women and girls everywhere*” (SDG target 5.1), to eliminate all forms of violence against all women

and girls in the public and private spheres (SDG target 5.2), to “*Adopt and strengthen sound policies and enforceable legislation for the promotion of gender equality and the empowerment of all women and girls at all levels*” (SDG target 5.c) and to create sound policy frameworks based on gender-sensitive development strategies (SDG target 1.B).

Indonesia’s Constitution guarantees the right to protection against discriminatory treatment⁶³⁵ and other rights that are available regardless of gender. In addition, Indonesian law specifies women’s rights, including to: representation in politics,⁶³⁶ education,⁶³⁷ and work of one’s choosing.⁶³⁸ The National Commission on Violence Against Women (*Komnas Perempuan*) was established to help eliminate all forms of violence against women and enforce women’s rights; and preventing and managing violence against women.⁶³⁹

In 2012, the Ministry of Health estimated that 74,000 people inject drugs in Indonesia, about 11% of whom were women.⁶⁴⁰ A 2016 study of over 700 women who inject drugs in Indonesia found that 42% of women reported living with HIV, but less than half accessed antiretroviral treatment.⁶⁴¹ It highlighted that women and girls suffer disproportionately from the impact of punitive drug policies in Indonesia.

The negative impacts of Indonesia’s drug policies on women and girls is compounded by systemic gender inequalities in access to work, education, socioeconomic development, and in the levels of gender violence and poverty in the country.⁶⁴² One in three women in Indonesia aged between 15 and 64 have experienced physical violence. The number of reported cases of violence against women increased 14% from 348,466 in 2018 to 406,178 in 2019.⁶⁴³ 71% of the cases in 2019 involved domestic violence. Women who use drugs in Indonesia are up to 24 times more likely to have experienced violence from an intimate partner

than women who do not use drugs.⁶⁴⁴ Women are twice more likely to live in poverty than men and significantly more likely to suffer from stigma and social and economic exclusion.⁶⁴⁵

Women who inject drugs have less access to harm reduction services than men do and are more likely to acquire HIV.⁶⁴⁶ Gender inequality, violence and misogyny increase exposure to drug-related health harms.⁶⁴⁷ Women have reduced access to harm reduction services and drug dependence treatment, because services do not exist, are not tailored to needs, or because of the effects of gender-based stigma and criminalisation, in addition to stigmatisation for drug use.⁶⁴⁸

Women are also more likely to be targeted by police than men are. In a survey of 730 women who inject drugs in Greater Jakarta and Bandung, 48% reported being targeted by police on the streets and arrested, mostly for drug use and possession, in the past year. Approximately 9 in 10 of the women who were criminalised in this way also experienced police brutality, including extortion, physical and sexual violence. Women targeted by police enforcement reported significantly higher HIV risks associated with sharing used needles and unsafe sex, as well as higher prevalence of overdose, than women who did not face police violence.⁶⁴⁹

In September 2019, the UN General Assembly committed to targeted and accelerated action to remove all legal, social and economic barriers to achieve gender equality and the empowerment of all women and girls, and the realisation and enjoyment of their human rights.⁶⁵⁰ In the Outcome Document, Indonesia committed to ensuring that women who use drugs can access adequate health services.⁶⁵¹

UN agencies emphasise the importance of gender-sensitive drug policies,⁶⁵² call on Member States to adopt gender-sensitive drug control measures that address the needs of women and girls,⁶⁵³ recommend gender-sensitive and evidence-based drug treatment services to reduce harmful effects for women who use drugs,⁶⁵⁴ highlight the duty on Member States to pass laws that protect women and to take responsibility for laws that unintentionally cause harm,⁶⁵⁵ and emphasise that Member States must take concrete measures to meet their commitments to ensuring women's rights in drug policies and programmes.⁶⁵⁶

“Improving the comprehension and knowledge, as well as identifying lessons-learned are necessary for implementing the gender mainstreaming strategy.”

Indonesia's 2017 VNR report

The draft RPJMN 2020-2024 called for a strengthening of gender-responsive policies and for women to participate in and have control over development⁶⁵⁷ but the section on gender mainstreaming was abridged in the final RPJMN. In 2018, UN Women published an assessment of progress and gaps in implementing the SDGs from a gender perspective.⁶⁵⁸

Recommendations

Building on the RPJMN 2020-2024, mainstream a gender perspective into and ensure the involvement of women (including women who use drugs) in developing, implementing, monitoring, and evaluating drug policies and programmes (Outcome Document para 4(g)).

Ensure comprehensive protection for women against gender violence and inequality by addressing gaps in laws and regulations, to ensure substantive equality and enjoyment of the right to health and related rights.⁶⁵⁹

Ensure non-discriminatory access to health, care and social services in prevention, primary care and treatment programmes and ensure that women, including detained women, have access to adequate health services and counselling, including those particularly needed during pregnancy (Outcome Document para 4(a)). Ensure that drug treatment and rehabilitation services, national guidelines, strategies and policies on drugs and HIV/AIDS, are evidence-based and gender-sensitive, and reflect the needs and circumstances of all women and girls.

6.2 Improve prison policy and gender equality

Women incarcerated for drug offences are the fastest growing prison population worldwide.⁶⁶⁰ Between 2000 and 2017, the female prison population globally increased by 53.3% compared to 19.6% for male prisoners.⁶⁶¹ Women are imprisoned for non-violent drug-related offences in significantly higher proportions than men are.⁶⁶² The UN

has recognised disproportionate increases in rates of female imprisonment, including for low-level drug offences.⁶⁶³

Indonesia has one of the highest rates of incarcerated women worldwide.⁶⁶⁴ Between 2011 and 2018 the number of female prisoners increased by 144%, while the number of male prisoners increased by 108%.⁶⁶⁵ As of February 2019, at least 5,579 female prisoners in Indonesia had been convicted of non-violent drug offences. In 2016, at the height of the 'drug emergency', over 90% of female prisoners in Indonesia

Female prison population in Indonesia

Year	Female prisoners in Indonesia	% of total prison population	Female prison population rate per 100,000 of population
2000	1,807	3.4%	0.9
2005	4,656	4.7%	2.1
2010	6,876	5.8%	2.9
2015	9,587	5.4%	3.7
2018	13,916	5.7%	5.2
2019	15,325	6%	5.7

Source: World Prison Brief (31 December 2018) Indonesia, <http://www.prisonstudies.org/country/indonesia>

were being incarcerated for non-violent drug offences.⁶⁶⁶

Contact with the criminal justice system has differentiated negative consequences for women compared to men.⁶⁶⁷ There are barriers to justice, with many women unable to afford legal representation.⁶⁶⁸ Women are more likely than men to have dependents, and so incarceration exacerbates poverty and inequalities, leading to increased vulnerabilities of families and harm to society.⁶⁶⁹ It is also more difficult for women with

a history of incarceration to find work, housing and financial support on return to their communities.⁶⁷⁰

Evidence suggests that judges and other criminal justice officials do not consider gender inequalities when sentencing.⁶⁷¹ The UN has published guidelines for Member States to ensure access to legal aid for women⁶⁷² and for the treatment of female offenders and prisoners, including alternatives to imprisonment.⁶⁷³ A 2017 Indonesian Supreme Court Regulation was designed to

Women and incarceration in Indonesia

In 2018, LBH Masyarakat and the International Drug Policy Consortium published a report on incarceration of women for drug offences in Indonesia.⁶⁹⁵ The report was based on data gathered from 307 women charged with using, selling, delivering and other drug-related offences, including the offence of failing to report illicit drug use. The average period spent in prison by the respondents was 6 years and 11 months. One prison had

an overcrowding rate of 304%. 69% of the respondents reported having used drugs. 25% experienced torture during their police investigation. 42% were not assisted by a lawyer at any stage: 69% had no lawyer in the investigation stage, 63% had no lawyer during the prosecution, and 48% had no lawyer in their trial. 82% had children but many had lost contact. 21% reported never having been visited in detention by their families.

Recommendations

Take into account the needs and possible vulnerabilities of female drug offenders when imprisoned, in line with the Bangkok Rules (Outcome Document paras 4(g) and (n)). Ensure access to high-quality legal aid and consideration of mitigating factors with a gender focus during investigations and court proceedings (including, for example, history of violence and trauma and caretaking responsibilities).

Ensure the design and implementation of gender-sensitive alternatives to incarceration that reflect individual needs and circumstances and that draw from and implement the Bangkok Rules and Nelson Mandela, for example, conditional discharge, restitution, suspended or deferred sentences, probation and judicial supervision, community service orders, referral to a suitable attendance centre.

help judges apply the principles of gender equality and non-discrimination.⁶⁷⁴

In May 2019, Indonesia had only 34 correctional facilities and 4 detention centres designed to accommodate women. 23 of them were built in 2017-2018. Half of the female prisoners in the country are in blocks within prisons and detention centres designed for and occupied by men.⁶⁷⁵ There are no psychosocial or rehabilitation health services for women who use drugs while in prison in Indonesia.⁶⁷⁶ Structural and institutional limitations prevent Indonesian prisons from fulfilling basic rights for female prisoners, including healthcare, education and nutrition.⁶⁷⁷

UN agencies have called on Member States to develop gender-sensitive alternatives to incarceration and promote community-based sentencing for female offenders,⁶⁷⁸ and to develop gender-specific measures as an integral part of policies on crime prevention and criminal justice.⁶⁷⁹ The Bangkok Rules contain provisions designed to protect the rights of women offenders and prisoners.⁶⁸⁰ However, Indonesia's main legal regulation for the prison system does not implement the Bangkok Rules or address the specific needs of women.⁶⁸¹

6.3 Female drug couriers

Drug offences are the second most common offence for women sentenced to death globally.⁶⁸² Many women sentenced to death for drug offences are couriers.⁶⁸³ Involvement often results from exploitation, coercion, violence, and socioeconomic circumstances.⁶⁸⁴ Women face higher levels of violence and harassment from law enforcement officers, disproportionate sentences for drug offences, barriers to fair trial rights, an absence of gender-sensitive justice that often does not consider mitigating circumstances, and less access to health and social services.

A 2017 UN report highlighted the links between poverty, family roles and drug-related offences committed by women, raising concerns about over-incarceration for couriers, having a secondary role in the commission of crimes, or performing low-level high-risk tasks, often at the request of their partners.⁶⁸⁵ Coercion, social disadvantage and limited opportunities

to access work and education, result in unfair trials and disproportionate sentences.⁶⁸⁶

In the Outcome Document, Indonesia committed to identifying and addressing risk factors and conditions that make women and girls vulnerable to exploitation and participation in drug trafficking.⁶⁸⁷ The Outcome Document also calls for proportionate sentencing and alternatives to incarceration, noting the Bangkok Rules. The CND encouraged Member States to cooperate in addressing the involvement of women and girls in drug trafficking, especially couriers,⁶⁸⁸ and urged them to implement programmes aimed at preventing women and girls from being used as couriers.⁶⁸⁹

The RPJMN 2015-2019 included targets to tackle violence against women, which has increased each year in Indonesia, and the handling of gender violence by law enforcement officers, in the context of improving the quality of law enforcement.⁶⁹⁰ It also included targets to protect women and marginalised groups from violence and criminal activity, increase understanding in government and society about gender violence and exploitation, increase the effectiveness of health, social and legal services for female victims of violence, and increase capacity to strengthen the legal system.⁶⁹¹

In 2015, the National Commission on Violence Against Women reported that most women facing a death sentence in Indonesia were victims of gender-based violence and that *“female domestic workers [were] targeted by international drug smuggling and human trafficking syndicates, unknowingly made into drug mules by perpetrators who exploit the women’s layered vulnerabilities”*.⁶⁹² In December 2019, Malaysia’s government said that other countries should review their laws and stop executing drug couriers.⁶⁹³

Indonesia’s government should take an integrated approach to tackling gender violence and exploitation, and ensure that anyone who commits a drug-related offence for which they do not have full agency is not liable to criminal proceedings. This would reflect the ASEAN Plan of Action Against Trafficking in Persons⁶⁹⁴ and is necessary to achieve SDG target 5.2, *“Eliminate all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation”* (SDG target 5.2).

Recommendations

Issue guidelines to law enforcement agencies, prosecutors and judges - as part of the national sentencing guidelines - to identify and address protective and risk factors and the conditions that make women and girls vulnerable to exploitation and participation in drug trafficking, including as couriers (Outcome Document para 4(d)).

Increase funding to ensure the availability of high-quality legal aid for women and girls who come into contact with the criminal justice system at all stages, as part of a gender-sensitive approach to all people who use drugs or are involved in the drug trade. Strengthen efforts to prevent and combat all discrimination and violence against women through enhanced laws and awareness-raising campaigns.



7 Develop civil society and global partnerships and achieve policy coherence

SDG 17 seeks to “strengthen the means of implementation and revitalise the global partnership for sustainable development” between the international community, civil society, governments, the private sector and others. Meaningful participation and inclusive engagement of civil society and affected communities are crucial to realising the 2030 Agenda.

The 2017 Presidential Decree to implement the SDGs articulated an important role for civil society in planning, implementing, monitoring, and evaluating Indonesia’s progress towards the SDGs.⁶⁹⁶ There is scope to significantly widen cooperation with civil society and affected groups in relation to drug policy and criminal justice reforms.

Indonesia helped to ensure that global partnerships formed part of the 2030 Agenda and the government has since taken

a lead role in advancing partnerships for the SDGs. Pursuing the sustainable development-led approach advocated in this report would bolster Indonesia’s partnerships for the SDGs domestically, regionally, and at a global level.

7.1 Develop civil society partnerships

SDG 17 requires Member States to “Encourage and promote effective public, public-private and civil society partnerships, building on the experience and resourcing strategies of partnerships” (SDG target 17.17). The right to development also entails free and meaningful participation for all.

Civil society is one of the four participation platforms under the 2017 Presidential Decree on the SDGs, providing a central role

in the evaluation and implementation of Indonesia's progress towards the 2030 Agenda.⁶⁹⁷ Indonesia's civil society is vibrant, has developed considerable expertise in drug policy, criminal justice and related issues, and is generally able to work freely and in an open environment. But there are challenges: the legal and institutional regulatory framework is uncertain⁶⁹⁸ and civil society, in particular those aiming to improve social cohesion and care for vulnerable and minority groups, faces a narrowing social and political space.⁶⁹⁹

Indonesia should be enhancing meaningful cooperation with civil society, people who use drugs, people living with HIV or other diseases associated with drug use, women, former prisoners and other groups, in formulating and implementing development-led and health-based drug policies and programmes.⁷⁰⁰ People who use drugs are often well placed to help formulate effective responses to public health challenges and, fundamentally, should be meaningfully involved in decisions that affect their lives.⁷⁰¹ Meaningful cooperation requires access to adequate information and accommodating vulnerable groups according to needs.

“SDGs implementation is conducted by involving all stakeholders: government and parliament, philanthropic and business societies, civil society organisations and media, academics and experts to ensure achieving SDGs in line with the principles of inclusiveness and no one left behind.”

Indonesia's 2019 VNR report

The important role for civil society and communities of people who use drugs in formulating, implementing and evaluating drug policy was also recognised in the 2009 CND Political Declaration.⁷⁰² The CND recommends that Member States strengthen interaction and partnerships with civil society.⁷⁰³ The Outcome Document noted that civil society, the scientific community, academia and affected populations play an important role in the design, implementation and evaluation of drug policies and programmes.⁷⁰⁴

Indonesia's government does engage with civil society in some areas but developing this cooperation and the meaningful involvement of affected communities would bolster much-needed progress towards the SDGs. The International NGO Forum on Indonesian Sustainable Development has questioned the level of Indonesia's progress.⁷⁰⁵ In the 2018 global SDG Index, Indonesia was ranked 99 out of 156 countries in progress

towards the 2030 Agenda.⁷⁰⁶ While Indonesia has integrated the SDGs into national development planning, there is still a long way to go to realise the SDGs for all people through a 'leave no one behind' based strategy, and to align the national approaches towards development and human rights.

7.2 Enhance global partnerships

Indonesia has taken a pioneering role to, “*Enhance the global partnership for sustainable development, complemented by multi-stakeholder partnerships that mobilise and share knowledge, expertise, technology and financial resources, to support the achievement of the sustainable development goals in all countries...*” (SDG target 17.16).

Years before the 2030 Agenda was even considered, the RPJPN included a long-term mission of helping to maintain a world order based on freedom, lasting peace and social justice and the country plays a central role in the global development agenda. Indonesia appointed a presidential envoy to the High Level Panel of Eminent Persons for the Post-2015 Development Agenda. The emphasis on global partnerships to implement sustainable development contributed to the SDG 17 commitment for global partnerships for the SDGs.

The RPJMN 2015-2019 aimed to strengthen Indonesia's role in global and regional cooperation by increasing the quality of global cooperation and promoting democracy and human rights at regional and international levels.⁷⁰⁷ The need for multilateral cooperation to tackle common challenges was further emphasised in Indonesia's 2019 VNR report.⁷⁰⁸

During Indonesia's candidacy for a 2019-2020 seat on the UN Security Council, the government articulated a vision to support global development.⁷⁰⁹ After securing a seat, they pledged to build synergy between peace and the SDGs through global partnerships.⁷¹⁰ In October 2019, Indonesia was selected to serve a fifth term on the UN Human Rights Council, commencing in 2020.⁷¹¹

SDG 17 calls for partnerships to share knowledge, science, innovation and expertise (SDG target 17.6), and international cooperation and capacity building to support development (SDG target 17.9). The Outcome Document recognises the need for mechanisms to enhance international cooperation on drug policy.⁷¹² In 2019, UNODC called for a strengthening of international cooperation to stop global drug challenges from endangering efforts to achieve SDG targets to ensure healthy lives and promote peace and justice.⁷¹³

The death penalty for drug offences - which is now carried out in relatively few countries⁷¹⁴ - undermines international information-sharing and efforts to combat transnational crime, and impedes effective cross-border and international judicial cooperation to tackle drug trafficking.⁷¹⁵ The practice is contrary to the SDGs and strains global partnerships and international relations, isolating Indonesia and causing particularly extensive damage to bilateral relationships when foreign nationals are sentenced to death or executed. The RPJMN 2020-2024 acknowledges that severe punishments for foreign drug offenders have had an impact on bilateral relationships with other countries.⁷¹⁶ Foreign affairs is one of the five priorities for political, legal, defence and development security in

2020-2024⁷¹⁷ and the RPJMN emphasises the importance of Indonesia's positive image in international affairs.⁷¹⁸

Countries in Asia and the Pacific are not on track to achieve the 2030 Agenda in many priority areas.⁷¹⁹ Indeed, a UN report in May 2019 found that Asia and the Pacific will not achieve any of the SDGs by 2030 based on the current trajectory.⁷²⁰ In 2018, ASEAN heads of state met in Indonesia and expressed a commitment to strengthen collaboration to achieve the SDGs and overcome development gaps.⁷²¹ In November 2019, President Widodo underscored Indonesia's commitment to achievement of the SDGs in ASEAN.⁷²²

The reforms proposed in this report would lead to increased engagement with civil society and affected communities in Indonesia, help the country use the SDGs as a catalyst for regional cooperation, consolidate partnerships for peace at the global level,⁷²³ and enhance Indonesia's reputation as a pioneer and role model of sustainable development.

7.3 Achieve policy coherence

The requirement for Member States to “*Enhance policy coherence for sustainable development*” (SDG target 17.14) is central to realisation of the 2030 Agenda. Governments should be undertaking systematic, evidence-based reviews to ensure that their national and foreign policies support, rather than impede, progress towards the SDGs and targets.

One of the obstacles to aligning drug policies with the SDGs is the metrics used to measure success. These generally focus on the levels of supply and demand of illicit drugs - that is, the success of the ‘war on drugs’ - but do not collect data on positive or negative consequences of drug policies for society.⁷²⁴ Success should be measured by reducing harm to the health, security and welfare of individuals and society.⁷²⁵

The Outcome Document recognised the importance of policy coherence and identified that drug policies can be developed through development indicators in line with the SDGs,⁷²⁶ highlighting the importance of “*relevant human development indicators*” to evaluate policy outcomes for development.

Civil society actors have suggested alternative metrics and indicators based on the SDGs and aligned with the Outcome Document.⁷²⁷ UN agencies have also developed indicators for the realisation of human rights⁷²⁸ and issued guidance on a human rights-based approach to data collection in the implementation of the SDGs.⁷²⁹ Metrics should go beyond the numbers of people arrested, imprisoned or executed for drug offences, and instead focus on justice, security, poverty reduction, public health, inequalities and human rights.

The Criminal Code has not been reviewed in the context of Indonesia's commitment to the SDGs and contains a raft of problematic measures.⁷³⁰ The Narcotics Law has also been reviewed outside of a development framework. While the revised draft Criminal Code includes a remission for death sentences, it does not remove the penalty, and other articles promote severe penalties for drug-related offences, group together use, possession, purchase, and cultivation of illicit drugs, and fail to recognise drug dependence as a health issue.⁷³¹

There is a lack of coherence between development planning and drug policies in Indonesia, compounded by the often conflicting aims of ministries and agencies. The drug control regime undercuts progress towards the 2030 Agenda, causes extensive harms to individuals and society, overshadows Indonesia's many development achievements, and damages the government's ambition to be recognised as a pioneer and role model of the SDGs. Evidence-based and sustainable development-led policies are needed, as an integral part of the national development framework, in order to ‘leave no one behind’ and to reach the furthest behind first.

R Recommendations

Support reforms to the legal and institutional regulatory framework, to create a more enabling environment for civil society, and enhance civil society engagement in consultations that influence national planning and decision-making. In particular, work closely and meaningfully with civil society and affected groups to review drug policy, and encourage efforts to develop support networks for prevention, treatment, care, recovery, rehabilitation, and social reintegration (Outcome Document para 1(q)).

Develop the capacity of the BNN, Ministry of Health, Ministry of Social Affairs and Ministry of Law and Human Rights to cooperate in developing evidence-based, sustainable development-led drug policies (Outcome Document para 1 (l)).

Strengthen their exchange of information and good practice to effectively implement an integrated and balanced approach (Outcome Document para 6(c)).

Replace drug-related metrics and measurements of success with metrics that support progress towards the SDGs.⁷³² Integrate the National Action Plan for Human Rights with the national development framework and use human rights-based indicators in public policy; and ensure that laws and regulations support progress towards the SDGs, including through revisions to the Criminal Procedure Code, Corrections Law, Criminal Code, and Narcotics Law.

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