

# “No One Believed Me”: A Global Overview of Women Facing the Death Penalty for Drug Offenses

THE CORNELL CENTER ON THE DEATH PENALTY WORLDWIDE

September 2021



Cornell Law School

Cornell Center on the  
Death Penalty Worldwide



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No one believed me is a quote from Merri Utami, who was sentenced to death for drug trafficking in Indonesia in 2002. Her quote reflects the injustices faced by women accused of capital drug offenses around the world: many decision makers disbelieve women's plausible innocence claims or discount the effects of relationships and economic instability on women's decisions to traffic drugs.

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LBH Masyarakat is a not-for-profit non-governmental organization, based in Jakarta, Indonesia that provides free legal services for the poor and victims of human rights abuses, including people facing the death penalty or execution; undertakes community legal empowerment for marginalized groups; and advocates for law reform and human rights protection through campaigns, strategic litigation, policy advocacy, research and analysis

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The Cornell Center on the Death Penalty Worldwide takes sole responsibility for the final content of the report.

## Prologue

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*Merri Utami is on death row in Indonesia for drug trafficking. She maintains that she had no knowledge of the drugs she was carrying. We feature Merri's story in greater detail in this report's first case profile.*

My name is Merri Utami. Twenty years ago (this October) I was sentenced to death for a drug offense. I have spent 20 years in prison for an act I did not understand at the time. During this long imprisonment, I have suffered a lot. I still remember how the media covered my case when I was arrested and dubbed me the 'Queen of Heroin.' I had no chance to tell the truth. I still remember that during the police investigation stage I said repeatedly that the drugs were not mine, but no one was there to help me, and no one believed me. They tortured me, but even then I would not confess.

At the moment the judges sentenced me to death, I could not control my emotions. I was terrified. After that, there were moments when I felt like I wanted to die. But my most challenging moment was when I had to convey the judge's verdict to my family. My children would grow up without a mother, and I couldn't bear the shame my family would have to endure due to my case. The greatest pain of all was when my son died. It was his birthday, and I wanted to call him from prison, but I didn't have the money to pay for the call. I ended up selling water spinach, and I only managed to collect the money three days after my child's birthday. The day I finally got to call my son, they had just buried him. My chest felt like it was smothered, because I could not run and hug his body. The yearning for my child still makes my heart shudder. His death urged me to rise above my adversity and begin to accept my situation. I learned that an imprisoned soul can still express itself. A well-grown tree can produce fruits and enlighten the mood of people who care for it. I have tried to learn to be like a tree, through singing, gardening, and helping to build a church within the prison. But at times I have been in a place of desperation. For eight months, I did not have money to buy the basic needs of a woman. I had to hoe and plant vegetables in exchange for sanitary napkins.

My routine work kept my mind busy until one night, in 2016, two prison guards woke me up and told me that they were taking me to Nusakambangan, the site of executions. I looked at the cell once inhabited by the late Rani Andriani,

another woman sentenced to death for drug offenses who had faced the same situation I was facing now. I was so scared. Memories of the smells, sounds, and footsteps of officers in Nusakambangan still linger in my head to this day. Ahead of my scheduled execution, I was met by my daughter who brought along my infant grandchild. It was the height of my sorrow. I tried to reassure my daughter but inside my heart ached. I wanted to live and to share my experiences, so that no other vulnerable woman would be manipulated. That night, God let me stay alive.

I want the world to understand that when women are in a toxic relationship—as I was—society does not support her, but blames her for choosing the wrong man. Women are vulnerable to being manipulated by men because women feel they need protection, and most of those who provide protection are men. Even when women have been hurt over and over again, they will continue to apologize. This weakness makes women vulnerable to being tortured by men physically and mentally. I hope anyone who reads this report could take heed of these valuable lessons. I also hope that policy-makers will be wiser in assessing the deterrent effect of imprisonment. The death penalty should be abolished, because God gives people the opportunity to repent when they are at fault.

I want the world to know that we, women on death row, are suffering inwardly. Women often keep their struggles to themselves, even though they are unconsciously destroying themselves. But people can, and must, learn from the experiences of women. So women must open up and tell their stories. This is our story.



**Merri Utami**

July 21, 2021

Cilacap Correctional Institution



Merri Utami inside the church she helped to build in prison. Photo courtesy of LBHM.



## Foreword

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Executions for drug offences reached a 12-year global low in 2020, an outcome which is undermined by the steadily rising number of death sentences for drug offences being handed down by judges. Although recognised as a violation of international human rights law, the death penalty for drug offences remains a politically sensitive topic, to the point that it is a recurring theme for presidential posturing in a handful of countries around the world.

This important study takes a deep dive into the experiences of women on death row for drug offences. Significantly, this report examines the issue at a time when globally, women's incarceration rates have increased by 17% since 2010 (a disproportionately higher increase than men); with punitive drug laws as a major driver of this trend. It is estimated that approximately 35% of women in prison around the world have been convicted for drug offences. In the Middle East and Asia, drug offences are the second most common crime for which women are sentenced to death.

The war on drugs narrative justifies the harshest punishments for drug-related crimes, and – as highlighted in Harm Reduction International's global research - in 35 countries the harshest judicial punishment means the death penalty. People on death row for drug offences tend to be involved at the lowest level of the drug trade, and are generally marginalised in society. Gender, socio-economic position, ethnicity and foreign status in a country add intersectional vulnerability to this context. I note the authors' interest in also amplifying the experiences of transgender and gender non-binary people on death row for drug offences, which was limited by the paucity of information available; and acknowledge the additional vulnerabilities of a group of individuals whose stories are largely hidden from the public.

While some women engage in the drug trade through their own volition, for others, a narrower range of choices, along

with poverty, coercion, violence, manipulation, and the survival needs of a family play a significant factor in their involvement. Merri Utami's case and her campaign for clemency shows how she ended up on death row after being manipulated by people with more power and resources.

However, notwithstanding the often blatant reference to gender in judicial proceedings, an analytical approach to the role of gender and connected vulnerabilities is often omitted from consideration when it comes to sentencing. The cases documented by Cornell Center on the Death Penalty Worldwide demonstrate the alarming extent to which women sentenced to death for drug offences experienced gender bias in criminal proceedings and violations of their right to a fair trial.

We thank the Cornell Center on the Death Penalty Worldwide for its work to shine a light on the lives of women on death row for drug offences and are committed to working together to challenge the harms of, and limitations of our archaic laws, policies and processes. We must strive for societies where it is inconceivable that our elected representatives tolerate the death penalty, or invest vast amounts of tax payer dollars in systems which sustain state violence and mass incarceration. We can only begin to address the harm done by firmly connecting our work towards abolition of the death penalty with the full decriminalisation of drugs and inclusive feminist movements.

**Naomi Burke-Shyne**

Executive Director

London, July 2021

Harm Reduction International

## Executive Summary

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The punitiveness of the international drug control system has been largely responsible for the growth of the world's female prison population in the last three decades. In countries that punish drug offenses with death—a violation of international law—a large majority of the women on death row were convicted of drug-related offenses. This report examines the circumstances that lead women to commit or be charged with drug offenses and the impact of gender bias on the criminal process they experience.

Drug convictions account for a minority of the world's death sentences but a majority of capital convictions in a small number of so-called 'retentionist' death penalty states. Capital drug laws are most entrenched in states that resist the global trend towards abolition, concentrated in Asia and the Middle East. Many of these states do not publish information on their use of capital punishment. Moreover, gender-disaggregated and gender-specific data frequently does not exist. Nevertheless, this study examines the available information, notably for countries such as Indonesia, Malaysia, China, and Thailand. Our analysis reveals the following trends relating to women facing death for drug offenses:

**FOREIGN NATIONALS ARE OVER-REPRESENTED** among women on death row for drug offenses. These disparities are more pronounced among the female death row population than among death-sentenced men. Many of these foreign nationals are migrant workers. For example, in Malaysia, 95% of the 129 women on death row for drug offenses in 2019 were foreign nationals.

### **ECONOMIC INSECURITY**

The gendered financial burden of caring for family members, especially among women with little education and without the aid of strong social support systems or access to stable work, is one of the key factors that pushes women into trafficking drugs. Courts often fail to take into account women's economic instability and caregiving responsibilities before imposing death sentences. One woman in China, a single mother, spent the proceeds of a drug sale to care for her son, who had a disability. The court held that this fact was irrelevant. Although economic need often propels women into drug trafficking, women typically make little money from trafficking (they are often unaware of what exactly they are carrying). Drug trafficking is, like

most women's jobs pre-arrest, just another precarious job—albeit one that exposes them to the risk of capital punishment.

### **MANIPULATIVE OR COERCIVE RELATIONSHIPS WITH MALE CO-DEFENDANTS.**

In many of the cases we reviewed, women transported drugs under the influence or pressure of a male partner, who typically suffered fewer or no criminal consequences. In part, this reflects the gender-stratified and male-dominated structure of the drug economy. In one case, the only apparent evidence against the spouse of a drug trader who was well-known to the police was an informal ledger that included the word "wife." She was sentenced to death; her husband disappeared before serving any jail time.

Women are also disproportionately likely, compared to men, to fall victim to online romance scams that may ultimately lead them to unwittingly traffic drugs. Men who fake relationships to trick women into transporting drugs rely on a common set of tactics, but female defendants struggle to convince judges that they were not aware of the drugs they were carrying. Courts also often neglect to consider the role of an abusive relationship on a woman's decision to transport drugs.

### **REFUSAL TO CONSIDER GENDER-SPECIFIC MITIGATION**

Fair trial principles dictate that courts should consider all relevant mitigating circumstances before imposing a sentence. In practice, however, many courts neglect gender-specific mitigation, and in states that impose a mandatory death penalty, courts may not consider any mitigating circumstances at all. Our research suggests that past trauma from abusive relationships affects the trajectories of many women who traffic drugs. Available data also suggests that women in prison for drug offenses are more likely than men to have endured adverse childhood experiences. Nevertheless, courts routinely fail to take into account the impact of trauma and gender-based violence in determining the appropriate sentence for women.

## **RELIANCE ON STEREOTYPICAL GENDER NARRATIVES**

In the course of this study, we uncovered many cases where courts relied on gender stereotypes to interpret women's circumstances and motivations before sentencing them to death. They offer troubling indications that gender bias affects outcomes in capital drug cases. Notably, courts are reluctant to accept that a female defendant was tricked or pressured into transporting drugs unless she matches the profile of a helpless female victim: poor, uneducated, and—in cases involving a male co-conspirator—inexperienced with men. Courts tend not to believe that women from less disadvantaged backgrounds or who have experienced prior romantic relationships are vulnerable to coercion or manipulation. In one case from Malaysia, the court concluded that “it is very unlikely that the respondent, who is a diploma holder... could have placed herself in a situation where she could be exploited to commit a crime.” In the case of another woman, who claimed her partner manipulated her into transporting drugs, the court described the defendant's defense posture as “a damsel in her maiden love,” a perspective it rejected given that “she herself gave evidence that she was in the process of divorcing her husband and, on top of that, they have a child. Thus, it would not be too remote in finding that she fully knew the effect, danger and pitfall of anyone madly and blindly in love.”

## **RELIANCE ON LEGAL SHORTCUTS TO CONVICTION AND SENTENCE**

In some countries with punitive drug laws, courts are precluded from examining the circumstances of the offense or the offender before deciding on the appropriate sentence. In Malaysia, a death sentence is mandatory for defendants who are convicted of drug trafficking, no matter what

mitigating factors exist. In many jurisdictions, moreover, the law provides courts with two major shortcuts to conviction: a defendant in possession of a drug is presumed to know what she is carrying; and if the quantity of drugs is above a statutory minimum, she is presumed to intend to traffic drugs. These legal rules dramatically increase the number of women who are sentenced to death while ignoring women's position in the drug trade's gender-stratified and predominantly masculine system. Women are disproportionately likely to be low-level drug couriers—and therefore ignorant of the type, quantity, and value of the drugs they are carrying.

## **LACK OF ACCESS TO ADEQUATE INTERPRETERS AND LAWYERS**

Women in many migrant source countries tend to have less access to education than men, which makes them less likely to speak a foreign language. Because of disparities in socioeconomic status and educational attainment, women struggle more than men to access an interpreter or retain skilled legal counsel. In one case we reviewed, the woman's boyfriend and potential co-defendant told the police, in a language she did not understand, that she did not need an interpreter, before pinning the blame on her and walking away—while she was condemned to death.

This report relies on primary and secondary data sources and is the first effort to aggregate global data surrounding drug offenses and the death penalty as these phenomena relate to gender. Based on our findings, we have issued a series of urgent recommendations to governments, lawmakers, the judiciary, prison authorities, and civil society. We hope that this report spurs further research and attention to the plight of women facing death sentences for drug-related offenses.

## Introduction

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In our previous research report about women on death row globally, *Judged for More Than Her Crime*, we highlighted gender discrimination in capital trials and the uniquely precarious detention conditions for women facing capital sentences. Here, we use a gender lens to focus on women facing the death penalty for drug offenses.

Scholars and commentators have observed that the “number of women arrested for participating in the illicit drug trade is on the rise worldwide, in particular among women who lack education or economic opportunity or who have been victims of abuse.”<sup>2</sup> Criminologists attribute this rise to harsher sentencing for low-level drug offenses, rather than increased criminal activity by women.<sup>3</sup> As a whole, the use of the death penalty is on the decline, but a small minority of nations have passed legislation expanding the application of the death penalty for drug offenses.<sup>4</sup> Other countries are attempting to bring back the death penalty for use in drug cases.<sup>5</sup> The use of the death penalty for drug crimes is of special concern because it violates international law, which requires that the death penalty be used only for the “most serious crimes,”<sup>6</sup> a threshold that human rights bodies have repeatedly found that drug offenses do not meet.<sup>7</sup>

In this report, we dove deep into the pernicious ways in which women experience the disparate impact of capital drug laws. Most notably, we found that the economic insecurity that women experience, their disproportionate share of caretaking responsibilities, and manipulation or coercion by intimate partners result in women committing drug offenses or being charged with drug offenses in countries where they face the death penalty. The drug trade is a gender-stratified and predominantly masculine system,<sup>8</sup> and men commit most drug crimes.<sup>9</sup>

Some women make a conscious decision to traffic drugs in context of their gendered positionality. Within the gender-stratified drug trade, many other women are tricked into carrying drugs unwittingly, and many of those women are targeted by men who became their trusted, intimate partners under false pretenses before asking women to transport items that contain drugs.<sup>10</sup> Available data suggests that the top of the drug trade hierarchy is male-dominated, and that relative to their overall role in the drug trade, women are disproportionately likely to be low-level drug couriers.<sup>11</sup> A number of countries mandatorily impose the death penalty

for certain drug offenses, unless defendants are able to provide valuable information that allows law enforcement to disrupt the drug trade.<sup>12</sup> This means that low-level couriers, and therefore women, are disproportionately unlikely to have this information, and therefore more likely to receive the mandatory death penalty without the opportunity to present compelling mitigation.<sup>13</sup>

Researcher Samantha Jeffries has concluded that women incarcerated for drug offenses in Thailand have experienced “trauma, disordered family lives, other adverse life experiences, deviant friendships, addiction (and other mental health problems), male influence and control, limited education, poverty, and familial caretaking responsibilities.”<sup>14</sup> Our research suggests that many women on death row for drug offenses around the world share these characteristics. These challenges are heightened in the lives of women who are noncitizens, who are disproportionately sentenced to death in at least three of the countries profiled in this report. Many of them are migrant workers who face “compounded vulnerabilities.”<sup>15</sup>

Our research has also uncovered examples of gender bias in the criminal legal system, such as courts that, in capital drug trials, focus on a female defendant’s history of sex work, and police who impute guilt to a woman based solely on her male co-defendant’s accusations.<sup>16</sup> Courts routinely fail to take into account the impact of trauma and gender-based violence in determining the appropriate sentence for a woman’s case.

As in our previous work, we highlight both the serious risk that innocent women are sentenced to death for drug offenses, and the sympathetic stories of women who are guilty of their offenses—but whose guilt is mitigated by compelling circumstances. Feminist academics emphasize the importance of acknowledging that women often have agency in choosing to traffic drugs and that some women participate at all levels of the drug trade,<sup>17</sup> and we aim to reflect the complex, gendered realities within which some women make their decisions. As a result of media bias towards narratives of innocence and our desire to profile women only when attention on their case would not harm them, our report includes multiple stories of women who have compelling arguments that they are innocent. We wish to emphasize, however, that both innocent and guilty

women sentenced to death for drug offenses deserve fair trials and sentencing proceedings in which the realities of their lives receive full consideration.



## Methodology

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As we have previously noted, data regarding women sentenced to death around the world is scant.<sup>18</sup> In compiling this report, we relied on a variety of sources, including empirical studies, reports, journal articles, government statistics, complaints to international human rights bodies, case files, country-specific legislation, jurisprudence, civil society, and media reports. In addition, we conducted interviews with country experts from China, Indonesia, Iran, Malaysia, Pakistan, the Philippines, Saudi Arabia, Singapore, and Thailand.

Whenever possible, our report drew on information specific to women on death row for drug offenses. Where such information was not available, we relied on information about women incarcerated for drug offenses who faced a possible death sentence at trial, or women incarcerated for drug offenses more generally. We indicate these distinctions in the text of the report.

We define drug offenses as “drug-related activities categorised as crimes under national laws... [T]his definition excludes activities which are not related to the trafficking, manufacturing, possession or use of controlled substances and related inchoate offences (inciting, assisting or abetting a crime).”<sup>19</sup>

We have relied on both qualitative and quantitative data. We privileged in-depth profiles of individual women and used their narratives to contextualize our research. We strove to adopt an intersectional lens, and we were guided by research on intersectional discrimination that highlights the importance of using women’s narratives about themselves.<sup>20</sup> For this reason, long-form profiles of women with lived experience of incarceration and capital sentencing are central to our report.

Our research drew heavily on information gathered by in-country experts—including practicing capital defense lawyers, activists, academics, and non-profit organizations working on issues related to the death penalty, gender rights, migrant worker rights, drug policy, extrajudicial killings, and female incarceration. Our partners’ knowledge of the legal, political, and cultural systems in which they work is invaluable, and is based on their first-hand experience as well as their engagement with a wide range of stakeholders in the criminal legal system, including civil society, prison

administrators, and individuals living under a death sentence.

Gathering information on death penalty practices is challenging at the best of times, and the COVID-19 pandemic further curtailed our access to information. Our partners were often unable, during the research period, to visit prisons and carry out their usual work with directly impacted women. In several cases, therefore, we had to rely on information that dates from before the pandemic, and we tailored our country research to the available information.

Finally, we started our research with the goal of incorporating all gender minorities into our study, including individuals who identify as cis-women, trans women, trans men, and non-binary. We found, however, that there is little to no publicly available information about trans and non-binary individuals facing the death penalty for drug offenses. We have shared what information we could find about trans and non-binary people (though only some identify as women). Until more death penalty advocates engage with the rights of trans and non-binary people, studies on gender and capital punishment will be limited largely to cis-women.

## PROFILE: MERRI UTAMI (INDONESIA)

Merri Utami is a grandmother who has spent 19 years on death row in Indonesia. Merri was convicted of illegally importing drugs into Indonesia, but she insists that she had no knowledge of her role, and that she was in fact targeted and manipulated by professional drug traffickers. Merri's life has been shaped by poverty, abuse, and exploitation.



Merri Utami in prison in 2016, during her first meeting with LBHM. Photo courtesy of LBHM.

At a young age, Merri entered an abusive marriage.<sup>21</sup> Her husband was a violent man, but Merri felt she did not have the power—or the financial means—to leave him.<sup>22</sup> More than twenty years later, the marks of his violence remain on Merri's body.<sup>23</sup> They had two children: Yosi, a son, and Devi, a daughter. Yosi was born with a defective heart valve, and the cost of his treatment consumed much of the family's meager resources.<sup>24</sup> Merri's husband was a gambler, and his debts added to the family's financial stress. Pressured by her husband, and the need to treat her son, Merri left Indonesia to work as a domestic worker in Taipei.<sup>25</sup> Her children went to live with an aunt in East Java.

Merri missed her children desperately and she wrote long, loving letters to them, trying to parent from afar.<sup>26</sup> She returned home to Indonesia once, hoping that she could stay, but Merri's husband had not reformed and his beatings resumed.<sup>27</sup> She quickly returned to Taipei, and they separated. After some time, an acquaintance in Taipei introduced her to Jerry, who presented himself as a Canadian businessman living in Jakarta. They began a relationship. While her husband had been vicious, Jerry was kind.<sup>28</sup>

One day, Jerry surprised Merri with tickets to Nepal. He told her that they would go on holiday and afterwards they would marry.<sup>29</sup> After a few days in Nepal, Jerry unexpectedly announced that he had to return to Indonesia early for work. He apologized profusely and encouraged her to enjoy the

rest of her holiday.<sup>30</sup> Jerry said that Merri's purse was too old and that, as an apology for his departure, he had instructed a friend to gift her a new one.<sup>31</sup> When Jerry's friend gave Merri the bag, she asked why it was so heavy. Jerry's friend explained that it was a good quality bag, which was heavier than a cheap bag, and Merri believed him.<sup>32</sup>

Merri returned to Indonesia, and left the airport carrying the new purse. She quickly realized that her suitcase, which had her souvenirs from Nepal inside it, was missing, and she returned to the airport to report her suitcase missing. Upon re-entering the airport, security officers put all of Merri's luggage through X-ray scanners and then, swiftly, led her into a small room, placing the new purse from Jerry on a table. The officers pricked the bag with a needle, and white powder started pouring out.<sup>33</sup> The lining of the bag was stuffed with heroin. Merri was shocked, and tried to call Jerry for help, but his phone had been disconnected.<sup>34</sup> Two police officers escorted Merri to a hotel where they interrogated her. Merri insisted that she had no knowledge of the drugs. **The police held a gun to her head, kicked her in the face and slapped her, leaving her with a split lip and wounds covering her body.**<sup>35</sup> Despite their brutality, she refused to confess.

Because Merri could not afford a lawyer, she was assigned one by the government.<sup>36</sup> At her trial, **her lawyer did not present a single witness or expert to testify on her behalf.**<sup>37</sup> He failed to tell the court about Merri's background of domestic violence or explain her isolation and vulnerability to exploitation as a migrant domestic worker.<sup>38</sup> The all-male panel of judges observed that Merri's testimony was fractured and unclear.<sup>39</sup> They reasoned that this was indicative of her role in a highly secretive international drug syndicate,<sup>40</sup> instead of considering that it might in fact reflect the effects of trauma.<sup>41</sup> The judges also deemed that Merri did not look sufficiently remorseful.<sup>42</sup> On May 20, 2002, Merri was convicted of importing heroin and sentenced to death by firing squad.<sup>43</sup> (This verdict was later upheld by Bandung High Court in 2002 and the Supreme Court in 2003.)<sup>44</sup>

Shortly after her conviction, Merri received the news that her son, Yosi, had died. She said she felt as though her "chest was... smothered."<sup>45</sup> Meanwhile, she continued to face daily indignities as a woman within the prison system. Nonetheless, Merri strived to make her life bearable. She learned to garden and became an active church member.<sup>46</sup>

Merri explains that she was trying “to make peace with the unimaginable environment.”<sup>47</sup> In 2005, Merri was reunited with her daughter, Devi, and the two restored the bond that had been damaged by Merri’s incarceration.<sup>48</sup>

One night in 2016, prison guards informed Merri that she was to be transferred to Nusa Kambangan, known as “Execution Island.”<sup>49</sup> Devi frantically called Merri’s lawyer, but he did not return her calls.<sup>50</sup> The Community Legal Aid Institute (LBHM) heard about Merri’s case, and offered her their legal services.<sup>51</sup> They rushed to submit a clemency petition to the Indonesian President just days before her scheduled execution.<sup>52</sup>



Merri and her daughter, Devi, before Merri’s incarceration. Photo courtesy of LBHM.

**The night before Merri was due to be executed, Devi came with her infant child to say goodbye to her mother.**<sup>53</sup> Merri describes that moment as “the height of [her] sorrow.”<sup>54</sup> On July 29, 2016, four people who at been imprisoned with Merri were executed, but Merri was spared.<sup>55</sup> Five years later, however, Merri remains in prison under sentence of death. Her request for clemency has gone unanswered.<sup>56</sup>

*To write this profile, we conducted interviews with Merri’s lawyers, and consulted court records and publicly available information. We publish this profile with Merri’s consent.*

## Global Trends

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### GENDER, DRUG CRIME, AND INTERNATIONAL LAW

#### The prohibition of capital punishment for drug offenses under international law

The International Covenant on Civil and Political Rights (ICCPR), one of the most widely ratified human rights treaties, restricts the use of capital punishment to the “most serious crimes.”<sup>57</sup> In the last 30 years, treaty bodies, human rights courts, and scholars have interpreted this standard as encompassing only “intentional crimes, with lethal or other extremely grave consequences.”<sup>58</sup> The U.N. Human Rights Committee, the treaty body tasked with interpreting the ICCPR, has repeatedly made clear that drug offenses do not meet the “most serious crimes” threshold.<sup>59</sup> Imposing death sentences or carrying out executions for drug crimes therefore contravenes international standards.<sup>60</sup>

Nevertheless, a small but vocal minority of states continues to impose capital punishment for drug offenses, often as part of punitive anti-drug policies, arguing that the drug trade creates “threats to the life, values and health of the state”—and thus meets the threshold of “most serious crime.”<sup>61</sup> States that use capital punishment for drug offenses claim that the death penalty has a deterrent effect on drug trafficking and drug use, although there is no evidence that it is more efficient than other methods of punishment.<sup>62</sup> In fact, the international drug control system, characterized by harsh punishments and police enforcement, has done little to decrease the harms associated with drug use.<sup>63</sup>

Globally, 35 countries currently prescribe the death penalty for drug offenses, mostly concentrated in Asia and the Middle East. States that impose the death penalty for drug offenses are more likely to belong to the minority of countries that continue to carry out executions. Only seven of the 35 countries that retain the death penalty for drug offenses are de facto abolitionist, according to the U.N.’s definition of the term (no executions in at least ten years).<sup>64</sup> The remaining 28 countries that punish drug offenses with death, however, belong to the group of 35 more broadly retentionist jurisdictions<sup>65</sup> (they have carried out at least one execution in the past decade).<sup>66</sup> Among these, nine states are among the world’s top ten executioners as identified by Amnesty International.<sup>67</sup> As a result, although the death penalty for drug offenses is a regional trend, it is one that

accounts for a significant part of the world’s use of capital punishment.

In the 35 states that currently prescribe the death penalty for drug offenses, capital punishment applies to a range of drug-related activities, most notably cultivation and manufacturing, smuggling, trafficking, and importing/exporting controlled substances. Drug trafficking includes smuggling, trading, exchanging, or selling a drug.<sup>68</sup> Certain states also apply the death penalty for offenses such as drugs possession and drugs possession for trafficking, storing and hiding drugs, financing drug offenses, or inducing or coercing minors to use drugs.<sup>69</sup>

In 12 states, the legal framework compels courts to impose arbitrary death sentences as a punishment for at least certain drug offenses, in violation of international law. These states apply the mandatory death penalty for drug trafficking,<sup>70</sup> in many cases determining that the sentence should be death by only looking at the quantity of drugs involved. In these cases, domestic courts have no discretion to consider the circumstances of the offender or the offense before imposing a sentence of death.<sup>71</sup> This practice violates international law prohibiting mandatory capital sentencing.<sup>72</sup>

Drug laws that make possession a capital offense are particularly problematic under international law. Capital possession laws target individuals who use drugs rather than individuals involved in the drug trade. Yet six states apply the death penalty for possession of drugs, defined here as the mere act of being in possession of a substance.<sup>73</sup> Possession requires no intent to distribute and counts among the least serious drug-related offenses. Fourteen states<sup>74</sup> allow the imposition of the death penalty for possession for the purpose of trafficking. At least seven of these<sup>75</sup> presume intent to traffic if the defendant carried more than a threshold quantity provided by law.<sup>76</sup> In some countries, the amount that triggers the presumption of trafficking—which can lead to a death sentence—is very low. For example, in Sri Lanka, possession of just two grams of cocaine triggers the presumption,<sup>77</sup> although it is not uncommon for people who use cocaine regularly to consume one gram or more a day.<sup>78</sup>

The persistence of excessively retributive capital drug policies stands in sharp contrast to the abolitionist trend that

has gained ground worldwide over the past three decades.<sup>79</sup> Between 2008 and 2018, excluding China, five of the states that retain the death penalty for drug offenses (Iran, Singapore, Indonesia, Vietnam, and Saudi Arabia) were responsible for almost 40% of total known executions.<sup>80</sup> While some states, such as Iran, have progressively restricted the application of the death penalty for certain drug offenses, others, such as the Philippines, have proposed reintroducing capital punishment for drug offenses.<sup>81</sup>

Our research indicates that, in practice, even in countries that do not have a mandatory death penalty, courts often fail to adequately consider the circumstances of the offense and the offender, including in drug cases. Courts are particularly reluctant to consider gender-specific mitigation evidence. As a result, even though women often play a minor role in the drug trade and are sometimes manipulated or coerced into committing drug offenses, they are easy targets for drug enforcement authorities. The current international drug control system has thus dramatically increased the number of women imprisoned and sentenced to death.<sup>82</sup>

### **Women sentenced to death for drug offenses under international law**

Very few international standards specifically address women's rights within the criminal legal process. International law does exclude pregnant women from the application of the death penalty, and several regional treaties exclude breastfeeding mothers.<sup>83</sup> These protective standards grant additional safeguards only to women in their maternal role, emphasizing the value of women who meet socially-enforced ideals of femininity.

More than a decade ago, the international community adopted standards regarding the treatment of women in prison, but they remain vastly under-implemented. The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the 'Bangkok Rules'), which complement the United Nations Standard Minimum Rules for the Treatment of Prisoners (the 'Mandela Rules'),<sup>84</sup> set out minimum standards for the humane incarceration of women, including facilities that separate them from male detainees and supervision by female staff.<sup>85</sup> Eleven years after their adoption and despite the exponential growth of the female prison population in the last 20 years, prisons remain largely designed for a male population.<sup>86</sup> In April 2021, recognizing the growing number of women incarcerated for drug

offenses, the U.N. Office on Narcotic Drugs and Crimes, together with the Office for Rule of Law and Security Institutions in the Department for Peace Operations and the Office of the U.N. High Commissioner for Human Rights, reiterated the need to take into account the distinct backgrounds and needs of incarcerated women.<sup>87</sup>



Image by Obilia Studio. Photo courtesy of IDPC

In recent years, international bodies have begun to recognize the need to bring a gender lens to international drug policy. In 2016, the U.N. General Assembly addressed human rights impacts of drug control and discussed gender-specific issues faced by women incarcerated for drug offenses, such as the need to access gender-sensitive health services and counseling. It called for member states to involve women in all stages of the development, implementation, and monitoring of drug policies.<sup>88</sup> That same year, the U.N. Commission on Narcotic Drugs called on member states to consider the specific needs of women and girls in implementing drug policies.<sup>89</sup>

These declarations fall short of addressing the human rights issues women face in capital drug prosecutions. In addition, the frequent unavailability of gender-disaggregated and gender-specific data impedes both national and international actors from understanding how gender bias operates in capital sentencing and finding solutions to address it.



## THE USE OF THE DEATH PENALTY FOR DRUG-RELATED OFFENSES: A REVIEW OF STATE PRACTICES

### Global trends on the use of the death penalty for drug offenses

Punitive drug policies contribute significantly to the growing prison population worldwide,<sup>90</sup> particularly with respect to women. In 2020, over two million people were in prison for drug-related offenses,<sup>91</sup> and drug-related charges accounted for 20% of the global prison population.<sup>92</sup> In the last 20 years, the global female prison population has increased by 50%, much of it attributable to (often low-level) drug-related convictions.<sup>93</sup> Moreover, **punitive drug laws have a greater impact on women’s imprisonment (35% of 714,000 women globally are in prison for drugs) than on men’s (19% of ten million men).**<sup>94</sup> This trend is most notable in countries like Thailand, where the ratio of women incarcerated for drug offenses has reached 84% of the total female prison population.<sup>95</sup> Women’s incarceration affects their families in unique ways: worldwide, around 19,000 children are currently living with their mothers in prison.<sup>96</sup>

The available data suggests that drug convictions account for a minority of the world’s death sentences but a majority of capital convictions in a small number of states. Amnesty International reports that by the end of 2020, at least 28,567 people were known to be under sentence of death, with 82% of them in only nine countries, excluding China.<sup>97</sup> Harm Reduction International estimates that, amongst them, at least three thousand were on death row for drug offenses (though, due to lack of transparency around death penalty data, the true number may well be higher), again excluding China.<sup>98</sup> In a handful of countries, however—many of which continue to carry out executions—drug convictions underlie the vast majority of capital sentences. In the states defined by Harm Reduction International as ‘high application’ death penalty states for drug offenses,<sup>99</sup> drug convictions account for a substantial proportion—and sometimes an overwhelming majority—of death-sentenced prisoners.<sup>100</sup> In 2020, 87% of all recorded death sentences in Vietnam were imposed for drug offenses,<sup>101</sup> and in the same year, 86% of new known death sentences in Indonesia were imposed for drug offenses.<sup>102</sup> Every new known death sentence in Singapore in 2019 was for a drug offense.<sup>103</sup>

According to Amnesty International murder and drug-related offenses underlie most of the world’s executions,<sup>104</sup>

but precise data is exceedingly difficult to come by. The best available estimates almost certainly undercount the true number of drug-related executions globally, possibly by hundreds. Amnesty confirmed 122 known drug-related executions out of 657 executions globally in 2019 (excluding China).<sup>105</sup> In 2020, Amnesty documented 483 executions globally (excluding China),<sup>106</sup> of which 30 were drug-related.<sup>107</sup> This figure represents a 96% drop from the figure Harm Reduction International reported in 2015,<sup>108</sup> which is more likely attributable to the global pandemic rather than a shift in state policies. Given the lack of reliable data, particularly from China—which executes more people than the rest of the world combined—and Vietnam, these figures offer only a glimpse into the scale of drug-related executions and death sentences globally.

### Women facing death for drug-related offenses

Murder and drug offenses account for most of women’s death sentences globally.<sup>109</sup> Among the eight states defined as ‘high application’ death penalty states for drug offenses (China, Indonesia, Iran, Malaysia, Saudi Arabia, Singapore, Thailand and Vietnam),<sup>110</sup> all either currently have women on death row for drug offenses, or are believed to recently have had women on death row for drug offenses, as we detail in this report. Recently, Iran raised the minimum quantity of drugs that can trigger a death sentence.<sup>111</sup> Multiple sources report that, before these reforms, Iran was executing a significantly larger number of women for drug-related offenses than for homicide.<sup>112</sup> Gender-disaggregated death row data is not available for China, Saudi Arabia, Singapore, or Vietnam.



Image by Obilia Studio. Photo courtesy of IDPC

In the remaining high application states for which we have data—Indonesia, Malaysia and Thailand—we observe three trends: (1) drug offenses account for most of the known death sentences nationwide; (2) an overwhelming majority of the women on death row were convicted of drug offenses; and in Malaysia and Thailand, (3) drug convictions underlie a greater proportion of death sentences among women than among men. Amnesty International reports that, in Malaysia, 95% of all women on death row in 2019 were convicted of drug offenses, compared to 70% of the men under sentence of death.<sup>113</sup> In Thailand, of the 33 women who were on death row as of February 2021, 94% had been convicted of drug offenses, compared to 60% of the men on death row.<sup>114</sup> Between 2000 and 2018, 18 of 22 women sentenced to death in Indonesia were convicted of drug offenses.<sup>115</sup>

We have faced considerable difficulties in accessing information for other states. For instance, while we know that North Korea sentenced at least one woman to death for drug trafficking in 2019,<sup>116</sup> we were not able to gather any information on her case or other cases in the country. Similarly, we were able to identify 14 female defendants sentenced to death in China between 2015 and 2019, eight of whom received a death sentence for drug offenses, but our research suggests that the actual numbers are much higher.<sup>117</sup> While we know that in 2019 Saudi Arabia executed at least two women for drug offenses, both foreign nationals,<sup>118</sup> there is no information available about women currently on death row. Finally, in other countries we know the number of women on death row but do not know the offense for which they received a capital sentence. According to Amnesty International, globally at least 19 women were sentenced to death and 16 were executed in 2020.<sup>119</sup> Again, this is likely an underestimate.

### **Foreign nationals facing the death penalty for drug offenses**

In the high application states for which we have data, foreign nationals are overrepresented on death row. Foreign nationals make up 26% of death-sentenced prisoners in Indonesia, and all of them received a capital sentence for drug convictions.<sup>120</sup> In Malaysia, foreign nationals represent over 40% of death-sentenced prisoners, a large majority of whom were convicted of drug offenses.<sup>121</sup> All five persons executed for drug offenses in Saudi Arabia in 2020 were foreign nationals.<sup>122</sup> Foreign nationals face particular disadvantages in criminal prosecutions: they often

do not speak the language of the police or the courts and have difficulty accessing interpreters; they have little local support in navigating the criminal system; and their families are too far to contribute to the background investigation necessary for an adequate defense.<sup>123</sup> The overrepresentation of foreign nationals among capital defendants facing drug charges worsens the already prevalent fair trial violations in capital drug prosecutions.

In the high application states for which we have data, foreign nationals are also overrepresented among women facing the death penalty. Many of these are migrant workers.<sup>124</sup> In Malaysia, Amnesty International reported that 95% of the 129 women on death row for drug offenses in 2019 were foreign nationals, compared to 70% of the men.<sup>125</sup> In Thailand, while we lack data for death row, we know that as of 2017, 66% of incarcerated female foreign nationals had been convicted of drug-related offenses, compared to 45% of men.<sup>126</sup>

### **State-sanctioned extrajudicial killings for drug-related offenses**

Although this study focuses on states that impose judicial death sentences for drug offenses, one state that has formally abolished the death penalty espouses an equally retributive model of drug policing: the Philippines. National police forces, often with the explicit encouragement of President Rodrigo Duterte, have engaged in a years-long campaign of extra-judicial killings targeting individuals who use drugs or whom they presume are involved in the drug trade.<sup>127</sup> The U.N. Human Rights Council has decried “alleged widespread and systematic killings” of people who use drugs and perceived drug traders as part of a nationwide ‘war on drugs.’<sup>128</sup> Estimates of the number of people killed range from 8,663 (as of June 2020) to over 27,000 (as early as December 2018).<sup>129</sup> We include the Philippines in this review because these killings result from an identifiable public policy, and because the government has attempted on multiple occasions to reintroduce capital punishment for drug offenses.

There is no publicly available information on the number of women who have become casualties of this campaign of extra-judicial killings. Tens of thousands of women, however, have registered as persons who use drugs with their local council office, as required by law,<sup>130</sup> and now live with a credible fear of being killed. One investigative report likened joining this “watch list” to being “targeted for

assassination.”<sup>131</sup> Women are also indirectly affected by the ‘war on drugs.’ In the words of the Special Rapporteur on extra-judicial, summary or arbitrary executions: “[A]s the majority of the victims are men, their female partners, by virtue too of their gender-based roles, are left to confront the associated stigma, fear, insecurity and economic deprivation, in addition to the burdens of identifying and burying their dead loved ones and seeking justice.”<sup>132</sup>

Finally, there have been documented cases of police killing cisgender and transgender women as a result of them registering, or in some cases being involuntarily registered, for these watch lists.<sup>133</sup> For instance, in 2017, the police arrested Heart de Chavez, a transgender woman living in Manila, after finding her name on the watch list. De Chavez sold small amounts of drugs in order to buy food. When the police found no drugs on her, they demanded a bribe, which she could not afford to pay. Three days later, masked men in civilian clothes pulled from her house at night and shot her at point blank range, killing her.<sup>134</sup>

## PROFILE: EJAZ FATIMA (SAUDI ARABIA)

Ejaz Fatima, a Pakistani national, was executed in Saudi Arabia in April 2019 with her husband, Mustafa Muhammad, after Saudi courts convicted them of trafficking heroin.



Ejaz Fatima and Mustafa Muhammad on their wedding day in 2006. Photo taken by Mustafa's family. Photo courtesy of Justice Project Pakistan.

Ejaz and Mustafa married in 2006 and subsequently had five children.<sup>135</sup> Mustafa, the sole family breadwinner, ran a small chicken shop and took on whatever extra work he could find for daily wages.<sup>136</sup> The couple worked hard but they struggled to provide for their family on Mustafa's meager income, and three of their children died in infancy.<sup>137</sup> In addition to their surviving children, the couple cared for Mustafa's father, who was paralyzed. Mustafa's mother describes Ejaz as "humble and responsible... I never found a daughter-in-law like her."<sup>138</sup> Ejaz and Mustafa doted on their surviving children: their daughter Bushra, born in 2010, and their son Ali Raza, born in 2011. According to Mustafa's family, more than anything, the couple "just wanted a healthy and long life for their two children."<sup>139</sup>

In 2016, Ejaz and Mustafa told their families that they wanted to make Umrah, a pilgrimage to Mecca.<sup>140</sup> The couple hoped, through prayer and devotion, to improve their

economic situation. They arranged their trip through a friend, Waseem, who worked as a travel agent.<sup>141</sup> We do not know whether Ejaz and Mustafa were aware of Waseem's involvement in drug activities, but they felt that the trip was safe enough to travel with their daughter Bushra, aged six at the time. Mustafa's family believed that they brought her because she "was very close to her parents and she couldn't live without them."<sup>142</sup> Their younger child, Ali Raza, remained in Pakistan. On June 27, 2016, the day the family arrived in Saudi Arabia, they were arrested at an airport in Jeddah for smuggling heroin.<sup>143</sup>

The airport police immediately separated the family, taking Mustafa to a men's prison and Ejaz and Bushra to the women's section of the Dhaban Central Prison.<sup>144</sup> After six months, prison officials separated Bushra from her mother and detained her for over two years in a separate juvenile facility, despite her young age.<sup>145</sup> Neither Saudi nor Pakistani authorities notified Ejaz and Mustafa's family of their arrest and detention.<sup>146</sup>

On occasional calls to their families, Ejaz and Mustafa described a criminal process rife with fair trial violations. Neither had a lawyer or an interpreter.<sup>147</sup> As neither spoke any Arabic, Mustafa's father explains, "They couldn't understand... **They weren't [even] aware, when they were convicted, [that they had received a] death sentence.**"<sup>148</sup> Research by Human Rights Watch and Justice Project Pakistan indicates that it is exceedingly rare for Pakistani nationals (and many other foreign nationals) to receive legal representation in Saudi Arabian courts, including in capital drug cases.<sup>149</sup>

Meanwhile, Bushra, who was seven by that time, lived in prison-like conditions at the juvenile facility. Supervised by Saudi officials who only spoke Arabic and surrounded by Arabic-speaking youth, Bushra could not communicate at first and gradually retreated into herself.<sup>150</sup> She was allowed to play outside for just one hour each day.<sup>151</sup> Every other month, she saw her mother for 30 minutes, under strict supervision from prison guards.<sup>152</sup> In two years, Bushra only saw her father twice, and his shaved head and shackled limbs reportedly "terrified" her.<sup>153</sup> After battling with the Saudi authorities, Ejaz's relatives traveled to Saudi Arabia to collect Bushra and she returned home to Pakistan on February 27, 2019.<sup>154</sup> In her last meeting with her mother shortly before she left the country, Bushra was "mostly mute."<sup>155</sup>

Less than two months later, on April 11, 2019, Ejaz and Mustafa were beheaded.<sup>156</sup> Again, authorities failed to notify their families, who learned the news when Mustafa and Ejaz's former cellmates were able to send word.<sup>157</sup> On the morning of his execution, Mustafa had asked his cellmate to contact his family and to "ask my father to forgive me."<sup>158</sup> After learning of their deaths, Ejaz's and Mustafa's families tried desperately to repatriate their bodies to Pakistan. The Saudi authorities did not respond to or even acknowledge the families' request for repatriation.<sup>159</sup> To this day, the families have not received any legal or court documents, or any death certificates, from Saudi Arabia.<sup>160</sup> Turning to their own government for assistance, they applied to the High Court with the help of Justice Project Pakistan, a human rights organization, to request that the state help facilitate the return of their loved ones' remains.<sup>161</sup> The High Court dismissed their application, and Ejaz and Mustafa's bodies still lie in an undisclosed location in Saudi Arabia. Mustafa's father explains, "**[W]e just wanted to get their dead bodies so that their children could go to their parent's graves.**"<sup>162</sup>

Today, Bushra and Ali Raza, now aged ten and 11, live with their maternal uncle.<sup>163</sup> When Bushra first returned to Pakistan, she could no longer speak Punjabi, and her family struggled to communicate with her. According to Mustafa's family, "She was... disturbed... [s]he used to keep silent."<sup>164</sup> To this day, "[s]he doesn't want to talk about [what happened]."<sup>165</sup> Bushra struggles to concentrate and is doing poorly in school. Both Bushra and Ali Raza "miss their parents a lot."<sup>166</sup> The plight of Ejaz Fatima and Mustafa Muhammad is emblematic of the obstacles faced by indigent foreign nationals charged with drug trafficking, particularly where—as in the case of Pakistan—the country of origin is unwilling to provide assistance.

*To write this profile, we conducted interviews with Ejaz and Mustafa's legal advocates and with Mustafa's family. We also consulted the limited case documents that were available. We publish this profile with both Ejaz and Mustafa's families' consent.*



## Gendered Pathways to Offending

### THE ROLE OF ECONOMIC INSECURITY IN PATHWAYS TO DRUG OFFENDING

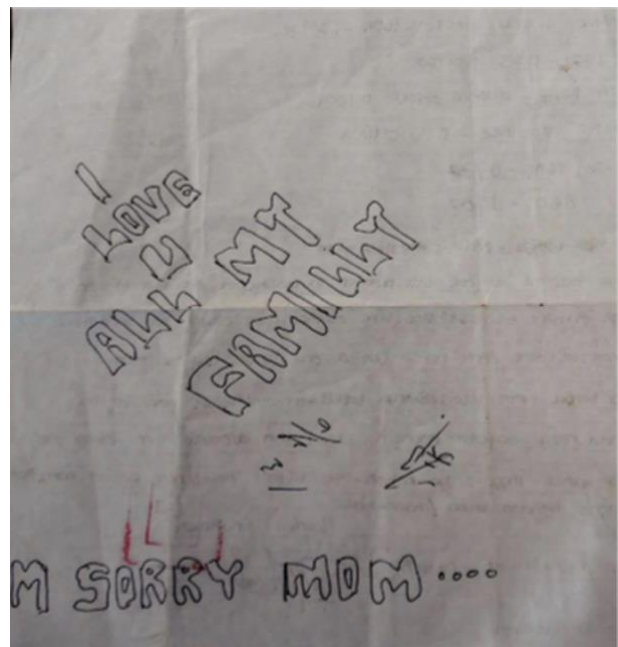
#### Economic insecurity: a gendered phenomenon

As women in a patriarchal society, women on death row for drug offenses are subject to gendered systems of oppression that push them into economic insecurity. As Lucy Harry has argued in her study of women on death row in Malaysia, economic precarity is a better framework than poverty for understanding women's pathways to committing drug offenses.<sup>167</sup> Precarious work is defined as the uncertainty over continuing employment, lack of control over working conditions, wages, and the workplace, lack of regulatory protection, and a low income level.<sup>168</sup> Women, especially women in the Global South, are over-represented in precarious work.<sup>169</sup> Men and women tend to be segregated into different occupations, with women disproportionately in part-time, low paying jobs<sup>170</sup> with short-term contracts or no contracts at all and little opportunity for career progression—in other words, precarious work.<sup>171</sup> This labor market gender segregation is partly attributable to discrimination by employers, who may be less likely to hire or promote women because they expect women to leave the labor market when they have children.<sup>172</sup>

The other key reason for women's overrepresentation in precarious work is their disproportionate share of unpaid care work: one study estimates that women perform 75% of the world's unpaid work.<sup>173</sup> Moreover, they are often responsible for providing care and financial support to both their immediate and extended family.<sup>174</sup> This unpaid care burden is exacerbated for single mothers, who make up the majority of one-parent households<sup>175</sup> and face significantly higher poverty risks than average. Single mothers must support their family on a sole income, which is often inadequate, and they often struggle to juggle paid and unpaid work. They also face additional challenges due to their gender, such as pay gaps and motherhood pay penalties.<sup>176</sup> A series of studies from Thailand showed the financial impact of early caregiving responsibilities among women who were later incarcerated for drug offenses. Many faced caregiving responsibilities early in life and had to leave school early either to support their parents or their families—often after marrying and having children as

teenagers. These caregiving responsibilities severely curtailed their future employment prospects.<sup>177</sup>

The burden of unpaid care work also makes it harder for women to secure long-term, full-time, well-paying employment. Women responsible for unpaid care work are more likely to pursue more precarious work in the labor market, such as part-time work, so that they have the flexibility to meet their unpaid care responsibilities.<sup>178</sup> In East and Southeast Asia, for instance, young women are less likely than young men of the same age to transition to education, employment, or training after they leave school—even though girls attend and complete school at equal (or higher) rates than boys in the region. The most common reasons that young women in the Asia Pacific region are not in paid employment are family responsibilities, housework, and pregnancy.<sup>179</sup> Furthermore, neoliberal reforms have worsened the economic precarity and financial stressors that women face by making the labor market more precarious overall,<sup>180</sup> and by decreasing the availability of public care.<sup>181</sup> These reforms dismantled social safety nets that “buffered insecurity”<sup>182</sup> and left countries with withered public services, especially in education and healthcare.<sup>183</sup>



Drawing by a woman sentenced to death for a drug offense in China, sent to her family. Photo courtesy of Komnas Perempuan.

**The gendered financial burden of caring for family members, without the aid of strong social support systems or access to stable work, is one of the key factors that pushes women into trafficking drugs.** In Malaysia, for instance, a recent study found that many women—especially those who were single, divorced, or pregnant—decided to traffic drugs because they needed money to take care of their family’s needs.<sup>184</sup> We found similar trends in our research on other countries.

### **The economic precarity of women migrants**

Globalization and neoliberal reforms have resulted in increased migration,<sup>185</sup> and women make up an increasing majority of intra-ASEAN migrants in many ASEAN countries.<sup>186</sup> Many women experience gendered pressures to migrate. The families of women—especially young girls—may exercise significant control over women’s decision to migrate, making “the distinction between forced and voluntary migration difficult to identify.”<sup>187</sup> **Women often migrate for work to support their families.**<sup>188</sup> **Some women may also see migration as an opportunity to escape oppressive patriarchal systems** by freeing themselves from parental control, making more independent marriage choices, and becoming more financially independent.<sup>189</sup> Women seeking work abroad are especially vulnerable to exploitation by drug syndicates. Many of these women have never engaged in waged work before<sup>190</sup> and are desperate for money because they are struggling financially<sup>191</sup> and are from areas with high unemployment.<sup>192</sup>

### **Women and economic precarity: a pathway to drug offending**

In most of the cases we reviewed for this report, women who received a death sentence for drug trafficking had experienced economic precarity. Lucy Harry found that a majority of women on death row for drug trafficking in Malaysia experienced economic precarity before their arrest.<sup>193</sup> Most of them were unemployed or engaged in precarious work that did not require higher education or significant training—such as domestic worker, bartender, and cashier—before their arrest. Others likely worked in the illicit economy as masseuses or sex workers. Only a handful of women had high-paid, “high-skilled occupations—an accountant, a nurse and teachers.”<sup>194</sup> Most of these women had few viable opportunities to earn money, and drug trafficking emerged as one of their few options. For some

women, trafficking jobs present an opportunity to support their families. For others, selling drugs allows them to escape domestic violence or familial abuse.<sup>195</sup> Many women who experience economic precarity, however, feel that they had no choice but to traffic drugs. For example, one woman, who was single and working at a hair salon, accepted a job transporting drugs because she needed extra money to pay for her father’s medical bills. She was sentenced to death.<sup>196</sup> Courts often fail to sufficiently consider these nuances at sentencing, and in jurisdictions with mandatory capital sentencing or presumptions of guilt based on quantity, they are unable to do so at all.

Researchers in Thailand have similarly found that the most common pathway to offending for women was “economic familial provisioning.”<sup>197</sup> Many women in one study shared similar stories: childhood poverty led them to leave school early, limiting their employment prospects. As adults, they continued to face poverty amid growing responsibilities to financially support their parents and dependents. They needed money to afford necessities such as food, utilities, and the cost of sending their children to school. As their anxiety reached a peak, a friend or acquaintance who was aware of their precarious economic situation offered them a job transporting drugs. The women saw the job as a solution to the pressing problem of how to support their families.<sup>198</sup>

Economic precarity makes women more vulnerable to drug traffickers who may exploit them to carry drugs without their consent. A majority of the women whose cases are detailed in our report stated that they were unaware of the drugs they were transporting. Mary Jane Veloso, for instance, thought that she was traveling for a work opportunity abroad when in fact she was used by a network of illegal recruiters to transport drugs across borders. Moreover, women can be vulnerable to drug trafficking recruiters for both economic and social reasons.<sup>199</sup> **Some recruiters appear to use both economic and romantic incentives to trick women into transporting drugs.** One known trafficker tricked multiple women into trafficking drugs, including an Indonesian woman with whom he started a romantic relationship. He tricked the woman—who was a mother of a young child and undergoing a divorce—into traveling with a suitcase containing hidden drugs. At the time, the woman was merely grateful that he was covering her travel expenses. Originally, that woman’s flight would have taken her to Malaysia, where she would have faced the death penalty if caught. At the last minute,

he re-routed her to Hong Kong, where she was arrested and faced a long prison sentence instead.<sup>200</sup>

Drug trafficking does not, however, resolve women's economic precarity. Indeed, it is important to note that women's precarity "is perpetuated—not solved—by drug trafficking."<sup>201</sup> Women often make little money from trafficking; they usually earn significantly less than the value of the drugs they carry, often because they are not aware of exactly what they are carrying.<sup>202</sup> **Drug trafficking is, like most women's jobs pre-arrest, just another precarious job—albeit one that exposes them to the risk of capital punishment.**



Drawing by a woman sentenced to death for a drug offense in China, sent to her family. The artist has depicted herself with her husband, and her son, as bears. The bird symbolizes her wish to fly, free from incarceration, to her family. Photo courtesy of Komnas Perempuan.

## MANIPULATIVE RELATIONSHIPS

Women facing the death penalty for drug offenses are frequently arrested together with male suspects. In many such cases, male romantic partners drive women's involvement in the drug trade. Yet male co-defendants or co-suspects often face lesser or no criminal consequences for their actions, even if they played a key role in the drug-related activity. Researchers Carolyn Hoyle and Lucy Harry have found that in Southeast Asia, **most women face the death penalty for crimes stemming "from their relationships, be it with their dependents, intimate romantic partners, friends, or relatives."**<sup>203</sup>

This section explores the impact of manipulative or coercive intimate relationships on the lives of women who face death for drug offenses, whether that relationship is genuine or part of a scam to trick women into transporting drugs. Understanding how manipulative relationships can lead to drug offending is key in jurisdictions where the law presumes that defendants have knowledge of any drugs in their possession and infers intent to traffic from the quantity of the drugs.<sup>204</sup> Men who fake relationships to trick women into unwittingly transporting drugs rely on a common set of tactics, but female defendants struggle to convince judges that they were not aware they were carrying drugs. Courts also often neglect to consider the role of an abusive or threatening relationship on a woman's decision to transport drugs.

Available data makes clear that men are considerably more likely to play a role in women's pathways to offending than the other way around. Lack of detailed data often makes it difficult to ascertain the degree to which a woman experienced pressure, financial encouragement, manipulation, or abuse before participating in a drug offense. Even in the realm of relationship scams, where the scammer's primary goal is to set up a woman to traffic drugs, it can be difficult to untangle how much of any given relationship contains genuine elements. Either way, romance scams represent a common pathway to drug offenses that many judges appear quick to disbelieve, even when there is substantial evidence of manipulation.<sup>205</sup>

## PROFILE: ANNA\*

Anna was a middle-aged woman with a large and caring family,<sup>206</sup> who lived in a wealthy nation that had abolished the death penalty. At a time when she was unhappy in her marriage, a stranger messaged her on Skype, claiming to be a Captain in the United States Army.<sup>207</sup>

Unbeknownst to Anna, the Captain was a fake persona created by online scammers.<sup>208</sup> She had previously fallen victim to a different cyberscam,<sup>209</sup> and her name may have been on a ‘sucker list’ used by online scammers to target likely victims. Anna was charmed by the caring Captain who seemed to be a good listener, and she developed feelings for him.<sup>210</sup> Though Anna had not been looking for a new romantic partner, she reciprocated when the Captain expressed feelings of deep friendship and love.<sup>211</sup> The Captain sent her loving, poetic messages:

Our lives have become so entwined, that we simply can't exist separately anymore, We need each other like springtime blossoms need rain and sunshine...<sup>212</sup>

If Anna ever questioned the authenticity of something the Captain said, he responded quickly with voice calls that reassured her.<sup>213</sup>

Eventually, the Captain sent Anna a photo of himself with a “Will you marry me?” sign, and wrote to Anna:

I do not want to waste anytime anymore, I do not want to be lonely, I have searched my heart... you are not happy in your married life, therefore I want to ask your hand in Marriage.<sup>214</sup>

Anna accepted his proposal.<sup>215</sup>

The Captain frequently pushed Anna to send him money for various reasons and manipulated her emotionally when she refused to do so by ignoring her or sending her accusatory messages:

Sometimes I don't know how [to] think, is it because you [know] that I love you so much, that gives you the chance to treat me the way you like[?] [If] you sent the money as

you claimed why is it that the Company [has] not received [it to] date, why is that you choose to break my heart knowing fully well that I need concentration here in the War Zone? So you want me dead?<sup>216</sup>

Though Anna was living on a minimal income and had little money, she was sometimes able to send him small sums. She did so, for instance, to help him when he claimed he was sending her his luggage in anticipation of moving to start a life with her.<sup>217</sup> **When it eventually became apparent that Anna had no more available funds, the scam quickly moved to a different stage—the Captain said that they could finally be together if Anna could do him one more favor.**<sup>218</sup>

Anna had communicated with the Captain on a daily basis for about two years when he told Anna that he was eligible to retire and could now marry her.<sup>219</sup> He said that she needed to collect his retirement papers from his Commander in a third country, then return the paperwork to the United States Embassy in her home country.<sup>220</sup> Anna quickly prepared for the trip and flew to the country with instructions and hotel accommodations that the Captain had supposedly pre-paid.<sup>221</sup> Nothing about the trip went according to plan.<sup>222</sup> The Captain told her that his Commander, who was connected to the United States Consulate, would meet her at the airport with his retirement documents, but he did not appear.<sup>223</sup> Anna unexpectedly needed to pay out of pocket for most of her hotel expenses.<sup>224</sup> She found herself low on funds and worried about covering the fare to the airport for her return flight.<sup>225</sup> By the time her return date approached, Anna was sleep-deprived and discombobulated after the trip's unexpected challenges.<sup>226</sup> **Scammers often purposefully use the technique of distracting and exhausting their targets to make them less likely to question the scam.**<sup>227</sup> The evening before Anna was to return home, a self-identified “representative” of the Commander appeared with the documents she had been waiting for.<sup>228</sup> He then offered to give her a ride to the airport—solving a problem she had been worried about—and he asked Anna to take a backpack of Christmas presents for his loved ones back with her.<sup>229</sup> She agreed to reciprocate

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\* We used a pseudonym and omitted some details to protect the identity of the woman featured in this profile. We are unable to provide citations for all of our statements, as some of them are supported by media articles that identify Anna by name.

his favor, and when she looked inside the backpack, she saw new clothes wrapped in plastic.<sup>230</sup>

Anna embarked on her journey home. During a layover in an Asian country that has the death penalty for drug offenses, Anna accidentally went through customs twice.<sup>231</sup> The second time, customs officials discovered drugs in the backpack she was carrying.<sup>232</sup> When the officials confronted Anna, she did not understand their slang reference to drugs and did not understand that she was being accused of transporting drugs in her bag. In fact, Anna did not understand that she had been the victim of a scam and struggled to make sense of what had happened—even after her arrest, and even at her trial three years later.<sup>233</sup>

Anna's trial took place in the country where she had been arrested, where she faced a mandatory death sentence if convicted. In the first instance, the trial judge found that Anna was not guilty and had carried the drugs unwittingly. Prosecutors disagreed with the trial judge and, on appeal, argued that “love sickness” and “ignorance” were not defenses to drug trafficking. They argued that the scammers' hold over Anna, and her naïve romantic attachment, were unreasonable and precluded a defense.<sup>234</sup> The prosecution's appeal was successful, and the appellate court sentenced Anna to death. Anna spent over a year on death row and a total of five years in prison before a court of final appeal overturned her conviction, agreeing that she had been unaware she was carrying drugs.

Anna's case is emblematic of the difficulties that scam victims encounter to persuade courts that they are innocent or that online manipulation is a mitigating circumstance. **Especially in jurisdictions where defendants must rebut a presumption that they intended to transport drugs, it is difficult for those who are vulnerable to manipulation to justify their lack of suspicion to the courts.** The criminal legal system treats targets of financial scams as victims but treats targets of drug trafficking scams as criminal defendants—exposing them to the risk of incarceration and sometimes death.

*To write this profile, we consulted the cited academic paper and various public news sources, which we did not cite in order to protect Anna's identity.*



## The role of romantic relationships in women’s pathway to drug offenses

A substantial number of women who face the death penalty for drug offenses whose cases we reviewed committed the offense under the influence or pressure of male partners. In part, this reflects the gender-stratified and male-dominated structure of the drug economy.<sup>235</sup> Women tend to operate in the lowest ranks of the drug economy as couriers, while those in leadership positions tend to be men.<sup>236</sup>

Women in prison for drug offenses often report that their intimate partners manipulated, coerced, or misled them into drug-related activity.<sup>237</sup> In Thailand, where there is the most available data, one study of 16 women imprisoned for drug offenses found that a quarter of the female respondents reported that they were manipulated into trafficking drugs by their romantic partners.<sup>238</sup> None of the 18 men in the same study reported any partner involvement in their drug offense. On the contrary, men were likely to report that their partners tried to impede their involvement with drugs.<sup>239</sup> In a similar study by Jeffries et al., 72% of their sample of Thai women in prison for drug offenses reported that, as adults, they were in intimate relationships with partners involved in ‘deviant’ behavior.<sup>240</sup> Jeffries and her co-authors found that in Thailand, “attachments to family and intimate partners are more likely related to women’s offending/criminalization than men.”<sup>241</sup>

We observe similar trends in all countries where data is available. One known drug syndicate that operates in Malaysia, Thailand, the Philippines, Indonesia, and China seeks out women to act as drug couriers.<sup>242</sup> The syndicate sends male operatives to establish relationships with—and sometimes even marry—Malaysian women.<sup>243</sup> The syndicate specifically targets women and pays them to carry drugs across borders.<sup>244</sup> Several women on death row in Malaysia reported to Amnesty International that they planned to travel with a friend or partner who pulled out of the trip at the last minute—a common scenario in cases where women unwittingly carry another person’s drugs.<sup>245</sup> Similarly, in Indonesia, many of the women sentenced to death between 2000 and 2018 reported manipulation by men.<sup>246</sup> In contrast, “romance is not cited as a motivator or factor in the account of male drug traffickers.”<sup>247</sup>

Our research also supports the conclusion that past trauma from abusive relationships affects the trajectories of many women who traffic drugs. Women in prison for drug offenses are more likely than men to have endured adverse

childhood experiences. In Thailand, a study of women in prison for drug offenses concluded that:

[V]ictimisation and associated trauma are linked to both female and male imprisonment trajectories [to offending], [but] incarcerated women tend to be victimised earlier in their lives, in multiple ways (e.g., child abuse and domestic violence), and more frequently. As a result, victimisation appears to be an experience that carries more weight in shaping women’s pathways to prison.<sup>248</sup>

In a different study of men and women imprisoned in Thailand for drug offenses, 22% of the women, and none of the men, reported that they had experienced domestic violence.<sup>249</sup> Nearly a quarter of the women, and none of the men, had worked in the sex industry—who may be at an increased risk of trauma in part because of the criminalization of sex work.<sup>250</sup>

Abuse may increase a woman’s likelihood of offending in a number of ways. An abusive partner may coerce or manipulate a woman into engaging in drug-related activities.<sup>251</sup> Financial control is an extremely common feature of abusive relationships<sup>252</sup> and increases the chance women will commit a crime out of economic need.<sup>253</sup> Past trauma often makes individuals more susceptible to suggestions,<sup>254</sup> and trauma can also lead to mental health issues.<sup>255</sup> The case of Merri Utami illustrates how a history of abuse makes women more vulnerable to romantic scams.<sup>256</sup> Her experience of abuse at the hands of her husband increased her vulnerability to a scammer posing as a kind man who seemed to care deeply about her, but who later tricked her into trafficking drugs.

According to Merri Utami’s own understanding of what happened to her:

Women are vulnerable to being manipulated by men because women feel they need protection, and most of those who provide protection are men... Even when women have been hurt over and over again, they will continue to apologize. This weakness makes women vulnerable to being tortured by men physical and mentally, especially for women who think that living with men makes their lives better.<sup>257</sup>

One hallmark of cases where a male partner influences or manipulates a woman into committing a drug offense is that she bears the brunt of the risk and the criminal consequences. This may occur in part because the male co-defendant has access to more financial resources, or is more able to provide useful information about the drug trade to law enforcement if he faces criminal charges. For example, Avalie was sentenced to death while her male partner walked free. Her partner gave money to the police during their interview, and he told police officers in English—a language that Avalie does not speak—that the drugs belonged to Avalie rather than him.<sup>258</sup> Similarly, a different woman was sentenced to death for drug trafficking while her husband received a short prison sentence—though there was stronger evidence against him. (The police tried extorting the woman during the investigation and suggested she ask her husband for money when they realized she had no money. Later, the police officers involved in the investigation of the husband were dismissed after an internal investigation.)<sup>259</sup> In addition, male scammers who organize drug couriers face a low risk of detection, while women who are their scam victims are often caught while crossing international borders. This appears to have happened in the cases of Merri Utami, Siti Aslinda, and Anna.<sup>260</sup>

### **Romance scams as a pathway to drug offending**

Another pattern we observe is women facing the death penalty for drug offenses after falling prey to online scams. Because scammers work to maximize financial gain, they tend to manipulate women into transporting large amounts of drugs that result in drug trafficking charges rather than simple possession. Typically, romance scammers initiate a romantic relationship over the internet and groom victims over a period of time, sometimes maintaining the scam relationship for years.<sup>261</sup>

Scammers often claim to live in a different country than the scam victim, and their requests related to international travel can therefore “revolve around ‘plotlines’ that will enable the victim and offender to be together.”<sup>262</sup> For example, Merri Utami believed that she was traveling to Nepal to join ‘Jerry’ and that after she arrived, they would finally marry.<sup>263</sup> Anna believed that by traveling to another country to pick up administrative documents from the United States Embassy, her online love interest, ‘the Captain,’ could retire from the Army and move to her home country to be with her.<sup>264</sup>

While physical violence is rarely part of romance scams, scammers often engage in psychological coercion similar to non-physical forms of domestic violence.<sup>265</sup> In Anna’s case, ‘the Captain’ would angrily accuse her of not loving him if she failed to comply with his requests.<sup>266</sup> Psychologically coercive elements in romance scams appear more common for female victims than male victims. In an Australian study of romance scam victims, 100% of the women but only 55% of men reported that they had been subjected to psychological maltreatment by the scammer they believed they were dating.<sup>267</sup>

Our analysis of the available data suggests that women who fall prey to drug trafficking romance scams are likely to be poor. In the market of fake online relationships, scammers involved in drug trafficking are able to profit from victims who have no money, while financial scammers can only profit from victims who are able to send them money. For that reason, drug trafficking scammers are more likely than other scammers to pursue poor victims. In addition, scammers sell each other ‘sucker lists,’ which compile details about people who have fallen prey to a scam in the past.<sup>268</sup> This practice increases the likelihood that romance scam victims have previously lost money to other scams (as in the case of Anna).<sup>269</sup>

There is little data to help us understand the global scale of women facing the death penalty due to victimization by a romance scammer. Most of the research on online scams looks at financial romance scams, which don’t always lead to drug trafficking. Studies on online scams tend to focus on victims from wealthy countries, who represent a smaller and more privileged set of women facing the death penalty for drug offenses. One study mentions that “many” of the 11 Australians imprisoned in China for drug offenses in 2016 were victims of romance scams.<sup>270</sup> Nevertheless, studies on financial romance scams remain relevant to understanding how scammers target and manipulate women.

**Women are disproportionately likely to fall victim to an online financial romance scam compared to men.** This is true in a range of countries: 90% of victims in a sample from Malaysia, India, Singapore, and Thailand were women;<sup>271</sup> 90% of victims in a Hong Kong study were women;<sup>272</sup> 82% of victims in a United States report were women;<sup>273</sup> and studies in the United Kingdom found that between 60%<sup>274</sup> and 63%<sup>275</sup> of victims are women (with one study finding that women sent twice as much money to their scammer as male victims).<sup>276</sup> In Australia, too, women were

disproportionately likely to have become a victim of a romance scam compared to men.<sup>277</sup> In 2019, police uncovered a large online romance scam organization working across Malaysia, Singapore, and Hong Kong, whose 139 victims were all women.<sup>278</sup> Research shows that individuals who become victims of romance scams are more likely than the average person to have “idealized” views about love.<sup>279</sup> As these figures demonstrate, in the context of entrenched gender norms, women are more susceptible to romance scams than men.

Women facing capital punishment for drug offenses after falling prey to a romance scam are doubly victimized, both by their alleged romantic partners and by the country charging them with a capital offense. When women are groomed by fake romantic partners and send money to their scammer, the criminal legal system treats them as victims. When women fall for drug trafficking scams and unknowingly move drugs across borders, states treat them as criminal offenders and, in some countries, they face an uphill battle to avoid a death sentence. Courts often consider tales of romance scams with incredulity,<sup>280</sup> though a growing body of research, much of which we cite here, should bolster victims’ defense arguments.

Some scholars argue that romance scams should be examined through a domestic violence framework, explaining that “[r]omance fraud can be differentiated from a ‘bad’ relationship” because the fake romantic partner is acting with the “sole purpose of deceiving and manipulating [the victim]” for their financial gain.<sup>281</sup> Despite this difference in the partners’ intent, there are substantial similarities in the use of psychological coercion and manipulation.<sup>282</sup> In some cases, romance scams even involve sexual abuse—with the scam victim participating in cybersex under false pretenses, and with the scammer sometimes using a recording as blackmail.<sup>283</sup> For the victims of romance scams, their relationship is deeply important and meaningful. **The women whose cases we profile in this report believed they were about to marry their partner and that their lives were about to take a turn for the better.<sup>284</sup> Instead, they found themselves betrayed and on death row.**

# Implications for Criminal Legal Processes

## GENDER BIAS AND GENDER-BASED DISCRIMINATION IN THE IMPOSITION OF THE DEATH PENALTY FOR DRUG OFFENSES

In societies with gender inequality, gender bias affects all aspects of social life and is particularly acute in criminal legal processes and prisons, which are largely designed by and for men.<sup>285</sup> In our previous research, we noted that female capital defendants may benefit from lighter sentences than male capital defendants when their actions are consistent with social expectations of female behavior. Women, however, are punished more harshly when they transgress gender norms.<sup>286</sup> In the context of the death penalty for drug offenses, gender bias infects capital sentences when anti-drug legislation fails to account for women's personal circumstances, for example, or when courts ignore gendered mitigating factors or embrace narratives based on detrimental gender stereotypes.

In the course of this study, we uncovered many cases where courts relied on gender stereotypes to interpret women's circumstances and motivations before sentencing them to death. Outside of the death penalty context, however, some researchers have suggested that women may benefit from 'positive' gender bias within anti-drug enforcement systems, leading to a lower likelihood of conviction for drug offenses. In one study of countries that do not punish drug offenses with death, researchers found that "feminine attributes may work to the advantage of women [as they are] less likely to be visible to and detected/searched by police, which in turn may provide them with the opportunity to sell drugs."<sup>287</sup> In context of the United States and murder convictions, research indicates that—on average—women are less likely than men to be sentenced to death<sup>288</sup> because of their gender, though gender discrimination plays a role in which women are sentenced to death.<sup>289</sup> It is not clear what role 'positive' gender discrimination may play in other countries and in the context of non-violent crimes, where stereotypes of women as weak<sup>290</sup> may be less likely to affect sentencing.

The concept of 'positive' gender bias does not serve to explain why the female prison population has increased faster than the male prison population in recent decades, with growing numbers of women imprisoned on drug-

related convictions.<sup>291</sup> We also did not find any scholarship supporting the contention that 'positive' gender bias leads to more lenient sentences for women within the drug control system in countries with the death penalty for drug offenses, but research on this topic is sorely lacking. Because this study focuses on women who did receive a sentence of death, the issue lies beyond the scope of our investigation here. Without further research, it is difficult to assess the potential impact of 'positive' gender bias in the context of women sentenced to death for drug offenses.

### Gender-based discrimination in legislative frameworks and policymaking

Gender-based discrimination in drug control legislation is more often attributable to the disparate impact of policies than to rules that are discriminatory on their face. In part, the failure to acknowledge and redress the disparate impact of drug policies on women stems from women's underrepresentation among lawmakers and policy developers.<sup>292</sup> Women account for a minority of elected legislators in almost every country.<sup>293</sup> On average, in states with the death penalty for drug offenses, only 18.4% of legislators are women.<sup>294</sup> This means that women have less input than men on designing laws and determining public policies.<sup>295</sup> **'One-size fits all' rules, in practice, tend to disadvantage groups whose social realities are invisible to decision-makers.**<sup>296</sup> **As a result, because women's and men's experiences in criminal legal systems vary,**<sup>297</sup> **criminal legal systems routinely overlook women and girls' needs.**<sup>298</sup> Increased representation of female judges could, to some extent, counteract gender-based discrimination in capital trials. For example, we found that in China, female judges incarcerate fewer offenders for smuggling, selling, transporting, and manufacturing drugs than male judges.<sup>299</sup> While we don't have information on the gender breakdown of the sentences handed down by female judges, these trends may suggest that women make different sentencing assessments based on their lived experience.

In countries that punish drug offenses with death, national anti-drug legislation does not generally mention women. Nevertheless, a few jurisdictions apply aggravating factors for drug offenses that may, in practice, apply more frequently to female defendants than male defendants. For example, in Sri Lanka, committing a drug offense near a

location where children attend educational, athletic, or social activities is an aggravating factor.<sup>300</sup> In the Philippines, it is an aggravating factor to manufacture a drug in the presence of a minor.<sup>301</sup> Because women are often the primary caregivers to children, this type of aggravation may well discriminate against women.

Capital drug laws likewise do not set out gender-specific mitigation factors or exclusions,<sup>302</sup> with one exception. Pregnant women are excluded from execution in virtually every country, and regional treaties as well as national laws protect nursing women from execution in parts of Africa and the MENA region.<sup>303</sup> Sentencing principles dictate that all courts should consider relevant mitigating circumstances. In practice, however, many courts neglect gender-specific mitigation, and in states that apply the mandatory death penalty for drug crimes, courts may not consider mitigating circumstances at all.

In countries where the death penalty is mandatory for drug offenses, judges cannot consider the circumstances of the offense—except, perhaps, for the weight of the drugs involved—or the background of the offender when determining the sentence.<sup>304</sup> As we examine in our country chapters, mandatory capital sentences for drug offenses have dramatically increased the number of women who are sentenced to death.<sup>305</sup> Researchers believe that mandatory sentencing schemes have disproportionately affected women, who are primarily low-level drug couriers and easy targets for drug enforcement authorities.<sup>306</sup>

As highlighted by the U.N. Special Rapporteur on violence against women, “an ironic consequence of such [...] regulations is that women who commit relatively low-level drug crimes find themselves serving prison time while more serious offenders often escape imprisonment by entering into plea-bargaining deals, which involve giving ‘substantial assistance’ to the prosecution [which] women are usually unable to provide.”<sup>307</sup> In Singapore and Malaysia, for example, a life sentence may replace the death penalty if the prosecutor asserts that a drug courier has substantially assisted in “disrupting” trafficking activities.<sup>308</sup> This criterion, however, can be very arbitrary in practice. For instance, in 2015, a Thai woman escaped the death penalty in Singapore after the High Court imposed a reduced sentence of life in prison for importing drugs after she provided substantive assistance to the authorities.<sup>309</sup> On the other hand, in Malaysia, a woman who was initially spared the death penalty as she had assisted the authorities

was, on appeal, imposed the death penalty.<sup>310</sup> The court dismissed the assistance she had provided on the basis that “she had no option” but to cooperate.<sup>311</sup> In most cases, however, women, who occupy lower positions within drug syndicates are unable to provide law enforcement with assistance. To account for the disparate degrees of knowledge between low-ranking and high-ranking members of drug syndicates, China has published guidelines recommending that courts apply different standards to principal and accomplice offenders in order to determine the sufficiency of the assistance they provide.<sup>312</sup> Based on our analysis of the publicly available case documents, however, there is no evidence that courts apply this principle consistently.

### **Capital trials and gendered narratives**

Women who come into contact with criminal legal systems experience what some criminologists call a ‘double deviance’ effect:<sup>313</sup> they “are judged not only on the basis of their crime, but because they are perceived to have betrayed traditional gender roles.”<sup>314</sup> In other words, courts may issue a harsher sentence if a female defendant’s offense not only contravenes the law but *also* deviates from behavioral norms socially deemed to be “gender-appropriate.”<sup>315</sup> Gender role transgressions function, in practice, like a form of aggravation. According to gendered narratives of crime, women occupy the role of crime victims, while those who commit drug-related crimes are coded as ‘masculine.’<sup>316</sup> All drug traffickers face stigma, but by participating in an activity which public policy decries as harmful to a society’s well-being, particularly that of its youth, female drug offenders may face the additional stigma of contravening their gender-determined role as “mothers, the anchors of their families and caretakers.”<sup>317</sup>

It is difficult to quantify the extent to which these stereotypes influence stakeholders in criminal legal systems, but there are troubling indications that gender bias affects outcomes in capital drug cases.<sup>318</sup> In Malaysia, for instance, researchers found that women convicted of trafficking drugs are considerably less likely than men to see their sentence revised or overturned on appeal, particularly if they are foreign nationals.<sup>319</sup> Malaysian courts have also inferred guilt based on assumptions about women’s social status. In one drug trafficking case, for example, the court posited that the defendant “was hardly a naïve or gullible person,” explaining that she graduated high school, spoke English, modeled, and traveled. According to the court, the

items in her handbag (make-up, accessories, sunglasses, American money, and an expensive watch) were “not a poor lady’s possessions” and indicated that “she is a socializer—a lady of the ‘world.’” The court concluded that “it is very unlikely that the respondent, who is a diploma holder... could have placed herself in a situation where she could be exploited to commit a crime.”<sup>320</sup>

In other cases, courts fail to consider the reality of unequal relationship dynamics or recognize that female defendants might bear less criminal responsibility than their male partners. For example, a trial court in Malaysia sentenced a Chinese national to life imprisonment, recognizing that she was only a courier and had helped law enforcement identify her boyfriend, who played a key role in the offense. Nevertheless, the court of appeal sentenced her to death after rejecting her argument that she had been manipulated by her boyfriend whom she “was very much in love with.” The Court found this explanation “unbelievable” in light of her education, work experience, and life experience. Indeed, the court emphasized that

[She] acted and portrayed herself like a damsel in her maiden love but, with respect, her background would indicate this most probably is a concoction of her real self. .<sup>321</sup>

Malaysian Appellate Court

In the court’s estimation, the defendant, as a divorced woman, had lost the innocence that would enable her to fit the profile of a stereotypical victim. Moreover, her past failed relationship should have protected her from entering into another bad relationship involving manipulation. Such judicial assessments contradict what studies tell us about the likelihood of abuse survivors entering into future abusive relationships.<sup>322</sup>

Courts may also show bias against female defendants who transgress rules of sexual behavior. In one case in Iran, a police report mentioned that the female defendant accused of a drug offense had engaged in sex work, even though it bore no connection to the crime. According to a lawyer present at the woman’s trial, this information had a substantial impact on the court’s decision to sentence her to death. The judge, who was a cleric, made several comments during trial and at sentencing expressing disapproval of her work. Observing the defendant’s daughter in the audience at trial, the judge commented, based on her physical

appearance, that she was “clearly doing the same job as her mother.”<sup>323</sup>

In 2017, the Indonesian Supreme Court sought to address the issue of discriminatory practices in the courts and their processes by publishing ‘Guidelines for Judging cases of women in conflict with the law.’<sup>324</sup> While the guidelines constitute a step towards addressing gender-based discrimination in the courts, in practice, they have not been applied consistently.<sup>325</sup>

## Media portrayals and public discourse

The role of the media is essential in shaping public opinion about women involved in drug activities and in legitimizing the retributive nature of drug laws. Media use different narrative patterns when reporting about women compared to men.<sup>326</sup> In addition, media tell different kinds of stories about citizens versus foreigners who are facing capital charges. Media narratives and public opinion not only influence case outcomes but may also affect defendants’ mental health. For example, in Southeast Asia, one woman who was married to a prominent drug trafficking leader was arrested with one of her husband’s famous clients. As a result, her case received extensive media attention. The media named her the “Queen of meth.” Her mental health suffered from the relentless barrage of negative attention and public scorn, and she was eventually sentenced to death.<sup>327</sup>

Most media interest in women facing the death penalty for drug offenses focuses on foreign nationals: women facing a capital trial outside of their home country. Media outlets often portray them as victims of the ‘war on drugs’ and emphasize their maternal roles as justification for a reprieve.<sup>328</sup> For example, almost all the media coverage about Lindsay Sandiford, a British national who was sentenced to death in Indonesia for smuggling drugs, emphasizes her role as a mother and grandmother.<sup>329</sup> Similarly, media coverage about Siti Aslinda Binte Junaid, a Singaporean national who was sentenced to death for drug trafficking in China, consistently mentions her family and her role as a mother.<sup>330</sup> Even when intended to be sympathetic, these narratives are double-edged. They reinforce the idea that women deserve compassion only to the extent that they fulfill their roles as caregivers, and at the same time they highlight the distance between the behavior of a ‘good mother’ and the subject’s entanglement in drug trading. Some media outlets, especially those that adopt a



more sensationalistic style, profit from framing stories within this tension. Meanwhile, many media pieces neglect the subtlety of the economic pressures and relationship dynamics that lie at the heart of many women's pathway to drug offending.

## Death row conditions

In *Judged for More Than Her Crime* we provided a detailed analysis of how women's specific needs and vulnerabilities are overlooked by criminal legal systems and detention facilities. Gender-based discrimination affects many aspects of prisons, such as overcrowding, living conditions, access to medical care, and isolation from family.<sup>331</sup>

While women sentenced to death for drug crimes experience similar detention conditions as other women on death row, they may also suffer from additional harm. Some women convicted of drug offenses may use drugs, and prisons are often ill-equipped to respond to their health care needs.<sup>332</sup> The Bangkok Rules mandate that "prison health services shall provide or facilitate specialized treatment programmes designed for women substance abusers."<sup>333</sup> There is little data regarding drug use among women sentenced to death for drug offenses. Certainly, retributive drug policies that criminalize drug use lead to a large number of women who use drugs among women incarcerated for drug offenses more generally. In Indonesia, for instance, one study estimated that over two-thirds (69%) of women incarcerated for drug offenses had a history of drug use.<sup>334</sup>

While drug rehabilitation programs exist in several prisons in Malaysia and Thailand,<sup>335</sup> it is unclear whether they are available to women on death row, who are excluded from most prison programming with a focus on re-entry. Moreover, many drug programs fail to respond to the specific needs of women, who are disproportionately likely to have survived trauma and may need special accommodation due to pregnancy or caregiving responsibilities.<sup>336</sup>

## GENDER BIAS AND FAIR TRIAL VIOLATIONS

Because the death penalty is an irreversible punishment, international law requires that states scrupulously observe international fair trial standards throughout capital proceedings.<sup>337</sup> Nevertheless, as we examine throughout this report, women (and men) facing the death penalty for drug offenses often endure multiple infringements of their

rights to a fair trial. In this section, we seek to examine the ways in which gender bias exacerbates the risk of fair trial violations for women prosecuted for drug-related activity. We found some evidence that women are at higher risk than men of being sentenced to death without receiving effective legal representation or access to a competent interpreter. Our findings are somewhat tentative, however, due to lack of data, and this is an area in which further research would be welcome.

## Gender and the rights of foreign nationals

### Violations of the right to interpretation

Foreign nationals are disproportionately sentenced to death,<sup>338</sup> and the likelihood of a capital sentence is even higher for foreign nationals who do not speak the language used at trial.<sup>339</sup> The risk is highest of all for female foreign nationals, and it is therefore not surprising that they are overrepresented on death row in several jurisdictions.<sup>340</sup> If they are not fluent in the language of the country where they are tried, they will be unable to respond to police questioning, understand their trial, or contribute to an adequate defense. International law recognizes a right to an interpreter in every criminal process, free of charge and immediately following arrest, including during police interrogations.<sup>341</sup> Yet many capital drug jurisdictions either provide inadequate interpretation or no interpretation at all, either during police interrogations or at trial.<sup>342</sup> When courts provide interpreters, they may be unqualified or incompetent.<sup>343</sup>

Many of the women we profiled in this report were migrant workers. Women in many migrant source countries tend to have less access to education than men,<sup>344</sup> which makes them less likely to speak a foreign language, whether it's the local language or a common language for interpreters, such as English. Mary Jane Veloso's case illustrates this risk. Mary Jane was born to a poor family and completed only one year of high school. When she was arrested in Indonesia, she had no access to an interpreter, even though she did not speak Bahasa Indonesian. At trial, the court-provided interpreter was an unlicensed student who translated the proceedings into English, a language she did not speak fluently. Mary Jane could not adequately communicate with her lawyer, court officials, or the judge and therefore had no meaningful understanding of the trial that determined her fate.

Some of the cases reviewed indicate that, **because many foreign national women are arrested together with a male co-defendant, lack of systematic access to an interpreter may heighten the ability of male co-defendants to co-opt a conversation with police or with attorneys, depriving women of an individualized criminal process.** In Avalie’s case, for instance, her purported boyfriend told the police that they did not need an interpreter to answer questions because he could speak English. He told the police that the drugs belonged to Avalie and walked away free, while Avalie—who did not understand the police interrogation—was later sentenced to death.<sup>345</sup>

### Violations of the right to consular notification

Under well-established international law, arresting or detaining states must notify foreign nationals of their right to consular notification and access.<sup>346</sup> Consular representatives can provide critical assistance to their nationals facing a capital sentence abroad, such as access to a competent interpreter, assistance with gathering relevant information in the home country to bolster the defense, and sometimes support for legal aid.<sup>347</sup>

State authorities have an obligation to contact consular officials without delay if the detained or arrested foreign national requests that they do so.<sup>348</sup> State compliance with this norm, however, varies widely. In many countries, women facing a capital sentence for drug offenses are more likely than men to be foreign nationals,<sup>349</sup> exposing them to a higher risk of harm from state noncompliance with the Vienna Convention on Consular Relations.

Research from Malaysia shows that government authorities are more likely to notify embassies from Europe than those from other regions, such as Africa.<sup>350</sup> Moreover, they often delay notification until after they have procured an incriminating statement from the defendant.<sup>351</sup>

### Violations of the right to effective legal representation

**Women—including those charged with drug offenses—often struggle more than men to retain skilled counsel due to gender disparities in socioeconomic status and educational attainment.** This difficulty is even greater for foreign women, who are less likely to have access to individuals outside of prison who can contact a local lawyer on their behalf. Female defendants may also struggle more

to identify and retain an attorney to represent them on appeal. Additionally, families may be unwilling to step in to help because of the strong stigma associated with a drug offense, and they may be especially less likely to help a female relative compared to a male relative.<sup>352</sup> In some countries, indeed, public disapproval of drug activity is so strong that the stigma can spread to defendants’ families.<sup>353</sup> A woman may face additional shame due to the social perception that committing a drug offense means she has failed as a mother or caregiver.<sup>354</sup>



A woman incarcerated for a drug offense waits to meet with her lawyers in a prison in Indonesia. Photo courtesy of LBHM.

When defendants cannot afford a lawyer, states are under an obligation to provide them with legal aid at no cost.<sup>355</sup> Many capital defenders lack the training and resources to offer effective legal representation, however, and this is particularly true of state-funded lawyers. Indeed, “independent national experts” in Thailand “estimate that legal aid lawyers are less likely than private lawyers to perform actions such as ‘presenting arguments in favor of a defendant’s release pre-trial,’ or ‘giving advice to the defendant in private before any contact with the state justice official.’”<sup>356</sup> Furthermore, in Thailand, “it is not uncommon for women to perceive legal aid providers as lacking gender sensitivity.”<sup>357</sup> In Vietnam, female defendants have expressed a similar concern and “as a result, women may find it difficult to confide in a (typically male) legal aid provider and share intimate information related to a case.”<sup>358</sup>

## PROFILE: BONNIE\* (MALAYSIA)

Bonnie is a Chinese woman from Hong Kong who has been on death row in Malaysia since 2010.

Bonnie was born in Hong Kong and faced adversity early in life. Her father was often absent, but when he was home, he was abusive and violent. She remembers him shouting and beating her mother every time he came home. She and her siblings were always afraid of him. Bonnie succeeded in overcoming these difficult circumstances and built a life for herself. She completed a basic education, married, and had a son. She worked in a wristwatch business owned by her husband and his business partner.

In her mid-40's, however, Bonnie's marriage broke down and the future of the family business came under threat. After an audit by tax authorities, the business owed a substantial sum in arrears and fines. Unable to pay this debt, Bonnie's husband and his partner transferred the business into her name, leaving her to bear the financial and legal repercussions. This was not the first time Bonnie had had to carry more than her share of the family's financial responsibilities. While both Bonnie and her husband drew salaries from the wristwatch business, Bonnie paid for the family's living expenses from her salary alone. She believes that her husband gambled most of his income. Although Bonnie had always worried about money, her worries now reached a peak. If the family business did not pay the tax authorities, it would go bankrupt and their primary source of income would disappear. Bonnie's husband constantly pressured her to pay off the debt, even after the couple separated. Bonnie was particularly concerned about how the separation and financial insecurity would affect her nine-year-old son. Bonnie feared that she would not be able to support him if they lost the family business.

In this moment of crisis, an acquaintance offered Bonnie a job transporting drugs and Bonnie, desperate to alleviate the family's financial pressures, accepted. In March 2010, Bonnie flew to Malaysia. A few weeks later, as Bonnie prepared to fly back to Hong Kong, airport security officers stopped her at a security checkpoint and brought her to a small side room to conduct a body search.

Bonnie was unable to communicate with the officers as they searched her body and belongings, and she could not answer

their questions. Bonnie spoke only a little English and no Malay, and the officers did not speak Cantonese, her native language. None of the officers, however, offered Bonnie an interpreter. Bonnie felt terrified and helpless. After the officers found drugs strapped to Bonnie's body, they asked Bonnie to sign a document, which she could not read. She never found out what it contained. Bonnie was arrested.

Because, at the time, Malaysia applied the mandatory death penalty to drug offenses, the court never considered Bonnie's history of childhood trauma and financial pressure as a mitigating circumstance. Moreover, at her trial, Bonnie again lacked adequate interpretation. The court provided Bonnie with an English-speaking interpreter, but Bonnie understood too little English to follow the proceedings. When Bonnie's lawyer raised the issue of inadequate interpretation on appeal, the appellate court emphasized that Bonnie could write her name using English letters, lived in a former British colony, and had been able to navigate a foreign airport on her own by reading signs in English. Treating these facts as evidence that Bonnie's level of English was sufficient to sign a confession and to understand a legal proceeding, the court dismissed the claim.

The appeals court also dismissed Bonnie's claim that the lack of an interpreter during the police search and interrogation amounted to a fair trial violation. **The court reasoned that, if Bonnie had wanted to communicate with the officers, she could have asked a bystander, such as another passenger or the owner of an airport kiosk, to interpret for her.** This analysis presumes that passersby in airports are willing and able to offer interpretation services, and that the defendant, rather than the state, bears the responsibility to ensure that competent interpreters are available during the criminal process. The appeals court subsequently confirmed Bonnie's death sentence.

**Bonnie has now spent over a decade on death row, where her lack of language skills in Malay exacerbates her isolation.** Her son and mother are only rarely able to make the journey from Hong Kong to visit her, and she has gone long periods without seeing them. One of her sharpest regrets is that she was unable to raise her son, who is now 20 years old. Bonnie does not have any close friends or close relatives in Malaysia and she struggles to communicate with

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\* We used pseudonyms and omitted some details to protect the identities of the individuals featured in this profile.

prison staff and other incarcerated women. Her long incarceration has taken a toll on her mental health. She often has trouble sleeping and experiences mood swings and depression.

Now aged 56, Bonnie is preparing a clemency application. A pardon would allow her to return to her mother and son, who have struggled to make ends meet without her support.

*To write this profile, we conducted interviews with Bonnie's legal advocates and consulted case documents and clemency application materials. We publish this profile with Bonnie's consent.*



## Country Case Studies

### INDONESIA

Indonesia regularly sentences both men and women to death for drug offenses. The majority of people on death row in Indonesia have been convicted of drug offenses and, in recent years, this proportion has been rapidly increasing.<sup>359</sup> Amnesty International found that, of the 117 new death sentences imposed in 2020, 101 (86%) were for drug-related offenses.<sup>360</sup> Moreover, Indonesia is one of the few jurisdictions that carries out executions for drug offenses.<sup>361</sup> Indeed, in recent years, the government has only executed individuals convicted of drug offenses. In 2015 and 2016, Indonesia executed 18 people, all for drug offenses.<sup>362</sup> Two were women and 15 were foreign nationals—eight from Nigeria, two each from Australia and Brazil, and one from each of Malawi, the Netherlands and Vietnam.<sup>363</sup>

#### Demographic trends among women sentenced to death for drug-related offenses

There are currently five women on death row for drug offenses in Indonesia.<sup>364</sup> In total, there are 11 women under sentence of death, so those convicted of drug offenses comprise 45% of women on death row.<sup>365</sup> Women represent a small minority of death-sentenced prisoners. The entire population of death row—including men—is estimated to be between 355<sup>366</sup> and 482<sup>367</sup> people. Approximately 60% of all death row prisoners are convicted of drug offenses.<sup>368</sup> Of the five women currently on death row for drug offenses, two are foreign nationals. At the time of their arrest, two were migrant domestic workers<sup>369</sup> and three had minor children.<sup>370</sup>



The gate to Denpasar Women's Penitentiary, Indonesia, where Lindsay Sandiford is currently incarcerated. Photo courtesy of Komnas Perempuan.

Three of the five women were drug couriers, or ‘drug mules.’<sup>371</sup> Among these women, two have stated that they had no knowledge of the drugs that they were carrying, and another has said that she was under extreme duress at the time of the commission of the offense.<sup>372</sup> The remaining two women were believed to have played a more substantial role in the drugs syndicate and were convicted of importing, manufacturing, or selling drugs.<sup>373</sup> Of this last group, both women were arrested with multiple male co-defendants, and both were romantically involved with one of their co-defendants.<sup>374</sup> In total, three of the five women maintain that they were manipulated by drug syndicates and had no knowledge the crimes for which they have been convicted; another woman maintains that she acted only under extreme duress.<sup>375</sup> Thus, at least **four of the five women on death row for drug offenses claim that they were the victims of manipulation or coercion.**

#### Legislative framework

Indonesia retains the death penalty for a broad range of drug-related offenses, including manufacturing, trafficking, and selling illicit substances.<sup>376</sup> Indonesia’s legislative framework for drug control is remarkably punitive across the spectrum of drug-related activities. Mere possession of cannabis, for example, can lead to a four-year prison sentence,<sup>377</sup> while possession of under 5 grams of heroin or methamphetamine is punishable by four to 12 years’ imprisonment.<sup>378</sup> In 2019, the International Drug Policy Consortium (IDPC) identified one woman serving a sentence of eight years and four months in a case involving less than 0.4 grams of a controlled substance.<sup>379</sup>

People who use drugs live under constant surveillance. Indonesian law requires that people who use drugs and their families report their drug use to the authorities.<sup>380</sup> Failure to do so is punishable by imprisonment or a fine,<sup>381</sup> and in 2019 IDPC found at least six women incarcerated for not reporting their own drug use.<sup>382</sup> Largely as a result of these draconian policies, the prison population has ballooned from 53,000 individuals in 2000<sup>383</sup> to 269,000 in 2020.<sup>384</sup> Over 130,000 of these are detained for drug offenses, and one third for mere “drug use.”<sup>385</sup> Compared to other countries, Indonesia incarcerates one of the highest numbers of women and,<sup>386</sup> of the over 14,000 women who are



incarcerated, 53% are imprisoned for drug-related offenses.<sup>387</sup>

The offense of drug importation can be proven by the mere *act* of receiving or possessing drugs, without the need to demonstrate that the defendant intended to traffic drugs.<sup>388</sup> In Merri Utami’s case, for example, the court explicitly stated that the simple act of bringing drugs across the border into Indonesia (with or without knowledge) is enough to prove the offense of importing.<sup>389</sup> The court further did not engage in any analysis as to whether Merri Utami knew or did not know that she was importing drugs before sentencing her to death.<sup>390</sup> Felicity Gerry QC has persuasively argued that this framework unduly burdens drug couriers, who “struggle to demonstrate in court that they were ignorant of the nature of what they were carrying or that they had been coerced in some way.”<sup>391</sup> (It is notable that Indonesia’s punitive drug control regime—and in particular, that criminal intent is not required to incur criminal liability—is sharply at odds with its unusually protective human trafficking regime brought in by the 2007 Trafficking in Persons Law.)<sup>392</sup>

### Recent executions for drug offenses

Between 2008 and 2013, there was an unofficial moratorium on executions in Indonesia.<sup>393</sup> In 2012, the country’s first democratically-elected president, Susilo Yudhoyono, commuted the death sentence of a man, Deni Setia Maharwan, who had been convicted of drug trafficking.<sup>394</sup> In 2013, however, President Yudhoyono authorized the execution of five individuals, two of whom were foreign nationals convicted of drug offenses.<sup>395</sup> When Joko Widodo assumed the presidency in 2014 after campaigning on a platform of accountable governance and respect for human rights, many observers assumed the moratorium would resume.<sup>396</sup> Instead, within six months of taking office, President Widodo had authorized the execution of 14 people, all for drug offenses.<sup>397</sup> The next year he authorized four more executions, again for drug offenses.<sup>398</sup> President Widodo justified the executions by reference to Indonesia’s high incidence of drug use, declaring the country in a “state of emergency.”<sup>399</sup>



A protest against the executions in Nusakambangan in July 2016. Photo courtesy of LBHM.

### The anti-drug discourse and bias against foreign nationals

Government pronouncements and official media coverage fuel a misconception that foreign nationals are disproportionately responsible for drug crimes in Indonesia. This is not borne out by the facts: the number of foreign nationals arrested as suspects in police drug investigations lies around 0.4%.<sup>400</sup> Nevertheless, foreign nationals are wildly overrepresented in the prison population as a whole, and particularly on death row. **As of 2019, 29% of death row prisoners in Indonesia were noncitizens, all of whom were facing the death penalty for drug-related crimes.**<sup>401</sup> Two of the five women currently on death row for drug offenses are foreign nationals.<sup>402</sup> In addition, one of the two women executed for drug offenses in 2015 was a Vietnamese national, Tran Thi Bich Hanh.<sup>403</sup> Her dying wish was to be executed in her home country, a request that Indonesia denied.<sup>404</sup>

Lawmakers have used especially harsh rhetoric in relation to foreign nationals accused of drug offenses. President Widodo has explicitly endorsed extrajudicial killings of foreign nationals. In 2017, he reportedly stated, “Just be firm, especially with foreign drug dealers who enter the country and resist [arrest]. Gun them down. Give no mercy.”<sup>405</sup> Foreign nationals are also procedurally disadvantaged in some respects. For example, national law stipulates that only Indonesian nationals are eligible to ask the court to rule on the constitutionality of using the death penalty for drug offenses,<sup>406</sup> and thus the Constitutional Court has refused to review applications by foreign nationals facing the death penalty.<sup>407</sup>

Despite the institutional bias against foreign nationals, there is also an emerging current of popular sympathy for certain categories of foreigners convicted of drug crimes: female migrant workers.<sup>408</sup> Indonesia has one of the largest migrant worker communities in the world. In 2016, about nine million Indonesians were working abroad, and half of those were women, the majority of whom were employed as domestic workers.<sup>409</sup> Many Indonesians understand how migrant workers are vulnerable to exploitative relationships.<sup>410</sup> As a result, the advocacy campaigns in support of Merri Utami (an Indonesian migrant worker who had been working in Taipei) and Mary Jane Veloso (a Filipina migrant worker in Indonesia) have attracted notable public sympathy.<sup>411</sup>

When Mary Jane Veloso was due to be executed in 2015, Indonesian migrant workers rallied to support her. The day before her execution, the hashtag #MaryJane was the second-most trending topic on Twitter in Indonesia.<sup>412</sup> Articles entitled “I could have been Mary Jane Veloso,” and others like it, were published in the Jakarta Post.<sup>413</sup> A leading scholar on Indonesia, Dave McRae, comments that this outpouring of support “has drawn a number of mainstream Indonesian figures who wouldn’t normally talk about the death penalty into calling for [Mary Jane] to be spared.”<sup>414</sup> At the time of writing, a petition asking President Widodo to grant Merri Utami clemency had over 26,000 signatories, a significant number by Indonesian standards.<sup>415</sup> Thus, when noncitizen, indigent women are defendants in capital drug-related cases, it appears that the aggressive rhetoric employed by lawmakers is counterbalanced by the strength of solidarity that large swathes of Indonesians feel with these women.

## Fair trial violations

Significant fair trial violations are evident at every stage of the criminal legal system in Indonesia. From arrest to clemency, authorities routinely breach the fundamental rights of capital drug defendants, notably by failing to provide access to effective legal representation or to curb the use of torture. Defendants with compounding vulnerabilities—such as individuals who are women, foreign nationals, or both—experience a higher risk of harm from fair trial violations.

In line with international law, Indonesian law guarantees that defendants have the right to legal counsel of their choice at all stages of a criminal investigation and trial.<sup>416</sup>

Empirical research demonstrates, however, that the authorities routinely violate the right to effective counsel.<sup>417</sup> At the investigation phase, in fact, it is exceedingly rare for defendants to be afforded representation. The Institute for Criminal Justice Reform (ICJR) found that of 100 death penalty cases analyzed between 2017 and 2019, only 11 defendants benefitted from legal assistance at the investigation phase.<sup>418</sup> At trial, because most defendants accused of drug offenses cannot afford a lawyer, they receive the assistance of court-appointed lawyers, many of whom lack the training, resources, and experience to effectively represent them.<sup>419</sup> In one case, the defense reportedly requested a sentence of death, against the client’s wishes, and the court complied.<sup>420</sup> More common problems include, for instance, defense lawyers lacking gender-sensitive awareness and advocacy strategies<sup>421</sup> and failing to call any witnesses, as occurred in the cases of multiple women currently on death row for drug offenses.<sup>422</sup> On appeal, “judges often fail to take the lack of effective legal counsel into consideration,” even at the Supreme Court level.<sup>423</sup>



The door of a solitary confinement cell in Paledang Bogor Penitentiary, Indonesia, which holds women accused of capital drug offenses (pre-conviction). Photo courtesy of Komnas Perempuan.

While all defendants are irreparably harmed by a lack of effective representation, women are likely to suffer disproportionate harm. Women in Indonesia have less access to education and are less financially independent than their male counterparts,<sup>424</sup> making them more dependent on legal assistance to understand the legal process, even while they lack the means to secure private counsel.

Torture by police is endemic at the investigation stage. IDPC found that in noncapital cases, 25% of female drug

defendants surveyed had experienced torture.<sup>425</sup> Komnas HAM (the National Commission on Human Rights) found that an even higher proportion of death row prisoners (23 of 56, or 41%) reported experiencing torture at the hands of the police.<sup>426</sup> Research suggests that courts continue to admit evidence obtained as a result of torture, such as coerced confessions, including in capital cases.<sup>427</sup> At least two of the women currently on death row for drug offenses report having been tortured by police: one woman experienced sexual violence in pre-trial detention, and Merri Utami was threatened and beaten during the investigation process, leaving wounds covering her body.<sup>428</sup>



The gate of Surabaya Class I Detention Centre. Pintu Taubat means "The Door of Repentance." This prison is located in East Java, Indonesia, and holds women accused of capital drug offenses (pre-conviction). Photo courtesy of Komnas Perempuan.

Authorities frequently fail to secure the assistance of interpreters for defendants who do not speak Bahasa Indonesia during police interrogations, conversations with

counsel, and at court hearings. In a small, in-depth study of 12 death row prisoners, Amnesty International found that "most of the foreign nationals... did not receive any language assistance."<sup>429</sup> In addition, Komnas HAM found that, of the 17 foreign nationals on death row that they interviewed, seven had received no interpreter during their legal proceedings, although none had any knowledge of Bahasa Indonesia.<sup>430</sup> Mary Jane Veloso, for instance, a Filipina national who speaks Tagalog, endured a police interrogation without an interpreter. At her trial, an interpreter translated the proceedings into English, a language she barely understood.<sup>431</sup> Without the ability to communicate, a defendant cannot understand the charges against her, communicate with her lawyer, or mount an adequate defense.

Some of the clearest violations of international law occur at the clemency stage. President Widodo has repeatedly stated that the government will deny any application for clemency made by people sentenced to death for drug offenses, on the grounds that "[t]his crime warrants no forgiveness."<sup>432</sup> Automatic denials of clemency based on categories of offense, however, are incompatible with Indonesia's obligations under international law, which clearly establishes a right to seek clemency in all cases.<sup>433</sup> Moreover, executions have taken place pending a request for clemency—in the cases of Humphrey Ejike Jefferson and Seck Osame, amongst others<sup>434</sup>—which also violates international law.<sup>435</sup>

Finally, and perhaps most egregiously, police sometimes commit extrajudicial killings against people accused of drug offenses. President Widodo has publicly incited law enforcement to "shoot drug traffickers"<sup>436</sup> and "gun them down."<sup>437</sup> LBHM has recorded 199 cases of police shooting in drug cases, resulting in 68 deaths and 130 persons injured.<sup>438</sup> In such cases, officers almost always act with impunity.<sup>439</sup>

## Conclusion

Based on our review of the research, as well as our qualitative review of the cases of women on death row for drug offenses, we conclude this chapter with the following observations. First, flagrant fair trial violations characterize the Indonesian criminal legal system in general, and this especially harms indigent, undereducated defendants—which women often are. Second, though foreign nationals are overrepresented amongst women sentenced to death for

drug offenses, this trend is not as extreme in Indonesia as it is in other jurisdictions.<sup>440</sup> Third, Indonesian drug laws do not require that specific intent be proven.<sup>441</sup> In capital cases, this may disproportionately disadvantage women<sup>442</sup> since three of the five women currently on death row for drug offenses maintain that they acted without knowledge of the crime.<sup>443</sup> More research, however, is required to confirm whether women are, in fact, disproportionately harmed. Lastly, a majority of the women sentenced to death for drug offenses claim that they were the victims of manipulation or coercion.<sup>444</sup>



## PROFILE: MARY JANE VELOSO (INDONESIA)\*

Mary Jane Veloso is a 36-year-old Filipina woman incarcerated on death row in Indonesia for drug trafficking. Mary Jane was convicted of illegally importing heroin into Indonesia, but she maintains that she was targeted by drug traffickers and had no knowledge of her role. Though her case has elicited much public sympathy, and her recruiters are currently being prosecuted in the Philippines, her future remains uncertain.



Mary Jane being escorted by police in 2015. Photo courtesy of Ignatius Eswa/Reuters.

Mary Jane was born to a poor family. After completing one year of high school, she was forced to abandon her education due to economic pressures.<sup>445</sup> By the age of 17, Mary Jane was married, and at 18 she became a mother.<sup>446</sup> Mary Jane and her husband engaged in whatever work they could find to support themselves and their two young sons. Mostly, they combed through garbage to separate the plastics and other recyclable materials, which they then sold.<sup>447</sup>

Mary Jane wanted a better life and so she sought out domestic work abroad, enduring the sacrifice of leaving her family behind. When Maria Cristina Sergio—the long-term girlfriend of Mary Jane’s godbrother, Julius Lacanilao—offered her work as a maid in Malaysia, Mary Jane accepted the opportunity.<sup>448</sup> Mary Jane left the Philippines with Maria Cristina in April 2010. When they arrived in Malaysia, Maria Cristina told Mary Jane that the position she had promised her was no longer available but that she would help her find a new one. Three days later, Maria

Cristina suggested that Mary Jane travel to Indonesia while they searched for other employment opportunities.<sup>449</sup> Maria Cristina bought Mary Jane clothes, gave her an empty suitcase in which to pack her new things, and dropped Mary Jane at the airport to board her flight to Indonesia alone.<sup>450</sup>

Upon Mary Jane’s arrival in Yogyakarta Airport, security personnel detected something suspicious in her suitcase. They ripped open the seams and found 2.6 kilograms of heroin<sup>451</sup>—with a street value of about USD \$500,000—hidden inside.<sup>452</sup> The police immediately arrested her. Mary Jane’s father, Cesar Veloso said, “[W]hen I learned Mary Jane was jailed in Indonesia, I lost my mind. I felt dead... that child of mine was caring. Kind.”<sup>453</sup>

**During the police investigation, Mary Jane received neither legal advice nor an interpreter.** The police interrogated her in Bahasa Indonesia, a language she did not understand at all.<sup>454</sup> Because she could not afford a lawyer, she was represented at trial by a state-funded attorney with little experience in capital cases.<sup>455</sup> Her lawyers were woefully inadequate. Most notably, they failed to ensure that Mary Jane was provided with an interpreter who would allow her to adequately communicate with her attorney, court officials, and the trial judge.<sup>456</sup> Her court-appointed interpreter was an unlicensed student who translated proceedings from Bahasa into English, a language that Mary Jane understood only slightly, having studied it at school during her curtailed education.<sup>457</sup> Throughout her trial, **Mary Jane had no meaningful understanding of the criminal process that would determine her fate.**

When Mary Jane’s trial ended in October 2010, the prosecution requested a sentence of life imprisonment.<sup>458</sup> The court exceeded the prosecutor’s recommendation and sentenced her to death. One of Mary Jane’s current lawyers believes that the pivotal moment came when the trial judge asked her mid-hearing—in Bahasa—whether she regretted trafficking drugs into the country.<sup>459</sup> Mary Jane didn’t understand the question and fumbled for an answer. “No,” she said, eventually. On October 11, 2010, six months after arriving in Indonesia, Mary Jane was sentenced to death by firing squad.<sup>460</sup>

Finding herself on death row, separated indefinitely from her young children, in a country where she knew no one and

\* The contents and views in this article are the authors' and are not to be considered or used in any legal or judicial proceeding of any party in any jurisdiction.



did not speak the language, Mary Jane fell into despair. She attempted on several occasions to kill herself by banging her head against her cell wall.<sup>461</sup> Gradually, she began to find ways to forge life-sustaining meaning in prison. She learned Bahasa and today speaks the language fluently.<sup>462</sup> She earned the friendship of prison officers who, despite their modest salaries, collected funds to pay for her parents and sons to visit her.<sup>463</sup> (The Philippine government supported later family visits.)<sup>464</sup> Mary Jane describes the visits she receives as “[a] spark of hope [that] fills my heart.”<sup>465</sup>

In 2015, Indonesian president Widodo announced that nine prisoners convicted of drug offenses would be executed, including Mary Jane.<sup>466</sup> A coalition of advocacy groups organized a vigorous campaign on her behalf, with protests taking place in both the Philippines and Indonesia.<sup>467</sup> Nevertheless, Mary Jane’s execution was due to go forward until, shortly before the execution was to take place, Maria Cristina Sergio and her boyfriend, Julius Lacanilao—the recruiters who had sent Mary Jane to Indonesia—handed themselves in to the police in the Philippines.<sup>468</sup> Filipino president Aquino requested that Indonesia keep Mary Jane alive so that she could testify against Maria Cristina and Julius.<sup>469</sup> **Of the nine people scheduled to be executed on April 29, 2015, Mary Jane was the only person who survived.**<sup>470</sup>



Mary Jane’s family gather in a prayer circle, 6 hours before her scheduled execution in 2015. Photo courtesy of Komnas Perempuan.

After Maria Cristina confessed, Filipino authorities instituted criminal proceedings against her and Julius Lacanilao. In 2020, Filipino courts found them both guilty of large-scale illegal recruitment<sup>471</sup> and, currently, prosecutors are still pursuing human trafficking charges against them, for which Mary Jane is the primary victim and witness.<sup>472</sup> Once those proceedings end and Mary Jane is no

longer required as a witness, her lawyers fear that the Indonesian authorities might schedule her execution.<sup>473</sup> They hold out hope that a trafficking conviction in the Philippines would lead Indonesian courts to quash her conviction.<sup>474</sup> Prominent government-led anti-drug campaigns in both Indonesia and the Philippines, however, create additional obstacles to Mary Jane’s release. During a visit to Jakarta, President Duterte even reportedly gave the go-ahead to President Widodo to authorize her execution.<sup>475</sup>

Mary Jane’s case has elicited considerable public sympathy. Many working-class Filipinos and Indonesians identify with her and understand how the vulnerability of foreign domestic workers can lead to exploitation.<sup>476</sup> For now, Mary Jane waits in prison. She writes, “I have two small kids who need a mother’s nurturing, guidance, and love.”<sup>477</sup> She adds, **“[I] hope that one day [...] justice will take me out of this prison cell.”**<sup>478</sup>

*To write this profile, we conducted interviews with Mary Jane’s lawyers, advocates and social workers. We also consulted court records and publicly available information. We publish this profile with Mary Jane’s consent.*

## MALAYSIA

Malaysia's capital drug laws have fueled one of the largest female death rows in the world. According to Amnesty International, as of February 2019, **95% of the 141 women on death row in Malaysia (all but seven) had been convicted of drug offenses.** The vast majority of death-sentenced women—over 85%—are foreign nationals, only one of whom (out of 121) was not sentenced for a drug offense.<sup>479</sup> These high numbers are largely attributable to exceptionally punitive drug laws, which presume defendants' intent to traffic drugs if they are in possession of a minimum quantity, and impose mandatory death sentences. Thanks to extensive research conducted by Lucy Harry, we know that many women sentenced to death for drug offenses share similar stories.<sup>480</sup> They face unique challenges in the criminal legal system.

While its reliance on capital punishment has decreased over the past three decades, Malaysia has long imposed some of the harshest drug laws in the world, introducing capital punishment for drug offenses in 1975 and making it mandatory (i.e., removing the courts' discretion to impose lesser sentences) in 1983.<sup>481</sup> Individuals convicted of drug offenses were not eligible for clemency until the early 1990s, and Malaysia executed over 120 people for drug offenses between 1983–1992.<sup>482</sup>

At the turn of the 21<sup>st</sup> century, the government's stance on the death penalty began to shift. Executions significantly decreased in the 1990s<sup>483</sup> and, at the time of writing, Malaysia has not carried out an execution since 2017.<sup>484</sup> Parliament passed legal amendments in 2017 to make capital punishment for drug trafficking discretionary in some circumstances,<sup>485</sup> and in 2018 the government adopted a moratorium on executions and committed to abolishing the death penalty. In 2019, however, in response to public criticism, the government changed course and announced that it would instead only abolish the mandatory death penalty. The government appointed a committee to develop alternatives to the mandatory death penalty.<sup>486</sup> The committee presented its conclusions in February 2020,<sup>487</sup> but as of writing, the report was still under review and had not been released.<sup>488</sup> In March 2020, a new government came to power.<sup>489</sup> The new government voted in favor of a U.N. General Assembly resolution calling for a moratorium on capital punishment<sup>490</sup> and has maintained Malaysia's moratorium,<sup>491</sup> but its position on repealing the mandatory death penalty remains unclear.<sup>492</sup> In August 2020, the

Federal Court ruled that the mandatory death penalty was constitutional and that Parliament holds the power to abolish the mandatory death penalty.<sup>493</sup>

Meanwhile, Malaysia's death row has swelled as a result of the country's punitive drug laws.<sup>494</sup> Malaysia has one of the largest death rows in the world,<sup>495</sup> and as of October 2020, 68.9% of death-sentenced prisoners were convicted of drug trafficking.<sup>496</sup> No group has been more affected by the country's punitive drug policy than women who are foreign nationals, many of whom come from economically disadvantaged backgrounds.<sup>497</sup> **Compared to the men on death row, women are disproportionately foreign nationals and disproportionately sentenced to death for drug offenses.** As of February 2019, 95% of women on death row, but only 70% of men, had been convicted of drug offenses.<sup>498</sup> Moreover, 86% of the women sentenced to death for drug trafficking were foreign nationals, compared to less than half of the men convicted of capital drug offenses.<sup>499</sup>

### Legislative framework

In Malaysia, it is a capital offense to traffic (or offer or prepare to traffic) a "dangerous drug."<sup>500</sup> The law imposes a system of legal presumptions<sup>501</sup> that make it very difficult for a defendant to escape conviction and, under most circumstances, once the defendant is convicted the only available punishment is death.<sup>502</sup> If the defendant had custody of a drug, the law presumes that the defendant had knowledge of it.<sup>503</sup> The law also presumes that, provided the drug quantity exceeds a statutory minimum, the defendant intended to traffic.<sup>504</sup> Through the use of statutory minimums, Malaysia, like other jurisdictions, uses weight as a proxy for criminal intent. To rebut this double presumption, defendants must prove it is more likely than not that they did not know about the drugs and did not intend to traffic.<sup>505</sup> In 2019, the Federal Court of Malaysia, the country's highest appellate court, ruled that the double presumption was unconstitutional because it violates the presumption of innocence.<sup>506</sup> Parliament, however, has not yet amended the legislation.<sup>507</sup> Additionally, the Federal Court has not addressed whether applying just one presumption is constitutional.<sup>508</sup>

Moreover, once the defendant is convicted, the death penalty is in most cases mandatory for capital drug offenses.<sup>509</sup> Combined with the double presumption, therefore, the law impedes courts from meaningfully

considering the circumstances of the offense and the offender at any stage of the capital trial, including through gender-specific mitigation. A 2017 amendment grants judges the discretion to sentence a convicted defendant to life imprisonment instead of death if the defendant meets certain criteria, such as by helping law enforcement ‘disrupt’ drug trafficking activities.<sup>510</sup> Defendants convicted of capital drug offenses, however, rarely benefit from this sentencing exemption,<sup>511</sup> in part because most are low level couriers.<sup>512</sup> Finding themselves at the bottom of the male-dominated hierarchy of trafficking groups, they almost always lack information about the broader organization.<sup>513</sup>

### **Pathways to offending for women convicted of drug-related offenses**

Harry’s 2021 study, which reviewed the cases of 146 women sentenced to death for drug offenses in Malaysia after 1983,<sup>514</sup> found that **many women, especially those who were sole providers for their families, trafficked drugs because they urgently needed money to support their families.**<sup>515</sup> For example, one woman who was single and working at a hair salon took a trafficking job because she needed to pay her father’s medical bills.<sup>516</sup> A combination of family responsibilities and economic precarity—both factors that affect women more often than men—underlies many women’s pathway to offending.<sup>517</sup> Almost all of the women in the study had been unemployed or engaged in precarious work before their arrest.<sup>518</sup> Many came from countries with high unemployment rates,<sup>519</sup> placing them at heightened risk of being targeted by drug syndicates.<sup>520</sup> Recruiters recognize that people in areas with high unemployment and inequality are more willing to travel for money.<sup>521</sup>

According to research by Amnesty International, many women sentenced to death for drug offenses in Malaysia are low-level offenders with little to no information about or control over what they were transporting, or the true nature of what they perceived as a job.<sup>522</sup> A substantial number, especially among foreign nationals,<sup>523</sup> report that they were unaware that they were carrying illicit drugs.<sup>524</sup> **In many cases, women agreed to carry what they thought was a bag of non-illicit items, sometimes for pay.**<sup>525</sup> Romantic partners also deceived many women into trafficking. Drug syndicates in Southeast Asia sometimes recruit couriers through romantic deception, and women living in economic precarity are especially vulnerable to deception by romantic

partners who promise familial support and economic security.<sup>526</sup> For example, **one woman sentenced to death in Malaysia unknowingly trafficked drugs while traveling to meet her online boyfriend, who had promised to find her employment, marry her, and take care of her family once she traveled to Malaysia.**<sup>527</sup> Among the women who were aware they were carrying drugs, most did not know where the drugs were headed to or coming from, or the identities of individuals in higher positions in drug networks.<sup>528</sup>

Women on death row in Malaysia—whether they knowingly or unwittingly transported drugs—reported that they had little to no control over the key elements of drug trafficking operations, including their travel plans and the quantity and type of drugs in their possession.<sup>529</sup> Even women who had carried drugs on their bodies often said that they had not known the drugs’ weight or content.<sup>530</sup> Many women did not book tickets themselves but instead used tickets that their recruiters gave them. Their travel plans were often turbulent, wide-ranging, and changed at the last minute—a classic tactic to disorient involuntary drug couriers.<sup>531</sup> For example, one woman’s friend asked her to carry confidential documents from Brazil to Bangkok, but at the last minute she was directed to fly to Malaysia instead and the man who was supposed to give her documents instead gave her towels (which, unbeknownst to her, contained dried-in cocaine).<sup>532</sup>

### **Fair trial violations in capital drug cases**

Review of available judgments indicates that many women are sentenced to death despite reasonable doubts as to their guilt. Since judges presume defendants’ awareness of the drugs in their custody and intent to traffic,<sup>533</sup> a defendant has the burden of proving that it is more probable than not that she did not know about the drugs or intend to traffic. This means that, even if she raises reasonable doubt over her guilt, she can still be sentenced to death.<sup>534</sup> Many female foreign nationals argue that they were not aware of the drugs they carried,<sup>535</sup> but trial judges rarely accept this defense.<sup>536</sup> For example, judges dismiss the defense if they estimate that the defendant had reason to question the behavior of the recruiter and failed to investigate the situation.<sup>537</sup> In making this determination, **courts tend to assume that women should have been suspicious of the people who gave them hidden drugs to carry, even if that person was a trusted intimate partner.** Because it is difficult for defendants to prove why they were *not* suspicious, judges often conclude

that the defendant's evidence is insufficient to rebut the presumption of guilt. Additionally, "the courts have also held that whether the 'organiser' of the drug scheme is fictitious or not, is often irrelevant in establishing whether the accused" knew about the drugs in her possession.<sup>538</sup> Lastly, judges often refuse to consider arguments relating to intent if the defendant did not present that defense at the first available opportunity.<sup>539</sup> Many women, therefore, are sentenced to death on the basis of minimal evidence of culpability.

The case of Luo Dan is emblematic of courts' expectation that defendants suspect the motives of the people closest to them. The defendant, presumed to be guilty of trafficking after being arrested for carrying drugs in a bag, told the court that her boyfriend had given her the bag, filled with shoes, to deliver to a friend in Malaysia.<sup>540</sup> She had looked inside the bag and seen nothing suspicious.<sup>541</sup> The evidence against Luo was weak. The appellate court cited the following evidence against Luo: she removed a luggage tag from her suitcase (after it was no longer needed); her flight made an unanticipated stop; she did not mention her boyfriend until after her arrest; she requested a payment from an acquaintance for an unknown reason; and the shoes inside the bag were unusually heavy and this should have made her suspicious because as "a woman ... she would be familiar with women's shoes."<sup>542</sup> In fact, Luo texted her boyfriend that the bag was heavy, and the judge decided that she should have been more suspicious and probed her boyfriend further about the contents of the bag.<sup>543</sup> Meanwhile, there was no evidence of payment from her boyfriend, and a search of her phone and iPad showed no suspicious texts about the content of the bag.<sup>544</sup> Based on this evidence, the trial court sentenced her to death. **The appellate court confirmed that Luo "was complicit in and had the requisite knowledge of the drugs she was carrying,"<sup>545</sup> even though it agreed it was likely that her boyfriend was "the mastermind of this illicit [drug trafficking] operation."<sup>546</sup>**

Our review of cases also suggests that **courts tend to dismiss the 'lack of knowledge' defense unless the female defendant fits the stereotype of a duped drug courier: an impoverished and uneducated woman.** Courts thus cite more privileged aspects of defendants' backgrounds to infer guilt or intent. When dismissing defenses, for example, judges have pointed out that the defendant was from a "middle-class family," or that she was not "uneducated," "naïve," or

a "simpleton."<sup>547</sup> In one case, the judge pointed out that the defendant was "an educated person, a graduate in Economics from the University of Xihua," and argued that "surely alarm bells of suspicion ought to have been aroused to a person of reasonable intelligence such as the appellant."<sup>548</sup> This logic suggests that judges have a preconceived notion that all women who are manipulated into trafficking are naïve people from abject poverty with little to no educational background. These generalized assumptions do not take into account the complex realities of women's lives, in which gendered factors such as caregiving responsibilities and romantic manipulation can leave women from more diverse backgrounds vulnerable to deception.

Many defendants with limited financial resources do not have access to effective legal counsel at every stage of the criminal process, making it harder to rebut legal presumptions about their guilt and to obtain clemency. Many defendants who cannot afford pre-trial counsel do not receive it, placing them at greater risk of making incriminating statements during police interrogations.<sup>549</sup> Defendants who cannot afford legal representation during their trials receive court-appointed lawyers, who are often overworked<sup>550</sup> and lack resources to appoint experts.<sup>551</sup> Because lawyers appointed to represent indigent defendants receive minimal compensation, some trial lawyers spend little time preparing a capital case.<sup>552</sup> Many women on death row do not receive legal assistance when requesting a pardon.<sup>553</sup> Defendants who apply for a pardon without legal representation are at a considerable disadvantage, because pardon petitions made with a lawyer's support tend to be more persuasive and credible.<sup>554</sup>

Finally, many foreign nationals, women and men, were sentenced to death following trials that infringe upon a key fair trial standard: the right to interpretation.<sup>555</sup> Malaysian law only grants defendants a right to an interpreter when they are in court.<sup>556</sup> As a result, many foreign nationals do not have interpreters during police interrogations or while they are preparing their pardon petitions or their defense.<sup>557</sup> Some police officers hire an interpreter before asking an accused person to sign a statement, but interpreters provided by the police often have limited language competency and defendants struggle to communicate with them.<sup>558</sup> Foreign nationals who do not have interpretation during police interrogations sometimes provide "confessions" that misrepresent their statements or that were induced by

investigating officers.<sup>559</sup> For example, one woman whose case we profiled, Avalie, did not receive an interpreter during her police interrogation; instead, the police directed all their questions to her boyfriend, who blamed Avalie for the offense and instructed her to sign a document that she did not understand, which turned out to be a confession.<sup>560</sup> Some capital defense lawyers also reportedly lack the resources to hire interpreters to prepare their client's defense.<sup>561</sup> Some lawyers report that they are only able to speak to their clients in court, shortly before hearings are scheduled to begin, since that is where court-assigned interpreters are available.<sup>562</sup> Foreign nationals, who are far away from their families and support networks, are also at a disadvantage during the pardon application process, especially if they lack support from their respective embassies.<sup>563</sup>

### **Prison conditions**

Women face unique challenges when they are incarcerated under sentence of death in Malaysia.<sup>564</sup> People on death row—especially foreign nationals, who make up most of the female death row population<sup>565</sup>—experience extreme isolation. People sentenced to death live in solitary confinement for 23 hours a day<sup>566</sup> and must stay in the confines of their dormitories during the one hour when they can leave their cells.<sup>567</sup> They may not participate in work and education programs.<sup>568</sup> The experience of foreign nationals is even more isolating: they receive fewer visits, and if they do not speak the Malay language—like Bonnie, one of the women we have profiled—<sup>569</sup> they struggle to communicate with guards, medical staff, and fellow prisoners. Language barriers also prevent foreign nationals from participating in religious meetings.<sup>570</sup> Often, prison staff prohibit books in foreign languages, so foreign nationals are rarely able to read in their native language—depriving them of one of the few activities that death row prisoners are permitted.<sup>571</sup>

Pregnant women and women detained with young children face additional challenges. While we do not know how many death row prisoners have experienced pregnancy while incarcerated, many women in the general prison population report that they did not have access to pre- or post-natal health services or food suitable for pregnancy.<sup>572</sup> Prisons restrict the amount of time that a mother can stay with her child, and a mother must receive special permission to keep her child in prison after her child is four years old.<sup>573</sup> Additionally, some prisons lack nursery programs or

separate mother-and-baby units with appropriate facilities for children.<sup>574</sup>

Finally, Malaysian prisons fail to account for female prisoners' specific medical needs. Half of the incarcerated women in one study reported that the prison did not provide menstrual hygiene products, and 34% reported that they did not have access to enough water to maintain menstrual hygiene.<sup>575</sup> Women rarely received painkillers for menstrual cramps, even when they requested them.<sup>576</sup> Incarcerated women were rarely able to access gynecological examinations.<sup>577</sup>

### **Conclusion**

We can draw several conclusions based on the available information. First, a large majority, over 85%, of women on death row in Malaysia are foreign nationals convicted of drug offenses.<sup>578</sup> Second, many women on death row trafficked drugs to support their families in a context of economic precarity,<sup>579</sup> and they had little to no information about or control over their role in the trafficking enterprise.<sup>580</sup> Third, women are less likely to have information to share with law enforcement,<sup>581</sup> so judges sentence most women to the mandatory death penalty without considering their gender-specific circumstances.<sup>582</sup> Fourth, women are often sentenced to death despite substantial doubts about their guilt.<sup>583</sup> Fifth, foreign nationals, a majority of women on death row, rarely receive adequate interpretation during the criminal process.<sup>584</sup> Lastly, women on death row experience extreme isolation<sup>585</sup> and lack access to sufficient healthcare services.<sup>586</sup>



## PROFILE: AVALIE\* (MALAYSIA)

Avalie, a foreign national, has been on death row in Malaysia for eight years. Her case exemplifies the barriers women face in presenting their version of events to the courts, especially when they became involved in drug-related activities through a male partner.

Avalie, a single mother to two daughters, was working as a beautician when she met Darrius in 2009. They began a romantic relationship. When Darrius moved to Malaysia, where he owned a restaurant, they maintained a long-distance relationship and called each other often. After they had been dating for a year, Darrius invited Avalie to visit him in Malaysia. Avalie was thrilled with the invitation: she had never traveled abroad before, and the trip felt like a dream come true. Darrius bought plane tickets for Avalie and her eldest daughter, who was about nine years old. According to Avalie, Darrius also sent her a bag with instructions to use it to pack for her trip.

When Avalie and her daughter arrived at the Kuala Lumpur airport, security officers detected drugs in the bag Darrius had provided. Instead of confronting Avalie, the police let her leave the airport and secretly followed her. Avalie made her way to a hotel where Darrius was waiting. As they greeted each other, Darrius took her bag and headed to the hotel reception counter to check in. The police chose this moment to arrest them.<sup>587</sup> When the police opened the bag, they found over two kilograms of methamphetamine.<sup>588</sup>

According to Avalie, she never had an opportunity to tell the police her story. When the police began asking questions, she requested an interpreter because she did not speak English or the Malay language.<sup>589</sup> Darrius interjected, however, that they did not need an interpreter because he could communicate with the police in English.<sup>590</sup> He assured Avalie that he would sort out the situation by giving the police money and explaining to them that the bag did not belong to Avalie. **The police directed all their questions to Darrius and he answered for both himself and Avalie, who did not understand their exchange.** She later learned that Darrius told the police that the bag and the drugs belonged to Avalie and that he had no knowledge of them. **The police gave Avalie a document that she did not understand, and Darrius told her she needed to sign to be released. She signed the document and later learned**

**that it was a confession statement.**<sup>591</sup> Ultimately, the police let Darrius go and arrested Avalie. Avalie never heard from Darrius again. Meanwhile, Avalie was imprisoned with her daughter. After a few months, the authorities removed the child from her mother and sent her back to her home country to live with relatives.

According to Avalie, her court-appointed trial lawyer failed to present her account to the court. Instead, her counsel crafted a far-fetched defense narrative that contradicted the evidence. He told the court that Avalie had brought her own bag to Malaysia, and that after she arrived at the hotel, the police and Darrius had connived to frame her by replacing her luggage with a different bag containing drugs. The trial lawyer's defense theory was unsupported by the evidence. Meanwhile, he failed to highlight the absence of an interpreter during the police interrogation and the unreliability of the evidence offered by Darrius, a co-suspect. When, on appeal, a different lawyer explained her version of events, the judges disbelieved her. The mere fact that she contradicted her trial lawyer's defense narrative, even if she attributed the change to incompetent lawyering, cast a shadow over her credibility.<sup>592</sup>

In 2013, three years after her arrest,<sup>593</sup> Avalie was convicted of drug trafficking and sentenced to death. She is very depressed and misses her family, who is far away in her home country. Avalie calls her daughters when she can, but she has not seen them since Malaysian authorities removed her daughter from her care. Avalie has since exhausted her appeals, and her clemency petition is currently pending before the Pardons Board.<sup>594</sup>

*To write this profile, we conducted interviews with Avalie's legal advocate and consulted articles and reports. We publish this profile with her lawyer's consent.*

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\* We used pseudonyms and omitted some details to protect the identities of the individuals featured in this profile.

## THAILAND

The overwhelming majority of women on death row in Thailand have been convicted of drug-related offenses. As of February 2021, all but two of the 33 women on death row had received a death sentence for a drug conviction.<sup>595</sup> Moreover, punitive drug laws disproportionately affect women compared to men; 93.9% of the women, but only 59.7% of men, under sentence of death were convicted of drug-related offenses.<sup>596</sup> As a result, women make up 13% of the country's total death row population,<sup>597</sup> one of the highest proportions anywhere in the world.<sup>598</sup>

Although Thailand has one of the largest death row populations in Asia,<sup>599</sup> it carries out few executions.<sup>600</sup> It remains a retentionist state, as it has carried out an execution within the past ten years<sup>601</sup> (most recently in 2018, after nine years without executions).<sup>602</sup> No woman has been executed since 1999, when Samai Pan-intara was executed for drug trafficking.<sup>603</sup>

Thailand punishes a range of offenses with death, including drug-related offenses. It is a capital crime in Thailand to produce or distribute “category one” drugs,<sup>604</sup> or to possess category one drugs for distribution, as long as the quantity of drugs exceeds the amount defined in the sentencing guidelines.<sup>605</sup> By law, courts presume that defendants in possession of more than a statutory amount of category one drugs intend to distribute them.<sup>606</sup> In practice, to rebut the presumption and avoid a possible death sentence, defendants must sometimes prove beyond a reasonable doubt that they did not intend to distribute the drugs.<sup>607</sup> This practice violates the presumption of innocence and fair trial standards.<sup>608</sup>

Thailand's punitive drug laws have fueled a substantial growth in the female prison population over the past three decades.<sup>609</sup> Today, Thailand has the world's second highest incarceration rate of women.<sup>610</sup> Women make up 14% of incarcerated people in Thailand, the highest proportion in the world,<sup>611</sup> and 19% of people sentenced to death for drug offenses.<sup>612</sup> According to available data, the majority of women on death row for drug offenses are low-level offenders without criminal histories and are less likely than men to have a criminal record.<sup>613</sup> In a recent survey of eight women sentenced to death for drug offenses, none of the women had connections to organized crime networks and most reported that drug dealing was not their primary source of income.<sup>614</sup>

## Pathways to offending for women convicted of drug-related offenses

A 2021 study by Jeffries et al. is one of the most detailed studies available of the life histories of women convicted of capital drug offenses. In 2017,<sup>615</sup> the researchers interviewed 16 women incarcerated for drug offenses, eight of whom were sentenced to death, and 18 men incarcerated for drug offenses, six of whom were sentenced to death.<sup>616</sup> Although the sample size was small, the authors' conclusions confirm patterns identified by other researchers regarding the gendered factors that push women into drug offending and common differences between women and men's experiences.

The authors found that **in many cases, female drug offending is predicated on a combination of poverty, caregiving responsibilities, and lack of economic opportunity.**<sup>617</sup> Compared to men, women who commit drug-related offenses are more likely to be sole providers,<sup>618</sup> to have dependents (both children and other relatives),<sup>619</sup> and to be driven by financial need.<sup>620</sup> Over a third of the women in the 2021 study reported that the main reason they trafficked drugs was that they needed money to support their families. Only one of the men in the study, by contrast, cited family financial needs as the main reason he was involved in drug trafficking.<sup>621</sup> The great majority of incarcerated women surveyed—81%, compared to only 50% of men—had children of their own, and almost a quarter of those women became mothers when they were children themselves.<sup>622</sup> The authors also found evidence that, among people incarcerated for drug offenses, women were more likely than men to have supported extended family members before their arrest.<sup>623</sup> Many women became family caregivers at a young age, trapping them in a cycle of poverty. Three-quarters of the women surveyed grew up in low-income households. More than a quarter of them dropped out of school before finishing compulsory education, in several cases to work to support their families.<sup>624</sup> They faced limited employment prospects after leaving school, and many worked in precarious jobs before their arrest.<sup>625</sup>

A significant number of women surveyed by Jeffries et al. in 2021 reported that men in their lives had manipulated or deceived them into trafficking. **One-quarter of the women—and none of the men—reported that their romantic partners took advantage of their economic and emotional vulnerabilities and manipulated them into**

**trafficking drugs.**<sup>626</sup> Many were struggling financially and had recently ended relationships with men who mistreated them, sometimes violently.<sup>627</sup> One woman reported that her intimate partner promised to help pay her rent if she helped him transport some “gemstones,” which were in fact drugs.<sup>628</sup> Another woman’s boyfriend led her to believe that he would break up with her if she did not traffic drugs for him.<sup>629</sup>

The authors also found that **women incarcerated for drug offenses were more likely than men to have experienced domestic abuse and other intimate relationship problems**—a finding confirmed by other studies.<sup>630</sup> Half of the women surveyed reported that they had experienced domestic violence, half had experienced intimate partner infidelity, and 75% had experienced the breakdown of an intimate relationship. None of the men, by contrast, had experienced domestic violence.<sup>631</sup>

Women convicted of drug offenses are also more likely than men to have suffered some form of childhood trauma, including parental abandonment, child abuse, and exposure to illicit drugs or crime in their family or community.<sup>632</sup> Several women reported that their childhood trauma pushed them into relationships with intimate partners who introduced them to drugs and supported their drug use, which eventually led them into the drug trade.<sup>633</sup> Men’s intimate partners, on the other hand, were more likely to attempt to hinder their partners’ involvement with drugs.<sup>634</sup>

### **Fair trial violations**

Restrictive sentencing guidelines and inadequate legal representation often prevent judges from considering women’s motivations for trafficking at sentencing.<sup>635</sup> Thai judges may only consider the mitigating factors enumerated in confidential mandatory-sentencing guidelines,<sup>636</sup> which do not include mitigating factors such as poverty, caregiving responsibilities, or a history of gender-based violence.<sup>637</sup> Higher court judges, who review the mitigating factors applied by trial judges, strictly enforce the prohibition against non-enumerated mitigating factors.<sup>638</sup> As defendants charged with capital drug offenses are often poor, they must rely on the assistance of state-funded lawyers.<sup>639</sup> Court-appointed lawyers are under-resourced, receiving only about 8,000-50,000 baht (about USD \$250–\$1,600) to defend a capital case.<sup>640</sup> Their lack of resources hinders their ability to rebut the presumption that their clients intended to distribute the drugs in their possession

and to investigate and present applicable mitigating circumstances.<sup>641</sup>

Foreign nationals<sup>642</sup> face additional fair trial violations when charged with a capital drug offense. There is no publicly accessible data indicating the number of foreign nationals on death row in Thailand. Regional and international trends, however, suggest that a substantial number of women on death row for drug offenses are likely noncitizens.<sup>643</sup> Moreover, we know that a majority of the foreign women in Thai prisons were convicted of drug offenses, and that female foreign nationals are more likely than male foreign nationals to be convicted of drug offenses.<sup>644</sup> Although Thailand has acceded to the Vienna Convention on Consular Relations,<sup>645</sup> women foreign nationals incarcerated in Thailand have reported that consular officials were not notified of their arrest and that they did not receive consular assistance.<sup>646</sup> Those who do not speak English fluently have further reported that courts failed to provide them with adequate interpretation services during trial.<sup>647</sup> As a result, they did not understand the legal process, court procedures, or their sentences. Additionally, courts do not provide interpreters to help defendants communicate with their lawyers outside of the courtroom, impeding lawyers’ ability to mount an adequate defense.<sup>648</sup>

### **Prison conditions**

Incarcerated women face harsh prison conditions. Women on death row<sup>649</sup> experience similar prison conditions to women serving other sentences because they live with the general prison population during the day.<sup>650</sup> Women under sentence of death sleep in separate dormitories only if the prison has the capacity to divide sleeping areas.<sup>651</sup> The International Federation for Human Rights argues that detention conditions violate international human rights standards, including the Bangkok Rules.<sup>652</sup> In 2015, the Thailand Institute of Justice (TIJ) and the Department of Corrections of Thailand launched the Model Prison Project to help prisons improve their compliance with the Bangkok Rules,<sup>653</sup> and TIJ reports that practices in some prisons have since improved.<sup>654</sup> Additionally, Thailand also amended its correctional legislation in 2017 to incorporate the principles of the Bangkok Rules, for instance by adding specific provisions on the incarceration of mothers and pregnant women.<sup>655</sup> Despite these improvements, Thai prison conditions still fall below international standards in some areas.<sup>656</sup> Thailand’s prisons are severely overcrowded.<sup>657</sup> For example, one prison, the Central Women’s Correctional

Institute, has less than half a meter (1.5 feet) width of floor space for each incarcerated woman.<sup>658</sup> Incarcerated women often develop back and leg pain because they must sleep without moving onto their sides.<sup>659</sup>



Empty locker at the abandoned women's prison in Chiang Mai, Thailand, in 2014. Photo courtesy of Drburtoni, Flickr.

Women also face uniquely gendered challenges in prison. **Since Thailand has few women's prisons, women are often detained far from home, hindering their family's ability to visit.**<sup>660</sup> Penitentiary rules mandate that prison administrators remove children born in prison from their mothers before they reach the age of one, which traumatizes both women and their children.<sup>661</sup> (Babies may remain in prison with their mothers until the age of three if the prison has a nursery, which many do not.)<sup>662</sup> If prison administrators cannot identify relatives willing to take the child or find a foster family, they send the baby to an orphanage.<sup>663</sup> Prisons also lack women's health services. Women report that they need to purchase their own sanitary napkins,<sup>664</sup> although they have very limited opportunities to earn money in prison.<sup>665</sup>

Many women on death row eventually receive clemency.<sup>666</sup> Formerly incarcerated women face severe challenges to re-entering society. Women often struggle to find work because many employers refuse to hire formerly incarcerated women.<sup>667</sup> Additionally, women are often destitute when they leave prison.<sup>668</sup>

## Conclusion

Our review of available data on women on death row in Thailand leads to the following conclusions. First, nearly all women on death row in Thailand were convicted of drug offenses.<sup>669</sup> Second, the majority of women who commit drug offenses are caregivers who come from low socioeconomic backgrounds and whose crimes are motivated by financial need.<sup>670</sup> Third, gender-based violence and trauma have shaped the trajectories of many women sentenced to death for drug offenses.<sup>671</sup> Fourth, women are more likely than men to have an intimate partner who supports their drug involvement or manipulates them into trafficking.<sup>672</sup> Fifth, courts sentence women to death without considering evidence of gender-based oppression that contributed to their offenses.<sup>673</sup> Finally, prison conditions for death-sentenced women fall short of international standards and fail to respond to women's needs.<sup>674</sup>

## CHINA

China executes more women for drug offenses than any other country in the world.<sup>675</sup> Precise data on China’s application of the death penalty is notoriously elusive.<sup>676</sup> The available information, however, indicates that although capital sentences are likely decreasing overall, the proportion of death sentences handed out for drug offenses seems to be increasing.<sup>677</sup> In addition, the proportion of women (versus men) among those who are incarcerated and executed for drug-related crimes might be growing.<sup>678</sup> China’s legislative framework for capital drug offenses is punitive and opaque. Moreover, courts fail to thoroughly assess mitigating circumstances in the context of drug-related offenses—including gender-specific mitigation.

### State secrecy around death penalty data

China classifies information on the death penalty as a state secret.<sup>679</sup> In fact, the state deems national-level data on the approval and execution of death sentences to be top secret, the highest possible level of secrecy.<sup>680</sup> State secrecy laws that govern the judiciary are vague and overbroad,<sup>681</sup> and unlawfully disclosing information about the death penalty may itself be a death-punishable offense.<sup>682</sup> As a result, it is impossible to gather comprehensive statistical data on the application of the death penalty in China.



Guards “say a final farewell” to a woman who is about to be executed for drug trafficking. This photograph, which was taken in 2003, is one of few publicly available photographs from Chinese death row.

In 2013, in response to international calls for increased transparency, the Supreme People’s Court (SPC) set up China Judgments Online, a national database for criminal case documents from all court levels.<sup>683</sup> According to SPC guidelines, all criminal case documents should be accessible on this database,<sup>684</sup> but in reality courts only upload a small fraction of capital court proceedings.<sup>685</sup> For instance, in

2016, Amnesty International found that of 305 executions reported in the media, only 26 could be located in the database.<sup>686</sup> Amnesty further found that “[d]rug cases seem to be missing on an even larger scale than other types of crimes from the database” and that the cases of foreign nationals executed for drug offenses were rarely, if ever, published.<sup>687</sup> Moreover, in recent months, there have been reports that the SPC is in fact *removing* many of the judgments that were previously publicly available (especially those pertaining to death penalty cases).<sup>688</sup> In addition, as the SPC selects which of its judgments appear online, the published proceedings tell us more about the types of cases it wishes to highlight than they allow us to draw conclusions.<sup>689</sup>

For this chapter, we analyzed a large sample of the publicly available judgments of women sentenced to death for drug offenses. Where possible, we interviewed current and former capital defense attorneys, spoke with scholars, and consulted relevant media sources. Nevertheless, some of our conclusions remain tentative, given that we are drawing from an incomplete dataset.

### Demographic trends among women sentenced to death for drug-related offenses

**China executes more people than any other nation.**<sup>690</sup> By all estimates, thousands of people are sentenced to death and executed in China each year.<sup>691</sup> In 2018, the Dui Hua Foundation estimated that China had executed two thousand people,<sup>692</sup> while Dr. Teng Biao asserts that the annual number of executions is likely closer to six thousand.<sup>693</sup> Though 46 crimes are currently punishable by death in China,<sup>694</sup> “[a]vailable evidence suggests that most death sentences are now handed down for two categories of offense: drugs and murder.”<sup>695</sup> In both 2018 and 2019, Chinese media reported between 160 and 200 drug-related executions on June 26, which marks ‘International Day Against Drug Abuse and Illicit Trafficking.’<sup>696</sup> The total annual number of drug-related executions is likely to be significantly higher. Of those executed for drug-related offenses, women constitute a small—but possibly growing—minority.<sup>697</sup> While it is impossible to track national death penalty trends, research across certain provinces indicates that in noncapital cases the proportion of women (versus men) among defendants in drug cases is increasing.<sup>698</sup> One lawyer said that in his defense practice, he is seeing “more and more women” facing capital drug charges.<sup>699</sup>





An incarcerated woman carries water to women who are about to be executed for drug trafficking so that they can wash their faces. This photograph, which was taken in 2003, is one of few publicly available photographs from Chinese death row.

In the China Judgments Online database, a keyword search for the terms “drug offense,” “death sentence,” and “female” returned over 600 cases. Almost all of these cases had been adjudicated since 2013, and the sample included those who had received suspended death sentences. (After two years, a suspended death sentence is reduced to an indeterminate life sentence<sup>700</sup> or a term of years if the person does not commit another offense while in prison.<sup>701</sup> Exceedingly few suspended death sentences are converted into death sentences with immediate effect.)<sup>702</sup> In partnership with the China University of Political Science and Law, we randomly selected and analyzed 300 of these cases. As commentators believe that the SPC publishes cases “selectively,” this is most likely not a representative sample.<sup>703</sup> Nevertheless, we have identified some broad themes that emerge from the cases.

According to the database sample, almost all women who received a death sentence for a drug offense had trafficked or transported methamphetamine or heroin. The overwhelming majority of women were convicted on trafficking and transporting charges alone; even if there were other additional charges, such as manufacturing, *all* cases involved trafficking and transporting circumstances.<sup>704</sup> Most often, the drug involved was methamphetamine or, somewhat less frequently, heroin.<sup>705</sup> The overwhelming majority of the cases in the sample resulted in suspended death sentences, which rarely result in execution.<sup>706</sup> All of the women who received a sentence of death with immediate effect had prior convictions.<sup>707</sup>



A woman sentenced to death for drug trafficking folds the clothes she plans to wear during her execution. She requested red clothes to symbolize luck.

Of the women who received a death sentence—either suspended or immediate—most were young and poorly educated. **Almost all of the women had left school before the end of junior high school.**<sup>708</sup> About half of the women were between 26–35 years old at the time of sentencing.<sup>709</sup> The vast majority were from rural areas and were farmers or unemployed.<sup>710</sup> The judgments did not consistently mention whether defendants had minor children or other care-taking responsibilities. A significant proportion of the women were charged with a male co-defendant.<sup>711</sup> One defense lawyer told us that, in his experience, when a woman has a male co-defendant, he is most often an intimate partner or a family member.<sup>712</sup>

Ethnic minorities appear to be overrepresented among women on death row for drug offenses.<sup>713</sup> One contributing factor for this trend may be that a significant proportion of China’s ethnic minorities reside in Yunnan, which has the highest number of drug prosecutions in the country.<sup>714</sup> Other research, however, has shown that ethnic minorities suffer from discrimination in criminal sentencing and that “this bias is largest for groups heavily involved in the drug trade.”<sup>715</sup>

### Historical trends in the use of capital punishment

In the 1980s, China adopted a law enforcement campaign that was governed by the mantra “Strike Hard.”<sup>716</sup> The Strike Hard campaign embraced the use of capital punishment. Party-state officials used to quote an adage that, if judges have the choice of whether “to kill or not to kill, they should choose to kill.”<sup>717</sup> The Dui Hua Foundation estimates that 12,000 people were executed in China in 2002.<sup>718</sup> Beginning in 2005, however, the Chinese



Communist Party adopted a policy of “kill fewer, kill cautiously” as part of its “harmonious society” agenda.<sup>719</sup> Thereafter, in 2007, the SPC assumed exclusive authority for the final review and approval of all death sentences.<sup>720</sup> The overall use of the death penalty since that time is widely believed to have fallen significantly. A number of sources estimate that the annual number of executions fell by around ten thousand,<sup>721</sup> though others believe that the reduction was more modest.<sup>722</sup>

Meanwhile, however, China’s anti-drug policies have grown increasingly punitive. Around the same time that the “harmonious society” agenda reduced the overall use of the death penalty, **the Party launched another national campaign called the “People’s War on Drugs.”**<sup>723</sup> The War on Drugs triggered increasingly harsh punishments for drug-related offenses, a trend that continues today. One lawyer told us that “the general trend in the last two years for major drug crimes is that sentences are getting heavier and heavier.”<sup>724</sup> Moreover, recent empirical research by Tobias Smith concluded that “the proportion of death sentences handed out for drug crimes seems to be increasing, and, indeed, some people believe that the total number of executions for drug crimes may be on the uptick as well.”<sup>725</sup> Susan Trevaskes asserts that drug crime is “seen by politicians and Chinese society at large as exceptionally destructive of social and economic order.”<sup>726</sup> Public condemnation plays a part in the (potentially) growing number of death sentences, since one of the sentencing factors that determines whether a capital sentence is warranted is whether the crime caused “extremely serious... harm... to society.”<sup>727</sup> Trevaskes argues that “[j]udicial perceptions have their basis in Communist Party policy and attitudes to drugs.”<sup>728</sup> As a result, judges have the discretion to sentence drug offenders to death and regularly do so.

Worldwide, drug use and production has increased in recent decades<sup>729</sup> and China plays a key role in global trafficking routes.<sup>730</sup> This is especially true in Southwestern provinces—such as Yunnan and Guangdong—which are near the ‘Golden Triangle’ of Laos, Myanmar, and Thailand that produces much of the world’s heroin.<sup>731</sup> Yunnan province is China’s drug capital. Its politicians are firmly anti-narcotics, and are also deeply involved in developing penal policies nationally.<sup>732</sup> The number of drug-related death sentences in Yunnan is higher than the national average.<sup>733</sup> When the central government has implemented reforms in favor of leniency, Yunnan courts have tried to

minimize their impact, with politicians insisting that “we need to understand the necessity of the death penalty in protecting social stability.”<sup>734</sup> In sum, China’s application of the death penalty for drug-related offenses varies in different parts of the country but, overall, China’s reduced application of the death penalty in recent decades does not appear to extend to drug-related offenses.

## Legislative framework

Chinese criminal law does little to disaggregate disparate drug offenses and indiscriminately groups all drug-related sentencing options together. Article 347 of the 1997 Criminal Law broadly stipulates that smuggling, trafficking, transporting, or manufacturing narcotic drugs are punishable by 15 years’ fixed-term imprisonment, an indeterminate life sentence, or death. This vague, unstructured framework lends judges a high degree of discretion in sentencing. Meanwhile, however, Article 347 provides little judicial discretion in terms of assessing criminal culpability.<sup>735</sup> The only objective criterion it provides for establishing criminal culpability is the weight of the illicit substances involved. Article 347 specifies that the smuggling, trafficking, transport or production of over one thousand grams of opium and 50 grams of heroin or methamphetamine is a death-eligible offense. In the publicly available cases, the judgments focus on the weight of the illicit substance in the possession of the defendants, apportion different amounts to the various defendants and assess culpability in that manner.<sup>736</sup> Using the quantity of drugs involved as the primary determinant of liability unduly burdens defendants who are low-ranking in drug syndicates, because high-ranking members purposefully avoid directly handling large quantities.

Pregnant and breastfeeding women are statutorily barred from being sentenced to death.<sup>737</sup> The SPC claims that drug syndicates target pregnant women to engage in transporting and trafficking, in the belief that they are at a decreased risk of suffering harsh punishments in the criminal legal system.<sup>738</sup> The SPC has concluded that it will “crack down on” those who “hire pregnant women.”<sup>739</sup>

As a general rule, courts that handle drug cases rarely consider the personal circumstances of the defendant.<sup>740</sup> Courts do not, for instance, generally consider having children or other dependents to be a mitigating factor at sentencing, even when the need to financially support them provided the primary impetus for the drug offense.<sup>741</sup> In one

case, the defendant was a mother who had used the proceeds of drug trafficking to support her disabled child. The court explicitly stated that this was irrelevant to its assessment, and the woman received a suspended death sentence.<sup>742</sup> Female defendants are more likely to be the primary caregivers of minor children,<sup>743</sup> so they are disproportionately harmed by courts' failure to consider this mitigating factor. As female capital drug defendants in China tend to be poor and undereducated, they would benefit from courts considering the mitigating effect of all aspects of their background.

In transportation cases—where, unlike in trafficking cases, the drugs do not leave the national territory—the SPC has recognized that **it is problematic for judges to use drug quantity as a proxy for moral blameworthiness.**<sup>744</sup> Poor, rural farmers most often engage in drug transportation and the SPC has recognized their limited culpability.<sup>745</sup> In 2008, the SPC promulgated sentencing guidelines in the 'Dalian Minutes,' encouraging judges to consider the personal circumstances of the defendant and situate the crime in its socioeconomic context.<sup>746</sup> Judges therefore engage in more mitigation analysis in drug transportation cases than in other drug-related cases. This may disproportionately aid female defendants who, as earlier mentioned, are predominantly sentenced to death in transportation and trafficking cases. Nonetheless, women may be disadvantaged under aspects of the broader mitigation framework used by the courts to determine sentences. For example, one of the primary opportunities for defendants to reduce their sentence is to provide information to law enforcement about drug organizations, which is considered to be “meritorious service.”<sup>747</sup> Guidelines advanced by the SPC in 2010 advise that the standard for meritorious service be different for principal offenders and accomplice offenders, to account for the disparity of knowledge between low- and high-ranking members of drug-trafficking organizations.<sup>748</sup> Based on our analysis of publicly available cases, however, courts do not appear to consistently apply this guideline.<sup>749</sup> If it is inconsistently applied, this would disadvantage low-ranking members of drug syndicates, which in turn disadvantages women. In sum, China's legislative framework does not afford for an in-depth mitigation analysis in every case, and, in some respects, this unduly burdens women.

## Fair trial violations

Significant fair trial violations permeate the criminal legal system in China. China is not transparent about the use of torture, for example, and **it is thus probable that confessions in some death penalty cases have been extorted through torture.**<sup>750</sup> The most common fair trial violations in capital drug cases include an inability to access effective legal representation and arbitrary convictions and sentences.

All capital defendants have the right to legal representation at trial, and the state provides indigent defendants with state-funded counsel.<sup>751</sup> Research indicates that, by a number of metrics, state-funded lawyers may be less effective than private counsel.<sup>752</sup> In drug cases, however, retaining private counsel can be particularly expensive.<sup>753</sup> Capital defense lawyers report that “capital defendants are not *equally* poor” and “[d]rug crime defendants sometimes put away rainy day money to pay for counsel.”<sup>754</sup> Capital defenders therefore often charge more for drug-related cases.<sup>755</sup> This practice disproportionately harms low-ranking members of drug syndicates who have fewer financial resources.

Moreover, there is a dearth of capital defense lawyers, since “[d]efense work in China is low status, low pay, high stress and high risk.”<sup>756</sup> Legal aid lawyers with less than three years' experience have reportedly defended death penalty cases.<sup>757</sup> In the database sample of women sentenced to death for drug offenses, we found that state-funded lawyers more frequently raised defenses of innocence, even where that was a tenuous claim.<sup>758</sup> In addition, capital defendants currently have no right to a publicly-funded lawyer during their final review before the SPC review stage, though defendants may hire private counsel, if they can afford it.<sup>759</sup> This means that only a small minority of defendants receive legal assistance at the highest level of appellate review.<sup>760</sup> Nonetheless, China's National People's Congress is considering a new Legal Aid Law which, if enacted, would guarantee death-sentenced prisoners a right to counsel at the SPC review stage.<sup>761</sup>

A further hurdle that defendants face in relation to legal representation is that lawyers are not always granted access to information relevant to the case. The Rights Practice has found that “[t]he police, procuratorate [Chinese prosecutor] and the courts all operate ‘within the system’ and share privileged information among themselves... [which] leaves lawyers unable to access information vital to provide an adequate defence for their client.”<sup>762</sup> Like other

jurisdictions, while all defendants are irreparably harmed by a lack of counsel, or ineffective counsel, women may disproportionately suffer due to their generally low-ranking positions in drug syndicates and, more broadly, their economic position in society.<sup>763</sup>

Finally, death penalty jurisprudence for drug-related offenses is inconsistent from one region to another,<sup>764</sup> which violates the prohibition against arbitrary capital sentencing under international law.<sup>765</sup> Amnesty International reports that “the police, prosecuting authorities and courts in different provinces and regions have different understandings of and standards for how to apply the death penalty in drug-related offenses.”<sup>766</sup> Prevailing attitudes towards drugs in the province where the trial takes place strongly influence whether a death sentence is handed down or not.<sup>767</sup> Arbitrariness pervades the criminal legal system in other ways, too. For example, China promotes its drug policies each year on June 26—International Day Against Drug Abuse and Illicit Trafficking—and each year around that time the number of drug-related executions increases.<sup>768</sup> One lawyer stated that he always hopes that none of his clients receive a verdict on June 26, since courts in China typically issue harsh verdicts in drug-related cases on that day.<sup>769</sup> Finally, arbitrariness is introduced into the system via the courts’ unreasonable reliance on weight as a determinative factor in sentencing. The purity of the drugs is not taken into account, leading to death sentences for some individuals who were carrying less illicit substance than others who were sentenced to an indeterminate life sentence.<sup>770</sup>

## Conclusion

In China, as in other jurisdictions, women are primarily disadvantaged via their low-ranking positions within drug syndicates. This disadvantage operates in a number of ways. First, they are less often able to disclose information about illicit markets and thus less likely to benefit from reduced sentences.<sup>771</sup> Second, they are less likely to be able to afford capital defenders’ increased fees for drug defendants.<sup>772</sup> Third, courts use drug weight as a proxy for criminal culpability, and this leads to low-ranking members being apportioned more blameworthiness, since the lowest-ranking individuals often carry the most drugs, and the most risk.<sup>773</sup> The overwhelming majority of women on death row for drug offenses are poor, uneducated, and from rural backgrounds, and are more likely than men to bear major responsibility for childcare. As a result, they suffer

disproportionately from courts rejecting caregiver status as a mitigating factor.<sup>774</sup> Our analysis of the available, truncated set of case documents suggests that many young women from rural areas engage in drug crime to support their young children.<sup>775</sup>

## PROFILE: SITI ASLINDA BINTE JUNAIDI (CHINA)

Siti Aslinda Binte Junaidi is a Singaporean woman incarcerated on death row in China for drug trafficking. At trial, Aslinda was represented by a legal aid lawyer.<sup>776</sup> Aslinda was sentenced to death in July 2020 by the Shenzhen Intermediate Court and, if her appeals fail, she will be at risk of imminent execution.<sup>777</sup>



Aslinda in February 2014 (before her incarceration), taken at her mother's house. Photo courtesy of KK Cheng Law LLC.

In late 2014, **Aslinda was a single mother struggling to support her 12-year-old daughter**, Ismiraldha.<sup>778</sup> Searching for job opportunities online, Aslinda met Chibuzor Onwuka, a businessman who offered her a generous sum to transport suitcases of goods from China to Cambodia by plane.<sup>779</sup> Aslinda was excited by this opportunity and soon began transporting Mr. Onwuka's goods between Guangzhou, China and Phnom Penh, Cambodia once or twice a month.<sup>780</sup> The goods usually included women's lingerie, handbags and toner cartridges.<sup>781</sup> After Aslinda met a man named Mohd Yusri, they began to transport goods for Mr. Onwuka together.<sup>782</sup> Mr. M Ravi, a Singaporean lawyer who has been assisting Aslinda, believes that Aslinda was deeply in love with Yusri and would have done almost anything for him.<sup>783</sup> Mr. Onwuka paid them USD \$2,000–\$3,000 each per trip and also covered their airfare and hotel bills.<sup>784</sup> Aslinda wondered how Mr. Onwuka's business was so profitable, but when she asked him, he explained that the goods he transported were handpicked to be sold to prominent Cambodians.<sup>785</sup> This satisfied her curiosity.

In October 2015, during Aslinda and Yusri's third joint trip, customs officers in Shenzhen, China, stopped them at the airport.<sup>786</sup> A luggage search revealed over 11 kilograms of methamphetamine (with a street value of about USD \$220,000) in the lining of 28 women's handbags.<sup>787</sup> Both Aslinda and Yusri were immediately arrested.

We know little about Aslinda's trial in China. Mr. Ravi believes that the legal aid attorney representing Aslinda was ineffective in many respects.<sup>788</sup> The Singaporean Ministry of Foreign Affairs recommended a number of Chinese defense lawyers when Aslinda was arrested, but Aslinda's family "couldn't afford [any of them] due to the very high cost."<sup>789</sup> On July 25, 2020, almost five years after her arrest, the Shenzhen Intermediate Court found Aslinda guilty of drug trafficking and sentenced her to death with immediate effect.<sup>790</sup> This is a far longer pre-trial period than is typical in China.<sup>791</sup> Aslinda's co-accused, Yusri, received a suspended death sentence,<sup>792</sup> a lesser punishment that in most cases is reduced to an indeterminate life sentence after two years.<sup>793</sup> Without access to the court proceedings—which Chinese authorities have not published and which are classified as a state secret by default<sup>794</sup>—we do not know why they received such disparate sentences.

In December 2020, media sources (likely erroneously) reported that Aslinda would be executed within two weeks.<sup>795</sup> Ismiraldha, then 17 years old and desperate to help her mother, contacted Mr. Ravi, a well-known human rights lawyer in Singapore.<sup>796</sup> Mr. Ravi frantically sought to secure local Chinese representation for Aslinda, though many of the defense attorneys he approached asked for exorbitant fees.<sup>797</sup> Nevertheless, Mr. Ravi's efforts were eventually successful, and Aslinda is now represented by experienced counsel for her appeal to the Guangdong High Court.<sup>798</sup>

Mr. Ravi laments that the Singaporean authorities have not been more active in assisting Aslinda. For example, they failed to ensure that she was adequately represented at trial. Mr. Ravi says he has "been trying to reach out to the Ministry of Foreign Affairs and they've not been very helpful... it's very frustrating."<sup>799</sup> The Ministry has told Ismiraldha, Aslinda's teenage daughter, that if her mother is executed, Ismiraldha will have to pay the full cost of repatriating the body to Singapore.<sup>800</sup>

Meanwhile, Ismiraldha has not seen her mother in over five years. They are, however, sometimes able to write each

other letters. In one of Aslinda's recent letters, she asked after her daughter's schooling and appearance, imagining how Ismiraldha has grown. Trying to remain positive, she focused on her daughter's education and future: "Elda, by the way, what's your height and weight now? How's your [school] life? Fun? Enjoy yourself alright."<sup>801</sup> **Ismiraldha reports that she is "in a state of disbelief"<sup>802</sup> and "worried and scared" for her mother's life.<sup>803</sup>** The Guangdong High Court will soon hear Aslinda's appeal, and her appellate lawyers are hopeful that, with their assistance, the courts will finally hear her story.

*To write this profile, we conducted interviews with Aslinda's lawyers and consulted publicly available information. We publish this profile with the consent of Aslinda's daughter and her lawyers.*

# Women, Harm Reduction, and the Criminalization Approach to Drugs—authored by Harm Reduction International

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Women who use drugs or are involved in the drug market experience unique discrimination and stigmatization. With regards to death penalty, the above chapters describe how gender bias and gender-based discrimination play a role in drug offenses, which result in disparate impacts upon women. Globally, 35% of all female prisoners are imprisoned for drug offenses.<sup>804</sup>

Even outside the context of the death penalty, women face disparate impacts of drug policy. Among other areas in which the gender dimension of drug policy emerge clearly are (a) the availability and accessibility of gender-sensitive harm reduction services; and (b) the disproportionate impact of criminalization on women engaging in the drug market. In this chapter, we delve deeper into these two areas. By doing so, we aim to give more context about the intersection of women, drug policy, and human rights.

In the past decade, civil society, community-based organizations, networks of women who use drugs, and U.N. agencies have increasingly highlighted how drug policy negatively affects women. For example, in its 2014 policy brief, U.N. Women acknowledged that “the world drug problem is undermining gender equality” and called for the integration of a gender perspective to respond to the issue.<sup>805</sup> Resolution 59/5 of the U.N. Commission on Narcotic Drugs highlighted the social barriers that “continue to hinder the access of women to treatment for drug use and, in some cases, a lack of sufficient resources allocated for removing those barriers.”<sup>806</sup>

## Access to gender-sensitive harm reduction and drug treatment services

Harm reduction refers to policies, programs, and practices aiming to minimize negative health, social, and legal impacts associated with drug use, drug policies, and drug laws.<sup>807</sup> These policies include but are not limited to drug consumption rooms, needle and syringe programs, non-abstinence-based housing and employment initiatives, psychosocial support, and the provision of information on safer drug use.<sup>808</sup> Harm reduction policies are evidence-based and have been shown to “greatly reduce morbidity and mortality associated with” drug use.<sup>809</sup> In addition to being effective, harm reduction centers human rights and individual autonomy. Harm reduction is an essential

component of the human right to health, which should be guaranteed both in the community and in detention settings,<sup>810</sup> and provided in a non-discriminatory manner. Harm reduction is of particular importance to women who use drugs, who face a higher risk of HIV and hepatitis C than men.<sup>811</sup>

Currently, women face unique obstacles in accessing harm reduction and drug treatment services. Women are estimated to comprise 20% of all people who inject drugs globally.<sup>812</sup> These figures are likely an underestimate due to gender inequality, pervasive stigma against women who use drugs, and the lack of disaggregated data, all of which hinder research. In 2012, the U.N. Commission on Narcotic Drugs stated that “women with substance abuse problems are often deprived of or limited in their access to effective treatment that takes into account their specific needs and circumstances.”<sup>813</sup>

A recent literature review on women and barriers to harm reduction services, published in 2020,<sup>814</sup> identified four key, interrelated barriers to women’s access to harm reduction services: stigma and structural violence; gender-based violence; lack of female-specific services; and criminalization.

First, women who use drugs endure pervasive stigma both in society and in healthcare settings because of the intersection of the stigmatization of drug use and entrenched social constructs that view women as primary caregivers and subordinates to men.<sup>815</sup> As a consequence, women are less likely to disclose their drug use due to fear of discrimination, abuse, and—in some contexts—losing their children.<sup>816</sup> In turn, this affects their ability and willingness to access harm reduction services.<sup>817</sup> The pervasive stigma has also pushed women who use drugs into hidden and unsafe spaces as a way to keep their drug use secret—making it harder for harm reduction workers to reach them.<sup>818</sup>

Second, women who use drugs are disproportionately vulnerable to violence, both in the private and in the public sphere. Gender-based and intimate partner violence rates among women who inject drugs are two to five times higher than among women who do not inject drugs.<sup>819</sup> In countries with punitive drug policies, where police are responsible for



enforcing drug laws while also acting as first responders to reports of domestic violence, women who use drugs and who experience violence may be treated as potential drug offenders rather than as victims of violence.<sup>820</sup>

Third, a lack of female-specific services negatively affects the health of women who use drugs. Women tend to experience medical and social consequences of drug use faster than men, and some of the negative health impacts of drugs and drug policies are gender-specific.<sup>821</sup> Hence, women may require access to a diverse set of services, including sexual and reproductive healthcare and/or support for gender-based violence or mental health issues. Although harm reduction services are available in more than 80 countries, gender-sensitive services are not widely available.<sup>822</sup> Only two out of 13 Asian countries where harm reduction is available report any specific service designed for women who use drugs.<sup>823</sup> In North America, harm reduction services designed for women who use drugs are mostly available in urban settings.<sup>824</sup> In addition, the criminalization of drug use, especially in countries where drug offenses are punishable by death, might also be a factor that discourages women to access services.<sup>825</sup>

The lack of gender-sensitive services is even more apparent in detention settings. Although the Mandela Rules prescribe that people in prison must have access to the same standard of care as they would outside prison,<sup>826</sup> women in prison have less access to harm reduction services.<sup>827</sup> As a consequence, women report unsafe injection behavior in prison due to the lack of accessible sterile injecting equipment.<sup>828</sup>

## **Criminalization**

The global female prison population has increased steadily in the past 20 years, largely because of increasingly punitive drug laws. Drug offenses—particularly low-level offenses such as use, possession, or small-scale dealing of drugs—are among the main drivers of female incarceration in many countries. Globally, the percentage of women in prison for drug offenses, compared to other offenses, is higher than that of men.<sup>829</sup> Notably, drug offenses are, together with homicide, the main crime for which women are sentenced to death in several countries—including Thailand, Indonesia, and Malaysia.<sup>830</sup>

The criminalization of drugs and drug-related activities has far-reaching impacts on women's lives beyond the use of capital punishment. It not only exposes them to incarceration and violence by law enforcement, but also increases their marginalization and discrimination, and—as the U.N. Committee on Economic, Social and Cultural Rights emphasized—impedes the realization of their right to health.<sup>831</sup> When criminalization results in incarceration, this reverberates negatively on the woman's health and livelihood, and on that of her family and community.

Many women are imprisoned for their involvement in drug trafficking. Although not all women engage in drug trafficking due to exploitation, many women engage in the drug market, including as drug couriers, as a consequence of multiple forms of gendered vulnerability.<sup>832</sup> When they are involved in drug trafficking, they are disproportionately relegated to low-ranking, low-paying roles putting them in a high-risk position.<sup>833</sup> For example, evidence from limited contexts indicates that women may accept lower payments than men while being willing to take higher risks.<sup>834</sup>

A consequence of such over-representation in lower-level roles is the tendency of women to be harshly sentenced for minor involvement in the drug trade. This is due to many factors, including the fact that drug laws tend to be excessively punitive, and that prosecution and sentencing are often primarily based on being in possession, or in the vicinity, of an illicit substance, and on quantity—rather than having physical control over or deriving economic benefit from the drugs. This makes low-level actors and couriers inherently more exposed to harsh sentencing. Sentencing often fails to take into account all the circumstances of the crime and the offender. In addition, people with limited power within the drug hierarchy are less likely to have insider information that could be used for a plea bargain (in some cases, they are not even aware of their involvement), they may be less able to secure quality legal assistance, and they may be more vulnerable to torture and/or forced confessions.<sup>835</sup> Research carried out in Indonesia found that more than 25% of women sentenced for drug offenses experienced torture before, during, and/or after their trials.<sup>836</sup>

In retentionist countries,<sup>837</sup> the above situation contributes to the increased number of women on death row. In some countries, a significant proportion of women on death row were convicted of a drug offense. For example, in Thailand

and in Indonesia, women account for 94%<sup>838</sup> and 50% of female death row prisoners, respectively.<sup>839</sup>

### **Moving forward**

2021 marks the 60th anniversary of the 1961 Single Convention on Narcotic Drugs, and the 50th anniversary of the 1971 Convention on Psychotropic Substances. For a long time, issues pertaining to women and drugs have been overlooked. Women's needs continue to be neglected. As a consequence, women are disproportionately affected by drug policy, both from health and legal perspectives. Moving forward, it is imperative to decriminalize drugs and reform drug policy in order to accommodate the specific needs of women involved with drugs. Women who use drugs must be meaningfully involved in the design, implementation, and evaluation of harm reduction services and other drug treatments. We must advocate for all stakeholders to unpack, understand, and address women's vulnerability and involvement in drug offenses. More importantly, we must also advocate for policies that center around respecting women's rights and autonomy to mitigate the disparate impacts of drug policy on women.

## Policy Recommendations to Stakeholders

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International human rights standards require the **abolition of the death penalty**. The implementation of capital punishment is inseparable from discrimination and bias, and an execution's finality is unconscionable within systems known to convict innocent people, provide ineffective defense counsel, and fail due process standards.

Policies based on principles of **harm reduction** are the best way to address the harms associated with drug use, in tandem with the **decriminalization** of activities related to the personal use and possession of drugs. Harm reduction policies are humane and effective, while criminalization leads to human rights violations and is often ineffective. States must implement these policies with special consideration to the needs of all marginalized and vulnerable groups, including women and gender minorities.

States must work towards **gender equity**. Overt discrimination in the criminal legal system reflects the pervasiveness of harmful gender stereotypes and discriminatory practices in society at large. Likewise, social inequality often has a disparate impact on women and other vulnerable groups in the criminal legal system. Because women facing capital punishment face intersectional discrimination, states must also work towards equity for all racial, ethnic, and religious groups, for foreign nationals, and for all other marginalized groups.

In the interim, we recommend the following incremental changes to possibly lessen gender bias in the use of the death penalty for drug offenses:

### IN STATES THAT APPLY THE DEATH PENALTY FOR DRUG-RELATED OFFENSES

#### Recommendations to governments and lawmakers:

- Abolish the mandatory death penalty and ensure that courts consider all relevant mitigation evidence in capital trials, including evidence of trauma, gender-based violence, economic pressures, and family caretaking responsibilities.
- Require that the prosecution prove all the elements of drug-related offenses beyond a reasonable doubt, including, for drug trafficking, knowledge of the type and quantity of drugs and intent to traffic the drugs—without the use of legal presumptions.
- Ensure that, if sentencing reductions are available to defendants who assist law enforcement, these reductions are equally available to all defendants who cooperate with the police, including low-level drug couriers who may have less valuable information to share.
- Implement systems for defendants to have access to trained interpreters and ensure that they are available at all stages of a criminal case, including during interrogations, private conversations with defense counsel, court hearings, and throughout the clemency process. Interpreters should be available to anyone with non-native language skills who prefers to work through an interpreter, and interpreters should speak the defendant's native language fluently.
- Provide defendants who cannot afford to hire counsel with court-appointed lawyers who have the training, experience, and resources necessary to provide effective, gender-sensitive legal representation. Defense lawyers should be available at all stages of the criminal process, including during police interrogations, pretrial investigation, all appeals, and the clemency process. States should require that court-appointed attorneys have prior experience in capital cases and provide the defense with adequate resources to prepare for trial, including by conducting investigations and retaining experts. Courts should reconsider the sentences of defendants who did not receive effective legal representation at trial.
- Comply with the Vienna Convention on Consular Relations, customary international law, and other multilateral and bilateral treaties regarding defendants' rights to consular notification and access to consular assistance.
- Provide support to citizens who are facing the death penalty abroad.
- Center the voices of directly impacted women, trans people, and non-binary people in policy decisions, as they best understand their own problems and needs.

### **Recommendations to the judiciary:**

- Create and require that judges attend trainings on gender-based violence and its connection to women's offending in drug crimes.
- Accord mitigating weight to defendants' experiences of trauma, gender-based violence, economic pressures, duress, and family caretaking responsibilities at sentencing.

### **Recommendations to prison authorities:**

- Improve prison conditions for women and gender minorities, in particular through meaningful implementation of the Bangkok Rules. Death row conditions should not be worse than the conditions of the general prison population. People in detention should have access to harm reduction and educational programs regardless of their sentences.
- Carefully weigh which solutions are in the best interest of children whose mothers are detained. If young children remain with their parent on death row, those children must be provided with health care, recreational opportunities, and education comparable to what is available to children outside of prison. If children are not detained with their parent, the state should place them in appropriate care and ensure that they are able to regularly visit their incarcerated parent.

### **Recommendations to civil society:**

- Conduct and publish research on the prevalence of gender-based violence, including child abuse, among women incarcerated or sentenced to death for drug-related offenses.
- Engage with bar associations, defense lawyers, judges, and prosecutors to increase awareness of gendered aspects of drug law enforcement.
- Gather and publish data regarding the extent to which women convicted of drug offenses have experienced coercive intimate relationships or intimate partner violence that influenced their actions leading to their incarceration.
- Conduct and publish research on trans and non-binary people facing incarceration or a sentence of death for drug offenses.

- Center the voices of directly impacted women, trans people, and non-binary people in decision-making and in advocacy, as they best understand their own problems and needs.

## **IN STATES THAT DO NOT PUNISH DRUG-RELATED OFFENSES WITH DEATH**

### **Recommendations to governments and lawmakers:**

- Strongly condemn the use of the death penalty for drug offenses in all countries where such penalties exist.
- Develop an international coalition of like-minded countries to work together to end the use of the death penalty for drug offenses.
- Take advantage of all opportunities within the U.N., U.N. human rights bodies and other regional mechanisms to call for an end to the death penalty for drug offenses.
- Refrain from aiding or funding law enforcement in countries where people could face death for a drug crime.
- Do not condition aid to countries on strengthening or maintaining punitive drug laws.
- Where appropriate, condition aid to countries on death penalty abolition, moratoriums on executions, or reform of drug policies to comply with human rights laws and standards.

## **WITHIN U.N. BODIES**

### **Recommendations to all U.N. bodies:**

- Center the voices of directly impacted women, trans people, and non-binary people in decision-making and in advocacy, as they best understand their own problems and needs.

### **Recommendations to the Commission on Narcotic Drugs:**

- Emphasize gender justice and harm reduction while combating drug offenses as key pillars that must inform states' drug policies.

### **Recommendations to both the OHCHR and the UNODC:**

- Continue advocating for states to fully abolish the death penalty, and to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights.
- Publicly condemn gender-based discrimination in the application of the death penalty.
- Take the necessary steps to ensure that technical, financial, or legal assistance provided to states—including in the context of drug law enforcement—does not contribute to or facilitate the imposition of the death penalty.

### **Recommendations to the UNODC:**

- Conduct and publish research on the prevalence of gender-based violence, including child abuse and coercive intimate relationships or intimate partner violence, among the experiences of women incarcerated or sentenced to death for drug-related offenses, through the Global Programme on Strengthening Crime Prevention and Criminal Justice Responses to Violence Against Women.
- Engage with bar associations, defense lawyers, judges, and prosecutors to increase awareness of gendered aspects of drug law enforcement, through the Gender in the Criminal Justice System Programme.
- Conduct and publish research on trans and non-binary people facing incarceration or a sentence of death for drug offenses, through the Global Prison Challenges Programme.
- Make project-related documentation publicly available to allow civil society to monitor issues related to gender and the use of the death penalty for drug-related offenses.

### **Recommendations to the U.N. High Level Political Forum on Sustainable Development:**

- Highlight the gendered impact of the death penalty for drug offenses and prioritize its abolition as an essential milestone towards achieving Goals 5 & 16 of the Sustainable Development Goals.

## Appendix

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### WOMEN KNOWN TO BE ON DEATH ROW IN STATES APPLYING THE DEATH PENALTY FOR DRUG OFFENSES AS OF JULY 9, 2021

#### Bahrain

No official figures are available for death row prisoners in Bahrain. Research by Reprieve, a partner organization, suggests that there have been no women on death row in Bahrain since at least 2011.<sup>840</sup>

#### Bangladesh

No official figures are available for death row prisoners in Bangladesh. We have found no reports of women on death row for drug offenses.

#### Brunei Darussalam

No official figures are available for death row prisoners in Brunei. We have found no reports of women on death row for drug offenses.

#### China

Information the death penalty is classified as a state secret. Moreover, it is difficult to estimate the number of individuals under sentence of death because many prisoners do not remain on death row: they are either executed immediately, or given a suspended death sentence, which is often commuted to a sentence of life imprisonment after two years.<sup>841</sup> The death sentences reported in the media are a fraction of the true number, but by all estimates, the number of death sentences imposed and carried out in China is in the thousands each year.<sup>842</sup>

China almost certainly carries out more executions of women convicted of drug offenses than any other country.<sup>843</sup> In addition, there is some evidence that China is sentencing more and more drug offenders to death. Of those executed for drug-related offenses, women constitute a small—but possibly growing—minority.<sup>844</sup> Our survey of China Judgments Online, an official database containing court documents for cases from all court levels, revealed that at least 300 women have been sentenced to death for drug offenses since 2013. This figure includes both suspended and immediate death sentences.<sup>845</sup>

#### Cuba

There are no women (nor men) on death row in Cuba.<sup>846</sup>

#### Egypt

According to the Egypt Death Penalty Index database, there are currently 148 women on death row in Egypt.<sup>847</sup> None of them were sentenced to death for a drug offense.

#### India

There were 12 women on death row in India in 2015.<sup>848</sup> None of them were sentenced to death for a drug offense. We were not able to find more recent information on the number of women on death row and whether there are women currently on death row for drug offenses in India.

#### Indonesia

There are currently five women on death row for drug offenses in Indonesia,<sup>849</sup> or 45% of the 11 women under sentence of death in the country.<sup>850</sup>

#### Iran

There are no official statistics on the number of death sentences imposed and carried out in Iran.<sup>851</sup>

Beginning in 2017, drug-related executions dropped sharply after an amendment to the Anti-Narcotics Law increased the minimum weight of drugs required for a capital sentence.<sup>852</sup> Multiple sources report that, before the reforms, the country executed significantly more women for drug-related offenses than for homicide.<sup>853</sup>

While the number of women sentenced to death for drug offenses has certainly decreased since 2017, Iran continues to sentence women convicted of drug trafficking, and it is likely that there are currently women on death row following drug convictions. Indeed, at least one report from 2020 documents the execution of a woman who had been convicted on drug-related charges.<sup>854</sup>

#### Iraq

No official figures are available for death row prisoners in Iraq and we do not have information about whether any of the over four thousand people believed to be on death row



were convicted of a drug offense.<sup>855</sup> We have found no reports of women on death row for drug offenses.

### **Jordan**

We have found no reports of women on death row for drug offenses. We believe that most women under sentence of death in Jordan were convicted of homicide.<sup>856</sup>

### **Kuwait**

Research by Reprieve, a partner organization, indicates that there are five women on death row in Kuwait.<sup>857</sup> None of them were sentenced to death for a drug offense.

### **Lao PDR**

Because of restrictive state practices concerning the release of information related to the death penalty, it is difficult to verify the number of people on death row.<sup>858</sup> Research by Harm Reduction International, a partner organization, suggests that at least three women were sentenced to death in 2020.<sup>859</sup> Harm Reduction International estimates that most of the people on death row are awaiting an execution for a drug offense.<sup>860</sup> In this context, it is highly likely that some women on death row in Lao PDR are awaiting execution for a drug offense.

### **Libya**

No official figures are available for death row prisoners in Libya. We have found no reports of women on death row for drug offenses.

### **Malaysia**

As of February 2019, according to Amnesty International, 95% of the 141 women on death row in Malaysia (all but seven) had been convicted of drug offenses. The vast majority of death-sentenced women—over 85%—are foreign nationals, only one of whom (out of 121) was not sentenced for a drug offense.<sup>861</sup>

### **Mauritania**

No official figures are available for death row prisoners in Mauritania, but Amnesty International reports that there are at least 123 persons on death row.<sup>862</sup> We have found no reports of women on death row for drug offenses.

### **Myanmar**

No official figures are available for death row prisoners in Myanmar.<sup>863</sup> We have found no reports of women on death row for drug offenses.

### **North Korea**

Because the use of capital punishment is a state secret and given the lack of a reliable and independent media, it is impossible for us to estimate the number of women on death row for drug offenses. We believe it very likely, however, that there are women on death row and that some of them are awaiting execution for a drug offense. In 2019, North Korea sentenced at least one woman to death for drug trafficking.<sup>864</sup>

### **Oman**

We have found no reports of any individuals on death row for drug offenses.<sup>865</sup>

### **Pakistan**

Research by Harm Reduction International, a partner organization, suggests that there are around 28 women on death row in Pakistan,<sup>866</sup> but it is unclear how many of them were sentenced to death for a drug offense.

### **Occupied Palestinian Territories (Gaza)**

According to research by Harm Reduction International, a partner organization, there are five people on death row for drug offenses.<sup>867</sup> We have found no reports of women among them.

### **Qatar**

No official figures are available for death row prisoners in Qatar.<sup>868</sup> We have found no reports of women on death row for drug offenses.

### **Saudi Arabia**

No official figures are available for death row prisoners in Saudi Arabia. Saudi Arabia executes several women each year.<sup>869</sup> We were unable to confirm, however, the number of women on death row.<sup>870</sup> In 2019, Saudi Arabia executed two women—Kudirat Afloobi, a Nigerian national, as well as Ejaz Fatima, a Pakistani national—for drug trafficking.<sup>871</sup>

## **Singapore**

Little official information is available about death row prisoners in Singapore. Each year, the Singapore Prison Service publishes the number of executions carried out in the previous year.<sup>872</sup> Research suggests that there are women on death row and that most of them were sentenced to death for a drug offense.<sup>873</sup> At least two women were recently sentenced to death for drug offenses: one for drug trafficking in 2017,<sup>874</sup> and one for drug possession with intent to traffic in 2018.<sup>875</sup>

## **South Korea**

No official figures are available for death row prisoners in South Korea. In 2019, there were 56 people under sentence of death,<sup>876</sup> but we do not know how many of them are women, or how many were convicted of a drug offense. We have found no reports of women sentenced to death for drug offenses.

## **South Sudan**

No official figures are available for death row prisoners in South Sudan.<sup>877</sup> We have found no reports of women on death row for drug offenses.

## **Sudan**

No official figures are available for death row prisoners in Sudan.<sup>878</sup> We have found no reports of women on death row for drug offenses.

## **Sri Lanka**

According to the annual reports published by the Statistics Division, Prisons Headquarters of Sri Lanka, 37 women were sentenced to death between 2014 and 2020. Of these, eight had been convicted of a drug offense.<sup>879</sup> We do not know how many of these women are still under sentence of death.

## **Syria**

No official figures are available for death row prisoners in Syria.<sup>880</sup> We have found no reports of women on death row for drug offenses.

## **Thailand**

The overwhelming majority of women on death row in Thailand have been convicted of drug-related offenses. As of February 2021, all but two of the 33 women on death

row<sup>881</sup> had received a death sentence for a drug conviction. Moreover, punitive drug laws disproportionately affect women compared to men: drug-related convictions account for 93.9% of the women on death row but only 59.7% of men under sentence of death. As a result, women make up 13% of the country's total death row population,<sup>882</sup> one of the highest proportions anywhere in the world.<sup>883</sup>

## **Taiwan**

Research by Amnesty indicates that two women are on death row in Taiwan.<sup>884</sup> We believe, however, that neither was sentenced to death for a drug offense.<sup>885</sup>

## **United Arab Emirates**

Research by Amnesty International indicates that two women are currently on death row in the United Arab Emirates,<sup>886</sup> but neither of them seem to have been sentenced to death for a drug offense. The United Arab Emirates has sentenced women to death for drug offenses in the past.<sup>887</sup>

## **United States of America**

None of the 51 women currently on death row in the United States were sentenced to death for a drug offense.<sup>888</sup>

## **Vietnam**

Because the use of capital punishment is a state secret, it is very difficult to provide a figure for the number of women on death row for drug offenses in Vietnam.<sup>889</sup> Harm Reduction International estimates that at least 14 women were sentenced to death for drug offenses in 2019 and at least eight in 2020.<sup>890</sup> Because Vietnam regularly executes prisoners sentenced to death,<sup>891</sup> and we do not have any information about clemency or commutations, we do not know how many of these women are currently on death row.

## **Yemen**

No official figures are available for death row prisoners in Yemen.<sup>892</sup> It is unclear whether drug production, possession, and trafficking are still punishable by death.<sup>893</sup> We do not know if there are women sentenced to death for drug offenses in Yemen.

## Endnotes

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- <sup>1</sup> Migrante International is the largest grassroots global alliance of Filipino migrants, migrant workers and families organizing to promote migrants' rights and dignity against all forms of discrimination, exploitation and abuse in the work place and in the community and resist all anti-migrant policies. We push for the building of a self-reliant economy to stop forced migration, promote social equity and justice and unite with other sectors of society for the advancement of national development and democracy.
- <sup>2</sup> U.N. Office on Drugs and Crimes, *Women and Drugs: Drug Use, Drug Supply and Their Consequences*, World Drug Report 2018, p. 26, <https://perma.cc/NMT7-9WB2>, Jun. 2018.
- <sup>3</sup> Preeti Jha, *Asia's Prisons Are Filling up with Women. Many Are Victims of the War on Drugs*, CNN, <https://perma.cc/8368-C6BS>, last accessed Jun. 14, 2021.
- <sup>4</sup> Joon Lee, *The Death Penalty in 2019: Declining Use of the Death Penalty Worldwide*, Cornell Center on the Death Penalty Worldwide, <https://perma.cc/UCA5-JENN>, Apr. 14, 2020.
- <sup>5</sup> Preet Jha, *Philippines Death Penalty: A Fight to Stop the Return of Capital Punishment*, BBC, <https://perma.cc/7L95-EJP4>, Aug. 16, 2020.
- <sup>6</sup> Cornell Center on the Death Penalty Worldwide, *Most Serious Crimes*, <https://perma.cc/B4SX-VYNH>, Oct. 8, 2015.
- <sup>7</sup> Human Rights Committee, General Comment No. 36 on Article 6 of the ICCPR, on the right to life, para. 35, U.N. Doc. CCPR/C/GC/36, Oct. 2018. U.N.G.A. Human Rights Council, *Annual Report of the U.N. High Commissioner for Human Rights and Reports of the Office of the High Commissioner and the Secretary-General*, U.N. Doc. A/HRC/42/28, Aug. 2019. See also, Human Rights Committee, *Concluding Observations: Thailand*, para. 14, U.N. Doc. CCPR/CO/84/THA, Jul. 8, 2005.
- <sup>8</sup> U.N. Office on Drugs and Crimes, *Women and Drugs: Drug Use, Drug Supply and Their Consequences*, p. 31, <https://perma.cc/NMT7-9WB2>, Jun. 2018.
- <sup>9</sup> Jennifer Fleetwood, *Mafias, Markets, Mules: Gender Stereotypes in Discourses*, p. 963, *Sociology Compass* Vol. 9 Iss. 11, Nov. 2015.
- <sup>10</sup> See *Manipulative Relationships* (Section IV.B.).
- <sup>11</sup> Jennifer Fleetwood, *Mafias, Markets, Mules: Gender Stereotypes in Discourses*, pp. 968-969, *Sociology Compass* Vol. 9 Iss. 11, Nov. 2015. U.N. Office on Drugs and Crimes, *Women and Drugs: Drug Use, Drug Supply and Their Consequences*, p. 27, <https://perma.cc/NMT7-9WB2>, Jun. 2018.
- <sup>12</sup> See *Gender Bias and Gender-Based Discrimination* (Section V.A.).
- <sup>13</sup> See *Gender Bias and Gender-Based Discrimination* (Section V.A.).
- <sup>14</sup> Samantha Jeffries, Chontit Chuenurah, and Tristan Russell, *Expectations and Experiences of Women Imprisoned for Drug Offending and Returning to Communities in Thailand: Understanding Women's Pathways into, Through, and Post-Imprisonment*, p. 2, 9(2) *Laws* 1, Jun. 22, 2020 (citations omitted).
- <sup>15</sup> Carolyn Hoyle and Lucy Harry, *Compounded Vulnerability: Foreign National Women and the Death Penalty in Southeast Asia*, *Amicus Journal*, Mar. 6, 2020. See *Malaysia* (Section VI.B.), *Indonesia* (Section VI.A.), and *Thailand* (Section VI.C.).
- <sup>16</sup> See Avalie's profile (Section VI.B.).
- <sup>17</sup> Jennifer Fleetwood, *Mafias, Markets, Mules: Gender Stereotypes in Discourses*, pp. 962-976, *Sociology Compass* Vol. 9 Iss. 11, Nov. 2015.
- <sup>18</sup> Cornell Center on the Death Penalty Worldwide, *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty*, Cornell Law School, Sep. 2018.
- <sup>19</sup> Harm Reduction Intl., *The Death Penalty for Drug Offenses: Global Overview 2020*, p. 15, <https://perma.cc/5C9Y-B78L>, Mar. 2021.
- <sup>20</sup> See e.g., Shreya Atrey, "The Danger of a Single Story:" *Introducing Intersectionality in Fact-Finding*, *The Transformation of Human Rights Fact-Finding*, Alston, Philip and Sarah Knuckey, <https://perma.cc/5LCG-EM2T>, Jan. 2016. Barbara Ann Cole, *Gender, Narratives and Intersectionality: Can Personal Experience Approaches to Research Contribute to 'Undoing Gender'?*, pp. 561-578, *International Review of Education*, Vol. 55, No. 5/6, Nov. 2009.
- <sup>21</sup> Afif Muhammad, Raka Tengku and Aisya Humaida, affiliated with LBH Masyarakat, interviewed by the Cornell Center on the Death Penalty Worldwide (CCDPW) and Harm Reduction Intl., Oct. 10, 2020.
- <sup>22</sup> *Ibid.*
- <sup>23</sup> *Ibid.*
- <sup>24</sup> *Ibid.*
- <sup>25</sup> *Ibid.*
- <sup>26</sup> *Ibid.*
- <sup>27</sup> *Ibid.*
- <sup>28</sup> *Ibid.*

- <sup>29</sup> Ibid.
- <sup>30</sup> Ibid.
- <sup>31</sup> Ibid.
- <sup>32</sup> Ibid. *Indonesia v. Merri Utami*, p. 25, 140/Pid.B/2002/PN.TNG, Tangerang District Court, May. 20, 2002.
- <sup>33</sup> Ibid.
- <sup>34</sup> Ibid.
- <sup>35</sup> Ibid. Amnesty Intl., *Jokowi Should Not Become The Most Prolific Executioner in Recent History*, <https://perma.cc/HNL4-8SPF>, Jul. 28, 2016.
- <sup>36</sup> Afif Muhammad, Raka Tengku and Aisya Humaida, affiliated with LBH Masyarakat, interviewed by CCDPW and Harm Reduction Intl., Oct. 10, 2020.
- <sup>37</sup> Only three witnesses gave testimony to the court, and all three were Customs Officers who had examined Merri's bag. See *Indonesia v. Merri Utami*, pp. 12-17, 140/Pid.B/2002/PN.TNG, Tangerang District Court, May. 20, 2002.
- <sup>38</sup> See generally *Indonesia v. Merri Utami*, 140/Pid.B/2002/PN.TNG, Tangerang District Court, May. 20, 2002.
- <sup>39</sup> *Indonesia v. Merri Utami*, p. 34, 140/Pid.B/2002/PN.TNG, Tangerang District Court, May. 20, 2002.
- <sup>40</sup> Ibid.
- <sup>41</sup> For a discussion of how a person may struggle to coherently recount traumatic events see, for example, Jeff Jaeger et al, *Trauma Narratives: It's What You Say, Not How You Say it*, pp. 473-481, *Psychol Trauma*, Sep. 2014.
- <sup>42</sup> *Indonesia v. Merri Utami*, p. 34, 140/Pid.B/2002/PN.TNG, Tangerang District Court, May. 20, 2002.
- <sup>43</sup> Ibid. at 35.
- <sup>44</sup> *Indonesia v. Merri Utami*, 175/Pid/2002/PT.BDG, Bandung High Court, Jul. 18, 2002. *Indonesia v. Merri Utami*, 1771 K/Pid/2002, Indonesian Republic Supreme Court, Jan. 10, 2003.
- <sup>45</sup> Merri Utami, *If Only I Were Given a Chance To Be Free*, The Jakarta Post, <https://perma.cc/62R2-LN3X>, Aug. 28, 2020.
- <sup>46</sup> Afif Muhammad, Raka Tengku and Aisya Humaida, affiliated with LBH Masyarakat, interviewed by CCDPW and Harm Reduction Intl., Oct. 10, 2020. Merri Utami, *If Only I Were Given a Chance To Be Free*, The Jakarta Post, <https://perma.cc/62R2-LN3X>, Aug. 28, 2020.
- <sup>47</sup> Merri Utami, *If Only I Were Given a Chance To Be Free*, The Jakarta Post, <https://perma.cc/62R2-LN3X>, Aug. 28, 2020.
- <sup>48</sup> Afif Muhammad, Raka Tengku and Aisya Humaida, affiliated with LBH Masyarakat, interviewed by CCDPW and Harm Reduction Intl., Oct. 10, 2020.
- <sup>49</sup> Ibid. Merri Utami, *If Only I Were Given a Chance To Be Free*, The Jakarta Post, <https://perma.cc/62R2-LN3X>, Aug. 28, 2020.
- <sup>50</sup> Afif Muhammad, Raka Tengku and Aisya Humaida, affiliated with LBH Masyarakat, interviewed by CCDPW and Harm Reduction Intl., Oct. 10, 2020.
- <sup>51</sup> Ibid.
- <sup>52</sup> Ibid. Amnesty Intl., *Indonesia: Jokowi Should Not Become The Most Prolific Executioner in Recent History*, <https://perma.cc/HNL4-8SPF>, Jul. 28, 2016.
- <sup>53</sup> Merri Utami, *If Only I Were Given a Chance To Be Free*, The Jakarta Post, <https://perma.cc/62R2-LN3X>, Aug. 28, 2020.
- <sup>54</sup> Ibid.
- <sup>55</sup> Kate Lamb, *Indonesia Kills Four Prisoners in First Executions in a Year*, <https://perma.cc/QJ4Z-6ZL9>, Jul. 28, 2016.
- <sup>56</sup> Afif Muhammad, Raka Tengku and Aisya Humaida, affiliated with LBH Masyarakat, interviewed by CCDPW and Harm Reduction Intl., Oct. 10, 2020.
- <sup>57</sup> ICCPR, art. 6(2), 999 U.N.T.S. 171, Dec. 16, 1966.
- <sup>58</sup> U.N. Economic and Social Council, *Resolution 1984/50 on Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty*, May. 24, 1984, Endorsed by the U.N. General Assembly in resolution 39/118, adopted without a vote on Dec. 14, 1984.
- <sup>59</sup> Human Rights Committee, *General Comment No. 36 on Article 6 of the ICCPR, on the right to life*, para. 35, U.N. Doc. CCPR/C/GC/36, Oct. 2018. U.N.G.A. Human Rights Council, *Annual Report of the U.N. High Commissioner for Human Rights and Reports of the Office of the High Commissioner and the Secretary-General*, U.N. Doc. A/HRC/42/28, Aug. 2019. See also, Human Rights Committee, *Concluding Observations: Thailand*, para. 14, U.N. Doc. CCPR/CO/84/THA, Jul. 8, 2005.
- <sup>60</sup> U.N. High Commissioner for Human Rights, *Using the Death Penalty to Fight Drug Crimes Violates International Law*, U.N. Rights Experts Warn World Day Against the Death Penalty, <https://perma.cc/Z9UC-WPWN>, Oct. 7, 2015.
- <sup>61</sup> Rick Lanes, *Death Penalty for Drug Offenses: A Violation of International Human Rights Law*, p. 12, International Harm Reduction Association, <https://perma.cc/DMS5-N3BS>, Jan. 2007.
- <sup>62</sup> U.N.G.A., *Moratorium on the Use of the Death Penalty*, para. 60, U.N. Doc. A/73/260, Jul. 2018.

<sup>63</sup> Amnesty Intl., 2015 World Day Against the Death Penalty: Not the Solution to Drug-Related Crime, p. 7, ACT50/2634/2015, Oct. 10, 2015.

<sup>64</sup> “Abolitionist de facto, namely States and territories in which the death penalty remains lawful and death sentences may still be pronounced but executions have not taken place for 10 years.” See U.N. Economic and Social Council, Report of the Secretary-General, Capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty, p. 5, U.N. Doc. E/2015/49, Apr. 13, 2015. These states are Brunei Darussalam, Cuba, Lao PDR, Mauritania, Myanmar, South Korea, and Sri Lanka. See Cornell Center on the Death Penalty Worldwide, Map on the Status of the Death Penalty Worldwide, <https://perma.cc/ZPC8-RBU5>, last accessed on Jun. 22, 2021.

<sup>65</sup> These states are Bahrain, Bangladesh, China, Egypt, India, Indonesia, Iran, Iraq, Jordan, Kuwait, Libya, Malaysia, North Korea, Oman, Pakistan, Qatar, Saudi Arabia, Singapore, South Sudan, State of Palestine, Sudan, Syria, Taiwan, Thailand, United Arab Emirates, United States of America, Vietnam, and Yemen. See See Cornell Center on the Death Penalty Worldwide, Map on the Status of the Death Penalty Worldwide, <https://perma.cc/ZPC8-RBU5>, last accessed on Jun. 22, 2021.

<sup>66</sup> “Retentionist in practice, namely States in which the death penalty remains lawful and that have conducted an execution during the previous 10 years.” See U.N. Economic and Social Council, Report of the Secretary-General, Capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty, p. 5, U.N. Doc. E/2015/49, Apr. 13, 2015.

<sup>67</sup> These states are China, Egypt, India, Iran, Iraq, Oman, Saudi Arabia, the United States of America, and Yemen. See Cornell Center on the Death Penalty Worldwide, Map on the Status of the Death Penalty Worldwide, <https://perma.cc/ZPC8-RBU5>, last accessed on Jun. 22, 2021. For the ranking of executing countries see Amnesty Intl., Global Report: Death Sentences and Executions 2020, p. 4, ACT 50/3760/2021, Apr. 21, 2021.

<sup>68</sup> This includes any reference to the following acts: smuggle, receive from a smuggler, purchase, buy, sell, transport, trans-ship, cause the transit of, administer, distribute, import, export, deal in, carry, offer to be sold, broker, give, receive, send, procure, supply, offer or advertise for sale, exchange, accept, be an intermediary in sale and purchase, acquire, or deliver. See Harm Reduction Intl., The Death Penalty for Drug Offenses 2019, Legislation Table, <https://perma.cc/KJ2B-2GU8>, Mar. 2020.

<sup>69</sup> These states are Bahrain, Bangladesh, Cuba, Egypt, India, Indonesia, Iran, Malaysia, Myanmar, Oman, Pakistan, South Sudan, Sri Lanka, Sudan, and Thailand. See Ibid.

<sup>70</sup> These states are Brunei Darussalam, Iran, Jordan, Kuwait, Lao PDR, Malaysia, Myanmar, Oman, Singapore, Sudan, United Arab Emirates, and Yemen. See Ibid.

<sup>71</sup> Human Rights Committee, General Comment No. 36 on Article 6 of the ICCPR, on the right to life, para. 37, U.N. Doc. CCPR/C/GC/36, Oct. 2018.

<sup>72</sup> Ibid.

<sup>73</sup> Bangladesh, India, Iran, Lao PDR, Mauritania, and Pakistan. See Harm Reduction Intl., The Death Penalty for Drug Offenses 2019, Legislation Table, <https://perma.cc/KJ2B-2GU8>, Mar. 2020.

<sup>74</sup> Bahrain, Brunei Darussalam, Cuba, Egypt, Indonesia, Malaysia, Myanmar, Singapore, Sri Lanka, Sudan, Thailand, United Arab Emirates, Viet Nam, and Yemen. See Ibid.

<sup>75</sup> Brunei Darussalam, Indonesia, Malaysia, Myanmar, Singapore, Sri Lanka, and Thailand. See Ibid. See also Misuse of Drugs Act 1973 of Singapore, sec. 17, Revised Edition of 2008, Ch. 185, Mar. 31, 2008. Dangerous Drugs Act 1952 of Malaysia, sec. 37, Revised Edition of 1980, Act 234, Jul. 17, 1980.

<sup>76</sup> In these cases, defendants have the burden of showing sufficient proof that they did not know about the drugs or did not intend to traffic them.

<sup>77</sup> Poisons, Opium, and Dangerous Drugs Act 1929 of Sri Lanka, Sec. 5, para. 54A-B, Amended in 1984, Act 13, May 8, 1984.

<sup>78</sup> Aspenridge Recovery, How Much Does It Cost to Maintain an Addiction?, <https://perma.cc/8BZQ-DR2G>, last accessed on Jun. 8, 2021.

<sup>79</sup> “As the number of countries practicing capital punishment steadily decreased [...], the number of retentionist states expanding the scope of the death penalty to include drug offenses steadily increased.” See Rick Lanes, Death Penalty for Drug Offenses: A Violation of International Human Rights Law, p. 24, International Harm Reduction Association, <https://perma.cc/DMS5-N3BS>, Jan. 2007.

<sup>80</sup> U.N. Commn. on Narcotic Drugs, Side Event: The Death Penalty for Drug-Related Offenses: The Impact on Women and Vulnerable Groups, <https://perma.cc/98ES-2ZDE>, Mar. 2019.

<sup>81</sup> Philippines House of Representatives, House Bill No. 4727, [http://congress.gov.ph/legisdocs/first\\_17/CR00047.pdf](http://congress.gov.ph/legisdocs/first_17/CR00047.pdf), Jan. 11, 2017.

<sup>82</sup> Jennifer Fleetwood and Lizzie Seal, Women, Drugs and the Death Penalty: Framing Sandiford, p. 363, The Howard



Journal of Crime and Justice, Sep. 5, 2017. Chontit Chuenurah and Ukrit Sornprohm, Drug Policy and Women Prisoners in Southeast Asia, p. 134, in *The Impact of Global Drug Policy on Women: Shifting the Needle*, Nov. 19, 2020.

<sup>83</sup> Cornell Center on the Death Penalty Worldwide, *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty*, p. 7, Cornell Law School, Sep. 2018.

<sup>84</sup> U.N. Office on Drugs and Crime, *The United Nations Standard Minimum Rules for The Treatment of Prisoners (the Nelson Mandela Rules)*, U.N. Doc. A/Res/70/175, Dec. 17, 2015.

<sup>85</sup> World Coalition Against the Death Penalty, Cornell Center on the Death Penalty Worldwide, and Penal Reform Intl., *Prison Conditions for Women Facing the Death Penalty*, p. 2, <https://perma.cc/6V7P-PMQZ>, Oct. 2018.

<sup>86</sup> Penal Reform Intl. and Thailand Institute of Justice, *Global Prison Trends 2020*, p. 4, <https://perma.cc/ZA8U-SUCW>, May 2020.

<sup>87</sup> U.N. Office on Drugs and Crimes, Office for Rule of Law and Security Institutions in the Department for Peace Operations and Office of the U.N. High Commissioner for Human Rights, *United Nations System Common Position on Incarceration*, p. 8, <https://perma.cc/5Y39-SLJE>, Apr. 2021.

<sup>88</sup> U.N.G.A., *Outcome Document of the Session on the World Drug Problem*, p. 15, <https://perma.cc/ZPB4-5MX2>, Jun. 2016.

<sup>89</sup>“The Commission on Narcotic Drugs [...] encourages Member States to take into consideration the specific needs and circumstances of women subject to arrest, detention, prosecution, trial or the implementation of a sentence for drug-related offenses when developing gender-specific measures as an integral part of their policies on crime prevention and criminal justice, including appropriate measures to bring to justice perpetrators of abuse of women in custody or in prison settings for drug-related offenses.” See U.N. Comm on Narcotic Drugs, *Mainstreaming a Gender Perspective in Drug-Related Policies and Programmes*, p. 3, Resolution 59/5, , <https://perma.cc/FVK2-EQYL>, Mar. 2016.

<sup>90</sup> Penal Reform Intl. and Thailand Institute of Justice, *Global Prison Trends 2020*, p. 6, <https://perma.cc/ZA8U-SUCW>, May 2020.

<sup>91</sup> *Ibid.* at 4.

<sup>92</sup> *Ibid.* at 6.

<sup>93</sup> See e.g., The Sentencing Project, *Fact Sheet: Incarcerated Women and Girls*, p. 4, <https://perma.cc/RL23-XCWF>, Nov. 2020.

<sup>94</sup> U.N. Office on Drugs and Crimes, *World Drug Report 2019. Booklet 2: Global Overview of Drug Demand and Supply*, p. 32, <https://perma.cc/BKH6-ZKZR>, Jun. 2019.

U.N. Office on Drugs and Crimes, Office for Rule of Law and Security Institutions in the Department for Peace Operations and Office of the U.N. High Commissioner for Human Rights, *United Nations System Common Position on Incarceration*, p. 5, <https://perma.cc/5Y39-SLJE>, Apr. 2021.

<sup>95</sup> This is also a trend in the Philippines, where 53% of women in prison received a drug conviction. See Linklaters LLP and Penal Reform Intl., *Sentencing of Women Convicted of Drug-Related Offenses*, p. 8, <https://perma.cc/W6YM-DEQ7>, Feb. 2020.

<sup>96</sup> Penal Reform Intl. and Thailand Institute of Justice, *Global Prison Trends 2020*, p. 6, <https://perma.cc/ZA8U-SUCW>, May 2020.

<sup>97</sup> Amnesty Intl., *Global Report: Death Sentences and Executions 2020*, p. 13, ACT 50/3760/2021, Apr. 21, 2021.

<sup>98</sup> Harm Reduction Intl., *The Death Penalty for Drug Offenses: Global Overview 2020*, p. 15, <https://perma.cc/5C9Y-B78L>, Mar. 2021.

<sup>99</sup> Harm Reduction Intl. defines high application states as “those in which executions of individuals convicted of drug offenses were carried out, and/ or at least ten drug-related death sentences per year were imposed in the past five years.” In 2019, before the COVID-19 pandemic, these high application states were China, Indonesia, Iran, Malaysia, Saudi Arabia, Singapore, Thailand, and Vietnam. See Harm Reduction Intl., *The Death Penalty for Drug Offenses: Global Overview 2019*, p. 26, <https://perma.cc/27GN-9FGR>, Mar. 2020. In 2020, Harm Reduction Intl. classified Thailand as ‘low application’ because of the state’s execution record. See Harm Reduction Intl., *The Death Penalty for Drug Offenses: Global Overview 2020*, p. 49, <https://perma.cc/5C9Y-B78L>, Mar. 2021. Because of the high number of death sentences for drug offenses in Thailand, we include it in our analysis.

<sup>100</sup> They account for at least 36% of persons on death row in Malaysia, 18% of death sentences in Vietnam in 2020, 75% of sentences in Indonesia over the last 5 years, and 62% of persons on death row in Thailand. See *Ibid.* at 15.

<sup>101</sup> Amnesty Intl., *Global Report: Death Sentences and Executions 2020*, p. 5, ACT 50/3760/2021, Apr. 21, 2021.

<sup>102</sup> Amongst new death sentences, 101 out of 117 were for drug offenses. See *Ibid.* at 28.

<sup>103</sup> Harm Reduction Intl., *The Death Penalty for Drug Offenses: Global Overview 2019*, p. 31, <https://perma.cc/27GN-9FGR>, Mar. 2020.

<sup>104</sup> Amnesty Intl., *Global Report: Death Sentences and Executions 2020*, p. 26, ACT 50/3760/2021, Apr. 21, 2021.

<sup>105</sup> *Ibid.* at 13.

<sup>106</sup> *Ibid.* at 9.

<sup>107</sup> Harm Reduction Intl., *The Death Penalty for Drug Offenses: Global Overview 2020*, p. 15, <https://perma.cc/5C9Y-B78L>, Mar. 2021.

<sup>108</sup> Ibid.

<sup>109</sup> Cornell Center on the Death Penalty Worldwide, *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty*, p. 12, Cornell Law School, Sep. 2018.

<sup>110</sup> Harm Reduction Intl. defines high application states as “those in which executions of individuals convicted of drug offenses were carried out, and/ or at least ten drug-related death sentences per year were imposed in the past five years.” In 2019, before the COVID-19 pandemic, these high application states were China, Indonesia, Iran, Malaysia, Saudi Arabia, Singapore, Thailand, and Vietnam. See Harm Reduction Intl., *The Death Penalty for Drug Offenses: Global Overview 2019*, p. 26, <https://perma.cc/27GN-9FGR>, Mar. 2020. In 2020, Harm Reduction Intl. classified Thailand as ‘low application’ because of the state’s execution record. See Harm Reduction Intl., *The Death Penalty for Drug Offenses: Global Overview 2020*, p. 49, <https://perma.cc/5C9Y-B78L>, Mar. 2021. Because of the high number of death sentences for drug offenses in Thailand, we include it in our analysis.

<sup>111</sup> Beginning in 2017, drug-related executions decreased after an amendment to the Anti-Narcotics Law that increased the minimum amount of drugs that would subject convicted producers and distributors to a death sentence. See Library of Congress, *Iran: Drug Law Amended to Restrict Use of Capital Punishment*, <https://perma.cc/C6TQ-R8DZ>, Aug. 31, 2017. In 2020, Iran nevertheless executed a woman on drug-related charges for the first time since the reform. See Iran Human Rights, *Woman and Former Husband Executed on Drug-Related Charges in Qazvin*, <https://perma.cc/JZE3-SJ6N>, May 31, 2021.

<sup>112</sup> According to Iran Human Rights, Iran hanged at least 83 women for drug crimes between 2011-2017, compared to at least 24 for murder in the same period. See Iran Human Rights, *Annual Reports on the Death Penalty*, <https://perma.cc/27J6-G554>, last accessed on Jun. 23, 2021. According to another source, Iran hanged at least 53 women for drug crimes between 2011-2017, compared to at least 20 for murder in the same period. See Capital Punishment U.K., *Female Hangings Worldwide 1988-Date*, <https://perma.cc/L69L-VQZY>, last accessed on Jun. 23, 2021.

<sup>113</sup> Amnesty Intl., *Fatally Flawed: Why Malaysia Must Abolish the Death Penalty*, p. 20, ACT 50/1078/2019, Oct. 8, 2019.

<sup>114</sup> 27 women are at the appeals stage; one woman is at the Supreme Court stage; three women have exhausted all their appeals. See Thailand Department of Corrections, *Statistics*

*Report on Death Row Prisoners*, <https://perma.cc/UF2A-6TE6>, last accessed in Feb. 2021. See Malaysia (Section VI.B.).

<sup>115</sup> Carolyne Hoyle and Lucy Harry, *Compounded Vulnerability: Foreign National Women and the Death Penalty in Southeast Asia*, p. 2, *Amicus Journal*, Dec. 2020 from Rahmawati Maidina, *Analyzing Fair Trial Aspects of Death Penalty for Drug Cases in Indonesia: Policy and Implementation: Special Cases on Women*, p. 4, Institute for Criminal Justice Reform, May 2019.

<sup>116</sup> Lee Sang-Yong, *Liberalization of information is becoming more distant*, *Daily NK*, <https://perma.cc/6JQM-6YK5>, Feb. 19, 2019.

<sup>117</sup> Women account for approximately 2% of all people sentenced to the death penalty in China between 2015 and 2019, and 57% of women sentenced to death in that time period received a death sentence for drug-related crimes. See China (Section VI.D.)

<sup>118</sup> Anonymous sources, *Interview with the Cornell Center on the Death Penalty Worldwide*.

<sup>119</sup> Amnesty Intl., *Global Report: Death Sentences and Executions 2020*, p. 10, ACT 50/3760/2021, Apr. 21, 2021.

<sup>120</sup> Institute for Criminal Justice Reform, *2020 Indonesian Death Penalty Report: Taking Lives During the Pandemic*, p. 23, <https://icjr.or.id/wp-content/uploads/2020/12/Death-Penalty-Report-ICJR-2020.pdf>, Oct. 2020.

<sup>121</sup> Harm Reduction Intl., *The Death Penalty for Drug Offenses: Global Overview 2019*, pp. 15 and 24, <https://perma.cc/27GN-9FGR>, Mar. 2020.

<sup>122</sup> Also, in 2018, at least 29 of the 59 people executed for drug crimes in Saudi Arabia were foreign nationals, most from Pakistan and Nigeria. See Harm Reduction Intl., *The Death Penalty for Drug Offenses: Global Overview 2018*, p. 15, <https://perma.cc/PEV8-ZX5C>, Feb. 2019.

<sup>123</sup> See *Gender Bias and Fair Trial violations (Section V.B.)*. For instance, 15 of the 16 people sentenced to death in Singapore in 2018 were convicted of drug trafficking, about a third of them foreign nationals. See Harm Reduction Intl., *The Death Penalty for Drug Offenses: Foreign Nationals, Briefing Paper*, p. 1, <https://perma.cc/2DJG-MEEU>, Mar. 2019.

<sup>124</sup> See *The Role of Economic Insecurity in Pathways to Drug Offending (Section IV.A.)*

<sup>125</sup> All but one of the female foreign nationals on death row were convicted of a drug offense. See Amnesty Intl., *Fatally Flawed: Why Malaysia Must Abolish the Death Penalty*, pp. 52-56, ACT 50/1078/2019, Oct. 8, 2019.

<sup>126</sup> See Thailand (Section VI.C.)

<sup>127</sup> During his inauguration speech on 30 June 2016, President Duterte said: “If you know of any addicts, go

ahead and kill them yourself.” See Amnesty Intl. U.K., More than 7000 killed in the Philippines in 6 Months, As President Encourages Murder, <https://perma.cc/9MPD-UDDP>, May 18, 2020. See also Amnesty Intl. U.K., “If You Are Poor, You Are Killed”: Extrajudicial Executions in the Philippines’ “War on Drugs,” ASA 35/5517/2017, Jan. 27, 2017. Human Rights Council, Situation of Human Rights in the Philippines, pp. 3-4, U.N. Doc. A/HRC/44/22, Jun. 29, 2020.

<sup>128</sup> Human Rights Council, Situation of Human Rights in the Philippines, pp. 3-4, U.N. Doc. A/HRC/44/22, Jun. 29, 2020. In June 2021, the International Criminal Court Prosecutor announced that she had requested judicial authorization to proceed with an investigation on the “Situation in the Philippines.” See International Criminal Court, Statement of the Prosecutor on her request to open an investigation of the Situation in the Philippines, <https://perma.cc/8A4U-ZQC2>, Jun. 14, 2021

<sup>129</sup> Internal governmental agencies within the Philippine state disagreed in 2019 about how many had died in the “war on drugs.” See Rappler, In Numbers: The Philippines’ War on Drugs, <https://perma.cc/GS57-YENC>, last accessed Jun. 23, 2021. See also DW, Duterte’s Four Years in Power: Extrajudicial Killings, Rights Abuses, and Terror, <https://perma.cc/8Q2Q-AD38>, Jul. 7, 2020. Davinci Maru, CHR Chief: Drug War Deaths Could Be as High as 27,000, ABS-CBN News, <https://perma.cc/H4Y2-C25P>, Dec. 5, 2018.

<sup>130</sup> Between July 2016 and January 2017, alone, according to police records, close to 40,000 women registered as drug users with their local council office. See Philippine Center for Investigative Journalism, What’s Flawed, Fuzzy with Drug War Numbers?, <https://perma.cc/TD3L-NNTX>, Jun. 8, 2017.

<sup>131</sup> Sheila Coronel, Mariel Padilla, David Mora, and The Stable Center for Investigative Journalism, The Uncounted Dead of Duterte’s Drug War, The Atlantic, <https://perma.cc/9VX6-BHNV>, Aug. 19, 2019.

<sup>132</sup> U.N.G.A., Human Rights Council, Report of the Special Rapporteur on extra-judicial, arbitrary and summary executions on a gender-sensitive approach to arbitrary killings, para. 49, U.N. Doc. A/HRC/35/23, Jun. 6, 2017.

<sup>133</sup> Vivian Peregrino was killed because she surrendered and put her name on a watch list. See Patricia Evangelista, In the Name of the Father, Rappler, <https://perma.cc/LY2G-NBKS>, 2016. Danica May Garcia was killed by a bullet meant for her grandfather, who was on a watch list. See Patricia Evangelista, Danica, My Danica, Rappler, <https://perma.cc/X7BF-6EGM>, Sep. 6, 2016. Heart de Chavez and Joan were killed because both were on watch lists. See Human Rights Watch, “License to Kill”: Philippine Police Killings in Duterte’s “War on Drugs,” pp. 75-76, <https://perma.cc/NYG8-LL8G>, Mar. 2017.

<sup>134</sup> Human Rights Watch, “License to Kill”: Philippine Police Killings in Duterte’s “War on Drugs,” p. 75, <https://perma.cc/NYG8-LL8G>, Mar. 2017.

<sup>135</sup> Interview with Mustafa Muhammad’s family, conducted by Justice Project Pakistan, Jun. 1, 2021.

<sup>136</sup> Sohail Emmanuel, affiliated with Justice Project Pakistan, affidavit submitted to Lahore High Court, p. 1-2, Oct. 31, 2019.

<sup>137</sup> Interview with Mustafa Muhammad’s family, conducted by Justice Project Pakistan, Jun. 1, 2021.

<sup>138</sup> Ibid.

<sup>139</sup> Ibid.

<sup>140</sup> Ibid.

<sup>141</sup> Ibid.

<sup>142</sup> Ibid.

<sup>143</sup> Sarah Belal, affiliated with Justice Project Pakistan, application submitted to Lahore High Court, p. 2, Oct. 31, 2019.

<sup>144</sup> Ibid.

<sup>145</sup> Ibid.

<sup>146</sup> Interview with Mustafa Muhammad’s family, conducted by Justice Project Pakistan, Jun. 1, 2021.

<sup>147</sup> Ibid.

<sup>148</sup> Ibid.

<sup>149</sup> Human Rights Watch and Justice Project Pakistan, Caught in a Web, p. 8 and 15, <https://perma.cc/7AZM-XQ33>, Mar. 2018.

<sup>150</sup> Sohail Emmanuel, affiliated with Justice Project Pakistan, affidavit submitted to Lahore High Court, p. 2, Oct. 31, 2019.

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<sup>152</sup> Ibid.

<sup>153</sup> Ibid.

<sup>154</sup> Ibid.

<sup>155</sup> Sohail Emmanuel, affiliated with Justice Project Pakistan, affidavit submitted to Lahore High Court, p. 3, Oct. 31, 2019.

<sup>156</sup> Sarah Belal, affiliated with Justice Project Pakistan, application submitted to Lahore High Court, p. 2, Oct. 31, 2019.

<sup>157</sup> Sohail Emmanuel, affiliated with Justice Project Pakistan, affidavit submitted to Lahore High Court, p. 4, Oct. 31, 2019.

<sup>158</sup> Ibid.

- <sup>159</sup> Interview with Mustafa Muhammad's family, conducted by Justice Project Pakistan, Jun. 1, 2021.
- <sup>160</sup> Ibid.
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- <sup>162</sup> Interview with Mustafa Muhammad's family, conducted by Justice Project Pakistan, Jun. 1, 2021.
- <sup>163</sup> Ibid.
- <sup>164</sup> Ibid.
- <sup>165</sup> Ibid.
- <sup>166</sup> Ibid.
- <sup>167</sup> Lucy Harry, Rethinking the Relationship between Women, Crime and Economic Factors: The Case-Study of Women Sentenced to Death for Drug Trafficking in Malaysia, *Laws*, p. 2, vol. 10, no. 9, Jan. 31, 2021.
- <sup>168</sup> Judy Fudge and Rosemary Owens, Precarious Work, Women, and the New Economy: The Challenge to Legal Norms, p. 11, *Precarious Work, Women, and the New Economy: The Challenge to Legal Norms*, Hart Publishing, Apr. 26, 2006.
- <sup>169</sup> Lucy Harry, Rethinking the Relationship between Women, Crime and Economic Factors: The Case-Study of Women Sentenced to Death for Drug Trafficking in Malaysia, *Laws*, p. 2, vol. 10, no. 9, Jan. 31, 2021.
- <sup>170</sup> Judy Fudge and Rosemary Owens, Precarious Work, Women, and the New Economy: The Challenge to Legal Norms, p. 13, *Precarious Work, Women, and the New Economy: The Challenge to Legal Norms*, Hart Publishing, Apr. 26, 2006.
- <sup>171</sup> Lucy Harry, Rethinking the Relationship between Women, Crime and Economic Factors: The Case-Study of Women Sentenced to Death for Drug Trafficking in Malaysia, *Laws*, p. 4, vol. 10, no. 9, Jan. 31, 2021.
- <sup>172</sup> Sara Elder and Sriani Kring, Young and Female – A Double Strike?, p. 36, *Work4Youth Publication Series No. 32*, Jan. 2016. Employers in many countries have expressed a preference for hiring men, and men tend to receive higher wages than women, including for the same occupations. See Sara Elder and Sriani Kring, Young and Female – a Double Strike?, pp. 37,40, *Work4Youth Publication Series No. 32*, Jan. 2016. Additionally, oppressive gender discourses justify the segregation of women into menial work: in Malaysia, one “[employer’s] strategy was underpinned by orientalist discourses where women are considered not only to have naturally nimble fingers, but also to be naturally more docile and willing to accept tough work discipline, and naturally less inclined to join trade unions, than men; and to be naturally more suited to tedious, repetitious, monotonous work.” See Lucy Harry, Rethinking the Relationship between Women, Crime and Economic Factors: The Case-Study of Women Sentenced to Death for Drug Trafficking in Malaysia, *Laws*, p. 4, vol. 10, no. 9, Jan. 31, 2021.
- <sup>173</sup> McKinsey Global Institute, Executive Summary: How Advancing Women’s Equality Can Add \$12 Trillion to Global Growth, p. 2, <https://perma.cc/9GDM-AVUD>, Sept. 1, 2015.
- <sup>174</sup> Leonora C. Angeles and Sirijit Sunanta, Demanding Daughter Duty: Gender, Community, Village Transformation, and Transnational Marriages in Northeast Thailand, pp. 549-574, *Critical Asian Studies* 41, no. 4, Dec. 1, 2009. Fatima Khan, Farhat Jamil and Rudi Khalid, Parental Modeling as Predictor of Filial Obligation in Young Adults, p. 56, *ResearchGate*, <https://perma.cc/AZ4X-55M7>, Dec. 2017. A study based on interviews with Indonesian youth suggests that women in Indonesia are expected to play a dominant role in caring for elderly family members. See Rahmi Setiyani and Carol Windsor, Filial Piety: From the Perspective Of Indonesian Young Adults, p. 51, *Nurse Media Journal of Nursing*, Vol. 9, No. 1, Jun. 2019. A study from Malaysia suggests that daughters are more involved in caring for elderly parents than sons and that elderly parents expect more help/support from their daughters than from their sons. See Khadijah Alavi and Rahim M. Sail, Roles of Malay Women in the Process of Caring for Elderly Parents: Dilemma and Challenges in the Era of Globalisation, pp. 72–73, *Kajian Malaysia*, Vol. 28, No. 2, Jan. 1, 2010. A different study of 56 informal caregivers in Malaysia concludes that females, especially daughters, are usually the informal caregivers to elderly relatives. See Zheng-Yi et al, The Formal and Informal Long-term Caregiving for the Elderly: the Malaysian Experience, p. 174, *Asian Social Science*, Vol. 9, No. 4, Mar. 28, 2013.
- <sup>175</sup> Globally, 84.3% of one-parent households are lone-mother households. See U.N. Women, Progress of the World’s Women 2019-2020: Families in a Changing World, p. 63, <https://perma.cc/L54R-W5RJ>, Jun. 25, 2019.
- <sup>176</sup> Ibid. at 129-130.
- <sup>177</sup> Samantha Jeffries et al., Extending Borders of Knowledge: Gendered Pathways to Prison in Thailand for International Cross Border Drug Trafficking, pp. 15–17, *Psychiatry, Psychology and Law*, <https://perma.cc/4AG5-VJA2>, May 26, 2021. Samantha Jeffries, Chontit Chuenurah and Rebecca Wallis, Gendered Pathways to Prison in Thailand for Drug Offending? Exploring Women’s and Men’s Narratives of Offending and Criminalization, pp. 93–94, <https://perma.cc/WWM5-EUKH>, Dec. 17, 2018. Samantha Jeffries and Tristan Russel, Expectations and Experiences of Women Imprisoned for Drug Offending and Returning to Communities in Thailand: Understanding Women’s Pathways Into, Through, and Post-Imprisonment, pp. 14–15, *Laws* 2020 Vol. 9, No. 2, Jun. 22, 2020.



- <sup>178</sup> Judy Fudge and Rosemary Owens, *Precarious Work, Women, and the New Economy: The Challenge to Legal Norms*, p. 15, Precarious Work, Women, and the New Economy: The Challenge to Legal Norms, Hart Publishing, Apr. 26, 2006.
- <sup>179</sup> The post-school gender gaps are highest in the Philippines, Myanmar, Indonesia, and Thailand. Moreover, for female job seekers, the unpaid care burden is exacerbated by an additional hurdle: men often appear to be favored for the limited supply of highly skilled jobs. See U.N. Children's Fund, *Gender Counts: A quantitative assessment of gender inequality and its impact on girls and boys in East and Southeast Asia*, pp. 73, 76, <https://perma.cc/K6DM-QU4X>, Aug. 21, 2019.
- <sup>180</sup> Neoliberal reforms (economic growth/structural adjustment processes) in the 1960s to the 1980s increased the share of precarious work in the labor market. See Judy Fudge and Rosemary Owens, *Precarious Work, Women, and the New Economy: The Challenge to Legal Norms*, p. 12, *Precarious Work, Women, and the New Economy: The Challenge to Legal Norms*, Hart Publishing, Apr. 26, 2006. Neoliberal reforms increased international competition and demand for flexibility, creating a swell of precarious employment. See Arne L. Kalleberg and Kevin Hewison, *Precarious Work and the Challenge for Asia*, p. 277, *American Behavioral Scientist*, Vol. 57, No. 3, Nov. 16, 2012.
- <sup>181</sup> Bharati Sadasivam, *The Impact of Structural Adjustment on Women: A Governance and Human Rights Agenda*, p. 664, *Human Rights Quarterly*, Vol. 19, No. 3, Aug. 1997.
- <sup>182</sup> Arne L. Kalleberg and Kevin Hewison, *Precarious Work and the Challenge for Asia*, p. 277, *American Behavioral Scientist*, Vol. 57, No. 3, Nov. 16, 2012.
- <sup>183</sup> David Tittensor and Fethi Mansouri, *The Feminisation of Migration? A Critical Overview*, p. 13, *The Politics of Women and Migration in the Global South*, Palgrave Macmillan, <https://perma.cc/6RJ2-BSUP>, Jan. 2017.
- <sup>184</sup> Lucy Harry, *Rethinking the Relationship between Women, Crime and Economic Factors: The Case-Study of Women Sentenced to Death for Drug Trafficking in Malaysia*, *Laws*, p. 12, vol. 10, no. 9, Jan. 31, 2021.
- <sup>185</sup> Rising unemployment and prices create pressure to migrate, and global communication makes migration appear easier. See Rosemary Barberet, *Women, Development and Globalization*, p. 36, *Women, Crime and Criminal Justice*, 1<sup>st</sup> Edition, Apr. 5, 2014.
- <sup>186</sup> U.N. Women, *Women Migrant Workers in the Asean Economic Community*, pp. 42-43, <https://perma.cc/8HDM-VHSX>, Jun. 2017. In 2004, for instance, 81% of the regular migrant workers leaving Indonesia were women, and in 2010 85% of documented Cambodian migrants in Malaysia were women. See U.N. Women, *Women Migrant Workers in the Asean Economic Community*, p. 102, <https://perma.cc/8HDM-VHSX>, Jun. 2017.
- <sup>187</sup> U.N. Women, *Women Migrant Workers in the Asean Economic Community*, p. 101, <https://perma.cc/8HDM-VHSX>, 2017.
- <sup>188</sup> Brenda S.A. Yeoh, Elspeth Graham and Paul J. Boyle, *Migrations and Family Relations in the Asia Pacific Region*, p. 3, *Asian and Pacific Migration Journal*, Vol. 11, No. 1, Mar. 1, 2002.
- <sup>189</sup> *Ibid.* at 4.
- <sup>190</sup> Lucy Harry, *Rethinking the Relationship between Women, Crime and Economic Factors: The Case-Study of Women Sentenced to Death for Drug Trafficking in Malaysia*, *Laws*, p. 13, vol. 10, no. 9, Jan. 31, 2021.
- <sup>191</sup> Beh Lih Yi, *Indonesian Drug Convict Facing Death Row Highlights the risks to migrant workers: campaigners*, <https://perma.cc/7GPQ-H38E>, Jul. 28, 2016.
- <sup>192</sup> Lucy Harry, *Rethinking the Relationship between Women, Crime and Economic Factors: The Case-Study of Women Sentenced to Death for Drug Trafficking in Malaysia*, *Laws*, p. 13, vol. 10, no. 9, Jan. 31, 2021.
- <sup>193</sup> *Ibid.* at 10. According to research from Malaysia, “[m]ost commonly, individuals who become drug mules or carriers are motivated by poverty and financial difficulties.” Natalia Antolak-Saper and Sara Kowal, *Drug trafficking, the death penalty and the vulnerable defendant*, <https://perma.cc/U8UA-UY35>, Jul. 21, 2020. Other research from Malaysia shows that, in some cases, the women claimed that they had gotten into financial trouble and were coerced by the circumstances to take on or continue the job. Amnesty Intl., *Fatally Flawed: Why Malaysia Must Abolish the Death Penalty*, p. 21, ACT 50/1078/2019, Oct. 8, 2019.
- <sup>195</sup> Samantha Jeffries and Tristan Russel, *Expectations and Experiences of Women Imprisoned for Drug Offending and Returning to Communities in Thailand: Understanding Women's Pathways Into, Through, and Post-Imprisonment*, p. 10, *Laws* 2020 Vol. 9, No. 2, Jun. 22, 2020.
- <sup>196</sup> Lucy Harry, *Rethinking the Relationship between Women, Crime and Economic Factors: The Case-Study of Women Sentenced to Death for Drug Trafficking in Malaysia*, *Laws*, p. 9, vol. 10, no. 9, Jan. 31, 2021.
- <sup>197</sup> Samantha Jeffries et al., *Extending Borders of Knowledge: Gendered Pathways to Prison in Thailand for International Cross Border Drug Trafficking*, pp. 26-29, *Psychiatry, Psychology and Law*, May, 26, 2021.
- <sup>198</sup> *Ibid.*

<sup>199</sup> Preetu Jha, *As Asia Ramps up Its War on Drugs, Women Are Being Jailed for Low-Level Crime*, CNN, <https://perma.cc/8368-C6BS>, Apr. 14, 2021.

<sup>200</sup> *Ibid.*

<sup>201</sup> Lucy Harry, *Rethinking the Relationship between Women, Crime and Economic Factors: The Case-Study of Women Sentenced to Death for Drug Trafficking in Malaysia*, *Laws*, p. 4, vol. 10, no. 9, Jan. 31, 2021.

<sup>202</sup> *Ibid.* at 25.

<sup>203</sup> Carolyn Hoyle and Lucy Harry, “Compounded Vulnerability: Foreign National Women and the Death Penalty in Southeast Asia,” p. 2, *Amicus Journal*, Mar. 6, 2020.

<sup>204</sup> See *Gender Bias and Fair Trial violations (Section V.B.)*

<sup>205</sup> See Anna’s profile (*Section IV.B.*) and Merri Utami’s profile.

<sup>206</sup> Monica T. Whitty, *Drug Mule for Love*, p. 4, *Journal of Financial Crime*, ISSN: 1359-0790, May 13, 2021.

<sup>207</sup> *Ibid.* at 5.

<sup>208</sup> *Ibid.* at 5.

<sup>209</sup> *Ibid.* at 7.

<sup>210</sup> *Ibid.* at 5, 7.

<sup>211</sup> *Ibid.* at 7.

<sup>212</sup> *Ibid.* at 8.

<sup>213</sup> *Ibid.* at 14.

<sup>214</sup> *Ibid.* at 6, 8.

<sup>215</sup> *Ibid.* at 6.

<sup>216</sup> *Ibid.* at 9-10.

<sup>217</sup> *Ibid.* at 5-6, 9.

<sup>218</sup> *Ibid.* at 11.

<sup>219</sup> *Ibid.* at 6-7.

<sup>220</sup> *Ibid.* at 7.

<sup>221</sup> *Ibid.* at 7.

<sup>222</sup> *Ibid.* at 7.

<sup>223</sup> *Ibid.* at 7.

<sup>224</sup> *Ibid.* at 7.

<sup>225</sup> *Ibid.* at 11.

<sup>226</sup> *Ibid.* at 11.

<sup>227</sup> *Ibid.* at 3, 13.

<sup>228</sup> *Ibid.* at 7.

<sup>229</sup> *Ibid.* at 7.

<sup>230</sup> *Ibid.* at 7.

<sup>231</sup> *Ibid.* at 7.

<sup>232</sup> *Ibid.* at 7.

<sup>233</sup> *Ibid.* at 11.

<sup>234</sup> We have seen similar arguments that were accepted in other cases, such as in the case of a Chinese woman facing the death penalty in Malaysia where the appellant court found:

[T]o suggest because of that endless love she was too carefree in accepting the yellow bag from Stanly without questions is too incredible to be believed. After all this is not the first time she is in love. She acted and portrayed herself like a damsel in her maiden love but with respect her background would indicate this most probably is a concoction of her real self. We noted she herself gave evidence she was in the process of divorcing her husband and on top of that they have a child. Thus it would not be too remote in finding that she fully knew the effect, danger and pitfall of anyone madly and blindly in love.

*Oui Jieru v. Public Prosecutor* MLJU 821, p. 48, Case No. B-05(SH)-33-01/2019, B-05(H)-620-12/2018, and 45A-61-06/2014, *Putrajaya Court of Appeal*, Jun. 23, 2020.

<sup>235</sup> U.N. Office on Drugs and Crimes, *Women and Drugs: Drug Use, Drug Supply and Their Consequences*, *World Drug Report*, p. 31, <https://perma.cc/NMT7-9WB2>, Jun. 2018 (citations omitted).

<sup>236</sup> *Ibid.* at 29.

<sup>237</sup> In a 2021 study of 16 women convicted of cross-border trafficking, 8 of whom were sentenced to death, 5 of the women were identified as having a romantic pathway to drug offenses. They all stated that a romantic partner coerced, manipulated, or misled them into committing drug offenses. See Samantha Jeffries et al., *Extending Borders of Knowledge: Gendered Pathways to Prison in Thailand for International Cross Border Drug Trafficking*, pp. 29-32, *Psychiatry, Psychology and Law*, 2021. See *Thailand (Section VI.C.)*.

<sup>238</sup> Samantha Jeffries et al., *Extending Borders of Knowledge: Gendered Pathways to Prison in Thailand for International Cross Border Drug Trafficking*, pp. 46-52, *Psychiatry, Psychology and Law*, 2021.

<sup>239</sup> There were 18 men in the study, six of whom were sentenced to death. *Ibid.* at 30, 33.

<sup>240</sup> Samantha Jeffries, *Gendered Pathways to Prison in Thailand for Drug Offending? Exploring Women’s and Men’s Narratives of Offending and Criminalization*, p. 86, *Contemporary Drug Problems*, volume 46, issue 1, Mar. 2019 (concluding that of persons convicted of drug offenses, including one woman sentenced to death, 72% of women and 19% of men reported that, as adults, they were intimate relationships with “deviant” partners).

<sup>241</sup> Samantha Jeffries, Chontit Chuenurah, and Tristan Russell, *Expectations and Experiences of Women Imprisoned for Drug Offending and Returning to Communities in Thailand: Understanding Women’s*



- Pathways into, Through, and Post-Imprisonment, pp. 2-3, 9(2) *Laws* 1, Jun. 22, 2020.
- <sup>242</sup> *Bernama* via *New Strait Times*, 425 Malaysian drug mules detained abroad since 2013, <https://perma.cc/UT8M-RCVK>, Dec. 23, 2018.
- <sup>243</sup> *Ibid.*
- <sup>244</sup> *Ibid.*
- <sup>245</sup> Amnesty International, *Fatally Flawed: Why Malaysia Must Abolish the Death Penalty*, p. 21, ACT 50/1078/2019, Oct. 8, 2019.
- <sup>246</sup> Carolyn Hoyle and Lucy Harry, *Compounded Vulnerability: Foreign National Women and the Death Penalty in Southeast Asia*, p. 3, *Amicus Journal*, Mar. 6, 2020 (citations omitted).
- <sup>247</sup> Lucy Harry, *Rethinking the Relationship between Women, Crime and Economic Factors: The Case-Study of Women Sentenced to Death for Drug Trafficking in Malaysia*, pp. 2-3, *Laws*, Vol. 10 No. 9, 2021, citing Jennifer Fleetwood, *Drug Mules: Women in the International Cocaine Trade*, Palgrave Macmillan, p.108, 2014. See also Samantha Jeffries et al., *Extending Borders of Knowledge: Gendered Pathways to Prison in Thailand for International Cross Border Drug Trafficking*, p. 29, *Psychiatry, Psychology and Law*, May 26, 2021.
- <sup>248</sup> Samantha Jeffries, Chontit Chuenurah, and Tristan Russell, *Expectations and Experiences of Women Imprisoned for Drug Offending and Returning to Communities in Thailand: Understanding Women's Pathways into, Through, and Post-Imprisonment*, p. 2, 9(2) *Laws* 1, Jun. 22, 2020 (citations omitted).
- <sup>249</sup> Samantha Jeffries et al., *Gendered Pathways to Prison in Thailand for Drug Offending? Exploring Women's and Men's Narratives of Offending and Criminalization*, p. 86, *Contemporary Drug Problems*, volume 46, issue 1, Mar. 2019.
- <sup>250</sup> *Ibid.* at 84-85.
- <sup>251</sup> Samantha Jeffries, Chontit Chuenurah, and Tristan Russell, *Expectations and Experiences of Women Imprisoned for Drug Offending and Returning to Communities in Thailand: Understanding Women's Pathways into, Through, and Post-Imprisonment*, p. 2, 9(2) *Laws* 1, Jun. 22, 2020.
- <sup>252</sup> National Network to End Domestic Violence, *About Financial Abuse*, <https://perma.cc/3LAX-6Y4P>, last accessed Jun. 15, 201.
- <sup>253</sup> Samantha Jeffries, Chontit Chuenurah, and Tristan Russell, *Expectations and Experiences of Women Imprisoned for Drug Offending and Returning to Communities in Thailand: Understanding Women's Pathways into, Through, and Post-Imprisonment*, p. 2, 9(2) *Laws* 1, Jun. 22, 2020.
- <sup>254</sup> Monia Vagni, Tiziana Maioriano, and Valeria Giostra, *The Relationship Between Suggestibility, Fabrication, Distortion, and Trauma in Suspected Sexually Abused Children*, p. 2, *Social Sciences*, 10:37, Jan. 24, 2021.
- <sup>255</sup> Jeremy Armstrong, *Mum Facing Death Sentence for Smuggling £1.6m Cocaine Claims She Was Forced into It*, *Mirror*, <https://perma.cc/XH38-HJRY>, Dec. 8, 2012.
- <sup>256</sup> See Merri Utami's profile.
- <sup>257</sup> See Prologue.
- <sup>258</sup> See Avalie's profile (Section VI.B.).
- <sup>259</sup> Anonymous sources, Interview with CCDPW, Apr. 13, 2021.
- <sup>260</sup> See Merri Utami's profile, Siti Aslinda's profile (Section VI.D.), and Anna's profile (Section IV.B.).
- <sup>261</sup> This has been studied in the context of financial romance scams. See Monica T. Whitty, *Anatomy of an Online Dating Romance Scam*, pp. 445, 449, *Security Journal* 28, Feb. 11, 2013.
- <sup>262</sup> Cassandra Cross, Molly Dragiewicz and Kelly Richards, *Understanding Romance Fraud: Insights from Domestic Violence Research*, p. 1305, *British Journal of Criminology* 58, Mar. 14, 2018.
- <sup>263</sup> See Merri Utami's profile.
- <sup>264</sup> See Anna's profile (Section IV.B.).
- <sup>265</sup> Cassandra Cross, Molly Dragiewicz and Kelly Richards, *Understanding Romance Fraud: Insights from Domestic Violence Research*, p. 1317, *British Journal of Criminology* 58, Mar. 14, 2018.
- <sup>266</sup> Monica T. Whitty, *Drug Mule for Love*, p. 6 and 9, *Journal of Financial Crime*, ISSN: 1359-0790, May 13, 2021. See Anna's profile (Section IV.B.).
- <sup>267</sup> Cassandra Cross, Molly Dragiewicz and Kelly Richards, *Understanding Romance Fraud: Insights from Domestic Violence Research*, pp. 1310-16, *British Journal of Criminology* Vol. 58, Mar. 14, 2018 ("Psychological maltreatment" is defined in domestic violence literature to include economic abuse, creation of fear, isolation, monopolization, degradation, psychological destabilization, emotional or interpersonal withdrawal, contingent expression of love).
- <sup>268</sup> Ann Brenoff, *How A Billion-Dollar Internet Scam Is Breaking Hearts and Bank Accounts*, *Huff Post*, <https://perma.cc/S452-LFMW>, Jul. 27, 2017.
- <sup>269</sup> See Anna's profile (Section IV.B.). Monica T. Whitty, *Predicting Susceptibility to Cyber-Fraud Victimhood*, pp. 280-281, *Journal of Financial Crime*, Vol. 26, No. 1, 2019.
- <sup>270</sup> Monica T. Whitty, *Drug Mule for Love*, p. 1, *Journal of Financial Crime*, ISSN: 1359-0790, May 13, 2021.

- <sup>271</sup> Malaysian women cheated of \$24m in love scams, *The Strait Times*, <https://perma.cc/6DTS-474E>, Mar. 27, 2016.
- <sup>272</sup> Chermaine Lee, The ‘Romance Scammers’ Cashing in on Lockdown Loneliness, *BBC*, <https://perma.cc/38J2-GJA3>, Dec. 1, 2020.
- <sup>273</sup> Ann Brenoff, How a Billion-Dollar Internet Scam Is Breaking Hearts and Bank Accounts, *Huff Post*, <https://perma.cc/S452-LFMW>, Jul. 27, 2017.
- <sup>274</sup> Monica T. Whitty, Do You Love Me? Psychological Characteristics of Romance Scam Victims, p. 107, *Cyberpsychology, Behavior, and Social Networking*, Vol. 21, No. 2, 2018.
- <sup>275</sup> Kevin Peachey, Women ‘Victims in 63% of Romance Scams,’ *BBC*, <https://perma.cc/2N2J-P6NA>, Feb. 10, 2019.
- <sup>276</sup> *Ibid.*
- <sup>277</sup> Cassandra Cross, Molly Dragiewicz and Kelly Richards, Understanding Romance Fraud: Insights from Domestic Violence Research, pp. 1308-1309, *British Journal of Criminology* 58, Mar. 14, 2018.
- <sup>278</sup> Clifford Lo, Syndicate that Conned 139 Women in Love Scams Busted in Joint Operation by Police from Hong Kong, Macau, Malaysia and Singapore, *South China Morning Post*, <https://perma.cc/9A3Q-FNXV>, Nov. 28, 2019.
- <sup>279</sup> Tom Buchanan and Monica T. Whitty, The Online Dating Romance Scam: Causes and Consequences of Victimhood, *Psychology, Crime and Law*, Vol. 20 No. 3, pp. 261-283, Mar. 28, 2013.
- <sup>280</sup> See Anna’s profile (Section IV.B.) and Merri Utami’s profile.
- <sup>281</sup> Cassandra Cross, Molly Dragiewicz and Kelly Richards, Understanding Romance Fraud: Insights from Domestic Violence Research, p. 1304, *British Journal of Criminology* Vol. 58, Mar. 14, 2018.
- <sup>282</sup> *Ibid.* at 1303-1322.
- <sup>283</sup> Monica T. Whitty, d
- <sup>284</sup> See Merri Utami’s profile and Anna’s profile (Section IV.B.)
- <sup>285</sup> Discrimination can take different forms. Sometimes all members—or all ascertainable members—of a group are discriminated against on the simple basis of their group membership. In other cases, a group—such as white, cis-women—has a more complicated relationship to discrimination. They may face discrimination for violating certain gender stereotypes but are favored when they comply with stereotypes. Some groups are unrepresented, overlooked, or undervalued in decision-making, and these groups may feel the disparate impact of policies that were not designed to serve that group’s needs. People with multiple group identities often face intersectional discrimination—for example, women of color can face gender discrimination, racial discrimination, and intersectional discrimination based specifically on their identity as women of color. See Cornell Center on the Death Penalty Worldwide, *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty*, p. 3, Cornell Law School, Sep. 2018.
- <sup>286</sup> *Ibid.* at 6.
- <sup>287</sup> Lisa Maher, Women in the Drug Economy: A Metasynthesis of the Qualitative Literature, p. 818, *Journal of Drug Issues*, Vol. 37, Iss. 4, Oct. 1, 2007.
- <sup>288</sup> Andrea Shapiro, Unequal Before the Law: Men, Women and the Death Penalty, p. 447, 8 AM. U. J. *Gender Soc. Policy & L.*, 2000 (citations omitted).
- <sup>289</sup> Cornell Center on the Death Penalty Worldwide, *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty*, p. 30, Cornell Law School, Sep. 2018.
- <sup>290</sup> “Because women are stereotyped as weak, passive, and in need of male protection, prosecutors and juries seem reluctant to impose the death penalty upon them.” See Steven F. Shatz and Naomi R. Shatz, *Chivalry Is Not Dead: Murder, Gender, and the Death Penalty*, p. 42, University of San Francisco Law Research Paper No. 2011-08, Aug. 2011, citing Andrea Shapiro, *Unequal Before the Law: Men, Women and the Death Penalty*, p. 456, 8 AM. U.J. *Gender Soc. Policy & L.*, 2000.
- <sup>291</sup> U.N. Office on Drugs and Crimes, *World Drug Report 2019. Booklet 2: Global Overview of Drug Demand and Supply*, p. 32, <https://perma.cc/CWN7-8ND9>, Jun. 2019. U.N. Office on Drugs and Crimes, Office for Rule of Law and Security Institutions in the Department for Peace Operations and Office of the U.N. High Commissioner for Human Rights, *United Nations System Common Position on Incarceration*, pp. 3, 5, <https://perma.cc/5Y39-SLJE>, Apr. 2021. See e.g. The Sentencing Project, *Fact Sheet: Incarcerated Women and Girls*, p. 4, <https://perma.cc/TT38-2VTM>, Nov. 2020.
- <sup>292</sup> “Women’s presence in decision-making is [...] critical in ensuring that their particular needs, interests and experiences are captured in the decision-making process. [...] Studies have clearly asserted that women are important agents of policy and cultural change in parliaments.” See U.N. Development Program, *Guidance Note: Strategies and good practices in promoting gender equality outcomes in parliaments*, pp 1-2, <https://perma.cc/SA96-A65P>, May 2016.
- <sup>293</sup> The data for each country is available on the Inter-Parliamentary Union (IPU) Parline Website which provides data on national parliaments. See IPU Parline, *Monthly Ranking of Women in National Parliaments*,

<https://perma.cc/4JAF-RAP8>, last accessed on Jun. 23, 2021.

<sup>294</sup> We calculated this average in June 2021. *Ibid.*

<sup>295</sup> Fiona Macaulay, *Gendering Drug Policy*, p. 30, in *The Impact of Drug Policy on Women: Shifting the Needle*, Nov. 19, 2020. Similarly, low or null engagement of people who use drugs, and particularly of women who use drugs, also results in them having less or no input on determining public policies relating to drug.

<sup>296</sup> *Ibid.* at 25.

<sup>297</sup> U.N. Office on Drugs and Crimes, *Gender and Organized Crime: Module 15*, p. 7, University Module Series, <https://perma.cc/NY4Y-N7SQ>, 2019.

<sup>298</sup> Penal Reform Intl., *Short Guide on U.N. Bangkok Rules on women offenders and prisoners*, p. 3, <https://perma.cc/M9E8-CZRZ>, 2013.

<sup>299</sup> Shuai Wei and Moulin Xiong, *Judges Gender and Sentencing in China*, p. 238, *Feminist Criminology*, Apr. 17, 2019. There does not seem to be a substantial difference between judges' sentences for other types of crime.

<sup>300</sup> *Conventions against Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act 2008 of Sri Lanka*, art. 2.4(g), No.1 of 2008, Jan. 23, 2008. Similar provisions exist in states that don't apply the death penalty for drug offenses, such as India and Guyana. See *Narcotic Drugs and Psychotropic Substances Act of India*, art. 32.B(d), Sep. 16, 1985, as updated through Apr. 1, 2021. *Narcotic Drugs and Psychotropic Substances (Control) Act 1988 of Guyana*, Section 4.2(c), Ch. 35:11, Mar. 10, 1988.

<sup>301</sup> *Comprehensive Dangerous Drugs Act 2002 of the Philippines*, Section 8(a), No. 9165, Jun. 7, 2002. [emphasis added].

<sup>302</sup> Linklaters LLP and Penal Reform Intl., *Sentencing of women convicted of drug-related offences*, p. 11, <https://perma.cc/W6YM-DEQ7>, Feb. 2020.

<sup>303</sup> "Sentence of death shall not ... be carried out on pregnant women." See ICCPR art. 6(5), 999 U.N.T.S. 171, Dec. 16, 1966. Nevertheless, a majority of the states that have the death-penalty for drug offenses allow judges to sentence pregnant women to death and merely delay execution until they are no longer pregnant or nursing. See Cornell Center on the Death Penalty Worldwide, Database, <https://perma.cc/LZ87-LVBA>, last accessed Jun. 23, 2021.

<sup>304</sup> Jennifer Fleetwood and Lizzie Seal, *Women, Drugs and the Death Penalty: Framing Sandiford*, p. 363, *The Howard Journal of Crime and Justice*, Sep. 5, 2017. Chontit Chuenurah and Ukrit Sornprohm, *Drug Policy and Women Prisoners in Southeast Asia*, p. 132, in *The Impact of Global Drug Policy on Women: Shifting the Needle*, Nov. 19, 2020.

<sup>305</sup> See *Malaysia (Section VI.B.)*, *Thailand (Section VI.C.)*. See also, Jennifer Fleetwood and Lizzie Seal, *Women, Drugs and the Death Penalty: Framing Sandiford*, pp. 360,

361, *The Howard Journal of Crime and Justice*, Sep. 5, 2017.

<sup>306</sup> Linklaters LLP and Penal Reform Intl., *Sentencing of women convicted of drug-related offences*, p. 7, <https://perma.cc/W6YM-DEQ7>, Feb. 2020.

<sup>307</sup> U.N.G.A., *Report of the Special Rapporteur on violence against women, its causes and consequences*, para. 26, U.N. Doc. A/68/340, Aug. 21, 2013.

<sup>308</sup> *Misuse of Drugs Act 1973 of Singapore*, sec. 33B, Revised edition of 2008, Ch. 185, Mar. 31, 2008. The 2017 amendments to the *Dangerous Drugs Act of Malaysia* grant courts the discretion not to impose the death sentence, but only if the defendant "has assisted an enforcement agency in disrupting drug trafficking activities within or outside Malaysia." See Natalia Antolak-Saper, Sara Kowal, Samira Lindsey, Chow Ying Ngeow and Thaatchaayini Kanatu with the support of Harm Reduction Intl., *Drug Offences and the Death Penalty in Malaysia: Fair Trial Rights and Ramifications*, p. 29, Monash University, <https://perma.cc/P93D-VU8X>, May 28, 2020.

<sup>309</sup> Today online, *Drug courier spared the death penalty for helping CNB in probe*, <https://perma.cc/USY9-ASX3>, Jan. 8, 2015.

<sup>310</sup> Harm Reduction Intl., *The Death Penalty for Drug Offences: Global Overview 2020*, p. 43, <https://perma.cc/5C9Y-B78L>, Mar. 2021.

<sup>311</sup> *Ibid.*

<sup>312</sup> See *China (Section VI.D.)*

<sup>313</sup> Charlotte Barlow, *Silencing the Other: Gendered Representations of Co-accused Women Offenders*, p.469, *The Howard Journal* Vol. 54, No. 5, Dec. 2015.

<sup>314</sup> U.N. High Commissioner for Human Rights, *Death penalty and gender dimension: Exploring disadvantage and systemic barriers affecting death sentences*, <https://perma.cc/E7QQ-HSAB>, Sept. 24, 2020. Cornell Center on the Death Penalty Worldwide, *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty*, p. 6, Cornell Law School, Sep. 2018.

<sup>315</sup> Rosalyn Harper, Gemma Harper and Janet Stockdale, *The Role and Sentencing of Women in Drug Crime*, p. 104, *Legal and Criminological Psychology*, Vol. 7 Issue 1, Dec. 16, 2010.

<sup>316</sup> Jennifer Fleetwood and Lizzie Seal, *Women, Drugs and the Death Penalty: Framing Sandiford*, p. 360, *The Howard Journal of Crime and Justice*, Sep. 5, 2017.

<sup>317</sup> Julia Kensy, Camille Stengel, Marie Nougier and Ruth Birgin, *Drug Policy and Women: Addressing the Negative Consequences of Harmful Drug Control*, p.6, *International Drug Policy Consortium*, Dec. 21, 2012.

- <sup>318</sup> U.N. High Commissioner for Human Rights, Death penalty and gender dimension: Exploring disadvantage and systemic barriers affecting death sentences, <https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=26292&LangID=E>, Sept. 24, 2020. Cornell Center on the Death Penalty Worldwide, *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty*, p. 6, Cornell Law School, Sep. 2018.
- <sup>319</sup> Lim Chee Han, Ngeow Chow Ying and Harchanadevi Arivananthan, High Incidence of Judicial Errors in Capital Punishment Cases in Malaysia, *Penang Institute Issues*, <https://perma.cc/JGU5-AFLU>, Oct. 30 2018. Harm Reduction International, *The Death Penalty for Drug Offences: Global Overview 2018*, p. 14, <https://perma.cc/PEV8-ZX5C>, Feb. 2019.
- <sup>320</sup> Lucy Harry, *Rethinking the Relationship between Women, Crime and Economic Factors: The Case-Study of Women Sentenced to Death for Drug Trafficking in Malaysia*, *Laws*, vol. 10, no. 9, pp. 9,10, Jan. 31, 2021.
- <sup>321</sup> Harm Reduction Intl., *The Death Penalty for Drug Offences: Global Overview 2020*, p. 43, <https://perma.cc/5C9Y-B78L>, Mar. 2021.
- <sup>322</sup> See *Manipulative Relationships (Section IV.B.)*.
- <sup>323</sup> Hossein Raeesi, interview with the Cornell Center on the Death Penalty Worldwide on Feb. 18, 2021.
- <sup>324</sup> Supreme Court of Indonesia, *Guidelines for Judging Women's Cases Against the Law, Regulation (Perma) No. 3 of 2017*, <https://perma.cc/VH7B-ABD2>, Aug. 2017.
- <sup>325</sup> Aisya Humaida, affiliated with LBH Masyarakat, email to CCDPW, Jul. 16, 2021.
- <sup>326</sup> Jennifer Fleetwood and Lizzie Seal, *Women, Drugs and the Death Penalty: Framing Sandiford*, p. 368, *The Howard Journal of Crime and Justice*, Sep. 5, 2017. See also Anthony Lambert, *Mediating crime, mediating culture: Nationality, femininity, corporeality and territory in the Schappelle Corby Drug case*, pp. 237-256, *Crime Media Culture*, Vol. 4, Iss. 2, Aug. 2008.
- <sup>327</sup> Anonymous sources, Interview with the Cornell Center on the Death Penalty Worldwide, Apr. 13, 2021.
- <sup>328</sup> Jennifer Fleetwood and Lizzie Seal, *Women, Drugs and the Death Penalty: Framing Sandiford*, p. 370, *The Howard Journal of Crime and Justice*, Sep. 5, 2017.
- <sup>329</sup> *Ibid.* at 368.
- <sup>330</sup> James Griffiths, *Singaporean woman faces execution in China as family launches last desperate appeal*, CNN, <https://perma.cc/7JMR-5CL3>, Dec. 25, 2020.
- <sup>331</sup> Cornell Center on the Death Penalty Worldwide, *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty*, pp. 19-24, Cornell Law School, Sep. 2018.
- <sup>332</sup> Chontit Chuenurah and Ukrit Sornprohm, *Drug Policy and Women Prisoners in Southeast Asia*, p. 137, in *The Impact of Global Drug Policy on Women: Shifting the Needle*, Nov. 19, 2020. See also World Coalition Against the Death Penalty, Cornell Center on the Death Penalty Worldwide and Penal Reform Intl., *Prison conditions for women facing the death penalty*, p. 3, <https://perma.cc/6V7P-PMQZ>, Oct. 2018.
- <sup>333</sup> U.N. Economic and Social Council, United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), Rule 15, Resolution 2010/16, U.N. Doc. A/RES/65/229, Mar. 16, 2011.
- <sup>334</sup> Chontit Chuenurah and Ukrit Sornprohm, *Drug policy and women prisoners in Southeast Asia*, p. 138, in *The Impact of Drug Policy on Women: Shifting the Needle*, Nov. 19, 2020.
- <sup>335</sup> *Ibid.*
- <sup>336</sup> *Ibid.* at 137. See also World Coalition Against the Death Penalty, Cornell Center on the Death Penalty Worldwide and Penal Reform Intl., *Prison conditions for women facing the death penalty*, p. 3, <https://perma.cc/6V7P-PMQZ>, Oct. 2018.
- <sup>337</sup> U.N. Economic and Social Council, Resolution 1984/50 on Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, para. 3, May. 24, 1984, Endorsed by the U.N. General Assembly in resolution 39/118 adopted without a vote on Dec. 14, 1984. Human Rights Committee, General comment No. 6 on Article 6 of the ICCPR, para. 7, U.N. Doc. CCPR/C/GC/6, Apr. 30, 1982. Human Rights Committee, General comment No. 32 on Article 14 of the ICCPR, para. 59, U.N. Doc. CCPR/C/GC/32, Aug. 32, 2007. Human Rights Committee, General comment No. 36 on Article 6 of the ICCPR, para. 41, U.N. Doc. CCPR/C/GC/36, Oct. 2018.
- <sup>338</sup> Cornell Center on the Death Penalty Worldwide, *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty*, p. 17, Cornell Law School, Sep. 2018.
- <sup>339</sup> Harm Reduction Intl., *The Death Penalty for Drug Offences: Global Overview 2020*, p. 25, <https://perma.cc/5C9Y-B78L>, Mar. 2021.
- <sup>340</sup> See *Global Trends (Section III.B.)*, Indonesia (Section VI.A.), Malaysia (Section VI.B.), and Thailand (Section VI.C.).
- <sup>341</sup> ICCPR, art. 14(3)(f), 999 U.N.T.S. 171, Dec. 16, 1966. Organization of American States, *Amer. Conv. on Human Rights*, art. 8(2)(a), <https://perma.cc/4VTE-4HVX>, Jan. 22, 1969. Council of Europe, *European Conv. for the Protection of Human Rights and Fundamental Freedoms*, art. 6(3)(e), <https://perma.cc/BW9H-7QW2>, Nov. 4, 1950. *Conv. on the*



Rights of the Child, art. 40(2)(vi), 1577 U.N.T.S. 3, Nov. 20, 1989. See also Amnesty Intl., Fair Trial Manual, Second edition, p.84, POL 30/002/2014, Apr. 9, 2014.

<sup>342</sup> Natalia Antolak-Saper, Sara Kowal, Samira Lindsey, Chow Ying Ngeow and Thaatchaayini Kanatu with the support of Harm Reduction Intl., Drug Offences and the Death Penalty in Malaysia: Fair Trial Rights and Ramifications, p. 23, Monash University, <https://perma.cc/P93D-VU8X>, May 28, 2020.

<sup>343</sup> For example, Justice Project Pakistan documented several capital cases in Saudi Arabia, the interpreter told the judge that the defendant pleaded for forgiveness when in fact the defendant disputed the charges. See Justice Project Pakistan, “Caught in a web”: Treatment of Pakistanis in the Saudi Criminal Justice System, p. 3, <https://perma.cc/7AZM-XQ33>, Mar. 7, 2018.

<sup>344</sup> See The Role of Economic Insecurity in Pathways to Drug Offending (Section IV.A.).

<sup>345</sup> See Avalie at (Section VI.B.).

<sup>346</sup> U.N., Vienna Convention on Consular Relations, Article 36(1)(b), 596 U.N.T.S. 261, Apr. 24, 1963.

<sup>347</sup> European and South American embassies tend to provide more assistance to their arrested nationals than embassies from other countries. Malaysian officials are particularly unlikely to notify embassies from African countries, and embassies from African countries are especially unlikely to provide assistance to their arrested nationals. See Carolyn Hoyle, Monash panel, Drug Offenses and the Death Penalty in Malaysia, <https://perma.cc/2WUG-YLMN>, May 28, 2020. Additionally, some foreign nationals belonging to targeted minorities in their countries of origin receive less consular support. For example, embassies provide varying levels of support for the pardon petition process. According to reports, embassy representatives from the Filipino and Indonesian embassies help many of their nationals seek a pardon, while foreign nationals from some African and Middle Eastern countries, along with foreign nationals from targeted minorities in their countries of origin, received little or no support from their embassies. See Amnesty Intl., *Fatally Flawed: Why Malaysia Must Abolish the Death Penalty*, p. 32, 40, ACT 50/1078/2019, Oct. 8, 2019.

<sup>348</sup> U.N., Vienna Convention on Consular Relations, Article 36(1)(b), 596 U.N.T.S. 261, Apr. 24, 1963. See also Amnesty Intl., Fair Trial Manual, Second edition, p.84, POL 30/002/2014, Apr. 9, 2014

<sup>349</sup> See The Use of the Death Penalty for Drug-Related Offenses: A Review of State Practices (Section III.B.), Indonesia (Section VI.A.), Malaysia (Section VI.B.) and Thailand (Section VI.D.).

<sup>350</sup> Carolyn Hoyle, Monash panel, Drug Offenses and the Death Penalty in Malaysia, <https://perma.cc/2WUG-YLMN>, May 28, 2020.

<sup>351</sup> Amnesty Intl., *Fatally Flawed: Why Malaysia Must Abolish the Death Penalty*, p. 29, ACT 50/1078/2019, Oct. 8, 2019.

<sup>352</sup> Cornell Center on the Death Penalty Worldwide, *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty*, p. 28, Cornell Law School, Sep. 2018.

<sup>353</sup> See Merri Utami’s profile.

<sup>354</sup> See See Gender Bias and Gender-Based Discrimination (Section V.A.).

<sup>355</sup> U.N. Economic and Social Council, Resolution 1984/50 on Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, para. 5, May. 24, 1984, Endorsed by the U.N. General Assembly in resolution 39/118 adopted without a vote on Dec. 14, 1984. Human Rights Committee, General comment No. 36 on Article 6 of the ICCPR, para. 41, U.N. Doc. CCPR/C/GC/36, Oct. 2018.

<sup>356</sup> U.N. Office on Drugs and Crimes, *Global Study on Legal Aid: Country Profiles*, p. 60, <https://perma.cc/9GYE-F4PN>, Dec. 2016.

<sup>357</sup> *Ibid.* at 62.

<sup>358</sup> *Ibid.* at 73.

<sup>359</sup> Amnesty Intl., *Death Sentences and Executions 2020*, p. 28, ACT 50/3760/202, Apr. 21, 2021. Harm Reduction Intl., *The Death Penalty for Drug Offenses: Global Overview 2020*, p. 20, <https://perma.cc/5C9Y-B78L>, Mar. 2021.

<sup>360</sup> Amnesty Intl., *Death Sentences and Executions 2020*, p. 28, ACT 50/3760/202, Apr. 21, 2021.

<sup>361</sup> See Gender, Drug Crime, and International Law (Section III.A.).

<sup>362</sup> Puri Kencana Putri and Aghniadi, *Drugs and the Death Penalty, Inside Indonesia*, <https://perma.cc/UL88-EX2E>, Oct. 15, 2019.

<sup>363</sup> *Ibid.*

<sup>364</sup> These women are: Mary Jane Veloso, Chandra Jet Lie, Merri Utami, Lindsay Sandiford, and Murziyanti Binti Zainal Abidin. *Reprieve, Continuously Updated Data on Death-Sentenced Women Prisoners in Indonesia*, last updated Jul. 9, 2021, internal document emailed to CCDPW, Jul. 9, 2021.

<sup>365</sup> *Ibid.*

<sup>366</sup> Adhigama Andre Budiman, Ajeng Gandini Kamilah, et al, *Taking Lives During Pandemic: 2020 Indonesian Death Penalty Report*, p. 21, Institute for Criminal Justice Reform, Oct. 2020. Harm Reduction Intl., *The Death Penalty for Drug Offenses: Global Overview 2020*, p. 38, <https://perma.cc/5C9Y-B78L>, Mar. 2021.

<sup>367</sup> Amnesty Intl., *Death Sentences and Executions 2020*, p. 24, ACT 50/3760/202, Apr. 21, 2021.

- <sup>368</sup> Of an estimated 355, 214 are for drug offenses. See Adhigama Andre Budiman, Ajeng Gandini Kamilah, et al, *Taking Lives During Pandemic: 2020 Indonesian Death Penalty Report*, p. 22, Institute for Criminal Justice Reform, Oct. 2020. Harm Reduction Intl., *The Death Penalty for Drug Offenses: Global Overview 2020*, p. 38, <https://perma.cc/5C9Y-B78L>, Mar. 2021.
- <sup>369</sup> Lindsay Sandiford and Mary Jane Veloso are foreign nationals. Merri Utami and Mary Jane Veloso were migrant domestic workers. Reprieve, *Continuously Updated Data on Death-Sentenced Women Prisoners in Indonesia*, last updated Jul. 9, 2021, internal document emailed to CCDPW, Jul. 9, 2021.
- <sup>370</sup> Mary Jane Veloso, Chandra Jet Lie and Merri Utami had minor children at the time of their arrest. See *Ibid*.
- <sup>371</sup> *Ibid*.
- <sup>372</sup> Mary Jane Veloso and Merri Utami claim they had no knowledge of the drugs they were carrying. Lindsay Sandiford maintains she only trafficked drugs because she was led to believe her son's life was at risk. See *Ibid*.
- <sup>373</sup> *Ibid*.
- <sup>374</sup> Murziyanti Binti Zainal Abidin was jointly charged with seven men, including her husband; Chandra Jet Lie was jointly charged with three men, including her husband. *Ibid*.
- <sup>375</sup> Mary Jane Veloso, Chandra Jet Lie and Merri Utami maintain they had no knowledge. Lindsay Sandiford maintains she only trafficked drugs because she was led to believe her son's life was at risk. We have not been able to gather this data for Murziyanti Binti Zainal Abidin. *Ibid*.
- <sup>376</sup> Law of the Republic of Indonesia No. 5 of 1997 on Psychotropic Substances, Article 59, 1997. Law of the Republic of Indonesia No. 35 of 2009 on Narcotics, Articles 74, 113, 114, 116, 118, 119, 121, 132, 133, and 144, 2009.
- <sup>377</sup> Law of the Republic of Indonesia No. 35 of 2009 on Narcotics, Article 111, 2009.
- <sup>378</sup> Law of the Republic of Indonesia No. 35 of 2009 on Narcotics, Article 112, 2009.
- <sup>379</sup> Mary Catherine A. Alvarez, *Women, Incarceration and Drug Policy in Indonesia*, p. 8, Intl. Drug Policy Consortium, Mar. 2019.
- <sup>380</sup> Law of the Republic of Indonesia No. 35 of 2009 on Narcotics, Article 55, 2009.
- <sup>381</sup> Law of the Republic of Indonesia No. 35 of 2009 on Narcotics, Article 128, 2009.
- <sup>382</sup> Mary Catherine A. Alvarez, *Women, Incarceration and Drug Policy in Indonesia*, p. 8, Intl. Drug Policy Consortium, Mar. 2019.
- <sup>383</sup> George Havenhand, *Reorienting Drug Policy in Indonesia*, p. 31, Reprieve & LBH Masyarakat, Mar. 2020.
- <sup>384</sup> LBH Masyarakat, Harm Reduction Intl., and Institute for Criminal Justice Reform, *Submission to the Human Rights Council*, <https://perma.cc/N98A-ESUF>, p. 9, Jun. 1, 2020.
- <sup>385</sup> Figures from The Department of Correctional Service of the Ministry of Law and Human Rights, accessible at <http://smslap.ditjenpas.go.id/>. Cited in LBH Masyarakat, Harm Reduction Intl., and Institute for Criminal Justice Reform, *Submission to the Human Rights Council*, <https://perma.cc/N98A-ESUF>, p. 9, Jun. 1, 2020.
- <sup>386</sup> Mary Catherine A. Alvarez, *Women, Incarceration and Drug Policy in Indonesia*, p. 2, Intl. Drug Policy Consortium, Mar. 2019.
- <sup>387</sup> 7,584 are imprisoned for drug offenses. See LBH Masyarakat, Harm Reduction Intl., and Institute for Criminal Justice Reform, *Submission to the Human Rights Council*, <https://perma.cc/N98A-ESUF>, p. 9, Jun. 1, 2020.
- <sup>388</sup> Law of the Republic of Indonesia No. 35 of 2009 on Narcotics, Article 113, 2009.
- <sup>389</sup> *Indonesia v. Merri Utami*, p. 30, 140/Pid.B/2002/PN.TNG, Tangerang District Court, May. 20, 2002.
- <sup>390</sup> See generally *Ibid*.
- <sup>391</sup> Felicity Gerry QC, Thomas Harré, Nathalina Naibaho, Julia Muraszkiwicz, and Neil Boister, *Is the Law an Ass When It Comes to Mules? How Indonesia Can Lead a New Global Approach to Treating Drug Traffickers as Human Trafficked Victims*, p. 180, *Asian Journal of International Law*, Jan. 2018.
- <sup>392</sup> This debate is beyond the scope of this report, but for discussion on this, see generally Felicity Gerry QC, Thomas Harré, Nathalina Naibaho, Julia Muraszkiwicz, and Neil Boister, *Is the Law an Ass When It Comes to Mules? How Indonesia Can Lead a New Global Approach to Treating Drug Traffickers as Human Trafficked Victims*, *Asian Journal of International Law*, Jan. 2018. Komnas Perempuan (the National Commission on Violence Against Women) further argues that women migrant workers are especially vulnerable to being trafficked by drug syndicates. See Komnas Perempuan, *Independent Report Submitted to the CEDAW Committee*, <https://perma.cc/V67N-S8RQ>, Dec. 30, 2016.
- <sup>393</sup> Amnesty Intl., *Indonesia: First Execution in Four Years "Shocking and Regressive"*, <https://perma.cc/8AQL-JOHX>, Mar. 15, 2013.
- <sup>394</sup> Margareth S. Aritonang and Bagus BT Saragih, *Drug dealer Clemency 'a Setback'*, <https://perma.cc/9FBT-SWWQ>, Oct. 13, 2012.
- <sup>395</sup> Amnesty Intl., *Death Sentences and Executions 2013*, p. 23, ACT 50/001/2014, Mar. 25, 2014.



<sup>396</sup> Dave McRae, Indonesian Capital Punishment in Comparative Perspective, p. 2, 14-15, *Journal of the Humanities and Social Sciences of Southeast Asia and Oceania*, 2017.

<sup>397</sup> *Ibid.* at 1, 26.

<sup>398</sup> *Ibid.* at 26. Puri Kencana Putri and Aghniadi, Drugs and the Death Penalty, Inside Indonesia, <https://perma.cc/UL88-EX2E>, Oct. 15, 2019.

<sup>399</sup> Amnesty Intl., Indonesia: Flawed Justice: Unfair Trials and the Death Penalty in Indonesia, p. 5, ASA 21/2434/2015, Oct. 15, 2015. Though the statistics promulgated by the government were likely inflated, Indonesia is a significant market for both the production and consumption of illicit drugs. See Claudia Stoicescu, Indonesia Uses Faulty Stats on ‘Drug Crisis’ to Justify Death Penalty, *The Conversation*,

<https://perma.cc/VG28-Q488>, Feb. 4, 2015. Indonesia provides one of the largest and most profitable markets for methamphetamines (known locally as *sabu-sabu*). See Intl. Drug Policy Consortium, East and South Asia, <https://perma.cc/9EG6-7XWF>, last accessed Jul. 21, 2021. The U.N. Office on Drugs and Crime reports that much of the methamphetamine seized in Indonesia originated in China or Malaysia, and Indonesia plays a pivotal role in a number of global trafficking routes. See U.N. Office on Drugs and Crime, *The Challenge of Synthetic Drugs in East and South-East Asia*, p. 22-23, <https://perma.cc/K8BL-7EC3>, Jun. 2017.

<sup>400</sup> George Havenhand, Reorienting Drug Policy in Indonesia, p. 23, *Reprieve and LBH Masyarakat*, Mar. 2020.

<sup>401</sup> Erasmus A.T. Napitupulu and Genoveva Alicia K.S. Maya, *A Game of Fate: Report on Indonesia Death Penalty Policy in 2019*, p. 22, Institute for Criminal Justice Reform, Oct. 2019.

<sup>402</sup> Lindsay Sandiford and Mary Jane Veloso are foreign nationals. *Reprieve*, Continuously Updated Data on Death-Sentenced Women Prisoners in Indonesia, last updated Jul. 9, 2021, internal document emailed to CCDPW, Jul. 9, 2021.

<sup>403</sup> Amnesty Intl., *Death Sentences and Executions 2015*, p. 31, ACT 50/3487/2016, Apr. 2016.

<sup>404</sup> Stefy Tenu, Vietnamese Drug Convict Awaiting Execution Expresses One Final Wish, *Jakarta Globe*, <https://perma.cc/MJC7-5VS2>, Jan. 15, 2015.

<sup>405</sup> Haeril Halim, Jokowi Orders Police to Gun Down Foreign Drug Traffickers, *The Jakarta Post*, <https://perma.cc/X325-5LWG>, Jul. 22, 2017.

<sup>406</sup> Law of the Republic of Indonesia No. 24 of 2003 on the Constitutional Court, Article 51(1), 2003.

<sup>407</sup> Amnesty Intl., Indonesia: Flawed Justice: Unfair Trials and the Death Penalty in Indonesia, p. 45, ASA 21/2434/2015, Oct. 15, 2015.

<sup>408</sup> Dave McRae, Indonesian Capital Punishment in Comparative Perspective, p. 19, *Journal of the Humanities and Social Sciences of Southeast Asia and Oceania*, 2017.

<sup>409</sup> U.N. Women, *Gaining Protection for Indonesia’s Migrant Workers and Their Families*, <https://perma.cc/R9HV-EUP7>, Jul. 12, 2019. Conversely, there are only about 570 migrant workers registered to work in Indonesia, so migrant workers are significantly overrepresented amongst women sentenced to death for drug offenses. See U.N.G.A. Human Rights Council, Working Group on the Universal Periodic Review, National Report Submitted in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21, p. 13, U.N. Doc. A/HRC/WG.6/27/IDN/1, May 2017.

<sup>410</sup> In 2011, when Saudi Arabia executed Ruyati Binti Sapubi, a migrant worker from West Java who had killed her female employer, many Indonesians were appalled. See Bassina Farbenblum, Eleanor Taylor-Nicholson, and Sarah Paoletti, *Migrant Workers’ Access to Justice at Home: Indonesia*, p. 115-116, Open Society Foundations, <https://perma.cc/MRF9-LR8W>, Oct. 2013. In response, President Yudhoyono established a taskforce to provide consular assistance to Indonesians facing execution abroad, and between 2011 and 2014, 240 such prisoners had their death sentences commuted. See Amnesty Intl., Indonesia: Flawed Justice: Unfair Trials and the Death Penalty in Indonesia, p. 6, ASA 21/2434/2015, Oct. 15, 2015. As of January 2020, the Indonesian Ministry of Foreign Affairs reports that there are 171 Indonesian citizens on death row abroad. Yuni Asriyanti, affiliated with Komnas Perempuan, email to CCDPW, May 20, 2021. This issue still elicits much public sympathy, as was evident in 2018, when Saudi Arabia executed Tuti Tursilawati, an Indonesian migrant worker who killed her employer who had raped her. See Ariza Muthia, and Rizkina Aliya, *Indonesian Migrant Domestic Workers Lack Protection – How Can Legal Academics Help?*, *The Conversation* <https://perma.cc/635V-TS2F>, Mar. 26, 2019.

<sup>411</sup> It is worth noting that there has not been the same degree of public support for Lindsay Sandiford—a British national on death row in Indonesia for drug offenses—likely because she is not similarly situated. *Reprieve*, Continuously Updated Data on Death-Sentenced Women Prisoners in Indonesia, last updated Jul. 9, 2021, internal document emailed to CCDPW, Jul. 9, 2021.

<sup>412</sup> Yenni Kwok, The Internet Is Begging the Indonesian Government to Spare a Filipina Single Mother’s Life, *TIME*, <https://perma.cc/8FPV-F5W5>, Apr. 24, 2015.

<sup>413</sup> Erwiana Sulistyaningsih, I Could Have Been Mary Jane Veloso, *The Jakarta Post*, <https://perma.cc/55FX-V6SK>, May 20, 2015.

- <sup>414</sup> David Wroe, Bali Nine Executions: Spared Mary-Jane a Figure of Sympathy, Indonesia Scholar Says, The Sydney Morning Herald, <https://perma.cc/88VY-MBMN>, Apr. 29, 2015.
- <sup>415</sup> Change.org petition on behalf of Merri Utami, <https://perma.cc/MUE7-7ZZ8>, last accessed Jul. 17, 2021.
- <sup>416</sup> Law of the Republic of Indonesia No. 8 of 1981 on the Code of Criminal Procedure, Articles 54-55, 1981.
- <sup>417</sup> Email correspondence between the Institute for Criminal Justice Reform and Harm Reduction Intl., Sep. 2019. Cited in Harm Reduction Intl., The Death Penalty for Drug Offenses: Global Overview 2019, p.15, <https://perma.cc/27GN-9FGR>, Mar. 2020.
- <sup>418</sup> Email correspondence between the Institute for Criminal Justice Reform and Harm Reduction Intl., Sep. 2019. Cited in Harm Reduction Intl., The Death Penalty for Drug Offenses: Global Overview 2019, p. 15, <https://perma.cc/27GN-9FGR>, Mar. 2020.
- <sup>419</sup> Amnesty Intl., Indonesia: Flawed Justice: Unfair Trials and the Death Penalty in Indonesia, p. 26-32, ASA 21/2434/2015, Oct. 15, 2015. The quality of representation varies so significantly in part because there is no effective oversight or enforcement of the Advocate Code of Ethics which regulates lawyers. See George Havenhand, Reorienting Drug Policy in Indonesia, p. 26, Reprieve and LBH Masyarakat, Mar. 2020.
- <sup>420</sup> This happened in the case of Yusman Telaumbanua. See Amnesty Intl., Indonesia: Flawed Justice: Unfair Trials and the Death Penalty in Indonesia, p. 29, ASA 21/2434/2015, Oct. 15, 2015.
- <sup>421</sup> Aisya Humaida, affiliated with LBH Masyarakat, email to CCDPW, Jul. 16, 2021.
- <sup>422</sup> Merri Utami and Mary Jane Veloso's trial lawyers both failed to call a single witness. Afif Muhammad, Raka Tengku and Aisya Humaida, affiliated with LBH Masyarakat, interviewed by CCDPW and Harm Reduction Intl., Oct. 10, 2020. Josalee Deinla, affiliated with the National Union of Peoples' Lawyers, interviewed by CCDPW, Apr. 8, 2021.
- <sup>423</sup> Institute for Criminal Justice Reform, Menyelisik Keadilan Yang Rentan: Hukuman Mati Dan Penerapan Fair Trial Di Indonesia, p. 163, Jan. 2019. Cited in Harm Reduction Intl., The Death Penalty for Drug Offenses: Global Overview 2019, p. 16, <https://perma.cc/27GN-9FGR>, Mar. 2020.
- <sup>424</sup> Only 46% of women have a secondary level of education, and 53% of women participate in the labor market. See U.N. Development Program, Human Development Report 2020: Indonesia, p. 6, <https://perma.cc/VM22-VPUA>, Dec. 15, 2020.
- <sup>425</sup> Mary Catherine A. Alvarez, Women, Incarceration and Drug Policy in Indonesia, p. 11, Intl. Drug Policy Consortium, Mar. 2019.
- <sup>426</sup> Komnas HAM, Laporan Pemantauan Terpidana Mati [Monitoring Report on Death Row Inmates], pp. 17-22, 36-40, 2011. Cited in Amnesty Intl., Indonesia: Flawed Justice: Unfair Trials and the Death Penalty in Indonesia, p. 38, ASA 21/2434/2015, Oct. 15, 2015.
- <sup>427</sup> Institute for Criminal Justice Reform, Menyelisik Keadilan Yang Rentan: Hukuman Mati Dan Penerapan Fair Trial Di Indonesia, p. 11, Jan. 2019. Cited in LBH Masyarakat, Harm Reduction Intl., and Institute for Criminal Justice Reform, p. 4, Submission to the Human Rights Council, <https://perma.cc/N98A-ESUF>, Jun. 1, 2020.
- <sup>428</sup> Yuni Asriyanti, affiliated with Komnas Perempuan, interviewed by CCDPW, Apr. 13, 2021. Afif Muhammad, Raka Tengku and Aisya Humaida, affiliated with LBH Masyarakat, interviewed by CCDPW and Harm Reduction Intl., Oct. 10, 2020.
- <sup>429</sup> Amnesty Intl., Indonesia: Flawed Justice: Unfair Trials and the Death Penalty in Indonesia, p. 43, ASA 21/2434/2015, Oct. 15, 2015. Only one of the people in this study was a woman.
- <sup>430</sup> Komnas HAM, Laporan Pemantauan Terpidana Mati [Monitoring Report on Death Row Inmates], p. 23-25, 43, 2010. Cited in Amnesty Intl., Indonesia: Flawed Justice: Unfair Trials and the Death Penalty in Indonesia, p. 44, ASA 21/2434/2015, Oct. 15, 2015.
- <sup>431</sup> Josalee Deinla, affiliated with the National Union of Peoples' Lawyers, interviewed by CCDPW, Apr. 8, 2021.
- <sup>432</sup> Amnesty Intl., Indonesia: Flawed Justice: Unfair Trials and the Death Penalty in Indonesia, p. 5, ASA 21/2434/2015, Oct. 15, 2015.
- <sup>433</sup> The U.N. Human Rights Committee has stated that "no category of sentenced persons can be a priori excluded from [the right to seek pardon or commutation]." See U.N. Human Rights Committee, General Comment 36 on the Right to Life, para. 47, U.N. Doc. CCPR/C/GC/36, Sep. 3, 2019.
- <sup>434</sup> LBH Masyarakat, Harm Reduction Intl., and Institute for Criminal Justice Reform, Submission to the Human Rights Council, <https://perma.cc/N98A-ESUF>, p. 3, Jun. 1, 2020.
- <sup>435</sup> U.N. Human Rights Committee, General Comment 36 on the Right to Life, para. 47, U.N. Doc. CCPR/C/GC/36, Sep. 3, 2019.
- <sup>436</sup> Reuters, Indonesian President Orders Officers to Shoot Drug Traffickers, <https://perma.cc/5WCD-XF3G>, Jul. 22, 2017.

- <sup>437</sup> Haeril Halim, Jokowi Orders Police to Gun Down Foreign Drug Traffickers, The Jakarta Post, <https://perma.cc/X325-5LWG>, Jul. 22, 2017.
- <sup>438</sup> LBH Masyarakat, Harm Reduction Intl., and Institute for Criminal Justice Reform, Submission to the Human Rights Council, <https://perma.cc/N98A-ESUF>, p. 6, Jun. 1, 2020.
- <sup>439</sup> Asian Human Rights Commission, Indonesia: Light Punishment for Four Police Officers Who Tortured to Death a Victim, <https://perma.cc/R4XJ-V2M9>, Mar. 1, 2016.
- <sup>440</sup> For example, in Malaysia, 86% of women sentenced to death for drug offenses are foreign nationals. Amnesty Intl., *Fatally Flawed: Why Malaysia Must Abolish the Death Penalty*, p. 19, ACT 50/1078/2019, Oct. 8, 2019.
- <sup>441</sup> See, for example, Law of the Republic of Indonesia No. 35 of 2009 on Narcotics, Article 113, 2009. Felicity Gerry QC, Thomas Harré, Nathalina Naibaho, Julia Muraszkievicz, and Neil Boister, *Is the Law an Ass When It Comes to Mules? How Indonesia Can Lead a New Global Approach to Treating Drug Traffickers as Human Trafficked Victims*, p. 180, *Asian Journal of Intl. Law*, Jan. 2018. *Indonesia v. Merri Utami*, p. 30, 140/Pid.B/2002/PN.TNG, Tangerang District Court, May. 20, 2002.
- <sup>442</sup> Three of five women on death row for drug offenses maintain they had no knowledge of the crime for which they are convicted. Reprieve, *Continuously Updated Data on Death-Sentenced Women Prisoners in Indonesia*, last updated Jul. 9, 2021, internal document emailed to CCDPW, Jul. 9, 2021.
- <sup>443</sup> For example, Mary Jane Veloso's lawyers are unclear whether, even if a court in the Philippines rules that Mary Jane was the victim of human trafficking, that will result in her acquittal in Indonesia. Josalee Deinla, affiliated with the National Union of Peoples' Lawyers, interviewed by CCDPW, Apr. 8, 2021. See also *Indonesia v. Merri Utami*, p. 30, 140/Pid.B/2002/PN.TNG, Tangerang District Court, May. 20, 2002.
- <sup>444</sup> Mary Jane Veloso, Chandra Jet Lie and Merri Utami maintain they had no knowledge. Lindsay Sandiford maintains she only trafficked drugs because she was led to believe her son's life was at risk. Reprieve, *Continuously Updated Data on Death-Sentenced Women Prisoners in Indonesia*, last updated Jul. 9, 2021, internal document emailed to CCDPW, Jul. 9, 2021.
- <sup>445</sup> Josalee Deinla, affiliated with the National Union of Peoples' Lawyers, interviewed by CCDPW, Apr. 8, 2021. Joanna Concepcion, affiliated with Migrante International, interviewed by CCDPW, Mar. 15, 2021.
- <sup>446</sup> Josalee Deinla, affiliated with the National Union of Peoples' Lawyers, interviewed by CCDPW, Apr. 8, 2021. Joanna Concepcion, affiliated with Migrante International, interviewed by CCDPW, Mar. 15, 2021.
- <sup>447</sup> Josalee Deinla, affiliated with the National Union of Peoples' Lawyers, interviewed by CCDPW, Apr. 8, 2021. Joanna Concepcion, affiliated with Migrante International, interviewed by CCDPW, Mar. 15, 2021.
- <sup>448</sup> Josalee Deinla, affiliated with the National Union of Peoples' Lawyers, interviewed by CCDPW, Apr. 8, 2021. Joanna Concepcion, affiliated with Migrante International, interviewed by CCDPW, Mar. 15, 2021. Yuni Asriyanti, affiliated with Komnas Perempuan, interviewed by CCDPW, Apr. 13, 2021.
- <sup>449</sup> Josalee Deinla, affiliated with the National Union of Peoples' Lawyers, interviewed by CCDPW, Apr. 8, 2021. Joanna Concepcion, affiliated with Migrante International, interviewed by CCDPW, Mar. 15, 2021. Yuni Asriyanti, affiliated with Komnas Perempuan, interviewed by CCDPW, Apr. 13, 2021.
- <sup>450</sup> Josalee Deinla, affiliated with the National Union of Peoples' Lawyers, interviewed by CCDPW, Apr. 8, 2021. Joanna Concepcion, affiliated with Migrante International, interviewed by CCDPW, Mar. 15, 2021. Yuni Asriyanti, affiliated with Komnas Perempuan, interviewed by CCDPW, Apr. 13, 2021.
- <sup>451</sup> BBC, *Mary Jane Veloso – What Happened to Save Her From Execution?*, <https://perma.cc/WTY5-MBBN>, Apr. 30, 2015.
- <sup>452</sup> Euan McKirdy and Kathy Quiano, *Facing Execution in Indonesia, Filipina Maid Gets Last-Minute Reprieve*, <https://perma.cc/69A9-7LDG>, Apr. 29, 2015.
- <sup>453</sup> Buena Bernal, *The Fate of Mary Jane Veloso*, Rappler, <https://perma.cc/HZT5-C6AZ>, Apr. 2, 2021.
- <sup>454</sup> Josalee Deinla, affiliated with the National Union of Peoples' Lawyers, interviewed by CCDPW, Apr. 8, 2021.
- <sup>455</sup> Joanna Concepcion, affiliated with Migrante International, interviewed by CCDPW, Mar. 15, 2021. Yuni Asriyanti, affiliated with Komnas Perempuan, interviewed by CCDPW, Apr. 13, 2021.
- <sup>456</sup> Josalee Deinla, affiliated with the National Union of Peoples' Lawyers, interviewed by CCDPW, Apr. 8, 2021.
- <sup>457</sup> Josalee Deinla, affiliated with the National Union of Peoples' Lawyers, interviewed by CCDPW, Apr. 8, 2021. Yuni Asriyanti, affiliated with Komnas Perempuan, interviewed by CCDPW, Apr. 13, 2021.
- <sup>458</sup> International Domestic Workers Foundation, *Case Profile: Mary Jane Veloso*, <https://perma.cc/4C33-EEJM>, Apr. 8, 2015.
- <sup>459</sup> Josalee Deinla, affiliated with the National Union of Peoples' Lawyers, interviewed by CCDPW, Apr. 8, 2021.
- <sup>460</sup> *People of the Philippines v. Maria Cristina Sergio and Julius Lacanilao*, p. 2, Case No. 240053, Republic of the Philippines Supreme Court, Oct. 16, 2019. Inquirer,

Timeline: The Case of Mary Jane Veloso, <https://perma.cc/7GMB-EE6P>, May. 2, 2015.

<sup>461</sup> Yuni Asriyanti, affiliated with Komnas Perempuan, interviewed by CCDPW, Apr. 13, 2021.

<sup>462</sup> Ibid.

<sup>463</sup> Ibid.

<sup>464</sup> Josalee Deinla, affiliated with the National Union of Peoples' Lawyers, interviewed by CCDPW, Apr. 8, 2021.

<sup>465</sup> Mary Jane Veloso, poem recited to an interfaith group of visitors at Wirungunan Prison on Sep. 14, 2018, sent by Komnas Perempuan to CCDPW, Apr. 14, 2021.

<sup>466</sup> Claire Phipps, Who Were the Eight People Executed by Indonesia?, The Guardian, <https://perma.cc/TH46-4S5Y>, Apr. 28, 2015.

<sup>467</sup> Josalee Deinla, affiliated with the National Union of Peoples' Lawyers, interviewed by CCDPW, Apr. 8, 2021.

Joanna Concepcion, affiliated with Migrante International, interviewed by CCDPW, Mar. 15, 2021. Yuni Asriyanti, affiliated with Komnas Perempuan, interviewed by CCDPW, Apr. 13, 2021.

<sup>468</sup> Josalee Deinla, affiliated with the National Union of Peoples' Lawyers, interviewed by CCDPW, Apr. 8, 2021.

<sup>469</sup> Reuters, Aquino Appeals to Indonesia One More Time to Keep Filipina Alive, <https://perma.cc/2ZNS-2LRJ>, Apr. 28, 2015.

<sup>470</sup> Claire Phipps, Who Were the Eight People Executed by Indonesia?, The Guardian, <https://perma.cc/TH46-4S5Y>, Apr. 28, 2015.

<sup>471</sup> People of the Philippines v. Maria Cristina Sergio and Julius Lacanilao, Case No. (15)-3666, Republic of the Philippines Third Judicial Region Regional Trial Court Branch 88, Jan. 30, 2020.

<sup>472</sup> People of the Philippines v. Maria Cristina Sergio and Julius Lacanilao, p. 2, Case No. 240053, Republic of the Philippines Supreme Court, Oct. 16, 2019. Josalee Deinla, affiliated with the National Union of Peoples' Lawyers, interviewed by CCDPW, Apr. 8, 2021.

<sup>473</sup> Mary Jane's reprieve was granted on the basis that she was needed as a witness against Maria Cristina Sergio and Julius Lacanilao. Josalee Deinla, affiliated with the National Union of Peoples' Lawyers, interviewed by CCDPW, Apr. 8, 2021.

<sup>474</sup> Josalee Deinla, affiliated with the National Union of Peoples' Lawyers, interviewed by CCDPW, Apr. 8, 2021.

<sup>475</sup> Oliver Holmes, The Observer, Tragic Story of Death-Row Maid Caught Up in Asia's War on Drugs, <https://perma.cc/TUL3-LQ8F>, Sep. 17, 2016.

<sup>476</sup> David Wroe, Bali Nine Executions: Spared Mary-Jane a Figure of Sympathy, Indonesia Scholar Says, The Sydney Morning Herald, <https://perma.cc/88VY-MBMN>, Apr. 29, 2015.

<sup>477</sup> Louie Navarro, Letters from Death Row: Mary Jane Veloso Writes, CNN Philippines, <https://perma.cc/D8E6-39CF>, Apr. 27, 2015.

<sup>478</sup> Mary Jane Veloso, poem recited to visitors, sent by Komnas Perempuan to CCDPW, Sep. 14, 2018.

<sup>479</sup> As of February 2019, there were 121 female foreign nationals on death row, 120 of whom were convicted of capital drug offenses. There were 20 Malaysian women on death row, 14 of whom were convicted of capital drug offenses. Amnesty Intl., *Fatally Flawed: Why Malaysia Must Abolish the Death Penalty*, pp. 19, 52–56, ACT 50/1078/2019, Oct. 8, 2019.

<sup>480</sup> Lucy Harry, Rethinking the Relationship Between Women, Crime and Economic Factors: The Case-Study of Women Sentenced to Death for Drug Trafficking in Malaysia, *Laws*, p. 1, *Laws*, vol. 10, no. 9, Jan. 31, 2021.

<sup>481</sup> Amnesty Intl., A Brief History of the Death Penalty in Malaysia, <https://perma.cc/XJH2-L9KF>, last accessed Jun. 22, 2021.

<sup>482</sup> Ibid.

<sup>483</sup> Amnesty Intl., A Brief History of the Death Penalty in Malaysia, <https://perma.cc/XJH2-L9KF>, last accessed Jun. 22, 2021.

<sup>484</sup> Malaysian authorities observed an official moratorium on executions for three consecutive years, from 2017–2019. Amnesty Intl., *Global Report: Death Sentences and Executions 2020*, p. 29, ACT 50/3760/202, Apr. 21, 2021. As of June 30, 2021, Malaysia had not carried out an execution in 2021. Cornell Center on the Death Penalty Worldwide Death Penalty Database, Malaysia: Executions in 2021 to Date, <https://perma.cc/QEN5-P5VE>, last accessed Jun. 30, 2021. It is unclear when the last woman was executed in Malaysia. Information about death penalty practices in Malaysia is “inconsistent and limited,” since the government does not systematically monitor and report comprehensive figures on the death penalty. Natalia Antolak-Saper et al., *Drug Offences and the Death Penalty in Malaysia: Fair Trial Rights and Ramifications*, p. 16, Monash University, <https://perma.cc/2MQX-CQFH>, May 28, 2020. There were four confirmed executions in Malaysia in 2017. CCDP Database, Malaysia, last accessed Jun. 22, 2021. All four people executed in 2017 were men. Quraishi Muzammil, *Towards a Malaysian Criminology: Conflict, Censure and Compromise*, pp. 149–152, Palgrave Macmillan, 2020. Malaysia executed at least nine people in 2016, but it is unclear whether any of those people were women. Amnesty Intl., *Death Sentences and Executions 2016*, p. 17, ACT 50/5740/2017, 2017.

<sup>485</sup> Amnesty Intl., *Fatally Flawed: Why Malaysia Must Abolish the Death Penalty*, p. 24, ACT 50/1078/2019, Oct. 8, 2019.



- <sup>486</sup> Natalia Antolak-Saper et al., *Drug Offences and the Death Penalty in Malaysia: Fair Trial Rights and Ramifications*, p. 5, Monash University, <https://perma.cc/2MQX-CQFH>, May 28, 2020.
- <sup>487</sup> Malay Mail, *Minister: Special committee submits report on death penalty alternative sentences*, <https://perma.cc/C6Z5-KGDT>, Feb. 11, 2020.
- <sup>488</sup> Dashveenjit Kaur, *Final Report On Death Penalty Replacements To Be Tabled Soon*, The Malaysian Reserve, <https://perma.cc/UDP8-GB4C>, Jul. 15, 2020.
- <sup>489</sup> Amnesty Intl., *Global Report: Death Sentences and Executions 2020*, p. 29, ACT 50/3760/202, Apr. 21, 2021.
- <sup>490</sup> Human Rights Watch, *Asian Nations Reject U.N. Vote Against Death Penalty*, <https://perma.cc/BU8L-2XB4>, Nov. 24, 2020.
- <sup>491</sup> Amnesty accuses Malaysia of holding ‘unfair’ trials leading to death, <https://www.freemalaysiatoday.com/category/nation/2021/04/21/amnesty-accuses-malaysia-of-holding-unfair-trials-leading-to-death/>, Apr. 21, 2021.
- <sup>492</sup> Natalia Antolak-Saper et al., *Drug Offences and the Death Penalty in Malaysia: Fair Trial Rights and Ramifications*, p. 5, Monash University, <https://perma.cc/2MQX-CQFH>, May 28, 2020.
- <sup>493</sup> *Letitia Bosman v. PP and Other Appeals*, para. 8, Criminal Appeal Nos. 05-76-04-2017(J), 05-179-08-2017(B), 05-214-092017(K) & 05(M)-118-05-2018(B), 5 MLRA 636, Putrajaya Federal Court, Aug. 13, 2020.
- <sup>494</sup> Malaysia’s death row population rose from 245 people in 1996 to 1,281 in 2019. Amnesty Intl., *A Brief History of the Death Penalty in Malaysia*, <https://perma.cc/XJH2-L9KF>, last accessed Jun. 22, 2021.
- <sup>495</sup> Cornell Center on the Death Penalty Worldwide Death Penalty Database, *Number of Individuals on Death Row*, <https://perma.cc/FG98-FHV8>, last accessed Jul. 1, 2021.
- <sup>496</sup> Malaysian Parliamentary Q&A, *Question No. 20* [translated by the CCDPW], pp. 1–2, Nov. 26, 2020.
- <sup>497</sup> Additionally, data on the death row population as a whole suggests that Malaysian women on death row are disproportionately of Indian origin. 7% of the total Malaysian population, and 25% of all Malaysian nationals on death row (including men and women), are of Indian origin. *Ibid.* at 22.
- <sup>498</sup> *Ibid.* at 20.
- <sup>499</sup> As of February 2019, 49% of the men sentenced for drug trafficking were foreign nationals. *Ibid.* at 19.
- <sup>500</sup> Dangerous Drugs Act of Malaysia, sec. 39B(1), amended by Act A1558 of 2017, 1952.
- <sup>501</sup> *Ibid.* at 37(d) and 37(d)(a).
- <sup>502</sup> *Ibid.* at 39B(1) and 39B(2A). See also Natalia Antolak-Saper et al., *Drug Offences and the Death Penalty in Malaysia: Fair Trial Rights and Ramifications*, p. 29, Monash University, <https://perma.cc/2MQX-CQFH>, May 28, 2020.
- <sup>503</sup> *Ibid.* at 37(d).
- <sup>504</sup> *Ibid.* at 37(d)(a). For an explanation of double presumptions, see: *Alma Nudo Atenza v. PP and Another Appeal*, para. 139, 3 MLRA, Federal Court, Putrajaya, Apr. 5, 2019. In one case, the defendant claimed that she was not aware that her bag contained drugs, but the court concluded that “where a large quantity of drugs is found in possession of a person, common sense dictates that an inference be made that it was not intended for his personal consumption and convincing evidence is needed to rebut that inference.” *Luo Dan v. Public Prosecutor*, para. 2, Criminal Appeal No. J-05(M)-609-12-2017, Court of Appeal, Putrajaya, May 13, 2019.
- <sup>505</sup> Natalia Antolak-Saper et al., *Drug Offences and the Death Penalty in Malaysia: Fair Trial Rights and Ramifications*, p. 30, Monash University, <https://perma.cc/2MQX-CQFH>, May 28, 2020.
- <sup>506</sup> *Alma Nudo Atenza v. PP and Another Appeal*, para. 151, 3 MLRA, Federal Court, Putrajaya, Apr. 5, 2019.
- <sup>507</sup> Natalia Antolak-Saper et al., *Drug Offences and the Death Penalty in Malaysia: Fair Trial Rights and Ramifications*, p. 31, Monash University, <https://perma.cc/2MQX-CQFH>, May 28, 2020.
- <sup>508</sup> *Alma Nudo Atenza v. PP and Another Appeal*, para. 152, 3 MLRA, Federal Court, Putrajaya, Apr. 5, 2019. See also Amnesty Intl., *Fatally Flawed: Why Malaysia Must Abolish the Death Penalty*, p. 31, ACT 50/1078/2019, Oct. 8, 2019.
- <sup>509</sup> Dangerous Drugs Act of Malaysia, secs. 39B(1) and 39B(2A), amended by Act A1558 of 2017, 1952. See also Natalia Antolak-Saper et al., *Drug Offences and the Death Penalty in Malaysia: Fair Trial Rights and Ramifications*, p. 29, Monash University, <https://perma.cc/2MQX-CQFH>, May 28, 2020.
- <sup>510</sup> Under the amended statute, judges can sentence defendants convicted of drug trafficking to life imprisonment and whipping, as long as the defendant assists helps law enforcement disrupt drug trafficking activities and the defendant meets one of three additional criteria: (a) there was no evidence of buying or selling the drug when the defendant was arrested, (b) an undercover agent was not involved, or (c) the defendant’s involvement is restricted to transporting, carrying, sending, or delivering the drug. Dangerous Drugs Act of Malaysia, secs. 39B(1) and 39B(2A), amended by Act A1558 of 2017, 1952. The amendment did not apply retroactively to the people already on death row, who make up 84% of the current death row population. Amnesty Intl., *Fatally Flawed: Why Malaysia Must Abolish the Death Penalty*, p. 24, ACT 50/1078/2019, Oct. 8, 2019.

<sup>511</sup> Of the 38 drug trafficking cases that judges heard between March 2018 and October 2020, judges used sentencing discretion in only 28.9% of the cases and imposed a sentence other than death in only 10.5% of the cases. The number of people sentenced to death for drug trafficking has continued to rise since Parliament passed the 2017 amendment. Sara Kowal, Dobby Chew, and Mai Sato, *Discretion in law but not in practise: Malaysia's Dangerous Drugs Act*, Monash University, <https://perma.cc/ZL9J-M4J4>, Jul. 19, 2021.

<sup>512</sup> Natalia Antolak-Saper et al., *Drug Offences and the Death Penalty in Malaysia: Fair Trial Rights and Ramifications*, p. 30, Monash University, <https://perma.cc/2MQX-CQFH>, May 28, 2020. According to Amnesty International's research in Singapore, where judges also have sentencing discretion in capital drug cases if defendants assist law enforcement, low-level drug couriers are least likely to be able to assist law enforcement and are thus more likely to face execution. Amnesty Intl., *Malaysia: Action Needed to Make Death Penalty Bill Meaningful Opportunity for Change*, p. 2, ACT 50/7510/2017, Nov. 2017.

<sup>513</sup> According to global research, women are less likely to have high-ranking positions in the drug economy, "in which a stratified and masculine system prevails." U.N. Office on Drugs And Crime, *Women And Drugs: Drug Use, Drug Supply and Their Consequences*, pp. 27, 31, <https://perma.cc/NMT7-9WB2>, Jun. 2018. Many men and women on death row for drug offenses in Malaysia had little or no information about the broader context of their jobs. Amnesty Intl., *Fatally Flawed: Why Malaysia Must Abolish the Death Penalty*, p. 23, ACT 50/1078/2019, Oct. 8, 2019.

<sup>514</sup> The study also included the cases of women whose death sentences were reversed on appeal.

<sup>515</sup> Lucy Harry, *Rethinking the Relationship between Women, Crime and Economic Factors: The Case-Study of Women Sentenced to Death for Drug Trafficking in Malaysia*, p. 12, *Laws*, vol. 10, no. 9, 2021.

<sup>516</sup> *Ibid.*

<sup>517</sup> See *The Role of Economic Insecurity in Pathways to Drug Offending (Section IV.A.)*

<sup>518</sup> Harry's study identified the occupations prior to arrest of 87/146 of the women. Thirteen were unemployed, and 70 worked in low-paid jobs that did not require higher education or significant training, such as domestic worker, bartender, and cashier. Six of the women—those who worked as a masseuse or sex worker—likely worked in the illicit economy. The study identified only four women in more high-paid, "high-skilled" occupations (an accountant, a nurse, and two teachers). Lucy Harry, *Rethinking the Relationship between Women, Crime and Economic Factors: The Case-Study of Women Sentenced to Death for*

*Drug Trafficking in Malaysia*, pp. 10–11, *Laws*, vol. 10, no. 9, 2021.

<sup>519</sup> *Ibid.* at p. 13.

<sup>520</sup> *Ibid.* at pp. 12–13.

<sup>521</sup> *Ibid.*

<sup>522</sup> Amnesty Intl., *Fatally Flawed: Why Malaysia Must Abolish the Death Penalty*, pp. 20–23, ACT 50/1078/2019, Oct. 8, 2019.

<sup>523</sup> The innocent carrier defense "is particularly prevalent amongst those vulnerable members of the death-row population, notably foreign nationals who are female." Natalia Antolak-Saper et al., *Drug Offences and the Death Penalty in Malaysia: Fair Trial Rights and Ramifications*, p. 32, Monash University, <https://perma.cc/2MQX-CQFH>, May 28, 2020.

<sup>524</sup> Harry identified 82 cases in which women were arrested between 1982–2018 for carrying drugs into an airport. In over three-fourths of these cases, the defendants argued that they were unaware that they were carrying drugs. Lucy Harry, affiliated with the University of Oxford, email to DPW, Jul. 5, 2021. Researchers from the Anti-Death Penalty Asia Network and Monash University analyzed cases in which defendants were charged with drug trafficking between January 2016 to June 2021. The researchers found that 69.2% of the 13 women, and only 54.7% of the men, charged during this time relied on the 'lack of knowledge' defense. Sara Kowal, Dobby Chew, and Mai Sato, *Discretion in law but not in practise: Malaysia's Dangerous Drugs Act*, Monash University, <https://perma.cc/ZL9J-M4J4>, Jul. 19, 2021. Most of the women in Amnesty's survey of 30 women convicted of capital drug offenses likewise said that they were not aware they were carrying illicit drugs. Amnesty Intl., *Fatally Flawed: Why Malaysia Must Abolish the Death Penalty*, p. 21, ACT 50/1078/2019, Oct. 8, 2019.

<sup>525</sup> In several cases, women received about USD \$500 for carrying a bag. In another case, a woman found with drugs in her body said that she did not understand that the capsules she was forced to swallow contained illicit drugs. After she agreed to carry some diamonds from Brazil for USD \$2,200, her business contact locked her in a house, blindfolded her, and threatened to kill her if she did not swallow round-shaped objects—which she was told were diamonds—for four hours. Soon after, two men inserted more small bags into her vagina. The judges, however, dismissed her defense, arguing that her behavior was "inconsistent with the conduct of someone who was at one point of time under the threat of being killed" because she did not inform airport officials of her situation. Amnesty Intl., *Fatally Flawed: Why Malaysia Must Abolish the Death Penalty*, p. 21, ACT 50/1078/2019, Oct. 8, 2019.



- <sup>526</sup> See *The Role of Economic Insecurity in Pathways to Drug Offending (Section IV.A.) and Manipulative Relationships (Section IV.B.)*.
- <sup>527</sup> Lucy Harry, *Rethinking the Relationship between Women, Crime and Economic Factors: The Case-Study of Women Sentenced to Death for Drug Trafficking in Malaysia*, pp. 11–14, *Laws*, vol. 10, no. 9, 2021.
- <sup>528</sup> Amnesty Intl., *Fatally Flawed: Why Malaysia Must Abolish the Death Penalty*, pp. 21–23, ACT 50/1078/2019, Oct. 8, 2019.
- <sup>529</sup> *Ibid.*
- <sup>530</sup> *Ibid.*
- <sup>531</sup> Lucy Harry, *Rethinking the Relationship between Women, Crime and Economic Factors: The Case-Study of Women Sentenced to Death for Drug Trafficking in Malaysia*, p. 14, *Laws*, vol. 10, no. 9, 2021.
- <sup>532</sup> Court of Appeal of Malaysia, B-05-23-01/2012 (PHL) (2014). Cited in Amnesty Intl., *Fatally Flawed: Why Malaysia Must Abolish the Death Penalty*, p. 21, ACT 50/1078/2019, Oct. 8, 2019.
- <sup>533</sup> *Dangerous Drugs Act of Malaysia*, secs. 37 (d) and 37 (d)(a), amended by Act A1558 of 2017, 1952.
- <sup>534</sup> Natalia Antolak-Saper et al., *Drug Offences and the Death Penalty in Malaysia: Fair Trial Rights and Ramifications*, p. 30, Monash University, <https://perma.cc/2MQX-CQFH>, May 28, 2020.
- <sup>535</sup> *Ibid.* at 32
- <sup>536</sup> *Ibid.*
- <sup>537</sup> “Ignorance is a defence when there is no reason for suspicion and no right and opportunity of examination, and ignorance simpliciter is not enough.” *Public Prosecutor v. Zolzaya Natsagroj and Barsbaatar Ganbold*, para. 32, Criminal Trial No. 45A-152-08/2013, High Court of Malaysia at Shah Alam, Aug. 2013.
- <sup>538</sup> Natalia Antolak-Saper et al., *Drug Offences and the Death Penalty in Malaysia: Fair Trial Rights and Ramifications*, p. 33, Monash University, <https://perma.cc/2MQX-CQFH>, May 28, 2020.
- <sup>539</sup> *Ibid.* Amnesty Intl., *Fatally Flawed: Why Malaysia Must Abolish the Death Penalty*, p. 7, ACT 50/1078/2019, Oct. 8, 2019.
- <sup>540</sup> *Luo Dan v. Public Prosecutor*, para. 5, Criminal Appeal No. J-05(M)-609-12-2017, Court of Appeal, Putrajaya, May 13, 2019.
- <sup>541</sup> *Ibid.*
- <sup>542</sup> *Ibid.* at 1–19.
- <sup>543</sup> *Ibid.* at 8–9.
- <sup>544</sup> *Ibid.* at 1–19.
- <sup>545</sup> *Ibid.* at 24.
- <sup>546</sup> *Ibid.* A court has since reduced Luo Dan’s sentence to 15 years. *V Anbalagan*, In *Landmark Ruling, Apex Court Frees 2 Businessmen On Drugs Manufacturing Charge*, *Free Malaysia Today*, <https://www.freemalaysiatoday.com/category/nation/2020/08/25/in-landmark-ruling-apex-court-frees-2-businessmen-on-drugs-manufacturing-charge/>, Aug. 25, 2020.
- <sup>547</sup> Lucy Harry, *Rethinking the Relationship between Women, Crime and Economic Factors: The Case-Study of Women Sentenced to Death for Drug Trafficking in Malaysia*, pp. 9–10, *Laws*, vol. 10, no. 9, 2021.
- <sup>548</sup> *Xio Qing v. PP*, para. 69, B-05(M)-514-10/2018, Court of Appeal, Putrajaya, December 27, 2019.
- <sup>549</sup> The Malaysian courts manage a legal aid scheme to provide free representation, but only for trials and appeals. Two additional schemes have emerged to cover the pre-trial stage, which includes arrest, remand, and bail applications. One, run by the National Legal Aid Foundation, provides pre-trial aid for Malaysians only. Another scheme, run by the Malaysian Bar, provides pre-trial representation to offenders of all nationalities. Despite these initiatives, many defendants without resources to hire lawyers are unable to receive pre-trial legal aid. One lawyer estimated that the program run by the Malaysian Bar only has the resources to provide pre-trial aid in 60-70% of cases that need it, and even less in some areas of the country. Amnesty Intl., *Fatally Flawed: Why Malaysia Must Abolish the Death Penalty*, p. 6, ACT 50/1078/2019, Oct. 8, 2019.
- <sup>550</sup> Joint Stakeholder Report for the 31<sup>st</sup> Session of the Working Group on the Universal Periodic Review, *Death Penalty in Malaysia*, p. 5, Mar. 2018.
- <sup>551</sup> Natalia Antolak-Saper et al., *Drug Offences and the Death Penalty in Malaysia: Fair Trial Rights and Ramifications*, p. 33, Monash University, <https://perma.cc/2MQX-CQFH>, May 28, 2020.
- <sup>552</sup> Amnesty Intl., *Fatally Flawed: Why Malaysia Must Abolish the Death Penalty*, p. 28, ACT 50/1078/2019, Oct. 8, 2019.
- <sup>553</sup> *Ibid.* at 6.
- <sup>554</sup> *Ibid.* at 39.
- <sup>555</sup> *Ibid.* at 31–32. International standards protect the right to interpretation. See, e.g., U.N.G.A., *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, principle 14, resolution 43/173, Dec. 9, 1988. See also Amnesty Intl., *Fair Trial Manual*, Second Edition, p. 84, POL 30/002/2014, Apr. 9, 2014.
- <sup>556</sup> Amnesty Intl., *Fatally Flawed: Why Malaysia Must Abolish the Death Penalty*, p. 31, ACT 50/1078/2019, Oct. 8, 2019.
- <sup>557</sup> *Ibid.*

- <sup>558</sup> Ibid. at 7, 31.
- <sup>559</sup> Joint Stakeholder Report for the 31<sup>st</sup> Session of the Working Group on the Universal Periodic Review, Death Penalty in Malaysia, p. 4, Mar. 2018.
- <sup>560</sup> See Avalie’s profile (Section VI.B.).
- <sup>561</sup> Amnesty Intl., *Fatally Flawed: Why Malaysia Must Abolish the Death Penalty*, p. 32, ACT 50/1078/2019, Oct. 8, 2019.
- <sup>562</sup> Ibid.
- <sup>563</sup> As of February 2019, foreign nationals on death row were 10% less likely to file a pardon petition than Malaysian death-sentenced prisoners. Ibid. at 7–8.
- <sup>564</sup> As of February 2019, women were held in nine prisons across the country: the Kajang, Kota Kinabalu, Pengkalan Chepa, Pokok Sena, Puncak Borneo, Seberang Perai, Sibul, Sungai Udang, and Tapah prisons. Ibid. at 52–56.
- <sup>565</sup> Ibid. at 19.
- <sup>566</sup> “In all prisons, death row prisoners are housed in quarters separated from other prisoners.” Carole Berrih and Ngeow Chow Ying, *Isolation and Desolation: Conditions of Detention of People Sentenced to Death Malaysia*, p. 78, Anti-Death Penalty Asia Network and Ensemble Contre la Peine de Mort, <https://perma.cc/984B-Z6P7>, 2020. Other sources confirm that death row prisoners are placed in solitary confinement and allowed out of their cells for only one hour per day. See Kate Mayberry, *Malaysia says no ‘U-turn’ in death penalty abolition*, Al Jazeera, <https://perma.cc/V68G-VFBU>, Nov. 15, 2018.
- <sup>567</sup> The Human Rights Commission of Malaysia (SUHAKAM), *The Right to Health in Prison: Results of a Nationwide Survey and Report*, p. 73, [https://drive.google.com/file/d/0B6FQ7SONa3PRZXNaejlsZktQWTg/view?resourcekey=0-BbH-7\\_gU9E6OkYTy8VwGVA](https://drive.google.com/file/d/0B6FQ7SONa3PRZXNaejlsZktQWTg/view?resourcekey=0-BbH-7_gU9E6OkYTy8VwGVA), 2017.
- <sup>568</sup> Carole Berrih and Ngeow Chow Ying, *Isolation and Desolation: Conditions of Detention of People Sentenced to Death Malaysia*, p. 80, Anti-Death Penalty Asia Network and Ensemble Contre la Peine de Mort, <https://perma.cc/984B-Z6P7>, 2020.
- <sup>569</sup> See Bonnie’s profile (Section V.B.).
- <sup>570</sup> Carole Berrih and Ngeow Chow Ying, *Isolation and Desolation: Conditions of Detention of People Sentenced to Death Malaysia*, p. 82, Anti-Death Penalty Asia Network and Ensemble Contre la Peine de Mort, <https://perma.cc/984B-Z6P7>, 2020.
- <sup>571</sup> Ibid.
- <sup>572</sup> The Human Rights Commission of Malaysia published a report on prison conditions in 2017. The Commission conducted visits in 2014 to 18 prisons, including seven where, by 2019, female prisoners were reported to be on death row. (In 2019, women were on death row at the Kajang, Kota Kinabalu, Pengkalan Chepa, Puncak Borneo, Sibul, Sungai Udang, and Tapah prisons, all of which the Commission visited in 2014. See: Amnesty Intl., *Fatally Flawed: Why Malaysia Must Abolish the Death Penalty*, p. 19, ACT 50/1078/2019, Oct. 8, 2019.) The Commission surveyed 762 female prisoners, and, although the authors did not indicate how many of these women were on death row, they reported having observed at least one death-sentenced woman. Of the 51 incarcerated women surveyed for the report who were pregnant or who had previously been pregnant while in prison, only 67% reported having access to pre/post-natal health services during imprisonment, and only 37% reported having diets suitable for pregnancy. The Human Rights Commission of Malaysia (SUHAKAM), *The Right to Health in Prison: Results of a Nationwide Survey and Report*, pp. 7, 49, 51, 74, [https://drive.google.com/file/d/0B6FQ7SONa3PRZXNaejlsZktQWTg/view?resourcekey=0-BbH-7\\_gU9E6OkYTy8VwGVA](https://drive.google.com/file/d/0B6FQ7SONa3PRZXNaejlsZktQWTg/view?resourcekey=0-BbH-7_gU9E6OkYTy8VwGVA), 2017.
- <sup>573</sup> Malaysian Prisons Regulations, art. 13(1), 193/2003, Sept. 1, 2000.
- <sup>574</sup> The Human Rights Commission of Malaysia (SUHAKAM), *The Right to Health in Prison: Results of a Nationwide Survey and Report*, p. 87, [https://drive.google.com/file/d/0B6FQ7SONa3PRZXNaejlsZktQWTg/view?resourcekey=0-BbH-7\\_gU9E6OkYTy8VwGVA](https://drive.google.com/file/d/0B6FQ7SONa3PRZXNaejlsZktQWTg/view?resourcekey=0-BbH-7_gU9E6OkYTy8VwGVA), 2017.
- <sup>575</sup> Ibid. at 51. The Commission observed that “access to regular provision and sufficient numbers of sanitary napkins are not standardised in prison, resulting in a lack of adequate menstrual hygiene management in prisons.”
- <sup>576</sup> Ibid. at 68.
- <sup>577</sup> Ibid. at 85.
- <sup>578</sup> Amnesty Intl., *Fatally Flawed: Why Malaysia Must Abolish the Death Penalty*, pp. 52-56, ACT 50/1078/2019, Oct. 8, 2019.
- <sup>579</sup> Lucy Harry, *Rethinking the Relationship between Women, Crime and Economic Factors: The Case-Study of Women Sentenced to Death for Drug Trafficking in Malaysia*, p. 12, *Laws*, vol. 10, no. 9, 2021.
- <sup>580</sup> Amnesty Intl., *Fatally Flawed: Why Malaysia Must Abolish the Death Penalty*, pp. 21–23, ACT 50/1078/2019, Oct. 8, 2019.
- <sup>581</sup> U.N. Office on Drugs And Crime, *Women And Drugs: Drug Use, Drug Supply and Their Consequences*, pp. 27, 31, <https://perma.cc/NMT7-9WB2>, Jun. 2018.
- <sup>582</sup> Natalia Antolak-Saper et al., *Drug Offences and the Death Penalty in Malaysia: Fair Trial Rights and Ramifications*, p. 29, Monash University, <https://perma.cc/2MOX-CQFH>, May 28, 2020.

- <sup>583</sup> Natalia Antolak-Saper et al., *Drug Offences and the Death Penalty in Malaysia: Fair Trial Rights and Ramifications*, p. 30, Monash University, <https://perma.cc/2MOX-CQFH>, May 28, 2020.
- <sup>584</sup> Amnesty Intl., *Fatally Flawed: Why Malaysia Must Abolish the Death Penalty*, pp. 31–32, ACT 50/1078/2019, Oct. 8, 2019.
- <sup>585</sup> Carole Berrih and Ngeow Chow Ying, *Isolation and Desolation: Conditions of Detention of People Sentenced to Death Malaysia*, p. 78, Anti-Death Penalty Asia Network and Ensemble Contre la Peine de Mort, <https://perma.cc/984B-Z6P7>, 2020.
- <sup>586</sup> The Human Rights Commission of Malaysia (SUHAKAM), *The Right to Health in Prison: Results of a Nationwide Survey and Report*, pp. 7, 49, 51, 74, [https://drive.google.com/file/d/0B6FQ7SONa3PRZXNaejlsZktQWTg/view?resourcekey=0-BbH-7\\_gU9E6OkYTy8VwGVA](https://drive.google.com/file/d/0B6FQ7SONa3PRZXNaejlsZktQWTg/view?resourcekey=0-BbH-7_gU9E6OkYTy8VwGVA), 2017.
- <sup>587</sup> Datuk N. Sivananthan, *Avalie’s lawyer on appeal*, interviewed by DPW, Mar. 22, 2021.
- <sup>588</sup> Amnesty Intl., *Fatally Flawed, Why Malaysia Must Abolish the Death Penalty*, p. 32, ACT 50/1078/2019, Oct. 8, 2019.
- <sup>589</sup> Datuk N. Sivananthan, *Avalie’s lawyer on appeal*, interviewed by DPW, Mar. 22, 2021.
- <sup>590</sup> Amnesty Intl., *Fatally Flawed, Why Malaysia Must Abolish the Death Penalty*, p. 32, ACT 50/1078/2019, Oct. 8, 2019.
- <sup>591</sup> Datuk N. Sivananthan, *Avalie’s lawyer on appeal*, interviewed by DPW, Mar. 22, 2021.
- <sup>592</sup> *Ibid.*
- <sup>593</sup> Amnesty Intl., *Fatally Flawed, Why Malaysia Must Abolish the Death Penalty*, p. 32, ACT 50/1078/2019, Oct. 8, 2019.
- <sup>594</sup> Datuk N. Sivananthan, *Avalie’s lawyer on appeal*, interviewed by DPW, Mar. 22, 2021.
- <sup>595</sup> The criminal legal process has three stages in Thailand: Courts of First Instance, Courts of Appeal and the Supreme Court. Court of Justice Thailand, *The Court of Justice System*, <https://coj.go.th/th/content/page/index/id/91994>, last accessed Jun. 16, 2021. As of February 2021, the cases of twenty-seven women are at the Courts of Appeal, the case of one woman is at the Supreme Court, and three women have exhausted all their appeals. See Department of Corrections of Thailand, *Statistics Report for the Death Row Inmates*, <https://perma.cc/UF2A-6TE6>, Mar. 23, 2021.
- <sup>596</sup> Department of Corrections of Thailand, *Statistics Report for the Death Row Inmates*, <https://perma.cc/UF2A-6TE6>, Mar. 23, 2021.
- <sup>597</sup> *Ibid.*
- <sup>598</sup> Other research provides information on how death rows break down by gender in several other countries. Cornell Center on the Death Penalty Worldwide, *Judged for More than Her Crime*, pp. 9–10, Cornell Law School, Sept. 2018.
- <sup>599</sup> Cornell Center on the Death Penalty Worldwide, *Death Penalty Database*, last accessed Jun. 13, 2021.
- <sup>600</sup> Amnesty Intl., *Thailand: Country’s first execution since 2009 a deplorable move*, <https://perma.cc/ZFM9-PV6T>, Jun. 19, 2018.
- <sup>601</sup> “Retentionist in practice, namely States in which the death penalty remains lawful and that have conducted an execution during the previous 10 years.” See U.N. Economic and Social Council, *Report of the Secretary-General, Capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty*, p. 5, U.N. Doc. E/2015/49, Apr. 13, 2015.
- <sup>602</sup> Amnesty Intl., *Thailand: Country’s first execution since 2009 a deplorable move*, <https://perma.cc/ZFM9-PV6T>, Jun. 19, 2018.
- <sup>603</sup> Thailand has executed three women since 1942. See Intl. Federation for Human Rights and Union for Civil Liberty, *Shadow report on the situation of torture and ill-treatment of prisoners in Thailand*, p. 4, <https://perma.cc/X49O-3U7A>, Apr. 30, 2014. Yai Sonthibumroong was executed in 1942 and Ginggaew Lorsoongnern was executed in 1979 for conspiring in a kidnapping and murder. See Amber Blaize, *The Woman Who Was Executed Twice*, Medium, <https://perma.cc/9BTN-EANJ>, Nov. 7, 2020. Samai Pantintara was executed in 1999 for drug trafficking. See Amnesty Intl., *Tailandiaiaai menos 36 personas en espera de ejecuci3n*, p. 1, ASA 39/05/99/s, Nov. 24, 1999. See also *Hands off Cain*, <https://perma.cc/8TMB-WJXW>, last accessed Jun. 16, 2020.
- <sup>604</sup> Narcotics Act of Thailand, sec. 7(1), B.E. 2562, 2019. Category one drugs are: heroin, amphetamine, methamphetamine, MDMA (Ecstasy), and LSD. Patcharavalan Akbar & Gloria Lai, *Thailand Amends Drug Law to Reduce Penalties and Ensure More Proportionate Sentencing*, IDPC, <https://idpc.net/blog/2017/02/thailand-amends-drug-law-to-reduce-penalties-and-ensure-more-proportionate-sentencing>, Feb. 15, 2017.
- <sup>605</sup> Narcotics Act of Thailand, sec. 65, 66, B.E. 2562, 2019. According to a source within the judiciary interviewed by the authors, the ministry of justice provides judges with confidential sentencing guidelines setting out the minimum amounts for which people can be sentenced to death. Anonymous source within the judiciary, *Interview with the CCDPW*, Jun. 8, 2021.
- <sup>606</sup> Courts presume that defendants in possession of at least 0.75 milligrams of LSD, 375 milligrams of amphetamine, or

three grams of other category one drugs intend to distribute the drugs. Narcotics Act of Thailand, sec. 15, B.E. 2562, 2019.

<sup>607</sup> According to a source within the judiciary interviewed by the Cornell Center on the Death Penalty Worldwide, neither the Criminal Procedure Code nor confidential judicial guidelines mandate that the defendant rebut the presumption beyond a reasonable doubt, but judges use this standard in practice. Anonymous source within the judiciary, Interview with the CCDPW, Jun. 8, 2021.

<sup>608</sup> The ICCPR provides that “everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty . . .”. See ICCPR, art. 14, para. 2, 999 U.N.T.S. 171, Dec. 16, 1966. The Human Rights Committee has specified that the presumption of innocence “imposes on the prosecution the burden of proving the charge [and] guarantees that no guilt can be presumed until the charge has been proved beyond reasonable doubt.” See Human Rights Committee, General comment No. 32 on Article 14 of the ICCPR, para. 30, U.N. Doc. CCPR/C/GC/32, Aug. 23, 2007. The Inter-American Court, the European Court and the African Commission have also indicated that the presumption of innocence requires the prosecution to prove guilt beyond a reasonable doubt. See Amnesty Intl., Fair Trial Manual Second Edition, p. 125, Second edition, p.84, POL 30/002/2014, Apr. 9, 2014. The U.N. Safeguards guaranteeing protection of the rights of those facing the death penalty supports the Human Rights Committee’s interpretation of the right of presumption of innocence, providing that “capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts.” See U.N. Economic and Social Council, Resolution 1984/50 on Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, art. 4, May. 24, 1984, Endorsed by the U.N. General Assembly in resolution 39/118 adopted without a vote on Dec. 14, 1984. The HRC has expressed concerns that New Zealand’s Misuse of Drugs Act 1975, which presumes that defendants in possession of the statutory amount of drugs are trafficking, violates the ICCPR. See Human Rights Committee, Concluding observations of the Human Rights Committee, Consideration of reports submitted by States parties under article 40 of the Covenant, para. 17, U.N. Doc. CCPR/C/NZL/CO/5, Apr. 7, 2010. Misuse of Drugs Act of New Zealand, Schedule 5, Dec. 1, 2009. Legal advocates also argue that courts violate defendants’ fair trial rights by presuming that defendants in possession of drugs were intending to traffic them. See Harm Reduction Intl., The Death Penalty for Drug Offenses: Global Overview 2019, pp. 21-25, <https://perma.cc/27GN-9FGR>, Mar. 2020. S. Pinto, Is the death penalty the answer to drug crime?, Amnesty Intl., <https://perma.cc/YFB3-2VXP>, Oct. 9, 2015.

<sup>609</sup> As of this writing, over 84% of the women incarcerated in Thailand were convicted of drug offenses. See Thailand Institute of Justice, Women’s Pathways into, through and out of Prison, p. 118, <https://perma.cc/XVG4-G96S>, Mar. 8, 2021.

<sup>610</sup> According to data from 2017, Thailand incarcerated 60.7 women prisoners per 100,000 people. See Roy Walmsley, World Female Imprisonment List: Fourth Edition, p. 2, World Prison Brief, <https://perma.cc/TTV4-UM8U>, 2017.

<sup>611</sup> Thailand Institute of Justice, Research on the Causes of Recidivism in Thailand, p. 6, <https://perma.cc/383J-X65B>, Mar. 2021.

<sup>612</sup> Department of Corrections of Thailand, Statistics Report for the Death Row Inmates, <https://perma.cc/UF2A-6TE6>, Mar. 23, 2021.

<sup>613</sup> In a 2021 study of 16 women convicted of cross-border trafficking, 8 of whom were sentenced to death, 93.8% of the women had never been previously arrested. By contrast, 39% of the 18 men in that study, six of whom were sentenced to death, had been previously arrested. See Samantha Jeffries et al., Extending Borders of Knowledge: Gendered Pathways to Prison in Thailand for International Cross Border Drug Trafficking, p. 12, Psychiatry, Psychology and Law, <https://perma.cc/BV2H-N352>, May 26, 2021. Of incarcerated individuals, including 39 women convicted of drug offenses and four women sentenced to death, only 17% of the women and 41% of the men in the study had prior criminal records. See Samantha Jeffries et al., A gender-comparative exploration of women’s and men’s pathways to prison in Thailand, p. 547, Australian & New Zealand Journal of Criminology, volume 53, issue 4, Dec. 1, 2020. Of persons convicted of drug offenses, including one woman sentenced to death, 33% of the women and 56% of the men had been previously arrested. See Samantha Jeffries et al., Gendered Pathways to Prison in Thailand for Drug Offending? Exploring Women’s and Men’s Narratives of Offending and Criminalization, p. 86, Contemporary Drug Problems, volume 46, issue 1, Mar. 2019.

<sup>614</sup> Samantha Jeffries et al., Extending Borders of Knowledge: Gendered Pathways to Prison in Thailand for International Cross Border Drug Trafficking. p. 19, Psychiatry, Psychology and Law, <https://perma.cc/BV2H-N352>, May 26, 2021.

<sup>615</sup> Ibid. at 13. In a 2018 survey of 2,499 incarcerated women, 79.9% of whom had been convicted of a drug offense, the two most commonly reported factors leading to the offense were financial need (22.3% of responses) and the need to support family (15.6% of responses). See Thailand Institute of Justice, Prison Database: Thailand, <https://perma.cc/PC5M-A2SM>, last accessed Jul. 21, 2021. Other research suggests that most incarcerated women were



the sole providers for their families before their arrest. According to a survey of 450 incarcerated women, of whom 83% were convicted of drug-related offenses and at least four were originally sentenced to death, 55% of respondents financially supported themselves, their children, and/or their family without help, and over half of respondents reported their income was not enough to live on. See Thailand Institute of Justice, *Women Prisoners and the Implementation of the Bangkok Rules in Thailand*, pp. 131–132, <https://perma.cc/D353-T6N9>, Nov. 2014.

<sup>616</sup> Eight of the women and five of the men originally sentenced to death had their sentences reduced by the time of the study. Samantha Jeffries, affiliated with the School of Criminology and Criminal Justice at Griffith University, interviewed by CCDPW, DPW Thailand Doc. E-1, Mar. 21, 2021.

<sup>617</sup> Samantha Jeffries et al., *Extending Borders of Knowledge: Gendered Pathways to Prison in Thailand for International Cross Border Drug Trafficking*, p. 13, *Psychiatry, Psychology and Law*, <https://perma.cc/BV2H-N352>, May 26, 2021. In a 2018 survey of 2,499 incarcerated women, 79.9% of whom had been convicted of a drug offense, the two most commonly reported factors leading to the offense were financial need (22.3% of responses) and the need to support family (15.6% of responses). See Thailand Institute of Justice, *Prison Database: Thailand*, <https://perma.cc/PC5M-A2SM>, 2018. Other research suggests that most incarcerated women were the sole providers for their families before their arrest. According to a survey of 450 incarcerated women, of whom 83% were convicted of drug-related offenses and at least four were originally sentenced to death, 55% of respondents financially supported themselves, their children, and/or their family without help, and over half of respondents reported their income was not enough to live on. See Thailand Institute of Justice, *Women Prisoners and the Implementation of the Bangkok Rules in Thailand*, pp. 131–132, <https://perma.cc/84UJ-CXXN>, Nov. 2014.

<sup>618</sup> Thailand Institute of Justice, *Women Prisoners and the Implementation of the Bangkok Rules in Thailand*, pp. 131–132, <https://perma.cc/84UJ-CXXN>, Nov. 2014.

<sup>619</sup> Samantha Jeffries et al., *Extending Borders of Knowledge: Gendered Pathways to Prison in Thailand for International Cross Border Drug Trafficking*, p. 11, *Psychiatry, Psychology and Law*, <https://perma.cc/BV2H-N352>, May 26, 2021. Thailand Institute of Justice, *Prison Database: Thailand*, <https://perma.cc/PC5M-A2SM>, last accessed Jul. 21, 2021. Samantha Jeffries, Chontit Chuenurah & Rebecca Wallis, *Gendered Pathways to Prison in Thailand for Drug Offending? Exploring Women’s and Men’s Narratives of Offending and Criminalization*, pp. 96–99, <https://perma.cc/WWM5-EUKH>, Dec. 17, 2018. Tristan Russel & Samantha Jeffries, *A gender-comparative exploration of women’s and men’s pathways to prison in*

Thailand, pp. 552–555, <https://journals.sagepub.com/doi/abs/10.1177/0004865820954463>, Sep. 23, 2020.

<sup>620</sup> Samantha Jeffries et al., *Extending Borders of Knowledge: Gendered Pathways to Prison in Thailand for International Cross Border Drug Trafficking*, p. 13, *Psychiatry, Psychology and Law*, <https://perma.cc/BV2H-N352>, May 26, 2021. Thailand Institute of Justice, *Prison Database: Thailand*, <https://perma.cc/PC5M-A2SM>, last accessed Jul. 21, 2021. Thailand Institute of Justice, *Women Prisoners and the Implementation of the Bangkok Rules in Thailand*, pp. 131–132, <https://perma.cc/D353-T6N9>, Nov. 2014.

<sup>621</sup> Samantha Jeffries et al., *Extending Borders of Knowledge: Gendered Pathways to Prison in Thailand for International Cross Border Drug Trafficking*, p. 13, *Psychiatry, Psychology and Law*, <https://perma.cc/BV2H-N352>, May 26, 2021. In a 2018 survey of 2,499 incarcerated women, 79.9% of whom had been convicted of a drug offense, the two most commonly reported factors leading to the offense were financial need (22.3% of responses) and the need to support family (15.6% of responses). See Thailand Institute of Justice, *Prison Database: Thailand*, <https://perma.cc/PC5M-A2SM>, last accessed Jul. 21, 2021. Other research suggests that most incarcerated women were the sole providers for their families before their arrest. According to a survey of 450 incarcerated women, of whom 83% were convicted of drug-related offenses and at least four were originally sentenced to death, 55% of respondents financially supported themselves, their children, and/or their family without help, and over half of respondents reported their income was not enough to live on. See Thailand Institute of Justice, *Women Prisoners and the Implementation of the Bangkok Rules in Thailand*, pp. 131–132, <https://perma.cc/84UJ-CXXN>, Nov. 2014.

<sup>622</sup> Samantha Jeffries et al., *Extending Borders of Knowledge: Gendered Pathways to Prison in Thailand for International Cross Border Drug Trafficking*, p. 11, *Psychiatry, Psychology and Law*, <https://perma.cc/BV2H-N352>, May 26, 2021. 78% of 2,499 incarcerated women had children. At least 79.4% of the women in the 2018 study were convicted of drug offenses, but data is not available on how many women were sentenced to death. See Thailand Institute of Justice, *Prison Database: Thailand*, <https://perma.cc/PC5M-A2SM>, last accessed Jul. 21, 2021. 83% of incarcerated women and only 38% of the men in the study had children. See Samantha Jeffries, Chontit Chuenurah & Rebecca Wallis, *Gendered Pathways to Prison in Thailand for Drug Offending? Exploring Women’s and Men’s Narratives of Offending and Criminalization*, pp. 96–99, <https://journals.sagepub.com/doi/full/10.1177/0091450918818174>, Dec. 17, 2018.

<sup>623</sup> Of the 31 women in a 2020 study who cited economic familial provisioning as their main motivation for offending (29% of whom were convicted of drug offenses), 71% had dependent family members other than children. Of the 12 incarcerated men who cited economic familial provisioning in this study as their main motivation for offending (50% of whom were convicted of drug offenses), only 33% had dependent family members other than children. See Tristan Russel & Samantha Jeffries, A gender-comparative exploration of women's and men's pathways to prison in Thailand, pp. 552–555, <https://journals.sagepub.com/doi/abs/10.1177/0004865820954463>, Sep. 23, 2020. In a 2019 study, a larger portion of the women were responsible for providing for extended family members than the men were. See Samantha Jeffries, Chontit Chuenurah & Rebecca Wallis, Gendered Pathways to Prison in Thailand for Drug Offending? Exploring Women's and Men's Narratives of Offending and Criminalization, pp. 96–99, <https://journals.sagepub.com/doi/full/10.1177/0091450918818174>, Dec. 17, 2018.

<sup>624</sup> Samantha Jeffries et al., Extending Borders of Knowledge: Gendered Pathways to Prison in Thailand for International Cross Border Drug Trafficking, pp. 11, 15, Psychiatry, Psychology and Law, <https://perma.cc/BV2H-N352>, May 26, 2021. Additionally, 32.4% of a survey of 2,470 incarcerated women did not complete compulsory education, and the majority of those women did not complete upper primary school. See Thailand Institute of Justice, Prison Database: Thailand, <https://perma.cc/PC5M-A2SM>, last accessed Jul. 21, 2021.

<sup>625</sup> At least six of the women in the 2021 study worked in informal and insecure jobs. See Samantha Jeffries et al., Extending Borders of Knowledge: Gendered Pathways to Prison in Thailand for International Cross Border Drug Trafficking, pp. 13, 17, Psychiatry, Psychology and Law, <https://perma.cc/BV2H-N352>, May 26, 2021.

<sup>626</sup> Ibid. See also Samantha Jeffries, Chontit Chuenurah & Rebecca Wallis, Gendered Pathways to Prison in Thailand for Drug Offending? Exploring Women's and Men's Narratives of Offending and Criminalization, pp. 96–99, <https://journals.sagepub.com/doi/full/10.1177/0091450918818174>, Dec. 17, 2018.

<sup>627</sup> Samantha Jeffries et al., Extending Borders of Knowledge: Gendered Pathways to Prison in Thailand for International Cross Border Drug Trafficking, pp. 17–18, Psychiatry, Psychology and Law, <https://perma.cc/BV2H-N352>, May 26, 2021.

<sup>628</sup> Ibid.

<sup>629</sup> Ibid.

<sup>630</sup> Samantha Jeffries et al., Extending Borders of Knowledge: Gendered Pathways to Prison in Thailand for International Cross Border Drug Trafficking, p. 11,

Psychiatry, Psychology and Law, <https://perma.cc/BV2H-N352>, May 26, 2021. Incarcerated women were more likely to have experienced domestic abuse, sexual assault, partner infidelity, and spousal abandonment. See Samantha Jeffries, Chontit Chuenurah & Rebecca Wallis, Gendered Pathways to Prison in Thailand for Drug Offending? Exploring Women's and Men's Narratives of Offending and Criminalization, p. 86, <https://journals.sagepub.com/doi/full/10.1177/0091450918818174>, Dec. 17, 2018. 32% of incarcerated women, compared to only 1% of men in the study, had experienced domestic violence victimization A gender-comparative exploration of women's and men's pathways to prison in Thailand, pp. 558–560, <https://journals.sagepub.com/doi/abs/10.1177/0004865820954463>, Sep. 23, 2020.

<sup>631</sup> Samantha Jeffries et al., Extending Borders of Knowledge: Gendered Pathways to Prison in Thailand for International Cross Border Drug Trafficking, p. 11, Psychiatry, Psychology and Law, <https://perma.cc/BV2H-N352>, May 26, 2021.

<sup>632</sup> 56% of women and 28% of men had been separated from their parents; 50% of women and 11% of men had experienced childhood abuse; 50% of women and 11% of men had been exposed to illicit drugs and/or crime in their communities; and that family members of 50% of women and 28% of men had used substances and/or engaged in other 'deviant' behavior. Ibid. at 47.

<sup>633</sup> Involvement with peers who used drugs was the most common impetus for men's drug trafficking involvement (16/18 men). Unlike women, most men did not report childhood adversity and did not report that trauma contributed to them joining these friend groups. See Ibid. at 13–15.

<sup>634</sup> Ibid. at 14.

<sup>635</sup> Before 2017, judges could not take any mitigating factors into account at sentencing because the death penalty was mandatory for drug trafficking. The National Assembly abolished the mandatory death penalty for drug offenses in 2017. See Patcharavalan Akbar and Gloria Lai, Thailand Amends Drug Law to Reduce Penalties and Ensure More Proportionate Sentencing, IDPC, <https://perma.cc/2KXW-YECD>, Feb. 15, 2017.

<sup>636</sup> Anonymous source within the judiciary, Interview with the CCDPW, Jun. 8, 2021.

<sup>637</sup> Ibid.

<sup>638</sup> Ibid.

<sup>639</sup> Ibid.

<sup>640</sup> Thailand Judicial Administration Commission's Regulation on the Rewards for Courts' Appointed Lawyers



[translated by the CCDPW], p. 4, B.E. 2548, revised by B.E. 2550, 2005.

<sup>641</sup> Ibid.

<sup>642</sup> According to data from 2017, most incarcerated foreign nationals in Thailand were from Myanmar, Laos, and Cambodia; a smaller number came from Malaysia, Nigeria, China, Vietnam, Iran, Pakistan, and India. Mayuree Sukprateep, The law on enforcement of penalties: a case study of the right to communicate in foreign inmates [translated by the CCDPW], pp. 741-745, <https://perma.cc/TE5A-YHAW>, last accessed Jun. 22, 2021.

<sup>643</sup> Jennifer Fleetwood & Lizzie Seal, Women, Drugs and the Death Penalty: Framing Sandiford, p. 2, *The Howard Journal of Crime and Justice*, Sep. 5, 2017. Carolyn Hoyle & Lucy Harry, Compounded vulnerability: foreign national women and the death penalty in Southeast Asia, p. 2, *Amicus Journal*, Dec. 2020.

<sup>644</sup> In 2017, 66.1% of incarcerated female foreign nationals were convicted of drug-related offenses, while 44.7% of incarcerated male foreign nationals were convicted of drug-related offenses. See Mayuree Sukprateep, The law on enforcement of penalties: a case study of the right to communicate in foreign inmates [translated by the CCDPW], pp. 741-745, <https://perma.cc/TE5A-YHAW>, last accessed Jun. 22, 2021. Thailand Institute of Justice, <https://perma.cc/PC5M-A2SM>, last accessed Jul. 21, 2021.

<sup>645</sup> U.N., Vienna Convention on Consular Relations, Article 36(1)(b), 596 U.N.T.S. 261, Apr.24, 1963.

<sup>646</sup> These women, however, were not convicted of capital drug offenses. Data is not available on whether women sentenced to death for capital drug offenses received notice of their right to consular assistance. Anonymous source within the judiciary, Interview with the CCDPW, Jun. 8, 2021.

<sup>647</sup> The Office of the Judiciary provides translators for major languages, but often does not provide translators for languages that are less widely spoken. Ibid.

<sup>648</sup> Ibid.

<sup>649</sup> Women sentenced to death for drug offenses are detained in three prisons: the Central Women's Correctional Institute, the Nakhon Si Thammarat prison, and the Chiang Mai Women's Correctional Institution. As of February 2021, 18 women sentenced to death for drug offenses were detained at the Central Women's Correctional Institute, seven at the Nakhon Si Thammarat prison, and six at the Chiang Mai Women's Correctional Institution. Department of Corrections, <https://perma.cc/UF2A-6TE6>, Mar. 23, 2021. The Chiang Mai Women's Correctional Institution is a "model" prison. See Thailand Institute of Justice, The TIJ Carried Out a Model Prison Project in ASEAN, First Piloted in Cambodia, <https://perma.cc/QS9W-BV5Y>, Aug. 29, 2019.

<sup>650</sup> Thailand Institute of Justice, Women Prisoners and the Implementation of the Bangkok Rules in Thailand, pp. 88–89, <https://perma.cc/D353-T6N9>, Nov. 2014.

<sup>651</sup> Ibid.

<sup>652</sup> International Federation for Human Rights and Union for Civil Liberty, Flawed Models: Implementation of International Standards in Thailand's 'Model' Prisons for Women, pp. 4, 16, N° 744a, Dec. 2019. The United Nations drafted the Bangkok Rules based on an initiative led by Thai Princess Bajrakitiyabha and the Ministry of Justice of Thailand. Thailand Institute of Justice, About the Bangkok Rules, <https://perma.cc/V822-BY4W>, last accessed Jun. 22, 2021.

<sup>653</sup> Through the Model Prison Project, TIJ developed a checklist that the Ministry of Justice uses to assess how well prisons across the country implement the Bangkok Rules. Chontit Chuenurah and Ukrit Sornprohm, Drug Policy and Women Prisoners in Southeast Asia, pp. 138–139, in *The Impact of Global Drug Policy on Women: Shifting the Needle*, Emerald Publishing Limited, Chontit Chuenurah and Ukrit Sornprohm, 2020. After working with prisons for four years to help them develop gender-sensitive policies and practices, TIJ certified the 15 most committed to implementing the Bangkok Rules as "model prisons." Thailand Institute of Justice and Griffith University, Women's pathways into, through and out of prison, pp. 22–23, <https://perma.cc/2SFJ-98ZQ>, Mar. 2021.

<sup>654</sup> Chontit Chuenurah, affiliated with the Thailand Institute of Justice, interviewed by DPW, Jul. 9, 2021.

<sup>655</sup> Chontit Chuenurah and Ukrit Sornprohm, Drug Policy and Women Prisoners in Southeast Asia, p. 138, in *The Impact of Global Drug Policy on Women: Shifting the Needle*, Emerald Publishing Limited, Chontit Chuenurah and Ukrit Sornprohm, 2020.

<sup>656</sup> International Federation for Human Rights and Union for Civil Liberty, Flawed Models: Implementation of International Standards in Thailand's 'Model' Prisons for Women, p. 4, N° 744a, Dec. 2019

<sup>657</sup> Thailand Institute of Justice, Research on the Causes of Recidivism in Thailand, p. 6, <https://perma.cc/383J-X65B>, Mar. 2021.

<sup>658</sup> The Chiang Mai Women's Correctional Institution has about 1.11m2 of floor space per woman. See International Federation for Human Rights, Behind the Walls: a look at conditions in Thailand's prisons after the coup, p. 20, N° 688s, Feb. 2017. International Federation for Human Rights and Union for Civil Liberty, Flawed Models: Implementation of International Standards in Thailand's 'Model' Prisons for Women, p. 15, N° 744a, Dec. 2019.

<sup>659</sup> Ibid.

- <sup>660</sup> International Federation for Human Rights and Union for Civil Liberty, *Flawed Models: Implementation of International Standards in Thailand's 'Model' Prisons for Women*, p. 10, N° 744a, Dec. 2019. 58.4% of incarcerated women surveyed for a 2018 study were detained far from home. Thailand Institute of Justice, *Women in the World Behind the Walls: 2018 Report of Women Prisoners in Thailand*, p. 80, <https://perma.cc/P3VX-S3D4>, Jan. 2018.
- <sup>661</sup> Melalin Mahavongtrakul, *Dignity Behind Bars*, Bangkok Post, <https://www.todayonline.com/world/asia/dignity-behind-bars>, Aug. 28, 2017.
- <sup>662</sup> Thailand Institute of Justice, *Women Prisoners and the implementation of the Bangkok rules in Thailand*, p. 107, <https://perma.cc/D353-T6N9>, Nov. 2014.
- <sup>663</sup> *Ibid.* One such orphanage is the House of Blessing Foundation, a non-governmental organization based in Bangkok that cares for children of incarcerated women and for recently released women and youth. See The House of Blessing Foundation, <https://perma.cc/JWU9-8BUC>, last accessed Jun. 22, 2021.
- <sup>664</sup> The Thai Department of Corrections Regulations on the Implementation of Health and Sanitation Measures for Prisoners state that prison officials must provide menstrual products to incarcerated women once every year, and that if this amount is insufficient prison officials can respond as they deem appropriate. Thai Department of Corrections Regulations on the Implementation of Health and Sanitation Measures for Prisoners, art. 11(B), B.E. 2561, Aug. 17, 2018. Women at the Central Women's Correctional Institute and the Chiang Mai Women's Correctional Institution, which incarcerate women sentenced to death for drug offenses, report that they need to purchase their own sanitary napkins. See International Federation for Human Rights and Union for Civil Liberty, *Flawed Models: Implementation of International Standards in Thailand's 'Model' Prisons for Women*, p. 17, N° 744a, Dec. 2019. International Federation for Human Rights, *Behind the Walls: a look at conditions in Thailand's prisons after the coup*, p. 23, N° 688s, Feb. 2017.
- <sup>665</sup> Thailand Institute of Justice and Griffith University, *Women's pathways into, through and out of prison*, pp. 67, 92, <https://perma.cc/2SFJ-98ZQ>, Mar. 2021.
- <sup>666</sup> Thailand has one of the highest clemency rates in the region. Of the people whose cases ended with either clemency or execution, at least 95% received clemency. The King periodically commutes many death sentences at a time through Collective Royal Pardons. During some Royal Pardons, the King has commuted all finalized death sentences passed before a specific date. See Daniel Pascoe, *Last Chance for Life: Clemency in Southeast Asian Death Penalty Cases*, pp. 66, 73-74. Oxford University Press, 2019. In 2012, the King commuted the death sentences of all women on death row at the time. Death Penalty Thailand, <https://perma.cc/YTD4-8DDX>, Feb. 13, 2012. See also Camille Sarret, *Thailand: a gender-based abolitionist strategy* [translated by Rebecca Bell], Ensemble Contre la Peine de Mort, <https://perma.cc/CU4V-HXYT>, Mar. 9, 2015.
- <sup>667</sup> Thailand Institute of Justice, *Women's Pathways into, through and out of Prison*, pp. 81-82, 92, <https://perma.cc/XVG4-G96S>, Mar. 8, 2021.
- <sup>668</sup> *Ibid.*
- <sup>669</sup> Department of Corrections of Thailand, *Statistics Report for the Death Row Inmates*, <https://perma.cc/UF2A-6TE6>, Mar. 23, 2021.
- <sup>670</sup> Samantha Jeffries et al., *Extending Borders of Knowledge: Gendered Pathways to Prison in Thailand for International Cross Border Drug Trafficking*, p. 13, *Psychiatry, Psychology and Law*, <https://perma.cc/BV2H-N352>, May 26, 2021; Thailand Institute of Justice, *Prison Database: Thailand*, <https://perma.cc/PC5M-A2SM>, last accessed Jul. 21, 2021. Thailand Institute of Justice, *Women Prisoners and the Implementation of the Bangkok Rules in Thailand*, pp. 131-132, <https://perma.cc/D353-T6N9>, Nov. 2014.
- <sup>671</sup> Samantha Jeffries et al., *Extending Borders of Knowledge: Gendered Pathways to Prison in Thailand for International Cross Border Drug Trafficking*, p. 11, 13-15, 47, *Psychiatry, Psychology and Law*, <https://perma.cc/BV2H-N352>, May 26, 2021; Samantha Jeffries, Chontit Chuenurah & Rebecca Wallis, *Gendered Pathways to Prison in Thailand for Drug Offending? Exploring Women's and Men's Narratives of Offending and Criminalization*, p. 86, <https://journals.sagepub.com/doi/full/10.1177/0091450918818174>, Dec. 17, 2018; Samantha Jeffries et al., *A gender-comparative exploration of women's and men's pathways to prison in Thailand*, pp. 558-560, <https://journals.sagepub.com/doi/abs/10.1177/0004865820954463>, Sep. 23, 2020.
- <sup>672</sup> Samantha Jeffries et al., *Extending Borders of Knowledge: Gendered Pathways to Prison in Thailand for International Cross Border Drug Trafficking*, p. 11, 13-15, *Psychiatry, Psychology and Law*, <https://perma.cc/BV2H-N352>, May 26, 2021.
- <sup>673</sup> Anonymous source within the judiciary, *Interview with the CCDPW*, Jun. 8, 2021.
- <sup>674</sup> International Federation for Human Rights and Union for Civil Liberty, *Flawed Models: Implementation of International Standards in Thailand's 'Model' Prisons for Women*, p. 4, N° 744a, Dec. 2019.
- <sup>675</sup> The Dui Hua Foundation were able to confirm that from 2014 to 2019, between 4-7 women were executed for drug

offenses each year. The real number is likely to be much higher. Even if we take this figure as a floor, China executes more women for drug offenses than any other country. Kevin Li, affiliated with Dui Hua, spreadsheet emailed to CCDPW, Mar. 15, 2021.

<sup>676</sup> See, for example, The Rights Practice, Submission to the U.N. Office of the High Commissioner for Human Rights on the Lack of Transparency in the Death Penalty, p. 2, <https://perma.cc/7TBH-6SLT>, Mar. 2021.

<sup>677</sup> Tobias Smith, The Contradictions of Chinese Capital Punishment, p. 93, UC Berkeley, <https://perma.cc/5C2Y-DZVC>, Jul. 2020. Anonymous, respondent to questionnaire sent by CCDPW, Apr. 2021.

<sup>678</sup> “From 2016 to 2018, among the drug trafficking cases prosecuted by Wenzhou prosecutors, the proportion of female drug traffickers was 15.57%, an increase of 3.05% from 2013 to 2015. Wenzhou News Net, 温州市检察院发

布贩毒犯罪案件八个特点：女性贩毒比例有所上升

[Wenzhou Procuratorate Released Eight Characteristics Of Drug Trafficking Crime Cases: The Proportion Of Female Drug Trafficking Has Increased], <https://perma.cc/VS9W-82WP>, Jun. 26, 2019. Female defendants in drug-related cases “have become increasingly prominent, accounting for about 20%” of drug-related cases in the Haidian Court over the last six years. See Beijing Higher People’s Court, 海淀法院发布近六年海淀区毒品犯罪案件变化情况调研报告 [Haidian Court Released A Survey Report On The Changes In Drug Crime Cases In Haidian District In The Past Six Years], <https://perma.cc/3E9E-SV66>, Dec. 4, 2015.

<sup>679</sup> The Rights Practice, Submission to the U.N. Office of the High Commissioner for Human Rights on the Lack of Transparency in the Death Penalty, p. 2, <https://perma.cc/7TBH-6SLT>, Mar. 2021.

<sup>680</sup> Ibid. Human Rights in China, State Secrets: China’s Legal Labyrinth, p. 41, <https://perma.cc/T2TG-JRHV>, 2007.

<sup>681</sup> For example, judges are required to keep “judicial work secrets” confidential—a term which is nowhere enumerated. The Rights Practice, Submission to the U.N. Office of the High Commissioner for Human Rights on the Lack of Transparency in the Death Penalty, pp. 3-4, <https://perma.cc/7TBH-6SLT>, Mar. 2021.

<sup>682</sup> A person may be sentenced to death if a disclosure of state secrets “causes particularly grave harm to the State and the people or if the circumstances are especially serious.” Criminal Law of the People’s Republic of China, Articles 111 and 113, 1997, amended 2017. See The Rights Practice, Submission to the U.N. Office of the High Commissioner for Human Rights on the Lack of Transparency in the Death Penalty, p. 2, <https://perma.cc/7TBH-6SLT>, Mar. 2021. The Supreme People’s Court (SPC) Interpretation of Certain

Issues further states that, revealing top-level classified state secrets where there are “especially deplorable circumstances” is a death-eligible offense. Cited in Human Rights in China, State Secrets: China’s Legal Labyrinth, p. 41, <https://perma.cc/T2TG-JRHV>, 2007. Tobias Smith maintains that “the closer a particular Chinese death penalty statistic approximates the indicator of annual national executions, the more severely its disclosure is sanctioned.” See Tobias Smith, Body Count Politics: Quantification, Secrecy, and Capital Punishment in China, pp. 707, 710-711, Law & Social Inquiry, May 6, 2020.

<sup>683</sup> The Rights Practice, Submission to the U.N. Office of the High Commissioner for Human Rights on the Lack of Transparency in the Death Penalty, p. 4, <https://perma.cc/7TBH-6SLT>, Mar. 2021. Dui Hua, Supreme People’s Court Makes Two Announcements About Online Court Database, <https://perma.cc/7ARE-R5KY>, Dec. 3, 2020.

<sup>684</sup> Supreme People’s Court, Provisions on People’s Court Release of Judgments on The Internet, <https://perma.cc/4LSD-58KN>, Aug. 29, 2016.

<sup>685</sup> The Rights Practice, Submission to the U.N. Office of the High Commissioner for Human Rights on the Lack of Transparency in the Death Penalty, p. 4, <https://perma.cc/7TBH-6SLT>, Mar. 2021.

<sup>686</sup> Amnesty Intl., China’s Deadly Secrets, p. 27, ASA 17/5849/2017, Apr. 10, 2017.

<sup>687</sup> Amnesty Intl., China’s Deadly Secrets, pp. 7,31, ASA 17/5849/2017, Apr. 10, 2017.

<sup>688</sup> Echo Xie, Millions of Court Rulings Removed From Official Chinese Database, South China Morning Post, <https://perma.cc/W22Y-BLVT>, Jun 26, 2021. Anne Henonchowicz, Timeline of Court Rulings Removed From the Internet, China Digital Times, <https://perma.cc/TKC7-5G9V>, Jun. 29, 2021.

<sup>689</sup> See Tobias Smith, Body Count Politics: Quantification, Secrecy, and Capital Punishment in China, p. 716, Law & Social Inquiry, May 6, 2020.

<sup>690</sup> Amnesty Intl., Death Sentences and Executions 2020, p. 26, ACT 50/3760/2021, Apr. 21, 2021.

<sup>691</sup> Amnesty Intl., Death Sentences and Executions 2020, p. 26, ACT 50/3760/2021, Apr. 21, 2021. Amnesty Intl., China’s Deadly Secrets, p. 10, ASA 17/5849/2017, Apr. 10, 2017. Tobias Smith, Body Count Politics: Quantification, Secrecy, and Capital Punishment in China, p. 711, Law & Social Inquiry, May 6, 2020.

<sup>692</sup> Dui Hua, Death Penalty Reform, <https://perma.cc/CA7C-SWZ4>, last accessed Jun. 19, 2021.

<sup>693</sup> Teng Biao, affiliated with the Pozen Family Center for Human Rights at the University of Chicago, email to CCDPW, Jul. 9, 2021.



<sup>694</sup> Sina News, 中国死刑这些年: 数量下降范围缩小(图) [China's death penalty in recent years: the number of declines narrowed], <https://perma.cc/GD5P-F35Z>, Sep. 21, 2018.

<sup>695</sup> Tobias Smith, The Contradictions of Chinese Capital Punishment, p. 136, UC Berkeley, <https://perma.cc/5C2Y-DZVC>, Jul. 2020.

<sup>696</sup> The Rights Practice, Submission to the U.N. Office of the High Commissioner for Human Rights on the Lack of Transparency in the Death Penalty, p. 3, <https://perma.cc/7TBH-6SLT>, Mar. 2021.

<sup>697</sup> According to the China Judgments Online Database sample, women constitute 4% of those sentenced to death for drug offenses. Zhiyuan Guo & Rong Ma, affiliated with the Center for Criminal Law and Justice of the China University of Political Science and Law, research memo for CCDPW, May. 4, 2021. This is likely a significant underestimate (since the cases of women can elicit more public sympathy and thus the SPC might be reticent to publish them). It is likely to be more in line with the percentage of women incarcerated for noncapital cases, which is 8%. See World Prison Brief, China, <https://perma.cc/L8UK-ZHUR>, last accessed Jun. 26, 2021.

<sup>698</sup> “From 2016 to 2018, among the drug trafficking cases prosecuted by Wenzhou prosecutors, the proportion of female drug traffickers was 15.57%, an increase of 3.05% from 2013 to 2015. Wenzhou News Net, 温州市检察院发布贩毒犯罪案件八个特点: 女性贩毒比例有所上升

[Wenzhou Procuratorate Released Eight Characteristics Of Drug Trafficking Crime Cases: The Proportion Of Female Drug Trafficking Has Increased], <https://perma.cc/VS9W-82WP>, Jun. 26, 2019. Female defendants in drug-related cases “have become increasingly prominent, accounting for about 20%” of drug-related cases in the Haidian Court over the last six years. See Beijing Higher People’s Court, 海淀法院发布近六年海淀区毒品犯罪案件变化情况调研报告 [Haidian Court Released A Survey Report On The Changes In Drug Crime Cases In Haidian District In The Past Six Years], <https://perma.cc/3E9E-SV66>, Dec. 4, 2015.

<sup>699</sup> Anonymous, respondent to questionnaire sent by CCDPW, Apr. 2021.

<sup>700</sup> The penalty is directly translated as “indeterminate term” but is often translated by scholars as “life sentence,” hence our choice of the term “indeterminate life sentence.” Almost anyone who receives this penalty can reasonably expect to be released at some point. For a discussion of this, see Tobias Smith, Making Sense of Life Without Parole in China, p. 75, Punishment and Society, Oct. 2019.

<sup>701</sup> Criminal Law of the People’s Republic of China, Article 50, 1997.

<sup>702</sup> It is estimated that 99% of people sentenced to death with suspended execution avoid death. Matthew Seet, Finding Reprieve: Should the Global Movement Against Capital Punishment Embrace China’s Suspended Death Sentence As a Model for Other Retentionist States to Emulate?, p. 467, Chinese Journal of International Law, Sep. 2017.

<sup>703</sup> “Cases are uploaded selectively.” See The Rights Practice, Submission to the U.N. Office of the High Commissioner for Human Rights on the Lack of Transparency in the Death Penalty, p. 4, <https://perma.cc/7TBH-6SLT>, Mar. 2021. Zhiyuan Guo & Rong Ma, affiliated with the Center for Criminal Law and Justice of the China University of Political Science and Law, research memo for CCDPW, May. 4, 2021.

<sup>704</sup> 96% were sentenced to death for trafficking and transporting drugs, and another 4% were sentenced to death for trafficking, transporting, allowing others to use drugs, or trafficking, transporting, or manufacturing drugs. See Zhiyuan Guo & Rong Ma, affiliated with the Center for Criminal Law and Justice of the China University of Political Science and Law, research memo for CCDPW, May. 4, 2021.

<sup>705</sup> 50% were methamphetamine, 34.7% were heroin, and 15.3% involved both drugs. See Zhiyuan Guo & Rong Ma, affiliated with the Center for Criminal Law and Justice of the China University of Political Science and Law, research memo for CCDPW, May. 4, 2021.

<sup>706</sup> Only 11 of the 300 cases – so 3.6% – were immediate death sentences. See Zhiyuan Guo & Rong Ma, affiliated with the Center for Criminal Law and Justice of the China University of Political Science and Law, research memo for CCDPW, May. 4, 2021.

<sup>707</sup> Zhiyuan Guo & Rong Ma, affiliated with the Center for Criminal Law and Justice of the China University of Political Science and Law, research memo for CCDPW, May. 4, 2021.

<sup>708</sup> 99.3% had less than a junior high school education. Also, of the five cases (of women sentenced to death for drug offenses) recently confirmed by the SPC for immediate execution, none had completed their junior high school education. See Zhiyuan Guo & Rong Ma, affiliated with the Center for Criminal Law and Justice of the China University of Political Science and Law, research memo for CCDPW, May. 4, 2021.

<sup>709</sup> 48.5% of women were between 26-35. 99.3% had less than a junior high school education. See Zhiyuan Guo & Rong Ma, affiliated with the Center for Criminal Law and Justice of the China University of Political Science and Law, research memo for CCDPW, May. 4, 2021.

<sup>710</sup> 99.3% were farmers or were unemployed. See Zhiyuan Guo and Rong Ma, affiliated with the Center for Criminal

Law and Justice of the China University of Political Science and Law, research memo for CCDPW, May. 4, 2021.

<sup>711</sup> Of the five cases (of women sentenced to death for drug offenses) recently confirmed by the SPC for immediate execution, three involved male co-defendants. Yang Mei, Huang Pu and Jian Zhuxiang were charged with male co-defendants; Zi Xiaosan and Lan Yuchang were not.

<sup>712</sup> Anonymous, respondent to questionnaire sent by CCDPW, Mar. 2021.

<sup>713</sup> Of the five cases (of women sentenced to death for drug offenses) recently confirmed by the SPC for immediate execution, three were national ethnic minorities. Yang Mei, Huang Pu and Lan Yuchang were national ethnic minorities; Zi Xiaosan was a foreign national and only Lan Yuchang was a Chinese Han.

<sup>714</sup> Susan Trevaskes, Creative Death Penalty Reform in China: The Case of Drug Transportation, p. 147, Law & Policy, Feb. 23, 2016.

<sup>715</sup> Yue Hou & Rory Truex, Ethnic Discrimination in Criminal Sentencing in China, p. 1, <https://perma.cc/43NG-P4VV>, Jun. 1, 2020.

<sup>716</sup> Susan Trevaskes, Death Penalty Reform, p. 1, China Story Yearbook, <https://perma.cc/4WCT-KGJB>, 2017.

<sup>717</sup> Ibid.

<sup>718</sup> Dui Hua, Death Penalty Reform, <https://perma.cc/CA7C-SWZ4>, last accessed Jun. 19, 2021.

<sup>719</sup> Susan Trevaskes, Creative Death Penalty Reform in China: The Case of Drug Transportation, pp. 145,147, Law & Policy, Feb. 23, 2016.

<sup>720</sup> Susan Trevaskes, Death Penalty Reform, p. 1, China Story Yearbook, <https://perma.cc/4WCT-KGJB>, 2017.

<sup>721</sup> Dui Hua, Death Penalty Reform, <https://perma.cc/CA7C-SWZ4>, last accessed Jun. 19, 2021. Susan Trevaskes, Death Penalty Reform, p. 3, China Story Yearbook, <https://perma.cc/4WCT-KGJB>, 2017

<sup>722</sup> Dr. Teng Biao believes that the annual number of executions in China in recent years is above 6,000. Teng Biao, affiliated with the Pozen Family Center for Human Rights at the University of Chicago, email to CCDPW, Jul. 9, 2021.

<sup>723</sup> Susan Trevaskes, Creative Death Penalty Reform in China: The Case of Drug Transportation, p. 152, Law & Policy, Feb. 23, 2016.

<sup>724</sup> Anonymous, respondent to questionnaire sent by CCDPW, Apr. 2021.

<sup>725</sup> Tobias Smith, The Contradictions of Chinese Capital Punishment, p. 93, UC Berkeley, <https://perma.cc/5C2Y-DZVC>, Jul. 2020.

<sup>726</sup> Susan Trevaskes, Creative Death Penalty Reform in China: The Case of Drug Transportation, p. 158, Law & Policy, Feb. 23, 2016.

<sup>727</sup> Criminal Law of the People's Republic of China, Articles 48 and 61, 1997. Susan Trevaskes, Creative Death Penalty Reform in China: The Case of Drug Transportation, pp. 148-149, Law & Policy, Feb. 23, 2016.

<sup>728</sup> Susan Trevaskes, Creative Death Penalty Reform in China: The Case of Drug Transportation, p. 144, Law & Policy, Feb. 23, 2016.

<sup>729</sup> U.N. Office on Drugs and Crime, World Drug Report 2020: Global Drug Use Rising, <https://perma.cc/HPR4-H4CP>, Jun. 25, 2020.

<sup>730</sup> Siyu Liu, Moulin Xiong, & Bin Liang, The Death Penalty for Foreign Drug Offenders in China: Legal Protection and Equal Treatment, p. 428, European Journal on Criminal Policy and Research, Mar. 26, 2018.

<sup>731</sup> Tobias Smith, The Contradictions of Chinese Capital Punishment, p. 97, UC Berkeley, <https://perma.cc/5C2Y-DZVC>, Jul. 2020.

<sup>732</sup> Susan Trevaskes, Creative Death Penalty Reform in China: The Case of Drug Transportation, p. 147, Law & Policy, Feb. 23, 2016.

<sup>733</sup> Susan Trevaskes, Creative Death Penalty Reform in China: The Case of Drug Transportation, p. 147, Law & Policy, Feb. 23, 2016.

<sup>734</sup> Yunnan Higher Court quoted in Yunnan Daily. Cited in Susan Trevaskes, Creative Death Penalty Reform in China: The Case of Drug Transportation, p. 147, Law & Policy, Feb. 23, 2016.

<sup>735</sup> Susan Trevaskes, Creative Death Penalty Reform in China: The Case of Drug Transportation, p. 150, Law & Policy, Feb. 23, 2016.

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