

SPECIAL SECTION:

**Voices from the  
courtroom: lawyers'  
strategies to reduce  
the imposition of the  
death penalty**

This special section in Harm Reduction International's (HRI) *The Death Penalty for Drug Offences: Global Overview 2020* provides a review of best practices for advocating against the death penalty, drawing on the first-hand experience of lawyers who have worked on the death penalty for drug offences. To better understand the current situation, lawyers' strategies, new challenges and opportunities, HRI reached out to lawyers and practitioners in China, India, Indonesia, Malaysia, Pakistan, Saudi Arabia, Singapore and Sri Lanka. This particular section is an exposition of lawyers' and activists' voices and concerns, and is particularly timely in light of the new challenges, but also opportunities, for death penalty abolition emerging from 2020.

Some of the lawyers interviewed for this briefing have assisted people on death row for over a decade; thus, this reflection on the interaction of legal defence and activism will hopefully contribute to revitalising conversations on abolition.

Despite supportive international and, in some cases, national legal frameworks, advocating against the use of the death penalty for drug offences presents huge challenges for lawyers and activists on the ground. One of the many challenges is confronting the stigma associated with drugs, driven by the global 'war on drugs' which promotes a punitive, zero-tolerance approach to drugs. The lack of legal representatives, due to lawyers being unable or unwilling to provide legal representation, will continue to propagate the drug war that disproportionately targets the poor and vulnerable.

There is no such thing as a one-size-fits-all approach for advocating against the use of the death penalty for drug offences. This special section delves into different strategies adopted by lawyers who tirelessly defend their clients (often under-resourced), inside and outside of the courtroom, to push for restriction of the use of the death penalty at a broader level.

# INSIDE THE COURTROOM: LEGAL STRATEGIES

One of the most important elements of defence work is to gain access to and assist the defendant from the earliest possible stage of the criminal proceeding. Early access to legal counsel significantly contributes to a fair, humane and efficient criminal justice system.<sup>251</sup> Indonesian lawyers Muhammad Afif and Yosua Octavian of LBH Masyarakat, a legal aid organisation working on drug policy and the death penalty (among other issues), shared their experience on this, explaining: “when we assist a case from the investigation stage, we have a better chance at avoiding a death sentence.”<sup>252</sup> In the past few years, LBH Masyarakat has managed to overturn death sentences for more than 20 of their clients.<sup>253</sup> In almost all of these cases, LBH Masyarakat assisted the client shortly after the point of arrest.

Once the case is heard before a court, it is essential that lawyers gather the necessary information to present mitigating factors. Mitigating factors are “any aspects of a defendant’s character, background, record, offence, or any other circumstances proffered by the defendant that, although not constituting excuse or justification for the crime, might serve as a basis for a sentence less than death.”<sup>254</sup> To present mitigating factors does not necessarily mean to deny the defendant’s guilt; rather, the aim is to present the court with a full picture regarding (among others) the defendant’s life history, age, mental state, and drivers for engaging in the drug market, thus allowing the judges to make a more informed decision.<sup>255</sup>

251 “Early Access to Legal Aid in Criminal Justice Processes: A Handbook for Policymakers and Practitioners” (New York: UNODC and UNDP, 2014), [https://www.unodc.org/documents/justice-and-prison-reform/eBook-early\\_access\\_to\\_legal\\_aid.pdf](https://www.unodc.org/documents/justice-and-prison-reform/eBook-early_access_to_legal_aid.pdf). Pag. 6.

252 Afif, M. and Octavian, Y., Personal Communication with LBHM, 2021.

253 For more details, see: Muhammad Afif and Yosua Octavian, “For Women Swept Up in the Drug Trade, Legal Help That Starts Early,” Open Society Foundations Voices (blog), Jun 22, 2016, <https://www.opensocietyfoundations.org/voices/women-swept-drug-trade-legal-help-starts-early>.

254 Joshua N. Sondheim, “A Continuing Source of Aggravation: The Improper Consideration of Mitigating Factors in Death Penalty Sentencing,” *Hastings Law Journal* 41, no. 2 (1990): 409–46, [https://repository.uchastings.edu/hastings\\_law\\_journal/vol41/iss2/5](https://repository.uchastings.edu/hastings_law_journal/vol41/iss2/5). Pag. 409.

255 *Ibid.*

People who are working as drug couriers, the lowest rank in the drug trade structure, are the most likely to be arrested and face legal charges. Many defendants come from low social or economic backgrounds, and their engagement in the drug trade is often driven by the need to provide for their family. Many others have experienced trauma or have serious mental impairments. Other defendants are tricked or coerced into carrying drugs.<sup>256</sup> The vulnerabilities that result in a person's involvement in the drug trade are important mitigating circumstances that should affect how the court determines the sentence. Therefore, the presence of competent lawyers is essential for defendants to be able to have mitigating factors presented and assessed by the court.

Unfortunately, the stigma surrounding drugs often results in judges perceiving drug crimes as extremely grave and serious, and a threat to society, insomuch as the defendant is seen as deserving of the most extreme punishment regardless of their circumstances. Therefore, by presenting mitigating factors, lawyers contribute to raising judges' awareness about the circumstances and vulnerabilities of drug defendants, about how drug markets work, and about drugs in general.

LBH Masyarakat's lawyers, Muhammad Afif and Yosua Octavian, stated:

***Presenting our client's mitigating factors for us is like showing the judges and the public the client's real identity. When they are in court, people see them as criminals. So, we show people that this person is also a father, a grandfather, a mother, a breadwinner of the family, a person with long-term trauma, [a person that has] experienced violence their whole life, so on and so forth.***<sup>257</sup>

256 Among others, see: Giada Girelli and Lucy Harry, "The Death Penalty for Drug Offences: The Impact on Women" (London: Harm Reduction International, Mar 2019), <https://www.hri.global/files/2019/03/12/death-penalty-impact-women.pdf>; Carolyn Hoyle and Giada Girelli, "The Death Penalty for Drug Offences: Foreign Nationals" (London: Harm Reduction International, Mar 2019), <https://www.hri.global/files/2019/03/12/death-penalty-foreign-nationals.pdf>.

257 Afif, M. and Octavian, Y., Personal Communication with LBHM, 2021.

For example, in India, Ansar Rahman was sentenced “to be hanged by neck till death” by a Basarat District Court in 2016 for possession and trafficking of 50 kilograms of heroin, while his co-defendant was sentenced to 30 years of imprisonment for the same charge.<sup>258</sup> Mr Rahman appealed to the High Court. In November 2019, the Calcutta High Court commuted his death sentence to 30 years of imprisonment. Among other mitigating factors, the Court considered Mr Rahman’s old age (he was 75 years old).<sup>259</sup> Tripti Tandon of Lawyers Collective welcomed the Calcutta High Court decision: “[This] is one of best practices. The mitigating factors were taken into consideration by the High Court.”

**In addition to defending individuals, lawyers also contribute to creating better legal protection through strategic litigation.** In many countries, lawyers work both on individual cases and on strategic litigation as these two strategies complement each other. However, it is important to mention that strategic litigation has the potential of promoting positive change only in countries with an independent, impartial and competent judicial system. In other contexts, lawyers and their teams usually deploy alternative strategies and focus on activities outside of the court, for example on building public support.

258 “Death Penalty for Dreaded Drug Mafia Kingpin,” The Hindu, Apr 9, 2016, <https://www.thehindu.com/news/national/other-states/death-penalty-for-dreaded-drug-mafia-kingpin/article8453265.ece>.

259 “State Of West Bengal vs Ansar Rahman @ Ramesh Giri & Anr,” D.R.6 of 2016 In C/W C.R.A.440 of 2016 § Calcutta High Court - Criminal Appellate Jurisdiction (2019), [http://164.100.79.153/judis/kolkata\\_app/index.php/casestatus/viewpdf/DR\\_6\\_2016\\_26112019\\_I\\_218\\_281.pdf](http://164.100.79.153/judis/kolkata_app/index.php/casestatus/viewpdf/DR_6_2016_26112019_I_218_281.pdf)

# OUTSIDE THE COURTROOM: BUILDING PUBLIC SUPPORT

To support their advocacy work in the court, many lawyers engage with the public to garner support for their cases. There are many ways to do this but the most common, especially during the COVID-19 pandemic, is through online engagement.<sup>260</sup>

In the era of digital journalism, one way of building public support is by engaging with journalists and online media (while being aware of the sometimes problematic coverage of drug policy and the death penalty some media outlets engage in). Lawyers can collaborate with journalists, raise their concerns about a specific case or issue, and amplify voices of individuals facing the death penalty and their families. Singaporean lawyer M. Ravi suggested that *“one of the best practices [for a campaign] is to engage the families of the inmates. In the recent case of a Singaporean woman who faces execution in China and which we are currently handling, her 17-year-old daughter has given an interview to CNN, and she has become a powerful advocate against death penalty.”*<sup>261</sup>

LBH Masyarakat in Indonesia adopts a similar approach. **The legal aid organisation has worked with journalists to present the whole story of the defendant, who is too often summarily judged as nothing more than a criminal, with little attention paid to their life history, circumstances and vulnerabilities. By doing so, lawyers are putting a human face to the case.** Lawyers Muhammad Afif and Yosua Octavian are of the view that *“journalists/media are our friends. They are key in shaping public opinion on our cases, which usually affects how the judges see the case. We often involve our friendly journalists and media and feed them with stories and perspectives that we want them to use – although it is not always successful.”*<sup>262</sup>

260 “Social Media Users Report: Latest Stats and Trends through 2024 by Platform and Location,” Insider, December 29, 2020, <https://www.businessinsider.com/global-social-network-users-report?r=DE&IR=T>.

261 Ravi, M., Personal Communication, 2020.

262 Afif, M. and Octavian, Y., Personal Communication with LBHM, 2021.

Another way to engage the public is through creative or artistic collaboration. **Collaboration with artists is a powerful and increasingly popular tool among social justice advocates, as it allows them to talk about a complex and sensitive topic in an accessible way,** making it more likely to attract the interest of the public. Justice Project Pakistan often uses a combination of artistic and creative media to campaign for the human rights of people deprived of liberty, including death row prisoners.<sup>263</sup> Lawyers at Justice Project Pakistan said:

*[We have] been collaborating with artists for the past six years, especially since the curbs and censorship on the traditional media have made it harder to advocate for rights of the prisoners. Such projects include a countrywide bus tour with a theatre troupe named 'Bus Kardo' (2017), a 24-hour live stream 'No Time to Sleep' (2018), an exhibition of performance art titled 'We have been waiting for you' (2019) and digital performance for the pandemic combining music, literature and puppetry called 'Before the sun comes up' (2020). These art events, along with continuous media campaigns on conventional and new media, have helped us reduce the executions from 325 [in 2015] into none in five years.*<sup>264</sup>

Civil society organisations and advocates also use social media to express their views and engage directly with the public. Social media remains an important tool of engagement as 80% of current global internet users are on some social media platform; often, what is trending in social media triggers actions in 'mainstream' media.

Social media activism by lawyers is a delicate issue. Some lawyers argue that the lawyer's duty is to fight for a case in court, and that public opinion should never influence judges' decisions; engagement with social media, especially to campaign for a case, is best left to other actors. For other lawyers, engaging with social media presents an opportunity to raise public attention, especially when it involves violations of human rights.

Lawyer M. Ravi reported that “*in two legal challenges which I handled last year, I had frequently posted updates on Facebook and garnered approximately 3700 likes and 2,000 shares in total.*” M. Ravi also added that using a hashtag has helped to contribute to raising public attention.<sup>265</sup> LBH Masyarakat’s longstanding social media campaign on the case of Merri Utami has resulted in more than 19,000 signatories to a petition asking Indonesian President Joko Widodo to grant clemency; this campaign uses the hashtag ‘#abolishthedeathpenalty’, among others.<sup>266</sup>

In Iran, the upholding of three death sentences against young activists also sparked online protests, with the Persian hashtag ‘#do\_not\_execute’ being used over eleven million times in a week.<sup>267</sup> Similarly, in Singapore, a petition to grant clemency to Syed Suhail, launched a few days before his scheduled execution for drug trafficking, quickly reached 30,000 signatures<sup>268</sup> - an unprecedented response in the country. In both cases, online engagement brought positive results, and contributed to those executions being suspended.

265 Ravi, M., Personal Communication, 2020.

266 “Clemency for Merry Utami: Save Merry from Injustice.”

267 Jiyar Gol, “Iran Judiciary May Halt Protesters’ Executions after Social Media Storm,” BBC News, Jul 16, 2020, <https://www.bbc.com/news/world-middle-east-53417228>

268 “An Open Letter to President Halimah Yacob: Save Syed Suhail.”