

**Mandates of the Working Group on discrimination against women and girls; the Special Rapporteur in the field of cultural rights; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on freedom of religion or belief; the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity and the Special Rapporteur on violence against women and girls, its causes and consequences**

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25 November 2022

Excellency,

We have the honour to address you in our capacities as Working Group on discrimination against women and girls; Special Rapporteur in the field of cultural rights; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on freedom of religion or belief; Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity and Special Rapporteur on violence against women and girls, its causes and consequences, pursuant to Human Rights Council resolutions 50/18, 46/9, 51/21, 49/5, 50/10 and 50/7.

In this connection, we would like to express our **grave concern regarding the proposed amendments to the Indonesian Criminal Code, *Rivisi Kitab Undang-undang Hukum Pidana (RKUHP)* that would continue limiting access to abortion, discriminate against women and girls, religious or belief minorities and LGBT persons, punish extramarital sex and live-in relationships and hamper the freedoms of expression, religion or belief and association.**

According to the information received:

The need for a new criminal code was recognised by the early 1960s. Working groups were appointed several times over the years, but it did not result in a draft code. By 2005, a draft code was produced that sought to reform and modernise Indonesian criminal law, which was the basis for subsequent drafts. In March 2013, the Government, through the Ministry of Law and Human Rights submitted the Draft Bill on Criminal Code (RKUHP) and Draft Criminal Procedural Code Bill (RKUHAP) to the House of Representatives (DPR). Discussions however were delayed and/or not prioritised.

In 2015, the Government declared the RKUHP as a priority, and it was included in the list of bills for deliberation in the legislature. A revision exercise of the text was initiated with the commitment that public consultations on the draft amendments would be held. In September 2019, the Government started discussions on the RKUHP again. On 15 September 2019, the Government announced that a parliamentary task force had finalized the 628-article bill and that a new code would be adopted soon. In the past years, several stakeholders have expressed numerous concerns on a number of provisions. In August 2022, public dialogues were reportedly conducted by the Government in eleven cities to gather inputs on the draft. On 9 November 2022, a new draft, which was seemingly the result of these consultations, was made public which still contains several problematic elements which would contravene Indonesia's international human rights obligations.

### *General concerns*

Article 2 of the draft code recognizes “any living law” in Indonesia, which could be interpreted to include *hukum adat* (customary criminal law) and Sharia (Islamic law) regulations at the local level. As there is no official list of “living laws” in Indonesia, we fear that this article could be used to prosecute vulnerable and minority groups arbitrarily.

### *Right to access safe and legal abortion*

At present, abortion in Indonesia is a punishable offense with a maximum sentence of four years as stated under article 346 of the criminal code. Article 348 stipulates that any person causing the death of the foetus with deliberate intent shall be punished by a maximum imprisonment of five years and six months. Article 349 of the criminal code stipulates that if a physician, midwife or pharmacist is deemed an accomplice to the crime under article 346, they may be deprived of the exercise of their profession.

The 2009 Health Law in articles 75 & 76 states however that a woman can seek an abortion in a “medical emergency situation”, by a health personnel who has the relevant expertise and authority and a certificate stipulated by the Minister, with the consent of the mother and her husband, except in cases of rape where the father’s consent is not required.

The new draft articles 465, 466, and 467 of the RKUHP would criminalize abortion if not in adherence to the stipulations mentioned in the provisions of the 2009 Health Law. A woman who terminates her pregnancy could be sentenced to up to four years in prison. Anyone who helps a pregnant woman have an abortion could be sentenced up to five years in prison. These provisions could also be interpreted to prosecute those selling or consuming emergency contraception.

The current legal framework relating to women’s and girls’ access to essential reproductive health services is not in line with international standards. We regret that the opportunity has not been seized for the reform process to bring the country’s domestic legal framework into compliance with Indonesia’s international human rights obligations in terms of women’s and girls’ sexual and reproductive rights. Instead, the new provisions would continue to criminalize abortion, which is a main deterrent in accessing abortion care, even within the legal framework, and to inflict unnecessary barriers. We also express serious concern that, by denying access to time-sensitive abortion care and voluntary abortion procedures, the State would be placing the health and economic security of women at risk, exacerbating systemic inequalities. In its 2021 report to the Human Rights Council on sexual and reproductive rights in crisis (A/HRC/47/38), the Working Group on discrimination against women and girls stressed that, the status quo, with millions of women and girls around the world highly exposed to gendered risks to their sexual and reproductive health, is unacceptable. The risks and harms that women and girls face in relation to their sexual and reproductive health must not be treated as unavoidable tragedies or collateral damage but recognized as the outcomes of policy failures and as indicative of serious human rights violations.

The above-mentioned provisions of the new draft criminal code would violate Indonesia's obligations under the Convention on the Elimination of All Forms of Discrimination against Women, which Indonesia ratified in September 1984. In November 2021, the Committee on the Elimination of Discrimination against Women (CEDAW Committee) expressed its concern that the draft criminal code restricts women's sexual and reproductive health and rights and called on Indonesia to 'ensure that the draft criminal code does not discriminate against women or restrict their sexual and reproductive health rights and that the drafting process is fully inclusive and participatory for women' (CEDAW/C/IDN/CO/8).

In connection with the above concerns, we would like to recall that criminalization of abortion and the failure to provide adequate access to services for the termination of an unwanted pregnancy constitute discrimination on the basis of sex, in contravention of article 2 of the International Covenant on Civil and Political Rights (ICCPR).

In its General Comment No. 36: article 6 of the ICCPR, on the right to life, the Human Rights Committee stressed that although States parties may adopt measures designed to regulate voluntary terminations of pregnancy, such measures must not result in violation of the right to life of a pregnant woman or girl nor jeopardize their lives, subject them to physical or mental pain or suffering, discriminate against them or arbitrarily interfere with their privacy. State parties must provide safe, legal and effective access to abortion including where the pregnancy is the result of rape or incest and also should not introduce new barriers and should remove existing barriers that deny effective access by women and girls to safe and legal abortion.

We would also like to emphasize that the fundamental human rights of women and girls include the right to the enjoyment of the highest attainable standard of physical and mental health, including sexual and reproductive health, which is enshrined in article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) signed by Indonesia in 2006. This includes the obligation of all States Parties to guarantee that measures are taken to ensure that health services are accessible to all, especially the most vulnerable and marginalized sections of the population, without discrimination, in conformity with article 2.2 of ICESCR.

As clarified by the Committee on Economic, Social, and Cultural Rights in General Comment No. 22 the right to sexual and reproductive health is an integral part of the right to health that encompasses unhindered access to a range of quality sexual and reproductive health facilities, services, goods including safe abortion services Sexual and reproductive freedoms include "the right to control one's health and body" and "the right to make free and responsible decisions and choices, free of violence, coercion and discrimination, regarding matters concerning one's body and sexual and reproductive health" (paras 5 and 45).

In its General Recommendation No. 35 on gender-based violence against women, the CEDAW Committee provides that violations of women's sexual and reproductive health and rights, such as forced sterilization, forced

abortion, forced pregnancy, criminalization of abortion, denial or delay of safe abortion and/or post-abortion care, forced continuation of pregnancy, and abuse and mistreatment of women and girls seeking sexual and reproductive health information, goods and services, are forms of gender-based violence that, depending on the circumstances, may amount to torture or cruel, inhuman or degrading treatment.

In a report to the Human Rights Council (A/HRC/32/44), the Working Group on discrimination against women and girls called on States to decriminalize the termination of pregnancy, repeal restrictive abortion laws and to ensure that access to health care, including reproductive healthcare, is autonomous, affordable and effective. In her 2021 report to the General Assembly, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health underlined States' obligations to decriminalize abortion, to prevent unsafe abortion and to provide safe, legal and effective access to abortion, in a manner that does not result in the violation of women's rights to life and other human rights enshrined in ICCPR (A/76/172, paras. 22, 40-41). In her 2022 report to the General Assembly, the same Special Rapporteur recommended the removal of all laws and policies criminalizing or otherwise punishing abortion and stressed that the [WHO Abortion Care Guideline](#) from 8 March 2022, recommends full decriminalization of abortion (A/77/197, para. 92).

In its reports, the Working Group on discrimination against women and girls has noted the persistence of a global discriminatory cultural construction of gender, often tied to religion, and the continued reliance of States on cultural justifications for adopting discriminatory laws or for failing to respect international human rights law and standards. Within the United Nations system, the Working Group has observed that States have misused references to culture, religion and family in an effort to dilute their international obligations to fulfil women's rights and achieve gender equality. While the Working Group is committed to the principle of upholding freedom of religion or belief as human rights to be protected, it regrets the increasing challenges to gender equality in the name of religion. It joins other international human rights expert mechanisms in reiterating that freedom of religion or belief should never be used to justify discrimination against women. Women's human rights are fundamental rights that cannot be subordinated to cultural, religious or political considerations (see A/HRC/38/46).

We would also like to refer to the latest Guidelines on Abortion issued by the World Health Organization in March 2022 calling for the full decriminalisation of abortion and removal of any existing prohibition based on gestational age limits and recommending grounds-based approaches restricting access to abortion be revised in favour of making abortion available on the request of the woman, girl or other pregnant person.

#### *Right to access contraception*

Furthermore, article 410 of the RKUHP envisages a maximum fine of one million rupiahs to punish any person who offers to a minor in writing, a portrait or an article that portrays any means to curb pregnancy; and if this is conveyed in the presence of a minor, the maximum punishment is a maximum

imprisonment of four months or a maximum light imprisonment of three months or a maximum fine of six hundred rupiahs.

Articles 410-411 of the updated draft code stipulate that “any person who without rights openly displays a device for aborting, offers, broadcasts writing, or demonstrates to be able to obtain a tool for aborting a pregnancy, shall be punished with imprisonment for a maximum of 6 (six) months or a maximum fine of 10 million rupiah. with article 412 specifying such acts will not be punished if that ‘carried out by authorized officers in the framework of implementing family planning, prevention of sexually transmitted infections, or for the benefit of education and health counseling or if carried out for scientific/educational purposes.’

While the exceptions are notable, the overall chilling effect of articles 410-411 would diminish free exchange of vital health information, including by teachers, parents, the media, and community members, and would likely impede even those who are officially exempted from the law.

Providing and receiving comprehensive sexuality education without fear of persecution is protected under the freedom of opinion and expression under article 19 of UDHR and article 19 of ICCPR. This right includes freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice (article 19 (2) of ICCPR).

Further, article 12 (1) of ICESCR provides that States recognized the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. In its General Comment No. 14, CESCR interpreted the right to health as an inclusive right, which extends not only to timely and appropriate health care but also to access to health-related education and information, including on sexual and reproductive health (E/C.12/2000/4, para. 11). Accordingly, States are under an obligation to respect the right to health by, inter alia, refraining from censoring, withholding or intentionally misrepresenting health-related information, including sexual education and information, as well as abstaining from preventing people’s participation in health-related matters (Ibid., para. 34). Obligations of the right to health further include the promotion of health education, as well as information campaigns, in particular with respect to sexual and reproductive health (Ibid., para. 36).

The CEDAW guarantees women and girls’ right to access specific educational information to help to ensure the health and well-being of families, including information and advice on family planning (article 10 (h)). The CEDAW Committee recommended States to develop and introduce age-appropriate, evidence-based, scientifically accurate mandatory curricula at all levels of education covering comprehensive information on sexual and reproductive health and rights in order to curtail violence against girls and women associated with educational institutions and schooling thereby protecting their right to be treated with respect and dignity (CEDAW/C/GC/36, para. 69 (i)). Moreover, to prevent violence against women, the Committee recommended States to address and eradicate gender stereotypes, prejudices, customs and practices that condone or promote gender-based violence against women and

underpin structural gender inequality, including by integrating gender equality content into curricula at all levels of education. This content should target stereotyped gender roles and promote values of gender equality and non-discrimination, including nonviolent masculinities, as well as ensure age-appropriate, evidence-based and scientifically accurate comprehensive sexuality education (CEDAW/C/GC/35, para. 35).

The CEDAW Committee has noted with concern ‘the lack of comprehensive age-appropriate sexuality education, and the limited access to contraception and sexual and reproductive health services under Law No. 52/2009 on population and family development and Law No. 36/2009 on health’ and has recommended the State to ‘eliminate discrimination, violence and stigma against women in rural areas, women living with HIV/AIDS, women with disabilities, women in detention and women using drugs, and ensure that they have access to adequate health services, including sexual and reproductive health services and HIV and drug treatment’ and ‘ensure that women and girls have effective access to sexual and reproductive health information and services, including age-appropriate sexuality education and modern methods of contraception, in particular by repealing legislation and regulations that restrict access to contraception’ (CEDAW/C/IDN/CO/8).

The Working Group on discrimination against women and girls has maintained that equality in reproductive health includes access, without discrimination, to affordable, quality contraception, including emergency contraception and that the entire field of law relating to termination of pregnancy is an area of regression for women’s control over their reproductive lives and their bodies, thus calling on states to that access to health care, including reproductive healthcare, is autonomous, affordable and effective (<https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WG/WomensAutonomyEqualityReproductiveHealth.pdf>).

The Working Group on discrimination against women and girls stated that the denial of access to a full range of contraceptive information and services, as well as the failure to remove barriers to access, including stereotypes portraying women’s “natural role” as mothers to justify such denial, constitutes a form of discrimination against women and girls, which puts their well-being at risk and has recommended that States ensure access to a full range of contraceptive information and services for women and girls, including emergency contraceptives (A/HRC/47/38).

#### *Criminalization of sex outside the wedlock/cohabitation/adultery*

Currently, sex outside of the wedlock is not criminalized in Indonesia, although adultery is criminalized under article 284 of the Penal Code with a maximum imprisonment of nine months. Article 284(2) also states that no prosecution shall be instituted unless by complaint of the insulted spouse with whom the bond of marriage has been severed by means of an application for divorce or due to severance from board and bed on the ground of the same act.

In contrast, Part Four. article 413 of the draft code refers to adultery and punishes extramarital sex by up to one year in jail or a fine. The draft code also allows complaints from husband and wife for married couples and parents

or children to report unmarried couples to the police if they suspect them of having sex. Both sex before marriage and adultery would be criminalized. We are concerned that such provisions could represent a risk of moral policing which could also be used to target members of the LGBT community. While this provision does not specifically mention same-sex conduct, since same-sex relationships are not legally recognized in Indonesia, it would effectively criminalize all same-sex conduct.

Draft article 414 states that couples who live together without being legally married could be sentenced to six months in prison. Under the proposed draft, non-married couples who live together will be committing a crime punishable by six months in prison or a fine, although only if reported to the police by their parents, children, or a spouse. This is yet another provision that could be used to target members of the LGBT community as same-sex marriage is illegal in Indonesia.

Such provisions would violate the right to privacy for consenting adults that is protected under international law. Such provisions could reinforce or exacerbate discriminatory social norms and have heightened impact on women, who could face pressure to enter forced marriages if accused of sex outside of marriage or an increase in societal “policing” of their behaviour.

The Working Group on discrimination against women and girls has noted that while criminal law definitions of adultery may be ostensibly gender neutral and prohibit adultery by both men and women, closer analysis reveals that the criminalization of adultery is both in concept and practice overwhelmingly directed against women and girls. Criminalisation of adultery hence contravenes article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, in which States parties condemn discrimination against women in all its forms, and agree to pursue, by all appropriate means and without delay, a policy of eliminating discrimination against women. The Working Group considers that the offence of adultery, though it may constitute a matrimonial offence, should not be regarded as a criminal offence with a maximum imprisonment of nine months. It is also our view that criminalisation of sexual relations between consenting adults should be regarded as an interference with the privacy of the individuals concerned (See the Working Group on discrimination against women and girls’ position paper in this regard available at <http://www.ohchr.org/EN/Issues/Women/WGWomen/Pages/WGWomenIndex.aspx>).

In addition, we would like to express our concerns that such discriminatory legislation could exacerbate gender-based violence, as women who are accused and/or convicted of adultery tend to be targets of violence and abuse, by members of family, community or law enforcement officers, due to a belief that they deserve to be punished for their moral crimes.

In its General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19 on violence against women, the CEDAW Committee recommends that Member States repeal all legal provisions that discriminate against women, and thereby enshrine, encourage, facilitate, justify or tolerate any form of gender-based violence against them;

including in customary, religious and indigenous laws, including legislation that criminalises adultery or any other criminal provisions that affects women disproportionately [CEDAW/C/GC/35, paragraph 31(a)].

The criminalization of sexual relations between consenting adults violates the right to bodily autonomy and integrity. The Beijing Platform states that “the human rights of women include their right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence.”

The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has also recommended that States repeal all laws that support the discriminatory and patriarchal oppression of women, inter alia laws that criminalize adultery, and decriminalize same-sex relationships between consenting adults (A/HRC/31/57).

#### *Other discriminatory provisions*

Article 408 Part One, criminalizes “obscene acts” and/or acts deemed as “violating decency” in public with a penalty of up to one year in prison or fine. In the absence of a clear definition of the term ‘obscene’ in the code, this article could be used to target LGBT people.

Such discriminatory provisions may also exacerbate gender-based violence, and violence based on sexual orientation and gender identity as women and LGBT persons who are accused and/or convicted of adultery, sodomy, or same-sex sexual relations tend to be targets of violence and abuse, by members of family, community or law enforcement officers.

The CEDAW Committee has expressed concern about the prevalence of discriminatory practices against lesbian, bisexual and transgender women and intersex persons, such as social exclusion, acts of hate speech and abuse, and arbitrary detention by the police and has recommended the State and adopt ‘legislative and policy measures to combat gender-based violence and discrimination against lesbian, bisexual and transgender women and intersex persons, including hate speech and physical, verbal and emotional abuse’ (CEDAW/C/IDN/CO/8).

In addition, twelve UN entities (ILO, OHCHR, UNAIDS Secretariat, UNDP, UNESCO, UNFPA, UNHCR, UNICEF, UNODC, UN Women, WFP and WHO) called for an end to violence and discrimination against LGBTI people. In their joint statement, they expressed their concerns that LGBTI persons face widespread discrimination and exclusion in all contexts - including multiple forms of discrimination based on other factors such as sex, race, ethnicity, age, religion, poverty, migration, disability and health status. They also drew attention to the acts of widespread physical and psychological violence that they have documented against LGBTI persons in all regions, noting that LGBTI youth, and lesbian and bisexual and transgender women are at a particular risk of physical, psychological and sexual violence in family and community settings. In light of this, they called on State to uphold international human rights standards on non-discrimination, including by prohibiting discrimination and violence against LGBTI adults, adolescents and



children in all contexts – including in education, employment, healthcare, housing, social protection, criminal justice and in asylum and detention settings

([https://www.ohchr.org/Documents/Issues/Discrimination/Joint\\_LGBTI\\_Statement\\_ENG.PDF](https://www.ohchr.org/Documents/Issues/Discrimination/Joint_LGBTI_Statement_ENG.PDF)).

*Right to freedom of religion or belief*

Articles 156 and 156(a) of the present penal code punish any person who publicly expresses feelings of hostility, hatred or contempt against one or more groups of the population of Indonesia, including religious groups. Art. 156a punishes any person who expresses feelings or commits an act that is considered to be at “enmity with, abusing or staining” one of the six religions recognized in Indonesia. Art. 156a punishes also expressions or acts “to prevent a person to adhere to any religion based on the belief of the almighty God”. These articles appeared to establish religious offences that could undermine both freedom of religion or belief and freedom of expression and could limit the ability to have a healthy dialogue and debate on religion or belief (see A/76/380 paragraph 59). In this regard, the Special Rapporteur on freedom of religion or belief highlighted that “legislation on religious offences is often used to facilitate the persecution of members of religious or belief minority groups, dissenters, atheists and non-theists” (see A/76/380 paragraph 29) and repeatedly urged States to repeal this kind of legislation (see A/72/365), as per the recommendation of the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (A/HRC/22/17/Add.4, paragraph 17), as well as of the Human Rights Committee in its General Comment No. 34 (see paragraph 48). These articles addressing “religious offences” appear not to be present in the Draft Law on Penal Code, which represents positive progress and is welcome.

According to the draft art. 300 of the Draft Law on Penal Code, “any person who publicly incites hostility, violence or discrimination against others’ religion or belief, or group on the basis of the religion or belief in Indonesia shall be punished with a maximum of five years of imprisonment or a fine”. Should it be adopted, the language would represent an improvement in respect of current art. 156 and 156(a). Nonetheless, we remind that what should be prosecuted is the incitement to hostility, violence or discrimination against any individual or group on the grounds of religion or belief (see A/RES/36/55) rather than “against others’ religion or belief”. We remind that “freedom of religion or belief does not — and indeed cannot — protect religions or belief systems themselves” (see A/71/269 paragraph 11), including their various “truth claims, teachings, rituals or practices, but instead protect and empower individuals, including in community with others, who profess any religion or belief and may wish to shape their lives in conformity with their own convictions” (ibidem).

Draft art. 302 establishes that any person who publicly incites, with the intention that another person leaves their religion or belief, shall be punished by a term of imprisonment of a maximum of two years or a fine. The language of this draft provision appears vague and confusing and could potentially be applied to peaceful expression of religion or belief, including expressions of

non-theistic and atheistic beliefs. The article should be revised in light of and shaped according to the prohibition of coercion in art. 18.2 of ICCPR and as interpreted in the Human Rights Committee's general comment 22 (see CCPR/C/21/Rev.1/Add.4 paragraph 5).

*Rights to freedom of opinion and expression, association and to take part in cultural life*

An important number of articles in the RKUHP have the potential to criminalise journalistic work and impinge upon press freedom. These articles, which also contradict the spirit of Law Number 40 of 1999 concerning the press cover a wide range of issues such as crimes against 'State Ideology' (draft article 188); Crimes of Insulting the Honour or Dignity of the President and Vice President (draft articles 218, 219, 220); a Crime of Broadcasting or Disseminating False News or Notifications, (draft articles 263 and 264); the criminalisation of acts of 'humiliation' of the Government; the Crime of Broadcasting or Disseminating 'False News or Notifications' (draft articles 263 and 264); Crimes against Insulting Public Powers and State Institutions (draft articles 349-350); and the Crime of Defamation (draft article 440). In the RKUHP, the media will also be prohibited from broadcasting news that has not been verified. If the news does not 'match the facts,' journalists and the media could face prison sentences of up to two years. Other controversial aspects of the bill include articles on slander against authorities and state agencies, freedom of assembly, the spread of misinformation, and treason. Draft article 256 contains provisions to criminalise the organisation of peaceful protests, punishable with fines and up to six months imprisonment. In addition, draft articles 118 impose up to a four-year prison sentence on anyone who spreads Marxist-Leninist teachings and 189 authorizes a 10-year sentence for associating with organizations that follow a Marxist-Leninist ideology "with the intent of changing the policy of the government" respectively.

It is a matter of serious concern that the criminalization of blasphemy may legitimise negative social attitudes towards members of minority religions or belief and encourage and lead to acts of violence against them by individuals holding extreme religious and political views.

The Special Rapporteur on freedom of opinion and expression has noted that restrictions applied on the freedom of expression should not be applied in such a manner as to promote prejudice and intolerance and recognized the importance to protect the freedom of expression of minority views including those views that might be offensive or disturbing to a majority (E/CN.4/1995/32).

Furthermore, prohibiting expressions or displays of lack of respect for a religion or other belief system, for example through laws criminalizing "blasphemy", is incompatible with the ICCPR and it would not be permissible for such prohibitions to be used to prevent or punish criticism of religious leaders or commentary on religious doctrine and tenets of faith (GC No. 34, para. 48; concluding observations: Indonesia, CCPR/C/IDN/CO/1).

Laws, policies and practices may amount to indirect discrimination where they appear neutral on their face but have a discriminatory effect. Blasphemy laws

that ostensibly apply to everyone can discriminate against religious or belief minorities, dissenters and atheists with a staggered intersectional impact on women.

The Special Rapporteur on freedom of opinion and expression has noted that national laws and judicial decisions often cite the protection of public morals as a reason to criminalize or seek the removal of content deemed to be improper, indecent, obscene or immodest and that States often use blasphemy laws to quash cultural diversity. Further, elimination of structural and systemic forms of gender discrimination is essential to protecting freedom of expression on a basis of equality and that States have an obligation not only to respect freedom of opinion and expression, but also to proactively remove the structural and systemic barriers to equality, including sexual and gender-based violence, which impede women's full enjoyment of freedom of opinion and expression. (A/76//258).

Article 15 of the International Covenant on Economic, Social and Cultural Rights guarantees the right of all to take part in cultural life, which include the right to participate in decisions that have an impact on cultural life. The Special Rapporteur in the field of cultural rights warned of the negative impact on cultural rights of fundamentalist ideologies that seek to stifle expression of cultural opposition and diversity so as to impose monolithic worldviews (A/HRC/34/56, para. 3). She also noted that Governments must ensure there is a counterweight to fundamentalist and extremist discourses by publicly challenging them and by guaranteeing education aimed at the objectives specified in article 13 (1) ICESR and article 26 (2) UDHR, as interpreted by the Committee in its General Comment No. 13. on the right to education. Such education should strengthen respect for human rights, promote understanding, tolerance and gender equality and be informed by humanism." (ibid., para. 24)

Taking into consideration the above-mentioned concerns and international human rights standards, we would like to urge your Excellency's Government to reconsider the proposed amendments to the Indonesian Criminal Code, *Rivisi Kitab Undang-undang Hukum Pidana (RKUHP)* that would discriminate against, or have a discriminatory impact on women and girls, LGBTI persons and religious or belief minorities as well as those which would restrict freedom of expression in the country. We hope that the executive and legislative authorities will seize this reform process to ensure that domestic law is brought in line with Indonesia's international human rights obligations and would not lead to potential retrogressions, in contravention to CESCR Committee General Comment No. 3 which clarified that any retrogressive measure would contravene the principles of the Covenant.

As it is our responsibility under the mandate provided to us by the Human Rights Council, to seek to clarify information brought to our attention, we would be grateful if you could please provide information on any measures that your Excellency's Government has taken or intends to take in order to implement the recommendations by UN human rights mechanisms, referred to above, and to bring its legislation into compliance with international human rights law. We would also be grateful if your Government could also provide us with any update on the latest legislative developments relating to the draft Penal Code.

This communication, as a comment on pending legislation and any response received from your Excellency's Government will be made public via the communications reporting website after 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council. While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their exacerbation.

We reiterate our willingness to share our technical expertise and assist Indonesia in its efforts to strengthen the country's legislative and institutional framework, guaranteeing the enjoyment of human rights for all in Indonesia, including the rights to equality, freedom from discrimination, freedom of expression and opinion, thought, conscience, religion or belief.

We would be grateful if the present letter could be shared with the Chair of Commission III of the Parliament.

Please accept, Excellency, the assurances of our highest consideration.

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