



# Indonesia vs. Suzethe Margaret

December 2020

**TRIALWATCH FAIRNESS REPORT**  
A CLOONEY FOUNDATION **FOR** JUSTICE INITIATIVE

## ABOUT THE AUTHOR

**Dr. Charles O'Mahony** is the Head of School of the School of Law at the National University of Ireland, Galway. His research focuses on mental health law, legal capacity, and the UN Convention on the Rights of Persons with Disabilities and its implications for the criminal law and criminal justice systems. Dr O'Mahony was elected as President of the Irish Association of Law Teachers (IALT) from 2014-2016. He previously worked as Amnesty International Ireland's Legal Officer on its mental health campaign and as a legal researcher for the Law Reform Commission of Ireland. Dr. O'Mahony thanks the TrialWatch initiative for helping to draft the report, which facilitated his legal conclusions and grading of the trial.

## ABOUT THE CLOONEY FOUNDATION FOR JUSTICE'S TRIALWATCH INITIATIVE

The **Clooney Foundation for Justice's TrialWatch initiative** monitors and grades the fairness of trials of vulnerable people around the world, including journalists, women and girls, religious minorities, LGBTQ persons, and human rights defenders. Using this data, TrialWatch advocates for victims and is developing a Global Justice Ranking measuring national courts' compliance with international human rights standards.

*The legal assessment and conclusions expressed in this report are those of the author and not necessarily those of the Clooney Foundation for Justice.*

# EXECUTIVE SUMMARY



**Dr Charles O'Mahony, Head of the School of Law at National University of Ireland, Galway and member of the TrialWatch Experts Panel, assigned this trial a grade of C:**

This trial did not meet international standards. Specifically, the authorities failed to assess the accommodations necessary for Ms. Margaret to effectively participate in the trial, as required by the UN Convention on the Rights of Persons with Disabilities, and, alternatively, failed to conduct an adequate inquiry into her fitness to stand trial, as required by the International Covenant on Civil and Political Rights. However, given that Ms. Margaret was found not guilty by reason of diminished capacity, this did not affect the outcome of the proceedings.

From October to February 2020, the Clooney Foundation for Justice's TrialWatch initiative monitored the criminal trial of Suzethe Margaret in Indonesia. Ms. Margaret, a Catholic woman with schizophrenia, was prosecuted for blasphemy for bringing a dog into a mosque while wearing shoes. While Ms. Margaret's trial largely complied with fair trial guarantees and the court ultimately found her not guilty based on a diminished capacity defense, her case reveals concerning deficits in how the Indonesian authorities respond to defendants with psychosocial disabilities in criminal proceedings. This case also illustrates the ways in which Indonesia's blasphemy law is inconsistent with international standards, disproportionately affecting religious minorities and persons with psychosocial disabilities.

Ms. Suzethe Margaret is a 53-year-old Catholic woman from Bogor District in West Java, Indonesia. Evidence presented at trial demonstrated that Ms. Margaret had been diagnosed with paranoid schizophrenia. Although Ms. Margaret had been receiving treatment since 2013, she often experienced periods of mental ill health, which included hallucinations and delusions.

In the days leading up to the incident for which she was prosecuted, Ms. Margaret was under the delusion that her husband was having an affair. On June 30, 2019, Ms. Margaret went out to buy a birthday cake for her son. She brought the family dog with her. According to Ms. Margaret, she heard voices in her head, which told her that her husband was getting married at Al-Munawaroh Sentul mosque. She hurriedly drove to the mosque. In reality, Ms. Margaret's husband was at their house, unaware of what was happening.

With her dog in her arms and without removing her shoes, Ms. Margaret entered the mosque, intending to stop the wedding. She was confronted by a mosque custodian, who

asked her about her religion; Ms. Margaret responded that she was Catholic and physically resisted when the custodian requested that she leave. The altercation, which attracted a crowd of worshippers at the mosque, was filmed by onlookers and widely shared on social media. The Bogor police escorted Ms. Margaret home and subsequently brought Ms. Margaret and her husband to the police station for interrogation.

Although Ms. Margaret's husband explained to the police that she had been diagnosed with schizophrenia and that the incident had occurred because Ms. Margaret did not regularly take her medication, the Indonesian authorities moved forward with a criminal prosecution. On July 1, 2019, the police ordered that Ms. Margaret be detained pending trial but immediately suspended the order (a procedure called *pembantaran penahanan*), referring Ms. Margaret to the Indonesian National Police (Polri) Hospital for observation. After four days under observation, the treating doctor issued a letter concluding that Ms. Margaret was grappling with a severe mental disorder - schizophrenia; that her actions on the day in question were a manifestation of the symptoms of the disorder; and that she lacked understanding of the risks and significance of her actions. At the referral of the Polri Hospital, Ms. Margaret was moved to a hospital closer to her home and treated as an in-patient from July 4, 2019 through September 11, 2019.

On September 12, 2019, the day after Ms. Margaret was discharged from the hospital, the Bogor District Public Prosecutor indicted Ms. Margaret under Article 156a(a) of the Indonesian Criminal Code. Article 156a(a) provides for a sentence of up to five years for "any person who deliberately in public gives expression to feelings or commits an act ... which principally ha[s] the character of being at enmity with, abusing or staining a religion, adhered to in Indonesia." Ms. Margaret's trial commenced in October 2019 and concluded in February 2020, with the court finding that Ms. Margaret was not criminally responsible for her actions on the basis of diminished capacity.

At the pretrial stage, it appears that the authorities violated Ms. Margaret's rights under the Convention on the Rights of Persons with Disabilities (CRPD). Article 12 of the CRPD requires States to ensure the "enjoy[ment] [of] legal capacity on an equal basis with others." As stated by the CRPD Committee, legal capacity can never be restricted on the grounds of mental capacity. As such, Article 14 of the CRPD prohibits the involuntary committal of individuals with psychosocial disabilities to institutions on the basis of actual or perceived impairments, even where there is a need for care or treatment.

It is unclear that Ms. Margaret had any choice in her committal to the police hospital for observation or her subsequent two months of inpatient treatment, particularly given that the police could have detained her had she refused such measures. Assuming that Ms. Margaret's committal was involuntary, her Article 12 right to enjoyment of legal capacity and Article 14 right to liberty were violated.

While the court generally conducted hearings in line with international standards, there was one major exception. Under the CRPD, States must provide individuals with

disabilities with the reasonable accommodations necessary to participate in legal proceedings. In Ms. Margaret's case, however, the authorities failed to adequately assess whether she required such support, in contravention of the CRPD.

Notably, Ms. Margaret appeared dazed throughout the trial and did not engage with her lawyers, raising concerns that she was in fact unable to participate in her own defense. If so, this would have violated her right to effective participation in the proceedings - a fundamental principle of the right to a fair trial enshrined in the ICCPR. It would also have violated Ms. Margaret's right to exercise legal capacity on an equal basis with others and right to access to justice, protected by - respectively - Articles 12 and 13 of the CRPD.

Instead of identifying reasonable accommodations for Ms. Margaret, the court conducted an analysis of Ms. Margaret's "fitness to stand trial." The UN Human Rights Committee has understood Article 14(1) of the ICCPR to require a detailed assessment of fitness where the defendant's mental health is in question. The inquiry into Ms. Margaret's fitness to stand trial - which consisted solely of testimony from her former doctor Dr. Yongky, who had not treated her in over a year, did not conduct an assessment geared towards ascertaining her capacity to stand trial, and based his conclusions on a brief encounter with Ms. Margaret in the court waiting room - was glaringly deficient. As recounted in defense submissions, Dr. Yongky noted that in order to more accurately determine whether Ms. Margaret was fit to stand trial, "he would have to *directly talk to her*."<sup>1</sup>

More broadly, Ms. Margaret's case highlights the extent to which Article 156a(a) is inconsistent with international standards. Article 156a(a) implicates three interconnected rights: freedom of expression, freedom of religion, and the right to equality and non-discrimination. The expansive provision criminalizes a broad range of speech offenses, affording the authorities unfettered discretion to prosecute those they wish and making it difficult for individuals to regulate their conduct accordingly. As such, it violates the right to freedom of expression guaranteed by Article 19 of the ICCPR.

Additionally, Article 156a(a) is neither necessary to achieve nor proportional to any potential state interests: a requirement of Article 19. As detailed by the United Nations Human Rights Committee and other UN bodies, only the gravest speech offenses should be subject to criminal penalties. Given that Article 156a(a) permits imprisonment of up to five years for speech offenses deemed merely insensitive to or disrespectful of Indonesia's official religions, it extends beyond any authorized exceptions - a further violation of freedom of expression guarantees.

Correspondingly, the provision undermines equality and non-discrimination guarantees. Article 156(a) is ripe for abuse against vulnerable groups. Ms. Margaret - a Catholic

---

<sup>1</sup> Memorandum of Defense, Response to the Public Prosecution's Sentencing Demand, January 7, 2020, pg. 32 (unofficial translation). Emphasis added.



woman diagnosed with schizophrenia - is emblematic of the types of individuals typically charged under the provision.

As clarified by the UN Human Rights Committee, the right to non-discrimination reflected in Articles 2 and 26 of the ICCPR can be violated even where there is no intent to discriminate, provided there are discriminatory effects. The vague language of Article 156a(a) - and the authorities' resulting blanket discretion in bringing cases - has translated into the disproportionate prosecution of religious minorities, particularly in situations where there is significant public pressure. This outcome raises concerns under Articles 2 and 26 of the ICCPR. It is likewise inconsistent with Article 18(1), which protects the right to freedom of religion or belief and, therein, religious minorities' ability to exercise this right free from fear and intimidation.

Ms. Margaret's case further demonstrates how Article 156a(a) leaves individuals with psychosocial disabilities vulnerable to prosecution. As noted above, evidence presented by both the prosecution and defense confirmed that Ms. Margaret's failure to obey mosque protocol stemmed from her schizophrenia. In criminalizing acts purely for their non-conformity with religious norms and etiquette, Article 156a(a) has been shown to disproportionately affect persons with psychosocial disability - particularly given documented gaps in understanding of psychosocial disability in Indonesia. This raises concerns about the provision's consistency with the non-discrimination guarantees set forth in the ICCPR as well as non-discrimination guarantees in the CRPD.

The Indonesian judicial system's shortcomings in appropriately addressing psychosocial disability is likewise evidenced by Article 44(2) of the Indonesian Criminal Code. Ms. Margaret was ultimately found not guilty under a diminished capacity defense established by Article 44(1). Its counterpart, Article 44(2), allows judges to order the involuntary committal of so absolved individuals to mental health institutions. As noted above, the CRPD proscribes involuntary commitment on the basis of perceived or actual impairment. The UN Human Rights Committee has similarly clarified that the ICCPR prohibits the imposition of detention on the basis of disability excepting narrow circumstances. In violation of these treaties, Article 44(2) confers broad discretion on judges to impose involuntary committal, absent any criteria or safeguards.

In sum, Ms. Margaret's trial exposes troubling gaps in the Indonesian justice system, principally with regard to its treatment of religious minorities and persons with psychosocial disabilities. In order to comply with international standards, Indonesia must review and revise its laws and procedures to ensure that such individuals receive due process and are treated fairly. To specifically fulfill its obligations under the CRPD Indonesia should provide better disability awareness training for stakeholders in its criminal justice system and adopt measures to raise awareness about persons with disabilities in Indonesian society.

# BACKGROUND INFORMATION

## A. POLITICAL AND LEGAL CONTEXT

Although Indonesia has made important human rights gains in recent years, there are continuing challenges. Freedom House's 2019 study of political and civil liberties rated Indonesia "partly free," noting concerns with systemic corruption, discrimination and violence against minority groups, and blasphemy laws.<sup>2</sup> These issues came into play during the trial of Ms. Margaret.

### *Religious Discrimination and Blasphemy Laws*

Indonesia is a Muslim-majority country, with approximately 87% of the country identifying as Muslim.<sup>3</sup> While freedom of religion is guaranteed by the Indonesian constitution, since 2004 the United States Commission on International Religious Freedom has placed Indonesia on its Tier 2 list for "engaging in or tolerating religious freedom violations that meet at least one of the elements of the 'systematic, ongoing, egregious' standard used to designate a 'country of particular concern.'"<sup>4</sup> The harassment of religious minorities, including violent attacks, has been well-documented by human rights groups, with national and local authorities reportedly either facilitating or taking insufficient precautions to prevent such abuse.<sup>5</sup>

As described by Amnesty International, "laws criminalizing blasphemy [are] ... used arbitrarily to imprison people who belong to minority religions or faiths, or whose beliefs are considered a deviation from the central tenets of the officially recognized religions in Indonesia."<sup>6</sup> Article 156a(a) of Indonesia's Criminal Code provides for a five year prison sentence for individuals who "deliberately in public giv[e] expression to feelings or commi[t] an act, which principally ha[s] the character of being at enmity with, abusing or staining a religion, adhered to in Indonesia" [hereinafter Article 156a]. Only six official

<sup>2</sup> Freedom House, "Freedom in the World Report on Indonesia", 2019. Available at <https://freedomhouse.org/country/indonesia/freedom-world/2019>.

<sup>3</sup> The largest religious minorities are Protestants (7% identify as Protestant), Roman Catholic (3%), and Hindu (1.5%). These numbers hail from the 2010 Census, as cited in United States Department of State, "Indonesia 2018 International Religious Freedom Report", 2018, pg. 2. Available at <https://www.state.gov/wp-content/uploads/2019/05/INDONESIA-2018-INTERNATIONAL-RELIGIOUS-FREEDOM-REPORT.pdf>.

<sup>4</sup> United States Commission on International Religious Freedom, "USCIRF Welcomes Release of Jailed Jakarta Governor; Denounces Indonesia's Blasphemy Law", January 24, 2019. Available at <https://www.uscifr.gov/news-room/press-releases-statements/uscifr-welcomes-release-jailed-jakarta-governor-denounces>.

<sup>5</sup> See Freedom House, "Freedom in the World Report on Indonesia", 2019; Amnesty International, "Prosecuting Beliefs: Indonesia's Blasphemy Laws", November 2014, Available at <https://www.amnesty.org/en/documents/ASA21/018/2014/en/>; Human Rights Watch, "Events of 2019: Indonesia", 2020. Available at <https://www.hrw.org/world-report/2020/country-chapters/indonesia>; Human Rights Watch, "In Religion's Name", February 2013, pgs. 3-5. Available at [https://www.hrw.org/sites/default/files/reports/indonesia0213\\_ForUpload\\_0.pdf](https://www.hrw.org/sites/default/files/reports/indonesia0213_ForUpload_0.pdf).

<sup>6</sup> Amnesty International, "Prosecuting Beliefs: Indonesia's Blasphemy Laws", November 2014, pg. 8.

religions are covered by the law: Islam, Christianity (Protestantism), Catholicism, Hinduism, Buddhism, and Confucianism.

As documented by organizations such as Human Rights Watch, hardline “Islamist groups” have leveraged blasphemy legislation as a political tool.<sup>7</sup> By pressuring police and prosecutors to initiate blasphemy cases, such groups are able to stir up public outrage and mobilize followers.<sup>8</sup> A high-profile example is the trial of former Jakarta Governor Basuki Tjahaja Purnama (Ahok), a Christian of Chinese descent, in 2017. “[T]he National Movement to Guard the MUI Fatwa (GNPF-MUI), a coalition of Islamist groups” organized massive rallies to “force the government and law enforcement authorities to prosecute and jail Ahok” on blasphemy charges.<sup>9</sup> These protests coincided with Ahok’s re-election campaign.<sup>10</sup> Ahok was ultimately convicted and spent two years in prison.<sup>11</sup>

The past several years have seen an increase in blasphemy prosecutions. While blasphemy cases are most frequently brought under Article 156a of the Criminal Code, other laws, such as Article 28(2) of the Electronic Transactions and Information Law, have been used to “prosecute individuals who have been accused of defaming or insulting a religion online.”<sup>12</sup> Prior to 2004, Article 156a had been applied approximately 8 times. From 2004-2014, 125 individuals were convicted pursuant to the provision.<sup>13</sup> That number has remained high in the years since President Joko Widodo assumed office in 2014: at least 23 people were sentenced under Article 156a between 2014-2018.<sup>14</sup>

As part of a larger process of updating its colonial era Criminal Code, Indonesia is set to expand its blasphemy law from one to six articles, including expanding the “elements of the crime” to include “defaming a religion, persuading someone to be a non-believer, disturbing a religious ritual or making noise near a house of worship, and insulting a cleric while leading a ritual.”<sup>15</sup> While government deliberations on the draft Criminal Code were

---

<sup>7</sup> See Human Rights Watch, “In Religion’s Name”, February 2013, pgs. 2-4.

<sup>8</sup> Human Rights Watch, “The Human Cost of Indonesia’s Blasphemy Laws”, October 25, 2018. Available at <https://www.hrw.org/news/2018/10/25/human-cost-indonesias-blasphemy-law>. See also United States Commission on International Religious Freedom, “Religious Extremists Exploit Blasphemy Laws in Indonesian Election, USCIRF says”, April 18, 2019. Available at <https://www.uscirf.gov/news-room/press-releases-statements/religious-extremists-exploit-blasphemy-laws-in-indonesian>.

<sup>9</sup> Indonesia at Melbourne, “Bigger than Ahok: Explaining the 2 December Mass Rally”, December 7, 2016. Available at <https://indonesiaatmelbourne.unimelb.edu.au/bigger-than-ahok-explaining-jakartas-2-december-mass-rally/>.

<sup>10</sup> BBC, “Ahok Trial: The Blasphemy Case Testing Indonesian Identity”, February 14, 2017. Available at <https://www.bbc.com/news/world-asia-38902960>.

<sup>11</sup> Al Jazeera, “Ex-Jakarta Governor Ahok, Jailed for Blasphemy, Freed”, January 24, 2019. Available at <https://www.aljazeera.com/news/2019/01/ahok-jakarta-governor-jailed-blasphemy-released-190124060045414.html>.

<sup>12</sup> Amnesty International, “Prosecuting Beliefs”, November 2014, pg. 7. Article 28(2) of the ETI law applies to, “[a]ny person who deliberately and without right disseminates information aimed to inflict hatred or hostility on individuals and/or certain groups of community based on ethnic groups, religions, races and inter-groups” and provides for up to six years imprisonment and a fine of up to 1 billion rupiah.

<sup>13</sup> Human Rights Watch, “The Human Cost of Indonesia’s Blasphemy Laws”, October 25, 2018.

<sup>14</sup> Id

<sup>15</sup> See Human Rights Watch, “Indonesia to Expand Abusive Blasphemy Law”, October 31, 2019. Available at <https://www.hrw.org/news/2019/10/31/indonesia-expand-abusive-blasphemy->



postponed after large-scale student protests in September 2019, some lawmakers have since called for deliberations to resume.<sup>16</sup>

### ***Treatment of Individuals with Psychosocial Disabilities***

Persons with psychosocial disabilities face enormous stigma in Indonesia.<sup>17</sup> Mental health services and support are inadequate, and many people with psychosocial disabilities are involuntarily committed.<sup>18</sup> Under the 2014 Mental Health Act, a relative or guardian can “admit a child or an adult with a psychosocial disability without their consent to a mental health or a social care institution, and without any judicial review.”<sup>19</sup>

According to Human Rights Watch, there have been documented instances of forced medical treatment and physical and sexual violence inflicted by employees in state mental health facilities.<sup>20</sup> Within the broader community, there is a limited understanding of mental health and similarly limited resources, with the result that some families rely on the traditional practice of *pasung*, where individuals with real or perceived psychosocial disabilities are “shackled or locked up in confined spaces.”<sup>21</sup>

Individuals with psychosocial disabilities are vulnerable to blasphemy prosecutions. As noted in a recent assessment of the relationship between mental illness and blasphemy legislation in Indonesia, the “lack of clarity in Article 156 A of the Indonesian Criminal Code ... makes the judicial task more complicated ... [and creates the risk that courts] take into account community tensions and anxieties, rather than focusing upon the potentially exculpating mental state of the accused person.”<sup>22</sup> In March 2019, a woman with an apparent mental health condition - she believed herself to be the reincarnation of a deity<sup>23</sup> - was convicted of hate speech under the ETI law after she uploaded videos to social media of her erroneously reciting the *shahada*, the Islamic declaration of faith.<sup>24</sup> A

---

law#:~:text=Indonesia%20is%20set%20to%20expand,of%20the%20country's%20Criminal%20Code.&text=The%20new%20provisions%20are%20also,Hinduism%2C%20Buddhism%2C%20and%20Confucianism.;Human Rights Watch, “Indonesia: Draft Criminal Code Disastrous for Rights”, September 18, 2019. Available at <https://www.hrw.org/news/2019/09/18/indonesia-draft-criminal-code-disastrous-rights>.

<sup>16</sup> The Jakarta Post, “House urges government to resume deliberation of controversial bills that triggered massive protests last year”, June 22, 2020. Available at <https://www.thejakartapost.com/news/2020/06/22/house-urges-govt-to-resume-deliberation-of-controversial-bills-that-triggered-massive-protests-last-year.html>.

<sup>17</sup> Psychology Research and Behavior Management Journal, “Stigma towards People with Mental Health Problems in Indonesia”, October 31, 2018. Available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6217178/>.

<sup>18</sup> Human Rights Watch, “Living in Hell: Abuses against People with Psychosocial Disabilities in Indonesia”, March 20, 2016. Available at [https://www.hrw.org/sites/default/files/report\\_pdf/indonesia0316web.pdf](https://www.hrw.org/sites/default/files/report_pdf/indonesia0316web.pdf).

<sup>19</sup> Id. at pg. 5.

<sup>20</sup> Id. at pgs. 3, 12-13.

<sup>21</sup> Id. at pgs. 3-5.

<sup>22</sup> Psychology, Psychiatry, and Law Journal, “Blasphemy Law, Mental Illness, and the Potential for Injustice: A Cautionary Tale from Indonesia”, April 2020. Available at <https://www.tandfonline.com/doi/full/10.1080/13218719.2020.1736392>.

<sup>23</sup> Human Rights Watch, “Woman Tried for Blasphemy over Mosque Incident”, October 11, 2019.

<sup>24</sup> As described in Indonesia at Melbourne, “Criminalising the Mentally Ill: Schizophrenic Woman to Face Court for Blasphemy”, October 8, 2019. Available at

few months later, another woman with documented mental health issues was charged with blasphemy after posting comments on social media.<sup>25</sup>

### ***Due Process and Fair Trial Rights***

As documented by international and local organizations and institutions, fair trial abuses are not uncommon within the Indonesian judicial system. Arbitrary arrest and detention is a significant problem.<sup>26</sup> According to the Indonesian Institute for Criminal Justice Reform, individuals are often arrested and detained without being informed of the charges.<sup>27</sup> There are also reports of coerced confessions (including through the use of torture),<sup>28</sup> “deni[al of] proper access to legal counsel,”<sup>29</sup> and withholding of key components of the case file from the defense, such as indictments.<sup>30</sup>

As observed by the Indonesian Institute for Criminal Justice Reform, at the trial stage the “presumption of guilt is commonplace.”<sup>31</sup> Correspondingly, the right to equality of arms is not always respected, with the prosecution afforded more opportunities to call and examine witnesses, among other allowances.<sup>32</sup> Freedom House and the U.S. State Department have noted that the court system remains beset by corruption: prosecutors and judges are reportedly susceptible to outside influence.<sup>33</sup> In Freedom House’s assessment, judges “occasionally rely on public opinion or religious rulings rather than a case’s legal merits.”<sup>34</sup>

On a positive note, court proceedings are consistently open to the public.

## **B. CASE HISTORY**

Ms. Suzethe Margaret (“Ms. Margaret”) is a 53-year-old woman (as of December 2020) from Bogor District, West Java. At the time of the alleged offense, Ms. Margaret, a

---

<https://indonesiaatmelbourne.unimelb.edu.au/criminalising-the-mentally-ill-schizophrenic-woman-to-face-court-for-blasphemy/?fbclid=IwAR1mHQO0sgxcw4E-zmN91mOKNTToNGEYaGFR9ZvYGeWEmzhiJIUPqXhuer54>.

<sup>25</sup> As described in Human Rights Watch, “Woman Tried for Blasphemy over Mosque Incident”, October 11, 2019. Available at <https://www.hrw.org/news/2019/10/11/indonesian-woman-tried-blasphemy-over-mosque-incident>.

<sup>26</sup> See Freedom House, “Freedom in the World Report on Indonesia”, 2019; United States Department of State, “Human Rights Country Report on Indonesia”, 2019, pgs. 6-7. Available at <https://www.state.gov/wp-content/uploads/2020/02/INDONESIA-2019-HUMAN-RIGHTS-REPORT.pdf>.

<sup>27</sup> Institute of Criminal Justice Reform, “Fair Trial Rights Report”, January 2019, pg. 9. Available at <http://icjr.or.id/wp-content/uploads/2019/02/Indonesia-Fair-Trial-Report-2018.pdf>.

<sup>28</sup> See Freedom House, “Freedom in the World Report on Indonesia”, 2019; United States Department of State, “Human Rights Country Report on Indonesia”, 2019, pgs. 3-4, 8.

<sup>29</sup> Freedom House, “Freedom in the World Report on Indonesia”, 2019.

<sup>30</sup> Institute of Criminal Justice Reform, “Fair Trial Rights Report”, January 2019, pgs. 16, 20.

<sup>31</sup> *Id.* at pg. 14. See also United States Department of State, “Human Rights Country Report on Indonesia”, 2019, pg. 8.

<sup>32</sup> *Id.* at pgs. 17-19.

<sup>33</sup> Freedom House, “Freedom in the World Report on Indonesia”, 2019; United States Department of State, “Human Rights Country Report on Indonesia”, 2019, pgs. 7-8, 20.

<sup>34</sup> Freedom House, “Freedom in the World Report on Indonesia”, 2019.

Catholic, was living with her children, mother, and husband, Mr. Firdaus Situngkir, who was regularly away in Papua for work.

Evidence presented at trial showed that Ms. Margaret had been diagnosed with schizophrenia.<sup>35</sup> Her documented symptoms included hallucinations, delusions, and paranoia: among other things, “feeling that her mind was being controlled by someone else.”<sup>36</sup> Ms. Margaret began undergoing treatment for paranoid schizophrenia as an outpatient at Marzoeki Mahdi Psychiatric Hospital in 2013.<sup>37</sup> As Dr. Lahargo (Ms. Margaret’s treating doctor since 2017) testified at trial, the disorder affected Ms. Margaret’s thoughts and feelings, her ability to grasp reality, and her ability to function in daily life.<sup>38</sup>

Prior to the incident on June 30, 2019, Ms. Margaret had not been taking her medication regularly: according to Dr. Lahargo, Ms. Margaret did not accept that she was experiencing mental illness, avoided medication, and underwent periods of mental ill health.<sup>39</sup> Ms. Margaret’s husband, Mr. Firdaus Situngkir, further testified that he was unable to ensure that Ms. Margaret took her medication given that he frequently traveled for work.<sup>40</sup> As recounted by Mr. Situngkir, 10 days before the incident Ms. Margaret “threw away the medication and said to [him], ‘You’re torturing me, giving me poison and I’ve thrown it all away.’”<sup>41</sup> One of Ms. Margaret’s delusions, relevant to the criminal case, was that her husband was having an affair and was about to remarry.<sup>42</sup>

Ms. Margaret was unwell in the days leading up to the incident on June 30, 2019. Just a few days prior, Ms. Margaret had informed her husband that she wanted to investigate her cousin’s death in Surabaya (it was unclear whether the cousin was in fact dead).<sup>43</sup> While in Surabaya, she asked a local food stall vendor whether her cousin had been killed and subsequently accused the vendor of conspiring against their family.<sup>44</sup> Her husband

---

<sup>35</sup> See Cibinong Class 1A District Court, Judgment, February 5, 2020, pgs. 35, 52–53, 55, 62, 78, 81, 82, 89, 90-91 (unofficial translation).

<sup>36</sup> Memorandum of Defense, Response to the Public Prosecution’s Sentencing Demand, January 7, 2020, pg. 4 (unofficial translation); Cibinong Class 1A District Court, Judgment, February 5, 2020, pgs. 52-53 (witness testimony of Dr. Lahargo) (unofficial translation).

<sup>37</sup> Cibinong Class 1A District Court, Judgment, February 5, 2020, pgs. 2, 23, 52-62 (witness testimony of Dr. Lahargo) (unofficial translation). See also Monitor’s Notes, November 11, 2019.

<sup>38</sup> *Id.* A different doctor, Dr. Yongky, testified about Ms. Margaret’s fitness to stand trial.

<sup>39</sup> Cibinong Class 1A District Court, Judgment, February 5, 2020, pgs. 52-53, 55-57 (witness testimony of Dr. Lahargo) (unofficial translation); Monitor’s Notes, November 11, 2019.

<sup>40</sup> Cibinong Class 1A District Court, Judgment, February 5, 2020, pg. 26 (witness testimony of Mr. Firdaus Situngkir) (unofficial translation); Monitor’s Notes, October 16, 2019.

<sup>41</sup> *Id.*

<sup>42</sup> Cibinong Class 1A District Court, Judgment, February 5, 2020, pg. 24 (witness testimony of Mr. Firdaus Situngkir) (unofficial translation); Monitor’s Notes, October 16, 2019. Mr. Situngkir displayed printouts of Whatsapp messages from Ms. Margaret prior to the incident on June 30, 2019, in which she asked him: “Did you just marry again, with Eli?” and “Was it good last night with Eli?”

<sup>43</sup> Cibinong Class 1A District Court, Judgment, February 5, 2020, pgs. 27-28 (witness testimony of Mr. Firdaus Situngkir) (unofficial translation); Monitor’s Notes, October 16, 2019.

<sup>44</sup> *Id.*

diffused the situation by explaining that Ms. Margaret had a mental illness, and Ms. Margaret was taken to the local police station.<sup>45</sup>

The alleged offense occurred on June 30, 2019. The following account is based on facts documented by the court as well as witness testimony presented at trial. Ms. Margaret left her house with her dog around noon, telling her husband she wanted to buy a birthday cake for their eldest child.<sup>46</sup> En route to the store, Ms. Margaret heard voices that informed her that her husband was getting married at a mosque (he was, in fact, at home).<sup>47</sup> She drove to Al-Munawaroh Sentul Mosque, intending to stop the wedding.<sup>48</sup> She honked at people as she sped to the mosque, endeavoring to get there as fast as possible.<sup>49</sup>

When she arrived at the mosque, it was approximately 1 p.m. Ms. Margaret entered the mosque and walked up to the second floor prayer area looking for her husband, repeating several times, “So, this is the place where my husband is getting married.”<sup>50</sup> She was wearing her shoes and carrying her dog.<sup>51</sup> Ms. Margaret testified that she brought the dog with her because she did not want it to die in the car.<sup>52</sup> She also testified that she did not realize at the time that she had to take off her shoes; she was angry at her husband and focused on preventing him from getting married.<sup>53</sup> In Ms. Margaret’s words, “everything happened so fast.”<sup>54</sup>

When Ms. Margaret was unable to find her husband on the second floor, she went down the stairs to the ground floor and kicked a box of mineral water so that the bottles scattered.<sup>55</sup> The mosque custodian, Mr. Ishak, picked up the bottles and asked Ms. Margaret why she was angry.<sup>56</sup> He further told Ms. Margaret that she could not enter the mosque with a dog and that she had to take off her shoes.<sup>57</sup> Ms. Margaret ignored Mr. Ishak, going back up the stairs to the prayer area to continue to look for her husband.<sup>58</sup> Mr. Ishak followed her, telling her she must leave the mosque.<sup>59</sup> During their

---

<sup>45</sup> Id.

<sup>46</sup> Cibinong Class 1A District Court, Judgment, February 5, 2020, pg. 24 (witness testimony of Mr. Firdaus Situngkir), pg. 75 (witness testimony of Ms. Margaret) (unofficial translation); Monitor’s Notes, October 16, 2019; Monitor’s Notes, November 26, 2019.

<sup>47</sup> Id.

<sup>48</sup> Cibinong Class 1A District Court, Judgment, February 5, 2020, pg. 75 (witness testimony of Ms. Margaret) (unofficial translation); Monitor’s Notes, November 26, 2019.

<sup>49</sup> Id.

<sup>50</sup> Bogor District Public Prosecutor’s Office, Indictment, September 12, 2019, pg. 3 (unofficial translation); Cibinong Class 1A District Court, Judgment, February 5, 2020, pg. 5 (witness testimony of Nurul Qomariah Mclaughlin) (unofficial translation).

<sup>51</sup> Id.

<sup>52</sup> Monitor’s Notes, November 26, 2019.

<sup>53</sup> Id.

<sup>54</sup> Id.

<sup>55</sup> Cibinong Class 1A District Court, Judgment, February 5, 2020, pgs. 78-79 (legal facts established by the court) (unofficial translation).

<sup>56</sup> Id.

<sup>57</sup> Id. See also Cibinong Class 1A District Court, Judgment, February 5, 2020, pg. 15 (testimony of Ishak Solehudin) (unofficial translation); Monitor’s Notes, October 9, 2019.

<sup>58</sup> Id. at pg. 78.

<sup>59</sup> Id.

confrontation, Ms. Margaret “let her dog loose on the mosque prayer rug,”<sup>60</sup> testifying later that she felt tired of carrying the dog, and that it ran away.<sup>61</sup> Mr. Ishak asked Ms. Margaret if she was Muslim, to which Ms. Margaret responded, “I am Catholic.”<sup>62</sup> Mr. Ishak stated that if she was Catholic, she should leave the mosque.<sup>63</sup>

Mr. Ishak tried to get Ms. Margaret to leave, “push[ing]” her.<sup>64</sup> Ms. Margaret physically resisted “by pushing the head of [the custodian, who then] brushed aside the Defendant’s hand, causing the mobile phone of [Ms. Margaret] to drop.”<sup>65</sup> Ms. Margaret kicked her leg in the direction of Mr. Ishak’s stomach but did not make contact.<sup>66</sup> The commotion and shouting attracted the attention of other worshippers at the mosque, including one individual who said to Ms. Margaret, “Woman, use your brain,” to which Ms. Margaret responded, “I use the brain, it’s you who don’t use the brain.”<sup>67</sup>

Ms. Margaret left the mosque to try and find her dog.<sup>68</sup> In the parking area, she encountered Mr. Ishak and they again quarreled.<sup>69</sup> According to Mr. Ishak, at some point during this subsequent altercation Ms. Margaret punched him.<sup>70</sup> While they were in the parking area, police from Babakan Madang Sub-district arrived.<sup>71</sup> Ms. Margaret was taken home by a woman from the mosque, “escorted by police officers.”<sup>72</sup>

At the house, the police asked Mr. Situngkir if they could bring Ms. Margaret to the station for questioning. Upon arrival at the Bogor District Police Station, Ms. Margaret became agitated, “running to and fro in fear that she might get hurt.”<sup>73</sup> In Mr. Situngkir’s words, she was “here, there and everywhere.”<sup>74</sup> Ms. Margaret and her husband were both questioned at the police station.<sup>75</sup> Mr. Situngkir explained that Ms. Margaret had been diagnosed with a mental illness.<sup>76</sup> A medical professional was not present during the questioning.<sup>77</sup>

---

<sup>60</sup> Id. at pg. 79.

<sup>61</sup> Monitor’s Notes, November 26, 2019.

<sup>62</sup> Cibinong Class 1A District Court, Judgment, February 5, 2020, pgs. 78-79 (legal facts established by the court) (unofficial translation).

<sup>63</sup> Id.

<sup>64</sup> Id.

<sup>65</sup> Id.

<sup>66</sup> Id. at pgs. 6, 16 (witness testimony of Ishak Solehudin).

<sup>67</sup> Id. at pg. 79 (legal facts established by the court).

<sup>68</sup> Id.

<sup>69</sup> Id.

<sup>70</sup> Id. at pg. 16 (witness testimony of Ishak Solehudin).

<sup>71</sup> Id. at pg. 17 (witness testimony of Ishak Solehudin), 79 (legal facts established by the court); Monitor’s Notes, October 9, 2019.

<sup>72</sup> Id. at pg. 85 (legal facts established by the court).

<sup>73</sup> Id. at pg. 27 (witness testimony of Firdaus Situngkir); Monitor’s Notes, October 16, 2019.

<sup>74</sup> Monitor’s Notes, October 16, 2019.

<sup>75</sup> Cibinong Class 1A District Court, Judgment, February 5, 2020, pg. 23 (witness testimony of Firdaus Situngkir) (unofficial translation).

<sup>76</sup> Id.

<sup>77</sup> Monitor’s Notes from Meeting with Local Contacts, October 9, 2019.



On July 1, the police ordered Ms. Margaret's detention (scheduled to last between July 1, 2019 and July 20, 2019, in line with domestic time limits on detention) but immediately issued a *pembantaran penahanan*, which suspended the detention,<sup>78</sup> and referred Ms. Margaret to the Indonesian National Police (Polri) Hospital for observation.<sup>79</sup> After four days under observation at Polri Hospital, the treating doctor issued a letter (*visum et repertum psychiatricum*) concluding: a. that Ms. Margaret was experiencing schizophrenia; b. that "the legal problems she experienced [we]re part of symptoms of her mental disorder"; and c. that she "lack[ed] understanding of the risks and significance of her actions."<sup>80</sup> Upon the referral of Polri Hospital and at the directive of the Bogor District Police, Ms. Margaret was treated by Dr. Lahargo as an in-patient at Marzoeki Mahdi Hospital from July 4, 2019 until September 11, 2019.<sup>81</sup> During those two months, Ms. Margaret received intensive treatment three times a day, which was described as including medication, psychotherapy, and social rehabilitation.<sup>82</sup> After her release from the hospital, Ms. Margaret continued to be treated as an out-patient.<sup>83</sup>

On September 12, 2019, the day after Ms. Margaret was discharged from the hospital, the Bogor District Public Prosecutor indicted Ms. Margaret under Article 156a of the Criminal Code, which states:

By a maximum imprisonment of five years shall be punished any person who deliberately in public gives expression to feelings or commits an act, a. which principally ha[s] the character of being at enmity with, abusing or staining a religion, adhered to in Indonesia.

On September 25, 2019, the trial began. As will be discussed in more depth below, questions arose regarding Ms. Margaret's fitness to stand trial. On October 2, 2019, Dr. Yongky, a doctor who had not treated Ms. Margaret in over a year (Dr. Lahargo took over Ms. Margaret's care in 2017), testified about this issue at the court's behest, confirming Ms. Margaret's fitness to stand trial.<sup>84</sup>

Subsequently, over eleven hearings held between October 2019 and January 2020, the prosecution and defense presented fact witnesses, expert witnesses (in the areas of

---

<sup>78</sup> Cibinong Class 1A District Court, Judgment, February 5, 2020, pg. 94 (unofficial translation).

<sup>79</sup> *Id.* at pgs. 24-25, 52, 54.

<sup>80</sup> *See id.* at pgs. 80- 81.

<sup>81</sup> *Id.* at pgs. 52-53 (witness testimony of Dr. Lahargo); Monitor's Notes, November 11, 2019.

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> Monitor's Notes from Meeting with Local Contacts, October 9, 2019.

Islamic law, psychiatry, and criminal law), and arguments.<sup>85</sup> Ms. Margaret testified on November 26 and was questioned by the prosecution, the defense, and the judges.<sup>86</sup>

Under Article 156a, the prosecution was required to prove the following elements: “intentionality”; “in public”; and expression of feelings or commission of acts “which principally have the character of being at enmity with, abusing or staining” one of the official religions of Indonesia.

Notably, the prosecution argued that the element of intentionality was met by the fact that Ms. Margaret wore her shoes and brought her dog into the mosque; yelled at Mr. Ishak; and let her dog loose in the mosque after she was asked to leave.<sup>87</sup> The prosecution additionally argued that Ms. Margaret’s mental “awareness of thought and action” (capacity) was demonstrated by her ability to drive to the mosque and her decision not to remove her shoes after reading a sign stating that shoes were forbidden in the prayer area.<sup>88</sup>

Defense counsel responded that Ms. Margaret’s intent could not be proven because her presence at the mosque and subsequent actions were driven by delusions that her husband was getting married and, more generally, by her psychosocial disability.<sup>89</sup> The defense correspondingly cited expert testimony that schizophrenia does not necessarily eliminate a person’s ability to carry out basic functions such as driving.<sup>90</sup> The defense further noted that under Article 44(1) of the Criminal Code, “[w]hosoever commits a deed that they cannot be held liable for due to mental defects during growth or for being troubled by illness, shall not be criminalized.”<sup>91</sup>

On February 5, 2020, the court issued its judgment. The presiding judge gave an overview of the evidence presented in court, including witness testimony and the history of Ms. Margaret’s mental illness. He observed that although Ms. Margaret experienced severe mental illness, her medication had allowed her to follow the court proceedings.<sup>92</sup> The panel concluded that all elements of the offense under Article 156a were met, including intentionality: defined by the court as when a “person committing an act ... desire[s] his

---

<sup>85</sup> There were hearings on October 9, 2019; October 16, 2019; October 21, 2019; October 29, 2019; November 11, 2019; November 18, 2019; November 26, 2019; December 17, 2019; January 7, 2020; January 14, 2020; January 21, 2020. Hearings on November 4, 2019 and December 10, 2019 were postponed, respectively, due to the absence of one of the judges and the prosecution’s request for additional time for preparation.

<sup>86</sup> Monitor’s Notes, November 26, 2019.

<sup>87</sup> Bogor District Public Prosecutor’s Office, Prosecution’s Sentencing Demand, December 17, 2019, pg. 25 (unofficial translation); Monitor’s Notes, December 17, 2019.

<sup>88</sup> Bogor District Public Prosecutor’s Office, Prosecution’s Sentencing Demand, December 17, 2019, pg. 26 (unofficial translation); Monitor’s Notes, December 17, 2019.

<sup>89</sup> Monitor’s Notes, January 7, 2020.

<sup>90</sup> Memorandum of Defense, Response to the Public Prosecution’s Sentencing Demand, January 7, 2020, pgs. 29, 54 (unofficial translation).

<sup>91</sup> *Id.* at pgs. 57-58.

<sup>92</sup> Monitor’s Notes, February 5, 2020.

actions and realize[s] the consequences of his actions.”<sup>93</sup> According to the court, intentionality was demonstrated by, among other things, Ms. Margaret entering the mosque wearing her shoes and carrying the dog; refusing to leave the mosque; releasing the dog; and shouting loudly after being reprimanded by the mosque custodian.<sup>94</sup>

Despite this finding, the judges noted that Ms. Margaret’s disability rendered her unable to “recognize that her actions were against the law and [unable to] determine the consequences of her actions,” resolving that “in accordance with the provisions of Article 44 of the Criminal Code,” she could not be held accountable.<sup>95</sup> Ms. Margaret was therefore absolved of all charges.<sup>96</sup> The prosecution subsequently appealed the verdict. That appeal is still pending.

The pressures outside the courtroom are worth noting. The incident at the mosque was recorded by onlookers and widely shared on social media,<sup>97</sup> with many demanding Ms. Margaret be punished.<sup>98</sup> Additionally, the board of the Al-Munawaroh Sentul Mosque, where the incident occurred, was described as having “mobilized the local community” to force the prosecution of Ms. Margaret.<sup>99</sup>

According to local contacts, the date of the first hearing was changed because of the possibility that it would be disrupted by protesters in favor of Ms. Margaret’s conviction.<sup>100</sup> The protests were reportedly called off after Ms. Margaret’s lawyers and husband appealed to religious organizations with clout to consider Ms. Margaret’s psychosocial disability.<sup>101</sup> Meanwhile, members of the community where the Al-Munawaroh Sentul Mosque was located regularly attended trial hearings. When Ms. Margaret was found not guilty, a spokesperson from the Dewan Kemakmuran Masjid (Mosque Prosperity Council)

---

<sup>93</sup> Cibinong Class 1A District Court, Judgment, February 5, 2020, pg. 84 (unofficial translation).

<sup>94</sup> *Id.* at pgs. 84-85.

<sup>95</sup> *Id.* at pg. 91.

<sup>96</sup> Monitor’s Notes, February 5, 2020.

<sup>97</sup> See The Independent, “‘Mentally ill’ woman faces jail for taking dog into mosque”, July 3, 2019. Available at <https://www.independent.co.uk/news/world/asia/mosque-dog-indonesia-catholic-arrest-blasphemy-mental-health-a8985551.html>; Catholic News Agency, “Catholic woman with schizophrenia being held for blasphemy in Indonesia”, July 9, 2019. Available at <https://www.catholicnewsagency.com/news/catholic-woman-with-schizophrenia-being-held-for-blasphemy-in-indonesia-70858>; The Jakarta Post, “‘Mentally ill’ woman arrested, charged with blasphemy for entering Bogor mosque with dog”, July 2, 2019. Available at <https://www.thejakartapost.com/news/2019/07/02/woman-who-entered-bogor-mosque-with-dog-arrested-charged-with-blasphemy.html>.

<sup>98</sup> Indonesia at Melbourne, “Criminalising the Mentally Ill: Schizophrenic Woman to Face Court for Blasphemy”, October 8, 2019; United States Commission on Religious Freedom, “Policy Update: Blasphemy Allegations in a Polarized Indonesia”, November 2019, pg. 4. Available at <https://www.uscirf.gov/sites/default/files/2019%20Indonesia%20blasphemy.pdf>.

<sup>99</sup> Indonesia at Melbourne, “Criminalising the Mentally Ill,” October 8, 2019.

<sup>100</sup> Monitor’s Notes from Meeting with Local Contacts, October 9, 2019.

<sup>101</sup> *Id.*

“expressed disappointment [at the verdict], casting doubt on the diminished capacity defense.”<sup>102</sup>

---

<sup>102</sup> Kyodo News, “Indonesia Court Acquits Woman of Blasphemy on Mental Health Grounds”, February 5, 2020. Available at <https://english.kyodonews.net/news/2020/02/fa52f167dbac-indonesia-court-acquits-woman-of-blasphemy-on-mental-health-grounds.html>.

# METHODOLOGY



## A. THE MONITORING PHASE

The Clooney Foundation for Justice’s TrialWatch initiative deployed several monitors to the trial of Suzethe Margaret before the Cibinong District Court, in Cibinong, Bogor. The trial was in Bahasa Indonesia. Monitors were either fluent in Bahasa or able to follow the proceedings with the help of an interpreter. Monitors were present for all hearings at which witnesses and evidence were presented and arguments made: a total of 12 hearings from October 9, 2019 until the delivery of the judgment on February 5, 2020.<sup>103</sup> Monitors used the CFJ TrialWatch App to record and track what transpired in court and the degree to which the defendants’ fair trial rights were respected.

## B. THE ASSESSMENT PHASE

To evaluate the trial’s fairness and arrive at a grade, TrialWatch Expert Dr Charles O’Mahony reviewed court documents, such as the indictment and judgment, and a legal analysis prepared by the TrialWatch initiative. Dr O’Mahony’s conclusions are as follows:

The court conducting the proceedings against Ms. Margaret largely complied with fair trial standards, ultimately finding Ms. Margaret not guilty despite significant public pressure for both her prosecution and conviction. Nonetheless, Ms. Margaret’s case exposes significant issues with how the Indonesian criminal justice system treats persons with psychosocial disability: specifically, Ms. Margaret’s potentially involuntary committal, the State’s apparent failure to identify and provide the support necessary to allow her to effectively participate in the trial, and, correspondingly, inadequacies in its inquiry into her fitness to stand trial. Indonesia must ensure that sufficient procedural safeguards are in place to enable free and informed decision-making on admission to psychiatric institutions as well as the participation of individuals with psychosocial disabilities in legal proceedings.

While issues with freedom of expression, freedom of religion, and the fitness determination conducted by the court are discussed below, the focus of the following assessment is on issues that arose during Ms. Margaret’s trial as they relate to provisions in the CRPD. Indonesia signed the UN Convention on the Rights of Persons with Disabilities (CRPD) on March 30, 2007 and ratified it on November 30, 2011. Indonesia’s ratification of the CRPD indicates its consent to be bound by the treaty. However, Ms. Margaret’s trial illustrates that Indonesia has failed to enact the necessary legislation to

---

<sup>103</sup> Monitors were not present for hearings on September 25, 2019 and October 2, 2019, at which the defendant’s fitness to stand trial was discussed. This issue, however, is covered extensively in the judgment and was likewise referenced throughout the trial.



give domestic effect to the CRPD in its criminal justice system, with evident shortcomings that are incompatible with the CRPD.

The CRPD requires States to broaden their anti-discrimination laws and human rights frameworks and protect the rights of persons with disabilities. In practice, laws and regulatory frameworks often remain defective, inadequate, or ineffective, or reflect a flawed understanding of the human rights model of disability. This is evident from Ms. Margaret's trial.

The CRPD Committee has reaffirmed through its jurisprudence that liberty and security of the person is one of the most precious rights to which all persons are entitled. Article 14 of the Convention is essentially a non-discrimination provision, setting out the scope of the right to liberty and security and prohibiting all discrimination therein based on disability, including psychosocial disability.

The CRPD Committee has been critical of States Parties such as Indonesia that permit the deprivation of liberty in mental health facilities on the grounds of actual or perceived impairment. Article 14 does not permit any exceptions whereby persons can be detained on the grounds of their actual or perceived impairment. The involuntary detention of persons with psychosocial disabilities for the purpose of providing psychiatric treatment violates the absolute ban on deprivation of liberty under Article 14(1)(b) of the CRPD. Correspondingly, Article 12 requires States Parties to recognize the legal capacity of persons with disabilities on an equal basis with others and Article 25 sets forth the principle of free and informed consent of persons with disabilities. The CRPD Committee has repeatedly and consistently stated that States should repeal provisions allowing for involuntary detention of persons with disabilities in mental health settings.

Although Ms. Margaret had been diagnosed with a mental illness, the decision to receive treatment and be admitted to a psychiatric hospital was a decision for her to make under the CRPD. Given that Ms. Margaret was a defendant in a high-profile criminal prosecution, it is unclear whether her admission and treatment were consensual. If Ms. Margaret was involuntarily detained on the grounds of diagnosis of mental illness, this detention would be incompatible with Article 14 of the CRPD and would be discriminatory in nature, amounting to arbitrary deprivation of liberty. If Ms. Margaret's admission was involuntary this would also have amounted to a denial of her legal capacity to decide about care, treatment, and admission to the hospital, violating Article 12 in conjunction with Articles 14 and 25 of the CRPD.

Indonesia has an obligation under Article 13 of the CRPD to ensure that persons with disabilities have access to justice on an equal basis with others. The recognition of the right to legal capacity enshrined in Article 12 complements Article 13. Persons with psychosocial disabilities must be recognized as persons before the law with equal standing in the criminal justice system if their rights and obligations are to be realized on an equal basis with others.

As discussed below, while the United Nations Human Rights Committee has interpreted the right to a fair trial to mandate an inquiry into an accused's fitness to stand trial where necessary, the CRPD articulates an alternative framework: if Ms. Margaret had been found unfit to stand trial and the court had delayed the proceedings, for example, this might have amounted to denial of legal capacity under Article 12 and potentially a violation of other rights such as Article 14 (the right to liberty).

Persons with disabilities are more likely to be deemed unfit to stand trial than persons without disabilities. Laws on fitness to stand trial generally seek to prevent discrimination arising from the conviction of a defendant with a perceived lack of mental capacity by delaying the trial. However, the consequence of an unfitness determination in criminal trials can result in a person being detained in a prison or psychiatric setting or being subject to coercive supervision orders in the community for longer periods than if the person had been convicted and given the maximum sentence.

To prevent such ends, the CRPD mandates the introduction of alternative frameworks for ensuring equal recognition before the law, access to justice, and the right to liberty and security for persons with disabilities, including persons with psychosocial disabilities.<sup>104</sup> Ms. Margaret's case illustrates that these alternative frameworks are not in place within the Indonesian justice system.

A key mechanism for achieving equality and non-discrimination under the CRPD is reasonable accommodation. Reasonable accommodation is defined as "necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure ... the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms."<sup>105</sup> The denial of reasonable accommodation constitutes discrimination and the prohibition of discrimination is included in every right in the CRPD. Therefore, reasonable accommodation is a non-discrimination provision that applies broadly, including in the criminal justice system. Reasonable accommodation means that States must take action in response to a particular person's requirements, entailing a case-by-case examination to determine the measures needed to ensure exercise of rights on an equal basis.

As noted above, Article 13 of the CRPD provides for the right to access to justice on an equal basis with others, specifically mandating the "provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages." The right of access to justice covers access to the different systems, information, procedures, processes, and locations involved in the administration of justice. Under Article 13, States must provide resources to support persons facing

---

<sup>104</sup> These rights will be discussed further below.

<sup>105</sup> CRPD, Article 2

criminal charges where questions as to their ability to comprehend and meaningfully participate in proceedings are raised.<sup>106</sup>

It is of significant concern in this case that the State made little attempt to assess the reasonable accommodations Ms. Margaret required to effectively participate in her trial. The deficit of such an assessment and the corresponding lack of reasonable accommodations in Ms. Margaret's case meant that that State fell short of its obligations under the CRPD. This failure amounted to a form of discrimination under Article 5, as well as a violation of the right to access to justice set forth in Article 13. It also potentially violated the Article 9 right to accessibility: Article 9 plays a key role with respect to access to justice, as it provides for access to information and communications.

The State's limited assessment into the reasonable accommodations required in Ms. Margaret's case likewise violated Article 12 (right to legal capacity), which is closely connected to Article 13 (effective access to justice). The interconnection between the two articles is clear in both the text of the CRPD and in the jurisprudence of the CRPD Committee. The Committee has stated that recognition of the right to legal capacity is essential for access to justice in many respects and that discriminatory denial of legal capacity and denial of the right to support in the exercise of legal capacity would also in certain circumstances activate Article 13.<sup>107</sup> In this case, the State's failure to ensure reasonable accommodations in Ms. Margaret's exercise of her right to legal capacity violated Article 12.

It is worth noting that the State does not appear to have considered the impact of both the prosecution and potential conviction on Ms. Margaret's mental health. Individuals with psychosocial disabilities are likely to see their symptoms worsen as the result of criminal proceedings. Further, while Ms. Margaret was not convicted in this case, it is well established that imprisonment results in the deterioration of mental health, most significantly as a result of being separated from family - especially children.<sup>108</sup> Imprisonment has also been reported as bringing about feelings of shock and depression, intensifying the symptoms of persons with psychosocial disability that existed prior to detention, and indeed engendering new symptoms of mental illness.<sup>109</sup> The state should take these potential consequences into account in deciding whether to prosecute.

---

<sup>106</sup> Piers Gooding and Charles O'Mahony, "Laws on unfitness to stand trial and the UN Convention on the Rights of Persons with Disabilities: Comparing reform in England, Wales, Northern Ireland and Australia", *International Journal of Law, Crime and Justice*, 2016, pgs. 122-145.

<sup>107</sup> Committee on the Rights of Persons with Disabilities, General Comment No. 1, U.N. Doc. CRPD/C/GC/1, May 19, 2014.

<sup>108</sup> Emma Plugge, Nicola Douglas, and Ray Fitzpatrick, "The Health of Women in Prison Study Findings", Department of Public Health University of Oxford, 2006, pg. 49.

<sup>109</sup> See Tamara Walsh, "Diverting Mentally Ill Women Away From Prison in New South Wales: Building on the Existing System", *Psychiatry, Psychology and Law*, 2003, pg. 228; Trevor Perry, "Court Mandated Outpatient Treatment for Mentally Ill Offenders in New South Wales", *Current Issues in Criminal Justice*, 2008, pg. 369.

# ANALYSIS



## A. APPLICABLE LAW

This report draws upon the International Covenant on Civil and Political Rights (ICCPR); jurisprudence from the United Nations Human Rights Committee, tasked with monitoring implementation of the ICCPR; the Convention on the Rights of Persons with Disabilities (CRPD); jurisprudence from the Committee on the Rights of Persons with Disabilities (CRPD Committee), tasked with monitoring implementation of the CRPD; and commentary from United Nations Special Procedures. Indonesia acceded to the ICCPR in 2006. The report also comments on relevant provisions of the Indonesian Criminal Code.

## B. INVESTIGATION AND PRETRIAL STAGE VIOLATIONS

### Involuntary Committal

At no time before trial was Ms. Margaret detained in police custody. However, there were certain anomalies in pretrial procedures. As noted above, after the police formally lodged Ms. Margaret's detention on July 1, 2019, they immediately issued a *pembantaran penahanan* - a document suspending her detention.<sup>110</sup> The police then referred Ms. Margaret to a police hospital for observation and onward to a psychiatric hospital for treatment.

The involuntary committal of individuals with psychosocial disabilities violates the Convention on the Rights of Persons with Disabilities (CRPD). Article 5(1) of the CRPD requires "States Parties [to] recognize that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law." Article 12 "reaffirm[s]" this guarantee of equal recognition before the law, including with respect to the "enjoy[ment of] legal capacity on an equal basis with others," while Article 14 prohibits States Parties from depriving persons with disabilities of their liberty on the basis of the "existence of a disability."

The CRPD Committee has distinguished between mental capacity and legal capacity, asserting that legal capacity should never be restricted based on mental capacity.<sup>111</sup> As such, the Committee has described Article 12's guarantee of equal "legal capacity" as "inextricably linked" with "the right to be free from involuntary detention in a mental health facility," protected under Article 14.<sup>112</sup> As stated by the Committee, the detention of persons with disabilities in institutions against their will is a denial of legal capacity on the

<sup>110</sup> Cibinong Class 1A District Court, Judgment, February 5, 2020, pg. 94 (unofficial translation).

<sup>111</sup> Committee on the Rights of Persons with Disabilities, General Comment No. 1, U.N. Doc. CRPD/C/GC/1, May 19, 2014, paras. 13-15.

<sup>112</sup> *Id.* at para. 31. See also *id.* at para. 40.

grounds of mental capacity, thereby “constitut[ing] arbitrary deprivation of liberty [in violation of] articles 12 and 14 of the Convention.”<sup>113</sup>

The Committee’s recent guidance on Article 14 further clarifies the provision’s requirements. According to the Committee, “[t]he involuntary detention of persons with disabilities based on risk or danger, alleged need for care or treatment, or other reasons relating to impairment or health diagnosis, ... is contrary to the right to liberty, and amounts to arbitrary deprivation of liberty.”<sup>114</sup> This means that “article 14 does not permit any exceptions whereby persons may be detained on the grounds of their actual or perceived disability,”<sup>115</sup> even if deemed necessary for others’ safety or for health care.<sup>116</sup>

The United Nations Human Rights Committee has found that under Article 9(1) of the ICCPR, “the existence of a disability sh[ould] not in itself justify a deprivation of liberty.”<sup>117</sup> Unlike the CRPD Committee, the UN Human Rights Committee has stated that the ICCPR allows for exceptions: that commitment can be used as a measure of last resort if it is necessary; if it is proportionate; if it is aimed preventing harm to the individual or to others; if it is imposed for the shortest time possible; and if procedural and substantive safeguards are in place.<sup>118</sup>

In the present case, it is unclear whether Ms. Margaret had any choice relating to her four-day stay at the police hospital and subsequent two months of in-patient treatment.<sup>119</sup> As noted above, although Ms. Margaret had been diagnosed with a mental illness the CRPD requires that the decision to receive treatment or be admitted to a mental health facility rest solely with the person in question.

The *pembantaran penahanan* issued by the police suspended the order for Ms. Margaret’s detention (scheduled to last from July 1, 2019 to July 20, 2019) so that she could be placed under observation at the police hospital. If Ms. Margaret had refused admission to the hospital, the police would have had the authority to revoke the

---

<sup>113</sup> Id. at para 40.

<sup>114</sup> Committee on the Rights of Persons with Disabilities, Report of the Committee on the Rights of Persons with Disabilities: Guidelines on Right to Liberty and Security of Persons with Disabilities, U.N. Doc. A/72/55, September 2015, Annex - para. 13. See also Committee on the Rights of Persons with Disabilities, Report of the Committee on the Rights of Persons with Disabilities, U.N. Doc. CRPD/C/12/2, November 5, 2014, Annex IV. - pg. 15.

<sup>115</sup> Committee on the Rights of Persons with Disabilities. Report of the Committee on the Rights of Persons with Disabilities, U.N. Doc. CRPD/C/12/2, November 5, 2014, Annex IV. - pg. 14.

<sup>116</sup> Committee on the Rights of Persons with Disabilities, Report of the Committee on the Rights of Persons with Disabilities: Guidelines on Right to Liberty and Security of Persons with Disabilities, U.N. Doc. A/72/55, September 2015, Annex - paras. 13-15.

<sup>117</sup> Human Rights Committee, General Comment No. 35, U.N. Doc. CCPR/C/GC/35, December 16, 2014, para. 19.

<sup>118</sup> Id.

<sup>119</sup> The court documents do not discuss the procedures concerning Ms. Margaret’s admission to the police hospital, and CFJ was unable to obtain additional information.



postponement and place her in detention instead. This raises the question of whether her entry to the police hospital was indeed voluntary.<sup>120</sup>

Further, following Ms. Margaret's four-day observation at the police hospital, the police referred her to in-patient treatment at a psychiatric hospital, where she spent two months. Again, given that the alternative was police custody, the voluntariness of this decision is questionable (for more on involuntary committal, see Section D: Additional Fairness Issues). To note, while the *pembantaran penahanan* allowed Ms. Margaret to stay in the psychiatric hospital instead of police detention, it also meant that the normal 20 day limit on detention did not apply and that any time she spent in the hospital would not have been subtracted from a potential jail sentence.<sup>121</sup>

Assuming that Ms. Margaret's committal to the hospital was indeed involuntary, it violated the CRPD's proscription of involuntary detention and treatment. Given the apparent lack of procedural safeguards and absence of any showing that Ms. Margaret was a danger to herself or others, it also violated the right to liberty enshrined in the ICCPR.

## **C. VIOLATIONS AT TRIAL**

Despite significant public pressure for conviction, the court attempted to ensure a fair trial. As mentioned above, the court changed the date, time, and room of the first hearing to prevent protesters from disrupting proceedings. The hearings themselves were open to the public and the media. Apart from one major exception, due process and fair trial principles were respected.

### **Adequate Support**

As discussed above, the CRPD requires that individuals with disabilities be afforded adequate support to participate in legal proceedings.

Under Article 12(2) of the Convention, States "shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life." Article 12(3) requires States to "take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity," while Article 13(1) further mandates that States ensure "effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role ... in all legal proceedings." States must tailor such "accommodations" to a particular person's

---

<sup>120</sup> See Indonesia Code of Criminal Procedure, Article 20(1): For purposes of investigation, an investigator...shall have the authority to make a detention; Article 31(2): [A]n investigator or a public prosecutor or judge may from time to time withdraw the postponement of detention where the suspect or the accused fails to observe the conditions as intended. Available at [https://www.unodc.org/res/cld/document/idn/law\\_number\\_8\\_year\\_1981\\_concerning\\_the\\_criminal\\_procedure\\_html/I.2\\_Criminal\\_Procedure.pdf](https://www.unodc.org/res/cld/document/idn/law_number_8_year_1981_concerning_the_criminal_procedure_html/I.2_Criminal_Procedure.pdf).

<sup>121</sup> Indonesia at Melbourne, "Criminalising the Mentally Ill," October 8, 2019.

requirements, meaning that States must undertake case-by-case assessments to determine what measures are necessary.

In *Noble v. Australia*, the CRPD Committee found a violation of the above provisions where the Australian authorities had failed to provide a defendant with an “intellectual and mental disability” with “adequate support or accommodation” to effectively participate in his criminal trial, instead suspending the proceedings and holding him in detention.<sup>122</sup>

In the present case, there was little attempt to assess what type of reasonable accommodations might be required to enable effective participation and it is unclear if Ms. Margaret was indeed able to effectively participate in the proceedings. As discussed in more depth below, the court relied on the testimony of a doctor who had not treated Ms. Margaret in over a year to determine that Ms. Margaret would be able to follow the proceedings if she took her medication. The doctor cited a brief interaction with Ms. Margaret in the court waiting room and her ability to recall his name as proof that she could participate in the trial.

And although the presiding judge began most hearings by asking Ms. Margaret if she was healthy, to which Ms. Margaret always responded in the affirmative, her mental well-being was an ongoing concern. Monitors observed that Ms. Margaret appeared dazed and sedated throughout the trial.<sup>123</sup> The panel of judges occasionally called for recess when they observed Ms. Margaret’s “condition ... deteriorating.”<sup>124</sup>

During defense counsel’s closing arguments on January 7, for example, the presiding judge interrupted to ask Ms. Margaret if she was able to continue with the hearing and whether she would like a drink of water. He also commented that she looked anxious and twice said to counsel, “let’s speed up the proceedings.”<sup>125</sup> Meanwhile, Ms. Margaret did not appear to actively participate in her defense. Monitors noted that Ms. Margaret rarely spoke with her lawyers.

Ms. Margaret’s documented demeanor at trial calls into question whether she received the support necessary to follow and participate in the proceedings. The State’s limited inquiry into the support required and corresponding failure to ensure provision of reasonable accommodations violated Articles 5, 9, 12, and 13 of the CRPD.

## **Fitness to Stand Trial**

---

<sup>122</sup> Committee on the Rights of Persons with Disabilities, *Noble v. Australia*, U.N. Doc. CRPD/C/16/D/7/2012, October 10, 2016, paras. 8.4-8.6.

<sup>123</sup> See Monitor’s Notes, November 11, 2019; Monitor’s Notes, December 17, 2019.

<sup>124</sup> See Memorandum of Defense, Response to the Public Prosecution’s Sentencing Demand, January 7, 2020, pg. 3 (unofficial translation).

<sup>125</sup> Monitor’s Notes, January 7, 2020.

As discussed above, the CRPD requires the State to provide persons with psychosocial disabilities with reasonable accommodations to ensure effective participation in legal proceedings. At the same time, where a court assesses a defendant's fitness to stand trial, the ICCPR imposes key standards. Those were flouted here.

### **Standards**

Article 14(1) of the ICCPR sets out a general guarantee of the right to a fair trial.<sup>126</sup> The United Nations Human Rights Committee has understood Article 14(1) to include a considered determination of capacity to stand trial if concerns are raised. In *Ahmed Khaleel v. Maldives*, for instance, where “there was evidence of prior State care for mental health issues” and “where the State party [did not] present evidence of a detailed inquiry into [the defendant's] fitness to stand trial,” the UN Human Rights Committee found that “the State party failed to conduct an adequate inquiry into [the defendant's] mental health, and thus failed to ensure that [the defendant] was capable of standing trial,” concluding that “the State party violated its obligations under Article 14(1).”<sup>127</sup>

While the UN Human Rights Committee has not expounded on what a “detailed” inquiry looks like, jurisprudence from the European Court of Human Rights (ECtHR) indicates that such a inquiry should center on whether a defendant is able to effectively participate in his or her trial.

In *S.C. v U.K.*, for example, the ECtHR found that the applicant's right to a fair trial had been violated because of his apparent inability to effectively participate in the proceedings. In addition to concerns raised by the applicant's young age, the court cited the applicant's psychosocial disability. The court provided the following definition of effective participation:

Effective participation ... presupposes that the accused has a broad understanding of the nature of the trial process and of what is at stake for him or her, including the significance of any penalty which may be imposed. It means that he or she, if necessary with the assistance of, for example, an interpreter, lawyer, social worker or friend, should be able to understand the general thrust of what is said in court. The defendant should be able to follow what is said by the prosecution witnesses and, if represented, to explain to his own lawyers his version of events, point out any statements with which he disagrees and make them aware of any facts which should be put forward in his defence.<sup>128</sup>

---

<sup>126</sup> International Covenant on Civil and Political Rights, December 16, 1966, 999 UNTS. 171, Article 14(1) [hereinafter “ICCPR”].

<sup>127</sup> Human Rights Committee, *Ahmed Khaleel v. Maldives*, U.N. Doc. CCPR/C/123/D/2785/2016, August 16, 2019, para. 9.6.

<sup>128</sup> European Court of Human Rights, *S.C. v. the United Kingdom*, App. No. 60958/00, November 10, 2004, para. 29.

The ECtHR has indicated that the inquiry into a defendant's ability to effectively participate must be rigorous<sup>129</sup> and has further noted that States "must exercise diligence to ensure the effective enjoyment" of the right to a fair trial.<sup>130</sup>

### ***Inquiry in Ms. Margaret's Case***

The inquiry into Ms. Margaret's fitness to stand trial was not "detailed" and likely not "adequate." It was limited to the testimony of her doctor prior to Dr. Lahargo, Dr. Yongky, who had not treated Ms. Margaret for over a year and did not conduct any assessment geared towards ascertaining her capacity to stand trial.

At the first hearing on September 25, 2019, the judges asked Ms. Margaret whether she was "fit to stand trial."<sup>131</sup> Ms. Margaret answered that she was "stable."<sup>132</sup> The court subsequently ordered an expert to ascertain whether Ms. Margaret was in "good health to attend the trial."<sup>133</sup> The expert appointed was Dr. Yongky, a psychiatrist who had treated Ms. Margaret from 2013 to 2018.<sup>134</sup> At the next hearing, on October 2, 2019, Dr. Yongky testified that he felt "the Defendant could attend the trial" as long as she took her medication.<sup>135</sup>

In support of this assessment, Dr. Yongky stated that Ms. Margaret remembered his name when they met outside the courtroom despite not having seen him for "a long time."<sup>136</sup> According to Dr. Yongky, this recognition "indicate[d] that her memory is sharp and she is in a calm state, can sit and concentrate."<sup>137</sup> As recounted by the defense, however, Dr. Yongky additionally clarified that he "was unable to determine whether or not the Defendant was [fit] to attend and take part in the trial because in order to do so, he would have to *directly talk to her*."<sup>138</sup>

The court's conclusion that Ms. Margaret was fit to stand trial based on Dr. Yongky's brief interaction with her in the court waiting room falls far short of a "detailed inquiry" into whether she was able to effectively participate in the proceedings. It appears that even Dr. Yongky questioned his ability to assess Ms. Margaret's mental state. Ms. Margaret's rights under Article 14(1) of the ICCPR were thereby violated.

If Ms. Margaret was in fact unable to effectively participate in the proceedings, this would also have violated the ICCPR. The European Court of Human Rights has held that

---

<sup>129</sup> See *id.* at para. 23.

<sup>130</sup> European Court of Human Rights, *Vaudelle v. France*, App. No. 35683/97, January 30, 2001, para 52.

<sup>131</sup> Monitor Notes of Meeting with Partners, October 9, 2019.

<sup>132</sup> *Id.*

<sup>133</sup> See *Cibinong Class 1A District Court, Judgment*, February 5, 2020, pg. 2 (unofficial translation).

<sup>134</sup> *Id.*

<sup>135</sup> *Id.* at pgs. 2-3.

<sup>136</sup> *Id.*

<sup>137</sup> *Id.* at pg. 3.

<sup>138</sup> Memorandum of Defense, *Response to the Public Prosecution's Sentencing Demand*, January 7, 2020, pg. 32 (unofficial translation). Emphasis added.

effective participation is a key component of the right to a fair trial.<sup>139</sup> This understanding of the right to a fair trial is affirmed by various subcomponents of Article 14 of the ICCPR: the right to interpretation in court, which aims to ensure that the accused is able to follow the proceedings;<sup>140</sup> the right to be tried in one's presence, which implies the ability to hear and follow the proceedings;<sup>141</sup> the right to defend oneself in person, which of necessity assumes the ability to hear and follow the proceedings;<sup>142</sup> and the right to communicate with counsel, which likewise assumes that the accused is able to hear and follow the proceedings and confer with counsel accordingly.<sup>143</sup> Assuming Ms. Margaret's inability to effectively participate, her right to a fair trial was violated.

## **D. OTHER FAIRNESS CONCERNS**

Article 156a of the Criminal Code, under which Ms. Margaret was prosecuted, is inconsistent with international standards on freedom of expression, freedom of religion, and the right to equality and non-discrimination. The provision states:

It is penalized with imprisonment for as long as five years whoever deliberately in public gives expression to feelings or commits an act, a. which principally ha[s] the character of being at enmity with, abusing or staining a religion, adhered to in Indonesia.

### **Right to Freedom of Expression**

Article 19 of the ICCPR guarantees the right to freedom of opinion and expression. Article 156a restricts freedom of expression beyond the limits established by Article 19.

#### ***Freedom of Expression Standards***

The United Nations Human Rights Committee has placed a high value on “uninhibited expression,”<sup>144</sup> explaining that restrictions on the right to freedom of expression must (i) be provided by law (the principle of legality), (ii) serve a legitimate objective, and (iii) be necessary to achieve and proportionate to that objective.<sup>145</sup> Objectives deemed legitimate

---

<sup>139</sup> European Court of Human Rights, *Stanford v. the United Kingdom*, App. No. 16757/90, February 23, 1994; European Court of Human Rights, *T. v. the United Kingdom*, App. No. 24724/94, December 16, 1999; European Court of Human Rights, *S.C. v. the United Kingdom*, App. No. 60958/00, November 10, 2004.

<sup>140</sup> ICCPR, Article 14(3)(f).

<sup>141</sup> *Id.* at Article 14(3)(d).

<sup>142</sup> *Id.*

<sup>143</sup> *Id.* at Article 14(3)(b).

<sup>144</sup> Human Rights Committee, General Comment No. 34, U.N. Doc. CCPR/C/GC/34, September 12, 2011, para. 38.

<sup>145</sup> See Human Rights Committee, *Kim v. Republic of Korea*, U.N. Doc. CCPR/C/64/D/574/1994, 1999, para. 12.2. See also UN General Assembly, Report of the Special Rapporteur on the promotion and protection of the right to freedom of expression and opinion, U.N. Doc. A/74/486, October 9, 2019, para 6.



under Article 19(3) of the ICCPR include the protection of public morals, national security, and the rights and reputation of individuals.<sup>146</sup>

As stated by the Committee, in order to comply with the principle of legality, legislation must be “formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly ... [and] may not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution.”<sup>147</sup>

Further, a restriction “violates the test of necessity if the protection could be achieved in other ways that do not restrict freedom of expression.”<sup>148</sup> The necessity requirement overlaps with the proportionality requirement, as the latter means that a restriction must be the “least intrusive instrument amongst those which might achieve their protective function.”<sup>149</sup> In this vein, laws cannot be overbroad.<sup>150</sup>

With respect to necessity and proportionality, the UN Special Rapporteur on the promotion and protection of the right to freedom of expression and opinion (Special Rapporteur on Freedom of Expression) has noted that only the gravest of speech offenses should ever be criminalized: child pornography, incitement to terrorism, public incitement to genocide, and advocacy for national, racial, or religious hatred.<sup>151</sup>

The Rabat Plan of Action provides further guidance. The Plan was adopted by experts convened by the Office of the United Nations High Commissioner for Human Rights to review prohibitions on incitement to/advocacy for national, racial or religious hatred. One of the goals of the Rabat workshops was to balance State efforts to criminalize grave speech offenses with respect for freedom of expression.<sup>152</sup> The resulting Plan echoes the requirements established by the UN Human Rights Committee; that restrictions “must be provided by law, be narrowly defined to serve a legitimate interest, and be necessary in a democratic society to protect that interest.”<sup>153</sup>

---

<sup>146</sup> Id.

<sup>147</sup> Human Rights Committee, General Comment No. 34, U.N. Doc. CCPR/C/GC/34, September 12, 2011, para. 25. See also UN General Assembly, Report of the Special Rapporteur on the promotion and protection of the right to freedom of expression, U.N. Doc. A/74/486, October 9, 2019, para. 6.

<sup>148</sup> Id. at para. 33.

<sup>149</sup> Id. at para. 34.

<sup>150</sup> Id.

<sup>151</sup> UN General Assembly, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, U.N. Doc. A/66/290, August 10, 2011, para. 40.

<sup>152</sup> UN Office of the High Commissioner for Human Rights, Freedom of Expression vs. Incitement to Hatred: OHCHR and the Rabat Plan of Action. Available at <https://www.ohchr.org/EN/Issues/FreedomOpinion/Articles19-20/Pages/Index.aspx>.

<sup>153</sup> Human Rights Council, UN Office of the High Commissioner for Human Rights on the expert workshops on the prohibition of incitement to national, racial or religious hatred (Appendix: “Rabat Plan of Action”), U.N. Doc. A/HRC/22/17/Add.4, January 11, 2013, para. 18.

Notably, the Plan urges that criminal sanctions for expression be “last resort measures to be applied only in strictly justifiable situations.”<sup>154</sup> As established by the Plan, States must draw distinctions between “(a) forms of expression that should constitute a criminal offence; (b) forms of expression that are not criminally punishable, but may justify a civil suit; and (c) forms of expression that do not give rise to criminal or civil sanctions, but still raise concerns in terms of tolerance, civility and respect for the convictions of others.”<sup>155</sup> For speech to amount to a criminal offense and be subject to criminal penalties, it must meet a six-part threshold test that establishes, among other things, that the speaker had the intent to incite discrimination, hostility, or violence, and that there was a reasonable probability of harm.<sup>156</sup>

### ***Blasphemy-Specific Standards***

On blasphemy laws specifically, the UN Human Rights Committee has made clear that “[p]rohibitions of displays of lack of respect for a religion or other belief system” are not compliant with the right to freedom of expression<sup>157</sup> except where the allegedly blasphemous speech constitutes “advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.”<sup>158</sup> In the Committee’s words, blasphemy laws cannot “be used to prevent or punish criticism of religious leaders or commentary on religious doctrine and tenets of faith.”<sup>159</sup>

The Special Rapporteur on Freedom of Expression has reached similar conclusions. As stated by the Rapporteur, “anti-blasphemy laws fail to meet the legitimacy condition of article 19(3) of the Covenant, given that article 19 protects individuals and their right to freedom of expression and opinion ... [article 19 does not] protect ideas or beliefs from ridicule, abuse, criticism or other ‘attacks’ seen as offensive.”<sup>160</sup>

Likewise, the Special Rapporteur on Freedom of Religion or Belief has emphasized that restrictions on speech concerning religion must be narrow, regardless of “subjective feelings of offensiveness.”<sup>161</sup> According to the Special Rapporteur, “the employment of criminal sanctions against expressions which do not advocate for violence or

---

<sup>154</sup> Human Rights Council, UN Office of the High Commissioner for Human Rights on the expert workshops on the prohibition of incitement to national, racial or religious hatred (Appendix: “Rabat Plan of Action”), U.N. Doc. A/HRC/22/17/Add.4, January 11, 2013, para. 34.

<sup>155</sup> *Id.* at para. 12.

<sup>156</sup> *Id.* at para. 29.

<sup>157</sup> Human Rights Committee, General Comment No. 34, U.N. Doc. CCPR/C/GC/34, September 12, 2011, para. 48.

<sup>158</sup> Human Rights Committee, General Comment No. 11, U.N. Doc. CCPR/C/GC/11, 1983, para. 2. The Special Rapporteur on Freedom of Expression has commented that “the blasphemy would be beside the point; only the advocacy constituting incitement would be relevant.”

<sup>159</sup> Human Rights Committee, General Comment No. 34, U.N. Doc. CCPR/C/GC/34, September 12, 2011, para. 48.

<sup>160</sup> UN General Assembly, Report of the Special Rapporteur on the promotion and protection of the right to freedom of expression, U.N. Doc. A/74/486, October 9, 2019, para. 21.

<sup>161</sup> Human Rights Council, Report of the Special Rapporteur on Freedom of Religion or Belief, U.N. Doc. A/HRC/31/18, December 23, 2015, para 61.

discrimination but which are deemed ‘blasphemous’” is “incompatible” with the right to freedom of expression.<sup>162</sup>

### **Article 156a**

Article 156a of the Indonesian Criminal Code falls afoul of the criteria outlined above. It criminalizes expressing feelings or committing actions “which principally have the character of being at enmity with, abusing or staining a religion, adhered to in Indonesia.” In contravention of the legality requirement, Article 156a is imprecise, making it difficult for individuals to regulate their conduct accordingly and conferring “unfettered discretion” on the authorities. It is unclear what would constitute speech “at enmity with” or “abusi[ve]” of religion. Studies demonstrate that the vague formulation of Article 156a has led to “arbitrary and inconsistent application” of the provision by the authorities and, correspondingly, criminalization of a broad range of speech.<sup>163</sup>

Further, as established by the UN Human Rights Committee, the Special Rapporteur on Freedom of Expression, the Special Rapporteur on Freedom of Religion or Belief, and the Rabat Plan, States cannot impose restrictions on the basis that speech is perceived as offensive or critical. The only acceptable “[p]rohibitions of displays of lack of respect for a religion or other belief systems” concern the prevention of advocacy of or incitement to hatred. Article 156a encompasses speech beyond this narrow exception, broadly barring acts deemed “at enmity with,” “abusi[ve]” of, or “staining” to an official religion in Indonesia.

With respect to necessity and proportionality, Article 156a does not pursue the “least intrusive” route. It sets forth a potential jail sentence of five years for those who violate the provision, an encroachment far from necessary to achieve state interests. As discussed above, criminal penalties are not appropriate responses to anything but the gravest offenses. The Rabat Plan elaborates on the level of severity required for criminal sanctions, such as likelihood of imminent harm. Article 156a’s expansive proscriptions do not meet these requirements, permitting courts to imprison individuals on the basis of “subjective feelings of offensiveness.”

### **Right to Freedom of Religion or Belief**

Closely related to freedom of expression is freedom of religion or belief, guaranteed by Article 18(1) of the ICCPR. The provision states: “[e]veryone shall have the right to freedom of thought, conscience and religion,” including “freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice

---

<sup>162</sup> Id.

<sup>163</sup> See Indonesian Institute for the Independent Judiciary, “Interpretations of Article 156A of the Indonesian Criminal Code on Blasphemy and Religious Defamation”, August 2018, pgs. 59, 78- 80. See also Melissa Crouch, “Law and Religion in Indonesia, Conflict and the Courts in West Java”, Routledge, 2014, pg. 146.

and teaching.” Individuals must be able to exercise this right “free from fear and free from discrimination.”<sup>164</sup>

Successive Special Rapporteurs on Freedom of Religion or Belief have cautioned against and called for the repeal of blasphemy laws due to their inconsistency with the right to freedom of religion or belief: specifically, the selective application of blasphemy laws to religious minorities and the use of such laws to mobilize sentiment against said minorities.<sup>165</sup> In 2013, for example, the Special Rapporteur noted the “typically ... intimidating effects” of blasphemy laws “on members of religious minorities.”<sup>166</sup> In 2015, the Rapporteur similarly observed: “blasphemy laws typically single out certain religions for special protection, thus not only encroaching on freedom of expression but also on freedom of religion or belief ... fuel[ing] stereotyping, stigmatization, discrimination and incitement to violence.”<sup>167</sup> As stated by the Rapporteur, “the employment of criminal sanctions against expressions which do not advocate for violence or discrimination but which are deemed ‘blasphemous’ cannot play a productive role in promoting religious sensitivity ... such criminal sanctions, wherever they exist, are incompatible with the provisions of freedom of religion or belief.”<sup>168</sup>

In 2018, the Rapporteur highlighted religious majorities’ exploitation of blasphemy laws to “target political dissidents, humanists, non-believers or any religious thinker who expresses different theological views than the State-sponsored religion.”<sup>169</sup> Citing blasphemy legislation’s “stifl[ing] [of] the enjoyment of freedom of religion or belief,” the Rapporteur urged States to repeal such laws.<sup>170</sup>

The Rabat Plan of Action echoes the Rapporteur’s conclusions. Noting the “persecution of religious minorities” facilitated by blasphemy laws as well as the “stifling impact”<sup>171</sup> of blasphemy laws “on the enjoyment of freedom of religion or belief,” the Plan recommends that States do away with blasphemy legislation.<sup>172</sup>

---

<sup>164</sup> Human Rights Council, Report of the Special Rapporteur on freedom of religion or belief, U.N. Doc. A/HRC/31/18, December 23, 2015, paras. 9, 16.

<sup>165</sup> See Human Rights Council, Report of the Special Rapporteur on freedom of religion or belief, U.N. Doc. A/HRC/37/49, February 28, 2018, para. 83; Human Rights Council, Report of the Special Rapporteur on the freedom of religion or belief, U.N. Doc. A/HRC/31/18, December 23, 2015, paras. 59-61, 84; Human Rights Council, Report of the Special Rapporteur on freedom of religion or belief, U.N. Doc. A/HRC/25/58, December 26, 2013, paras. 59, 70(e).

<sup>166</sup> Human Rights Council, Report of the Special Rapporteur on freedom of religion or belief, U.N. Doc. A/HRC/25/58, December 26, 2013, para. 59.

<sup>167</sup> Human Rights Council, Report of the Special Rapporteur on freedom of religion or belief, U.N. Doc. A/HRC/31/18, December 23, 2015, para. 60.

<sup>168</sup> *Id.* at para 61.

<sup>169</sup> Human Rights Council, Report of the Special Rapporteur on freedom of religion or belief, U.N. Doc. A/HRC/37/49, February 28, 2018, para. 83.

<sup>170</sup> *Id.*

<sup>171</sup> Human Rights Council, UN Office of the High Commissioner for Human Rights on the expert workshops on the prohibition of incitement to national, racial or religious hatred (Appendix: “Rabat Plan of Action”), U.N. Doc. A/HRC/22/17/Add.4, January 11, 2013, para. 19.

<sup>172</sup> *Id.* at para. 25.

In line with the concerns raised by the Special Rapporteur on Freedom of Religion or Belief and the Rabat Plan, blasphemy prosecutions in Indonesia have primarily been deployed against religious minorities, as exemplified by Ms. Margaret's case. As also demonstrated by Ms. Margaret's case and as detailed in the background section, certain hardline groups have leveraged blasphemy laws to push for such prosecutions.

Further, blasphemy prosecutions in Indonesia have been associated with harassment and violence.<sup>173</sup> In one case, following reports that a Buddhist woman had complained that her neighborhood mosque's loudspeaker was too loud, mobs burned down at least 14 Buddhist temples in the vicinity.<sup>174</sup> The woman was prosecuted for blasphemy and sentenced to one year and six months imprisonment. In another case, a crowd present for the sentencing of a Christian man convicted of blasphemy burned down several churches to express their dissatisfaction with the five-year jail sentence (which was actually the maximum sentence).<sup>175</sup> In Ms. Margaret's case, the presiding judge reportedly changed the timing and venue of hearings so as to prevent crowds from gathering.

As described above, Article 156a is not narrowly tailored to curtail incitement to violence or hatred, instead broadly criminalizing any activity deemed blasphemous and thus "fuel[ing] stereotyping, stigmatization, [and] discrimination," preventing religious minorities from exercising their right to freedom of religion or belief "free from fear and free from discrimination." It is thus inconsistent with Article 18 of the ICCPR.

## **Right to Equality and Non-Discrimination**

Like many blasphemy laws, Article 156a is ripe for abuse against religious minorities and other vulnerable groups, such as persons with psychosocial disabilities. Ms. Margaret - a Catholic woman diagnosed with schizophrenia - is emblematic of the "target[ing of] minority or politically disadvantaged groups under Indonesia's blasphemy law."<sup>176</sup>

### ***International Standards***

The ICCPR provides for equality and non-discrimination under Articles 2 and 26. Article 2 requires State Parties to "respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." Article 26 reads:

---

<sup>173</sup> See Amnesty International, "Prosecuting Beliefs: Indonesia's Blasphemy Laws", November 2014; Human Rights Watch, "In Religion's Name", February 2013.

<sup>174</sup> The Independent, "Woman who complained about noisy mosque jailed for blasphemy", August 21, 2018. Available at <https://www.independent.co.uk/news/world/asia/indonesia-blasphemy-woman-jailed-insulting-islam-mosque-buddhist-meiliana-a8501191.html>.

<sup>175</sup> See Human Rights Watch, "In Religion's Name", February 2013, pgs. 78-79.

<sup>176</sup> Indonesian Institute for the Independent Judiciary, "Interpretations of Article 156A of the Indonesian Criminal Code on Blasphemy and Religious Defamation", August 2018, pg. 83.



All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

The United Nations Human Rights Committee has stated that the term “discrimination” should be understood “to imply any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.”<sup>177</sup> The Committee has further noted that Article 26 “prohibits discrimination in law or in fact in any field regulated and protected by public authorities. ... Thus, when legislation is adopted by a State party, it must comply with the requirement of article 26 that its content should not be discriminatory.”<sup>178</sup>

According to the Committee, while some distinctions are permissible, they must possess a legitimate aim and be based on reasonable and objective criteria.<sup>179</sup> To note, discrimination can occur even if there is no government intent to discriminate: “an act which is not politically motivated may still contravene Article 26 if its effects are discriminatory.”<sup>180</sup>

### ***Article 156a and Discrimination Against Religious Minorities***

With respect to the present case, Article 156a of the Indonesian Criminal Code protects only the six officially recognized religions in Indonesia (Islam, Protestantism, Catholicism, Hinduism, Buddhism, and Confucianism),<sup>181</sup> thus discriminating against all other religions and beliefs practiced in Indonesia. As established by the UN Human Rights Committee, the content of legislation should not differentiate between protected groups unless there is a legitimate aim and the distinction is based on reasonable and objective criteria. The distinction elevating Indonesia’s six official religions over all others can possess no legitimate aim under the Covenant and thereby contravenes Articles 2 and 26 of the ICCPR.

Further, as detailed above, blasphemy laws are understood to have discriminatory effects on religious minorities. The Special Rapporteur on Freedom of Religion has observed

---

<sup>177</sup> Human Rights Committee, General Comment No. 18, 1989, para. 7.

<sup>178</sup> Id. at para. 12.

<sup>179</sup> Id. at para. 13. See also Human Rights Committee, *Sonia Yaker v. France*, U.N. Doc. CCPR/C/123/D/2747/2016, December 7, 2018, para. 8.14.

<sup>180</sup> Human Rights Committee, *Simunek et al v. Czech Republic*, U.N. Doc. CCPR/C/54/D/516/1992, July 31, 1995, para 11.7.

<sup>181</sup> Human Rights Watch, “In Religion’s Name”, February 2013, explaining the Constitutional Court’s Decision No. 140/PUU-VII/2009.

that many blasphemy laws encroach “on freedom of religion or belief, in particular of members of religious minorities, converts, critics, atheists, agnostics, internal dissidents and others,” and that “[a]bundant experience in a number of countries demonstrates that blasphemy laws ... often fuel stereotyping, stigmatization, discrimination and incitement to violence.”<sup>182</sup> The Rabat Plan of Action similarly notes that blasphemy laws “afford different levels of protection to different religions and have often proved to be applied in a discriminatory manner.”<sup>183</sup>

In particular, the vague formulation of Article 156a gives wide latitude to the authorities, meaning that the decision to bring blasphemy charges can be influenced by public pressure from the majority; as detailed in the background section, certain hardline groups have been known to push the authorities to pursue prosecutions. Correspondingly, religious minorities and those with beliefs outside the mainstream have been disproportionately prosecuted under Article 156a; as documented by a study of blasphemy cases in Indonesia, the provision “has been used to target differences in religious understanding, to form and preserve mainstream or recognized beliefs in society.”<sup>184</sup>

In the present case, it is likely that public pressure played a role in the authorities’ decision to proceed with the charges against Ms. Margaret, who belongs to the Catholic religious minority. Despite overwhelming evidence that Ms. Margaret’s diagnosed psychosocial disability was the cause of the incident, the prosecutor’s office still chose to indict Ms. Margaret and bring the case to trial. Notably, this decision followed calls from bodies such as the Dewan Kemakmuran Masjid for Ms. Margaret to be punished,<sup>185</sup> as well as the “mobiliz[ation]” of the community neighboring the mosque where the incident occurred.<sup>186</sup>

Regardless of the intent of Article 156a, its documented discriminatory effects on religious minorities raise concerns under Articles 2 and 26 of the ICCPR. With specific respect to Ms. Margaret’s case, Article 156a appears to have been applied in a discriminatory manner, likewise inconsistent with the named provisions.

### ***Article 156a and Discrimination Against Individuals with Psychosocial Disabilities***

---

<sup>182</sup> Human Rights Council, Report of the Special Rapporteur on freedom of religion or belief, U.N. Doc. A/HRC/31/18, December 23, 2015, para. 60.

<sup>183</sup> Human Rights Council, UN Office of the High Commissioner for Human Rights on the expert workshops on the prohibition of incitement to national, racial or religious hatred (Appendix: “Rabat Plan of Action”), U.N. Doc. A/HRC/22/17/Add.4, January 11, 2013, para. 19.

<sup>184</sup> Indonesian Institute for the Independent Judiciary, “Interpretations of Article 156A of the Indonesian Criminal Code on Blasphemy and Religious Defamation”, August 2018, pg. 98.

<sup>185</sup> United States Commission on Religious Freedom, “Policy Update: Blasphemy Allegations in a Polarized Indonesia”, November 2019, pg. 4. See also Indonesia at Melbourne, “Criminalising the Mentally Ill: Schizophrenic Woman to Face Court for Blasphemy”, October 8, 2019;

<sup>186</sup> Indonesia at Melbourne, “Criminalising the Mentally Ill,” October 8, 2019.

Articles 2 and 26 of the ICCPR prohibit discrimination on the grounds of disability.<sup>187</sup> Meanwhile, under Article 5(1) of the Convention on the Rights of Persons with Disabilities, States Parties must “recognize that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law.” Article 5(2) further requires States Parties to “prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.”

As detailed above, Article 156a has been arbitrarily and inconsistently applied by the authorities.<sup>188</sup> The provision is vague, affording judges and prosecutors broad discretion and allowing for the criminalization of a wide range of acts, including those that would not otherwise be criminalized apart from their perceived insensitivity towards or disrespect for Indonesia’s official religions. Due to both the provision’s emphasis on conformity with religious etiquette and widespread gaps in understanding of mental health, individuals with psychosocial disabilities may be particularly vulnerable to prosecution.<sup>189</sup>

Ms. Margaret, for example, had a well-documented history of schizophrenia, which entailed paranoia and delusions. Uncontradicted testimony by mental health experts, including an expert for the prosecution, indicated that her conduct in the mosque was driven by her schizophrenia: specifically, her belief that she needed to stop her husband’s marriage. This belief rendered Ms. Margaret unable to appreciate “the risks and significance” of her failure to follow mosque etiquette, such as conventions regarding the removal of shoes and the prohibition on dogs.<sup>190</sup> As concluded by even the police hospital that treated Ms. Margaret prior to the bringing of charges, her “legal problems ... [were] part of symptoms of her mental disorder.”<sup>191</sup> Ms. Margaret’s case mirrors other blasphemy prosecutions brought against persons with psychosocial disabilities in Indonesia.

As such, Article 156a’s criminalization of non-conforming behavior appears to have had a disproportionate impact on persons with psychosocial disabilities. This type of discriminatory effect raises concerns under the equality guarantees of the ICCPR and CRPD.

---

<sup>187</sup> See UN Office of the High Commissioner for Human Rights, “Human Rights of Persons with Disabilities.” Available at <https://www.ohchr.org/EN/Issues/Disability/Pages/DisabilityIndex.aspx>.

<sup>188</sup> See Indonesian Institute for the Independent Judiciary, “Interpretations of Article 156A of the Indonesian Criminal Code on Blasphemy and Religious Defamation”, August 2018, pgs. 29, 78- 80, 91. See also Melissa Crouch, “Law and Religion in Indonesia, Conflict and the Courts in West Java”, Routledge, 2014, pg. 146.

<sup>189</sup> See Indonesia at Melbourne, “Criminalising the Mentally Ill”, October 8, 2019; Human Rights Watch, “Woman Tried for Blasphemy over Mosque Incident”, October 11, 2019. Notably, the OHCHR has stated and the Committee on the Rights of Persons with Disabilities has indicated that defenses based on “the negation of criminal responsibility because of the existence of a mental or intellectual disability” are inconsistent with the equality guarantees of the Convention on the Rights of Persons with Disabilities.

<sup>190</sup> Cibinong Class 1A District Court, Judgment, February 5, 2020, pg. 81 (unofficial translation).

<sup>191</sup> *Id.*

## ***Involuntary Committal***

Article 44(2) of the Indonesian Criminal Code is at odds with the CRPD and ICCPR.

Article 44(1) allows courts to find defendants not liable on the basis of a lack of mental capacity. Its counterpart, Article 44(2), states: “If it is evident that [an accused] is not liable for the committed act by reason of the defective development or sickly disorder of his mental capacities, the judge may give an order that he is placed in a lunatic asylum during a probation time not exceeding the term of one year.” Although the court in Ms. Margaret’s case declined to apply this provision, the allowance of such a possibility merits discussion.

As noted above, the CRPD Committee has stated that the involuntary committal of individuals to mental health facilities based on “actual or perceived disability” constitutes a violation of Articles 12 and 14(1),<sup>192</sup> even where deemed necessary for care or safety concerns.<sup>193</sup> The Committee has repeatedly called on States to take measures to end involuntary treatment and commitment on the grounds of actual or perceived impairments, including by repealing relevant legislative provisions.<sup>194</sup>

As also discussed above, the UN Human Rights Committee has reached similar conclusions. Under Article 9(1) of the ICCPR, “the existence of a disability sh[ould] not in itself justify a deprivation of liberty.”<sup>195</sup> Unlike the Committee on the Rights of Persons with Disabilities, the Human Rights Committee has stated that the ICCPR allows for exceptions: that commitment can be used as a measure of last resort if it is necessary; if it is proportionate; if it is aimed preventing harm to the individual or to others; if it is imposed for the shortest time possible; and if procedural and substantive safeguards are in place.<sup>196</sup>

This report need not take a position on whether the CRPD Committee standard or the UN Human Rights Committee standard should be adopted: Article 44(2) contravenes both. It impermissibly affords courts blanket discretion to order involuntary commitment if an

---

<sup>192</sup> Committee on the Rights of Persons with Disabilities, Report of the Committee on the Rights of Persons With Disabilities on its twelfth session, U.N. Doc. CRPD/C/12/2, 2014, pgs. 14-15; Committee on the Rights of Persons with Disabilities, Report of the Committee on the Rights of Persons with Disabilities to the General Assembly: Guidelines on Right to Liberty and Security of Persons with Disabilities, U.N. Doc. A/72/55, September 2015, Annex - para. 10.

<sup>193</sup> Committee on the Rights of Persons with Disabilities, Report of the Committee on the Rights of Persons with Disabilities to the General Assembly: Guidelines on Right to Liberty and Security of Persons with Disabilities, U.N. Doc. A/72/55, September 2015, Annex - paras. 13-15.

<sup>194</sup> See Committee on the Rights of Persons with Disabilities, Report of the Committee on the Rights of Persons with Disabilities: Guidelines on Right to Liberty and Security of Persons with Disabilities, U.N. Doc. A/72/55, September 2015, Annex - para. 10; Committee on the Rights of Persons with Disabilities, Concluding Observations on the Initial Report of the Republic of Korea, U.N. Doc. CRPD/C/KOR/CO/1, October 29, 2014, para. 29; Committee on the Rights of Persons with Disabilities, Concluding Observations on the Initial Report of the Dominican Republic, U.N. Doc. CRPD/C/DOM/CO/1, May 8, 2015, para. 27; Committee on the Rights of Persons with Disabilities, Concluding Observations on the Initial Report of Austria, U.N. Doc. CRPD/C/AUT/CO/1, September 30, 2013, paras. 29-30.

<sup>195</sup> Human Rights Committee, General Comment No. 35, Article 9: Liberty and Security of the Person, U.N. Doc. CCPR/C/GC/35, December 16, 2014, para. 19.

<sup>196</sup> *Id.*

individual is found not liable for an offense by reason of mental disability under Article 44(1). This contravenes the CRPD's absolute prohibition on the involuntary commitment of persons based on disability. Notably, Article 44(2) neither delineates any standards with which judges must comply in ordering committal nor establishes any procedural safeguards. It does not even require the judge to provide reasons for imposing involuntary commitment. This unfettered leeway violates Article 9(1) of the ICCPR, as interpreted by the UN Human Rights Committee.



## CONCLUSION AND GRADE



The court conducting the proceedings against Ms. Margaret largely complied with fair trial standards, ultimately finding Ms. Margaret not guilty despite significant public pressure for her prosecution and conviction.

Nonetheless, Ms. Margaret's case exposes significant issues with how the Indonesian criminal justice system treats persons with psychosocial disabilities: specifically, Ms. Margaret's potentially involuntary committal, the State's apparent failure to identify and provide the support necessary to enable her to effectively participate in the trial, and deficiencies in the court's inquiry into her fitness to stand trial. Indonesia must ensure that sufficient procedural safeguards are in place to enable free and informed decision-making on admission to psychiatric institutions as well as the participation of individuals with psychosocial disabilities in legal proceedings.

Notably, Article 8 of the Convention on the Rights of Persons with Disabilities addresses awareness-raising and calls on States Parties to adopt measures to raise societal awareness about persons with disabilities; to foster respect for the rights and dignity of persons with disabilities; to combat stereotypes, prejudices and harmful practices, including those based on sex and age, in all areas of life; and to promote awareness of the capabilities and contributions of persons with disabilities. In so doing, States Parties have an obligation to undertake pragmatic and action-oriented measures, which include initiating and maintaining effective public awareness campaigns and encouraging all organs of the media to portray persons with disabilities in a manner consistent with the purpose of the CRPD.

It is evident from this trial that there is scope for the Indonesian authorities to do more to comply with its obligations under Article 8 of the CRPD. In particular, the social media campaign demanding the prosecution of Ms. Margaret illustrates a lack of awareness of psychosocial disability and highlights the scope for better understanding and respect for the dignity of persons with psychosocial disabilities.

Correspondingly, Article 13(2) of the CRPD states that effective access to justice for persons with disabilities requires States Parties to promote appropriate training for those working in the field of administration of justice, including police and prison staff. Prosecutors and members of the judiciary should also be provided with disability awareness training. This training is essential to ensuring that key stakeholders in the Indonesian criminal justice system better respond to persons with psychosocial disabilities.

Lastly, Ms. Margaret's case highlights the problematic nature of certain laws in Indonesia. Article 156a's broad and excessively harsh proscription of blasphemy violates the right to freedom of expression and leaves religious minorities as well as individuals with psychosocial disabilities vulnerable to prosecution. Article 44(2) confers unchecked

judicial discretion to imprison persons with psychosocial disabilities. In order to comply with its treaty obligations, Indonesia must revise or repeal these laws.

**GRADE:**

**C**



## GRADING METHODOLOGY

Experts should assign a grade of A, B, C, D, or F to the trial reflecting their view of whether and the extent to which the trial complied with relevant international human rights law, taking into account, *inter alia*:

- The severity of the violation(s) that occurred;
- Whether the violation(s) affected the outcome of the trial;
- Whether the charges were brought in whole or in part for improper motives, including political motives, economic motives, discrimination, such as on the basis of “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,”<sup>197</sup> and retaliation for human rights advocacy (even if the defendant was ultimately acquitted);
- The extent of the harm related to the charges (including but not limited to whether the defendant was unjustly convicted and, if so, the sentence imposed; whether the defendant was kept in unjustified pretrial detention, even if the defendant was ultimately acquitted at trial; whether the defendant was mistreated in connection with the charges or trial; and/or the extent to which the defendant’s reputation was harmed by virtue of the bringing of charges); and
- The compatibility of the law and procedure pursuant to which the defendant was prosecuted with international human rights law.

### Grading Levels

- A: A trial that, based on the monitoring, appeared to comply with international standards.
- B: A trial that appeared to generally comply with relevant human rights standards excepting minor violations, and where the violation(s) had no effect on the outcome and did not result in significant harm.
- C: A trial that did not meet international standards, but where the violation(s) had no effect on the outcome and did not result in significant harm.
- D: A trial characterized by one or more violations of international standards that affected the outcome and/or resulted in significant harm.
- F: A trial that entailed a gross violation of international standards that affected the outcome and/or resulted in significant harm.

---

<sup>197</sup> ICCPR, Article 26.