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OPEN LETTER ON AMNESTY INTERNATIONAL'S CONCERNS AT REPORTS OF PLANNED EXECUTIONS

Dear Minister

I write to you, on behalf of Amnesty International, to express deep concern about the impending execution of at least 14 people, both Indonesians and foreigners, this week, all convicted of drug-related crimes.

Should these executions proceed, Indonesia will be contravening international human rights law and standards. Several of those facing executions have recently applied for or intend to make use of their right to seek clemency before the President, a right guaranteed under the International Covenant on Civil and Political Rights, to which Indonesia is a state party. No executions must be carried out while appeals are pending.

Amnesty International is also concerned that some of the individuals facing executions may not have had legal assistance to enable them to file appeals for further judicial reviews. International law sets out key safeguards guaranteeing protection of the rights of those facing the death penalty that must be observed in all cases. These include the right to a fair trial; the right not to be subjected to torture or to other cruel, inhuman or degrading treatment or punishment; and the right to apply for clemency or pardon of a death sentence.

An Amnesty International report on Indonesia, *Flawed Justice: Unfair Trials and the Death Penalty*, published in October 2015 highlighted systemic flaws in the administration of justice resulting in violations of the right to fair trial, as outlined in the cases below of prisoners who are at imminent risk of execution at Nusakambangan Island:

- Indonesian nationals **Agus Hadi** and **Pujo Lestari** were arrested for attempting to smuggle benzodiazepine pills from Malaysia in 2006. They were detained at Riau Islands Police Headquarters on 22 November that year, interrogated there for 20 days and then transferred to the Batam prosecution detention centre. They were held in total for nine weeks before they appeared before a judge at their first trial hearing in the Batam District Court at the end of January 2007. Court documents indicate that Agus Hadi only received assistance from a lawyer on 12 December, 20 days after his arrest. Pujo Lestari had legal counsel appointed by the Batam District Court on 8 February, 78 days after his arrest and a week after the court had scheduled the first trial hearing.
- Indonesian national **Merri Utami** was arrested by the Soekarno Hatta Airport Police force after the police found 1.1kg of heroin in her bag on 31 October 2001. Merri Utami told her current lawyer that shortly after her arrest the police repeatedly beat her, sexually harassed her and

threatened her with rape to make her “confess” to possessing the drug; and that her sight has been damaged as a consequence of the beatings. She was convicted and sentenced to death in 2002. Her conviction and death sentence were upheld by the Supreme Court in 2003. She submitted an application for clemency to the President on 26 July 2016.

- **Zulfiqar Ali**, a Pakistani national, was arrested at his home in Bogor, West Java province on 21 November 2004, and charged with possession of 300g of heroin based on his friend's confession to the police. However during his trial, Zulfiqar's friend retracted his statement that the heroin belonged to him. During his pre-trial detention, he was refused the right to contact his embassy and was not permitted any access to a lawyer until approximately one month after his arrest. Tangerang District Court documents show prosecution granted an extension of Zulfiqar's detention from 4 March to 2 May 2005, meaning he was detained for at least three months before being brought to the first trial hearing, although there is no information as to when the first trial hearing started. Whilst being interrogated by the Soekarno-Hatta Airport district police, Zulfiqar Ali was kept in a house for three days and punched, kicked and threatened with death unless he signed a self-incriminating statement, which he later did. After three days his health deteriorated to the extent that on 24 November 2004 he was sent to a police hospital, where he required stomach and kidney surgery due to damage caused by the beatings. He was in the hospital for 17 days. During his trial he described this torture, but the judges allowed the “confession” to be admitted as evidence. There has been no independent investigation into his allegations. Zulfiqar Ali did not speak Bahasa Indonesia. He received limited translation assistance throughout his detention and during the proceedings against him. At the trial, he was provided with translation only from Bahasa Indonesia to English, but he understood only a little English. He was convicted and sentenced to death in 2005. His death sentence was upheld by the Supreme Court in 2006
- **Humphrey Jefferson “Jeff” Ejike**, a Nigerian man, who was arrested on 2 August 2003 in Jakarta for possessing drugs after police found 1.7kg of heroin in a room used by one of his employees at the restaurant he owned and ran. Jeff was convicted of and sentenced to death for offences relating to the import, export, sale and trafficking of drugs in 2004. His conviction and sentence were upheld by the Jakarta High Court in June 2004 and the Supreme Court in November 2004. He did not have access to a lawyer at the time of his arrest, interrogation or detention. He was detained for a total of five months without legal representation, in breach of Article 14 of the ICCPR as well as Indonesia's Criminal Procedure Code which guarantees the right to be assisted by and to contact counsel. He has claimed that he was repeatedly beaten during interrogation and threatened with being shot if he refused to sign papers in which he “confessed” to possessing the heroin or if he refused to implicate others. Trial records of April 2004, however, show that Jeff told the court that he was not subjected to any form of coercion, although he such statements are themselves sometimes made as a result of threats. The trial judgement includes the statement that “black-skinned people from Nigeria” are under surveillance by police because they are suspected of drug trafficking in Indonesia.

In November 2004, Charles Kanu, alias Kelly, the former owner of Humphrey Jefferson Ejike's restaurant, reportedly told police that he had organized for drugs to be planted in the restaurant so that Jeff would be arrested and convicted. Charles Kanu later died in prison but several people testified that they had witnessed him making this confession while in prison on drug charges. Such witness statements formed part of an appeal for a review of Humphrey Jefferson Ejike's case to the Supreme Court, which was rejected in September 2007. That same year the court upheld the constitutionality of the death penalty for drug offences. He applied for clemency from the President of Indonesia just a few days ago. No execution must be carried out while legal or clemency procedures are pending.

Agus Hadi, Pujo Lestari, Merri Utami, Humphrey Jefferson Ejike and Zulfiqar Ali are among the 14 facing the firing squad in the next few days.

The continued use of the death penalty in Indonesia, in violation of international law and standards, may also undermine efforts by the Indonesian government to protect its citizens from being subjected

to judicial execution in other countries. Amnesty International opposes the death penalty in all cases without exception, as a violation of the right to life and the ultimate cruel, inhuman and degrading punishment.

Pending full abolition of the death penalty in Indonesia, Amnesty International renews its call on the country's authorities to halt all executions and to take immediate steps to ensure that the cases of all those under sentence of death are reviewed by an independent and impartial body, with a view to the commutation of their death sentences. In particular, in cases where the death penalty has been imposed for drug-related offences, or where the trial did not meet the most rigorous international fair trial standards, or where in any other respect the proceedings or the handling of the case has been seriously flawed, relevant authorities should ensure there is a retrial that fully complies with international fair trial standards and which does not resort to the death penalty.

We hope that you will consider these recommendations.

Yours sincerely

Rafendi Djamin
Director, South East Asia & Pacific Regional Office