

**2015 WORLD DAY
AGAINST THE
DEATH PENALTY
NOT THE SOLUTION
TO DRUG-RELATED
CRIME**

**AMNESTY
INTERNATIONAL**



Amnesty International Publications

First published in [YYYY] by
Amnesty International Publications
International Secretariat
Peter Benenson House
1 Easton Street
London WC1X 0DW
United Kingdom
www.amnesty.org

© Amnesty International Publications [YYYY]

Index: [Index Number]
Original Language: English
Printed by Amnesty International, International Secretariat, United Kingdom

[ISBN:]
[ISSN:]

All rights reserved. This publication is copyright, but may be reproduced by any method without fee for advocacy, campaigning and teaching purposes, but not for resale. The copyright holders request that all such use be registered with them for impact assessment purposes. For copying in any other circumstances, or for reuse in other publications, or for translation or adaptation, prior written permission must be obtained from the publishers, and a fee may be payable. To request permission, or for any other inquiries, please contact copyright@amnesty.org

Cover photo: [Credit]

Amnesty International is a global movement of more than 3 million supporters, members and activists in more than 150 countries and territories who campaign to end grave abuses of human rights.

Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards.

We are independent of any government, political ideology, economic interest or religion and are funded mainly by our membership and public donations.

**AMNESTY
INTERNATIONAL**



CONTENT

1. the Death Penalty not the solution to drug-related crime	4
2. Background: drug policies, human rights and the death penalty	6
2. The death penalty for drug-related offences.....	10
2.1 INTERNATIONAL AND NATIONAL LAW.....	10
2.2 DEATH SENTENCES AND EXECUTIONS	12
2.3. COUNTRY OVERVIEWS	13
3. The death penalty: never the solution.....	23
4. Conclusions and recommendations	27

1. THE DEATH PENALTY NOT THE SOLUTION TO DRUG-RELATED CRIME

“Member states are encouraged to consider abolishing the death penalty for drug-related offences”

Raymond Yans, President of the International Narcotics Control Board, 5 March 2014.¹

Drug-related offences are still punishable with the death penalty in more than 30 countries despite clear restrictions set out in international law to limit use of the death penalty to the “most serious crimes”. This year’s World Day Against the Death Penalty (10 October) draws attention to the use of the death penalty for drug-related offences as a human rights violation.

Amnesty International opposes the death penalty in all cases without exception, regardless of the nature or circumstances of the crime; guilt, innocence or other characteristics of the individual; or the method used by the state to carry out the execution. The death penalty violates the right to life, as proclaimed in the Universal Declaration of Human Rights. It is the ultimate cruel, inhuman and degrading punishment.

Amnesty International recorded executions and death sentences for drug-related offences in 11 countries between 2014 and 2015. In most of these cases, the defendants’ right to a fair trial and other international safeguards guaranteeing protection of the rights of those facing the death penalty were violated and people from disadvantaged socio-economic backgrounds were disproportionately affected.²

¹ United Nations Information Centre, “INCB encourages States to consider the abolition of the death penalty for drug-related offences”, 5 March 2014, available at: http://www.incb.org/documents/Publications/PressRelease/PR2014/press_release_050314.pdf

² See, for example, Amnesty International, “Killing in the name of justice: the death penalty in Saudi Arabia” (MDE 23/2092/2015), available at <https://www.amnesty.org/en/documents/mde23/2092/2015/en/>

States that continue to use the death penalty, including for drug-related offences, often justify their position by referring to the perceived deterrent effect of this punishment on crime. But not only there is no evidence that the death penalty is any greater a deterrent than other forms of punishment, it has not been proven either to be a deterrent of drug use nor an effective way to prevent drug-related deaths.

In recent years, several states have taken steps to change their policies in response to drug use and trafficking, moving away from a punitive approach towards a new paradigm based on public health, including risk and harm reduction programs and addressing the root causes of drug use and abuse.

These issues will be at the core of discussions at the Special Session of the UN General Assembly (UNGASS), which will be held in New York in April 2016. The UNGASS provides a unique opportunity for the international community to ensure that drug policies at the national and international level are in compliance with international human rights law. In particular, Amnesty International calls on States that still use the death penalty for drug-related offences to bring their national legislation in line with international law and standards, and to end executions for drug-related offences as a first step towards the full abolition of the death penalty.

2. BACKGROUND: DRUG POLICIES, HUMAN RIGHTS AND THE DEATH PENALTY

In line with the international drug control regime,³ virtually every aspect of the unauthorized production, transport, sale and possession of narcotic drugs and psychotropic substances under international control constitute criminal offences in the majority of the world's countries. These offences are, with some variations and exception for medical or scientific purposes, harshly punished.⁴

States responses have focused on law enforcement and the use of the criminal justice system as the basic strategy for addressing drug problems and controlling addiction. In some countries efforts to address drug-related crime involved militarization of law enforcement and policing. From the 1980s several countries introduced the death penalty for drug-related offences.⁵

But drug policies based on harsh punishments and law enforcement, away from a public health approach, have not been effective in minimizing problematic use of drugs and its associated health harms, including drug-related deaths.⁶ As shown by the most recent data published by the United Nations Office on Drugs and Crime (UNODC), drug use has not decreased over the years. An estimated 5.2%

³ The international drug control regime is based on three different treaties: the Single Convention on Narcotic Drugs of 1954 as amended by the 1972 Protocol, the Convention on Psychotropic Substances of 1971 and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988.

⁴ Most countries around the world have ratified the drug conventions. To date, the Single Convention on Narcotic Drugs has 114 States parties; the Convention on Psychotropic Substances has 113 parties and the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances has 119 parties.

⁵ Harm Reduction International, "The Death Penalty for Drug Offences: A Violation of International Human Rights Law", 10 December 2007, available at <http://www.ihra.net/contents/271>

⁶ Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, UN doc. A/65/255, 6 August 2010.

of the global population aged between 15 and 64 used an illegal drug during 2013.⁷ While the estimated number of global drug users has increased - in line with the rising global population - from 203 million users in 2008 to 246 million in 2013, the number of drug dependent users has essentially remained stationary at just above 27 million throughout the same period.⁸

LETHAL TRANSITS: THE CARIBBEAN EXAMPLE

In 2012 the UN Development Programme (UNDP) looked at the consequences of drug trafficking in the transit area of the Caribbean and its impact on public security and perception of safety.⁹ The UNDP report highlights how drug trafficking organized by crime gangs frequently led to an increase in the local consumption of drugs, as couriers were often paid with illegal substances which they had to sell locally to obtain money. Drug consumption in turn triggered the development of local youth gangs and an increase in violence and crime.

In its 2012 report, the UNDP noted that “[d]rug-trafficking likewise leads to the proliferation of firearms, which are frequently traded for drugs, and the presence of armed men to protect turf and other illegal property. Indeed, drug-trafficking has been linked to the rise in execution-type killings. [...] Additionally, it fosters the corruption of public sector employees and law enforcement personnel by drug traffickers, who use their wealth to buy influence and protection from prosecution.”¹⁰

The predominantly punitive responses in the context of the so-called “war-on-drugs” have been detrimental to the enjoyment of human rights. However, these negative impacts on the lives of people are frequently ignored while the effectiveness of the international drug control regime is measured by the amount

⁷ UN Office on Drugs and Crime, “World Drugs Report 2015”, p.1, available at https://www.unodc.org/documents/wdr2015/World_Drug_Report_2015.pdf, last accessed on 2 October 2015. Estimates in this report are compiled from national surveys as well as studies that used indirect sources to estimate the number of problematic drug use in the country.

⁸ UNODC, “World Drugs Report 2015”, May 2015, available at http://www.undp.org/content/dam/undp/library/corporate/HDR/Latin%20America%20and%20Caribbean%20HDR/C_bean_HDR_Jan25_2012_3MB.pdf, p.1. The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health differentiated between drug dependence as a chronic, relapsing disorder that should be medically treated using a biopsychosocial approach and drug use, which is not a medical condition nor does it necessarily lead to drug dependence. (Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, UN doc. A/65/255, 6 August 2010).

⁹ UN Development Programme, “Caribbean Human Development Report”, 2012, available at: http://www.undp.org/content/dam/undp/library/corporate/HDR/Latin%20America%20and%20Caribbean%20HDR/C_bean_HDR_Jan25_2012_3MB.pdf

¹⁰ UN Development Programme, “Caribbean Human Development Report”, 2012, p.2.

of drugs seized or the number of drug ring-leaders that have been captured.¹¹

On 28 September 2015, the Office of the High Commissioner on Human Rights (OHCHR) presented before the Human Rights Council a study analyzing the different impacts of drug policies on human rights.¹² The study described a wide array of human rights violations arising from the current international drug control regime, including violations of the right to health, personal integrity and ultimately life.

While drug consumption rates have remained stable, risks associated with drug use have risen, including the risk of overdose, vascular accidents and infections. Echoing other UN bodies and mechanisms, the OHCHR's report highlighted the obstacles that the international drug control regime has created for ensuring the right to health, including treatment in a non-discriminatory way and reducing the availability of harm reduction programmes. Access to essential medicines for the relief of pain and suffering, drug dependency and other health conditions are often limited or absent due to strict controls.

The OHCHR also emphasised the particular risks that people who use drugs face in connection to law enforcement and the criminal justice system, including arbitrary detentions, torture and other ill-treatment, for which the perpetrators often enjoy impunity. Drug users are frequently denied treatment while in detention as a means of extracting "confessions" or are forced into compulsory treatment at designated rehabilitation centres, at which many have been subjected to torture and other ill-treatment, including long hours of physically strenuous exercise, physical and verbal abuse, beatings, solitary confinement and enforced labour.¹³

The report by the OHCHR also expressed concern about cases of extrajudicial executions that have been carried out in the context of operations aimed at the drug trade.¹⁴ Violations to the right to life, as highlighted by the OHCHR's report, also include the use of the death penalty for drug-related offences.

¹¹ See also UN Human Rights Council, "Study on the impact of the world drug problem on the enjoyment of human rights", UN doc. A/HRC/30/65, 4 September 2015.

¹² UN Human Rights Council, "Study on the impact of the world drug problem on the enjoyment of human rights", UN doc. A/HRC/30/65, 4 September 2015.

¹³ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, UN doc. A/HRC/22/53, 1 February 2013

¹⁴ UN Human Rights Council, "Study on the impact of the world drug problem on the enjoyment of human rights", UN doc. A/HRC/30/65, 4 September 2015.

The right to life of persons convicted of drug-related offences should be protected and, in accordance with article 6 of the International Covenant on Civil and Political Rights and the jurisprudence of the Human Rights Committee, such persons should not be subject to the death penalty.¹⁵

¹⁵ See also next section.

2. THE DEATH PENALTY FOR DRUG-RELATED OFFENCES

2.1 INTERNATIONAL AND NATIONAL LAW

Hundreds of executions are carried out each year for drug-related offences, despite the fact that such offences do not meet the threshold of the “most serious crimes” to which the use of the death penalty must be restricted under international law.

NOT THE “MOST SERIOUS CRIMES”

While Article 6 of the ICCPR allows in countries that still retain the death penalty for its use under certain circumstances, provisions in the same Article set abolition as the ultimate goal and restrict its use must to the “most serious crimes” only.

According to the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, adopted by the UN Economic and Social Council (ECOSOC) in resolution 1984/50 of 25 May 1984 and endorsed by the UN General Assembly in resolution 39/118 adopted without a vote on 14 December 1984, “[i]n countries which have not abolished the death penalty, capital punishment may be imposed only for the most serious crimes, it being understood that their scope should not go beyond intentional crimes, with lethal or other extremely grave consequences.”

The UN Human Rights Committee has on numerous occasions found that drug-related offences do not meet the criterion of “most serious crimes”,¹⁶ a finding reiterated in 2007 by the then UN Special Rapporteur on extrajudicial, summary or arbitrary executions, who stated:

“The conclusion to be drawn from a thorough and systematic review of the jurisprudence of all of the principal United Nations bodies ... is that the death penalty can only be imposed in such a way that it complies with the stricture that it must be limited to the most serious crimes, in cases where it can be

¹⁶ UN Human Rights Committee (8 July 2005), Concluding observations: Thailand, CCPR/CO/84/THA, para. 14; UN Human Rights Committee (29 August 2007), Concluding observations: Sudan, CCPR/C/SDN/CO/3, para. 19.

shown that there was an intention to kill, which resulted in the loss of life.”¹⁷

The UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment stated that the imposition of the death penalty for drug offences violates international human rights law, noting that, in his view, “drug offences do not meet the threshold of most serious crimes. Therefore, the imposition of the death penalty on drug offenders amounts to a violation of the right to life, discriminatory treatment and possibly ... their right to human dignity.”¹⁸

The UN Special Rapporteur on Extrajudicial, summary or arbitrary executions clarified in his 2012 report that “The notion of progressive restriction and the status of Article 6 (2) as an exception suggest that States that wish to use the death penalty must provide a justification for this limitation on the right to life. The outlines of the global picture that can be discerned suggest that there is insufficient consensus to permit the inclusion of crimes other than intentional killing within the exception created for the ‘most serious crimes’.”¹⁹ He concluded that “Domestic law should provide that death sentences may never be mandatory and may be imposed only for those crimes that involve intentional killing. The death penalty may not be imposed for drug-related offences unless they meet this requirement.”²⁰

As of today, drug-related offences, which can include different charges ranging from drug trafficking to drug possession, are punished or punishable by death in Bahrain, Bangladesh, Brunei Darussalam, China, Cuba, Democratic People’s Republic of Korea, Democratic Republic of the Congo, Egypt, Guyana, India, Indonesia, Iran, Iraq, Jordan, Kuwait, Laos, Libya, Malaysia, Myanmar, Oman, Pakistan, Qatar, Saudi Arabia, Singapore, Republic of Korea, South Sudan, Sri Lanka, Sudan, Syria, Thailand, United Arab Emirates, United States of America, Viet Nam and Yemen.²¹

Despite the fact that mandatory death sentences, even for the most serious crimes, are contrary to international law,²² drug-related offences are mandatorily

¹⁷ Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, 29 January 2007, UN Doc. A/HRC/4/20, para. 53, http://www.extrajudicialexecutions.org/application/media/A_HRC_4_20.pdf

¹⁸ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 14 January 2009, A/HRC/10/44, para. 66.

¹⁹ Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, 9 August 2012, A/67/275, para.66.

²⁰ *ibid.*, para.122.

²¹ This list covers offences that include drug trafficking resulting into death, drug trafficking not resulting into death, and drug trafficking by agents of the state.

²² The UN Human Rights Committee has said that “the automatic and mandatory imposition of the death penalty constitutes an arbitrary deprivation of life, in violation of Article 6, paragraph 1, of the [International] Covenant [on Civil and Political Rights], in circumstances where the death penalty is imposed without any possibility of taking into account the defendant’s personal circumstances or the circumstances of the particular offence”. *Pagdayawon Rolando v Philippines*, Views of the Human Rights Committee, Communication No.

punished by death in several countries including Iran, Malaysia and Singapore.²³

In at least three countries - Brunei Darussalam, Malaysia and Singapore - defendants found with specified amounts of certain drugs, or even simply in possession of keys to a building or vehicle in which drugs are found, are presumed guilty of drug trafficking.²⁴ In those circumstances, the burden of proof is shifted onto the defendant, in violation of the presumption of innocence and fair trial rights.²⁵

2.2 DEATH SENTENCES AND EXECUTIONS

Many countries that retain the death penalty do not publish information on death sentences imposed or executions carried out. Amnesty International monitors the use of the death penalty in all countries that retain this punishment. The organization publishes figures on the number of people sentenced to death and executed in each country using a variety of sources to establish the figures. However, because of the lack of official data the figures Amnesty International can confirm are almost invariably lower than the true number of death sentences and executions.

Within these limitations, Amnesty International was able to gather information on death sentences imposed and executions carried out for drug-related offences in 10 countries in 2014: China, Indonesia, Iran, Malaysia, Saudi Arabia, Singapore, Sri Lanka, Thailand, United Arab Emirates and Viet Nam.²⁶

In 2015, Amnesty International recorded executions for drug-related crimes in China, Iran (571, as of 20 September 2015), Indonesia (14 as of 28 August 2015) and

1110/2002, UN document CCPR/C/82/D/1110/2002, 8 December 2004, para. 5.2.

²³ While some sentencing discretion was introduced in Singapore under the Misuse of Drugs Act in 2012, defendants can still be mandatorily sentenced to death. See summary of concerns on Singapore in the next section of this document.

²⁴ Brunei Misuse of Drugs, Arts. 3A, 15-16; Malaysia's Dangerous Drugs Act, Art.37; Singapore's Misuse of Drugs Act, Art.18.

²⁵ Drug trafficking is presumed if the defendant is found in possession of a quantity of prohibited substance greater than a specified minim.

²⁶ Amnesty International, Death sentences and executions in 2014 (ACT 50/001/2015), available at <https://www.amnesty.org/en/documents/act50/0001/2015/en/> Amnesty International reports only on executions, death sentences and other aspects of the use of the death penalty, such as commutations and exonerations, where there is reasonable confirmation. In many countries governments do not publish information on their use of the death penalty, making confirmation of the use challenging. Therefore, with only a few exceptions, Amnesty International's figures on the use of the death penalty are minimum figures.

Saudi Arabia (58 as of 28 August 2015). Amnesty International received reports indicating that death sentences continued to be imposed for drug-related offences in 2015 in China, Indonesia, Iran, Kuwait, Malaysia, Saudi Arabia, Sri Lanka, United Arab Emirates and Viet Nam (see below).

The majority of the cases of people sentenced to death or executed for drug-related crimes recorded by Amnesty International involved foreign nationals, often from disadvantaged socio-economic backgrounds and unable to speak the language of the country in which they were arrested and charged.

2.3. COUNTRY OVERVIEWS

CHINA

In China, data on the number of executions and death sentences remains a state secret. Amnesty International estimated that in 2014 China executed more than the rest of the world combined, and sentenced thousands of people to death. A significant proportion of these executions and death sentences were for drug-related crimes.

On 29 August 2015, the National People's Congress adopted the People's Republic of China Criminal Law Amendment (9) (Act) which will take effect on 1 November; the law will reduce the overall number of capital offences from 55 to 46. The nine crimes for which the death penalty is being removed as a possible punishment include smuggling counterfeit currency; counterfeiting currencies fraudulent fundraising; organizing prostitution; obstruction of military duties and fabrication of rumours during wartime.

While a welcome step, Amnesty International remained concerned that drug-related offences were not included in the list of crimes for which the death penalty has been removed.

INDONESIA

Indonesia carried out fourteen executions this year, all for drug trafficking. Twelve out of the fourteen people executed were foreign nationals. The executions were carried out to confront what the authorities referred to as a

“national drug emergency”.²⁷ According to the Indonesian National Narcotics Agency Board (BNN) drug-related crime increased in Indonesia between 2009 and 2013 and so did drug consumption.

The authorities’ response to drug use and trafficking escalated at the end of 2014, when the newly-elected President Joko Widodo invoked the use of the death penalty as the solution to solve the “national drug emergency” and said he would reject all clemency applications put forward by 64 people convicted of drug-related offences.

While drug abuse in Indonesia is a serious issue deserving an effective response by the government, the premise and effectiveness of the authorities’ “tough on drugs” approach has been widely contested. The figures put forward by the Indonesian government to justify the resumption of executions have been widely criticized by the scientific community as misrepresenting the extent of Indonesia’s drug problem. Oxford-based researcher and PhD candidate Claudia Stoicescu and, independently of her, 11 academics published their concerns about the methodology followed in the two studies the BNN used to justify its figures.²⁸

The researchers found that the BNN did not adequately differentiate between different types of drugs and the frequency and pattern of their use; the studies’ definition of addiction was inconsistent with accepted criteria for drug

²⁷ President Joko Widodo’s speech is available at the State Secretary Website:

http://www.setneg.go.id/index.php?option=com_content&task=view&id=8712&Itemid=26 (accessed on 17 August 2015).

²⁸ Interview with Claudia Stoicescu, 5 March 2015. See also Claudia Stoicescu, “Indonesia uses faulty stats on ‘drug crisis’ to justify death penalty”, 5 February 2015, available at:

<https://theconversation.com/indonesia-uses-faulty-stats-on-drug-crisis-to-justify-death-penalty-36512>; Irwanto, Dewa N Wirawan, Ignatius Praptoraharjo, Sulistyowati Irianto, Siti Musdah Mulia, on behalf of 11 signatories, “Evidence-informed response to illicit drugs in Indonesia”, *The Lancet*, Vol.385, 6 June 2015.

dependence set out by the World Health Organization (WHO);²⁹ and the method used to indirectly estimate drug-related mortality was deemed unreliable. Further, Claudia Stoicescu said that “by its data, BNN present any kind of drug use as abuse, addiction and they use very stigmatising language for drugs user, for instance those who have tried drug once are considered as drug addicts”.³⁰

According to the researchers, the figure of 4.5 million drug users is not an estimation of the actual number of people in Indonesia who are in need of support to manage their drug addiction. It is rather a projection cited in a 2008 study by the National Narcotics Agency of all drug users, including those who have used drugs “less than five times in their life”.

The BNN study claimed that 40 to 50 young people were dying each day of drug use. According to Claudia Stoicescu, the methodology used to determine this figure was flawed as the study authors surveyed a sample of 2,143 people, asked how many of their friends used drugs, and of these, how many died because of drugs in the year before the survey. The median number of friends who died (three) was then applied to the 2008 estimate of drug addicts, arriving at a figure of 14,894. Divided by 365 days, this amounts to 41 “people dying because of drug use every day”.³¹

While opposing the death penalty in any circumstances, Amnesty International is concerned by the Indonesian authorities’ inaccurate analysis of the drug situation, based on figures which appear to have been disseminated to fuel public support for the new administration’s plan to address drug-related issues through the death penalty.

Prior to President Widodo’s public statements on the “national drug emergency” the Indonesia authorities had appeared ready to move away for a largely crime and punishment based approach to drug use and abuse. In March 2014 the Supreme Court, the Ministry of Law and Human Rights, the Ministry of Health, the Ministry of Social Affairs, the Attorney-General’s Office, the Indonesia National Police and the National Narcotics Board signed an Inter-Ministerial Regulation aimed at

²⁹ See, for example, World Health Organization, *Guidelines for the Psychosocially Assisted Pharmacological Treatment of Opioid Dependence*, 2009, available at http://www.who.int/substance_abuse/publications/Opioid_dependence_guidelines.pdf?ua=1

³⁰ Amnesty International, Interview with Claudia Stoicescu, 18 March 2015.

³¹ Interview with Claudia Stoicescu, 5 March 2015.

promoting alternatives to incarcerations for convicted drug users, such as voluntary treatment and rehabilitation.³² But, as also noted by the UN Office on Drugs and Crime, "signing regulation and implementing it are two different things."³³

According to figures obtained from the Law and Human Rights Ministry on 30 April 2015, there were at least 121 prisoners under sentence of death. These include 54 people convicted of drug-related crimes.³⁴

IRAN

Thousands of executions have been carried out for drug-related crimes in Iran since these offences began being punished by death in 1959.

The 1989 Anti-Narcotics Law, which was most recently amended in 2011, presently allows for the death penalty for a range of drug-related offences including trafficking more than 5kg of narcotics derived from opium and non-medical psychotropic substances listed by Parliament; trafficking or possessing more than 30g of certain illegal substances including heroin, morphine and cocaine; recruiting or hiring people to commit any crimes listed in the law; or organizing, running and financially supporting drug-related activities. It also provides for the mandatory death penalty for "heads of the gangs and network" without defining "gangs" or "network", leaving this open to interpretation.

Following the adoption of the amendments to the law in 2011, those convicted and sentenced to death under the Anti-Narcotics Law were no longer permitted to lodge appeals. Under Article 32 of the Law, all death sentences passed under the law were subject to confirmation either by the Head of the Supreme Court or the Prosecutor General who were entitled to revise or quash the sentence in the event that they find it to contravene Islamic law or that the judge was not competent. Denial of the right to appeal for people accused of drug-related offences is believed to have contributed to the acceleration of processing of such cases and the sharp increase in the number of drug-related executions since 2011.

³² UNODC, "Promoting alternative to imprisonment for convicted drug users in Indonesia", 8 April 2015, available at: <https://www.unodc.org/indonesia/en/2015/04/drug-users/story.html>

³³ UNODC, "Promoting alternative to imprisonment for convicted drug users in Indonesia".

³⁴ Information received by and on file with Amnesty International.

As of 20 September 2015, the Iranian authorities had carried out 829 executions, 571 of which were for drug trafficking. Among those most affected are foreign nationals and people from disadvantaged socio-economic backgrounds, including members of the ethnic minorities living in impoverished border provinces.³⁵

In June 2015 a new Code of Criminal Procedure came into effect. Although the new Code fails to address the shortcomings of Iran's criminal justice system including with regards to a meaningful right to appeal, it revokes Article 32 of the Anti-Narcotics Law, which left individuals sentenced to death for drug-related offences with no venue to appeal. However, it is yet to be seen if people sentenced to death before the Code came into force can benefit from the changes in the law.

In December 2014, Mohammad Javad Larijani, the Secretary General of Iran's High Council for Human Rights, announced intentions for revision of the Anti-Narcotic Law which he said would reduce the number of executions by 80%.³⁶

KUWAIT

Drug trafficking is punishable by death under the Kuwait Decree on the Control of Psychotropic Substances and Regulation of Use and Trafficking and the Kuwait Act Concerning the Fight Against Drugs and Regulating Use and Trafficking under certain circumstances.

While the last executions in Kuwait were carried out in 2013, for murder, death sentences continue to be imposed on a regular basis, including for drug trafficking.

MALAYSIA

Drug trafficking in Malaysia is punished by the mandatory death penalty under

³⁵ Amnesty International, "Iran's 'staggering' execution spree: nearly 700 put to death in just over six months", 23 July 2015, <https://www.amnesty.org/en/latest/news/2015/07/irans-staggering-execution-spreed/>

³⁶ Al-Monitor, "Iran considers ending death penalty for drug offenses", 4 December 2015, available at <http://www.al-monitor.com/pulse/originals/2014/12/iran-end-death-penalty-drug-cases.html#ixzz3072Cmitd>

the Dangerous Drugs Act 1952. People found in possession of certain amounts of illegal substances or of keys to vehicles or buildings in which illegal drugs are found are automatically presumed to be trafficking drugs. In those circumstances, the burden of proof is shifted onto the defendant, in violation of the presumption of innocence and fair trial rights.³⁷

Shahrul Izani bin Suparaman was 19 years old when he was found in possession of 622 grams of cannabis in Malaysia in September 2003. Because of the amount, he was automatically presumed to be trafficking drugs, a crime for which a death sentence is mandatory in Malaysia. It was his first criminal offence and he is currently appealing for clemency from the authorities.

Information on executions carried out in Malaysia is not publicly available and Amnesty International has not been able to assess whether any executions were carried out for drug-related offences in 2014. However, the organization recorded that half of the death sentences imposed in recent years relate to drug trafficking convictions. Amnesty International received credible information that in 2013 at least one person was executed for drug trafficking.

In 2012 the government of Malaysia announced legislative reforms in relation to the mandatory death penalty. While discussions on such reforms have been ongoing, no draft laws have, to date, been proposed. Amnesty International has urged the Malaysian authorities to fully remove the mandatory death penalty and the death penalty for drug-related offences from national legislation as first steps towards abolition.

SAUDI ARABIA

The past three years have seen a significant rise in the number of executions Amnesty International recorded for drug-related offences, which under Saudi Arabia's interpretation of Shari'a law are considered crimes punishable by death as discretionary punishment. Whereas in 2010 and 2011, less than 4% of recorded executions for those years were for drug-related offences, in 2012 the equivalent figure rose to almost 28%, followed by 32% in 2013. In 2014 and 2015 (up to

³⁷ Drug trafficking is presumed if the defendant is found in possession of a quantity of prohibited substance greater than a specified minimum.

June), the percentage of recorded executions that were for drug-related offences was 47% for each period.³⁸

Saudi Arabia's justice system lacks the most basic safeguards to ensure the right to a fair trial is protected. Often death sentences are imposed after unfair and summary proceedings, which are in some cases held in secret. Defendants are routinely denied access to a lawyer, or convicted on the basis of "confessions" obtained under torture or other ill-treatment. They are also denied the right to a full review of their conviction and sentence. Foreign nationals, particularly migrant workers from disadvantaged economic backgrounds who moved to Saudi Arabia from countries in Africa, the Middle East and Asia, comprise a high and disproportionate number of those executed in Saudi Arabia, including for drug-related offences.³⁹ During their trial, their foreign nationality and the fact that they often do not speak Arabic place them in a particularly disadvantageous position.

SRI LANKA

Under Section 54(A-B) of the Poisons, Opium and Dangerous Drugs Ordinance, drug trafficking and possession above certain amounts can be punished by the death penalty. At least ten people were sentenced to death for drug trafficking in 2014.

SINGAPORE

In Singapore, the death penalty remains applicable for drug-related offences under the Misuse of Drugs Act. Following the adoption of the amendments to the Misuse of Drugs (Amendment) Act 2012, judges can only exercise sentencing discretion in deciding whether or not to impose the death penalty on individuals in particular circumstances. However, in some circumstances the mandatory death penalty still applies. Only defendants who have demonstrated that they

³⁸ See also Amnesty International, "Killing in the Name of Justice": The Death Penalty in Saudi Arabia", August 2015, available at <https://www.amnesty.org/en/documents/mde23/2092/2015/en/>

³⁹ Amnesty International, "Affront to justice: Death penalty in Saudi Arabia" (Index: MDE 23/027/2008), October 2008.

were merely drug “couriers” – and who are provided with a certificate of “substantive assistance” by the Attorney General’s Office can be sentenced at the judge’s discretion to death or life imprisonment and 15 strokes of the cane. People who can demonstrate they have a severe mental disability which was relevant to the commission of the crime can only be sentenced to life imprisonment.

While the new restrictions on the imposition of the mandatory death penalty are a welcome step, the amended legislation still does not conform to international human rights law and standards. Singapore’s laws still allow torture in the form of caning as an alternative punishment to the death penalty. Further, for defendants to be spared the death penalty in drug trafficking cases, the Public Prosecutor has to be satisfied that the defendants have substantively assisted the Central Narcotics Bureau in disrupting drug trafficking activities.

Also of concern are provisions in national legislation that undermine the presumption of innocence and place the burden of proof on the defendant, including under sections 17-22 of the Misuse of Drugs Act. Under these Articles, defendants found in possession of a certain amount of controlled drugs, or holding keys or documents relating to the same controlled drugs, are automatically presumed guilty of possession for the purpose of trafficking unless it is proved otherwise.

Singapore carried out two executions on 18 July 2014, ending a moratorium established in 2012 to allow the Parliament to review the mandatory death penalty laws.⁴⁰ Both men had been convicted and mandatorily sentenced to death under the Misuse of Drugs Act for drug trafficking. Amnesty International recorded three new death sentences in 2014, all mandatory sentences for drug trafficking.⁴¹ In 2015 one mandatory death sentence for drug trafficking was known to have been imposed.

UNITED ARAB EMIRATES

Under the Anti-Narcotic Drugs and Psychotropic Substances Law drug trafficking and possession for the purpose of trafficking is punishable by death.

⁴⁰ Amnesty International, “Death sentences and executions in 2012” (ACT 50/001/2013), March 2013, available at <https://www.amnesty.org/en/documents/act50/0001/2013/en/>

⁴¹ Amnesty International, “Death sentences and executions in 2014” (ACT 50/001/2015), April 2015, available at <https://www.amnesty.org/en/documents/act50/0001/2015/en/>

While executions in recent years were carried out for murder, death sentences continue to be imposed for drug trafficking. At least two people were sentenced to death for this crime in 2015.

THAILAND

The Narcotics Act of Thailand allows for the imposition of the death penalty on those convicted of manufacturing, importing or exporting “category 1” or “dangerous” narcotics for commercial purposes; possessing more than 20g of category 1 or “dangerous” narcotics; or deceiving or coercing a woman or a person lacking legal competence to carry illegal substance.

While the last execution in the country was carried out in 2009, when two men were killed by lethal injection for drug-related offences, death sentences for these offences continue to be imposed. Amnesty International recorded 55 new death sentences were imposed in Thailand between June and December 2014, for drug-related offences and murder. The actual figure is believed to be much higher. Approximately 47% (302 people) of the 645 people on death row at the end of 2014 had been convicted of drug trafficking.

As of June 2015, 183 people were under sentence of death for drug-related offences, including 40 women.⁴²

On 12 November 2014 the Thai authorities adopted the Third National Human Rights Action Plan (2014-2018), which includes an objective on abolition of the death penalty.⁴³ In 2015 the Ministry of Justice began a consultation on the possibility of progressively restricting the use of the death penalty by first reducing the number of crimes for which the death penalty can be imposed.⁴⁴ However, the scope of the death penalty was expanded in 2015 to include corruption by foreign nationals in the list of capital crimes.

VIET NAM

⁴² Figures of the Department of Corrections.

⁴³ Ministry of Justice, The Summary of the 3rd Human Rights Action Plan, December 2014, available at <http://www.mfa.go.th/humanrights/images/the%20summary%20of%20thailands%203rd%20national%20human%20rights%20plan%202014-2018.pdf>

The Human Rights Action Plan needs to be adopted by the Parliament as well.

⁴⁴ Ministry of Justice, Advocacy Paper on implementing the human rights action plan, on file with Amnesty International.

Under Viet Nam's Penal Code, producing and trafficking drugs over certain amounts can be punished by the death penalty. Figures on the use of the death penalty continue to be classified as a state secret. Amnesty International recorded that in 2014 the courts imposed at least 72 new death sentences, 80% of which were for drug trafficking. Amnesty International received reports of at least seven new death sentences for drug trafficking in 2015.

The National Assembly is currently considering proposed amendments to the Penal Code aimed at reducing the scope of crimes for which, and people against whom, the death penalty can be imposed. While continuing to advocate for full abolition of the death penalty, Amnesty International calls on the authorities of Viet Nam, as a first step, to bring the country's legislation in line with international law by removing all provisions that allow for the use of the death penalty for crimes other than intentional killing.

3. THE DEATH PENALTY: NEVER THE SOLUTION

“There is no quick and simple remedy for drug dependence and we need to invest in long term, medical evidence- based solutions.”

Yury Fedotov, UNODC Executive Director⁴⁵

Authorities in countries that still retain the death penalty often justify its use as a crime-control measure; countries that apply the death penalty for drug-related crime have claimed that executions deter drug traffickers and prevent the use of drugs and drug-related deaths.

“In Singapore’s experience, the death penalty for drug traffickers has been, and continues to be, an effective deterrent as part of our framework of laws, coupled with effective enforcement based on the rule of law. This has kept our streets virtually drug and crime-free”.

Intervention by Singapore during the high-level panel at the Human Rights Council on “the impact of the world drug problem on the enjoyment of human rights”.

“[Drugs] undermine peace and stability, the social fabric and economic structure of countries. Violence and crime are corollaries of drug use. Drug trafficking has led to international terrorism, organized crime, money laundering [...] The Arab Group has warned of any attempt to reduce penalties for drug trafficking.”

Intervention by Saudi Arabia, on behalf of the Arab Group, during the high-level panel at the Human Rights Council on “the impact of the world drug problem on the enjoyment of human rights”.

“Every country and region is unique in its experience, challenges and needs in relation to addressing the drug problem. This particularities need to be borne in mind and the sovereignty of States in developing their criminal justice systems with regard to production, manufacturing, trafficking and abuse of drugs should be respected”.

Intervention by Egypt during the high-level panel at the Human Rights Council on “the impact of the world drug problem on the enjoyment of human rights”.

Despite these claims there is no credible evidence that the death penalty has a

⁴⁵ UNODC, “2015 World Drug Report finds drug use stable, access to drug & HIV treatment still low”, May 2015, available at https://www.unodc.org/documents/wdr2015/WDR15_Press_Release.pdf

unique deterrent effect in relation to crime. The most comprehensive survey of research findings carried out by the UN on the relationship between the death penalty and homicide rates concluded: "research has failed to provide scientific proof that executions have a greater deterrent effect than life imprisonment. Such proof is unlikely to be forthcoming. The evidence as a whole still gives no positive support to the deterrent hypothesis".⁴⁶

Statistics from countries that have abolished the death penalty show that its absence has not resulted in an increase in the crimes previously subject to capital punishment. In Canada, for example, the homicide rate per 100,000 of the population fell from a peak of 3.09 in 1975 (the year before the death penalty for murder was abolished) to 2.41 in 1980. The homicide rate in Canada remains significantly lower than it was prior to abolition.⁴⁷ A study comparing the murder rates in Hong Kong and Singapore, both of which have a similar population size, for a 35-year period beginning in 1973 found that the abolition of the death penalty in the former and a high execution rate in the latter in the mid-1990s had little impact on murder levels.⁴⁸

Evidence has shown that a punitive policy towards drugs has little influence on the prevalence of drug use.⁴⁹ Countries that have enacted harsh laws and implemented widespread arrest and imprisonment of drug users, even imposing death sentences, did not show lower levels of drug use and related problems than countries with more tolerant approaches.⁵⁰

As the annual world drug reports published by UNODC show, harsh punishments have not eliminated or reduced either drug trafficking nor drug use.⁵¹ On the

⁴⁶ Roger Hood, *The question of the death penalty and the new contributions of the criminal sciences to the matter: a report to the United Nations Committee on Crime Prevention and Control*, UN document E/AC.57/1988/CRP.7, 1988. The survey was last reviewed and published commercially as Roger Hood and Carolyn Hoyle, *The Death Penalty: A Worldwide Perspective*, Oxford, Clarendon Press, Fourth edition, 2008.

⁴⁷ *The Death Penalty: A Worldwide Perspective*, p. 325.

⁴⁸ Franklin E. Zimring, Jeffrey Fagan, David T. Johnson, "Executions, deterrence and homicide: a tale of two cities", 31 August 2009.

⁴⁹ Degenhardt L, Chiu W-T, Sampson N, Kessler RC, Anthony JC, et al. (2008) Toward a global view of alcohol, tobacco, cannabis, and cocaine use: Findings from the WHO World Mental Health Surveys. *PLoS Med* 5(7) available at <http://journals.plos.org/plosmedicine/article?id=10.1371%2Fjournal.pmed.0050141>

⁵⁰ Global Commission on Drug Policy. *War on Drugs*. June 2011, available at http://www.globalcommissionondrugs.org/wp-content/themes/gcdp_v1/pdf/Global_Commission_Report_English.pdf

⁵¹ For more information, see annual World Drug Reports produced by UNODC, available at

contrary, drug users have been stigmatized, usually considered to be ill or criminals, and this in turn has segregated and marginalized this sector of the population. Other marginalized groups, including children living in the street, persons with psychosocial disabilities, sex workers and homeless individuals have faced further discrimination based on drug policies.⁵²

Crime trends and patterns in different countries and regions are related to a range of factors which are context-specific. However, several UN studies have identified poverty, inequality, and the capacity of states to enforce the rule of law as common factors affecting the level of violence in most countries, in addition to individuals' particular circumstances.⁵³

The Special Rapporteur on the right to health has stated that drug use is neither a medical condition nor does it necessarily lead to drug dependence.⁵⁴ The circumstances that make an individual more vulnerable to problematic drug uses are inter-linked with the individuals' own circumstances as well as development conditions.⁵⁵ Harsh sentences, including the death penalty, have little effect in changing such circumstances. It is therefore critical that programmes aimed at reducing drug abuse, and associated harms, whether designed and funded by the competent authorities or a donor state or international organization, invest in measures targeted at changing the conditions of individual users as well as the community at large, in full respect of international human rights law and standards, including the expansion of harm reduction services, treatment programs and drug education.⁵⁶

A human rights response to the challenges of drug abuse is possible. When it comes to preventing drug-related deaths, the UN Commission on Narcotic Drugs and other UN bodies, including the Committee on Economic, Social and Cultural

<http://www.unodc.org/wdr2015/>

⁵² Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, UN doc. A/HRC/22/53, 1 February 2013

⁵³ UNODC, "Making them work –handbook on crime prevention guidelines", August 2010.

⁵⁴ Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, UN doc. A/65/255, 6 August 2010

⁵⁵ UN Human Rights Council, "Study on the impact of the world drug problem on the enjoyment of human rights", UN doc. A/HRC/30/65, 4 September 2015.

⁵⁶ Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, UN doc. A/65/255, 6 August 2010

Rights,⁵⁷ the Committee on the Rights of the Child⁵⁸ and the Special Rapporteur on the right to health have all determined that deaths related to drug use, caused by overdose as well as infectious diseases, including HIV, transmitted through unsafe injecting practices, can be effectively reduced through harm reduction programmes.⁵⁹ Opioid substitution therapy, needle and syringe exchange programmes and access to drug-consumption rooms have been identified as effective measures to tackle risks and harms associated with drug use⁶⁰ and can reduce overdosing by almost 90%.⁶¹

Despite the claims of some States, there is no clear evidence proving the link between harsh penalties, including the death penalty, and a reduction of drug trafficking and use.⁶²

⁵⁷ See UN documents E/C.12/RUS/CO/5, E/C.12/ZAZ/CO/1, E/C.12/EST/CO/2 and E/C.12/UKR/CO/5.

⁵⁸In its general comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health.

⁵⁹ See, for example, resolution 55/7, adopted on 16 March 2012 by the Commission on Narcotic Drugs; Tool to set and monitor targets for HIV prevention, diagnosis, treatment and care for key populations, July 2015, available at

http://apps.who.int/iris/bitstream/10665/177992/1/9789241508995_eng.pdf?ua=1&ua=1;

WHO, *Community management of opioid overdose*, 2014, available at

http://apps.who.int/iris/bitstream/10665/137462/1/9789241548816_eng.pdf?ua=1&ua=1

⁶⁰ UNODC/WHO, Discussion paper 2013, available at

http://www.who.int/substance_abuse/publications/opioid_overdose.pdf?ua=1;

WHO/UNODC/UNAIDS, *Position paper Substitution maintenance therapy in the management of opioid dependence and HIV/AIDS prevention*, 2004, available at

http://www.who.int/substance_abuse/publications/en/PositionPaper_English.pdf?ua=1

⁶¹ World Health Organization, "Community Management of Opioid Overdose", 2014, available at

http://www.who.int/substance_abuse/publications/management_opioid_overdose/en/

⁶² Degenhard et al., 'Toward a Global View of Alcohol, Tobacco, Cannabis, and Cocaine Use: Findings from the WHO World Mental Health Surveys', World Health Organization, 2008.

<http://www.plosmedicine.org/article/info:doi/10.1371/journal.pmed.0050141>

4. CONCLUSIONS AND RECOMMENDATIONS

As of today 140 countries have abolished the death penalty in law or practice. However, several countries continue to use the death penalty as part of their strategy to control drug use and combat drug trafficking, despite such use of the death penalty being contrary to international law.

International law and standards restrict the use of the death penalty to the “most serious crimes” generally defined as only those crimes that involve intentional killing. Drug-related crimes do not fall into this category. International law also sets the goal for States as abolition of the death penalty.

In April 2016 the UN General Assembly, the UN’s main deliberative body, will gather in a Special Session focused on drugs, to discuss the world’s drug control priorities, including the use of the death penalty for drug-related offences. The last time a special session on drugs was held was in 1998. The 2016 session offers an important opportunity for States to ensure that drug policies at both national and international level comply with international human rights law, and particularly to end the use of the death penalty for drug-related offences, as a first step towards its full abolition.

The death penalty is the ultimate cruel, inhuman and degrading punishment. Those countries that justify its use on the grounds that it is a means of addressing drug-related crime do so despite considerable evidence that on two points: firstly, there is no evidence that the death penalty is any more of a deterrent to crime than terms of imprisonment; secondly, a growing number of experts agree that addressing abuse of drugs and the negative impacts of such abuse on individuals and societies requires an integrated approach incorporating health and social interventions and limiting the use of criminal justice measures.

Amnesty International calls on all countries that still retain this punishment for

drug-related offences to:

- Immediately establish an official moratorium on executions with a view to abolishing the death penalty;;
- Commute without delay all death sentences;
- Immediately remove all provisions in national law that breach international human rights law, in particular:
 - by abolishing all provisions which provide for mandatory death sentences,
 - by restricting the imposition of the death penalty to intentional killing;
- In all death penalty cases, ensure rigorous compliance with international standards for fair trials.
- Ensure that foreign nationals arrested, detained or imprisoned have adequate access to consular and interpretation services;
- Make available information on the use of the death penalty in the country.
- Ratify, without reservations, the International Covenant on Civil and Political Rights and its Optional Protocols.

Amnesty International also urges the UN Office on Drugs and Crime and other UN entities, as well as UN Member States, involved in counter-narcotics operations to ensure that all of their drug policies and related programmes are carried out in full compliance with international law and other standards applicable to the use of the death penalty and do not contribute to the use of the death penalty in connection with drug-related offences.

Amnesty International also calls on States and other stakeholders to ensure that the outcome of the next UN General Assembly Special Session on drugs, to be held in April 2016, incorporates the respect and protection of human rights as an integral part of drug policies.

