



Amnesty International

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UN Anti-Drugs Day : Death Sentences for drug-crimes rise in the Asia Pacific - Action

"The death penalty should be eliminated for crimes such as economic crimes and drug-related offences"

UN Special Rapporteur on extrajudicial, summary or arbitrary executions, 1997.

Introduction

On the occasion of the UN Anti-Drugs Day on 26 June, the Anti-Death Penalty Asia Network (ADPAN), of which Amnesty International is a member, expressed in a statement [1] concern that more people in the region are sentenced to death for drug offences than for any other crime in a number of Asia Pacific countries.

These developments come at a time when there is a worldwide trend towards restricting and abolishing the death penalty. More than half the countries in the region still maintain the death penalty for drug offences despite the lack of scientific evidence showing that it deters would-be traffickers more effectively than other punishments. However, latest reports indicate that the death penalty against drug offenders is on the rise particularly in South East Asia.

The trade in and use of illicit drugs is a world-wide problem. Amnesty International recognizes that it is legitimate for governments to take appropriate law-enforcement measures against drug trafficking and related crimes, and that states may be party to international drug control treaties which require them to do so.

In analysing the practice, the UN Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions, Professor Philip Alston, concluded in January 2007 that the death penalty should be understood to be "a quite exceptional measure" that can only be imposed on cases where "it can be shown that there was an intention to kill which resulted in loss of life".

In a challenge to Indonesia's Constitution, Professor Alston, acting as an expert witness, told the Constitutional Court in April that "[d]eath is not an appropriate response to the crime of drug trafficking." [2]

Studies have shown that the death penalty is disproportionately imposed on the poorest, least educated and most vulnerable members of society. It takes the lives of offenders who might otherwise

have been rehabilitated. Crime is often linked to other social problems such as poverty, drug abuse, unemployment and the disintegration of the family, problems which are not solved by executions. [3] Amnesty International has great

sympathy with the victims of crime, however believes that the death penalty is by nature ineffective, arbitrary and does not deter crime. On the contrary, it creates more victims and demeans society as a whole.

The sixteen Asia Pacific countries whose laws still provide for the death penalty for drug-related offences are:

Bangladesh
Brunei
China
India
Indonesia
North Korea
South Korea
Laos
Malaysia
Myanmar
Pakistan
Singapore
Sri Lanka
Taiwan
Thailand
Viet Nam

[1] Amnesty International Public Statement - Asia Pacific: Death Sentences for Drug-related Crimes Rise in Region, ASA 01/003/2007, 26 June 2007

[2] "Drug trafficking doesn't meet death penalty test-law expert", AAP News, April 18, 2007. <http://www.theaustralian.news.com.au/story/0,20867,21578803-2702,00.html>

[3] "Singapore The death penalty: A hidden toll of executions", January 2004 (AI Index: ASA 36/001/2004)

International law prohibits mandatory death sentences

Of the 16 Asia Pacific countries whose laws provide for the death penalty for drug offences, seven of these (Brunei, Laos, India, North Korea, Singapore, Thailand, and Malaysia), have laws imposing a mandatory death penalty for drug offences. **8 of these have ratified the International Convention on Civil and**



Van Tuong Nguyen vigil outside parliament in Canberra, Australia (Jorge Pujol)

Political Rights (ICCPR). China and Laos have signed the ICCPR but have yet to ratify it.

The UN Human Rights Committee, the expert body charged with monitoring States' implementation of the ICCPR, has consistently determined that mandatory death sentences constitute a violation of the right to life, as provided in the International Covenant on Civil and Political Rights.

For instance, in considering an individual complaint it stated: "The Committee notes that the mandatory imposition of the death penalty under the laws of the State party is based solely upon the category of crime for which the offender is found guilty, without regard to the defendant's personal circumstances or the circumstances of the particular offence. [...] The Committee considers that such a system of

permissible in a capital case. In such cases, individualized sentencing by the judiciary is required in order to prevent cruel, inhuman or degrading punishment and the arbitrary deprivation of life." [4]

Some countries in Asia such as Malaysia, China and Singapore fail to apply the presumption of innocence for drug offences, instead creating a presumption of guilt. The presumption of innocence is an established international standard.

The requirement that the accused be presumed innocent unless and until proven guilty in the course of a trial which meets all guarantees of fairness has enormous implications for the defendants' right to a fair trial. It means that the prosecution has to prove an accused person's guilt. If there is reasonable doubt, the accused must not be found guilty. If the burden is reversed,

the accused person effectively loses the benefit of the doubt. This increases the risk that an innocent

appeal; (d) the number of instances in which clemency has been granted; (e) the number of persons remaining under sentence of death; and (f) each of the above broken down by the offence for which the person was convicted." [1]

[1] UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Transparency and the Imposition of the Death Penalty, UN Doc. E/CN.4/2006/53/Add.3, 24 March 2006.

TAKE ACTION!

On the occasion of Anti-Drugs Day Amnesty International is appealing to governments to:

- **Introduce a moratorium on all executions with a view to the total abolition of the death penalty.**
- **Commute death sentences for drug offences.**
- **Take immediate steps towards eliminating the death penalty for non-violent crimes including drug offences.**
- **Abolish any mandatory death sentence, as these are illegal under international human rights law.**
- **Publicize statistics on the death penalty and facts around the administration of justice in death penalty cases.**

<http://asiapacific.amnesty.org/apro/aproweb.nsf/pages/adpan>

"Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life".

Article 6 (1) of the International Covenant on Civil and Political Rights

mandatory capital punishment would deprive the author of the most fundamental of rights, the right to life, without considering whether this exceptional form of punishment is appropriate in the circumstances of his or her case. [...] The Committee finds that the carrying out of the death penalty in the author's case would constitute an arbitrary deprivation of his life in violation of article 6, paragraph 1, of the Covenant. [1]

The UN Special Rapporteur's latest report [2] stated that: "Making the death penalty mandatory for certain crimes, in such a way that a judge is prohibited from taking the circumstances of an individual accused person into account in Sentencing, is illegal under international human rights law." [3]

He states: "The experience of numerous judicial and quasi-judicial bodies has demonstrated that mandatory death sentences are inherently over-inclusive and unavoidably violate human rights law. The categorical distinctions that may be drawn between offences in the criminal law are not sufficient to reflect the full range of factors relevant to determining whether a death sentence would be

person may be executed.

[4] Ibid., para. 4.

Amnesty International opposes the death penalty in all cases as a violation of the right to life and the right not to be subjected to cruel, inhuman or degrading punishment.

Lack of transparency

Lack of transparency in the application of the death penalty undermines a fundamental safeguard against arbitrary deprivation of life. Human rights experts have condemned the practice of secrecy as amounting to cruel, inhuman or degrading treatment or punishment. Many countries in the Asia Pacific region do not publish official statistics on the number of death sentences imposed and executions carried out. In some countries executions are not announced ahead of time and are rarely reported.

In 2006, the UN Special Rapporteur found that: "The public is unable to determine the necessary scope of capital punishment without key pieces of information. In particular, public opinion must be informed by annual information on: (a) the number of persons sentenced to death; (b) the number of executions actually carried out; (c) the number of death sentences reversed or commuted on

[1] Report of the Human Rights Committee, UN Doc. A/56/40 (Vol. II), Annex X, Communication No. 806/1998, *Thompson v. St. Vincent and the Grenadines*, 18 October 2000, Report of the Human Rights Committee, UN Doc. A/57/40 (Vol. II), Annex IX, Communication No. 845/1998, *Kennedy v. Trinidad and Tobago*, 26 March 2002.

[2] Report of Un Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, A/HRC/4/20, 29 January 2007

[3] Ibid., para. 66.



CHINA

"This year starting from 1 January, the right of approval of death sentences will return to the Supreme People's Court (SPC). By doing this, we are seeking to limit the application of the death penalty in China. I'm confident that with the development and progress in my country, the application of the death penalty will be further reduced and it will finally be abolished".

Statement by La Yifan, China representative at the UN Human Rights Council, 12 March 2007

BACKGROUND INFORMATION

China has used International Day against Drug Abuse and Illicit Trafficking as an occasion for mass executions each year since at least 1991. Such executions have often taken place under the slogan "treasure life, reject drugs".

The number of people executed for drug offences in China is not published as official statistics on death sentences and executions are considered a "state secret". However, reports show that China still executes more people than the rest of the world put together^[1] and the number of executions for drug crimes is likely to be extremely high. According to information monitored in Chinese media reports, at least 55 individuals were executed for drug-related offences between 13 and 26 June 2006.^[2]

Despite anti-drugs laws under which offenders may be executed if they are found in possession of specific quantities of drugs, China's drug problem continues to grow. According to police data, the number of drug takers reportedly grew 35 percent from 2000 to 2005.^[3]

The UN Special Rapporteur on Summary or Arbitrary Executions has called on China to end the use of the death penalty for drug trafficking and expressed concern that China continues to "maintain in their national legislation the option to impose the death penalty for economic and/or drug-related offences."^[4]

Some welcome reforms have recently been made in China on the death penalty. From 1 January 2007 all death sentences must be subject to final approval by the Supreme People's Court. In addition, state press recently reported that China has pledged to make its death penalty system more transparent after reforms introduced this year and that, "Courts should eventually carry out public trials for appeal hearings in criminal cases".^[5]

Amnesty International is encouraged by this statement and welcomes the new reform in the hope that it will result in a significant reduction in the number of death sentences passed in China and improved safeguards against unfair trials. However, this needs to be accompanied by further reforms including the publication of full official statistics on death sentences and executions and a reduction in the number of crimes punishable by death – including the elimination of the death penalty for non-violent crimes such as economic and drug-related offences. Even with Supreme Court review, those facing the death penalty are unlikely to receive a fair trial in line with international human rights standards. Trials in China are generally marked by a lack of prompt access to lawyers, lack of presumption of innocence, political interference in the judiciary

[1] <http://web.amnesty.org/pages/deathpenalty-facts-eng>

[2] "People's Republic of China: The Olympics countdown – repression of activists overshadows death penalty and media reforms", April 2007 (AI Index: ASA 17/015/2007).

[3] "China to ban physical punishment, verbal humiliation of drug addicts", Xinhua, 25 August, 2006.

[4] Report of the UN Special Rapporteur on extrajudicial, summary or arbitrary executions", Philip Alston, 29 January 2007, (UN Index: A/HRC/4/20), n.57. The other countries highlighted were Iran, Malaysia, Singapore, Thailand and the USA.

[5] "China to make death penalty cases more transparent", FOCUS News Agency, 15 June, 2007.

and the failure to exclude evidence extracted under torture.^[6] Amnesty International urges the Chinese authorities to use International Anti-Drugs Day 2007 as an opportunity to commute death sentences of drug offenders. The authorities should also take further steps towards abolition of the death penalty in lead up to the Beijing Olympics in 2008 by reducing the scope of the death penalty and publishing official statistics on death sentences and executions.

[6] "China: review of death penalty by supreme court welcome, but abolition needed", October 2006 (AI Index: ASA 17/057/2006).

TAKE ACTION!

Send general appeals to the government:

- **Welcome reforms under which the Supreme People's Court must review and approve all death penalty verdicts.**
- **Publicise comprehensive statistics on the death penalty and facts around the administration of justice on the death penalty.**
- **Commute all death sentences for drug offences.**
- **Take immediate steps towards eliminating the death penalty for non-violent crimes, including economic and drug-related offences.**
- **Introduce a moratorium on executions with a view to abolition of the death penalty.**

Addresses

1. Prime Minister of the People's Republic of China

WEN Jiabao Guojia Zongli

The State Council General Office

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People's Republic of China

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Salutation: Your Excellency

2. President of the Supreme People's Court of the People's Republic of China

XIAO Yang Yuanzhang

Supreme People's Court

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People's Republic of China

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Salutation: Dear President

3. Minister of Justice of the People's Republic of China

WU Aiying Buzhang

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or pfmaster@legalinfo.gov.cn (c/o Ministry of Communications)

Salutation: Your Excellency

Copies of appeals can be sent to the diplomatic representatives of China accredited to your country



INDONESIA

“The right to life is guaranteed by the Constitution. I’m optimistic that even though the Indonesian legal system still recognizes the death penalty, eventually capital punishment will become history,”

Todung Mulya Lubis, a noted lawyer who filed a judicial review with the Constitutional Court in 2007 calling for the abolition of capital punishment.[1]

BACKGROUND INFORMATION

According to Indonesian law, the death penalty is provided for as an optional punishment for certain offences relating to the production, transit, import and possession of psychotropic drugs and narcotics.[1]

A total of at least 100 people are currently believed to be under sentence of death in Indonesia, 57 of them for drug offences of whom, 42 are foreign nationals. In recent years, largely due to a “war on drugs” declared by the Indonesian government, an increased number of death sentences have been handed down to those convicted of drug trafficking. In 2006 eight of the thirteen people sentenced to death were convicted of drug offences.

Ten drug related death sentences have already been handed down in 2007. Seven of these were handed down in May 2007 by the Supreme Court which increased them from prison sentences imposed by lower courts. This followed appeals lodged against life sentences imposed on two Europeans, and jail terms of 20 years imposed on five Chinese convicted of involvement in a large ecstasy factory in Indonesia. The Supreme Court also increased sentences to the death penalty for four Australian members of the ‘Bali Nine’ who were convicted of drug smuggling in 2005. In an appeal their lawyer said that the Supreme Court had made a mistake by raising the Denpasar District Court’s prison sentences to death sentences, without clear reasoning.

The last known executions for drug offences were carried out in 2004 when Indian national Ayodhya Prasad Chaubey (m), and Thai nationals Namsong Sirilak (f) and Saelow Prasert (m) were executed by firing squad. Amnesty International questioned the fairness of these trials after reports that their access to lawyers and interpreters was limited.[2]

According to Indonesia’s Criminal Procedure Code, “if the suspect or defendant is suspected or charged with committing a crime punishable by death or a prison term of 15 years or more, (...), and does not have their own legal counsel, a legal counsel must be appointed for each stage of the examination process” [Art.56(1)]. Further, “the legal services are to be provided free of charge” [Art.56(2)]. Amnesty International is concerned that this may not have been the case for many of those on death row, including Rani Andriani (f), a 32-year-old Indonesian sentenced to death for drug trafficking. Amnesty International was informed that Andriani was not represented by a lawyer following her arrest (although she was informed of her right to be represented) because she could not afford one. She reportedly only had access to a lawyer after one month in detention.

Rani Andriani is part of an extraordinary appeal for a judicial review of the Narcotics Law together with Indonesian Edith Yunita Sianturi (f) and Australians Myuran Sukumaran (m) and Andrew Chan (m) who have also been sentenced to death for drug offences. The lawyers challenging the constitutionality of the four cases, Dr. Todung Mulya Lubis, Alexander Lay, and Arief Wirjohetomo, argue that provisions on death penalty under the Narcotics Law contravene the right to life as

guaranteed and protected under Indonesia’s 1945 Constitution and should thus be repealed. It is not known when the court will hand down its final decision.

Indonesia acceded to the International Covenant on Civil and Political Rights in 2006. A year later, in April 2007 Philip Alston, the UN’s Special Rapporteur on extrajudicial, summary or arbitrary executions, appeared as a key witness for the four convicted drug traffickers mounting the constitutional challenge. Alston told Indonesia’s Constitutional Court that international law only permitted execution for the “most serious crimes”, those involving the killing of another person. “Drug trafficking, while a crime which deserves to be heavily punished is not a crime which can reasonably be inferred as one which literally involves the killing of a person by the accused,” he said. “Death is not an appropriate response to the crime of drug trafficking.”[3]

[1] “Indonesia: A briefing on the death penalty”, October 2004 (AI Index: ASA 21/040/2004).

[2] “Indonesia: Return of the execution”, October 2004 (AI Index: ASA 21/046/2004).

[3] “Drug trafficking doesn’t meet death penalty test-law expert”, AAP News – Australasia, 18 April 2007.

TAKE ACTION!

It is extremely important that you do NOT send appeals on behalf of Rani Andriani, Yunita Sianturi, Myuran Sukumaran or Andrew Chan.

Send only general appeals urging the government to:

- **Introduce a moratorium on all executions with a view to the total abolition of the death penalty commute of all death sentences for drug offences.**
- **Take immediate steps towards eliminating the death penalty for non-violent crimes, including drug-related offences.**
- **Publicise statistics on the death penalty and facts around the administration of justice in death penalty cases.**

Addresses

1. President

Mr Susilo Bambang Yudhoyono

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Fax: + 62 21 345 2685/+ 62 21 52 68726/+ 62 21 380 5511

Salutation: Dear President

Attorney General

Mr Hendarman Supandji

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Indonesia

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Salutation: Dear Attorney General

And to diplomatic representatives of Indonesia accredited to your country



BACKGROUND INFORMATION

Malaysia has a mandatory death penalty for drug trafficking.^[1] According to the 1952 Dangerous Drugs Act, any person found in possession of at least 15 grams of heroin; 40 grams of cocaine; one kilo of opium; or 200 grams of cannabis is presumed guilty of trafficking in the drug, unless the contrary can be proven, and faces a mandatory death sentence.^[2]

Amnesty International remains concerned about this aspect of the Dangerous Drugs Act as it places the onus on the accused to prove their innocence rather than on the state to prove their guilt. This contravenes a basic principle of Malaysian jurisprudence, as well as international legal safeguards which state that the accused has the right to be presumed innocent until proven guilty.

In 1996, the Mr Bacre Waly Ndiaye, the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, expressed concern that certain countries including Malaysia maintained national legislation "to impose the death penalty for drug-related offences"^[3].

The Malaysian government does not regularly or fully disclose statistics on the number of people under sentence of death or the number of executions. However, the majority of death sentences handed out in Malaysia in recent years have reportedly been for drug offences, many reportedly imposed on foreign nationals. In December 2005, the government stated that 52 people had been sentenced to death from 2004 through July 2005, 36 for drug offences. Judges reportedly have been willing to accept defence arguments that those accused of drug offences were guilty of possession rather than trafficking, and commutations of death sentences for drug offenders are known to take place periodically in Malaysia. However, gathering information about these developments remains problematic and official analysis is rarely made public.

There is some debate amongst civil society groups in support of restricting the death penalty in Malaysia. In March 2006, the Malaysian Bar, representing 12,000 lawyers, passed a resolution calling for the abolition of the death penalty, an immediate moratorium on all executions pending abolition, and commutation of all death sentences.^[4] Malaysians Against the Death Penalty and Torture (MADPET) regularly speak out in favour of a moratorium, most recently in March 2007 in response to the introduction of mandatory death penalty legislation for terrorism in Malaysia.^[5]

[1] In March 2007, a new law came into effect which applies a mandatory death penalty to those convicted of terrorism.

<http://madpet06.blogspot.com/search/label/Death%20Penalty>

[2] "Malaysia: Imminent execution. Chu Tak Fai [m], aged 30, Hong Kong national", June 2001 (AI Index: ASA 28/014/2001)

[3] UN Special Rapporteur report on extrajudicial, summary or arbitrary executions, 24 December 1996, E/CN/4/1997.

[4] "Remove death penalty from all Malaysian Laws", MADPET, 20 March 2007.

[5] <http://madpet06.blogspot.com/>

MALAYSIA

Imminent execution: Wichai Onprom, Thai national

Wichai Onprom, a Thai national, who has been on death row since 1995, has exhausted all his appeals and is facing imminent execution. Two weeks after his arrest for trafficking in 1.2 kg of cannabis, Onprom was sentenced to death by the High Court. His appeals to the Court of Appeal in 2004 and to the Federal Court in 2007 were both dismissed. According to reports, Onprom was presumed to be trafficking in drugs because he was found to be in possession of over 200 grams of cannabis, which is the specified amount carrying a mandatory death sentence. However, there are concerns that during the trial and appeals process it was never proven without doubt that Wichai Onprom was guilty of possession.

Wichai Onprom, who suffers from a congenital deformity in one hand, was arrested in Kedah, on the Thai-Malay border, in February 1995. He had not been able to afford to hire a defence lawyer and had to rely on court appointed lawyers, who at times are reported to be inexperienced.

TAKE ACTION!

Send your appeals for Wichai Onprom. Urge the government to:

- **Commute the death sentence passed on Wichai Onprom.**
- **Introduce a moratorium on all executions with a view to the total abolition of the death penalty.**
- **Take steps towards eliminating the death penalty for drug offences.**
- **Abolish any mandatory death sentence, as these are illegal under international human rights law.**
- **Publicise statistics on the death penalty and facts around the administration of justice in death penalty cases.**

Addresses

1. King of Malaysia and Supreme Head of State

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3. Datuk Seri Abdullah Haji Ahmad Badawi -Prime Minister

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And diplomatic representatives of Malaysia accredited to your country.



SINGAPORE

"It is never the real traffickers who are caught. The ones who are caught and hanged are often poor, desperate people, who are being made use of. By hanging them, we are helping to perpetuate the plan of the real traffickers who are very smart. They use people they can afford to lose to carry the drugs for them. So if we carry on with the death penalty, they will get away and the root of the problem is never really solved."

Singaporean lawyer quoted in the New Paper, 17 June 2001.

BACKGROUND INFORMATION

Singapore is believed to have one of the highest per capita execution rates in the world and enforces some of the world's strictest drug laws. More than 420 people have been executed since 1991, the majority for drug trafficking.[1]

The Misuse of Drugs Act provides for a mandatory death sentence for at least 20 different offences. Anyone found in possession of specified quantities of drugs is automatically presumed to be trafficking in the drug unless the contrary can be proven. This presumption of guilt conflicts with the universally guaranteed right to be presumed innocent until proven guilty and places the burden of proof on the defendant rather than the prosecutor. Such presumptions erode the right to a fair trial are in violation of international standards. In May 2001, the Court of Appeal ruled that those helping drug traffickers would face the death penalty.[2]

In a response to proposed changes to the Penal Code, the Singapore Law Society[3] in April 2007 asked that judges be given the right to provide for a discretionary punishment arguing that changing the mandatory death penalty for capital offences will not lead to a reduction in deterrence.

Public debate in Singapore about the death penalty is restricted. This is partly as a result of tight government controls on the press and civil society organisations. The government does not normally publish comprehensive statistics about death sentences or executions but a handful of executions are reported in the press. In his report to the United Nations Commission on Human Rights in March 2006, the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, remarked, *"Measures taken by the Government of Singapore suggest an attempt to suppress public debate about the death penalty in the country. For example, in April 2005, the Government denied a permit to an Amnesty International official to speak at a conference on the death penalty organized by political opposition leaders and human rights activists... If public opinion really is an important consideration for a country, then it would seem that the Government should facilitate access to the relevant information so as to make this opinion as informed as possible."*[4] Amnesty International believes that the regular and fully comprehensive release of annual, disaggregated data on the application of the death penalty in Singapore will serve an important function in prompting and informing widened public debate concerning the death penalty.

In recent years, there have been a number of high profile executions of drug-offenders. Unprecedented public debate was sparked when a former taxi-driver and window cleaner, Shanmugam s/o Murugesu, aged 38, was sentenced to death in April 2004 after being found with just over one kilogram of cannabis. His case resulted in local activists organizing a rare public forum to highlight Shanmugam's situation but he was later hanged on 13 May 2005.

On 2 December 2006, Australian Van Tuong Nguyen, aged 25, was hanged after he had been sentenced to death in March 2004, for importing 396.2 grams of heroin in transit through Singapore. Van Nguyen's case also attracted wide public attention in Singapore, Australia and the region.

In April 2005, the Singapore Law Society Gazette published a

commentary arguing that there was "light on the path" because "it is now open to an accused to show...that a mandatory death sentence is cruel and inhuman punishment under customary international law".

Professor Alston called on the Government of Singapore not to proceed with the execution of Nguyen saying it would violate international legal standards relating to the imposition of the death penalty. In speaking about the mandatory death penalty he said, *"Making such a penalty mandatory - thereby eliminating the discretion of the court - makes it impossible to take into account mitigating or extenuating circumstances and eliminate any individual determination of an appropriate sentence in a particular case"*. [5]

[1] "Singapore: Further information on death penalty", January 2007 (ASA 36/001/2007).

[2] "The death penalty: A hidden toll of executions", January 2004 (ASA 36/001/2004).

[3] [3] http://news.asiaone.com/a1news/20070405_story5_1.html

[4] "The death penalty: A hidden toll of executions", January 2004 (ASA 36/001/2004).

[5] <http://www.hrdc.net/sahrde>, 31 January 2006

TAKE ACTION!

Send your appeals to urge the government to:

- **Introduce a moratorium on all executions with a view to the total abolition of the death penalty.**
- **Urge that steps be taken to restrict the application of the death penalty against those convicted of drug offences.**
- **Commute all death sentences for drug offences.**
- **Abolish any mandatory death sentences, as these are prohibited under international human rights law.**
- **Publicise statistics on the death penalty and facts around the administration of justice in death penalty cases.**

Addresses:

1. Prime Minister & Minister for Finance Mr Lee Hsien Loong

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Salutation: Dear Prime Minister

2. Deputy Prime Minister and Minister for Home Affairs

Mr Wong Kan Seng

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Salutation: Dear Deputy Prime Minister

And to diplomatic representatives of Singapore accredited to your country.



BACKGROUND INFORMATION

The death penalty is mandatory for the production and import of heroin and discretionary for possession of more than 100 grams of heroin or amphetamines.

There are over 1,000 men and women on death row in Thailand and many, including foreign nationals, are believed to be sentenced to death for drug offences. Executions resumed in Thailand in 1995 after an eight-year moratorium. According to statistics released by the Department of Corrections^[1], the last reported executions were in 2004 when four people were executed.

Imposition of death sentences dramatically increased after former Prime Minister Thaksin Shinawatra, who came into power in 2001, made state action against the drug trade a political priority. This was followed by an official decision to carry out a "war on drugs" in February 2003. Thousands of suspected drug traffickers were reportedly placed on government "blacklists" and some suspected drug traffickers were reportedly extra-judicially executed.

Amnesty International has raised concern with Thai authorities over a number of years at endemic weaknesses in the criminal justice system. Among the concerns raised have been the slow pace of investigations into human rights violations and abuses and long delays in trials. Torture or ill-treatment has frequently been used as a means of extracting information or confessions from criminal suspects. Furthermore the fact that confession often leads to imposition of a lesser sentence, and that those sentenced to life have their sentences increased to death sentences on appeal, are seen to have compromised the fairness of trials.

Most prisoners on death row in Thailand are held continuously in metal shackles in contravention of international standards. Those condemned to death and their families are not routinely given more than several hours notice prior to an execution..^[2] Royal Pardons are granted regularly by the King including commutations of death sentences to life imprisonment.

[1] <http://www.correct.go.th/eng/deathpenalty.htm>

[2] "Thailand: Death sentences of Wichai Somkhaoyai and Bualoi Posit", January 2006 (AI Index: ASA 39/006/2006).

Two sisters: Montha Kuan and Sai Kuan, Cambodian nationals

In April 2001, Montha Kuan and Sai Kuan were sentenced to death by the Thai Lower Court on a discretionary charge of possession of drugs. Both were first time offenders. They were arrested in October 1997 and charged with possession of 100,000 amphetamine tablets for illegal sale. The death sentence was upheld by the Appeal Court on 6 May 2003 and by the Supreme Court on 13 August 2004. Both sisters have now exhausted all appeals and have not, like some other drug offenders, been subject to a royal amnesty. A royal amnesty was granted in 2006 affecting many prisoners under sentence of death. But limited to those sentenced whose final sentences were imposed on or before 12 August 2004. As the sisters' appeal was upheld on 13 August 2004, they did not qualify. The last available option for the Kuan sisters is to submit personal appeals for a royal pardon.

There are additional concerns that the trial procedures in the cases of the two sisters were not fair. According to reports the sisters were not informed of their rights by the police in the initial stages of arrest. They did not have a lawyer present

THAILAND

during the interrogation nor did they have access to adequate legal advice during the proceedings.

An urgent appeal was sent on 18 November 2004 by the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, asking the Thai Government to consider reviewing the death sentences of the two sisters including the granting of a commutation of the death sentences by His Majesty the King. The Special Rapporteur raised the point that, "...while several of the other crimes in this category, such as arson or bombing which lead to deaths, clearly fall within the internationally recognized category of the most serious crimes for which the death penalty might be considered, the crime in question here would not appear to fall into such a category." The Special Rapporteur raised this issue considering that the Government of Thailand had ratified the International Covenant on Civil and Political Rights in 1996 and has explicitly recognized that the death penalty should only be imposed "for the most serious crimes and heinous offences" and that the crime the accused were convicted of did not appear to fall under this internationally recognized category."^[1]

The Kuan sisters originally went to work in Thailand as domestic servants. Montha Kuan was arrested one month after her child was born and has not seen her child since being the arrest.

[1] Record of correspondence for 2005 official UN report E/CN.4/2005/7/Add.1, Extrajudicial, summary or arbitrary executions Report of the Special Rapporteur, Philip Alston
http://www.extrajudicialexecutions.org/reports/E_CN_4_2005_7_Add_1.pdf

TAKE ACTION!

Send your appeals for the Kuan sisters. Ask the government to:

- **Commute the death sentences against Montha Kuan and Sai Kuan.**
- **Express regret that the two sisters were not considered in the royal amnesty granted in 2006.**
- **Welcome the fact that a moratorium was in place for eight years.**
- **Reintroduce a moratorium on all executions with a view to the total abolition of the death penalty**
- **Urge that steps be taken to restrict the death penalty against those convicted of drug offences.**
- **Abolish any mandatory death sentence, as these are prohibited under international human rights law.**
- **Publicise comprehensive statistics on the death penalty and facts around the administration of justice in death penalty cases be made public.**

ADDRESSES

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Salutation: Dear Minister of Justice

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Salutation: Dear Prime Minister



VIET NAM

"Though there have been a lot of death sentences for drug-related offences, the number of drug criminals has increased."

Tran The Vuong, Vice Director, Viet Nam's Law Commission, 2006.^[1]

BACKGROUND INFORMATION

Vietnamese law states that the death penalty can be imposed on those found guilty of possessing, trading or trafficking in 100 grams or more of heroin,^[1] five kilograms or more of opium or other narcotic substances such as pills weighing 300 grams or more.

Viet Nam is a state party to the International Covenant on Civil and Political Rights (ICCPR), Article 6(2) of which states "in countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes..."^[2] According to Amnesty International's information, the majority of the death sentences and executions carried out in recent years were for drug trafficking. Since January 2005 at least 126 people have been sentenced to death for drug offences, 26 of them in 2007.

The *Thanh Nien News* reported in 2006 that about 100 people are executed in Vietnam each year, mostly for drug offences.^[3] The last known execution took place in September 2006 when Cam Minh Tam, Tran Anh Toan, and Ho Anh Tuan were executed by firing squad for drug crimes.

The reported increase in Viet Nam's use of the death penalty for drug offences has largely been due to the government's crackdown on 'social evils'. However, despite introducing tougher penalties as part of the anti-drug trafficking campaigns, there appears to be no sign of a fall in the amount of drugs illegally brought into Viet Nam. It was reported that the quantity of drugs seized has increased by 400 per cent year-on-year.^[4]

In 2000, Vietnam amended its criminal code to reduce the number of capital crimes from 44 to 29. In November 2006 a Parliamentary Law Commission admitted that the death penalty is failing to deter drug crimes, despite the large number of people executed for drug offences each year. The Law Commission vice-director Tran The Vuong said it acknowledged the deterrent effect of the death penalty was "not so significant" and that many people executed were often the couriers who are ignorant of the law. He also expressed the Commission's view that the number of capital crimes in Viet Nam should be reduced.^[5]

There is concern about the routine unfairness of capital trials which do not conform to international standards,^[6] the continuing frequency with which the death penalty is applied, and the lack of transparency surrounding its use. In 2004, then Prime Minister Phan Van Khai, signed a decree which made the reporting and dissemination of information on the death penalty a state secret.

^[1] In practice most people are reportedly sentenced to death for possessing more than 600 grams of heroin.

^[2] Para.7, General Comment 6 (Article 6), 27 July 1982, HRI/GEN/1/Rev.3, 15 August 1997. The UN Human Rights Committee, established to oversee the implementation of the ICCPR, provides authoritative interpretation of the ICCPR. It has stated that *the expression most serious crimes must be read restrictively to mean that the death penalty should be a quite exceptional measure*

^[3] "Vietnam law commission wants death penalty for fewer crimes", *Thanh Nien News*, 3 November 2006.

^[4] BBC quoting *Thoi Bao Thi Chinh Vietnam* 'Number of drugs cases decreasing in Vietnam - customs' 16 June 2005.

^[5] "Vietnam law commission wants death penalty for fewer crimes", *Thanh Nien News*, 3 November 2006.

^[6] "Socialist Republic of Viet Nam: The death penalty - inhumane and ineffective", August 2003 (AI Index: ASA 41/023/2003).

Potential miscarriage of Justice: Nguyen Minh Hung

Nguyen Minh Hung, aged 28, who was sentenced to death in 2004 by the Tay Ninh court for trafficking in 8.4kg of heroin from Cambodia, has been sentenced to death twice by the provincial court although he has persistently pleaded his innocence.^[1] In an appeal to the Ho Chi Minh City Supreme People's Court, Hung's defence lawyer pointed out that the lower court convicted Hung mainly on the statements of another suspect in the case.^[2]

In April of this year, convicted drug dealer Phan Nguyen Anh Thu admitted that she had arbitrarily "picked" Hung out as her accomplice from a police line up of suspects because she was under intense pressure during the investigation. Thu has asked the court to release Nguyen Minh Hung. She reportedly regrets claiming his involvement in the crime.

Despite numerous alibis supporting Hung's pleas of innocence, the appeals court in Tay Ninh upheld his death sentence. It has also been reported that the police were ordered by the court to bring criminal charges against all those who had testified on Hung's behalf as they were all believed to be lying.

A lawyer and two witnesses are now accusing investigators and a judge of intimidating them during Hung's trial.^[3] Witnesses for Hung stated that police interrogated them and repeatedly pressured them to retract earlier statements that would support Hung's plea of innocence.^[4]

^[1] "Drug dealer on death row may be innocent", *Thanh Nien News*, 5 April 2007.

^[2] "HCM City to review drug-trafficking death sentences", *Thanh Nien News*, 19 October 2004.

^[3] Ibid.

^[4] "Police, court accused of highhandedness in Vietnam death trial", *Thanh Nien News*, 10 April 2007.

TAKE ACTION!

It is extremely important that you do NOT send appeals on behalf of Nguyen Minh Hung. Send general appeals to urge the government to:

- **Introduce a moratorium on all executions with a view to the total abolition of the death penalty.**
- **Appeal for commutation of all death sentences for drug offences.**
- **Urge that steps be taken to restrict the death penalty against those convicted of drug offences.**
- **Publicise comprehensive statistics on the death penalty and facts around the administration of justice in death penalty cases.**

Addresses:

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Salutation: Dear Prime Minister

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Ministry of Justice

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Salutation: Dear Minister

And to the diplomatic representatives of Viet Nam accredited to your country.