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Asia Pacific: Death sentences for drug-related crimes rise in region

On the occasion of the UN Anti-Drugs Day on 26 June, the Anti-Death Penalty Asia Network (ADPAN)¹, of which Amnesty International is a member, expressed growing concern that more people are sentenced to death for drug offences than for any other crime in a number of Asia Pacific countries. This is at a time when there is a worldwide trend towards restricting and abolishing the death penalty.

Sixteen Asia Pacific countries continue to apply the death penalty for the offences of drug trafficking and possession, said ADPAN.

ADPAN recognizes that it is legitimate for governments to take appropriate law-enforcement measures against drug traffickers and related crime, and that states may be party to international drug control treaties which require them to do so. However there is no convincing evidence that the death penalty deters would-be drug traffickers more than any other punishment.

In the sixteen countries that impose the death penalty for drug offences, Amnesty International remains unaware of any evidence to show that the death penalty has led to a drop in drug use or trafficking. In China for example, police data shows that the number of drug users grew 35 percent in the five years since 2000. In Viet Nam, the BBC quoted an official who said in 2005 the quantity of drugs seized by customs had increased 400 percent year-on-year, despite its use of the death penalty.

Over the years, United Nations human rights monitoring bodies and experts have examined the scope of the death penalty as applied in different countries in the world. When it comes to the death penalty for drug-related crimes, legal definitions of the offences of possession and trafficking vary considerably from country to country. Most recently, 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 a witness told the Constitutional Court in April that, *"[d]eath is not an appropriate response to the crime of drug trafficking."*

Because the death penalty is shrouded in secrecy in many Asian countries it is not possible to say exactly how many death sentences are imposed for drug crimes. However, reports have shown that in South East Asian countries, including Indonesia, Malaysia, Singapore, Thailand and Vietnam, the majority of death penalty cases are for drug crimes.

In addition mandatory death sentences are applied for certain drug offences in Brunei, India, Laos, Thailand, North Korea, Singapore and Malaysia, giving judges no authority to take into account extenuating circumstances.

All legal proceedings, and particularly those related to capital offences, must conform to the minimum procedural guarantees contained in article 14 of the International Covenant on Civil and Political Rights, including the right to a fair and public hearing by a competent, independent and impartial tribunal, the presumption of innocence, the right to adequate legal assistance and the right to review by a higher tribunal.

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 person may be executed.

The failure to apply the presumption of innocence to those charged with drug offences, combined with the mandatory imposition of the death penalty, is an obvious violation of international legal standards. Often these violations are coupled with lack of adequate legal assistance at all stages in the proceedings including when defendants are too poor to pay for proper legal defence, compounding the unfairness of the trial.

In China, UN Anti-Drugs Day has been used by the authorities as an occasion for mass executions in recent years. In the period between 13 and 26 June 2006, Amnesty International recorded 55 executions for drugs offences.

Studies have shown that the death penalty is disproportionately imposed on the poorest, most vulnerable members of society. In many cases, people have become involved in drug trafficking out of desperation or ignorance. Executing these people not only fails to deter others, but also fails to deal with the underlying issues that drive them to offend, such as poverty and lack of education, and obviously precludes the possibility of reform.

ADPAN urges Asia Pacific countries to take the lead of countries such as the Philippines and Nepal and join the global trend towards total abolition of the death penalty -- starting by ending the use of the death penalty for drugs offences and studying and implementing alternative treatment to break the cycle of drug abuse and crime.

The sixteen Asia Pacific countries that still have the death penalty for drug- crimes are: Bangladesh, Brunei, China, India, Indonesia, North Korea, South Korea, Laos, Malaysia, Myanmar, Pakistan, Singapore, Sri Lanka, Taiwan, Thailand, and Viet Nam.

For further information on ADPAN, please go to : <http://asiapacific.amnesty.org/apro/APROweb.nsf/pages/adpan>

1. The Anti-Death Penalty Asia Network (ADPAN) is an independent informal network with over 34 members made up of individuals and organizations from 18 countries mainly from the Asia-Pacific region.

