

## **Joint Statement: The death penalty for drug-related offences.**

**Amnesty International, Anti Death Penalty Asia Network, Harm Reduction International, International Drug Policy Consortium, Penal Reform International and the World Coalition Against the Death Penalty**

We, the undersigned human rights organizations, would like to highlight to Member States of the Commission on Narcotic Drugs and the preparatory Board<sup>1</sup> of the 2016 UN General Assembly Special Session (UNGASS) on drugs the continued use by some countries of the death penalty for drug-related offences. This is despite clear restrictions set out in international law that where the death penalty is used it can only be imposed for the “most serious crimes”. States must use the opportunity presented by UNGASS to strengthen the promotion and respect of human dignity, the rule of law and human rights, including with a specific call to promote the abolition of the death penalty.

Currently, at least 33 countries and territories prescribe the death penalty for drug-related offences in law, at least 10 of which have the death penalty as a mandatory punishment for drug-related charges. In recent years, roughly 600 people are known to have been executed annually for drug-related offences. However, this is far from the full picture, as in several countries information about executions (including number and offence) is not made public. The vast majority of the known executions have taken place in a small handful of countries, notably China, Iran and Saudi Arabia. Many hundreds more are believed to remain on death row in these countries and in Malaysia, Indonesia, Pakistan and Thailand.

Contrary to the global trend away from the death penalty in which two-thirds of the world’s States have abolished it,<sup>2</sup> the international drug control regime has favoured the imposition of highly punitive measures as a way of controlling the use and distribution of drugs, including lengthy mandatory minimum prison sentences as well as the death penalty for certain drug-related activities. States have used the UN Drug Conventions to justify the use of the death penalty for drug-related offences, even if it is against international human rights law and standards. In 1979, only around ten countries prescribed the death penalty for drugs; today it has risen to at least 33.

However, as several international human rights mechanisms agree, drug-related offences do not constitute the “most serious crimes” and the death penalty may not be imposed for them. The UN Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty<sup>3</sup> clearly state that “[...] 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.” (Safeguard 1)

The UN Human Rights Committee has on numerous occasions found that drug-related offences do not meet the criterion of “most serious crimes”,<sup>4</sup> a finding reiterated in 2007 by the then UN Special Rapporteur on extrajudicial, summary or arbitrary executions,<sup>5</sup> in 2009 by the then UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment<sup>6</sup> and in 2013

<sup>1</sup> Elected in line with Decision 57/2 “Preparations for the special session of the General Assembly on the world drug problem to be held in 2016”, adopted at the reconvened 57<sup>th</sup> session of the Commission on Narcotic Drugs (3-5 December 2014).

<sup>2</sup> While in 1977 only 16 countries had abolished the death penalty in law or practice, as of today, 140 countries – two-thirds of the world’s states – have effectively abolished it. Only a minority of countries continue carrying out executions each year, and only around 10 countries have carried out executions every year in the last five year period.

<sup>3</sup> 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.

<sup>4</sup> 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.

<sup>5</sup> The Special Rapporteur has concluded that the application of the death penalty “*must be limited to the most serious crimes, in cases where it can be shown that there was an intention to kill, which resulted in the loss of life.*” Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, 29 January 2007, UN Doc. A/HRC/4/20, para. 53.

<sup>6</sup> According to the Special Rapporteur, “*the imposition of the death penalty on drug offenders amounts to a violation of the right to life, discriminatory treatment and possibly ... also their right to human dignity.*” 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.

by the UN Secretary General.<sup>7</sup> The Special Rapporteurs on extrajudicial executions and on torture have repeatedly reiterated this position since then,<sup>8</sup> most recently on World Day Against the Death Penalty 2015.<sup>9</sup>

In recent years, international drug control bodies have also supported the view that the death penalty for drug-related offences violates international law. These include the UN Office on Drugs and Crime and the International Narcotics Control Board.<sup>10</sup>

Furthermore, the right to a fair trial and the right not to be subjected to torture or other ill-treatment or punishment have been frequently violated in cases involving the death penalty for drug-related offences. Defendants from economically disadvantaged backgrounds are disproportionately affected by the death penalty, including for drug-related crimes, and in many cases are condemned for being low level couriers, duped or coerced into carrying drugs across international borders, or forced by economic duress into taking such risks.

Concerns have been raised that UNODC and other UN agencies, and in some instances abolitionist countries, have provided funds, trainings, supplies and/or information on counter-narcotic operations to jurisdictions which apply the death penalty for drug-related offences. Thus, when someone is sentenced to death and executed by a government utilising financial and technical materials from abolitionist states or UN agencies, it raises concerns about their complicity.

States and international agencies must assess the human rights implications of the international drug control regime, in particular on the right to life, and implement mechanisms to immediately mitigate such effects when contrary to international human rights law and standards.

We, the undersigned organisations, oppose the death penalty in all cases without exception and under all circumstances. Within the context of drug policies, and in light of the forthcoming UN General Assembly Special Session on drugs to be held in April 2016, we call on States to:

- Take immediate measures to halt executions, commute death sentences, and abolish the death penalty for drug-related offences as a first step towards its full abolition.
- Promote the abolition of the death penalty, including for drug-related offences, and the implementation of effective and evidence-based drugs policies that respect and protect human dignity, the rule of law and human rights.
- Ensure that drug policies and programmes are implemented in full compliance with international law and standards and that programmes to implement the UN Drug Conventions do not contribute to the use of the death penalty.
- Ensure transparency with regards to death sentences and executions.
- Request UNODC to conduct an annual review of the implementation of its human rights guidance in States receiving programmatic funding, the findings of which should be published annually to the CND by the Executive Director.

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<sup>7</sup> The Secretary General stated that “until it is fully abolished, retentionist States must ensure that the death penalty is imposed only for those crimes that involve intentional killing. It should not be imposed for drug-related offences”. UN Human Rights Council, *Question of the death penalty: Report of the Secretary-General*, 1 July 2013, A/HRC/24/18, para. 78.

<sup>8</sup> For example, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, 9 August 2012, A/67/275, para.66.

<sup>9</sup> Office of the High Commissioner for Human Rights, ‘Using the death penalty to fight drug crimes violates international law, UN rights experts warn World Day Against the Death Penalty –10 October 2015, available at:

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16581&LangID=E>

<sup>10</sup> Statement of the UNODC Executive Director Yury Fedotov on the use of the death penalty in Indonesia, 29 April 2015, available at <https://www.unodc.org/unodc/en/press/releases/2015/April/statement-of-the-unodc-executive-director-yury-fedotov-on-the-use-of-the-death-penalty-in-indonesia.html>; INCB encourages States to consider the abolition of the death penalty for drug-related offences, 5 March 2014, available at [https://www.incb.org/documents/Publications/PressRelease/PR2014/press\\_release\\_050314.pdf](https://www.incb.org/documents/Publications/PressRelease/PR2014/press_release_050314.pdf)