



THAILAND: TIME TO ABOLISH THE DEATH PENALTY

Ten years ago, on 18 December 2007, the UN General Assembly (UNGA) adopted its first of six resolutions on a moratorium on the use of the death penalty.¹ The resolutions evolved around a central call on States that still retain this punishment to establish a moratorium on executions *with a view to abolishing the death penalty* (emphasis added). The adoption of these instruments contributed to a new momentum in the campaigning for abolition, with 14 countries since 2007 repealing the death penalty completely from their national legislation and a further two becoming abolitionist for ordinary crimes only.

Thailand, which has abstained at the vote on most recent UNGA resolutions on a moratorium on the death penalty, is at a critical time in its journey towards abolition. It is close to mark ten years without any executions, in 2019. This would be an important landmark which, coupled with a commitment not to implement death sentences, would allow for its reclassification as an “abolitionist in practice” country.² Furthermore, the Thai authorities have committed to eliminate capital punishment in the Third National Human Rights Action plan, due to be implemented by 2018. They have also accepted recommendations made at the country’s UN Universal Periodic Review in May 2016 to review the imposition of the death penalty for offences related to drug trafficking, to commute death sentences with a view to abolishing the death penalty, and to take steps towards abolishing the death penalty.³

Thailand has also played a major role internationally in securing the adoption of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).⁴ The adoption in November 2016 of the Narcotic Act (Vol. 6) 2017 which, while retaining the death penalty, removed it as a mandatory punishment for the offence of selling prohibited substances, constituted a welcome step in this direction. The full implementation of the Nelson Mandela Rules is currently being piloted at Thonburi Remand Prison, following the announcement of the removal of leg shackles from all death row prisoners in 2013.

In light of this progress and these commitments to further steps, Amnesty International is calling on the Government of Thailand to secure positive and concrete human rights change on the death penalty, which would resonate in the Asia-Pacific region and more broadly.

Pending full abolition of the death penalty, we encourage the Government of Thailand to:

- vote in favour of the seventh resolution on a moratorium on the use of the death penalty, which will be considered at the 73rd session of the UN General Assembly in late 2018.
- accede to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.
- ensure that, pending its abolition, the use of the death penalty is limited, in line with international law and standards, to the “most serious crimes”, such as acts carried out with the intention of killing.
- abolish the mandatory death penalty for all crimes, allowing judges to consider the circumstances of the offence and of the defendants at sentencing.

¹ UN General Assembly resolution 62/149 of 18 December 2007. The last of such resolutions, UN General Assembly resolution 71/187, was adopted on 19 December 2016.

² Such a reclassification by Amnesty International requires a country to undertake an official or international commitment not to carry out executions and we urge the Thai authorities to make such a commitment.

³ Human Rights Council, Report of the Working Group on the Universal Periodic Review, Thailand, Addendum, UN doc. A/HRC/33/16/Add.1, 7 September 2016

⁴ General Assembly resolution 70/175, annex, adopted on 17 December 2015.

Amnesty International opposes the death penalty unconditionally in all circumstances and campaigns for the establishment of a moratorium on executions and commutation of death sentences as first steps towards full abolition of the death penalty. The concerns outlined below provide more context to Amnesty International's calls on the Thai authorities towards full protection of human rights and abolition of the death penalty.

1. THE DEATH PENALTY: A VIOLATION OF HUMAN RIGHTS

Amnesty International believes that the death penalty violates the right to life and is the ultimate cruel, inhuman and degrading punishment. Every execution is a brutal act that not only dehumanizes those that carry it out but also devalues the worth that society places upon human life. As Amnesty International noted in the Declaration of Stockholm in 1977, "Execution is an act of violence and violence tends to provoke violence...The imposition and infliction of the death penalty is brutalizing to all who are involved in the process."⁵

The death penalty is a unique form of cruel punishment: apart from the cruelty of the execution itself, it involves the cruelty of being forced to wait on death row contemplating the prospect of execution. The cruelty of the death penalty extends beyond the prisoner to the prisoner's family, to the prison guards and to the officials who carry out an execution. Information from various parts of the world shows that the role of an executioner can be deeply disturbing, even traumatic. Judges, prosecutors and other officials may also experience difficult moral dilemmas if the roles they are required to play in administering the death penalty conflict with their own ethical views and beliefs.

It is important to note that all criminal justice systems are vulnerable to discrimination and error. However, the death penalty is irrevocable and once inflicted cannot be undone. Furthermore, Article 10 of the International Covenant on Civil and Political Rights (ICCPR), to which Thailand is a state party, provides that the primary aim of penitentiary systems should be the reformation and social rehabilitation of prisoners. By its inherent nature, the death penalty is the ultimate denial of the rehabilitation of the offender.

As Amnesty International affirmed in the aforementioned Declaration of Stockholm in 1977, "It is the duty of the state to protect the life of all persons within its jurisdiction, without exception." The right to life is recognized in the Universal Declaration of Human Rights as well as a number of international and regional human rights instruments, national constitutions and laws. The desirability of the abolition of the death penalty is enshrined in international law. While Article 6 of the ICCPR allows for the use of capital punishment under certain circumstances, paragraph 6 clearly states that the same Article should not be used to "prevent or delay the abolition of the death penalty." In its General Comment No. 6 on Article 6 of the ICCPR, the Human Rights Committee – the expert body tasked with overseeing the implementation of the ICCPR - has stated that the Article "refers generally to abolition [of the death penalty] in terms which strongly suggest... that abolition is desirable. The Committee concludes that all measures of abolition should be considered as progress in the enjoyment of the right to life..."⁶

Four international and regional treaties provide for the abolition of the death penalty: the Second Optional Protocol to the ICCPR, aiming at the abolition of the death penalty;⁷ Protocols No. 6 and No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms;⁸ and the Protocol to the American Convention on Human Rights to Abolish the Death Penalty.⁹ In addition, at its 56th Ordinary Session in 2015 the African Commission adopted Draft Protocol to the African Charter on Human and Peoples' Rights on the Abolition of the Death Penalty in Africa, which is now awaiting consideration by the African Union.

The international community has long recognized the death penalty as a human rights issue and has worked to limit the use of the death penalty and urged UN Member States to remove it from national legislation. The UN Economic and Social Council, the UN Human Rights Committee, the UN Committee against Torture and the UN Human Rights Council and its predecessor, the UN Commission on Human Rights, have all contributed to the progressive restriction of the use of the death penalty and urged UN member states to move towards its abolition. The UN

⁵ Amnesty International, "Declaration of Stockholm. Conference on the Abolition of the Death Penalty", ACT 50/001/1977, 1 January 1977, available at <http://www.amnesty.org/en/library/info/ACT50/001/1977/en>

⁶ Human Rights Committee, General Comment No. 6: The Right to Life, UN Doc. HRI/GEN/1/Rev.1 at 6, 27 July 1982, para. 6.

⁷ Adopted by the UN General Assembly in 1989.

⁸ Adopted by the Council of Europe in 1982 and 2002 respectively.

⁹ Adopted by the General Assembly of the Organization of American States in 1990.

Economic and Social Council has adopted the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty (resolution 1984/50 of 25 May 1984), which set out the most basic guarantees to be observed in all death penalty cases; the safeguards were endorsed by the UN General Assembly in 1984 by consensus. Since 2007, the UN General Assembly has adopted, with strong cross-regional support, six resolutions calling for the establishment of a moratorium on executions with a view to abolishing the death penalty.

2. REPEAL THE DEATH PENALTY FOR OFFENCES THAT ARE NOT THE “MOST SERIOUS CRIMES”

Thailand is among only 13 countries in the world where the death penalty is known to have been imposed or implemented for drug-related offences in 2016.¹⁰ The death penalty is further retained for several other offences, including corruption and bribery, which do not meet the threshold of the “most serious crimes” to which the use of the death penalty must be restricted, in countries where it has not yet been abolished, under Article 6 (2) of the ICCPR.¹¹ This restriction has been interpreted as referring to lethal crimes or crimes with extremely grave consequences. The UN Human Rights Committee has stated that “[T]he expression ‘most serious crimes’ must be read restrictively to mean that the death penalty should be a quite exceptional measure.”¹² Most recently, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions has stated that the term ‘most serious crimes’ is restricted to cases of intentional killing.¹³ In particular he has specifically underlined that “The death penalty may not be imposed for drug-related offences unless they meet this requirement.”¹⁴ Furthermore, the UN Office on Drugs and Crime (UNODC), the agency responsible for coordinating the different UN anti-drug programmes, emphasized in a recent statement that the death penalty is not supported by the international drug control conventions.¹⁵ Similarly, the International Narcotics Control Board (INCB), an independent committee established to oversee the implementation of the UN Drug Conventions, has also called on States that still retain the death penalty for drug-related offences to consider its abolition for such offences.¹⁶

Pending full abolition of the death penalty, we encourage the authorities of Thailand to abolish the death penalty and accede to the Second Optional Protocol to the Covenant, aiming at the abolition of the death penalty. If the death penalty is maintained, Thailand should take all measures necessary to ensure that it is limited to the “most serious crimes”, such as acts carried out with the intention of killing.

3. REPEAL THE MANDATORY DEATH PENALTY FOR ALL CRIMES

While welcoming the periodic commutations of death sentences by the King of Thailand, Amnesty International remains concerned at the extensive resort to the death penalty in the country. Figures provided to Amnesty International by the Ministry of Justice state that 216 new death sentences were imposed in 2016; and that a total of 427 people, including 24 foreign nationals, remained under sentence of death at the end of the year – more than half of which for drug-related offences.

In a positive first step, in November 2016 the Legislative Assembly adopted the Narcotic Act (Vol. 6) 2017, which abolished the mandatory death penalty for the offence of selling prohibited substances. As highlighted by the National Human Rights Commission of Thailand,¹⁷ several provisions of the Criminal Code carry the death penalty as the mandatory punishment for certain offences.

The imposition of the mandatory death penalty is prohibited under international law.¹⁸ The UN Human Rights Committee has stated that “the automatic and mandatory imposition of the death penalty constitutes an arbitrary deprivation of life [...] in circumstances where the death penalty is imposed without any possibility of taking into

¹⁰ The other countries are China, India, Indonesia, Iran, Kuwait, Laos, Malaysia, Saudi Arabia, Singapore, Sri Lanka, Thailand, United Arab Emirates and Viet Nam. Amnesty International, “Death sentences and executions in 2016” (ACT 50/5740/2017), April 2017.

¹¹ Article 6(2) of the International Covenant on Civil and Political Rights; Safeguards guaranteeing protection of the rights of those facing the death penalty, adopted by the UN Economic and Social Council in resolution 1984/50 of 25 May 1984.

¹² Human Rights Committee, General Comment No. 6: The Right to Life, 27 July 1982, para. 6.

¹³ Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, UN doc. A/67/275, 9 August 2012, para. 35.

¹⁴ UN doc. A/67/275, para.122.

¹⁵ UNODC, Statement by the UNODC Executive Director on the recent executions in Indonesia, 29 July 2016, available at

<https://www.unodc.org/unodc/en/press/releases/2016/July/statement-by-the-unodc-executive-director-on-the-recent-executions-in-indonesia.html>; see also International Narcotics Control Board, “INCB reiterates its call to States to consider the abolition of the death penalty for drug-related offences”, 1 August 2016, available at https://www.incb.org/incb/en/news/press-releases/2016/press_release010816.html

¹⁶ International Narcotics Control Board, Report 2014. New York, 2013, pp. iii. In its 2016 yearly report, the Board noted that Singapore continues to apply the death penalty for drug-related offences and called “upon the Government of Singapore to commute death sentences that have already been handed down and to consider the abolition of the death penalty for drug-related offences.” (para.282).

¹⁷ National Human Rights Commission of Thailand, “Alternative Report on Thailand’s Implementation of the International Covenant on Civil and Political Rights”, 29 April 2016, para.26.

¹⁸ Report of the Special Rapporteur on Extrajudicial, summary or arbitrary executions, UN doc. A/HRC/14/24, 20 May 2010, para.51.

account the defendant's personal circumstances or the circumstances of the particular offence".¹⁹ In addition, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions has stated that "the death penalty should under no circumstances be mandatory by law"²⁰ and that "[the] mandatory death penalty which precludes the possibility of a lesser sentence being imposed regardless of the circumstances, is inconsistent with the prohibition of cruel, inhuman or degrading treatment or punishment".²¹

Pending full abolition of the death penalty, we encourage the authorities of Thailand to ensure that proposed legislation abolishes the mandatory death penalty for all crimes, allowing judges to consider the circumstance of the offence and of defendants at the time of sentencing.

4. BRING THAILAND IN LINE WITH GLOBAL TREND TOWARDS ABOLITION

Almost seven decades after the adoption of the Universal Declaration of Human Rights (Declaration), the global trend towards abolition of the death penalty is unmistakable. As of today, 142 countries—more than two-thirds of the world's countries—have abolished the death penalty in law or in practice.

When the Declaration was adopted in 1948, eight countries, mostly from Central and South America, had abolished the death penalty for all crimes.²² In 1977, when Amnesty International began campaigning against the death penalty, only 16 countries were abolitionist for all crimes; today that number is 105. Additionally, the US states of Connecticut, Illinois, Maryland, New Jersey, New Mexico and New York have all abolished the death penalty since the beginning of the millennium.

The number of countries that carry out executions has also been declining, with only 11 countries known to have carried out executions every year of the past five years.²³ In 2016, 172 (89%) of the 193 UN Member States were executions-free. In the Asia-Pacific region, 20 countries have abolished the death penalty for all crimes and a further seven are abolitionist in practice.

Elsewhere, Belarus is the only country in Europe and Central Asia that still carries out executions, while the USA is the only one to do so in the Americas (except for those US states which have abolished the death penalty as previously noted in this section). Out of the 54 member states of the African Union, only five countries per year on average are known to have implemented death sentences in recent years. Only six of the 21 member states of the League of Arab States carried out executions in 2016.

In recent years, several countries in the Asia-Pacific region have taken the final steps in their journeys towards abolition by repealing the death penalty from their national legislation – Fiji in 2015, Nauru in 2016 and, most recently, Mongolia in July 2017. Globally, a total of nine countries have abolished the death penalty for all crimes in the past five years alone and a further one – Guinea – has become abolitionist for ordinary crimes. By abolishing the death penalty, Thailand would join the majority of the world's countries that have consigned this punishment to history. Such a historic step would be a catalyst for further positive reforms in Southeast Asia, where other countries have also been considering changes to their laws, such as Indonesia and Malaysia. We believe that Thailand is uniquely positioned to drive the reform agenda in the region.

5. REJECT ILL-FOUNDED DETERRENCE ARGUMENT

We are concerned that supporters of the death penalty in Thailand often point to the ill-founded assumption that the death penalty is an effective crime control measure.²⁴ A comprehensive survey of research findings carried out by the UN on the relationship between the death penalty and homicide rates concluded: "[R]esearch has failed to provide scientific proof that executions have a greater deterrent effect than life imprisonment. The evidence as a whole still gives no positive support to the deterrent hypothesis".²⁵ Statistics from countries that have abolished the

¹⁹ Human Rights Committee, *Pagdayawon Rolando v Philippines*, Communication No. 1110/2002, UN document CCPR/C/82/D/1110/2002, 8 December 2004, para. 5.2.

²⁰ Report of the Special Rapporteur on Extrajudicial, summary or arbitrary executions, UN doc. E/CN.4/1999/39, 6 January 1999, para.63.

²¹ Report of the Special Rapporteur on Extrajudicial, summary or arbitrary executions, UN doc. E/CN.4/2005/7, 22 December 2004, para. 80.

²² Colombia (1910), Costa Rica (1877), Ecuador (1906), Iceland (1928), Panama (1922), San Marino (1865), Uruguay (1907) and Venezuela (1863).

²³ Afghanistan, China, Iran, Iraq, Japan, North Korea, Saudi Arabia, Somalia, Sudan, Taiwan and USA. See Amnesty International, "Death sentences and executions in 2016" (ACT 50/5740/2017), April 2017.

²⁴ See, for example, Bangkok Post, "Ultimate Penalty- is death sentence fair?", 2 July 2017, <https://www.pressreader.com/thailand/bangkok-post/20170702/28286650871041>

²⁵ 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 doc. 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, 2015.

death penalty show that the absence of the death penalty has not resulted in an increase in the crimes previously subject to capital punishment. A study comparing the murder rates in Hong Kong and Singapore, both of which have a similar size of population, for a 35-year period beginning in 1973 found that the abolition of the death penalty in the former and the high execution rate in the latter in the mid-1990s had little impact on murder levels.²⁶

In regards to drug related crime, evidence shows that punitive policies have little influence on the prevalence of drug use.²⁷ Research has found that countries that have enacted harsh laws and implemented widespread arrests 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.²⁸ As the annual world drug reports published by UNODC show, the number of people who use drugs globally has overall remained stable, while harsh punishments have not eliminated or reduced either drug trafficking nor drug use.²⁹ Use of illicit drugs in Asia, as suggested by UNODC, is at levels similar to or below the global average.³⁰ By contrast, even though the criminalization of drug-related conducts is intended to deter the use, possession and trafficking of drugs, evidence has shown that such policies encourage and perpetuate high-risk drug use behaviours.³¹ Moreover, these policies have promoted a stigmatized approach towards people who use drugs, usually considered to be ill or criminals, which has segregated and further marginalized this sector of the population.³²

6. HUMAN RIGHTS EDUCATION CRITICAL IN DEBATES ON THE DEATH PENALTY

As a first step towards abolition, governments should support and facilitate meaningful and informed debate on the issue of the death penalty, including through human rights education programmes and initiatives that would provide information and promote a rights-respecting culture.

Through its monitoring of death penalty developments globally, Amnesty International has however noted that, often, governments refer to real or perceived public support for the death penalty as a reason to justify its retention and use, making little or no effort to challenge perceptions that the death penalty deters crime.³³

Opinion polls that appear to give evidence of public support for the death penalty tend to simplify the complexities of public opinion; moreover public opinion about the death penalty--so far as it is possible to generalise about it--is often not based on a full or accurate understanding of the crime situation of the country, its causes and the means available for combating it. The methodology used to survey public opinion invariably bears a direct correlation to the findings: in some countries, for instance, 'public opinion' is assessed through consultation with specific stakeholders, such as members of civil society or religious associations, while in others, such assessment is carried out through 'polls' of samples of the general population. In either case, attitudes towards the death penalty are complex and influenced by the time and circumstances in which the data is gathered.³⁴

The issue of abolition of the death penalty and its influence on public opinion has been the subject of several studies, which have consistently shown that support for the retention of the death penalty progressively drops after its abolition. Surveys by the British Social Attitude Surveys showed, for instance, that support for the death penalty dropped from 74% in favour in 1986 to 65% in 1996 and 54% in 2004; in Germany, while a great majority of people supported capital punishment at the time it was abolished in 1949, only 24% were supported it in 1992; in France, the death penalty was abolished in 1981. At the time, opinion polls showed that 63% of the public was in favour of the death penalty. A survey conducted in 2006 found though that support for the death penalty had dropped to 42%. Similarly, polls conducted in 2004 and in 2006 respectively in New Zealand and Australia indicated that, decades after the abolition of capital punishment, less than 30% of the populations supported it.³⁵

²⁶ Franklin E. Zimring, Jeffrey Fagan, David T. Johnson, "Executions, deterrence and homicide: a tale of two cities", 31 August 2009.

²⁷ Degenhardt L, Chiu W-T, Sampson N, Kessler RC, Anthony JC, et al. "Toward a global view of alcohol, tobacco, cannabis, and cocaine use: Findings from the WHO World Mental Health Surveys." *PLoS Med* 5(7) (2008), available at <http://journals.plos.org/plosmedicine/article?id=10.1371%2Fjournal.pmed.0050141>

²⁸ 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

²⁹ For more information, see annual World Drug Reports produced by UNODC, available at <http://www.unodc.org/wdr2015/>

³⁰ United Nations Office on Drugs and Crime, "World Drug Report 2015", May 2015, pp. 15

³¹ Joanne Csete et. al., "Public Health and international drug policy" in *The Lancet*. April, 2016

³² Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health: Mission to Viet Nam, 4 June 2012, UN Doc. A/HRC/20/15/Add.2, para. 45.

³³ See, for example, the statement from the former Minister of Justice Gen.Paiboon Khumchaya at Southeast Asia Regional conference on Access to Justice, August 2015, available in Thai at: <http://m.matichon.co.th/readnews.php?newsid=1439534448>

³⁴ For more information, see Roger Hood and Carolyn Hoyle, "The Death Penalty: A Worldwide Perspective", Oxford, Clarendon Press, Fourth edition, 2008, pp. 350-382.

³⁵ Sources for all: Roger Hood and Carolyn Hoyle, "The Death Penalty: A Worldwide Perspective", Oxford, Clarendon Press, Fourth edition, 2008, p. 376.

Transparency on the use of the death penalty and human rights education are important for a meaningful public debate on capital punishment and its relationship to crime prevention. The death penalty is a human rights issue and should be examined from a human rights perspective. In line with UN General Assembly resolution 71/187 of 19 December 2016, governments should make available relevant information with regard to their use of the death penalty, which can contribute to informed and transparent national debates on this issue.