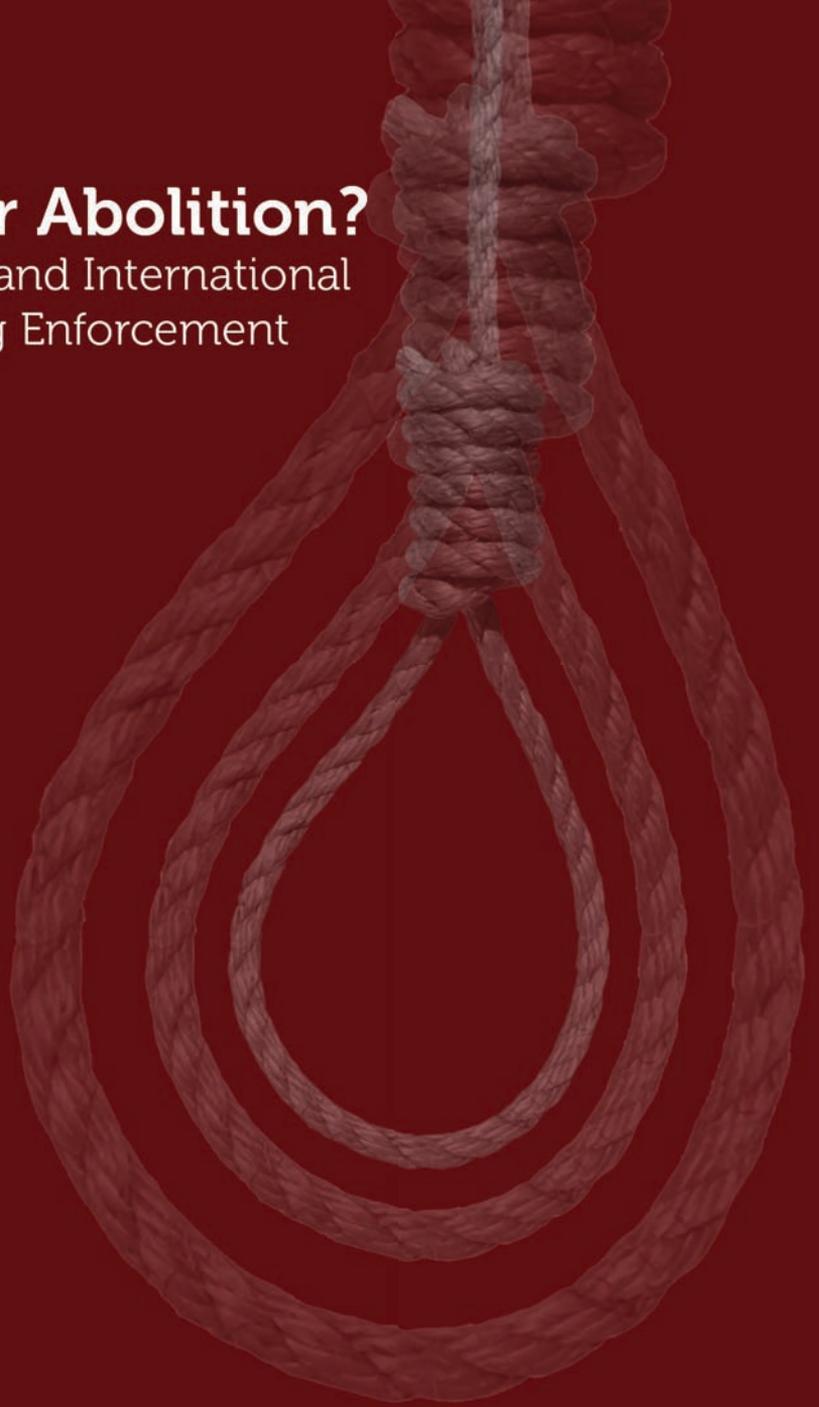


Complicity or Abolition?

The Death Penalty and International
Support for Drug Enforcement



INTERNATIONAL
HARM REDUCTION
ASSOCIATION

Complicity or Abolition?

The Death Penalty and International Support for Drug Enforcement

Rick Lines, Damon Barrett and Patrick Gallahue

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Designed by Mark Joyce

Copy-edited by Jennifer Armstrong

Published by

International Harm Reduction Association

Unit 701, 50 Westminster Bridge Road

London SE1 7QY

United Kingdom

Telephone: +44 (0)207 953 7412

E-mail: info@ihra.net

Websites: www.ihra.net www.ihrablog.net

About the International Harm Reduction Association

The International Harm Reduction Association (IHRA) is one of the leading international non-governmental organisations promoting policies and practices that reduce the harms from all psychoactive substances, harms which include not only the increased vulnerability to HIV and hepatitis C infection among people who use drugs, but also the negative social, health, economic and criminal impacts of illicit drugs, alcohol and tobacco on individuals, communities and society. A key principle of IHRA's approach is to support the engagement of people and communities affected by drugs and alcohol around the world in policy-making processes, including the voices and perspectives of people who use illicit drugs.

IHRA is an NGO in Special Consultative Status with the Economic and Social Council of the United Nations.

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KEY FINDINGS

- » The United Nations Office on Drugs and Crime (UNODC), the European Commission and individual European governments are all actively involved in funding and/or delivering technical assistance, legislative support and financial aid intended to strengthen domestic drug enforcement activities in states that retain the death penalty for drug offences.
- » Such funding, training and capacity-building activities – if successful – result in increased convictions of persons on drug charges and the potential for increased death sentences and executions.
- » Specific executions and death sentences can be linked to drug enforcement activities funded by European governments and/or the European Commission and implemented through UNODC.
- » Donor states, the European Commission and UNODC may therefore be complicit in executions for drug offences in violation of international human rights law and contrary to their own abolitionist policies and UN General Assembly resolutions calling for a moratorium on the death penalty for all offences.
- » The risk of further human rights abuses connected to drug enforcement projects, and the complicity of donors and implementing agencies in such abuses, is clear and must be addressed.

KEY RECOMMENDATIONS

- » In keeping with Resolution 2007/2274(INI) of the European Parliament, the European Commission should develop guidelines governing international funding for country-level and regional drug enforcement activities to ensure such programmes do not result in human rights violations, including the application of the death penalty.
- » The abolition of the death penalty for drug-related offences, or at the very least evidence of an ongoing and committed moratorium on executions, should be made a pre-condition of financial assistance, technical assistance and capacity-building and other support for drug enforcement.
- » A formal and transparent process for conducting human rights impact assessments as an element of project design, implementation and evaluation should be developed and included as part of all drug enforcement activities.
- » International guidelines on human rights and drug control should be developed to guide national responses and the design and implementation of drug enforcement projects.

1. EXECUTIVE SUMMARY

In May 2010 the International Harm Reduction Association (IHRA) published a survey of countries retaining the death penalty for drug offences. The report identified thirty-two jurisdictions with legislation prescribing capital punishment for certain categories of drug-related crime.¹

The application of capital punishment is typically for drug trafficking, cultivation, manufacturing and/or importing/exporting, but the definition of capital narcotics crimes is not limited to these offences. Indeed, a comparison of domestic drug legislation among retentionist countries reveals a huge disparity in the definition of a capital drug offence. The types of offence carrying a sentence of death are broad and diverse and, in some countries, include possession of illicit drugs.

Although capital punishment is not prohibited under international law, its application is limited in significant ways. Article 6(2) of the International Covenant on Civil and Political Rights states that the penalty of death may only be applied to the 'most serious crimes'. Over the past twenty-five years United Nations (UN) human rights bodies have interpreted Article 6(2) in a manner that limits the number and types of offence for which execution is allowable under international human rights law.²

While many retentionist governments argue that drug offences fall under the umbrella of 'most serious crimes', the UN Human Rights Committee and the UN Special Rapporteur on extrajudicial, summary or arbitrary executions have both stated that drug offences do not constitute 'most serious crimes' and that executions for such offences are in violation of international human rights law. This perspective is endorsed by the vast majority of states.

Although the responsibility for death sentences and executions for drug offences lies primarily with retentionist governments themselves, there are ways in which abolitionist governments and international organisations play a role in contributing to this practice.

For example, the United Nations Office on Drugs and Crime (UNODC), the European Commission and individual European governments are all actively involved in funding and/or delivering technical assistance, legislative support and financial aid intended to strengthen domestic drug enforcement in retentionist states. These activities are either specifically designed to assist in increased drug seizures and arrests through the provision of funds and equipment or relate to law enforcement training and prosecutorial capacity building. In countries that have legislation allowing for the death penalty for drug offences, such funding, training and capacity-building activities – if successful – result in increased convictions of persons on drug charges and therefore potentially increase death sentences and executions. This situation raises the serious concern that

1 P Gallahue and R Lines (2010) *The Death Penalty for Drug Offences: Global Overview 2010*. London: IHRA.

2 See R Lines (2007) *The Death Penalty for Drug Offences: A Violation of International Human Rights Law*. London: IHRA.

through these activities, UNODC, the European Commission and individual European governments risk complicity in acts that violate international human rights law, including the protections of the International Covenant on Civil and Political Rights. Such activities also undermine the Council of Europe's commitment to abolition of the death penalty, the Charter of the United Nations and UNODC's stated opposition to the death penalty for drug offences.

The UN General Assembly has repeatedly stated that international co-operation against illicit trafficking should be 'carried out in full conformity with the purposes and principles of the Charter of the United Nations and other principles of international law, and in particular with full respect for ... all human rights and fundamental freedoms'.³ Therefore, the human rights impact of the activities and programmes of UN member states and UN agencies must be a central consideration in the design and evaluation of their work. Projects and activities that may contribute to violations of international human rights law should be avoided. The 2007 and 2008 UN General Assembly resolutions calling for a worldwide moratorium on all executions further underline the responsibility of member states and UN agencies to work to oppose the death penalty.⁴

Although these standards apply to all member states, this issue has particular resonance for European countries. Protocol 6 to the European Convention on Human Rights commits all Council of Europe member states to abolishing the death penalty.⁵ The European Union (EU) has also specifically recognised the opportunities⁶ and dangers associated with external financial assistance vis-à-vis human rights. A 2008 resolution adopted by the European Parliament:

Calls on the Council and the Commission to ensure, with a view to the planned 2009 ministerial meeting of the United Nations Office on Drugs and Crime, that the funding supplied to international agencies such as those of the United Nations to combat illegal drugs is never used either directly or indirectly to support security bodies in countries which commit serious and systematic violations of human rights or apply the death penalty in drugs-related cases.⁷

UNODC has also explicitly asserted its opposition to capital punishment for drug offences, stating in a 2010 report that 'As an entity of the United Nations system, UNODC advocates the abolition of the death penalty and calls upon Member States to follow international standards concerning

³ UNGA Res. 61/183 (13 March 2007) UN Doc. A/RES/61/183; UNGA Res. 60/178 (22 March 2006) UN Doc. A/RES/60/178; See also UNGA Res. 46/101 (16 December 1991) UN Doc. A/RES/46/101; UNGA Res. 47/98 (16 December 1992) UN Doc. A/RES/47/98; UNGA Res. 48/112 (11 March 1994) UN Doc. A/RES/48/112; UNGA Res. 49/168 (24 February 1995) UN Doc. A/RES/49/168; UNGA Res. 50/148 (9 February 1996) UN Doc. A/RES/50/148; UNGA Res. 51/64 (28 January 1997) UN Doc. A/RES/51/64; UNGA Res. 53/115 (1 February 1999) UN Doc. A/RES/53/115; UNGA Res. 54/132 (7 February 2000) UN Doc. A/RES/54/132; UNGA Res. 55/65 (26 January 2001) UN Doc. A/RES/55/65; UNGA Res. 56/124 (24 January 2002) UN Doc. A/RES/56/124; UNGA Res. 58/141 (10 February 2003) UN Doc. A/RES/58/141; UNGA Res. 59/153 (8 February 2005) UN Doc. A/RES/59/153.

⁴ UNGA Res. 62/149 (26 February 2008) UN Doc. A/RES/62/149; UNGA Res. 63/168. (13 February 2009) UN Doc A/RES/63/168

⁵ Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty as amended by Protocol No. 11, Strasbourg, 28 April 1983.

⁶ European Commission (2001) Communication from the Commission to the Council and the European Parliament: The European Union's role in promoting human rights and democratisation in third countries, 8 May, COM(2001) 252 final, p. 8.

⁷ European Parliament (2008) European Parliament resolution on the Annual Report on Human Rights in the World 2007 and the European Union's policy on the matter (2007/2274(INI)), 8 May, P6_TA(2008)0193, para. 143, available at: www.unhcr.org/refworld/docid/483aa6952.html (last accessed 31 March 2010).

prohibition of the death penalty for offences of a drug-related or purely economic nature.⁸ These commitments make scrutiny of international assistance to drug enforcement activities in death penalty states even more critical.

Many European governments and the European Commission provide earmarked grants to UNODC for the purpose of supporting specific drug enforcement projects or activities.⁹ These targeted grants enable individual donors to utilise UNODC's international network of offices to implement activities for which the countries themselves lack the necessary local infrastructure or expertise. European governments and the European Commission collectively provided the vast majority of these funds to UNODC in 2009.¹⁰ However, at least some of these projects have thus far been implemented without the level of human rights assessment necessary to ensure that the activities themselves do not inadvertently result in executions for drug offences. While in some cases, the risk of human rights violations may be only theoretical, in others, such programmes have resulted in the execution of identifiable individuals for drug offences.

The drug enforcement activities supported by European donors and UNODC in retentionist states are not intended to increase the application of the death penalty. Rather, their objective is to increase the capacity of domestic law enforcement agencies to fight trafficking and enforce drug laws by, among other things, increasing the number of arrests and convictions for drug offences. However, the fact that the application of the death penalty is not the intended outcome of such activities does not exclude the donors or UNODC from responsibility for the human rights impact of their activities. By providing practical assistance to law enforcement in retentionist countries, in a context where those arrested could face the death penalty, and taking no safeguards against such an outcome, the donors and UNODC risk being complicit in resulting human rights violations.

Retentionist governments will argue that the principle of state sovereignty allows them the scope to establish their own national laws and penalties. And those that have not ratified the International Covenant on Civil and Political Rights may likewise make the point that they are not bound by the terms of the treaty. However, neither of these arguments negates the responsibilities of donor states and of UNODC to take effective measures to ensure that they are not engaged in activities that contravene international human rights law and EU and UN policy against capital punishment in all circumstances.

Although the drug enforcement activities of donors in death penalty states raise human rights concerns, they also create an opportunity for these actors to promote adherence and respect for international human rights law and to limit the application of the death penalty worldwide. Donors to and/or implementers of drug enforcement programmes in retentionist states can take proactive

8 UNODC (2010) Drug control, crime prevention and criminal justice: A human rights perspective. Note by the Executive Director (Commission on Narcotic Drugs, Fifty-third session, Vienna, 8–12 March), UN Doc. E/CN.7/2010/CRP.6*–E/CN.15/2010/CRP.1*.

9 D Bewley-Taylor and M Trace (2006) *The Funding of the United Nations Office on Drugs & Crime: An Unfinished Jigsaw*. Oxford: The Beckley Foundation Drug Policy Programme.

10 List available at: www.unodc.org/unodc/en/donors/donorlist/index.html?ref=menuaside (last accessed 25 March 2010).

measures to oppose the death penalty for drug offences through these activities. Actors such as the European Commission, UNODC and individual European states – all of which are committed in law and/or policy to the abolition of the death penalty – should use the influence of multilateral and bilateral drug enforcement aid as a tool to promote human rights generally, and the abolition of the death penalty for drug offences specifically. For example, European donors and UNODC can influence retentionist governments by refusing to provide, or to act as a conduit for, funds for drug enforcement activities unless the death penalty will not be an outcome of that assistance.

There are also a number of concrete actions that donors and international organisations can take in order to ensure that, through their support for drug enforcement activities in retentionist states, they are not inadvertently complicit with executions:

- » In keeping with Resolution 2007/2274(INI) of the European Parliament, the European Commission should develop guidelines governing international funding for country-level and regional drug enforcement activities to ensure such programmes do not result in human rights violations, including the application of the death penalty.
- » The abolition of the death penalty for drug-related offences, or at the very least evidence of an ongoing and committed moratorium on executions, should be made a pre-condition of financial assistance, technical assistance, capacity-building and other support for drug enforcement.
- » European donor states should develop and apply similar human rights guidelines to bilateral funding agreements for drug enforcement activities and programmes.
- » A formal and transparent process for conducting human rights impact assessments as an element of project design, implementation and evaluation should be developed and introduced as part of all drug enforcement activities.
- » UNODC should – in conjunction with the Office of the High Commission for Human Rights, non-governmental organisations, government representatives, international experts and affected communities – develop guidelines on human rights and drug control for use by international and bilateral donors, implementing agencies and national governments.
- » Donors should provide specific funding for the development of human rights capacity within UNODC and for the development of international guidelines on human rights and drug control.

2. THE DEATH PENALTY FOR DRUG OFFENCES WORLDWIDE

At the end of 2009 at least thirty-two states had enacted legislation providing for capital punishment for drug crimes, the majority of these being in the Middle East, North Africa and Asia Pacific regions.¹¹ A review of various sources shows that executions for drug offences have been carried out in recent years in a number of countries including China,¹² Indonesia,¹³ Iran,¹⁴ Kuwait,¹⁵ Malaysia,¹⁶ Pakistan,¹⁷ Saudi Arabia,¹⁸ Singapore,¹⁹ Thailand,²⁰ Yemen²¹ and Viet Nam.²² Even in countries that are not actively executing drug offenders, death sentences for drug-related crimes continue to be pronounced.²³

While in some of these countries the number of executions is small, in others drug offenders constitute a significant proportion of total executions. For example:

- » Iran: Some estimate that Iran has executed 10,000 drug traffickers since the revolution of 1979.²⁴ Iran has been known to execute more than 100 people a year for drug-related activities: between 2007 and 2009 IHRA estimates Iran executed slightly less than 400 people convicted of drug offences.²⁵
- » Malaysia: Thirty-six of the fifty-two executions carried out between July 2004 and July 2005 were for drug trafficking.²⁶ In April 2005 the Internal Security Ministry reported to the Malaysian Parliament that 229 people had been executed for drug trafficking over the previous thirty years.²⁷ IHRA has identified twenty-two death sentences for drug offences in 2008 and another fifty in 2009 from media reports.²⁸
- » Saudi Arabia: At least forty drug offenders were executed in 2007 and at least twenty-two in 2008.²⁹

11 The IHRA Global Overview 2010 (Gallahue and Lines op. cit.) identifies: China, Iran, Saudi Arabia, Viet Nam, Singapore, Malaysia, Indonesia, Kuwait, Thailand, Pakistan, Egypt, Syria, Yemen, Bangladesh, Lao People's Democratic Republic, Cuba, Taiwan, Oman, United Arab Emirates, Bahrain, India, Qatar, Gaza (Occupied Palestinian Territories), Myanmar, South Korea, Sri Lanka, Brunei-Darussalam, United States of America, North Korea, Iraq, Sudan, Libya.

12 Amnesty International (2010) Death Penalty Report: China Must End Secrecy Surrounding Sentences and Executions, ACT 50/001/2010; Radio Free Asia (31 March 2010) China casts veil over executions.

13 Human Rights Watch (2009) World Report 2009 – Indonesia, New York: HRW; New York Times (11 July 2008) Indonesia widens use of death penalty.

14 Netherlands Ministry of Foreign Affairs, Human Rights Department (n.d.) Overview executions 2009: Iran; Iran Human Rights (2010) Annual report for 2009.

15 Agence France-Presse (21 May 2007) Kuwait hangs Pakistani drug runner.

16 Malaysiakini (13 April 2005) 229 executed for drugs in the past 30 years.

17 Human Rights Commission of Pakistan (n.d.) Summary: Death penalty (1 January 2007 – 31 December 2007): www.hrcp-web.org/PDF/2007%20-%20Death%20Penalty.pdf (last accessed 26 March 2010).

18 Gallahue and Lines op. cit.

19 Amnesty International (2008) Amnesty International Report 2008 – Singapore, London: AI.

20 Amnesty International (26 August 2009) Thailand carries out first executions in six years.

21 Saba News (18 September 2008) Pakistani drugs trafficker, one Yemeni executed.

22 UK Foreign & Commonwealth Office (2009) Annual Report on Human Rights 2008. London: Foreign & Commonwealth Office; Amnesty International (2008) Amnesty International Report 2008 – Viet Nam, London: AI.

23 Gallahue and Lines op. cit.

24 US Department of State (2010) 2010 International Narcotics Control Strategy Report. Volume I (2010 INCSR). Washington, DC: Department of State. The bureau attributes these figures to Iranian government sources.

25 Gallahue and Lines op. cit.

26 CS Ling (26 March 2006) Debate over the death penalty heating up, New Straits Times.

27 Malaysiakini (13 April 2005) 229 executed for drugs in the past 30 years.

28 Gallahue and Lines op. cit.

29 Gallahue and Lines op. cit.

- » Viet Nam: The Government of Viet Nam stated in a 2003 submission to the UN Human Rights Committee that 'over the last years, the death penalty has been mostly given to persons engaged in drug trafficking'.³⁰ A 2006 media report observed that 'Around 100 people are executed by firing squad in Vietnam each year, mostly for drug-related offences'.³¹ Furthermore, Amnesty International states that at least 201 people were known to have been sentenced to death between 2007 and 2009, at least 109 of whom were for drug offences.³²
- » Singapore: Since 1991 more than 400 people have been executed, the majority for drug offences.³³ Between 1999 and 2003, 110 of the 138 people who were executed were killed for drug offences.³⁴ It is believed that Singapore has recently reduced the number of executions but it retains a mandatory sentence of death for anyone found guilty of importing, exporting or trafficking in more than 500 grams of cannabis, 200 grams of cannabis resin or 1,000 grams of cannabis mixture; and trafficking in more than 30 grams of cocaine, 15 grams of heroin or 250 grams of methamphetamine.³⁵
- » China: Although China guards its execution figures as a state secret, Amnesty International estimates the figure is in 'the thousands'.³⁶ Since the early 1990s China has used the UN's International Day Against Drug Abuse and Illicit Drug Trafficking, 26 June, to conduct public executions of drug offenders. In 2001 over fifty people were convicted and publicly executed for drug crimes at mass rallies, at least one of which was broadcast on state television.³⁷ In 2002 the day was marked by sixty-four public executions in rallies across the country, the largest of which took place in the south-western city of Chongqing, where twenty-four people were shot.³⁸ A UN human rights monitor reported 'dozens' of people being executed to mark the day in 2004,³⁹ and Amnesty International recorded fifty-five executions for drug offences over a two-week period running up to 26 June 2005.⁴⁰ In 2009 at least twenty people were executed to mark the day.⁴¹

In May 2010 IHRA published an extensive international survey of state legislation and practice vis-à-vis the death penalty for drug offences.⁴² IHRA's report identified thirty-two jurisdictions that prescribe the death penalty for drug-related activities and characterised six of them as being highly

30 Human Rights Committee (2003) Comments by the Government of Viet Nam on the concluding observations of the Human Rights Committee, 21 July, UN Doc. CCPR/CO/75/VNM/Add.2, para. 1.

31 Thanh Nien News (3 November 2006) Vietnam law commission wants death penalty for fewer crimes.

32 Amnesty International, communication with author (16 December 2009).

33 Amnesty International (2004) Singapore: The Death Penalty: A Hidden Toll of Executions. AI Index: ASA 36/001/2004.

34 Singapore Ministry of Home Affairs (30 January 2004) The Singapore government's response to Amnesty International's report Singapore: The Death Penalty: A Hidden Toll of Executions.

35 Misuse of Drugs Act (Cap. 185, 2008 Rev. Ed.): <http://statutes.agc.gov.sg/> (last accessed 29 March 2010); AI Singapore: The Death Penalty op. cit. p. 13; D Johnson and F Zimring (2009) *The Next Frontier: National Development, Political Change and the Death Penalty in Asia*. Oxford: Oxford University Press, p. 415; Additional information on thresholds: www.cnb.gov.sg (last accessed 20 January 2009).

36 Amnesty International (2010) *Death Sentences and Executions in 2009*. ACT 50/001/2010, p. 6.

37 Amnesty International (2002) *The Death Penalty Worldwide: Developments in 2001*. ACT 50/001/2002, p. 33.

38 Associated Press (27 June 2002) China executes 64 to mark UN anti-drug day.

39 Commission on Human Rights (2005) *Extrajudicial, summary or arbitrary executions report of the Special Rapporteur, Philip Alston: Addendum—Summary of cases transmitted to governments and replies received*, 17 March, UN Doc. E/CN.4/2005/7/Add.1, para. 69.

40 Amnesty International (2007) *Asia Pacific: Death sentences for drug-related crimes rise in region: Public statement*, AI Index: ASA 01/004/2007 (Public), News Service 114, 26 June.

41 Agence France-Presse (25 June 2009) China marks anti-drug day with executions.

42 Gallahue and Lines op. cit.

committed to capital drug policies: China, Iran, Saudi Arabia, Viet Nam, Singapore and Malaysia. These are countries that execute drug offenders regularly and/or sentence high numbers of people to death for drug-related crimes.

Other jurisdictions have demonstrated an ambivalence to the death penalty in general and to capital drug laws specifically. IHRA categorised eight jurisdictions as having a low commitment to their capital drug laws. These states may sentence people to death for drug offences and may carry out executions of drug offenders, however, in practice, actual executions for drug-related activities are rare.

Finally, IHRA identified fourteen jurisdictions as having a symbolic commitment to the death penalty for drug offences. These are states that do not, and in some cases never have, executed a person for a drug offence that did not cause the death of another person. Death penalty laws in such states seem to serve as only a symbolic statement of a 'tough' approach to drugs, rather than as a functioning criminal justice policy. In some cases these are states categorised as 'abolitionist in practice', meaning that they have not executed anyone in more than a decade and 'are believed to have a policy or established practice of not carrying out executions'.⁴³

In addition, at least four states were identified as having insufficient data. Some governments unfortunately provide very little information on their policies and practices, and this can make it difficult to ascertain the realities on the ground and to ensure compliance with relevant international standards.

43 AI Death Sentences and Executions in 2009 op. cit. p. 29.

3. THE DEATH PENALTY FOR DRUG OFFENCES IN INTERNATIONAL HUMAN RIGHTS LAW

Under the International Covenant on Civil and Political Rights, the application of capital punishment, while not prohibited, is restricted in important ways. One key restriction is found in Article 6(2), which states that 'In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes'. Executions for crimes that do not meet this threshold are therefore considered to violate the Covenant. The definition of what does and does not constitute a 'most serious crime' is therefore central to a consideration of whether the execution of drug offenders is consistent with international human rights law under the Covenant.

Since the Covenant entered into force in 1976 the interpretation of 'most serious crimes' has been refined and clarified by a number of UN human rights bodies in an effort to limit the number of offences for which a death sentence can be pronounced. As early as 1982 the UN Human Rights Committee – the expert body that monitors compliance with state obligations under the Covenant and provides authoritative interpretations of its provisions – expressed the opinion that 'the expression "most serious crimes" must be read restrictively to mean that the death penalty should be a quite exceptional measure'.⁴⁴

In 1984 the Economic and Social Council of the UN (made up of fifty-four member states) adopted the resolution 'Safeguards guaranteeing protection of the rights of those facing the death penalty', which reaffirmed that 'capital punishment may be imposed only for the most serious crimes' and further specified that the scope of capital offences 'should not go beyond intentional crimes with lethal or other extremely grave consequences'.⁴⁵ This resolution was later adopted by the General Assembly, the UN's supreme policy-making body, which comprises every member state.⁴⁶

The Human Rights Committee has indicated that the definition of 'most serious crimes' is limited to those directly resulting in death. Its concluding observations (periodic examinations of country compliance with the terms of the Covenant) stated for Iran in 1993 that 'In light of the provision of article 6 of the Covenant ... the Committee considers the imposition of that penalty for crimes of an economic nature ... or for crimes that do not result in loss of life, as being contrary to the Covenant'.⁴⁷

The Human Rights Committee's concluding observations have consistently criticised countries that apply the death penalty to a large number of offences, noting the incompatibility of many of those offences with Article 6 and calling for repeal in those cases. The committee has addressed these

44 Human Rights Committee (1982) General comment 6: The right to life (art. 6), 30 April, Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies. UN Doc. HRI/GEN/1/Rev, para. 7.

45 Economic and Social Council (1984) Safeguards guaranteeing protection of the rights of those facing the death penalty, ESC Res. 1984/50 annex 1984 UN ESCOR Supp (1) at 33, UN Doc. E/1984/84, para. 1.

46 UNGA Res. 39/118 (14 December 1984) UN Doc. A/RES/39/118.

47 Human Rights Committee (1993) Concluding observations: Iran, 29 July, UN Doc. CCPR/C/79/Add.25, para. 8.

criticisms to many states that apply capital punishment to drug offenders, including Egypt,⁴⁸ India,⁴⁹ Iran,⁵⁰ Libya,⁵¹ Sri Lanka,⁵² Sudan,⁵³ Syria,⁵⁴ Viet Nam⁵⁵ and Thailand.⁵⁶

On Sri Lanka in 1995 the committee specifically listed 'drug-related offences' among those that 'do not appear to be the most serious offences under article 6 of the Covenant'.⁵⁷ On Kuwait in 2000 it expressed 'serious concern over the large number of offences for which the death penalty can be imposed, including very vague categories of offences relating to internal and external security as well as drug-related crimes'.⁵⁸ On Thailand in 2005 it noted 'with concern that the death penalty is not restricted to the "most serious crimes" within the meaning of article 6, paragraph 2, and is applicable to drug trafficking'.⁵⁹ This definitive statement from the committee affirms that drug offences do not satisfy the threshold for capital punishment under the Covenant, and are therefore in violation of the protections in the treaty. On Sudan in 2007 the committee again listed 'drug trafficking' among those 'offences which cannot be characterized as the most serious'.⁶⁰

The UN Special Rapporteur on extrajudicial, summary or arbitrary executions has also strongly stated that drug offences do not meet the threshold of 'most serious crimes'.

... the death penalty should be eliminated for crimes such as economic crimes and drug-related offences. In this regard, the Special Rapporteur wishes to express his concern that certain countries, namely China, the Islamic Republic of Iran, Malaysia, Singapore, Thailand and the United States of America, maintain in their national legislation the option to impose the death penalty for economic and/or drug-related offences.⁶¹

The conclusion that drug-related offences fall outside the scope of 'most serious crimes' was recently reaffirmed in the Special Rapporteur's 2006 annual report.⁶² Indeed, the Special Rapporteur has stated that in cases where the 'international restrictions are not respected ... the carrying out of a death sentence may constitute a form of summary or arbitrary execution'.⁶³

The view that the death penalty for drug offences violates international law is also shared by the

48 Human Rights Committee (2002) Concluding observations: Egypt, 28 November, UN Doc. CCPR/CO/76/EGY, para. 12.

49 Human Rights Committee (1997) Concluding observations: India, 30 July, UN Doc. CCPR/C/79/Add.81, para. 20.

50 Human Rights Committee (1993) Concluding observations: Iran op. cit. para. 8.

51 Human Rights Committee (2007) Concluding observations: Libyan Arab Jamahiriya, CCPR/C/LBY/CO/4, para. 13

52 Human Rights Committee (1995) Concluding observations: Sri Lanka, 26 July 1995, UN Doc. A/50/40, s. 5.

53 Human Rights Committee (1997) Concluding observations: Sudan, 5 November, UN Doc. CCPR/C/79/Add.85, para. 8.

54 Human Rights Committee (2001) Concluding observations: Syrian Arab Republic, 24 April, UN Doc. CCPR/CO/71/SYR, para. 8.

55 Human Rights Committee (2002) Concluding observations: Viet Nam, 26 July, UN Doc. CCPR/CO/75/VNM, para. 7.

56 Human Rights Committee (2005) Concluding observations: Thailand, 8 July, UN Doc. CCPR/CO/84/THA, para. 14.

57 Human Rights Committee (1995) Concluding observations: Sri Lanka op. cit. s. 4.

58 Human Rights Committee (2000) Concluding observations: Kuwait, 27 July, UN Doc. CCPR/CO/69/KWT, para. 13

59 Human Rights Committee (2005) Concluding observations: Thailand op. cit. para. 14.

60 Human Rights Committee (2007) Concluding observations: Sudan, 29 August, UN Doc. CCPR/C/SDN/CO/3, para. 19.

61 Commission on Human Rights (1996) Report by the Special Rapporteur, Mr Bacre Waly Ndiaye, submitted pursuant to Commission on Human Rights resolution 1996/74, 24 December, UN Doc. E/CN.4/1997/60, para. 91.

62 Human Rights Council (2007) Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, 29 January, UN Doc. A/HRC/4/20, paras. 51–3.

63 Commission on Human Rights (2003) Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, 22 December, UN Doc. E/CN.4/2004/7, para. 48.

UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, who noted in a 2009 report to the Human Rights Council 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.'⁶⁴

From the perspective of the UN human rights system, there is little to support the suggestion that drug offences meet the threshold of 'most serious crimes'. In fact, the weight of opinion would indicate that drug offences are not 'most serious crimes' as the term has been interpreted, and that executions under such circumstances constitute human rights violations. Indeed, the international political consensus overall is clearly in favour of the abolition of the death penalty for all offences, as evidenced in two UN General Assembly resolutions calling for a worldwide moratorium on executions.⁶⁵

Besides violations of the right to life as enshrined in Article 6 of the Covenant, the death penalty for drug offences raises additional human rights concerns in some countries. For example, in some states drug trials are referred to specialised courts, raising concerns that death sentences have been handed down through processes that do not meet fair trial norms.⁶⁶ There are also concerns related to legislation prescribing mandatory death sentences for certain drug-related crimes in some countries. This practice has been criticised by the former UN Commission on Human Rights,⁶⁷ the UN Special Rapporteur on extrajudicial, summary or arbitrary executions,⁶⁸ the UN Human Rights Committee⁶⁹ and the Inter-American Court of Human Rights,⁷⁰ as well as in various national courts.⁷¹ IHRA's Global Overview 2010 identifies thirteen countries with such legislation in force.⁷²

64 Human Rights Council (2009) Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, 14 January, UN Doc. A/HRC/10/44, para. 66.

65 That consensus is disputed by some retentionist states, but often because the word 'consensus' has become confused with 'unanimity'. The consensus, evident in a large majority in favour of abolition, is clear.

66 For example Iran, where drug trials often take place in revolutionary courts (UK Home Office (2006) Country of origin information report – Iran, 28 April, p. 23). The UN Working Group on Arbitrary Detention has called on these tribunals to be abolished because of their failure to provide adequate due process protections.

67 Commission on Human Rights (2005) Human Rights Resolution 2005/59, 20 April, para. 6.

68 Human Rights Council (2007) op. cit. para. 4; see also paras. 54–9.

69 Human Rights Committee (26 March 2002) *Kennedy v. Trinidad and Tobago* Communication 845/1998, CCPR/C/74/D/845/1998, para. 7.3; Human Rights Committee (18 October 2000) *Thompson v. Saint Vincent and the Grenadines* Communication 806/1998, CCPR/C/70/D/806/1998, para. 8; Human Rights Committee (1995) *Lubuto v. Zambia* Communication 390/1990.

70 Inter-American Court of Human Rights (21 June 2002) *Hilaire, Constantine, Benjamin et al. v. Trinidad and Tobago* Series C 94.

71 The Court of Appeal of the Bahamas (8 March 2006) *Privy Council Appeal 44 of 2005 (1) Forrester Bowe (Junior) (2) Trono Davis v. The Queen*, para. 29(3); Supreme Court of Uganda (21 January 2009) *Attorney General v. Susan Kigula and 417 Others* 03 of 2006; Amnesty International (22 January 2009) *Mandatory death penalty ruled unconstitutional in Uganda*.

72 Gallahue and Lines op. cit.

4. DEATH SENTENCES, EXECUTIONS AND DRUG ENFORCEMENT PROJECTS

Although the responsibility for death sentences and executions for drug offences lies primarily with the retentionist governments themselves, there are ways in which abolitionist governments, as well as international organisations such as UNODC and the European Commission, run the risk of contributing to this practice.

Despite the human rights concerns identified regarding the application of the death penalty in drug cases, both European donors and UNODC fund or engage in activities in death penalty states with the intent or effect of enhancing the ability of those countries to detect, arrest and prosecute drug offenders. For example, UNODC's 2002–2003 strategy for the Asia Pacific Region (China, Cambodia, Laos, Myanmar, Thailand, Viet Nam) identifies as outcomes the 'establishment of mechanisms to increase the number of successful prosecutions involving more than one jurisdiction' and 'greater capacity of the judiciary to prosecute drug cases'; an 'increase in the number of successful prosecutions' was an objectively verifiable indicator for these outcomes.⁷³ In countries that prescribe the death penalty for drug offences, it is reasonable to suggest that an increase in successful drug prosecutions will likely result in an increase in death sentences and possibly even in executions. UNODC's organisational strategy for 2008 to 2011 includes as one of its desired outcomes: 'Enhanced capacity to respond effectively utilizing special investigative techniques in the detection, investigation and prosecution of crime, organized crime, corruption and drug trafficking'.⁷⁴

It should be noted that technical assistance to drug enforcement activities of member states forms only one component of the multi-disciplinary approach pursued globally by UNODC. The mission of the office as a whole is focused on the wider promotion of the rule of law and this is increasingly reflected in the new generation of UNODC Regional Programmes. The current 2008–2011 strategy refers to the development of 'accessible and accountable domestic criminal justice systems in accordance with international standards and norms' and the most recent UNODC 2009–2012 regional programme for East Asia and the Pacific, 'Challenges, Achievements and the Way Ahead', makes reference to international human rights standards in respect of other aspects of the criminal justice system, such as the use of compulsory centres for drug users.

Nonetheless, many European governments and the European Commission do provide earmarked grants to the UNODC for the purpose of supporting specific drug enforcement projects or activities.⁷⁵ These targeted grants enable individual donors to utilise UNODC's international network

73 UNDCP East Asia Pacific Programme 2002–2003: www.unodc.org/pdf/east_asia_pacific_programme.pdf (last accessed 10 June 2010).

74 UNODC (2007) Strategy for the period 2008–2011 for the United Nations Office on Drugs and Crime, 9 February, UN Doc. E/CN.7/2007/14–E/CN.15/2007/5, p. 6. The same strategy refers to the development of 'accessible and accountable domestic criminal justice systems in accordance with international standards and norms' (emphasis added).

75 Bewley-Taylor and Trace op. cit.

of offices to implement activities for which the countries themselves lack the necessary local infrastructure or expertise. These earmarked grants are known as 'special purpose funds' and form the vast majority of UNODC's annual budget.

According to UNODC, in 2009 '[m]ost of UNODC funding is tightly earmarked for special purposes and programmes, while unearmarked funding for general-purposes is limited (less than 6 per cent of total funding available to UNODC).'⁷⁶ That year, three of the five largest donors to UNODC's special purpose fund contributors (for all UNODC activities, including rule of law, policy and trend analysis, prevention, treatment and reintegration, and alternative development), were the European Commission (\$26.3 million⁷⁷), Sweden (\$13.7 million) and Germany (\$12.6 million), all of which are committed in law and policy to the abolition of the death penalty. In fact, fifteen of the top twenty-one contributors to UNODC's special purpose fund in 2009 were European states, which, together with the European Commission, donated a total of more than \$90 million of the \$204 million budget that year. Other major European donors included France (\$3.2 million), the United Kingdom (\$5.7 million), Norway (\$6.9 million), the Netherlands (\$12.2 million) and Italy (\$1.1 million).⁷⁸

Among the programmatic areas into which states donate special purpose funds are drug enforcement efforts, in some cases in areas of the world where such activities entail significant human rights risk. By providing practical assistance to law enforcement in retentionist countries where those arrested could face the death penalty, and taking no safeguards against that outcome (or other human rights risks⁷⁹), both the donor states and the international organisations involved risk being complicit in resulting human rights violations. The fact that the violations in question are not directly perpetrated by the donor states or international organisations themselves, and/or are not the specific intended outcome of the activities, does not absolve these actors from their human rights obligations or their programmes from scrutiny.

For example, the European Commission and the government of Austria jointly funded a UNODC project entitled, 'Strengthening Afghan-Iran Drug Border Control and Cross Border Cooperation' from 2004 to 2008. The project was designed to 'to facilitate the equipping of border control posts along the international border between Afghanistan and Iran.'⁸⁰ Under the project, 'The governments of Iran and Afghanistan... adopted a bilateral agreement for Iran to build 25 border posts within the Afghan territory...[to] enhance the capacity of the Afghan Border Police to reduce the flow of drugs at the Afghanistan/Iran border.'⁸¹ During the lifetime of the project, sixteen Afghan children were arrested by Iranian border authorities, convicted of trafficking drugs across the Afghanistan/Iranian border and sentenced to death by hanging.⁸²

76 UNODC (2010) Note by the Secretariat: Financial situation of the United Nations Office on Drugs and Crime, 3 March, E/CN.7/2010/CRP.7, para. 8

77 All dollar figures represent US dollars.

78 List available at: www.unodc.org/unodc/en/donors/donorlist/index.html?ref=menuaside (last accessed 25 March 2010).

79 Such as torture, arbitrary detention and corporal punishment, all of which and more have been documented in relation to counter-narcotics efforts.

80 UNODC Country Office for Afghanistan (2007) Afghanistan: Counter-narcotics law enforcement update 6, March, p. 1.

81 *ibid.* pp. 1–2.

82 BBC News (4 October 2007) Afghanistan: Paper fears child drug smugglers face hanging in Iran.

'Integrated border control in the Islamic Republic of Iran' was a multi-million dollar project implemented by UNODC and funded by Belgium, Ireland, France and the UK. Running from 2007 to 2010 the project intensified controls along trafficking routes, which included increased security equipment at airports, seaports, railway stations and checkpoints.⁸³ In addition to interventions such as the provision of training, sniffer dogs and equipment, the project established two pilot border liaison offices in Dogharun, along the Iran/Afghanistan border, and Zahedan, capital of the Sistan-Baluchistan province on the Iran/Pakistan border.⁸⁴ Through data compiled and made available by Iran Human Rights and cross-checked against other sources, IHRA identified twenty-four hangings in Zahedan for drug offences between 2007 and 2009.⁸⁵ According to Iran Human Rights, people are often executed where they are caught.⁸⁶

Whether or not these arrests and subsequent death sentences were linked to the border control posts funded through these projects, the examples clearly illustrate the human rights risks inherent in drug enforcement activities in retentionist countries. They also provide clear examples of the inherent risks when individual donor states or international organisations such as the European Commission and UNODC support drug enforcement activities without proper human rights oversight. However, at present, activities funded by European donors via UNODC are implemented without an appropriate assessment of potential human rights risk or a monitoring and evaluation process to identify human rights outcomes (whether positive or negative).

These projects are just two of many identified for this report that are funded by European states and/or the European Commission, and many of which are implemented by UNODC (see Appendix). In all cases, the projects have been implemented without the level of human rights assessment necessary to ensure that the activities themselves do not inadvertently result in executions for drug offences. While in some cases the risk of human rights violations may be theoretical, in others the programmes have resulted in the execution of identifiable individuals for drug offences. The following case studies illustrate how donors and implementing agencies may be complicit in executions in violation of international human rights law.

83 UNODC (2005) Integrated border control in the I.R. of Iran: Project idea, October, AD/IRN/05/I50, copy on file with the authors.

84 UNODC (2009) Semi-annual project progress report, 31 July, IRNI50, copy on file with the authors.

85 Many of these incidents are posted on the website of Iran Human Rights: www.IranHR.net.

86 Communication with author (September 2009).

CASE STUDY 1

Project: Development of cross border law enforcement co-operation in East Asia (AD/RAS/99/D91)

Cost: \$2.8 million

Donor: Japan

Duration: 1999–2007

Project D91's primary objectives included 'to improve cross border cooperation and drug enforcement performance ... and enhance capacity of law enforcement officers at border crossings and/or inland checkpoints to ... detect illicit drugs and suspect consignments of money and precursors concealed in cargo, road vehicles, river craft and foot travellers'.⁸⁷ The project created twenty-four (later expanded to forty-four) border liaison offices (BLOs) located at various high-risk border areas.⁸⁸ The BLOs served as mechanisms for cross-border intelligence-sharing and worked jointly to 'develop a system for operational law enforcement cooperation along and across the borders' of Cambodia, China, Laos, Myanmar, Thailand and Viet Nam.⁸⁹

UNODC's input into the project was substantial. The agency initiated the establishment of the BLOs, funded cross-border workshops and provided transportation, communications and basic office equipment as well as technical assistance.⁹⁰ UNODC has described the BLOs as a 'considerable success'.⁹¹ Drugs have been seized and suspects arrested in each of the target countries following cross-border co-operation between the relevant enforcement agencies through the BLOs. Many of those arrested have been handed back to their own country's authorities to face trial.⁹²

However, no consideration appears to have been given to the fate of those convicted as a result of project activities and no safeguards were put in place to ensure that those arrested and prosecuted as a result of the project would not face the death penalty. Two examples illustrate this. In 2001 Shan Chaungh Mei was arrested for drug trafficking near Muse in Myanmar due to the co-operative efforts of Chinese and Myanmar BLOs and with the support of UNODC (then known as the UN Drug Control Programme, UNDCP). As a national of Myanmar he was tried on drug offences in that country, found guilty and sentenced to death on 21 December 2001.⁹⁵

Tan Xiaolin (also known as Tan Minglin⁹⁴), one of the region's most notorious traffickers, was arrested in Myanmar following the collaboration between UNDCP's regional office and the relevant BLOs.⁹⁵ He was handed over to the Chinese authorities, tried and sentenced to death for drug trafficking on 10 May 2004. He was executed in June of that year to commemorate the UN International Day Against Drug Abuse and Illicit Drug Trafficking.⁹⁶

87 UNODC (n.d.) Development of cross-border law enforcement cooperation in East Asia: www.unodc.org/eastasiaandpacific/en/Projects/2003_12/Drug_Trafficking.html (last accessed 10 June 2010).

88 *ibid.* See also FR Dickens (2005) Terminal evaluation report: RAS/99/D91, p. 2, copy on file with the authors.

89 UNODC (2002) Border liaison offices in operation, UNDCP Regional Office for East Asia and the Pacific, internal doc. 17/2002, p. 2.

90 *ibid.* p. 4.

91 *ibid.* p. 5 (referring to the China/Myanmar BLOs).

92 See UNODC (2003) Phase II BLO study trip report: Project AD/RAS/99/D91, UNODC Regional Office for East Asia and the Pacific, internal doc. 4/2003; Eastern Horizons (March 2002) Myanmar strengthens international cooperation and intensifies apprehension of drug traffickers, p. 17.

93 UNODC (2002) Border liaison offices in operation *op. cit.* p. 6.

94 L Xinzhen (2004) Saying no to drugs, Beijing Review vol. 47, no. 26, 1 July, pp. 20–24.

95 UNODC (2002) Border liaison offices in operation *op. cit.* p. 7.

96 Noting execution in April 2004 of Tan Xiaolin, see KL Chin and SX Zhang (2007) The Chinese Connection: Cross border drug

CASE STUDY 2

Project: Memorandum of Understanding Agreement (China, Myanmar, Viet Nam, Cambodia, Lao PDR, Thailand)

Cost: \$26 million

Donors: United Kingdom, United States, European Commission, Sweden, Canada, Australia, Japan, UNAIDS, MOU members

Duration: 1993–

The Memorandum of Understanding (MOU) is a pact signed by six East Asian countries, all but one of which – Cambodia – retain the death penalty for drug offences. It was initiated in 1993 with the assistance of UNODC (then known as the UN Drug Control Programme, UNDCP) and the original agreement was signed by the then Executive Director of UNDCP. The agreement has since expanded to include HIV prevention, demand reduction, alternative development and judicial co-operation, but the majority of funds (61%) and the focus of the agreement remain on law enforcement.

The major donors of the total \$26 million budget for the various programmes are the United Kingdom (24%), United States (24%), Japan (24%) and Australia (10%). Other donors include the European Commission (3%), Sweden (3%), Canada (2%) and UNAIDS (5%). Most of the donor states and the European Commission are abolitionist. UNODC provides ongoing technical assistance.⁹⁷

This pact is often promoted by UNODC as a model of successful international co-operation against drug trafficking and cultivation. Indeed, UNODC has produced a poster series on the history of the project's development and activities, which was displayed, among other places, at the Vienna International Centre during the UN Commission on Narcotic Drugs High Level Segment in 2009.

While there are many projects that come under the scope of the MOU, a centrepiece of the agreement is the establishment of at least seventy border liaison offices (BLOs) throughout the region. The objective of the BLOs is to 'foster greater cross-border law enforcement cooperation ... on drug traffickers to enable fast and effective interventions by law enforcement officers on the other side of the border'.⁹⁸

According to UNODC, between 1999 and 2005 the BLOs were active in more than 700 cases, 'often accompanied by huge seizures'.⁹⁹ One of the 'larger successes' of the project, as identified by UNODC, was the arrest of Han Yongwan, a major regional drug trafficker, by Lao PDR authorities in September 2005 as part of a joint operation with China, Thailand and Myanmar under the MOU agreement and BLO project. He was subsequently extradited to China, where he was executed on 26 June 2008 to mark the UN's International Day Against Drug Abuse and Illicit Drug Trafficking.¹⁰⁰

trafficking between Myanmar and China. US Department of Justice Doc. 218254 89. Noting execution in April 2004 of Tan Minglin, see China Daily (25 June 2004) Dozens of drug dealers executed.

97 UNODC (n.d.) The M.O.U. Countries of S.E. Asia (poster series) at: www.unodc.org/documents/eastasiaandpacific//2009/03/cnd/MOU_Poster_small.pdf (last accessed 4 June 2010).

98 *ibid.*

99 *ibid.*

100 *ibid.* Xinhua News Agency (19 January 2007) Court hears cross-border heroin trafficking case; Xinhua News Agency (27 June 2008) China executes six drug dealers.

The UNODC poster series promoting the MOU project and displayed at the UN building in Vienna in March 2009 includes a photograph of Han Yongwan, hooded and handcuffed, posed among a group of drug enforcement officials from Lao and Myanmar (see Figure 1).

Cross-border cooperation facilitated by MOU projects also led to arrests of Nyein Kyaw and Kyaw Hlaing in October 2001 in Myanmar.¹⁰¹ Both were subsequently sentenced to death.¹⁰² These incidents followed two similar cases in Myanmar. UNODC's newsletter, Eastern Horizons, reported that Myanmar authorities 'acting closely together with the Australian Federal Police' arrested Twan Sin Htan and Aik Tun in April of 2001 'in connection with more than 350 kg of heroin seized in Fiji'.¹⁰³ By 29 August of that year, both had been sentenced to death.¹⁰⁴

Figure 1: Part of UNODC poster series to promote the MOU project¹⁰⁵

BLO RESULTS (1999-2005)

Because of cooperation among BLOs, more than 700 cases have been registered in the region. These have often been accompanied by large seizures. Here are a few examples of some of the larger successes.

2001
Drug seizures in China
In May 2001, Chinese police at Mengla launched a joint operation with their Lao PDR counterparts. During a 2-month operation, 17 suspects, including 5 Lao PDR nationals and 14.5 kg of morphine was seized by China and Lao PDR police.

An outdoor meeting right on the border line between China and Lao PDR Police Officers, April 2001

2004
ATS haul at Thai-Cambodia border
In 2004, cooperation between Thailand and Cambodia (Aranyaprathet-Poi Pet) led to the seizure of 15,800 tablets of ATS and 2,144 bottles of ketamine.

A Cambodian in military uniform was arrested with 15,800 tablets of ATS at Poi Pet as a result of intelligence exchange between Aranyaprathet-Poi Pet BLOs.

2005
Han Yongwan syndicate busted
In 2005, China, Lao PDR Myanmar and Thailand police jointly broke the "Han Yongwan" transnational drug syndicate with the seizure of more than 400 kg of heroin. By the end of 2006, China, Lao PDR, and Viet Nam had carried out almost 100 joint operations, in the border areas. More than 800 kg of heroin, methamphetamine and various illicit drugs were arrested during the joint operations.

Handover of Han Yongwan from Lao authorities to Myanmar authorities at Vientiane, Lao PDR in September 2005.

UNODC
United Nations Office on Drugs and Crime

Cambodia China Lao PDR Myanmar Thailand Viet Nam

101 Eastern Horizons (March 2002) op. cit., p. 17.

102 New Light of Myanmar (7 January 2003) Cooperations with the world nations in Myanmar's anti-narcotics drive, New Light of Myanmar (8 January 2003) Drug trafficker gets death sentence.

103 Eastern Horizons (March 2002) op. cit. p. 17.

104 New Light of Myanmar (17 September 2001) Drug traffickers get death sentences.

105 UNODC (n.d.) The M.O.U. Countries of S.E. Asia (poster series) op. cit.

5. HUMAN RIGHTS OBLIGATIONS OF DONORS AND INTERNATIONAL ORGANISATIONS

As explored above, executions for drug offences violate international human rights law. In the context of international assistance for drug enforcement, this situation engages the human rights obligations of both the donor countries and the international organisations through which the activities are funded and/or implemented. These obligations are of particular resonance in circumstances where such drug enforcement assistance is operationalised in retentionist states and where proper and effective human rights safeguards are not put in place.

States have legal obligations under the various human rights treaties they have ratified, as well as under customary international law. In the case of European countries, these include obligations under the International Covenant on Civil and Political Rights, which all EU countries have ratified, and Protocol 6 to the European Convention on Human Rights, which commits all Council of Europe member states to abolishing the death penalty.¹⁰⁶

These legal obligations are neither lessened nor negated in the context of drug control activities or when the activities in question are conducted via international organisations rather than directly by the individual states.¹⁰⁷ In the case of European donor states, the European Court of Human Rights emphasised these obligations in a 1999 judgment:

... where States establish international organisations in order to pursue or strengthen their cooperation in certain fields of activities, and where they attribute to these organisations certain competences and accord them immunities, there may be implications as to the protection of fundamental rights. It would be incompatible with the purpose and object of the [European] Convention [on Human Rights], however, if the Contracting States were thereby absolved from their responsibility under the Convention in relation to the field of activity covered by such attribution. It should be recalled that the Convention is intended to guarantee not theoretical or illusory rights, but rights that are practical and effective.¹⁰⁸

As a consequence, according to Professor Andrew Clapham, 'states cannot simply divest themselves of ... human rights obligations when they empower an international organization to take decisions or act on their behalf'.¹⁰⁹ Donor states have a responsibility to ensure that the activities in which they are engaged under the auspices of international organisations are human

¹⁰⁶ Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty as amended by Protocol No. 11, Strasbourg, 28 April 1983.

¹⁰⁷ In this context it is important to note that international organisations such as the UN have legal personality. See, for example, International Court of Justice (11 April 1949) Advisory opinion: Reparations for injuries suffered in the service of the United Nations, ICJ Reports 1949, p. 174; and International Court of Justice (20 December 1980) Advisory opinion: Interpretation of the agreement of 25 March 1951 between the WHO and Egypt, ICJ Reports 1980, p. 73.

¹⁰⁸ Waite and Kennedy v Germany (Application 26083/94), European Court of Human Rights judgment of 18 February 1999, para. 67.

¹⁰⁹ A Clapham (2006) Human Rights Obligations of Non-State Actors. Oxford: Oxford University Press, p. 108.

rights compliant:

International organizations are capable of violating international obligations with regard to human rights; and where these organizations remain unaccountable for such violations, states retain their international obligations to ensure respect for human rights. The acts and omissions of international organizations may then give rise to both international human rights violations by the organization and, in some circumstances, also for the relevant states.¹¹⁰

This has been the position for three decades of the International Law Commission in relation to peremptory norms of international law, including freedom from torture.¹¹¹

However, as explored in the previous section and in the appendices to this report, there are multiple instances in which international donors are supporting drug enforcement projects in death penalty states that operate with little or no human rights oversight. In some cases, specific executions can be traced to these projects.

These obligations are particularly compelling in the case of the European Union. A 2008 resolution of the European Parliament specifically highlights concerns over the potential for European complicity in human rights violations, including the application of the death penalty, as a result of European-funded, UNODC-implemented, drug enforcement activities. The resolution:

Calls on the Council and the Commission to ensure ... that the funding supplied to international agencies such as those of the United Nations to combat illegal drugs is never used either directly or indirectly to support security bodies in countries which commit serious and systematic violations of human rights or apply the death penalty in drug-related cases.¹¹²

It is not only individual states that have human rights obligations, they apply to international organisations such as UNODC as well. The Charter of the United Nations sets out as a task and responsibility for the UN the promotion of universal respect for, and observance of, human rights and fundamental freedoms,¹¹³ and the Universal Declaration for Human Rights calls upon 'every organ of society' to take 'progressive measures, national and international, to secure their universal and effective recognition and observance'.¹¹⁴

110 *ibid.*

111 The ILC stated that 'it is apparent that ... peremptory norms of international law apply to international organizations' and that 'it can hardly be maintained that states can avoid compliance with peremptory norms by creating an organization', ILC (1981) Yearbook of the International Law Commission 1980 vol. II, no. 2, p. 56.

112 European Parliament (2008) European Parliament resolution on the Annual Report on Human Rights in the World 2007 and the European Union's policy on the matter (2007/2274(INI)), 8 May, P6_TA(2008)0193, para. 143, available at: www.unhcr.org/refworld/docid/483aa6952.html (last accessed 31 March 2010). This resolution also called for a document to be prepared that would 'out in a comprehensive and detailed manner the best practices implemented by all European Union Member States on human rights and drug policies'. That document has yet to be released.

113 United Nations Charter, Arts. 1(3), 55 and 56.

114 Universal Declaration of Human Rights, preamble.

As a department of the UN Secretariat, a principal organ of the UN, established under the Charter, it is inconceivable that UNODC is exempt from sharing these responsibilities.¹¹⁵ As noted by one commentator, 'It is self-evident that the [UN] is obliged to pursue and try to realize its own purpose'.¹¹⁶ UNODC's strategy for 2008 to 2011 states that its services in relation to technical assistance and capacity building 'must be consistent with, and indeed contribute to, the wider efforts of the United Nations towards peace, security and development'. Human rights protection and promotion as an aim of the UN is unfortunately omitted, although this would appear to be an inadvertent rather than an intentional oversight as many 'result areas' in the strategy, including HIV/AIDS prevention, prison reform and juvenile justice, are clearly human rights objectives.¹¹⁷ In addition, UNODC's core mandate includes work on the implementation and operationalisation of the United Nations standards and norms in crime prevention and criminal justice. These include the 'Safeguards guaranteeing protection of the rights of those facing the death penalty'

In the specific case of the death penalty for drug offences, UNODC has explicitly and repeatedly in recent years asserted its opposition to the practice. Most recently, in a 2010 report, the UNODC Executive Director stated that 'As an entity of the United Nations system, UNODC advocates the abolition of the death penalty and calls upon Member States to follow international standards concerning prohibition of the death penalty for offences of a drug-related or purely economic nature'.¹¹⁸ It should be noted that this report was a strong statement of commitment to human rights from UNODC and included a detailed section on practical measures to mainstream human rights throughout the organisation.¹¹⁹ It was presented to both of UNODC's governing bodies – the Commission on Narcotic Drugs and the Commission on Crime Prevention and Criminal Justice – indicating a clear and high-level desire within the agency to improve UNODC's human rights capacity and performance. In addition to setting out the policy position of the office on human rights issues as they relate to drug control, crime prevention and criminal justice, the paper also included concrete proposals for the use of human rights impact assessments in project design stages, and for the consideration of relevant human rights legislation and international obligations in UNODC project documents.

The recognition that responsibility for securing human rights goes beyond states to non-state actors, including private corporations and agencies, has given rise to a wide range of initiatives aimed at clarifying and codifying the scope and content of that responsibility.¹²⁰ UNODC itself is one of six core UN agencies comprising an Inter-Agency Team that is part of the governance

115 See D Barrett and M Nowak (2009) *The United Nations and drug policy: Towards a human rights based approach*, in A Constantinides and N Zaikos (eds.) *The Diversity of International Law: Essays in Honour of Professor Kalliopi K. Koufa*. Leiden/Boston, MA: Brill/Martinus Nijhoff, pp. 449–77; 470–72.

116 Z Stavrinides (1999) *Human rights obligations under the United Nations Charter*, *International Journal of Human Rights* vol. 3, no. 3, pp. 38–48; 40.

117 UNODC (2007) *Strategy for the period 2008–2011 for the United Nations Office on Drugs and Crime*, 9 February, UN Doc. E/CN.7/2007/14–E/CN.15/2007/5, p. 3.

118 UNODC (2010) *Drug control, crime prevention and criminal justice: A human rights perspective*. Note by the Executive Director (Commission on Narcotic Drugs, Fifty-third session, Vienna, 8–12 March), UN Doc. E/CN.7/2010/CRP.6*–E/CN.15/2010/CRP.1*.

119 *ibid.* s. IV.

120 See, for example, the work of the UN Special Representative on business and human rights; OECD (2000) *OECD Guidelines for Multinational Enterprises*. Paris: OECD; UN sub-commission norms on business and human rights (26 August 2003) UN Doc. E/CN.4/Sub.2/2003/12/Rev.2.

framework of one such initiative: the 'United Nations Global Compact on Human Rights, Labour, the Environment and Anti-Corruption' (the Global Compact). The Global Compact seeks to encourage private sector companies to embrace and promote human rights, and to avoid complicity with human rights abuses, within their 'spheres of influence'.

The Office of the High Commissioner for Human Rights (OHCHR) briefing paper on understanding spheres of influence and complicity defines those 'relationships with a broader range of actors over whom it has the ability to exert influence with varying degrees with regard to human rights' as falling within a company's sphere of influence.¹²¹ These actors can include joint venture partners, host governments and governmental/intergovernmental policy-making bodies.¹²² Based upon this definition, national governments and law enforcement agencies in receipt of support for drug enforcement activities clearly fall within the sphere of influence of both UNODC and/or the original donors.

Principle 2 of the Global Compact states that 'Businesses should make sure that they are not complicit in human rights abuses.'¹²³ According to the OHCHR briefing paper:

A company is complicit in human rights abuses if it authorises, tolerates, or knowingly ignores human rights abuses committed by an entity associated with it, or if the company knowingly provides practical assistance or encouragement that has a substantial effect on the perpetration of human rights abuses. The participation of the company need not actually cause the abuse. Rather the company's assistance or encouragement has to be to a degree that without such participation, the abuses most probably would not have occurred to the same extent or in the same way.¹²⁴

As detailed above, both UNODC and international donors are involved in numerous activities that are either intended, or have the objective result, of increasing the capacity of retentionist states to detect and seize drug shipments and to arrest and successfully prosecute drug offenders. In countries that maintain the death penalty for drug-related offences, increasing arrests and/or successful prosecutions directly contribute to circumstances where increased executions are a potential, and even a likely, outcome. Such an outcome would place these activities among those described by the OHCHR as ones in which, without that international support, 'the abuses most probably would not have occurred to the same extent or in the same way'. Indeed, given the probability of these activities increasing the number of executions in circumstances that violate international human rights law, the donor states and international organisations involved risk finding themselves in a position where they may be shown to have 'tolerate[d] or knowingly ignore[d] human rights abuses committed by an entity associated with [them]' when they fail to attach clear human rights guidelines and monitoring processes to their activities.

121 OHCHR (2004) *The Global Compact and Human Rights: Understanding the Sphere of Influence and Complicity*. Geneva: OHCHR, p. 9.

122 *ibid.*

123 *ibid.* p. 2.

124 *ibid.* p. 6 (emphasis in original).

The OHCHR briefing paper provides a useful table to assist in assessing the implications of undertaking projects in countries that violate human rights in order to avoid possible complicity in potential abuses (see Table 1). Using this table, it is clear that many activities designed to strengthen drug enforcement mechanisms in death penalty states fall within the category of those that the Office of the High Commissioner recommends be avoided.

Table 1: Assessing the implications of undertaking projects in countries that violate human rights¹²⁵

Deciding to do business in states with poor human rights records²⁵		Government proximity to human rights abuses	
		Actively committing abuses	Possess insufficient resources for addressing abuses
Company proximity to human rights abuses	Activities intersect with abuses	Avoid	Proceed with Caution
	Activities do not intersect with abuses	Proceed with Caution	OK

Private corporations and international organisations are of course different. One is governed by individuals acting through partnership, directorship or as shareholders, whilst international organisations operate subject to mandates provided by member states. The analogy, however, is helpful. Based upon the principles and approach of the Global Compact, the fact that the application of the death penalty is not the intended outcome of these internationally supported programmes does not exclude the donor states or international organisations from responsibility for the human rights impact of their activities. Indeed, if these actors fail to take proactive measures to avoid human rights abuses that come as a result of their activities, they risk being complicit in violations of international human rights law. As explained in the OHCHR briefing paper, 'In most cases, it is the silence or failure to act ... that brings censure rather than ... active involvement in the violations.'¹²⁶

¹²⁵ *ibid.* p. 25 [Note 25 in Table 1 states: 'See also Global Compact Business Guide to Conflict Impact Assessment and Risk Management in Zones of Conflict; Deciding Whether to do Business in States with Bad Governments, The Confederation of Danish Industries, the Danish Centre for Human Rights, The Industrialization Fund for Developing Countries, 2001; and Business and Human Rights – A geography of corporate risk, *ibid.*']

¹²⁶ *ibid.* p. 3.

6. TOWARDS A HUMAN RIGHTS-COMPLIANT APPROACH TO INTERNATIONAL DRUG ENFORCEMENT: RECOMMENDATIONS FOR DONORS AND IMPLEMENTING AGENCIES

The Universal Declaration of Human Rights guarantees for everyone the right to ‘an international order in which the rights and freedoms set forth [in the Declaration] can be fully realized’.¹²⁷ The international drug control system and drug enforcement funding and capacity building have a role to play in this regard. In order to achieve this, donors and international organisations must acknowledge their human rights obligations in the context of international counter-narcotics efforts.

This report is not intended to provide a comprehensive list of all the drug enforcement programmes and activities that raise human concerns. Rather, it seeks to focus attention on an important gap in current international assistance for drug enforcement and highlight the ways in which such activities can contribute to human rights violations when proper oversight and monitoring systems are not in place. Although this report focuses on European donors and UNODC, its concerns and findings are applicable to other donor countries and organisations involved in international aid and technical assistance to drug enforcement activities.

The death penalty for drug offences is a key indicator of the absence of human rights considerations in drug control. The absence of safeguards to limit the application of the death penalty as a result of funding, technical assistance and capacity building is therefore an indicator of major human rights gaps and shortfalls in international and bilateral funding, implementation and evaluation processes. These gaps and shortfalls must be addressed.

Recommended actions for European donor states and the European Commission

The support of European donors, including the European Commission, for projects that have the potential to increase executions risks contradicting the robust abolitionist stance of the EU and of the Council of Europe. The proximity between the activities funded and human rights violations should compel support for rigorous and transparent assessments of counter-narcotics funding and the development of systems to avoid complicity in abuses. In particular:

- » In keeping with Resolution 2007/2274(INI) of the European Parliament, the European Commission should develop guidelines governing international funding for country-level and regional drug enforcement activities to ensure such programmes do not result in human rights violations, including the application of the death penalty.

127 Universal Declaration of Human Rights, Art. 28.

- » The abolition of the death penalty for drug-related offences, or at the very least evidence of an ongoing and committed moratorium on executions, should be made a pre-condition of financial assistance and other support for drug enforcement.
- » European donor states should develop and apply similar human rights guidelines to bilateral funding agreements for drug enforcement.
- » Donors should provide specific funding for the development of human rights capacity within UNODC and for the development of international guidelines on human rights and drug control (see below).

Recommended actions for UNODC

As the UN's lead agency on drugs, UNODC is uniquely placed to advocate for an end to the death penalty for drug offences internationally. Indeed, UNODC's influence both at the international and national levels is invaluable in promoting the abolitionist position of the UN and respect for international human rights law. In recent years UNODC has become increasingly vocal in its opposition to the death penalty, including in high level speeches by the Executive Director. UNODC criminal justice technical support is increasingly focusing on addressing issues surrounding abolition and in a recent example, the Executive Director indicated his concern in March 2010 in writing to a Head of State following a statement that the country intended to reintroduce capital punishment for drug-related offences. This is very welcome. However, a number of steps need to be taken in order to further operationalise these policy statements.

- » The abolition of the death penalty for drug-related offences, or at the very least evidence of an ongoing and committed moratorium on executions, should be made a pre-condition of technical assistance and capacity-building and other support for drug enforcement. Assistance should be offered to develop human-rights-compliant laws to support any drug enforcement assistance.
- » A formal and transparent process for conducting human rights impact assessments¹²⁸ as an element of project design, implementation and evaluation – should be developed and implemented as part of all drug enforcement activities. It should be noted that UNODC has raised the possibility of developing such a tool in its recent report on human rights to the Commission on Narcotic Drugs and the Commission on Crime Prevention and Criminal Justice. This is to be applauded, and must be put into action.¹²⁹

¹²⁸ For more on human rights impact assessment, see Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises: Human rights impact assessments – resolving key methodological questions, UN Doc. A/HRC/4/74, 5 February 2007; International Business Leaders' Forum, Global Compact and International Finance Corporation (June 2007) Guide to human rights impact assessment and management, road testing draft; P Hunt and G MacNaughton (2006) Impact Assessments, Poverty and Human Rights: A Case Study Using the Right to the Highest Attainable Standard of Health. Paris: UNESCO.

¹²⁹ UNODC (2010) Drug control, crime prevention and criminal justice op. cit. para. 59. According to the report: 'UNODC will consider using, where appropriate, the Human Rights Impact Assessment (HRIA) as a predictive tool for assessing the potential human rights impact of a policy or programme, with the aim of informing decision makers and affected persons. By helping to identify the nature and extent of the potential impact, the HRIA facilitates the adjustment of the proposed policy, mitigating the negative and maximizing the positive human rights impacts. HRIA is a combined tool for risk assessment, civil society engagement and decision-making, geared towards ensuring, from the outset, that human rights are at the centre of all policy and programmes. This is a relatively new and developing area and not without its difficulties, but one which could be of significant value for UNODC as a mechanism to mainstream human rights and operationalize human rights commitments and responsibilities. To this end, the HRIA includes a wide range of activities intended to identify and manage human rights risk and to evaluate human rights impact, positive and negative, throughout the life of each project.'

- » UNODC – working in conjunction with the OHCHR, non-governmental organisations, government representatives, international experts and affected communities – should develop guidelines on human rights and drug control for use by international and bilateral donors, implementing agencies and national governments.¹³⁰

¹³⁰ The International Guidelines on HIV/AIDS and Human Rights serve as a useful model. See also Council of Europe (2002) Guidelines on human rights and the fight against terrorism, adopted by the Committee of Ministers on 11 July 2002 at the 804th meeting of the ministers' deputies; A preliminary framework draft of principles and guidelines concerning human rights and terrorism: working paper prepared by Kalitopi Koufa, Special Rapporteur on terrorism and human rights, UN Doc. E/CN.4/Sub.2/2004/40, 11 August 2004.

APPENDIX: CASE STUDIES IN HUMAN RIGHTS RISK

Project: Interdiction and seizure capacity building with special emphasis on ATS and precursors in Vietnam (AD/VIE/03/G55)

Cost: \$736,800

Donor: United States

Duration: 2004–2007

Six Drug Interdiction Task Force Units (ITFUs) were established as the centrepiece of the 2003 UNODC project 'Interdiction and seizure capacity building with special emphasis on ATS and precursors'. In 2006 the ITFUs recorded thousands of arrests and drug seizures, including one shipment of over 40 kilograms of heroin, the fourth largest seizure ever to be made on land in Viet Nam.¹³¹

The immediate objective of the project was 'to strengthen the law enforcement efforts related to trafficking in drugs'. Among the key indicators adopted to measure the project's success or failure was 'a progressive increase in the number of individuals arrested by the Interdiction Task Force Units for trafficking in illicit drugs'.¹³² On this point, the project proved very successful. In Son La province, for example, border police, aided by the ITFUs, recorded increased arrests and seizures during the project's three-year period. In total 2,395 arrests were made and 171,033 kilograms of heroin were seized.¹³³ According to the final evaluation report, 'the seizures of drugs and the arrests for drug offences by the ITFU's have increased progressively under the project against national levels'.¹³⁴

In addition to the ITFUs, the project's objective was accomplished with a study tour to Singapore for high-level officers from the police, border army and customs.¹³⁵ The project's annual progress report states that 'The objectives of the study tour were to increase operational law enforcement and legal cooperation between Singapore and Viet Nam on drug trafficking [and] expose Vietnamese officials to the Singaporean approach in dealing with drug trafficking'.¹³⁶ Singapore's 'approach' to drugs includes the death penalty, as well as caning drug offenders.¹³⁷

131 UNODC (2008) Annual Report 2007. Vienna: UNODC, p. 66.

132 See Terminal Evaluation Report, AD/VIE/03/G55, Interdiction and Seizure Capacity Building with Special Emphasis on ATS and Precursors, October 2006, paras. 54 and 57. The full project document is on file with the authors.

133 *ibid.* Annex 4: Figures on drug seizures.

134 *ibid.* para. 60.

135 *ibid.* and UNODC (2007) Annual project progress report (for period: 01/01/2006 – 31/12/2006), Project: VIEG55, Region: East Asia and the Pacific, copy on file with the authors.

136 UNODC (2007) Annual project progress report *op. cit.*

137 For Singapore's recent defence of its practices, see M Teo (5 June 2010) Singapore's policy keeps drugs at bay, *The Guardian*; and Permanent Mission of Singapore to the United Nations in Geneva (2009) Statement by Singapore during the interactive dialogue at the 10th session of the Human Rights Council on 10 March 2009, in which the Government of Singapore declared, 'we strongly disagree that States should refrain from using the death penalty in relation to drug-related offences' and rejected 'the Special Rapporteur's advocacy of a liberal treatment of drug offenders'. Singapore also argued that corporal punishment was not a violation of international human rights law.

Vietnamese law provides that the death penalty may be imposed on those convicted of possessing, trading or trafficking in 100 grams or more of heroin.¹³⁸ However, Amnesty International reports that in practice most people who are sentenced to death were caught in possession of more than 600 grams of heroin.¹³⁹ Nevertheless, there was no assessment of this risk in the project's approval document and no effort was made to include safeguards to prevent human rights violations. Indeed, they do not appear to have been considered a 'project risk' by UNODC and state ratification of human rights treaties does not appear under 'legal context'.¹⁴⁰

According to the US State Department, which provided funding for the project, during the first six months of 2006 forty-six death sentences were handed down in Viet Nam out of 6,205 convictions for trafficking.¹⁴¹ This ratio of convictions to death sentences is consistent with UNODC's data from previous years. Between 1999 and 2004 UNODC reported that 55,828 people were tried for trafficking in Viet Nam, 357 of whom received death sentences.¹⁴²

Given the consistency with which the death sentence is passed on a percentage of all those convicted of trafficking, it is reasonable to assume that some of the 2,395 people arrested in Son La province under the UNODC interdiction project may have received death sentences. The likelihood that those persons arrested, with the assistance of the ITFUs, in possession of over 40 kilograms of heroin faced the death penalty is very high. Indeed, in September 2007, six defendants were sentenced to death for trafficking only a fraction of that amount during the same time period.¹⁴³

This case is of serious concern due to the fact that Viet Nam is actively carrying out executions for drug offences.¹⁴⁴ IHRA's Global Overview 2010 categorises Viet Nam as a 'high commitment' state due to its executions.¹⁴⁵ In 2004 around half of known death sentences were for drug offences.¹⁴⁶ In one 2004 case reported by Amnesty International, 'Nguyen Thi Ha, 48, was executed at Long Binh execution ground in Ho Chi Minh City on 9 April in front of hundreds of spectators. She had been sentenced to death for smuggling heroin.'¹⁴⁷

In addition to the activities above, consultants from the US Drug Enforcement Administration and the Australian Federal Police provided training in intelligence collection and sharing, methods of concealment and surveillance techniques.¹⁴⁸ These training sessions were conducted despite

138 The Socialist Republic of Viet Nam Penal Code (15/1999/QH10), accessible from: www.unodc.org/enl/browse_countries.jsp#v (last accessed 25 March 2010).

139 Amnesty International (2007) *Death Sentences for Drug-Crimes in the Asia-Pacific*. AI Index: ASA/01/-2/2007.

140 UNODC (n.d.) *Interdiction and seizure capacity building with special emphasis on ATS and precursors*: Project document, copy on file with the authors.

141 Bureau for International Narcotics and Law Enforcement (2007) *International Narcotics Control Strategy Report 2007*. Volume I. Washington, DC: Department of State, p. 334.

142 UNODC Country Office Viet Nam (2005) *Country Profile: Viet Nam*. Hanoi: UNODC, p. 24.

143 Vietnam News Agency (7 September 2007) *Drug traffickers get death penalty*.

144 Between 1999 and 2003 at least 128 people were executed (for a range of offences). *Capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty – Report of the Secretary General*, 9 March 2005, UN Doc. E/2005/3 14.

145 Gallahue and Lines op. cit.

146 Forty-four out of eighty-eight people. See Amnesty International (2005) *Amnesty International Report 2005 – Viet Nam*, London: AI.

147 *ibid.*

148 UNODC (n.d.) *Interdiction and seizure capacity building with special emphasis on ATS and precursors*: Project document, copy on file with the authors.

the fact that several Australian citizens had been sentenced to death on drug trafficking charges in Viet Nam in the preceding two years.¹⁴⁹ At the time, the Australian government was facing domestic criticism over its provision of information to a foreign government that enforced capital punishment.¹⁵⁰

Project: Development of cross border law enforcement co-operation in East Asia (AD/RAS/99/D91)

Cost: \$2.8 million

Donor: Japan

Duration: 1999–2007

See Case Study 1 in Section 4 above.

Project: Memorandum of Understanding Agreement (China, Myanmar, Viet Nam, Cambodia, Lao PDR, Thailand)

Cost: \$26 million

Donors: United Kingdom, United States, European Commission, Sweden, Canada, Australia, Japan, UNAIDS, MOU members

Duration: 1993–

See Case Study 2 in Section 4 above.

Project: Integrated border control in the Islamic Republic of Iran (AD/IRN/05/I50)

Cost: \$2,790,000

Donors: Belgium, France, Ireland, United Kingdom

Duration: 2007–2010

This project intensified controls along trafficking routes, which included increased security equipment and training at airports, seaports, railway stations and checkpoints.¹⁵¹ It developed information-sharing capacities, established two border liaison posts and furnished Iranian authorities with sniffer dogs, body scanners and other equipment. The project dovetailed with several other concurrent programmes launched over the past several years aimed at developing the information-sharing and co-operative-planning abilities of Iran, Pakistan and Afghanistan.¹⁵²

According to the project's 2008 annual report, Iranian police claimed that one single sniffer dog helped seize 450 kilograms of drugs that year.¹⁵³ The report adds that in 'preliminary tests taken in real operations' three dogs detected a combined total of 63 kilograms of opium.¹⁵⁴ An additional

149 These sentences were later commuted.

150 T Hyland (19 February 2006) AFP under fire over Vietnam drug arrest, *Sydney Morning Herald*.

151 UNODC (2005) Integrated border control in the I.R. of Iran: Project idea, October, AD/IRN/05/I50, copy on file with authors.

152 UNODC (April 2008) Green Paper: Afghanistan, Iran and Pakistan border management cooperation in drug control: outline action plan.

153 UNODC (2009) 2008 Annual project progress report, IRN150, copy on file with the authors.

154 *ibid.*

twenty drug-detecting dogs, which were trained in France, were delivered to the Iranian Anti-Narcotics Police in late 2008.¹⁵⁵ As part of this programme, body scanners were also installed at the Khomeini and Kerman international airports to catch 'swallowers'.¹⁵⁶

Furthermore, the project established two pilot border liaison offices in Dogharun, along the Iran/Afghanistan border, and Zahedan, capital of the Sistan-Baluchistan province on the Iran/Pakistan border.¹⁵⁷ Through data compiled and made available by Iran Human Rights and cross-checked against other sources, IHRA identified twenty-four hangings in Zahedan for drug offences between 2007 and 2009.¹⁵⁸ Iran Human Rights reports that people are often executed where they are caught.¹⁵⁹

The integrated border control project is just one programme providing equipment to the Iranian authorities. UNODC documents show that the UK has spent significant sums on increasing Iran's counter-narcotics capacity, including \$189,000 on motorcycles delivered to the provinces of Khorasan, where twenty-five known hangings for drug offences took place between 2007 and 2009; Kerman, where fourteen people were known to have been hanged during the same period; and Sistan-Baluchistan.¹⁶⁰ These were provided along with X-ray body-scanners, night-vision goggles, software programmes and mobile and satellite telephone communication intercepting systems.¹⁶¹

Examples of other drug enforcement projects in death penalty states

- » The **European Commission and Austria** jointly funded the UNODC project 'Strengthening Afghan–Iran drug border control and cross border cooperation', which was designed 'to facilitate the equipping of border control posts along the international border between Afghanistan and Iran'.¹⁶² Under the project, 'The governments of Iran and Afghanistan have adopted a bilateral agreement for Iran to build 25 border posts within the Afghan territory ... [to] enhance the capacity of the Afghan Border Police to reduce the flow of drugs at the Afghanistan/Iran border'.¹⁶³ During the lifetime of this project, sixteen Afghan children were arrested by Iranian border authorities, convicted of trafficking drugs across the Afghanistan/Iran border and sentenced to death by hanging.¹⁶⁴ Whether or not these arrests are linked to the new border control posts funded through this project, this example clearly illustrates the potential human rights abuses inherent in drug enforcement activities in the region.

155 *ibid.*

156 UNODC (2009) Semi-annual project progress report, 31 July, IRNI50, copy on file with the authors.

157 *ibid.*

158 Many of these incidents are posted on the website of Iran Human Rights: www.IranHR.net.

159 Communication with author (September 2009).

160 UNODC Law Enforcement and Technical Assistance Database, copy on file with the authors.

161 *ibid.*

162 UNODC Country Office for Afghanistan (2007) Afghanistan: Counter-narcotics law enforcement update 6, March, p. 1.

163 *ibid.* pp. 1–2.

164 BBC News (4 October 2007) Afghanistan: Paper fears child drug smugglers face hanging in Iran.

- » The government of **Canada** funds the \$3.5 million 'Pakistan border management project' launched in 2007. This project was modelled on the integrated border control project in Iran described above, and is designed to scale up the capability of Pakistan's authorities at selected locations on its western borders.¹⁶⁵ It follows two earlier UNODC-supported programmes (identified as RAS/890 and PAK/99/D86), under which the 'number of arrests increased'.¹⁶⁶ The goals of this project will be achieved by promoting co-operation between law enforcement agencies in Pakistan, Iran and Afghanistan through training and provision of equipment.¹⁶⁷ Law enforcement agencies in Pakistan are scheduled to receive X-ray machines for selected airports, night-vision goggles and communications tools.¹⁶⁸ Vehicles and computer equipment have been supplied and authorities have agreed to develop three border liaison posts at the Iran/Afghanistan, Iran/Pakistan and Pakistan/Afghanistan borders.¹⁶⁹
- » UNODC is helping to establish the Gulf Centre for Criminal Intelligence to serve as a hub for law enforcement agencies from Bahrain, Kuwait, Qatar, Oman, Saudi Arabia and the United Arab Emirates.¹⁷⁰ The project is funded by a \$4 million pledge from Qatar. If successful, the establishment of this information and intelligence hub will lead to more arrests and, as all of these countries maintain the death penalty for drug offences, a very high risk of the increased application of capital punishment.
- » The 'Container control programme' is widely viewed as a success story. It was initiated in 2003 by the Executive Director of UNODC together with the Secretary General of the World Customs Organization to increase security at seaports and prevent illicit drugs from being smuggled in maritime shipping containers. The project established inter-agency port control units, which employ analysts who are trained to identify suspicious containers for additional scrutiny.¹⁷¹ The first pilot countries to be incorporated into the project were Ecuador and Ghana,¹⁷² both of which are abolitionist states.¹⁷³ However, the project has since expanded to include Pakistan, which maintains the death penalty for drug offences. What is perhaps even more alarming is that, according to a 2009 progress report, the **European Commission** has pledged funding for the programme's activities in Iran,¹⁷⁴ which is an enthusiastic executioner of drug offenders.
- » **Sweden** has funded a project entitled 'Strengthening of Judicial and Prosecutorial Drug Control Capacity in East Asia' (1999-2004), with the aim of 'strengthening the judicial and prosecutorial capacity of Cambodia, China, Laos, Myanmar, Thailand and Vietnam to administer national drug control legislation and support sub-regional

165 K Frost (2009) Mid-Term Evaluation Report, Pakistan Border Management Project, 13 February.

166 UNODC, PAKJ61 Project document, 26 July 2007, copy on file with the authors.

167 Frost op. cit.

168 UNODC, PAKJ61 op. cit.

169 UNODC (2008) 2008 Annual progress report, 31 December, PAKJ61, copy on file with the authors.

170 UNODC, QAT/J24 Project document, copy on file with the authors.

171 UNODC-WCO Container Control Programme (June 2009) Progress report, copy on file with the authors.

172 *ibid.*

173 Amnesty International (n.d.) Abolitionist and retentionist countries: www.amnesty.org/en/death-penalty/abolitionist-and-retentionist-countries (last accessed 11 June 2010).

174 UNODC-WCO Container Control Programme op. cit.

cooperation'.¹⁷⁵ In most of these countries, the national drug legislation being administered contains the death penalty for drugs. While this programme may have had respect for human norms built into its course of work, is difficult to demonstrate the impact of this in the short term with respect to capital punishment.¹⁷⁶

- » UNODC has sought to improve the interdiction capabilities of drug law enforcement agencies in Yemen through training for judges and prosecutors and the supply of surveillance and communications equipment to enforcement services.¹⁷⁷
- » The **United Kingdom** has provided over £3.6 million for drug enforcement activities in Iran, mostly through UNODC, since 1998. This includes a 'programme of assistance to Iranian law enforcement authorities to tackle drug traffickers of heroin produced in Afghanistan'.¹⁷⁸ Iran actively executes people in public for drug offences and the UK has stated that it is 'extremely concerned about the use of the death penalty in Iran'.¹⁷⁹

175 Support to drug law enforcement in East Asia and the Pacific (AD/RAS/99/D82). See Office of the General Counsel, Asian Development Bank (April 2004) Law and Policy Reform Bulletin, 2003, no. 64.

176 Amnesty International (26 August 2009) Thailand carries out first executions in six years.

177 UNODC (n.d.) Legal and drug law enforcement assistance to Yemen: www.unodc.org/egypt/en/past_projects.html (last accessed 12 June 2010).

178 UK Foreign & Commonwealth Office (n.d.) Major heroin producing and trafficking countries: <http://tinyurl.com/26nsymz> (last accessed 11 June 2010).

179 UK Foreign & Commonwealth Office (n.d.) FCO country profile: Iran: www.fco.gov.uk/en/travel-and-living-abroad/travel-advice-by-country/country-profile/middle-east-north-africa/iran/?profile=all (last accessed 11 June 2010).



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