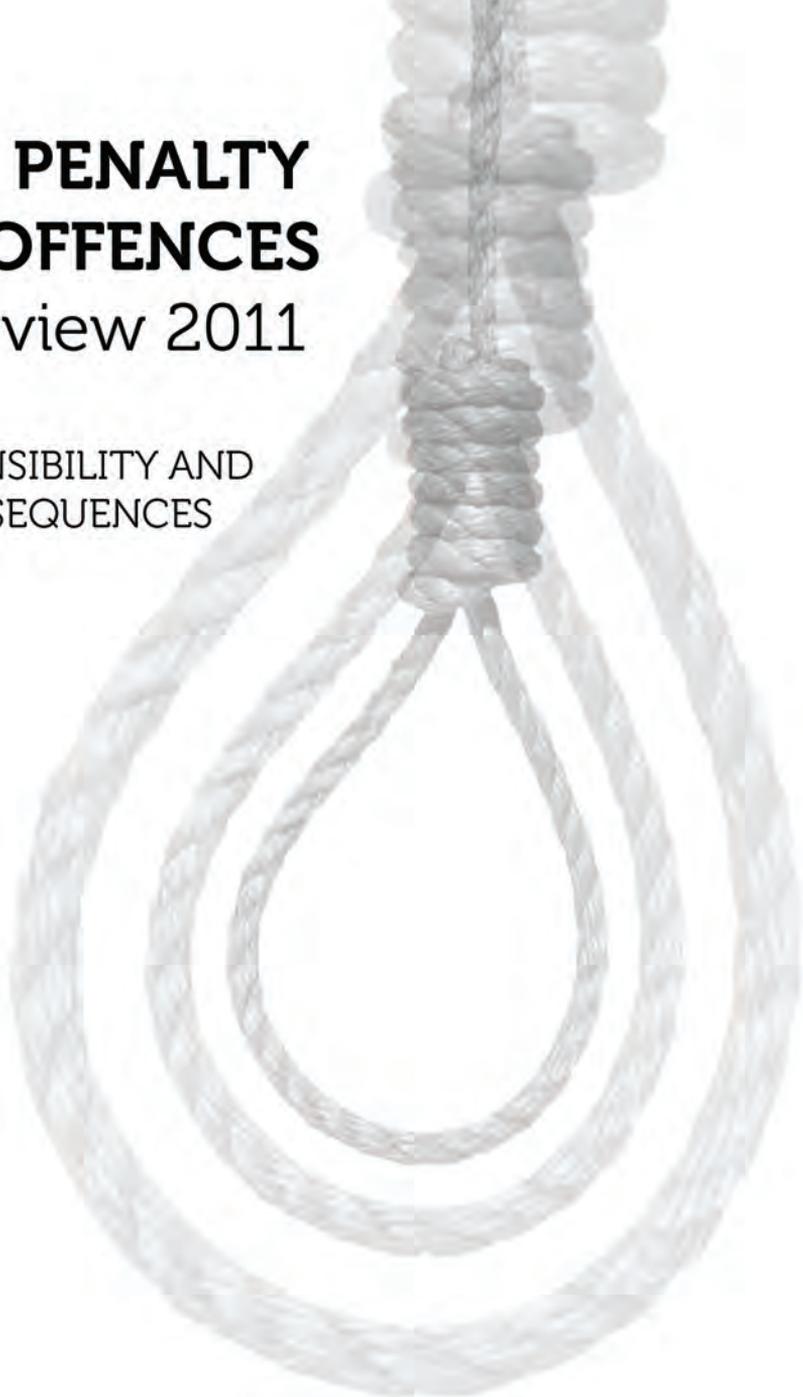


THE DEATH PENALTY FOR DRUG OFFENCES

Global Overview 2011

SHARED RESPONSIBILITY AND
SHARED CONSEQUENCES



HARM REDUCTION
INTERNATIONAL

The Death Penalty for Drug Offences Global Overview 2011

SHARED RESPONSIBILITY AND SHARED CONSEQUENCES

Patrick Gallahue

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About Harm Reduction International

Harm Reduction International is one of the leading international non-governmental organisations promoting policies and practices that reduce the harms from psychoactive substances, harms that 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 drug laws and policies on individuals, communities and society.

Our vision is a world in which individuals and communities benefit from drug laws, policies and practices that promote health, dignity and human rights.

We work to reduce drug-related harms by promoting evidence-based public health policy and practices and human-rights-based approaches to drug policy through an integrated programme of research, analysis, advocacy and collaboration with civil society partners.

About Harm Reduction International's Human Rights Programme

Harm Reduction International's human rights programme aims to promote a human-rights-based approach to international drug policy. We advocate for an international legal and policy environment that is conducive to the expansion of harm reduction policies and services and to the realisation of the human rights of people who use drugs and those who are affected by drug use, drug policies and the drug trade.

Harm Reduction International pursues this objective through an integrated programme of high quality legal and policy research and analysis, and international advocacy in collaboration with key civil society partners.

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1. INTRODUCTION AND EXECUTIVE SUMMARY

The *Global Overview 2011* is the fourth publication on the issue of the death penalty for drug offences that Harm Reduction International has produced since December 2007, and the second annual overview on the status of the practice worldwide. It provides a country-by-country analysis of the death penalty for drugs, and is intended to inform policy-makers of the potential for change as well as to shed some light on the environments in which the international fight against illicit drugs is pursued.

1.1 The death penalty for drugs worldwide

There are currently thirty-two countries or territories in the world that have laws prescribing the death penalty for drug offences, a practice that is in violation of international law.¹

Drug offenders make up the majority of those who are condemned to die and/or are executed in many retentionist countries. Although comprehensive numbers are difficult to obtain, it is certain that hundreds of people are executed every year for a drug-related offence (and that number would likely reach a thousand if those countries that keep their death penalty figures a secret were counted). Despite these disturbing numbers, the vast majority of executions are in practice carried out by a very small number of states and, while there are still too many states executing people for drug offences, these countries represent an extreme fringe of the international community.

Although secrecy remains an obstacle, the *Global Overview 2011* estimates that executions for drugs have taken place in just twelve to fourteen countries over the past five years. In the twelve months prior to this report's publication, it is probable that executions for drugs occurred in fewer than nine countries.² Furthermore, this report estimates that only 5 per cent of nations actually enforce mandatory death sentences for drugs in practice.

The international consensus against carrying out executions for drugs is becoming ever clearer. Many governments that have introduced capital drug laws do not carry out executions, even if some do occasionally pass death sentences. In fact, a handful of retentionist states have never applied the death penalty to a drug offender.

With so few states committed to the practice, capital drug laws would appear to be superfluous to most governments. However, like the death penalty generally, it is difficult to make sweeping assumptions about these sanctions because of their contextual significance and the swiftness with which laws and practices can change.

¹ According to Amnesty International, fifty-eight states retain the death penalty [Amnesty International (29 March 2010) *Death Sentences and Executions in 2010*, ACT 50/001/2011, p. 3]. The thirty-two states that prescribe the death penalty for drugs can be somewhat misleading when compared with Amnesty's figure since five are classified as abolitionist *de facto*. Therefore, of Amnesty's fifty-eight states, only twenty-seven prescribe the death penalty for drugs. According to the UN Secretary-General's eighth quinquennial report on capital punishment, 'de facto abolition is the result of government policy and is effected, in a legal sense, through a refusal by the authorities to actually order an execution or by the mechanism of official commutation or pardon' [UN Economic and Social Council (18 December 2009) E/2010/10, p. 14].

² Known executions have taken place in China, Iran and Saudi Arabia. It is probable that executions for drugs have taken place in Viet Nam, Malaysia and North Korea. It is unknown but possible that executions have occurred in Syria, Yemen and Iraq.

While predicting the future of such practices is impossible, it is clear that the past several years have seen the death penalty for drug offences in retreat. This is a welcome reversal to the rise in countries prescribing the death penalty for drugs that occurred over the 1980s and 1990s, even as the death penalty for all crimes was abolished at historically unprecedented rates.

Since 2000, more states have abolished the death penalty for all crimes, and others have revoked capital punishment as a possible sanction for drugs. Within those states that carry out executions in high numbers, there is an active debate on capital drug laws. Another promising recent development has been the accelerating number of challenges to the death penalty internationally, and in some cases to capital drug laws in particular. Such challenges are aided in no small part by the growing consensus that the death penalty for drugs is a violation of international human rights law. Evidence of this consensus is presented in greater detail in two other Harm Reduction International reports: *The Death Penalty for Drug Offences: A Violation of International Human Rights Law* and *The Death Penalty for Drug Offences: Global Overview 2010*. A brief overview of international law sources is included again in this report.

1.2 High application, low application and symbolic application states³

Despite the small number of states actually executing people for drug offences, drugs remain an important element in the capital punishment debate. In showing the variations in state practice, this report intends in part to demonstrate the potential for change.

Although the majority of states do not regularly execute drug offenders, there are still many people killed under these laws each year. The number of annual executions for drug offences is so high because a small handful of countries carry out the practice so aggressively. The vast majority of executions take place in just six states, which are classified in this report as 'high application' states. These jurisdictions have traditionally sentenced large numbers of people to death for drugs, and have carried out such sentences with regularity. The high application states are an extreme fringe in terms of both capital punishment and drug policy.

A second group of states actively apply the death penalty for drugs, but do so only as an exceptional or unusual measure. Drug offenders may be executed every three or four years, but as a trend the application tends to be low. Eight states belong to this 'low application' category.

Five countries that prescribe the death penalty for drug offences are classified as abolitionist de facto (or abolitionist in practice).⁴ Other countries maintain the death penalty for drugs in law, but have

³ These categories were inspired by David T. Johnson and Franklin E. Zimring's 2009 book, *The Next Frontier: National Development, Political Change, and the Death Penalty in Asia*. In this book the authors developed a means of establishing whether execution policies among retentionist nations in Asia are 'operational', 'exceptional', 'nominal' or 'symbolic'. In Harm Reduction International's previous report, *The Death Penalty for Drug Offences: Global Overview 2010*, the term 'commitment' was used to categorise countries in order to demonstrate the potential for abolitionist countries to push reform of capital drug laws. However, due to the risk that such a term could be confused with 'commitment' to criminal justice or rule of law, the term 'application' will be used in this and future reports.

⁴ Amnesty International (29 March 2010) *Death Sentences and Executions in 2009*, ACT 50/001/2010, p. 29. Amnesty International defines abolitionist in practice countries as those that 'have not executed anyone during the past 10 years and are believed to have a policy or established practice of not carrying out executions'.

either never carried out an execution for the crime or have gone many years without doing so, even though a few of these do pass death sentences. In these countries, the death penalty is symbolic of the nation's 'tough' stance against drugs and is applied accordingly. The *Global Overview 2011* identifies fourteen states or areas as belonging to this 'symbolic application' category.

There is also a fourth group of just four countries where there is insufficient data to categorise them accurately.

1.3 Foreign nationals disproportionately sentenced and executed

Careful inspection of capital drug laws reveals deep disparities in how these laws are applied. Very often, non-nationals comprise a majority or even a totality of those sentenced to death and/or executed by a state. In these circumstances, there are major concerns of discriminatory law enforcement practices and sentencing, as well as failures to honour due process norms and provide access to consular assistance. It is for these reasons that, where possible, the number of foreigners sentenced to death and/or executed has been highlighted in this report.

The cases of foreigners on death row tend to 'hit home' when a country finds one of its own citizens sentenced to die for carrying drugs abroad. Even the general public in retentionist countries responds angrily to sympathetic cases of its most vulnerable citizens facing capital punishment abroad after clearly having been exploited by drug trafficking organisations. These incidents highlight how the issue of the death penalty for drugs is a matter of shared concern for both abolitionist and retentionist countries that support international drug control efforts, as well as those that cooperate with countries that enforce the 'ultimate sanction' to combat drugs.

1.4 'Hard' drugs and soft targets

While retentionist states sometimes justify their capital drug laws as a means of guarding the nation from the potential effects of so-called 'hard' drugs, a cursory audit of death sentences shows that marijuana traffickers make up a large number or even a majority of those sentenced to die in some countries. Moreover, many of those executed and sentenced to die are far from major players in the illicit drug trade.

It is all too often people who are poor, desperate and vulnerable, and who have been exploited by trafficking gangs, who are sentenced to death. This situation was recently acknowledged by a government official in Singapore, who claimed that the execution of such people is necessary to send a message to their employers.⁵ Responding to a question about leniency for a young offender who had been sentenced to death for a crime he was accused of committing at just nineteen years of age, the Law Minister reportedly said, 'If [the Appellant] escapes the death penalty, drug barons

5 Yong Vui Kong v. Attorney-General, summary of the judgment of Chan Sek Keong CJ, 4 April 2011, Civil Appeal No. 144 of 2010. For further discussion of the case and the court's decision, see Y. McDermott (2010) Yong Vui Kong v. Public Prosecutor and the mandatory death penalty for drug offences in Singapore: a dead end for constitutional challenge?, 1 *International Journal on Human Rights and Drug Policy* 35.

will think the signal is that young and vulnerable traffickers will be spared and can be used as drug mules.⁶

Capital punishment policies, as well as draconian drug laws, are built on pillars of simplified generalisations. They rely on characterisations of people as 'evil',⁷ as well as the enforcement of judicially sanctioned death as the state's sovereign right to defend the citizenry from lethal threats. Increasingly, lawyers, policy-makers and scholars are highlighting these fallacies with an array of legal challenges, legislative reforms and insightful studies. It is hoped that this report will contribute to this discussion, and demonstrate the role of drug laws in the wider political debate on capital punishment. It is also hoped that this report will give pause to policy-makers and encourage them to reflect on how international drug control is pursued in certain legal and political environments.

⁶ Ibid.

⁷ For further discussion on this, see R. Lines (2010) Deliver us from evil? – The Single Convention on Narcotic Drugs, 50 years on, 1 *International Journal on Human Rights and Drug Policy* 3.

2. THE DEATH PENALTY FOR DRUG OFFENCES WORLDWIDE

2.1 The death penalty for drug offences in international law

Under international human rights law, as prescribed in the International Covenant on Civil and Political Rights, the use of capital punishment is not absolutely prohibited. Its legal application, however, is restricted significantly. This limitation is found under article 6(2), which states that the death penalty may only be legally applied for what the treaty terms ‘most serious crimes’.⁸

United Nations political bodies further endorsed the ‘most serious crimes’ threshold in a 1984 resolution of the Economic and Social Council of the United Nations (ECOSOC), which upheld nine safeguards on the application of the death penalty, affirming that capital punishment should be used ‘only for the most serious crimes’.⁹ This resolution, which held that such offences were limited to those ‘with lethal or other extremely grave consequences’, was later endorsed by the UN General Assembly.¹⁰

Over recent years, clear guidance has emerged from international human rights bodies and other parties within the UN system that drug crimes alone do not meet the threshold of ‘most serious crimes’ and that, as a consequence, executions solely for drug-related offences are in violation of international law. This position is shared by:

- » UN Human Rights Committee (HRC), the body of independent experts mandated with monitoring the implementation and interpretation of the Covenant on Civil and Political Rights¹¹
- » UN Office on Drugs and Crime (UNODC)¹²
- » UN Special Rapporteur on extrajudicial, summary or arbitrary executions¹³
- » UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment¹⁴
- » UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.¹⁵

This is also the perspective of many UN member states. For example, countries with capital drug

⁸ R. Lines (2010) A ‘most serious crime’ – The death penalty for drug offences and international human rights law, *Amicus Journal* 21.

⁹ ECOSOC (25 May 1984) Implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty, Resolution 1984/50.

¹⁰ UN General Assembly (14 December 1984) Human rights in the administration of justice, Resolution A/RES/39/118.

¹¹ HRC (8 July 2005) Concluding observations: Thailand, CCPR/CO/84/THA, para. 14; HRC (29 August 2007) Concluding observations: Sudan, CCPR/C/SDN/CO/3, para. 19.

¹² 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) E/CN.7/2010/CRP.6*–E/CN.15/2010/CRP.1*.

¹³ UN Commission on Human Rights (24 December 1996) Extrajudicial, summary or arbitrary executions: report by the Special Rapporteur, submitted pursuant to Commission on Human Rights Resolution 1996/74, E/CN.4/1997/60; UN Human Rights Council (29 January 2007) Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, A/HRC/4/20, paras. 51–52; HRC (18 June 2010) Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Addendum : Communications to and from governments, A/HRC/14/24/Add.1, pp. 45–46.

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

¹⁵ UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (6 August 2010) A/65/255, para. 17.

laws are routinely requested by abolitionist governments to restrict the scope of their death penalty laws in order to respect international minimum standards.¹⁶

2.2 The death penalty for drugs and international safeguards

The 'most serious crimes' provision is just one of a number of safeguards guaranteeing protection of the rights of those facing the death penalty that are routinely violated in the context of national drug enforcement. Drug crimes are frequently categorised as special offences requiring exceptional systems of justice. For example, Egypt extended an emergency law in May 2010 that allows drug trafficking suspects to be tried in emergency or military courts.¹⁷ Despite lacking many of the due process protections of civilian courts,¹⁸ these courts can and do pass death sentences.¹⁹

A 2009 Supreme Judicial Council decision in Yemen clarified that a Specialized Criminal Court – where 'trials are generally reported to fall short of international standards of fair trial' – is entrusted with jurisdiction over 'drug dealing and trafficking offences'.²⁰ Similarly, drug cases in Iran are tried in Revolutionary Courts.²¹ The UN Human Rights Committee²² and the UN Working Group on Arbitrary Detention²³ have each called for these tribunals to be abolished because of their failure to provide adequate due process protections. One report estimated that 99 per cent of the cases handled by the Revolutionary Courts involve drugs.²⁴

Concerns over trial standards have been raised in numerous countries where the death penalty is imposed for drug offences. Allegations of confessions extracted under coercion or torture have been made against China,²⁵ Thailand,²⁶ Indonesia,²⁷ Saudi Arabia,²⁸ Sudan,²⁹ Egypt³⁰ and others. Significant additional concerns over trial standards have been raised in regards to Syria,³¹ North Korea,³² Iraq,³³ Myanmar³⁴ and Cuba,³⁵ to name just a few.

16 See, for example, UN Human Rights Council (4 March 2009) Eleventh session, Report of the Working Group on the Universal Periodic Review – Saudi Arabia, A/HRC/11/23, paras. 22, 46, 74; UN Human Rights Council (15 March 2010) Fourteenth session, Report of the Working Group on the Universal Periodic Review – Iran, A/HRC/14/12, para. 74; UN Human Rights Council (3 March 2009) Eleventh session, Report of the Working Group on the Universal Periodic Review – China, A/HRC/11/25, paras. 28, 56, 96.

17 *New York Times* (11 May 2010) Egyptian emergency law is extended for 2 years.

18 US Department of State (25 February 2009) *2008 Country Reports on Human Rights Practices – Egypt*.

19 Amnesty International (11 April 2007) *Egypt – Systematic Abuses in the Name of Security*, MDE 12/001/2007, pp. 33–34.

20 Amnesty International (25 August 2010) *Yemen: Cracking Down Under Pressure*, MDE 31/010/2010, p. 18.

21 UK Home Office (28 April 2006) *Country of Origin Information Report – Iran*, p. 23.

22 HRC (3 March 1993) Concluding observations of the Human Rights Committee: Iran (Islamic Republic of), CCPR/C/79/Add.25, paras. 12, 20. It states: 'The Committee also deplors the lack of respect for due process of law, particularly before the Revolutionary courts, where trials *in camera* tend to be the rule and where apparently no real possibility is provided to the accused to prepare a defence. The lack of an independent Bar Association also has an adverse effect on the administration of justice, in the view of the Committee ... Urgent consideration should also be given to the abolition of the Revolutionary courts.'

23 UN Working Group on Arbitrary Detention (27 June 2003) Report. Visit to the Islamic Republic of Iran, E/CN.4/2004/3/Add.2.

24 UK Home Office (28 April 2006) *Country of Origin Information Report – Iran*, p. 23.

25 REDRESS (19 May 2010) *Reparation for Torture: China*; UK Foreign and Commonwealth Office (March 2008) *Human Rights Annual Report 2007 – China*; International Commission of Jurists (11 July 2008) *China – Attacks on Justice 2005*.

26 Amnesty International (28 May 2009) *Amnesty International Report 2009 – Thailand*.

27 UN Human Rights Council (29 May 2009) Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, A/HRC/11/2/Add.1, pp. 172, 174–175.

28 *Ibid.*

29 Amnesty International (29 March 2010) *Death Sentences and Executions in 2009*, ACT 50/001/2010, p. 7.

30 Amnesty International (11 April 2007) *Egypt – Systematic Abuses in the Name of Security*, MDE 12/001/2007, pp. 24–27, available at: www.unhcr.org/refworld/docid/4631c5762.html (last accessed 17 March 2010).

31 Human Rights Watch (27 March 2009) Syria: flawed court resumes prosecutions.

32 Korea Institute for National Unification (July 2009) White Paper on human rights in North Korea 2009, p. 12; UK Home Office (21 July 2009) *Country of Origin Information Report – Democratic People's Republic of Korea*.

33 Radio Free Europe/Radio Liberty (13 March 2009) Amnesty urges Iraq executions halt on legal fears.

34 UK Home Office (4 March 2009) *Country of Origin Information Report – Burma (Union of Myanmar)*, p. 29; UN Human Rights Council (11 March 2009) Report of the Special Rapporteur on the situation of human rights in Myanmar, Paulo Sérgio Pinheiro, A/HRC/10/19.

35 International Commission of Jurists (11 July 2008) *Cuba – Attacks on Justice 2005*.

Under such circumstances, any sentence of death is unlawful. The requirement that procedural safeguards be protected in capital trials is 'without a doubt a norm of customary law (or a general principle of law)'.³⁶ The Human Rights Committee made it clear in 1982 that the due process protections articulated in article 14 of the Covenant are built into article 6, 'including the right to a fair hearing by an independent tribunal, the presumption of innocence, the minimum guarantees for the defence, and the right to review by a higher tribunal. These rights are applicable in addition to the particular right to seek pardon or commutation of the sentence.'³⁷ In addition, Safeguard No. 5 of the General Assembly-endorsed 1984 ECOSOC Resolution states:

Capital punishment may only be carried out pursuant to a final judgement rendered by a competent court after legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the International Covenant on Civil and Political Rights, including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings.³⁸

Harm Reduction International has identified twelve states with laws that prescribe capital punishment as a *mandatory* penalty for certain drug offences. These countries are Brunei-Darussalam,³⁹ Egypt,⁴⁰ Iran,⁴¹ Kuwait,⁴² Lao PDR,⁴³ Malaysia,⁴⁴ Oman,⁴⁵ Singapore,⁴⁶ Sudan,⁴⁷ Syria,⁴⁸ United Arab Emirates⁴⁹ and Yemen.⁵⁰

Mandatory death sentences have been criticised as being 'over-inclusive' and 'unavoidably violat[ing] human rights law'.⁵¹ In 2007, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions wrote, 'In such cases, individualized sentencing by the judiciary is required in order to prevent cruel, inhuman or degrading punishment and the arbitrary deprivation of life.'⁵² Such

36 W. Schabas (2004) *International law and the death penalty: reflecting or promoting change*, in P. Hodgkinson and W. Schabas (eds.) *Capital Punishment: Strategies for Abolition* (2nd edn; Cambridge University Press) p. 53.

37 HRC (30 April 1982) General comment no. 06 (sixteenth session); the right to life (art. 6); W. Schabas (2004) *International law and the death penalty: reflecting or promoting change*, in P. Hodgkinson and W. Schabas (eds.) *Capital Punishment: Strategies for Abolition* (2nd edn; Cambridge University Press) p. 56.

38 ECOSOC (25 May 1984) Implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty, Resolution 1984/50.

39 Misuse of Drugs Act 2001. But it is worth remembering that no one has been executed in this country since 1957. Laws and thresholds are listed at www.narcotics.gov.bn (last accessed 14 March 2011). This law also has a separate set of capital thresholds for possession for the purpose of trafficking.

40 Law No. 122 of 1989, Amending Certain Provisions of Decree-Law No. 182 of 1960 Concerning the Control of Narcotic Drugs and Regulation of Their Utilization and Trade in Them.

41 Anti-Narcotics Drug Law of 25 October 1988, as amended on 1 July 1989.

42 Primary law sources not available. World Coalition Against the Death Penalty (June 2008) *Fighting Against the Death Penalty in the Arab World: Protagonists, Arguments and Prospects*, p. 29; Hands Off Cain (n.d.) Kuwait, available at: www.handsoffcain.info/bancadati/schedastato.php?idcontinente=23&nome=kuwait (last accessed 14 March 2011).

43 Article 146, Criminal Code.

44 Article 39B, Dangerous Drugs Act 1952.

45 Law on the Control of Narcotic Drugs and Psychotropic Substances 2000 imposes the death penalty on certain drug-related crimes if the offender is a recidivist, is a public official tasked with combating drugs, is involved with an international drug smuggling syndicate or uses a minor in the commission of the offence.

46 Misuse of Drugs Act 1973, available at: <http://statutes.agc.gov.sg> (last accessed 14 March 2011).

47 Article 15, Narcotic Drugs and Psychotropic Substances Act 1994.

48 Article 39, Syria's Narcotics Drugs Law of 1993, text accessible from www.unodc.org/en/browse_countries.jsp#s (last accessed 14 March 2011). The law permits mitigating circumstances to be considered – allowing for a prison term and substantial fine instead – unless the suspect is a public official responsible for combating drugs, a minor was used, or the offender was involved with an international smuggling syndicate.

49 Article 48, Federal Law No. 14 of 1995 on the Countermeasures Against Narcotic Drugs and Psychotropic Substances.

50 Law 3 of 1993 on Control of Illicit Trafficking in and Abuse of Narcotics and Psychotropic Substances states: 'The death penalty shall be imposed on: (a) Persons who have exported or imported narcotic substances with the intention of trafficking or distribution prior to having obtained the permit provided for in article 3 of this Law; (b) Persons who have produced, extracted, separated or manufactured narcotic substances with the intention of trafficking, in contravention of the provisions of this Law.'

51 UN Human Rights Council (29 January 2007) Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, A/HRC/4/20, para 4, also see paras. 54–59.

52 *Ibid.*

mandatory sentences have also been criticised by the former UN Commission on Human Rights,⁵³ the UN Human Rights Committee⁵⁴ and the Inter-American Court of Human Rights,⁵⁵ as well as by numerous national courts.⁵⁶

There are concerns regarding presumptions of guilt that are included in some national laws.⁵⁷ For example, Singapore's Misuse of Drugs Act contains provisions stipulating that anyone caught with more than a specified amount of narcotics is presumed to be trafficking.⁵⁸ An additional provision states:

(1) Any person who is proved to have had in his possession or custody or under his control – (a) anything containing a controlled drug; (b) the keys of anything containing a controlled drug; (c) the keys of any place or premises or any part thereof in which a controlled drug is found; or (d) a document of title relating to a controlled drug or any other document intended for the delivery of a controlled drug, shall, until the contrary is proved, be presumed to have had that drug in his possession. [...]

(3) The presumptions provided for in this section shall not be rebutted by proof that the accused never had physical possession of the controlled drug.

(4) Where one of 2 or more persons with the knowledge and consent of the rest has any controlled drug in his possession, it shall be deemed to be in the possession of each and all of them.⁵⁹

There are many fair trial concerns associated with such presumptions of guilt. It has been pointed out on numerous occasions,⁶⁰ including by the office of the Special Rapporteur on extrajudicial, summary or arbitrary executions, that this presumption 'shifts the burden of proof to the accused, does not provide sufficient guarantees for the presumption of innocence and may lead to violations of the right to life when the crime of drug trafficking carries a mandatory death sentence'.⁶¹

2.3 Fringe states and the global trend towards abolition

While there are still too many states that execute people for drug offences, they represent an extreme fringe of the international community.

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

54 HRC (26 March 2002) Kennedy v. Trinidad and Tobago Communication No. 845/1998, CCPR/C/74/D/845/1998, para. 7.3.; HRC (18 October 2000) Thompson v. Saint Vincent and the Grenadines Communication No. 806/1998, CCPR/C/70D/806/1998, para. 8; HRC (1995) Lubuto v. Zambia Communication No. 390/1990.

55 Inter-American Court of Human Rights (21 June 2002) Hilaire, Constantine, Benjamin et al. v. Trinidad and Tobago, Series C No. 94.

56 Privy Council Appeal No. 44 of 2005 (1) Forrester Bowe (Junior) (2) Trono Davis v. The Queen, The Court of Appeal of the Bahamas (8 March 2006) para. 29(3); Attorney General v. Susan Kigula and 417 Others No. 03 of 2006, Uganda: S. Ct (21 January 2009); Amnesty International (22 January 2009) Mandatory death penalty ruled unconstitutional in Uganda; Kafantayeni v. Attorney General, Constitutional Case No. 12 of 2005 [2007] MWHC 1; Bernard Coard and others v. The Attorney General of Grenada UKPC7 (2007).

57 Report of the Special Rapporteur, Mr Bacre Waly Ndiaye, submitted pursuant to Commission on Human Rights Resolution 1996/74, E/CN.4/1997/60/Add.1, para. 438.

58 See, for example, Amnesty International (15 January 2004) *Singapore: The Death Penalty – A Hidden Toll of Executions*, ASA 36/001/2004, p. 13. Clause 17 'Presumption concerning trafficking' states: 'Any person who is proved to have had in his possession more than – (a) 100 grammes of opium; (b) 3 grammes of morphine; (c) 2 grammes of diamorphine; (d) 15 grammes of cannabis; (e) 30 grammes of cannabis mixture; (f) 10 grammes of cannabis resin; (g) 3 grammes of cocaine; (h) 25 grammes of methamphetamine; (ha) 113 grammes of ketamine ... [plus various quantities and combinations of other illicit drugs] ... whether or not contained in any substance, extract, preparation or mixture, shall be presumed to have had that drug in possession for the purpose of trafficking unless it is proved that his possession of that drug was not for that purpose.' Misuse of Drugs Act, available at: <http://statutes.agc.gov.sg> (last accessed 16 May 2011).

59 Misuse of Drugs Act, clause 18, available at: <http://statutes.agc.gov.sg> (last accessed 16 May 2011).

60 Amnesty International (15 January 2004) *Singapore: The Death Penalty – A Hidden Toll of Executions*, ASA 36/001/2004.

61 Report of the Special Rapporteur, Mr Bacre Waly Ndiaye, submitted pursuant to Commission on Human Rights Resolution 1996/74, E/CN.4/1997/60/Add.1, para. 438.

Harm Reduction International estimates that only 5 per cent of the world's nations actually enforce mandatory death sentences for drugs in law and practice. Furthermore, although secrecy remains an obstacle to accurate calculations of executions, Harm Reduction International estimates that executions for drugs have taken place in only twelve to fourteen countries over the past five years. In the year prior to this publication (mid-2010 to mid-2011), it is probable that executions for drugs occurred in fewer than nine countries.⁶² The international consensus against carrying out executions for drugs is becoming ever clearer.

Throughout most of the 1980s and 1990s, the number of countries enacting capital drug laws rose dramatically. In 1979, around ten countries prescribed the death penalty for drugs. By 1985, that number had risen to twenty-two.⁶³ By 2000, it appeared that the number of states that imposed the death penalty for drugs had risen to as high as thirty-six.⁶⁴ What made this rise so lamentable was that it corresponded with the remarkable global trend towards abolition of the death penalty.

In more recent years, many states have started to bring their laws into compliance with international legal norms. In the past decade, for example, the Philippines,⁶⁵ Uzbekistan⁶⁶ and the Kyrgyz Republic⁶⁷ have abolished the death penalty for all offences, including drugs. Tajikistan limited the number of crimes punishable by death in 2004, removing drug offences from that list.⁶⁸ Jordan amended Articles 8 and 9 of Law No. 11 of 1988 on Narcotic Drugs and Psychotropic Substances in 2006, reducing the punishment for certain categories of drug crimes from the death penalty to life imprisonment.⁶⁹

The constitutionality of capital drug laws is a subject of intense debate, and sometimes legal challenge, even in countries where executions are actively carried out.

2.4 Legal and political challenges to the death penalty for drugs

Some government officials and commentators argue that human rights norms such as the abolition of the death penalty for drug offences are the product of Western thinking, and are therefore culturally and politically inappropriate for non-Western governments.⁷⁰ However, the suggestion of some sort of universal concept of 'Asian values' in this regard is not only undermined by the wide diversity of approaches to the death penalty evident among countries in the same regions, but is also

62 Known executions have taken place in China, Iran and Saudi Arabia. It is probable that executions for drugs have taken place in Viet Nam, Malaysia and North Korea. It is unknown but possible that executions have occurred in Syria, Yemen and Iraq.

63 R. Hood and C. Hoyle (2008) *The Death Penalty: A Worldwide Perspective* (Oxford University Press) p. 137.

64 The numbers vary between sources. However, this rise was reported by UN Commission on Crime Prevention and Criminal Justice (29 March 2001) *Capital Punishment and Implementation of the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty*, E/CN.15/2001/10; R. Lines (2007) *The Death Penalty for Drug Offences: A Violation of International Human Rights Law* (Harm Reduction International); R. Hood and C. Hoyle (2008) *The Death Penalty: A Worldwide Perspective* (Oxford University Press) p. 137.

65 D. Johnson and F. Zimring (2009) *The Next Frontier: National Development, Political Change and the Death Penalty in Asia* (Oxford University Press) p. 104.

66 Amnesty International (11 January 2008) Uzbekistan abolishes the death penalty.

67 Council of Europe (17 March 2010) Press Release: Declaration by the High Representative, Catherine Ashton, on behalf of the EU on the parliamentary and presidential approval of the Kyrgyz law on accession to the Second Optional Protocol to the ICCPR on the abolition of the death penalty, Brussels 6970/10 Presse 47, available at: www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/cfsp/113417.pdf (last accessed 6 April 2010); Institute for War and Peace Reporting (13 November 2009) *Return to Death Penalty Floated in Kyrgyzstan*, RCA No. 595.

68 Hands Off Cain (1 January 2006) The death penalty was retained for five crimes.

69 Penal Reform International (14 March 2010) communication with author; Amnesty International (4 March 2010) communication with author.

70 See, for example: D. Johnson and F. Zimring (2009) *The Next Frontier: National Development, Political Change and the Death Penalty in Asia* (Oxford University Press) p.

407; Byung-Sun Cho (2004) The death penalty in South Korea and Japan: 'Asian values' and the debate about capital punishment?, in P. Hodgkinson and W. Schabas (eds.) *Capital Punishment: Strategies for Abolition* (2nd edn, Cambridge University Press) pp. 253–274.

undermined by the active and ongoing campaigns to end the death penalty for drugs being driven by human rights activists in those countries.

An unsuccessful challenge to the mandatory death penalty was made in Singapore in 2010 on behalf of a young man convicted of trafficking drugs when he was just nineteen years old.⁷¹ The judgment of the Court of Appeal in Singapore has been criticised as representing 'an unwillingness to engage with international law on a domestic level, and an "eyes shut" approach to the sheer futility of the harshest punishment in deterring potential drug traffickers.'⁷² The decision went so far as to suggest that the court was not compelled to 'decide whether the [mandatory death penalty] is an inhuman punishment'⁷³ since 'the Singapore Constitution does not contain any express prohibition against inhuman punishment'.⁷⁴

There was another unsuccessful case in Indonesia in 2011, which had challenged the domestic capital legislation based on the state's international obligation to respect the right to life as enshrined by the International Covenant on Civil and Political Rights.⁷⁵

The past year also witnessed a successful constitutional challenge to the mandatory death penalty for drugs in India.⁷⁶ In July 2011, the Bombay High Court struck down the mandatory death penalty for drugs, stating that 'the use of wise and beneficent discretion by the Court in a matter of life and death after reckoning the circumstances in which the offence was committed and that of the offender is indispensable; and divesting the Court of the use of such discretion and scrutiny before pronouncing the preordained death sentence cannot but be regarded as harsh, unjust and unfair'.⁷⁷

Several death penalty states have recently debated their capital drug laws in political forums. In 2009, for example, Malaysia wrote that it 'is considering ... proposed amendments to existing anti-drug trafficking legislation to reduce the maximum sentence to life imprisonment'.⁷⁸ Unfortunately, this has not been reflected in practice and the number of death sentences continues to rise in the country. Although stating that it retains the death penalty as a deterrent measure, the government of Lao PDR said in 2010 that it 'would consider revising the Penal Law in the coming years, including with a view to limiting the scope of crimes to which the death penalty would apply'.⁷⁹

71 Yong Vui Kong v. Public Prosecutor, submissions on behalf of the appellant, Criminal Appeal No. 13 of 2008 and Criminal Appeal No. 26 of 2008, para. 1.4(II).

72 Y. McDermott (2010) Yong Vui Kong v. Public Prosecutor and the mandatory death penalty for drug offences in Singapore: a dead end for constitutional challenge? 1 *International Journal on Human Rights and Drug Policy* 35.

73 Yong Vui Kong v. Public Prosecutor (14 May 2010) judgment in the Court of Appeal of the Republic of Singapore, Criminal Appeal No. 13 of 2008 and Criminal Appeal No. 26 of 2008, paras. 61, 73–74. In para. 75, however, the court does state an explicit prohibition on torture. The court says, 'This explicit recognition by the Government that torture is wrong in the local context stands in sharp contrast to the absence of any statement on its part (in the context of our national policy on combating drug trafficking in Singapore) that the MDP is an inhuman punishment. In addition, torture, in so far as it causes harm to the body with criminal intent, is already criminalised under ch XVI of the Singapore Penal Code, which sets out the types of offences affecting the human body.'

74 *Ibid.*

75 ABC News (17 June 2011) Bali Nine ringleader loses final appeal; Australian Associated Press (13 August 2010) Australian death row pair Andrew Chan and Myuran Sukumaran finally admit Bali Nine roles.

76 Indian Harm Reduction Network v. The Union of India, in the High Court of Judicature at Bombay in its criminal jurisdiction under article 226 of the Constitution of India, criminal writ petition no. 1784 of 2010, June 2010.

77 *Ibid.*, para. 57. As of this writing, it was expected that there would be an appeal to this ruling.

78 Report of the Working Group on the Universal Periodic Review – Malaysia (3 June 2009) Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the state under review, A/HRC/11/30/Add.1, p. 5.

79 Report of the Working Group on the Universal Periodic Review – Lao People's Democratic Republic (15 June 2010) A/HRC/15/5, para. 11.

Other countries that have considered removing drug offences from their lists of capital crimes in recent years include China in 2010⁸⁰ and Viet Nam in 2009.⁸¹ Similarly, many countries identified in this report have an evolving approach to the death penalty generally. For example, in 2010 Thailand changed its position on a UN resolution calling for a global moratorium on executions with a view towards abolition, from opposition to abstention.⁸² The resolution calls on retentionist states to ensure their policies meet internationally agreed minimum standards on the safeguards for those facing execution.

2.5 The death penalty for drugs: rhetoric and reality

There are few commonalities among those who are sentenced to death and/or executed for drug offences. Despite the common defence that capital drug laws serve as a deterrent to 'major drug syndicates',⁸³ where information is available it would seem that those apprehended vary widely in the value chain. Some would appear to be major figures in organised criminal networks, while others are little more than low level couriers.

It is reasonable to believe that Wang Jianzhang, executed by China on 18 July 2008, was a principal figure in a drug trafficking organisation. However, it is hard to believe that people like Yong Vui Kong and Jacqueline Quianmo – who were reportedly just nineteen and twenty years of age respectively at the time of their arrests – are anything more than small-time couriers. Yong was sentenced to die in Singapore in 2008⁸⁴ and Quianmo was sentenced to die in Malaysia in 2010.⁸⁵ Their cases demonstrate that low capital thresholds, with mandatory sanctions and presumptions of guilt, create imprecise legal frameworks without the ability to make critical distinctions between defendants. That said, it must be emphasised that whether the convicted person is a major international trafficker or a low level courier, the application of the death penalty for the drug-related offence is equally illegal under international human rights law.

2.6 Drugs and the rhetoric of social harm

Retentionist governments sometimes justify harsh sentences for drugs as a necessary deterrent to social risks linked to drug use – such as addiction, overdose and blood-borne infections usually associated with drugs like heroin, cocaine and amphetamine-type stimulants. Yet the reality is more nuanced. Many of the people sentenced to die are not traders in so-called 'hard' drugs and instead are subject to the death penalty for trafficking in marijuana or hashish.

For example, in Iran and Kuwait, the majority of reported executions were heroin-related, whereas

80 Newspaper interview with Tsinghua University Professor Zhou Guangquan, *Southern Weekend* (26 August 2010) – translation provided by the Dui Hua Foundation's blog, *Dui Hua Human Rights Journal* (1 September 2010).

81 Agence France-Presse (19 June 2009) Vietnam cuts list of death penalty crimes: official.

82 UN General Assembly (11 November 2010) Sixty-fifth General Assembly, GA/SHC/3996.

83 Ministry of Home Affairs (24 June 2007) The Singapore Government's response to Amnesty International's report 'Singapore – The Death Penalty: A Hidden Toll of Executions'.

84 Yong Vui Kong v. Public Prosecutor (14 May 2010) judgment in the Court of Appeal of the Republic of Singapore, Criminal Appeal No. 13 of 2008 and Criminal Appeal No. 26 of 2008.

85 *The Star* (20 November 2010) Three drug traffickers to hang, one escapes the gallows.

in Malaysia, most of those sentenced to death were convicted of offences related to marijuana or hashish. Below is a breakdown of the drugs that people sentenced to die were convicted of carrying in three countries. It must be restated, however, that this is based only on publicly available information and therefore may not represent the most complete picture available.

Table 2.1: Malaysia death sentences by drug, 2008–2010⁸⁶

Marijuana/hashish/hemp	77
Heroin/morphine/opium	27
Amphetamine-type stimulants (ATS)	17
Ketamine	4
Unspecified	4
Cocaine	3
Mixture of heroin and ATS	2
Ecstasy	1

Table 2.2: Saudi Arabia executions by drug, 2007–2010⁸⁷

Heroin/morphine/opium	30
Marijuana/hashish/hemp	14
Cocaine	7
Mixture, heroin and hashish	2
Unspecified	8

Table 2.3: Singapore death sentences by drug: 2010

Heroin/morphine/opium	3
Marijuana/hashish/hemp	1

86 Collected from news reports in Bernama, *The Star*, *Daily Express*, *New Straits Times*, *Malay Mail* and other national and international news services.

87 Collected via the official Saudi Press Agency as well as national and international news services.

3. SHARED RESPONSIBILITY AND SHARED CONSEQUENCES: FOREIGN NATIONALS AND THE DEATH PENALTY FOR DRUG OFFENCES

3.1 Foreign nationals and the death penalty for drug offences

In countries where capital punishment is prescribed, death sentences are often handed down disproportionately to foreign nationals.

Drug trafficking is by nature a transnational crime. It is not unreasonable, therefore, that foreign nationals would comprise a portion, and perhaps even a substantial proportion, of those in the custody of the prosecuting state. However, in some countries capital punishment for drug-related offences appears to be disproportionately applied to non-nationals. A recent Amnesty International report states of the Asia-Pacific Region, 'the continued use of the death penalty for drug-related offences, often against foreign nationals, as well as the lack of adequate legal representation and due process guarantees remained a matter of concern for Amnesty International throughout the region'.⁸⁸

The UN Special Rapporteur on extrajudicial, summary or arbitrary executions wrote of Indonesia in 2009:

While it seems clear that foreigners play a significant role in smuggling drugs into Indonesia, the fact that four out of five prisoners awaiting execution on drugs trafficking charges are foreigners raises certain questions in terms of possible discrimination in relation to both criminal enforcement and sentencing in drug-related cases. It would be important to know if there are four times more foreigners than locals involved in the drug trade, if the police use the same approach in investigating and charging both locals and foreigners, and if the sentences handed down are equally harsh in relation to both foreigners and locals. In addition, foreigners in conflict with the law are particularly vulnerable and require special measures to ensure the fairness of the proceedings against them, including interpretation and consular assistance. These needs are protected by international law, in particular Article 14(3)(a) and (f) of the Covenant and the Vienna Convention on Consular Relations. We are concerned that in some cases these guarantees might not have been respected.⁸⁹

The Special Rapporteur's comment in his 2009 report was directed at the Indonesian government's

⁸⁸ Amnesty International (28 March 2011) *Death Sentences and Executions in 2010*, ACT 50/001/2011, p. 17.

⁸⁹ UN Human Rights Council (29 May 2009) Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, A/HRC/11/2/Add.1, p. 174.

figures that 'of the 57 [people] awaiting execution on drugs trafficking charges 43 are foreigners'.⁹⁰ While, the figures in Indonesia are troubling, the country is hardly alone in populating its death row predominantly with non-nationals. Drug-offending foreign nationals awaiting execution are over-represented in countries around the world.

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- » In Kuwait, fourteen people were hanged for a drug offence between 1998 and 2007. It would appear that none of them were nationals of Kuwait.⁹¹
- » In 2007, of forty people executed in Saudi Arabia for drug-related offences, thirty-six were foreigners, including nationals of Thailand, Nigeria, Pakistan, Iraq, Afghanistan and India. In 2008, when at least twenty-three people were executed for drug-related offences, at least seventeen were non-nationals, including citizens of Syria, Pakistan, India, Nigeria and Iraq.⁹²
- » Of seven people sentenced to die for a drug-related offence in the United Arab Emirates in 2010, six were non-nationals.⁹³
- » In Indonesia, four people have been executed for drugs since 2004: two Nigerians in 2008⁹⁴ and two Thais in 2004.
- » Indonesian citizens have been similarly subjected to harsh penalties abroad. There are reportedly 142 Indonesians facing the death penalty for drugs in Malaysia, seventy of whom actually received a death sentence and three have had their sentences finalised.⁹⁵ Despite Indonesia having a much larger population than Malaysia (approximately 200 million more people), there are reportedly more Indonesians facing the death penalty for drugs in Malaysia than there are people on death row in Indonesia.

Because very few countries provide official statistics on their respective applications of the death penalty, some unavoidable margin for error should be assumed in the figures above. However, every year governments are called on to make interventions on behalf of one or more of their citizens facing the death penalty for drugs.

It is clear that there are hundreds, if not thousands, of non-nationals who are facing or have faced the death penalty (some who may already have been executed) and who come from abolitionist

90 Ibid.

91 Hands Off Cain (21 November 2006) Two Pakistani nationals convicted of drug trafficking; *Shillong Times* (3 May 2006) Indian hanged to death in Kuwait for murder; *Pakistan Tribune* (4 December 2005) 4 expatriate drug smugglers hanged in Kuwait; *Pakistan Tribune* (10 January 2005) 2 Pakistani smugglers to be executed in Kuwait today; *Daily Times* (11 January 2005) Two Pakistanis to be hanged in Kuwait today; *Daily Times* (28 January 2004) Kuwait executes 2 Pakistanis for drugs, murder; *Daily Times* (21 January 2004) Kuwait parades body of hanged Pakistani convict.

92 Copy of names, dates and sources are on file with author.

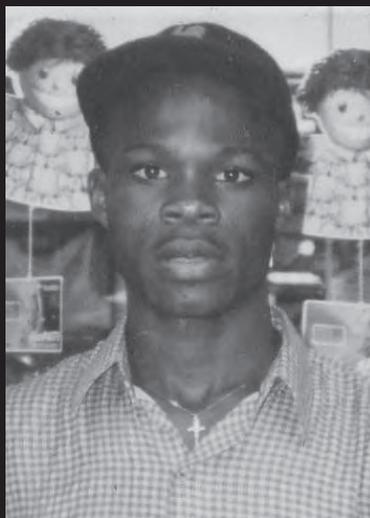
93 Copy of names, dates and sources are on file with author, in addition to (where available) details of the case as well as quantity and type of drugs seized.

94 BBC News (27 June 2008) Nigerians executed in Indonesia; *New York Times* (31 October 2007) Indonesia upholds death in drug cases.

95 *Jakarta Post* (26 August 2010) Indonesians face Malaysia death penalty mostly for drug crimes.

countries or those without capital drug laws. These include citizens of Australia,⁹⁶ France,⁹⁷ Israel,⁹⁸ Liberia,⁹⁹ Mexico,¹⁰⁰ Mongolia,¹⁰¹ The Netherlands,¹⁰² Nepal,¹⁰³ Nigeria,¹⁰⁴ Peru,¹⁰⁵ The Philippines,¹⁰⁶ Sweden,¹⁰⁷ Turkey,¹⁰⁸ United Kingdom,¹⁰⁹ United States,¹¹⁰ Zambia¹¹¹ and many more.

CASE STUDY: IWUCHUKWU AMARA TOCHI¹¹²



Country of execution: Singapore

Executed: 26 January 2007

Age at arrest: 19 years old

Age at execution: 21 years old

Mr Tochi went abroad to pursue a career as a football player after representing his native Nigeria in international tournaments as a child. However, the teenager found himself stranded in transit without sufficient money to get to a team try-out in Dubai. Tochi claimed a man who befriended him offered him \$200 to deliver a package of medicinal herbs to Singapore. When Tochi was arrested at Changi Airport with 727 grams (25.6 ounces) of heroin, he claimed he did not know that the contents of the package were illicit drugs. According to the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, the trial judge seems to have believed that Tochi could have been unaware that he was carrying heroin, stating that 'There was no direct evidence that he knew the capsules contained diamorphine, or that he had found that out on his own' but that 'ignorance did not exculpate him'.¹¹³ Despite pleas from UN human rights monitors and the Nigerian President, Olesegun Obasanjo, Singapore carried out the execution in January 2007. Before he was killed, Tochi reportedly pleaded with his lawyer, 'Please don't allow these people to kill me.'¹¹⁴

96 *Sydney Morning Herald* (12 January 2010) AFP's role in Rush arrest to be spelt out.

97 *The National* (26 January 2011) French man arrested for Emirates drug smuggling attempt.

98 *Jerusalem Post* (26 November 2008) Police framed Israeli facing Thai death penalty.

99 *Hands Off Cain* (5 May 2010) Malaysia: Liberian's death sentence for drug trafficking upheld.

100 *Washington Post* (24 April 2011) 3 Mexican brick makers who sought work in Malaysia now face hanging if convicted in drug trial.

101 *China Daily* (4 November 2008) China sentences Mongolian drug smuggler to death.

102 UN Human Rights Council (29 May 2009) Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, A/HRC/11/2/Add.1.

103 *Kathmandu Post* (26 November 2009) Two Nepalis get death sentence in Malaysia.

104 *China Daily* (3 November 2010) Nigerian sentenced to death for drug dealing.

105 *New Straits Times* (31 January 2009) 2 foreigners to hang for drug trafficking.

106 *Manila Bulletin* (12 December 2010) 70 Pinoy 'drug mules' worldwide on Death Row.

107 *SandAsia* (13 October 2010) Swedish Kim faces the death penalty in Thailand.

108 Amnesty International (06 November 2009) Turkish man at risk of beheading, *Urgent Action*, UA 302/09.

109 *The Telegraph* (23 December 2010) British woman faces death penalty in Malaysia.

110 *Jakarta Post* (5 August 2010) American gets death penalty for trafficking narcotics.

111 *Malaysia Star* (25 June 2010) Zambian to hang for drug trafficking.

112 Information from *Mail & Guardian Online* (31 July 2006) Death penalty: African executions go unnoticed; *Mail & Guardian Online* (26 January 2007) Singapore hangs two African drug smugglers; Associated Press (25 January 2007) Singapore executes 2 Africans for drugs; Amnesty International (21 October 2008) Nigeria: 'waiting for the hangman', AFR 44/020/2008; United Nations (25 January 2007) Press Release: UN rights expert calls on Singapore not to carry out execution, HR/07/9.

113 United Nations (25 January 2007) Press Release: UN rights expert calls on Singapore not to carry out execution, HR/07/9. However the Special Rapporteur added in the same release: 'The appeal court rejected the trial court's suggestion that it was irrelevant whether Mr Tochi had knowledge of what he was carrying. Nevertheless, it upheld his conviction. The appeal court reasoned that under Singapore law such knowledge is presumed until the defendant rebuts that presumption "on a balance of probabilities", concluding that, "It is not sufficient for [a defendant] merely to raise a reasonable doubt."'

114 Singapore Democratic Party (1 February 2007) Tochi was crying right up to his last 5 minutes.

3.2 The death penalty and international cooperation in drug control

Drug control is frequently referred to as a 'shared responsibility'. However, given the fluidity and transnational nature of the resources and intelligence that are shared, it is difficult to ensure that an abolitionist country will not facilitate the execution of another person, or even one of its own citizens.¹¹⁵ Indeed, the startling number of foreigners sentenced to death or executed for drugs demonstrates the human rights risks associated with international cooperation in drug control.

Such concerns have led some countries to publicly question their ability to cooperate in law enforcement actions with states that have capital drug laws without considering the impact on their own citizens.¹¹⁶ Some international donor organisations have responded by developing guidelines or conditions to attach to drug control funding to ensure they are not complicit in resulting human rights abuses.¹¹⁷ For example, the European Parliament passed a resolution in 2010 that called 'on the [European] Commission to 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' and stressed 'that the abolition of the death penalty for drug-related offences should be made a precondition for financial assistance, technical assistance, capacity-building and other support for drug enforcement'.¹¹⁸

The potential human rights risks linked to international drug control efforts were explored in a 2010 report by Harm Reduction International. The report, *Complicity or Abolition: The Death Penalty and International Support for Drug Enforcement*, lists numerous examples of narcotics control projects implemented in retentionist states that have resulted in human rights violations, abuses that are the unintended results of programmes funded and implemented without proper human rights oversight.¹¹⁹

For example, in 1993, the UN Office on Drugs and Crime (then known as the UN Drug Control Programme) initiated a Memorandum of Understanding between six East Asian countries to improve cooperation in drug control. The financing for the projects that this Memorandum facilitated was mostly provided by abolitionist governments.¹²⁰ One major law enforcement component of the project was the establishment of border liaison offices throughout the region.¹²¹ These border liaison offices were active in literally hundreds of major cases and seizures. One of the most celebrated 'successes' of this project was the arrest of Han Yongwan by Lao PDR authorities in September 2005,

115 For a greater discussion on this, see: R. Lines, D. Barrett and P. Gallahue (June 2010) *Complicity or Abolition? The Death Penalty and International Support for Drug Enforcement* (Harm Reduction International).

116 *The Australian* (6 August 2010) Death penalty warning for AFP.

117 European Parliament (16 December 2010) Resolution on the 'Annual Report on Human Rights in the World 2009' and the European Union's policy on the matter (2010/2202(INI)), para. 65.

118 *Ibid.* See also European Parliament (8 May 2008) Resolution on the 'Annual Report on Human Rights in the World 2007' and the European Union's policy on the matter (2007/2274(INI)) P6_TA(2008)0193, para. 143.

119 R. Lines, D. Barrett and P. Gallahue (June 2010) *Complicity or Abolition? The Death Penalty and International Support for Drug Enforcement* (Harm Reduction International).

120 The major donors of the \$26 million budget for 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%). While the agreement grew in scope to include HIV prevention, demand reduction, alternative development and judicial cooperation, 61 per cent of the funding went predominantly to law enforcement.

121 UNODC (n.d.) The M.O.U. countries of S.E. Asia (poster series).

as part of a joint operation with China, Thailand and Myanmar.¹²² Han, a major drug trafficker in the region, was eventually 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.¹²³ In this instance, it is possible to link a specific execution to a European-funded and UN-implemented drug enforcement programme. But the case of Han is likely not unique. In 2010, for example, the government of Myanmar, which is abolitionist in practice, made a presentation on the success of the border liaison offices in which it disclosed that it has handed over 128 people to Chinese authorities.¹²⁴

Human rights obligations in international drug control efforts

International organisations and the states that entrust authority to them have certain legal responsibilities.¹²⁵ 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'.¹²⁶ The European Court of Human Rights addressed this question in a 1999 judgment:

[W]here 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.¹²⁷

The principle of state responsibility for aiding or assisting another state in the commission of an internationally wrongful act has been spelled out by the International Law Commission. The UN General Assembly approved the Commission's 'Articles on the Responsibility of States for Internationally Wrongful Acts' in 2001.¹²⁸ Article 16, which reflects a rule of customary international law,¹²⁹ provides that:

A State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if: (a) that State does so with knowledge of the circumstances of the internationally wrongful act; and (b) the act would be internationally wrongful if committed by that State.¹³⁰

122 Ibid.

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

124 UNODC (2010) *Report on a Regional Seminar on Cross Border Cooperation, Law Enforcement Cooperation and Computer Based Training*, p. 43.

125 The division of obligations is a complicated legal question but it is possible to attribute conduct simultaneously to both a member state and an international organisation. See International Law Commission (2 April 2004) Second report on responsibility of international organizations by Mr Georgio Gaja, Special Rapporteur, A/CN.4/541, para. 6.

126 A. Clapham (2006) *Human Rights Obligations of Non-State Actors* (Oxford University Press) p. 108.

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

128 Ibid.

129 Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (4 February 2009) A/HRC/10/3, paras. 53–59.

130 Article 16 UN General Assembly, Responsibility of States for internationally wrongful acts: Resolution adopted by the General Assembly (28 January 2002) A/RES/56/83.

While state complicity is an evolving concept in international law, significant guidance has been developed in recent years, especially with respect to the use of torture in the 'war on terror'. The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has stated:

The Special Rapporteur reminds States that they are responsible where they knowingly engage in, render aid to or assist in the commission of internationally wrongful acts, including violations of human rights. Accordingly, grave human rights violations by States such as torture, enforced disappearances or arbitrary detention should therefore place serious constraints on policies of cooperation by States, including by their intelligence agencies, with States that are known to violate human rights.¹³¹

These ideas received further clarification and elaboration from the UK Parliament's Joint Committee on Human Rights when it investigated its own role in the torture of a terrorism suspect.¹³²

The questions of legal obligations and responsibilities are largely theoretical insofar as the European Union has been a forceful advocate in opposition to capital punishment in all circumstances. Furthermore, the highest levels of the United Nations Office on Drugs and Crime have stated their opposition to capital punishment for drugs and have engaged in steps to ensure this policy is reflected in UNODC programmes.¹³³

Yet when money and collaboration are studied more closely, the risks of complicity in human rights violations become clear. Indeed, in many cases the violations themselves are not theoretical, but can be specifically identified.

The death penalty for drug offences is a stark reminder that, without respect for international standards, there are shared consequences to drug control's 'shared responsibility'.

131 Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (4 February 2009) A/HRC/10/3, para. 53.

132 Human Rights Joint Committee (21 July 2009) Twenty-third report: allegations of UK complicity in torture, para. 35, available at: www.publications.parliament.uk/pa/jt200809/jtselect/jtrights/152/15206.htm.

133 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) E/CN.7/2010/CRP.6*–E/CN.15/2010/CRP.1*.

4. GLOBAL OVERVIEW 2011

This section provides a global overview of the thirty-two states and territories identified as prescribing capital punishment for drug offences in law.

As these data indicate, there remains a great disparity between law and practice. For example, Brunei-Darussalam prescribes a stringent mandatory death penalty, but in practice has not sanctioned a judicial execution in more than fifty years. Other countries impose death sentences in high numbers, yet rarely carry out executions. A small handful both sentence many drug offenders to death and carry out these executions with regularity and in high numbers.

Below is a state-by-state analysis of those countries that have legislation prescribing the death penalty for drug offences, including relevant figures describing how these laws are enforced in practice. The information presented here updates and builds upon the data presented in the *Global Overview 2010*.¹³⁴

Methodology

The *Global Overview 2011* was compiled by examining relevant death penalty laws and state practices, pulling together data and information from a variety of sources.

Some governments make their laws available on official websites or willingly share current legislation when requested. The United Nations Office on Drugs and Crime also maintains an online database of relevant national drug laws on most countries. Unfortunately this information is not always up to date. For this report, every effort has been made to identify the most current legislation. In a few instances, the report relies on credible secondary sources.

With respect to data on death sentences and executions, the margin for error is even greater. In most cases, the figures cited in this report on executions and death sentences cannot be considered comprehensive. Rather, they are broadly illustrative of how capital punishment is carried out for drug-related offences. Where information is incomplete, this report has attempted to identify the gaps. For example, human rights groups have documented numerous executions in Iran that were not reported in the media.

The numbers that have been included are drawn from, and cross-checked against, NGO reports and databases, UN documents, media reports, scholarly books and articles, local death penalty abolitionist groups and, in some cases, the governments themselves. Every effort has been taken to minimise inaccuracies but there is always the potential for error. Harm Reduction International welcomes being alerted to any additional data not included here.

¹³⁴ For more details on the laws or in some cases of the recent histories of the death penalty for drug offences in law and practice, please see P. Gallahue and R. Lines (May 2010) *The Death Penalty for Drug Offences: Global Overview 2010* (Harm Reduction International).

Categories

Harm Reduction International identifies thirty-two countries and territories that prescribe the death penalty for drugs.¹³⁵

According to Amnesty International, fifty-eight countries retain the death penalty. However, this figure excludes countries dubbed 'abolitionist in practice', which are states that 'are believed to have a policy or established practice of not carrying out executions'.¹³⁶ There are five countries included in the *Global Overview 2011* that are abolitionist in practice/de facto abolitionist.

In order to demonstrate the differences between law and practice among states with the death penalty for drug offences, the *Global Overview 2011* categorises countries into high application, low application or symbolic application states.¹³⁷

High application states are those that have made the sentencing of drug offenders to death and/or carrying out executions a regularised part of their criminal justice systems. In some instances, such as in Singapore and Malaysia, the number of executions for drugs has decreased in recent years. However, the number of death sentences pronounced in both countries remains high, and neither government has been sufficiently transparent in their capital punishment policies to prompt a downward shift in categorisation.

Low application is meant to demonstrate those countries where executions for drug offences are an exceptional occurrence. Although drug offenders are executed, in practice such penalties are relatively rare, especially when compared with the small handful of high application countries.

Symbolic application states are those countries that have the death penalty for drugs within their legislation but are abolitionist in practice, or that do not carry out executions for drug-related offences. Some of these countries may occasionally pass death sentences, but there is little or no chance that such a sentence will be carried out.

A fourth category, insufficient data, is used to denote instances where there is simply not enough information to classify the country accurately.

¹³⁵ The figures used in this report include two territories that are not recognised as fully independent 'states' by the United Nations – Gaza OPT and Taiwan – and that therefore fall outside the bounds of the retentionist states typically enumerated by other death penalty monitors. Furthermore, when 'abolitionist de facto' countries are excluded it means that only twenty-seven of the fifty-eight states classified as retentionist by Amnesty International prescribe the death penalty for drugs.

¹³⁶ Amnesty International (29 March 2010) *Death Sentences and Executions in 2009*, ACT 50/001/2010, p. 29. According to the UN Secretary-General's eighth quinquennial report on capital punishment, 'de facto abolition is the result of government policy and is effected, in a legal sense, through a refusal by the authorities to actually order an execution or by the mechanism of official commutation or pardon' [UN Economic and Social Council (18 December 2009) E/2010/10, p. 14].

¹³⁷ As stated at footnote 3, these categories were inspired by Johnson and Zimring's 2009 book, *The Next Frontier: National Development, Political Change, and the Death Penalty in Asia* (Oxford University Press).

4.1 High application states

CHINA

Laws in effect: Article 347 of the Criminal Law of the People's Republic of China¹³⁸

China guards its death penalty figures as a state secret, leading to widely varying estimates of how many people are killed each year. Amnesty International broadly asserts the number to be in 'the thousands'.¹³⁹ The Dui Hua Foundation suggests that approximately 5,000 people were executed in 2009,¹⁴⁰ and states that 'The manufacture, transport, smuggling, or trafficking of illegal drugs account for a significant number of executions reported by Chinese media.'¹⁴¹

Other organisations use different formulas to arrive at rough estimates of death sentences. For example, Hands Off Cain reports that the Supreme People's Court (SPC), which is empowered with final judicial review of all death sentences, handled 13,318 cases of various types and concluded 11,749 cases in 2009.¹⁴² The organisation quotes one scholar who estimated that death penalty cases make up as much as 90 per cent of the court's work.¹⁴³ The report adds, 'Under such circumstances and considering that the SPC dealt with 13,318 cases of various types and concluded 11,749 cases, an approximate but realistic estimate would put the number of death sentences in 2009 at around 10,000.'¹⁴⁴ However, it is impossible to know how many of these, whatever the number, are drug offenders.

For many years, China has used 26 June, the UN International Day Against Drug Abuse and Illicit Trafficking, as an opportunity to stage mass public trials and executions. The Dui Hua Foundation reported that the week leading up to 26 June 2010 'saw at least fifty-nine individuals put to death in China, and twenty in one day (Friday, June 25)'.¹⁴⁵

Nevertheless, there is potential for reform. China reduced the number of capital crimes in 2010 and, although the list was limited to offences such as 'tax dodging, fiddling receipts and smuggling endangered animals', it appears the state also considered dropping the death penalty for drugs.¹⁴⁶ That proposal was not adopted.

138 See: www.cecc.gov/pages/newLaws/criminalLawENG.php (last accessed 1 April 2010).

139 Amnesty International (29 March 2010) *Death Sentences and Executions in 2009*, ACT 50/001/2010; Amnesty International (28 March 2011) *Death Sentences and Executions in 2010*, ACT 50/001/2011.

140 Dui Hua Foundation (Fall 2010) *Dialogue: Reducing Death Penalty Crimes in China More Symbol than Substance* 41, pp. 1, 6.

141 *Ibid.*, p. 1.

142 Hands Off Cain (n.d.) *The most important facts of 2009 (and the first six months of 2010)*.

143 *Ibid.*

144 *Ibid.*

145 Dui Hua Foundation (Fall 2010) *Dialogue: Reducing Death Penalty Crimes in China More Symbol than Substance* 41, p. 6.

146 *Southern Weekend* (26 August 2010) Interview with Tsinghua University Professor Zhou Guangquan – translation provided by the Dui Hua Foundation's blog, *Dui Hua Human Rights Journal* (1 September 2010).

IRAN

Laws in effect: Amendment of the Anti-Narcotics Law and Annexation of Other Articles to It

Year	Total Executions	Executions for Drug Offences
2008	At least 317 ¹⁴⁷	At least 96 ¹⁴⁸
2009	At least 346 ¹⁴⁹	At least 172 ¹⁵⁰
2010	More than 650 ¹⁵¹	Approx. 590 ¹⁵²
Mandatory death for drugs:		Yes
Executed for a drug-related offence from 1979 to 2011:		More than 10,000 ¹⁵³

Harm Reduction International identified 156 people who were executed for drug-related offences in 2010, based on media and NGO reports. However, other estimates vary.

Iran Human Rights' 2010 report, for example, reveals numerous incidents of mass executions that were not reported by the state media.¹⁵⁴ These include fifty executions in Vakilabad prison, which took place between February and April 2010, forty-five Afghan citizens executed in April 2010 in northern Khorasan, the mass execution of forty-six people in Vakilabad prison in a single day in July or August and the mass execution of sixty-seven people in the Vakilabad prison on 18 August.¹⁵⁵ According to the report, most of these people were drug offenders.¹⁵⁶ Harm Reduction International has learned that Iranian authorities claim that approximately 90 per cent of executions in 2010 were for drug-related offences.¹⁵⁷ If this is the case, then these incidents represent another 187 people who were executed for drug offences in 2010.

Far from slowing the pace of executions, Iran began 2011 with an execution spree that totalled sixty-seven drug offenders in the month of January alone.¹⁵⁸

Between 2010 and early 2011, Iran not only intensified its application of the death penalty but also expanded its reach. According to media reports, people caught in possession of more than 30

147 Amnesty International (29 March 2010) *Death Sentences and Executions in 2009*, ACT 50/001/2010.

148 Netherlands Ministry of Foreign Affairs, Human Rights Department (n.d.) Overview executions 2008: Iran.

149 Amnesty International (29 March 2010) *Death Sentences and Executions in 2009*, ACT 50/001/2010.

150 Netherlands Ministry of Foreign Affairs, Human Rights Department (n.d.) Overview executions 2009: Iran. This estimate is higher than Iran Human Rights' calculation of 140 in its annual report for 2009. In either case, it represents a sharp increase.

151 UK Foreign and Commonwealth Office (March 2011) *Human Rights and Democracy: The 2010 Foreign & Commonwealth Office Report*, p. 204. There are varying estimates on this. For additional data with individual reports, see Iran Human Rights, *Annual Report of the Death Penalty in Iran in 2010*, available at: <http://iranhr.net/spip.php?article1984> (last accessed 28 February 2011). Amnesty International (28 March 2011) *Death Sentences and Executions in 2010*, ACT 50/001/2011, p. 5, reported more than 252. However, it should be added that according to this report (p. 26), 'Amnesty International received credible reports of more than 300 other executions which were not officially acknowledged, mostly in Vakilabad Prison, Mashhad. Most were of people convicted of alleged drugs offences.' Amnesty International detailed credible reports of many of the same instances as outlined by Iran Human Rights.

152 UK Foreign and Commonwealth Office (March 2011) *Human Rights and Democracy: The 2010 Foreign & Commonwealth Office Report*, p. 204. The proportion of drug offenders is consistent with Harm Reduction International sources that claim the Iranian government has attested that 90 per cent of those executed were drug offenders.

153 US Department of State (1 March 2010) *2010 International Narcotics Control Strategy Report. Volume I (2010 INCSR)*. The bureau attributes these figures to Iranian government sources.

154 Iran Human Rights (23 February 2011) Annual report of the death penalty in Iran in 2010, available at: <http://iranhr.net/spip.php?article1984> (last accessed 28 February 2011).

155 Ibid.

156 Ibid.

157 Unidentified source, communication with author. This claim contrasts with other credible sources. Iran Human Rights estimates that 66 per cent of executions in 2010 were for drug-related offences [Iran Human Rights (23 February 2011) Annual report of the death penalty in Iran in 2010, available at: <http://iranhr.net/spip.php?article1984> (last accessed 28 February 2011)].

158 Amnesty International UK (16 February 2011) Iran: Nobel Laureate Shirin Ebadi and rights groups demand moratorium on executions.

grams of certain types of amphetamine-type stimulants can now be sentenced to death.¹⁵⁹ Some defendants are denied the right to appeal under the Anti-Narcotics Law 'as their convictions and sentences are confirmed by the state Prosecutor-General'.¹⁶⁰

According to one NGO, Stop Child Executions, there were 160 juveniles on death row as of mid-2009 for a range of crimes including drug trafficking.¹⁶¹ The last-known execution of a juvenile offender convicted of a drug-related offence took place in 2007.¹⁶²

SAUDI ARABIA

Laws in effect: Article 37(1), Royal Decree No. 39 of 10 August 2005

Executed for a drugs: 2007-2010:	At least 64 (at least 53 foreigners)
Executed in 2010:	At least 27 ¹⁶³ (1 for drug-related offence)
Mandatory death for drugs:	No

Saudi Arabia introduced its capital drug laws in 1987¹⁶⁴ and subsequently became one of the world's most aggressive executioners of drug offenders. The country beheaded at least forty people in 2007, and twenty-four people in 2008, for drug-related crimes.¹⁶⁵ Yet in 2009 and 2010, the kingdom appears to have reduced the number of executions for all crimes, with a particularly dramatic reduction for drug-related offences. There remain concerns, however, that this development will not last, or that the actual numbers of executions are higher than reported.¹⁶⁶

159 Bernama (26 January 2011) Iran's new law on industrial drugs, published in the *Malay Mail*, available at: <http://mmail.com.my/content/62076-irans-new-law-industrial-drugs> (last accessed 28 February 2011).

160 Amnesty International (28 March 2011) *Death Sentences and Executions in 2010*, ACT 50/001/2011, p. 27.

161 Office of the High Commissioner for Human Rights (30 November 2009) Summary prepared in accordance with paragraph 15(C) of the Annex to Human Rights Council Resolution 5/1, Islamic Republic of Iran, A/HRC/WG.6/7/IRN/3, para. 18. Although UNICEF's submission to the Universal Periodic Review states that the practice of execution of juvenile drug offenders has been stopped, Hands Off Cain's 2009 annual report notes, 'On October 18, 2008, Hossein Zabhi, Deputy State Public Prosecutor, announced that a new Iranian judicial directive, initially issued more than a year before, would ban the execution of juvenile offenders for drug crimes but would keep capital punishment for those convicted of murder. The new directive doesn't apply to the 120 minors currently on death row, according to Zabhi.'

162 Hands Off Cain (24 July 2008) 2008 annual report.

163 Amnesty International (9 February 2011) communication with author.

164 Amnesty International (October 1995) *The Death Penalty: No Solution to Illicit Drugs*, ACT 51/02/95, p. 36.

165 P. Gallahue and R. Lines (May 2010) *The Death Penalty for Drug Offences: Global Overview 2010* (Harm Reduction International) p. 24.

166 Amnesty International (28 March 2011) *Death Sentences and Executions in 2010*, ACT 50/001/2011, pp. 32–33.

VIET NAM

Laws in effect: Article 193 of Viet Nam's Penal Code

Sentenced to death in 2010	At least 34 people ¹⁶⁷	At least 24 people for drug-related offences ¹⁶⁸
Sentenced to death: 2007–2009	At least 201 people ¹⁶⁹	At least 109 people for drug-related offences ¹⁷⁰
Mandatory death for drugs:		No

Viet Nam does not release death penalty figures, thus any numbers cannot be considered definitive. In 2009, Viet Nam's National Assembly removed Article 197 pertaining to 'organizing the illegal use of narcotics' from its list of capital offences.¹⁷¹ However, it kept drug trafficking on the list of capital crimes.

MALAYSIA¹⁷²

Laws in effect: Article 39B of the Dangerous Drugs Act 1952

Year	Total Death Sentences	Death sentences reported for drug offences
2009	At least 68 ¹⁷³	50 (at least 19 foreigners)
2010	At least 114 ¹⁷⁴	63 (at least 20 foreigners)
Executions since 1960 ¹⁷⁵	441	228 people for drug-related offences
Death Row ¹⁷⁶	696 (20 women)	479 people for drug-related offences
Mandatory death for drugs:		Yes

The number of people sentenced to death in Malaysia for drug-related offences as well as other crimes continues to rise at an alarming rate, almost tripling since 2008. As the number of people executed is not made publicly available,¹⁷⁷ it is difficult to know how many of these sentences have been carried out or to confirm reports that Malaysia does not execute people in high numbers.¹⁷⁸

Curiously, despite the rise in the number of people reportedly sentenced to die for drug-related

167 Ibid., p. 5.

168 Amnesty International (17 January 2011) communication with author.

169 Amnesty International (15 April 2008) *Death Sentences and Executions in 2007*, ACT 50/001/2008; Amnesty International (24 March 2009) *Death Sentences and Executions in 2008*, ACT 50/003/2009; Amnesty International (29 March 2010) *Death Sentences and Executions in 2009*, ACT 50/001/2010.

170 Amnesty International (16 December 2009) communication with author.

171 Ibid.

172 There are various calculations for death sentences. In certain contexts, analysts measure only death sentences that have received final judicial review. That has not been done here.

173 Amnesty International (29 March 2010) *Death Sentences and Executions in 2009*, ACT 50/001/2010.

174 Amnesty International (28 March 2011) *Death Sentences and Executions in 2010*, ACT 50/001/2011, p. 5.

175 *Online Citizen* (13 May 2011) NGOs form a coalition against the death penalty in Malaysia, available at: <http://theonlinecitizen.com/2011/05/ngos-form-a-coalition-against-the-death-penalty-in-malaysia/> (last accessed 16 May 2011). This was referred to in a statement by the chairperson of the Malaysian Bar Council's Human Rights Committee, Y.B. Gobind Singh, lawyer and MP for Puchong, and was attributed to the Home Minister.

176 Ibid. See also *The Star* (28 June 2011) Agreed – resolution over moratorium on death penalty.

177 Amnesty International (28 May 2009) *Amnesty International Report 2009 – Malaysia*; Hands Off Cain (n.d.) The most important facts of 2009 (and the first six months of 2010).

178 US Department of State (1 March 2010) *2010 International Narcotics Control Strategy Report. Volume I (2010 INCSR)*.

offences, the government has considered amending its capital drug laws. During the Universal Periodic Review, the government wrote that it 'is considering ... proposed amendments to existing anti-drug trafficking legislation to reduce the maximum sentence to life imprisonment'.¹⁷⁹

SINGAPORE

Laws in effect: Section 33, Misuse of Drugs Act 1973

Year	Total Executions	Executions for Drug Offences
2008 ¹⁸⁰	6	2
2009 ¹⁸¹	5	3
2010 ¹⁸²	0	0
Sentenced to death in 2010	At least 8 ¹⁸³	At least 4 (2 foreigners) for drug related offences ¹⁸⁴
Mandatory death for drugs:		Yes
Executed for drugs from 1999-2003:		110

Singapore has dramatically reduced its application of the death penalty in recent years. However, the government has steadfastly held on to its draconian legislation, which prescribes a mandatory death sentence to anyone caught with an excess of certain thresholds of illegal drugs.

In 2010, the Singapore Court of Appeal rejected a constitutional challenge brought by a young man who was sentenced to die for a crime he was convicted of committing when he was just nineteen years old.¹⁸⁵ The appeal argued that the law prescribing a mandatory death penalty fails to take the individual's circumstances into consideration, resulting in grossly disproportionate sentences and depriving the accused of fundamental due process guarantees,¹⁸⁶ thereby resulting in a punishment that is cruel and inhuman.¹⁸⁷ The court responded that 'the Singapore Constitution does not contain any express prohibition against inhuman punishment'¹⁸⁸ and therefore, the court felt no compulsion to 'decide whether the [mandatory death penalty] is an inhuman punishment'.¹⁸⁹ This appears to be a departure from its own jurisprudence. In previous cases, the court stated, 'It is quite widely accepted that the prohibition against cruel and inhuman treatment or punishment does amount to a rule in customary international law.'¹⁹⁰ Thus, Singapore is an interesting example of a country where the defence of the law has become more extreme while the law's application is mellowing.

179 Report of the Working Group on the Universal Periodic Review – Malaysia (3 June 2009) Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the state under review, A/HRC/11/30/Add.1, p. 5.

180 Singapore Prison Service, *Annual Report 2010*.

181 *Ibid.*

182 *Ibid.*

183 Amnesty International (15 February 2011) communication with author.

184 Three of those were sentenced for heroin and one for marijuana trafficking. IPS News (August 2010) Singapore: drug trafficking death sentence; *Straits Times* (3 September 2010) Drug boss to hang; *The Star* (5 February 2010) Death for two Malaysians caught trafficking drugs in Singapore; Amnesty International (15 February 2011) communication with author.

185 *Yong Vui Kong v. Public Prosecutor* (15 March 2010) respondent's arguments in the Court of Appeal of the Republic of Singapore.

186 *Yong Vui Kong v. Public Prosecutor*, submissions on behalf of the appellant, Criminal Appeal No. 13 of 2008 and Criminal Appeal No. 26 of 2008, para. 1.4(I).

187 *Ibid.*

188 *Yong Vui Kong v. Public Prosecutor* (14 May 2010) judgment in the Court of Appeal of the Republic of Singapore, Criminal Appeal No. 13 of 2008 and Criminal Appeal No. 26 of 2008, paras. 61, 73–74. At para. 75, however, the court does state an explicit prohibition on torture. The court said, 'This explicit recognition by the Government that torture is wrong in the local context stands in sharp contrast to the absence of any statement on its part (in the context of our national policy on combating drug trafficking in Singapore) that the MDP is an inhuman punishment. In addition, torture, in so far as it causes harm to the body with criminal intent, is already criminalised under ch XVI of the Singapore Penal Code, which sets out the types of offences affecting the human body.'

189 *Ibid.*, para. 120.

190 *Nguyen Tuong Van v. Public Prosecutor* [2005] Court of Appeal, 1 SLR 103; [2004] SGCA 47, para. 92. Interestingly, on the subject of customary international law, the court also said (para. 88), 'The common law of Singapore has to be developed by our Judiciary for the common good. We should make it abundantly clear that under the Constitution of our legal system, Parliament as the duly elected Legislature enacts the laws in accordance and consistent with the Constitution of Singapore. If there is any repugnancy between any legislation and the Constitution, the legislation shall be declared by the Judiciary to be invalid to the extent of the repugnancy. Any customary international law rule must be clearly and firmly established before its adoption by the courts. The Judiciary has the responsibility and duty to consider and give effect to any rule necessarily concomitant with the civil and civilised society which every citizen of Singapore must endeavour to preserve and protect.'

4.2 Low application states

INDONESIA

Laws in effect: Chapter XV, Law of the Republic of Indonesia No. 35 of 2009 regarding Narcotics

Year	Total Executions	Executions for Drug Offences
2008	10 ¹⁹¹	2 (both foreigners)
2009	0 ¹⁹²	0
2010	0 ¹⁹³	0
Death Row ¹⁹⁴	Approx. 100	58 (41 foreigners)
Mandatory death for drugs:		No

After rejecting a constitutional challenge to the death penalty in 2007, Indonesia's courts continue to wrestle with the legality of its capital drug laws. In 2010, an appeals court heard arguments that the death sentences imposed on members of the so-called 'Bali Nine' – a group convicted of trafficking drugs from Indonesia – violated their right to life.¹⁹⁵ Renowned human rights scholar Professor William Schabas submitted to the court that drug offences do not meet the standard of 'most serious crimes'.¹⁹⁶ The court, however, rejected this appeal.¹⁹⁷

According to Amnesty International, seven people were sentenced to death in 2010, including three foreigners for drug trafficking.¹⁹⁸

KUWAIT

Last known execution for drugs	2007
Executions for drugs: 1998 - 2007	14 (most, if not all, foreigners)
Mandatory death for drugs:	Yes
Sentenced to death in 2010	At least 3 ¹⁹⁹ At least 2 for drug-related offences (both foreigners) ²⁰⁰

No one has been executed in Kuwait since 2007. During the Universal Periodic Review, Kuwait

191 Amnesty International (24 March 2009) *Death Sentences and Executions in 2008*, ACT 50/003/2009.

192 *Ibid.*, p. 6.

193 Amnesty International (28 March 2011) *Death Sentences and Executions in 2010*, ACT 50/001/2011, p. 5.

194 *Jakarta Globe* (13 December 2010) Indonesian Narcotics Agency stresses need to seize drug assets. Information attributed to the spokesperson for the National Narcotics Agency (BNN); *Jakarta Post* (2 January 2011) Hundreds of Indonesians overseas jailed for drugs; *Antara News* (10 March 2011) 58 drug convict cases ready to be executed. For the sake of comparison with other countries, it should be said there may be variations on how these numbers are counted based on which death sentences have been approved by higher courts.

195 *The Australian* (14 August 2010) Bali Nine pair concede guilt in attempt to avoid execution; *Sydney Morning Herald* (13 August 2010) Bali Nine pair admit guilt in bid to avoid firing squad.

196 Professor William A. Schabas (19 July 2010) Expert opinion on international law and the 'most serious crimes' requirement for implementation of capital punishment: for submission to the Supreme Court of Indonesia in the case of Andrew Chan and Myuran Sukumuran.

197 ABC News (17 June 2011) Bali Nine ringleader loses final appeal.

198 Amnesty International (28 March 2011) *Death Sentences and Executions in 2010*, ACT 50/001/2011, p. 20.

199 *Ibid.*, p. 5.

200 *Arab Times* (17 December 2010) Court upholds death sentence against Bangladeshi drug smuggler; *Hands Off Cain* (4 January 2010) Kuwait: Pakistani carrier to die for drugs.

received several recommendations to abolish the death penalty, impose a moratorium or respect 'minimum standards related to the death penalty, in particular ensuring that the death penalty is only imposed for the most serious offences'.²⁰¹

THAILAND

Laws in effect: Section 66 of the Narcotics Act 1979²⁰²

Year	Total Executions	Executions for Drug Offences
2008	0	0
2009	2	2
2010	0	0
Last known execution for drugs:		2009
Mandatory death for drugs:		No
Executed for drugs: 2001 - 2010		14 ²⁰³
Death Row ²⁰⁴	708 total	339 for drug-related offences (68 women, 271 men)

Thailand retains the death penalty for drugs, although, as of this writing, the government appears to be reflecting on its capital punishment policies. In 2010, Thailand changed its position on the UN vote on the Moratorium on the use of the death penalty from opposition to abstention.²⁰⁵ Death sentences, however, continue to be imposed in high numbers. Fifty-three people were sentenced to death in 2010 and it is believed that about 60 per cent of these were drug offenders, according to human rights campaigners.²⁰⁶

201 UN Human Rights Council (16 June 2010) Report of the Working Group on the Universal Periodic Review – Kuwait, A/HRC/15/15.

202 Narcotics Act, B.E. 2522 (1979), ch. 12, available at: http://en.oncb.go.th/file/information_narcotics.html (last accessed 31 March 2010); International Federation for Human Rights (FIDH) (March 2005) *The Death Penalty in Thailand*, n411i/2, p. 19.

203 Amnesty International (28 May 2002) *Amnesty International Report 2002 – Thailand*, available at: www.unhcr.org/refworld/docid/3cf4bc0f10.html (last accessed 3 March 2010); Amnesty International (28 May 2003) *Amnesty International Report 2003 – Thailand*, available at: www.unhcr.org/refworld/docid/3edeb47e14.html (last accessed 3 March 2010); Agence France-Presse (12 December 2003) Thailand moves to death by injection.

204 (As of mid-2010.) Death Penalty Thailand (16 August 2010) Latest statistics for prisoners condemned to death in Thailand, available at: <http://deathpenaltythailand.blogspot.com> (last accessed 17 August 2011). Information credited to Department of Corrections, Bangkok. Similarly, Amnesty International reported that 'Of the 708 persons under sentence of death in Thailand at the end of 2010, nearly half of them had been convicted of drug-related offences.' Amnesty International (28 March 2011) *Death Sentences and Executions in 2010*, ACT 50/001/2011, p. 11.

205 UN General Assembly (11 November 2010) Sixty-fifth General Assembly, GA/SHC/3996.

206 Union for Civil Liberty (19 February 2011) communication with author.

PAKISTAN

Laws in effect: Section 9 of the Control of Narcotics Substances Act 1997²⁰⁷

Year	Total Executions	Executions for Drug Offences
2008	36 ²⁰⁸	0 ²⁰⁹
2009	0 ²¹⁰	0
2010	0 ²¹¹	0
Last known execution for drugs:		2007 ²¹²
Sentenced to death in 2008	237 total ²¹³	4 for drug-related offences ²¹⁴
Sentenced to death in 2009	276 total ²¹⁵	4 for drug-related offences ²¹⁶
Sentenced to death in 2010	332 total ²¹⁷	1 for drug-related offences ²¹⁸
Mandatory death for drugs:		No

Although the law allows the death penalty to be imposed for drug-related offences, it is not a common sentence compared with other crimes. The Human Rights Commission of Pakistan has tracked sentences and executions in the country. According to its data, no one was executed in 2009 and 2010, although death sentences continue to be imposed, including on drug offenders.

EGYPT

Laws in effect: The Anti-Drug Law, No. 182 for 1960 and its amendment by Law No. 122 for 1989

Sentenced to death in 2010	At least 185 ²¹⁹	At least 9 (7 foreigners) for drug-related offences ²²⁰
Mandatory death for drugs:		Yes

207 Text accessible from www.unodc.org/enl/browse_countries.jsp#p (last accessed 16 March 2011).

208 Human Rights Commission of Pakistan (n.d.) Summary: death penalty (1 January 2008 – 31 December 2008) available at: www.hrcp-web.org/PDF/2008%20-%20Death%20Penalty.pdf (last accessed 26 March 2010); this figure is identical to that in Amnesty International (24 March 2009) *Death Sentences and Executions in 2008*, ACT 50/003/2009, which estimated at least 36 people had been executed in Pakistan in 2008.

209 Human Rights Commission of Pakistan (n.d.) Summary: death penalty (1 January 2008 – 31 December 2008) available at: www.hrcp-web.org/PDF/2008%20-%20Death%20Penalty.pdf (last accessed 26 March 2010).

210 Amnesty International (29 March 2010) *Death Sentences and Executions in 2009*, ACT 50/001/2010, p. 6.

211 *Ibid.*, p. 5.

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

213 HRCP (n.d.) Summary: Death Penalty (1 January 2009 – 30 September 2009), available at: www.hrcp-web.org/PDF/2009%20-%20Death%20Penalty.pdf (last accessed 26 March 2010).

214 *Ibid.*

215 Amnesty International (30 March 2010) *Death Sentences and Executions in 2009*, ACT 50/001/2010, p. 12.

216 HRCP (n.d.) Summary: death penalty (1 January 2009 – 30 September 2009), available at: www.hrcp-web.org/PDF/2009%20-%20Death%20Penalty.pdf (last accessed 26 March 2010).

217 HRCP (6 January 2011) communication with author. (This figure is as of December 2010.) Amnesty International reported 365 for the year. Amnesty International (28 March 2010) *Death Sentences and Executions in 2010*, ACT 50/001/2011, p. 5.

218 HRCP (6 January 2011) communication with author.

219 Amnesty International (28 March 2010) *Death Sentences and Executions in 2010*, ACT 50/001/2011, p. 5.

220 Amnesty International (16 March 2011) communication with author. Four of these were Jordanians sentenced *in absentia*.

Very little information is made publicly available about the death penalty's application in Egypt.²²¹ The numbers presented here cannot be considered complete.

YEMEN

Laws in effect: Articles 33, 34 and 35 of Law 3 of 1993 on Control of Illicit Trafficking in and Abuse of Narcotics and Psychotropic Substances

Sentenced to death in 2010	More than 27 ²²²	At least 12 ²²³ for drug-related offences (at least 6 foreigners)
Mandatory death for drugs:		Yes

Yemen is an aggressive executioner and the numbers presented here cannot be considered comprehensive. Amnesty International reported that at least thirty people were executed in 2009²²⁴ and fifty-three people in 2010.²²⁵ Moreover, the number of people on death row is believed to be in the hundreds.²²⁶

In 2005, the UN Human Rights Committee urged Yemen to 'limit the cases in which the death penalty is imposed' and to 'ensure that it is applied only for the most serious crimes.'²²⁷ Similar recommendations were presented to Yemen during the Universal Periodic Review, which were not accepted by the government.²²⁸ In 2008, lawyer Ahmad Al-Wadei presented a paper in Sana'a that claimed that as many as thirty-three executions had been committed under Yemen's anti-drug law, although a timeline was not stated.²²⁹ It should also be said that there is a chance that Yemen belongs in the high application category.

221 Amnesty International (February 2010) *Egypt: Submission to the UN Universal Periodic Review Seventh Session of the UPR Working Group of the Human Rights Council*.

222 Amnesty International (28 March 2011) *Death Sentences and Executions in 2010*, ACT 50/001/2011, p. 5.

223 Most of these figures were collected through information provided by Hands Off Cain. There is some confusion over whether the more accurate number is 12 or 10 since two Pakistani men, Salim Dawod Abdulrahim and Imam Bakhsh Eyepub Yakoub, were reported to have been sentenced to death in both 2009 and 2010. Thus, there is a chance their sentences were upheld in 2010 when they were originally imposed the year before.

224 Amnesty International (30 March 2010) *Death Sentences and Executions in 2009*, ACT 50/001/2010, p. 6.

225 Amnesty International (28 March 2011) *Death Sentences and Executions in 2010*, ACT 50/001/2011, p. 5.

226 Summary prepared by the Office of the High Commissioner for Human Rights, in accordance with paragraph 15(c) of the Annex to Human Rights Council Resolution 5/1 – Yemen (4–15 May 2009) A/HRC/WG.6/5/YEM/3.

227 Concluding observations of the Human Rights Committee Yemen (9 August 2005) CCPR/CO/84/YEM, para. 15.

228 UN Human Rights Council (5 June 2009) Report of the Working Group on the Universal Periodic Review – Yemen, A/HRC/12/13, para. 94(3).

229 *Yemen Times* (8 December 2009) 315 death penalties legislated by four Yemeni laws, available at: www.yementimes.com/DefaultDET.aspx?i=1236&p=local&a=1 (last accessed 15 March 2011).

SYRIA

Laws in effect: Article 39 of Law No. 2 of 12 April 1993

Last-known death sentence for drugs	2008 (7 people) ²³⁰
Mandatory death for drugs:	Yes

It is very possible that more people have been sentenced to death or executed for drug-related offences since 2008. However, confirmation is difficult due to official secrecy around capital punishment.²³¹ Amnesty International reported more than ten death sentences and seventeen executions in 2010 for all crimes.²³²

TAIWAN²³³

Laws in effect: Articles 4, 6 and 15 of the Drug Control Act²³⁴

Year	Death sentences by the High Court for drug offences ²³⁵
2007	8
2008 ²³⁶	0
2009	2
2010	1
Last known execution for drugs:	2002
Executions for drugs 1987-2002:	13 ²³⁷
Mandatory death for drugs:	No

Taiwan continues to publicly flirt with abolition while carrying out executions.²³⁸ After a moratorium that lasted from 2006 to 2009, the government resumed executing prisoners in 2010 and 2011.²³⁹ In all those cases, the condemned were convicted of violent offences. In 2010, Harm Reduction International placed Taiwan in the 'symbolic' category due to its extended and then-ongoing moratorium. With executions being carried out in 2010 and 2011, as well as death sentences for drugs being passed, Taiwan's behaviour is ever more troubling to abolitionists. It was thus decided to place Taiwan in the higher category in this overview.

²³⁰ Hands Off Cain (1 April 2008) Syria: seven sentenced to death for drug dealing, available at: www.handsoffcain.info/news/index.php?iddocumento=10308425 (last accessed 1 March 2011).

²³¹ Amnesty International (28 May 2010) *Amnesty International Report 2010 – Syria*; Hands Off Cain (n.d.) The most important facts of 2009 (and the first six months of 2010).

²³² Amnesty International (28 March 2011) *Death Sentences and Executions in 2010*, ACT 50/001/2011, p. 5.

²³³ This section was completed with the assistance of the Taiwan Alliance to End the Death Penalty.

²³⁴ International Federation for Human Rights (June 2006) *The Death Penalty in Taiwan: Towards Abolition?*, n 450/2, p. 46.

²³⁵ According to information collected by the Taiwan Alliance to End the Death Penalty, there have been no death sentences for drug offences issued by the Supreme Court since 2002.

²³⁶ During this year, one drug offender was sentenced to death by a district court, according to information collected by the Taiwan Alliance to End the Death Penalty.

²³⁷ D. Johnson and F. Zimring (2009) *The Next Frontier: National Development, Political Change and the Death Penalty in Asia* (Oxford University Press) p. 201.

²³⁸ International Federation for Human Rights (FIDH) and Taiwan Alliance to End the Death Penalty (TAEDP) (14 June 2006) *Abolishing the Death Penalty: Time for Action*.

²³⁹ Amnesty International (4 March 2011) Taiwan: executions of five men condemned.

4.3 Symbolic application states

OMAN

Laws in effect: Article 43, Law on the Control of Narcotic Drugs and Psychotropic Substances 2000²⁴⁰

Last known execution for drugs:	2001
Executions for drugs 2000-2001:	At least 4 ²⁴¹
Mandatory death for drugs:	Yes

QATAR

Laws in effect: Article 34, Law No. 9, 1987, to Control Narcotic Drugs and Dangerous Psychotropic Substances and to Regulate Their Use and Trade therein

Last known execution for any crime:	2003 ²⁴²
Last-known death sentence for drugs:	2008 ²⁴³
Mandatory death for drugs:	No

UNITED ARAB EMIRATES

Laws in effect: Article 48, Federal Law No. 14 of 1995 on the Countermeasures Against Narcotic Drugs and Psychotropic Substances²⁴⁴

Last-known execution for drugs:	Unknown if ever ²⁴⁵	
Mandatory death for drugs:	Yes	
Sentenced to death for drugs in 2010 ²⁴⁶	At least 7 people	6 foreigners

240 Text available from UNODC Country Pages: www.unodc.org/enl/browse_countries.jsp (last accessed 16 March 2011).

241 World Coalition Against the Death Penalty (June 2008) *Fighting Against the Death Penalty in the Arab World: Protagonists, Arguments and Prospects*, p. 30.

242 World Coalition Against the Death Penalty (2nd edn, February 2010) *Fighting Against the Death Penalty in the Arab World: Protagonists, Arguments and Prospects*, p. 32.

243 Hands Off Cain (27 March 2008) Man in drug haul attempt gets death, available at: www.handsoffcain.info/news/index.php?idocumento=10308791 (last accessed 1 March 2011). The man, an Iranian, was sentenced to death *in absentia*.

244 Text available from UNODC Country Pages: www.unodc.org/enl/browse_countries.jsp (last accessed 16 March 2011).

245 UN Human Rights Council (16 September 2008) Summary prepared by the Office of the High Commissioner for Human Rights, in accordance with paragraph 15(c) of the Annex to Human Rights Council Resolution 5/1 – United Arab Emirates, A/HRC/WG.6/3/ARE/3, p. 3.

246 Amnesty noted twenty-eight death sentences for all crimes in UAE, 'mostly for drug trafficking, murder and rape', Amnesty International (28 March 2011) *Death Sentences and Executions in 2010*, ACT 50/001/2011, p. 33.

INDIA

Laws in effect: 1989 Amendment to the Narcotics and Psychotropic Substances Act²⁴⁷

Last-known execution for drugs:			Never ²⁴⁸
Mandatory death for drugs:			No
Death Row	Hundreds ²⁴⁹	2 for drug-related offences ²⁵⁰	

USA

Laws in effect: 18 USC § 3591(b)

Last-known execution for drugs:			Never ²⁵¹
Mandatory death for drugs:			No
Executed in 2010	46 ²⁵²	0 for drugs ²⁵³	
Sentenced to death for drugs in 2010	0 ²⁵⁴		

GAZA

Laws in effect: Egyptian Law 19 (to be enforced as of 2010)²⁵⁵

Last-known execution for drugs:		Never
Sentenced to death for drugs in 2010		0

247 Narcotics and Psychotropic Substances Act; available at India's Narcotics Control Bureau: <http://narcoticsindia.nic.in/NDPSACT.htm> (last accessed 1 March 2011); UNODC Country Pages, available at: www.unodc.org/en/browse_countries.jsp (last accessed 25 March 2010). These thresholds were 10 kg opium; 1 kg morphine; 1 kg heroin, 1 kg codeine; 500 grams cocaine; 20 kg hashish; 500 grams LSD; 1,500 grams methamphetamine.

248 US Department of State (March 2007) *2007 International Narcotics Control Strategy Report*, available at: www.state.gov/p/in/rls/nrcrpt/2007/vol1/html/80859.htm (last accessed 16 April 2010).

249 *Times of India* (29 June 2009) Pak has 7,000 on death row to India's 300. Since this number was reported many more people have been sentenced to death. For example, Amnesty reported that 105 people were sentenced to death in 2010, Amnesty International (28 March 2011) *Death Sentences and Executions in 2010*, ACT 50/001/2011, p. 33. It should also be said that Amnesty warned, 'The authorities failed to make public information detailing the number of executions and people on death row', Amnesty International (28 May 2009) *Amnesty International Report 2009 – India*.

250 Indian Harm Reduction Network v. The Union of India (June 2010) Criminal Writ Petition No. 1784 of 2010.

251 Death Penalty Information Center (18 March 2010) communication with author; Death Penalty Information Center (n.d.) Death penalty for offenses other than murder, available at: www.deathpenaltyinfo.org/death-penalty-offenses-other-murder (last accessed 3 March 2010).

252 Amnesty International (28 March 2011) *Death Sentences and Executions in 2010*, ACT 50/001/2011, p. 5.

253 Death Penalty Information Center (24 March 2011) communication with author.

254 *Ibid.*

255 This is somewhat unclear. Hamas has said repeatedly that it would adopt Egyptian Law – as when Egypt administered the Gaza Strip (1948 to 1967) the territory was subject to Egyptian law – which allows the death penalty for drug offences. See Agence France-Presse (30 November 2009) Hamas approves law to execute drug dealers. This appears to have been done, according to official announcements. See Ynetnews.com (19 September 2010) Hamas: death sentence for drug dealers, available at: www.ynetnews.com/articles/0,7340,L-3956631,00.html (last accessed 5 January 2011).

BANGLADESH

Laws in effect: Narcotics Control Act 1990

Last known execution for any drugs:	Unknown
Mandatory death for drugs:	No
Last-known death sentence for drugs:	2008 ²⁵⁶

BAHRAIN

Laws in effect: Decretal Law No. 10 of 1984 on the Amendment of the First Article of Decretal Law No. 15 of 1983 on the Amendment of Articles 23 and 24 of Decretal Law No. 4 of 1973 on Controlling the Use and Circulation of Narcotic Substances and Preparations²⁵⁷

Last-known execution for drugs		Unknown if ever ²⁵⁸
Mandatory death for drugs:		No
Sentenced to death for drugs in 2010	At least 1 ²⁵⁹	0 for drugs ²⁶⁰
Executed in 2010	At least 1 ²⁶¹	0 for drugs ²⁶²

MYANMAR

Laws in effect: Narcotic Drugs and Psychotropic Substances Law (27 January 1993), The State Law and Order Restoration Council Law No. 1/93²⁶³

Country status:	Abolitionist in practice
Last-known judicial execution:	1989 ²⁶⁴
Mandatory death for drugs:	No

256 *Daily Star* (18 May 2009) Heroin peddler to die.

257 Text available from UNODC Country Pages: www.unodc.org/enl/browse_countries.jsp (last accessed 16 March 2011).

258 Amnesty International (October 1995) *The Death Penalty: No Solution to Illicit Drugs*, ACT 51/02/95, p. 17; Hands Off Cain (14 January 2007) Death penalty stays for drug trafficking in Bahrain, available at: http://english.nessunotocchicaino.it/archivio_news/200701.php?iddocumento=9303738&mover=2 (last accessed 25 March 2010); Inter Press Service (1 April 2010) Rights-Bahrain: it's time to abolish the death penalty – activists, available at: www.ipsnews.net/news.asp?idnews=50879 (last accessed 6 April 2010).

259 Amnesty International (28 March 2011) *Death Sentences and Executions in 2010*, ACT 50/001/2011, p. 5.

260 Hands Off Cain (8 July 2010) Bahrain: Bangladeshi national executed. According to Hands Off Cain's report, that person was executed for murder.

261 Amnesty International (28 March 2011) *Death Sentences and Executions in 2010*, ACT 50/001/2011, p. 5.

262 Hands Off Cain (23 March 2010) Bahrain: death sentence for murder.

263 Text available from UNODC Country Pages: www.unodc.org/enl/browse_countries.jsp (last accessed 16 March 2011).

264 R. Hood and C. Hoyle (2008) *The Death Penalty: A Worldwide Perspective* (Oxford University Press) p. 88.

LAO PEOPLE'S DEMOCRATIC REPUBLIC

Laws in effect: Article 146, Criminal Code

Country status:			Abolitionist in practice
Mandatory death for drugs:			Yes
Sentenced to death in 2010	At least 4 ²⁶⁵	At least 4 for drug-related offences ²⁶⁶	

SOUTH KOREA

Laws in effect: Act on Special Cases concerning the Prevention of Illegal Trafficking in Narcotics, Psychotropic Substances and Hemp as amended on 31 December 1997²⁶⁷

Country status:		Abolitionist in practice
Last-known judicial execution:		1998 ²⁶⁸
Mandatory death for drugs:		No

SRI LANKA

Laws in effect: Poisons, Opium and Dangerous Drugs (Amendment) Act No. 13 of 1984²⁶⁹

Country status:			Abolitionist in practice
Last-known judicial execution:			1976 ²⁷⁰
Mandatory death for drugs:			No
Sentenced to death for drug-related offences since capital drug laws came into effect: ²⁷¹	74 total	13 foreigners	

265 Amnesty International (28 March 2011) *Death Sentences and Executions in 2010*, ACT 50/001/2011, p. 5.

266 Amnesty International (16 December 2009) communication with author.

267 Text available from UNODC Country Pages: www.unodc.org/en/browse_countries.jsp (last accessed 16 March 2011).

268 Amnesty International (28 May 2009) *Amnesty International Report 2009 – South Korea*; Amnesty International (16 February 2009) South Korea must not resume use of the death penalty.

269 Text available at www.police.lk/divisions/pnb_legislation.asp (last accessed 16 March 2011) or accessible from www.unodc.org/en/browse_countries.jsp.

270 D. Johnson and F. Zimring (2009) *The Next Frontier: National Development, Political Change and the Death Penalty in Asia* (Oxford University Press) p. 323 n. 27.

271 *Daily Mirror* (5 April 2010) 229 sentenced to life imprisonment and 74 to death under drug law, available at: <http://print.dailymirror.lk/news/news/7564.html> (last accessed 5 January 2011).

BRUNEI-DARUSSALAM

Laws in effect: Misuse of Drugs Act 2001²⁷²

Country status:	Abolitionist in practice
Last-known judicial execution:	1957 ²⁷³
Mandatory death for drugs:	Yes

CUBA

Laws in effect: 1999 Amendment to the Penal Code, Law No. 87²⁷⁴

Mandatory death for drugs:	No
Last-known judicial execution:	2003
Death Row:	0 ²⁷⁵

4.4 Insufficient data

NORTH KOREA

North Korea increased penalties for drug-related offences in 2006²⁷⁶ and 2008 to include the death penalty.²⁷⁷ The 2008 amendment is said to have made possession of more than 300 grams of narcotic drugs punishable with death.²⁷⁸ In 2007, at least five people are known to have been executed for drug-related offences.²⁷⁹ In 2008, there were reports that four drug smugglers were executed.²⁸⁰ However, these are just instances where reports have trickled out of the country and cannot be considered comprehensive. Amnesty International reported that more than sixty people were executed in 2010,²⁸¹ although the actual number was very likely higher.

272 Brunei Darussalam Narcotics Control Bureau: www.narcotics.gov.bn (last accessed 30 March 2010); text also accessible from www.unodc.org/enl/browse_countries.jsp#b (last accessed 28 March 2010).

273 R. Hood and C. Hoyle (2008) *The Death Penalty: A Worldwide Perspective* (Oxford University Press) p. 88.

274 Sito del Ministerio de Relaciones Exteriores de Cuba (n.d.) Principales normas jurídicas vinculadas a la prevención y el control de drogas, available at: www.cubaminrex.cu/Narcotrafico/Articulos/Enfrentamiento/Marco-legal.html (last accessed 9 April 2010).

275 Cuba commuted the sentence of the last person on death row in late 2010. See BBC (29 December 2010) Cuba commutes sentence of last death row inmate.

276 Hands Off Cain (18 March 2006) North Korea: country issues death penalty decree for drug traffickers, available at: www.handsoffcain.info/archivo_news/200603.php?iddocumento=8310651&mover=0 (last accessed 1 March 2011).

277 *Daily NK* (13 May 2008) North Korea has introduced amendments to its criminal codes to save the regime from falling apart; US Department of State (27 February 2009) 2009 *International Narcotics Control Strategy Report. Volume I* (2009 INCSR).

278 US Department of State (27 February 2009) 2009 *International Narcotics Control Strategy Report. Volume I* (2009 INCSR).

279 Hands Off Cain (24 July 2008) *Annual Report*.

280 *North Korea Today* (October 2008) no. 237; *North Korea Today* (January 2009) no. 261.

281 Amnesty International (28 March 2011) *Death Sentences and Executions in 2010*, ACT 50/001/2011, p. 5.

LIBYA

Libya has reportedly had the death penalty prescribed in law for certain drug and alcohol offences since 1996.²⁸² There have been conflicting reports over the number of people sentenced to death and executed for drug offences.

SUDAN

Under the Narcotic Drugs and Psychotropic Substances Act 1994, anyone who produces, manufactures, imports, exports, buys or sells drugs faces a mandatory death sentence if the offence is committed in association with an 'international criminal group'.²⁸³

Between 1989 and 1995, eighteen people were sentenced to death for drug-related offences, half of them women.²⁸⁴ Currently, a lack of available information makes it unclear how many people have been sentenced to death for drugs.

IRAQ

Iraq introduced Decree No. 3 of 2004, which prescribes the death penalty for drug offences, although only when committed 'with the aim of financing or abetting the overthrow of the government by force', following the removal of Saddam Hussein.²⁸⁵ Between 2005 and late 2010, 257 people, including six women, were executed, according to the Deputy Justice Minister.²⁸⁶ However, the Iraqi government has not reported detailed death penalty data nor disaggregated these numbers according to crimes.²⁸⁷

282 World Coalition Against the Death Penalty (2nd edn, February 2010) *Fighting Against the Death Penalty in the Arab World: Protagonists, Arguments and Prospects*, p. 30; Hands Off Cain (1 January 2009) A large number of offences, including political offences and economic 'crimes' are punishable by death, available at: www.handsoffcain.info/news/index.php?id=documento=12001310 (last accessed 1 March 2011). No laws are listed with UNODC. A story on the website of the South African newspaper *Times LIVE* stated: 'Under the existing code, which dates back to 1953, 21 crimes are punishable by death including drug trafficking and attacks on the security of the state.' *Times LIVE* (24 November 2009) Libya to allow NGOs, limit death penalty: magistrate, available at: www.timeslive.co.za/news/africa/article207503.ece (last accessed 8 April 2010).

283 Text accessible from www.unodc.org/enl/browse_countries.jsp#s (last accessed 25 March 2010).

284 Amnesty International (October 1995) *The Death Penalty: No Solution to Illicit Drugs*, ACT 51/02/95, pp. 41–42.

285 Amnesty International (April 2007) *Iraq – Unjust and Unfair: The Death Penalty in Iraq*, MDE 14/014/2007, p. 10.

286 Agence France-Presse (16 December 2010) Iraq has executed 257 since 2005: minister.

287 Amnesty International (1 September 2009) Iraq: a thousand people face the death penalty, p. 5.

5. CONCLUSION

Human rights abuses in the name of drug control are distressingly common. The death penalty is one glaring and irreparable example. Sadly, this practice and associated abuses – such as lack of fair trials, violations of the liberty and security of the person and failure to honour consular assistance – reflect an all-too-common view that illegal drugs are so great a threat that states are justified in departing from internationally recognised norms and standards.

This is particularly evident when one considers that even as the number of states imposing the death penalty for all crimes has decreased to historically unprecedented levels, the number that prescribe the death penalty for drugs has risen. Moreover, a review of state documents, such as those provided for the UN Universal Periodic Review, reveals that governments frequently defend their capital punishment policy by claiming it is reserved primarily for drug offenders. Very often it is argued to be a deterrent measure, yet this would seem to assume that the majority of those caught are cartel bosses in charge of large syndicates. Such an assumption collapses under closer scrutiny. A large proportion, if not an outright majority, are low level couriers, vulnerable to exploitation, and/or foreign nationals.

However, state practice and the development of international standards offer some cause for optimism. The vast majority of executions are carried out in a small number of countries. Most states that retain capital drug laws appear to be ambivalent about executing drug offenders. While many governments sentence people to die in high numbers, executions simply are not carried out or are carried out very rarely. How this can be interpreted probably varies according to context. Yet in some environments it can be hoped that this reluctance demonstrates an opportunity for legal reforms that would abolish capital drug laws. In certain countries, such reforms would go a long way towards abolishing the death penalty outright.

This is already being done at the national level. Human rights lawyers are now regularly bringing challenges to the death penalty for drugs in their own country. In 2010, there was a successful challenge to the mandatory death penalty for drugs in India. Another 2010 case challenging the mandatory death penalty, which had been imposed on an accused teen drug offender, was taken in Singapore. Although the verdict went against the plaintiff, it is hoped that this development will invite future challenges in Singapore and elsewhere. Furthermore, these debates are ongoing at political levels, even amongst unlikely governments that appear committed to their capital drug policies.

Nevertheless, the number of people sentenced to death and/or executed is rising in some jurisdictions. The situation in Iran is particularly worrying, as 2010 saw a shocking spike in executions, and 2011 opened with an even more accelerated pace of killings. Although a far cry from Iran, the rise in reported death sentences in Malaysia is also deeply concerning. Both Iran and Malaysia are partners in the international fight against illicit drugs, and therefore their policies do not merely reflect poorly

on their respective legal systems but also on some abolitionist governments' activities.

Wherever counter-narcotics resources and intelligence are shared, there can be no guarantees that such assistance does not lead to the application of the death penalty in violation of international human rights law. This is a concern that deserves particular emphasis. Drug control's so-called 'shared responsibility' entails unforeseen and equally shared consequences.



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