



15<sup>th</sup> May 2015

**Submission: Impact of the world drug problem on the enjoyment of human rights**

Referring to para. 1 of the Human Rights Council Resolution A/HRC/28/L.22 **Harm Reduction International**<sup>1</sup> and the **World Coalition Against the Death Penalty**<sup>2</sup> welcome the opportunity to provide information relating to 'the impact of the world drug problem on the enjoyment of human rights, and recommendations on respect for and the protection and promotion of human rights in the context of the world drug problem, with particular consideration for the needs of persons affected and persons in vulnerable situations'.

This submission will focus on the human rights impact of current drug policies on the application of the death penalty for drug offenses.

In the 1980s and 1990s, a trend emerged toward abolition of the death penalty as countries abolished capital punishment in law or simply ceased to execute in practice. Amnesty International writes that in 1977 only 16 countries had abolished the death penalty in law or practice. Now, the organization claims that number is up to 140 or approximately two-thirds of the world's countries.<sup>3</sup>

As this trend occurred, there was a concurrent and distressing development. With the so-called 'war on drugs' shifting into high gear,<sup>4</sup> countries introduced highly draconian sanctions including lengthy mandatory minimum prison sentences as well as the death penalty for certain drug related activities. For example, in 1979, around ten countries prescribed the death penalty for drugs. By 1985, that number had risen to 22.<sup>5</sup> By 2000, the number of states that imposed the death penalty for drugs had risen to 36.<sup>6</sup>

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<sup>1</sup> Harm Reduction International (HRI) is a leading non-governmental organisation with ECOSOC consultative status working to reduce the negative health, social and human rights impacts of drug use and drug policy by promoting evidence-based public health policies and practices, and human rights-based approaches to drug policy.

<sup>2</sup> The World Coalition Against the Death Penalty, an alliance of more than 150 NGOs, bar associations, local authorities and unions, was created in Rome on 13 May 2002. The aim of the World Coalition is to strengthen the international dimension of the fight against the death penalty. Its ultimate objective is to obtain the universal abolition of the death penalty. To achieve its goal, the World Coalition advocates for a definitive end to death sentences and executions in those countries where the death penalty is in force. In some countries, it is seeking to obtain a reduction in the use of capital punishment as a first step towards abolition.

<sup>3</sup> AI, The Death Penalty Fact Sheet: <https://www.amnesty.org/en/what-we-do/death-penalty/>

<sup>4</sup> See, for instance, D Stewart, 'Internationalizing the War on Drugs: The UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances,' 18 *Denver Journal of International Law and Policy* 387 (1989-1990)

<sup>5</sup> R. Hood and C. Hoyle (2008) *The Death Penalty: A Worldwide Perspective* (Oxford University Press) p. 137.

<sup>6</sup> There is some variation in the figures depending on sources. Nevertheless, this increase was noted by experts. See: 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*

Today, the criminalization of drugs is now driving the imposition of capital punishment in many parts of the world. Hundreds of people are sent to the gallows for drugs in Iran—comprising the majority of those executed in that country—and dozens more are beheaded in Saudi Arabia each year. Approximately 41 people were beheaded for drugs in Saudi Arabia in 2014, which accounts for around half of all executions. Indonesia resumed executions this year by sending 14 people to the firing squad for drug offences—far more than for any other crime.

Singapore resumed executions in 2014 with two people hanged, both for drugs.<sup>7</sup> At least one person was hanged in 2013 for drugs in Malaysia out of two known executions.<sup>8</sup> As of October 2014, there were 252 people on death row in Thailand for drugs—including 39 women—out of a total of 609.<sup>9</sup>

This occurred as a consensus emerged among international human rights bodies that the death penalty for drugs was a violation of the right to life as enshrined at Article 6(2) of the International Covenant on Civil and Political Rights and other regional human rights treaties. Among those entities that have vocally opposed the death penalty on human rights grounds are: UN Human Rights Committee; the UN Office on Drugs and Crime (UNODC); UN Special Rapporteur on extrajudicial, summary or arbitrary executions; UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the International Narcotics Control Board.<sup>10</sup>

This consensus among human rights and international drug control bodies is reflected in state practice. A very small number of governments actually execute drug offenders. Fewer than 10 percent of the world's countries retain the death penalty for drug offences in both law and practice.<sup>11</sup> In addition, despite the rise in countries applying the death penalty for drugs during the 1980s and 1990s, there has been a drop over

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Law (Harm Reduction International); R. Hood and C. Hoyle (2008) *The Death Penalty: A Worldwide Perspective* (Oxford University Press) p. 137.

<sup>7</sup> Singapore Prison Service Annual Report, 2013 and 2014

<sup>8</sup> <http://marathon.aimalaysia.org/abolish-death-penalty-malaysia>

<sup>9</sup> <http://deathpenaltythailand.blogspot.com/search?updated-min=2014-01-01T00:00:00%2B07:00&updated-max=2015-01-01T00:00:00%2B07:00&max-results=28>

<sup>10</sup> Human Rights Committee, Concluding Observations: Thailand, CCPR/CO/84/THA, 8 July 2005, para. 14; Human Rights Committee, Concluding Observations: Sudan, CCPR/C/SDN/CO/3, 29 August 2007, para. 19; United Nations Office on Drugs and Crime, *Drug Control, Crime Prevention and Criminal Justice: a Human Rights Perspective*, 2010, 'Note by the Executive Director' (Commission on Narcotic Drugs, Fifty-third Session, Vienna, 8–12 March 2010) E/CN.7/2010/CRP.6\*–E/CN.15/2010/CRP.1\*; UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Report to Commission on Human Rights on question of the violation of human rights and fundamental freedoms in any part of the world, with particular reference to colonial and other dependent countries and territories, E/CN.4/1997/60, 24 December 1996; UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Report to the Human Rights Council on the questions of disappearances and summary executions, A/HRC/4/20, 29 January 2007, paras. 51–52; UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Report to the Human Rights Council: addendum on communications to and from governments, A/HRC/14/24/Add.1, 18 June 2010, pp. 45–46; UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Report to the Human Rights Council on promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development, A/HRC/10/44, 14 January 2009, para. 66; UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; <http://idpc.net/incb-watch/updates/2014/03/incb-speaks-out-against-death-penalty>

<sup>11</sup> A precise estimate is difficult due to the secrecy that shrouds capital punishment in many countries.

the past 15 years.<sup>12</sup> As the Special Rapporteur on Extrajudicial, summary or arbitrary executions, Christof Heyns, wrote in 2012:

*As measured by State practice, however, there is no consensus among States to support the death penalty for crimes that do not involve lethal intent and that do not result in death, such as drug-related offences or economic crimes. In reality, many of these death-eligible crimes are not prosecuted by retentionist States as capital offences and/or death sentences are not handed down for them. Even fewer States actually carry out executions for these offences.*<sup>13</sup>

The variation in state practice is causing some conflict in norms between governments that cooperate in drug control activities. UN officials and human rights bodies have sought to systematize law enforcement in order to be assured that their international drug control does not lead to sanctions that violate international human rights treaties and state practice.

In 2012, the UN Secretary-General wrote:

*There has been developing recognition of the need to systematize international law enforcement efforts to ensure that cross-border cooperation does not lead to penalties that would violate international human rights law. Donor States and international organizations that provide support to drugs-control projects in retentionist States need to ensure that such assistance does not facilitate and legitimize the use of the death penalty in cases that would not be acceptable in accordance with international standards and safeguards.*<sup>14</sup>

Donor and international drug control agencies have in fact have increasingly implemented human rights policies to guide their work. This has not always resulted in governments that apply the death penalty for drugs to change their policies. However, it has led to the suspension of drug control aid to countries where they suspect that their assistance could result in people being killed, thereby making these governments complicit in a human rights violation. For example, Ireland, Denmark and the United Kingdom have all ceased providing certain types of drug control assistance to Iran due its rampant use of the death penalty for drugs.

A 2001 UN report recorded a more than 50% increase in the number of countries prescribing the death penalty for drugs into domestic law between 1985 and 2000.<sup>15</sup> This dramatic increase runs exactly opposite to the overall international trend towards the abolition of capital punishment documented during that same period. This window of time coincides remarkably closely with the period of the drafting, adoption and State ratification of the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, the third UN drug treaty that established State obligations in international law to enact harsh penal provisions for drug offences at domestic level, suggesting a link between international drug control law and domestic human rights violations. It is often stated that the progress towards the abolition of capital punishment is a dramatic example of the success of the human

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<sup>12</sup> For example, the Philippines, Uzbekistan, the Kyrgyz Republic,

<sup>13</sup> UN doc. A/67/275, para. 47

<sup>14</sup> UN doc. A/HRC/21/29, paras. 26 and 27

<sup>15</sup> UN doc. E/CN.15/2001/10, para. 90.



rights movement worldwide. If this is indeed the case, then the expansion of capital punishment for drug offences during this same period is a dramatic failure.