

Report to the Office of the High Commissioner for Human Rights

Implementation of the UNGASS joint commitment to effectively addressing and countering the world drug problem with regard to human rights

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Reporting Organizations:



Harm Reduction International is a leading non-governmental organisation 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. Since 2007, Harm Reduction International has been at the forefront of advocating for the abolition of the death penalty for drug offences worldwide.



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.

Harm Reduction International and the World Coalition against the Death Penalty welcome the opportunity to contribute to the report of the Office of the High Commissioner of Human Rights, and consult on the implementation of the joint commitment to effectively addressing and countering the world drug problem with regard to human rights, adopted as the outcome of the 2016 United Nations General Assembly Special Session on the world drug problem (hereafter: UNGASS Outcome Document).

This submission will focus on States' performance with regards to the death penalty for drug offences, in relation to Paragraphs 4 (l), 4(n), and 4 (o) of the UNGASS Outcome Document.

Introduction

A plethora of UN human rights mechanisms has authoritatively stated that the imposition of the death penalty for drug offences contravenes international human rights law.¹ The death penalty is not an isolated violation. Rather, it is only one – and one of the most visible – among a wide range of violations and abuses perpetrated by States against people who use drugs or are involved in the drug market.

Traditionally, domestic efforts in the name of drug control met little oversight, or assessment of their compliance with human rights obligations. The 2016 UNGASS was a fundamental step towards overcoming this traditional “separation” between the human rights and the drug control regimes, with human rights being authoritatively sanctioned as a fundamental reference of any drug policy.² Regrettably, and despite being one of the mostly debated issues over the course of the meeting,³ the UNGASS Outcome Document failed to mention the death penalty for drug offences.

The issue, however, remains crucial. Seventy-three States explicitly expressed strong opposition to the use of the death penalty for drug offences,⁴ and several recommendations included in the UNGASS Outcome Document implicitly require States to consider abolishing the death penalty.

The death penalty for drug offences: an overview

The latest [Global Overview of the Death Penalty for Drug Offences](#) has confirmed at least 33 countries and territories have the death penalty for drug offences in their legislation, although United Nations human rights mechanisms have authoritatively recognised that drug-related offences do not meet the threshold of “most serious crimes” to which capital punishment must be limited under Article 6.2 of the International Covenant on Civil and Political Rights.

Some of these States – such as **Brunei Darussalam, Iran, Lao DPR, Myanmar, Singapore, Sudan, and Syria** - retain the death penalty as mandatory punishment for at least certain drug-related offences, in blatant violation of well-established human rights standards.⁵

The enforcement of this legislation has led to the execution of at least 1320 individuals for drug offences between 2015 and 2017; 280 of these executions were carried out in 2017 alone, of which over 240 in Iran (notably, this figure constitutes an underestimation of the phenomenon, due to the lack of reliable data concerning this practice in a number of states, such as China and Vietnam).⁶ Considering these numbers in the context of research by Amnesty International, which recorded a total of 993 executions for 2017,⁷ we can conclude that close to 30% of all executions carried out worldwide were for drug-related crimes.

¹ Among others, see: UN Human Rights Committee. Concluding Observations: Thailand (8 July 2005), para 14. UN Doc. CCPR/CO/84/THA; UN Human Rights Committee. Concluding Observations: Sudan (29 August 2007), para. 19. UN Doc. CCPR/C/SDN/CO/3. Human Rights Council. Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston: Civil and Political Rights, Including the Questions of Disappearances and Summary Executions (29 January 2007), para. 39-53. UN Doc. A/HRC/4/20 UN Economic and Social Council. Resolution 1984/50 (25 May 1984).

² UNGASS Outcome Document, Paragraph 4(a)

³ Gen Sander, 'The Death Penalty for Drug Offences: Global Overview 2017' (London: Harm Reduction International, 2018), 12

⁴ Gen Sander, 'The Death Penalty for Drug Offences: Global Overview 2017' (London: Harm Reduction International, 2018), 12

⁵ Among others, see: UN Human Rights Committee. Communication No. 2177/2012 (Johnson v. Ghana): Decision adopted by the Committee at its 110th session (6 May 2014), para. 7.3. UN Doc CCPR/C/110/D/2177/2012

⁶ Gen Sander, 'The Death Penalty for Drug Offences: Global Overview 2017' (London: Harm Reduction International, 2018), 25 and 29

⁷ Amnesty International, 'Death Sentences and Executions 2017' (London: Amnesty international, 2018), 6

Imposition of the death penalty for drug offences as a consequence of unfair trials and ill-treatment

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 were made against **China, Thailand, Indonesia, Saudi Arabia, Sudan, Egypt** and others. Significant additional concerns over trial standards were raised in regards to **Syria, North Korea, Iraq, Myanmar and Cuba**, to name just a few⁸.

The Special Rapporteur on Torture raised concerns over the number of persons accused or convicted of drug-related crimes that are subject, in many countries, to other forms of discriminatory treatment in places of detention, including solitary confinement, special prison regimes and poor detention conditions.

The United Nations Special Rapporteur on extrajudicial executions raised similar concerns in February 2015 regarding executions in **Indonesia**: “According to available information, the 14 persons slated for execution in January – February 2015, did not get a fair trial. Twelve of them are foreign nationals who generally have no adequate interpretation services, the right to a translator or a lawyer at all stages of trial and appeal. Any death sentence must comply with international obligations related to the stringent respect of fair trial and due process guarantees, as stipulated in the International Covenant on Civil and Political Rights, to which Indonesia is a State party.”⁹

In **Iran**, drug charges are processed by the Revolutionary Courts. “Revolutionary Court judges routinely deny attorneys access to individuals who are subjected to extensive interrogations under severe conditions. According to the former UN Special Rapporteur on the situation of human rights in Iran, Ahmed Shaheed, who interviewed 133 people facing trial in the country for a 2014 report focused on Iran’s juridical system, 45% of those interviewed reported that they were not permitted to present a defence; in 43% of cases trials lasted only minutes and 70% of interviewees reported that coerced information or confessions had been reportedly used by the judge or made up at least part of the evidence presented by the prosecution.”¹⁰

In **Saudi Arabia**, 48 people have been executed in first four months of 2018, half of them for drug crimes and in many cases following unfair trials, in particular for the many foreigners sentenced to death in the kingdom (many of which from Jordan and Pakistan).¹¹ “Authorities generally did not allow lawyers to assist suspects during interrogation and often impeded them from examining witnesses and presenting evidence at trial. The problems were compounded for non-Arabic speaking foreigners, who in the absence of a lawyer face overwhelming obstacles to understanding court procedures and submitting defence documents.”¹²

Negative executive and legislative developments

In November 2016, President Duterte started a campaign to reintroduce the death penalty in the **Philippines** for drug-related offences, as promised during the electoral campaign. After intimidation campaigns and the jailing of the main opponent,¹³ the bill was adopted by the House of Representatives in March 2017.

“Discussions at the Senate on separate proposals to reintroduce the death penalty for several other offences were halted on 14 February, when 14 out of 24 Senators adopted a resolution highlighting concerns over the possible violation by the Philippines of its obligations as a state party to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty¹⁴. The proposals remained pending before the Senate”¹⁵ and was not put on the agenda for the 2018 session.

⁸ Patrick Gallahue, ‘The Death Penalty for Drug Offences: Global Overview 2011. Shared Responsibility and Shared Consequences’ (London: Harm Reduction International, 2011)

⁹ The United Nations Special Rapporteur on extrajudicial executions, ‘UN human rights expert calls for immediate halt to further executions in Indonesia’ (13 February 2015). Available at:

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15567&%23sthash.qgYnPTui.dpuf>

¹⁰ Iran Human Rights, *Annual Report on the death penalty in Iran in 2017*, published by ECPM, 2018, p.12-13

¹¹ “Saudi Arabia: Executions for Drug Crimes” (Human Rights Watch, 25 April 2018). Available at: <https://www.hrw.org/news/2018/04/25/saudi-arabia-executions-drug-crimes>

¹² “Saudi Arabia: Executions for Drug Crimes” (Human Rights Watch, 25 April 2018)

¹³ Michael Sullivan, “Jailed Philippine Senator: ‘I Won’t Be Silenced Or Cowed’” (NPR, 24 June 2017). Available at:

<https://www.npr.org/sections/parallels/2017/06/24/533794081/jailed-philippine-senator-i-wont-be-silenced-or-cowed>

¹⁴ The Philippines abolished the death penalty for all crimes in 2006 and ratified the UN treaty aiming at the abolition of the death penalty in 2007

¹⁵ Amnesty International, ‘Death Sentences and Executions 2017’ (London: Amnesty International 2018), 25

In March 2018, President Trump (**USA**) declared: “If we don’t get tougher on drug dealers, we are wasting our time”, later adding, “That toughness includes the death penalty.”¹⁶ The President made some allusions to similar policies in China and the Philippines, stating that they had kept drugs under control. However, such political stances can only damage the efforts made to effectively address the world drug problem.

“Ramping up the failed war on drugs with the imposition of the death penalty is another glaring example of the deep injustices of our criminal legal system (...) We know all too well that sentences of death are earmarked for the marginalized among us, the Black, brown, poor, and mentally ill. We must not allow these communities to be the scapegoats for politicians’ failures to justly and effectively respond to the opioid epidemic.”¹⁷

Positive legislative developments

In 2017, a number of States made progressive amendments to their capital punishment laws. For example, in January 2017 the National Legislative Assembly of **Thailand** adopted reforms that reduced the penalties for possession, import/export, and production for the sale of drugs, and – significantly - abolished the mandatory death penalty for selling drugs.¹⁸ In October 2017, **Iran** approved a long-debated amendment to the Anti-Narcotics Law that raises the minimum quantity of drugs required to incur capital punishment.¹⁹ This new law could help commute the sentences of the thousands of people on death row for (often minor) drug-related offences,²⁰ and could significantly reduce the number of executions for drug offences globally. In March 2018 a new law came into force in **Malaysia** which abolished the mandatory death penalty for certain drug-related offences.²¹

Myanmar also adopted, in February 2018, a new National Drug Control Policy.²² This new strategy, which explicitly mentions the UNGASS Outcome Document as a key reference,²³ manifests a more balanced and integrated approach to drug control, and – among other things - suggests the abolition of the death penalty for drug offences.²⁴

Conclusions and recommendations

Although not mentioned explicitly in the 2016 Outcome Document, the death penalty for drug offences is clearly incompatible with fundamental human rights standards, and as such has no place in any drug control legislation or policy.

Harm Reduction International and the World Coalition Against the Death Penalty urge the Office of the High Commissioner for Human Rights to:

- Stress the incompatibility of the death penalty for drug offences with international law;
- Call upon states to establish a moratorium on this measure, as a first step towards its definitive abolition;
- Urge States that retain the death penalty to respect fair trial and due process guarantees, as well as the other fundamental rights of people in detention, also in line with Paragraph 4 (o) of the UNGASS Outcome Document.

¹⁶ Maggie Haberman, Abby Goodnough and Katharine Q. Seelye. “Tough Talk, Few Details in President’s Opioid Plan” (New York Times, 20 March 2018). Available at: <https://www.nytimes.com/2018/03/19/us/politics/trump-new-hampshire-opioid-plan.html?rref=collection%2Fsectioncollection%2Fpolitics>

¹⁷ “Quaker Org Condemns Trump Plan to Execute Drug Dealers” (AFSC, 19 March 2018). Available at: https://www.afsc.org/story/quaker-org-condemns-trump-plan-to-execute-drug-dealers?utm_source=dlvr.it&utm_medium=facebook

¹⁸ Patcharavalan Akbar and Gloria Lai. “Thailand amends drug law to reduce penalties and ensure more proportionate sentencing” (IDPC Blog, 15 February 2017). Available at: <http://idpc.net/blog/2017/02/thailand-amends-drug-law-to-reduce-penalties-and-ensure-more-proportionate-sentencing>

¹⁹ Iran Human Rights and Ensemble Contre la Peine de Mort. ‘Annual Report on the Death Penalty in Iran 2017’ (2018), 16

²⁰ “Thousands of Iranian Death Row Inmates to Receive Sentence Reviews Under Amended Drug Law” (Centre for Human Rights in Iran, 3 November 2017). Available at: <https://www.iranhumanrights.org/2017/11/thousands-of-iranian-death-row-inmates-to-receive-sentence-reviews-under-amended-drug-law/>

²¹ “Malaysia: Death Penalty no longer Mandatory for Drug Trafficking” (Nessuno Tocchi Caino/Hands off Cain, 4 May 2018). Available at: <http://www.handsoffcain.info/notizia/malaysia-death-penalty-no-longer-mandatory-for-drug-trafficking-40304354>

²² Republic of the Union of Myanmar, *National Drug Control Policy* (20 February 2018). Available at: https://www.unodc.org/documents/southeastasiaandpacific/2018/02/Myanmar_Drug_Control_Policy.pdf

²³ Republic of the Union of Myanmar, *National Drug Control Policy*, 3 and 27

²⁴ Republic of the Union of Myanmar, *National Drug Control Policy*, 18