

The Death Penalty For Drug Offences: Foreign Nationals

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Harm Reduction International's report *The Death Penalty for Drug Offences: Global Overview 2018* suggests that foreign nationals are particularly disadvantaged, and sometimes discriminated against, in the criminal justice systems of those countries around the world that retain the death penalty. As a result, they are over-represented on death rows, especially in Asia and the Middle East.

Excluding China, for which no reliable data is available, in 2018, more than 93 people were executed,ⁱ and 149 people sentenced to death for drug offences, not considered in customary international law to be the 'most serious crimes'. A significant proportion of these were foreign nationals, as key findings from the 2018 *Global Overview* show:

- At least 29 of the 59 people executed for drug crimes in Saudi Arabia were foreign nationals, most from Pakistan and Nigeria.
- Fifteen of the 16 people sentenced to death in Singapore in 2018 were convicted of drug trafficking, about a third of them foreign nationals.
- In Indonesia, 34 people were sentenced to death for drug offences in 2018, resulting in 130 convicted drug offenders of the 236 death row prisoners, including about 60 foreign nationals.ⁱⁱ
- Death is the mandatory punishment for certain drug offences in Malaysia. The vast majority (932) of the 1,279 people awaiting execution were convicted for drug offences, more than half of whom are foreign nationals. While a quarter of those sentenced to death will have their sentences overturned at appeal, foreign nationals are half as likely to be successful at appeal.

The findings from the 2018 *Global Overview* echo prior studies by Harm Reduction International and other NGOs monitoring death sentences and executions around the world.

High levels of production and trafficking of drugs within the 'Golden Triangle' of Laos, Myanmar and Thailand have contributed to punitive drug policies that have resulted in a high proportion of foreigners on death row for drug offences in **Thailand, Vietnam and Indonesia**.

Though research is challenging in jurisdictions with poor human rights records, data suggest that over the past decade many Afghan citizens have been sentenced to death and executed in **Iran** for drug offences. For example, in 2010, about 3000 Afghans were on death row in Iran, most on drug-smuggling charges.ⁱⁱⁱ And over the past 13 years, over 500 foreigners, many convicted for drug offences, have been executed in Saudi Arabia, most following trials that violated international law and unfair pre-trial procedures involving torture.^{iv}

DISADVANTAGE IN THE CRIMINAL PROCESS

Foreign nationals, especially from Asia and Africa, are disproportionately affected by the death penalty.^v They might be migrant workers, people who are trafficked, asylum seekers, those who commit crimes while traveling abroad and those who cross borders to commit crimes. Foreign nationals are made more vulnerable by precarious socio-economic status, lack of fluency in the language of the host country, and lack of understanding of the laws or criminal process. They often have no power, resources, nor access to support networks, and are subject to suspicion, over-policing, criminalisation and discrimination in the criminal process. Unfair pre-trial processes mean that many will not be assisted by an interpreter or a lawyer in the police station when making a statement. Where foreign nationals are unable to afford to appoint their own private lawyer, are without family and friends nearby, and/or have little or no assistance navigating a foreign justice system or clemency applications, they are exceptionally vulnerable and may spend years on death row.

CONSULAR ASSISTANCE FOR FOREIGN NATIONALS

Where states' laws and practices compound discrimination against minority groups and non-citizens, international human rights law calls for measures to ameliorate disadvantage. The possibility of a foreign national in a retentionist country being disadvantaged was recognised by the **Vienna Convention on Consular Relations** (1963; ratified by 179 states), which defines a framework for consular relations between independent states aimed at securing procedural equality between foreign nationals and citizens. Article 36 provides that the competent authorities of a state in which a foreign national is arrested, detained or committed to prison shall *without delay* inform the consular post of that person's state. Consular authorities must be allowed access to the detainee, and to assist, not least by providing access to competent counsel, but also securing reliable interpretation services. The consulate may also make representations to the clemency authority on behalf of the prisoner.

However, consular assistance is often not provided in a timely fashion. For example, **Saudi Arabia** frequently denies consular assistance to foreign nationals.^{vi} Similarly, while **Malaysia's** consular obligations have been incorporated into Malaysian domestic law, the police rarely inform the embassies, and the prison service are only a little more responsive, leaving many foreigners without support in pre-trial and trial processes.

THE CASE OF ZULFIQAR ALI

Today over 11,000 Pakistanis are detained in jails abroad, many in Asia and the Middle East.^{vii} Zulfiqar Ali, a Pakistani citizen, died of cancer while under sentence of death for drug possession in Batu prison, Indonesia. He had been imprisoned for 13 years for possession of 300 grams of heroin, though he had not been caught with drugs; they were found on another man who implicated Ali—a man with no prior drug history or convictions. Ali had confessed under duress, a confession that should not have been relied on at trial. An independent inquiry in 2010 declared him to be innocent; it further acknowledged he had been abused in pre-trial detention, had not received legal advice or an interpreter, and that there was no evidence against him. Notwithstanding, in July 2016 he was prepared for execution, though the procedure was halted at the last minute following an intervention by the President of Pakistan. Ali died in 2018, not long after an unsuccessful application for clemency.^{viii}

RECOMMENDATIONS

1. **Retentionist states** must abolish the death penalty for drug offences as a step towards abolition.
2. **The European Union and the UN** must urge Member States that continue to use the death penalty to comply fully with their obligations to provide consular assistance to all foreign nationals detained, particularly those at risk of capital punishment.
3. **All governments** should intervene more actively to assist their own nationals at risk of capital punishment overseas.

i. Giada Girelli (2019) *The Death Penalty for Drug Offences: Global Overview 2018* reports at least 91 executions for drug offences in 2018. After the publication, official figures on Singapore were published, revealing two more executions for drug offences carried out in the country in 2018. The minimum confirmed figure as of 05 March 2019 is therefore 93. For more information see Singapore Prison Service, "Harnessing Community Corrections to Prevent Re-Offending" (2019), https://www.sps.gov.sg/docs/default-source/stats-release/sps-annual-stats-release-for-2018_511kb.pdf

ii. Giada Girelli (2019) *The Death Penalty for Drug Offences: Global Overview 2018*.

iii. FIDH, "Iran/Death Penalty: A State terror policy, Special update for the 11th World Day Against the Death Penalty" (10 October 2013) < <https://www.fidh.org/en/region/asia/iran/death-penalty-in-iran-a-state-terror-policy-14075> > accessed on 17 November 2018.

iv. European Saudi Organisation for Human Rights [ESOHR], "In 13 Years Saudi Arabia Deprived 504 Foreigners of the Right to Life through Beheading after Unfair Sentences, Violating International Law," June 19, 2018, <https://www.esohr.org/en/?p=1725>.

v. UN General Assembly, "Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions" A/70/304 (7 August 2015) para 76.

vi. European Saudi Organisation for Human Rights [ESOHR], "In 13 Years Saudi Arabia Deprived 504 Foreigners of the Right to Life through Beheading after Unfair Sentences, Violating International Law," June 19, 2018, <https://www.esohr.org/en/?p=1725>; European Saudi Organisation for Human Rights [ESOHR], "2018 Death Penalty Report: Saudi Arabia's False Promise

vii. Sabrina Toppa, *Condemned Unheard: On Death Row Abroad*, Dawn, Feb. 10, 2019: <https://www.dawn.com/news/1462966>

viii. *Ibid.*