



THE DEATH PENALTY AND DRUG OFFENCES

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CHINA, OCTOBER 2010

**PAPER PREPARED BY THE IRISH CENTRE FOR HUMAN RIGHTS &
THE INTERNATIONAL CENTRE ON HUMAN RIGHTS AND DRUG POLICY**



This lecture is funded with the support of the **European Union**

The Death Penalty for Drug Offences

According to the 2010 United Nations quinquennial report on the status of the death penalty, there are forty-seven countries in the world that retain capital punishment.¹ Of this group, thirty² have legislation prescribing the death penalty for drug-related offences. There are also two additional territories, Taiwan ROC and Palestine, which prescribe the death penalty for drug crimes.³

State practice and legislation vis-à-vis the death penalty for drugs varies enormously between these countries. A number of governments display a deep ambivalence towards capital punishment in general, and towards executing drug offenders specifically; whereas for others the execution of drug offenders forms a routine part of the criminal justice system. Some states pass death sentences fairly regularly, yet in practice executions are rarely or never carried out. Some states are extremely secretive about their capital punishment practices, while others are fairly open and some even enthusiastically publicise the executions of drug offenders. There is also a wide variation in the adherence to fair trial standards from one country to another.

Despite varying state practice, hundreds of people are executed for drug offences each year around the world, a figure that very likely exceeds one thousand when taking into account those countries that keep their death penalty statistics secret. In many instances, foreign nationals make up the majority of those executed or on death row.⁴

The Death Penalty for Drug in Domestic Legislation

Over the past two decades, a significant downward trend in the use of capital punishment has been documented internationally. Over time, fewer and fewer states imposed the death penalty and the number of capital crimes has decreased around the world.⁵ As Professor Roger Hood and Dr Carolyn Hoyle wrote in their book ‘The Death Penalty: A Worldwide Perspective’, the number of states categorised as ‘complete abolitionist’ rose from thirty-five in 1988 to ninety-one in 2007.⁶ However, this remarkable trend was shadowed by a simultaneous development – the steady rise in countries that introduced capital drug laws.⁷

In the post-World War II period, China was the first and only country identified as having the death penalty for drugs. In a survey of drug control legislation prepared for the 1948 session of the UN Commission on Narcotic Drugs, offences punishable with death in Chinese legislation included manufacture, planting, transportation and sale of drugs, and relapsing drug use. The document refers to China's drug laws as ‘a temporary emergency measure’ following the war, although these capital narcotics laws remain.⁸

Over the following three decades, a small number of states joined this list. Hood and Hoyle wrote that in 1979, the number of countries where various categories of drug crimes were punishable with death had risen to ten. However, over the following twenty years this figure increased significantly. By 1985, the number of states with capital drug laws had reached twenty-two.⁹ By the start of the last decade it would

appear that the number of states that imposed the death penalty for drugs had risen to as high as thirty-six.¹⁰ This sharp rise corresponded to both the entry into force of the 1988 *United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*, as well as a major international political and law enforcement campaign against drug use and trafficking, often known as the ‘war on drugs’.

The Death Penalty for Drug Offences and Human Rights

This trend of expanding the death penalty to include drug offences was also in conflict with emerging norms around human rights and the application of capital punishment. Concurrent with the expansion of capital drug laws, international treaty bodies and human rights monitors produced numerous reports and interpretations of international human rights law criticising the death penalty for drugs as a violation of the right to life.

While the death penalty is not absolutely prohibited in international law, it is subject to significant limitations. Article 6(2) of the *International Covenant on Civil and Political Rights* states that the penalty of death may only be applied for the ‘most serious crimes’. The ‘most serious crimes’ threshold was included in an Economic and Social Council resolution in 1984 that upheld nine safeguards on the application of capital punishment, one of which established that the penalty of death be reserved for offences ‘with lethal or other extremely grave consequences’.¹¹ The UN General Assembly endorsed the nine safeguards later that same year.¹²

While many retentionist governments argue that drug offences fall under the umbrella of ‘most serious crimes’,¹³ this is not the perspective of the UN Human Rights Committee, the body tasked with monitoring the implementation of the Covenant. The Committee has stated on numerous occasions that drug trafficking was an offence that ‘cannot be characterized as the most serious’.¹⁴

The death penalty for drug offences has also come under increased scrutiny from international human rights monitors, including the UN High Commissioner for Human Rights and the UN Special Rapporteur on torture, both of whom have stated that the practice violates international human rights law. The UN Special Rapporteur on extrajudicial, summary or arbitrary executions has also reminded states that international law ‘requires that capital punishment for drug trafficking be abolished and that death sentences already imposed for drug trafficking be commuted to prison terms’.¹⁵

The United Nations Office on Drugs and Crime (UNODC) has also explicitly stated its opposition to the application of the death penalty for drug offences. In a 2010 report, the UNODC Executive Director wrote that ‘As an entity of the United Nations system, UNODC advocates the abolition of the death penalty and calls upon Member

States to follow international standards concerning prohibition of the death penalty for offences of a drug-related or purely economic nature.’¹⁶

However, after the sharp rise in the 1980s and 1990s, the tide has started to turn. Over the past decade countries that had the death penalty for drug offences including the Philippines,¹⁷ Uzbekistan¹⁸ and Kyrgyz Republic¹⁹ abolished the death penalty outright.²⁰ Furthermore, Tajikistan²¹ and Jordan²² have removed drug offences from their lists of capital crimes. During this same period, a small handful of countries or areas introduced capital drug laws, including the Hamas administration in Gaza (Occupied Palestinian Territories).²³

Global Overview on the Status of the Death Penalty for Drug Offences

Of the thirty-two jurisdictions that maintain the death penalty for drug offences in their domestic legislation, the manner in which they actually implement those penalties varies significantly.

Some states demonstrate a high commitment to executing drug offenders, and sentence and/or execute drug offenders in very high numbers on an annual basis. In many cases, drug offenders make up a significant portion of those sentenced to die and those who are actually executed. Rather than being an exceptional occurrence, executions for drug offences in these countries seems a normalised part of the criminal justice process. Unlike the other countries, where death sentences may be frequent yet are generally commuted or never carried out, in high commitment states many of those condemned will in fact be executed.

Examples include Iran, where at least 172 drug offenders were in executed²⁴ in 2009 out of a total of 388 total executions;²⁵ Saudi Arabia, which has executed more than sixty drug offenders from 2007 through 2009,²⁶ and Viet Nam, where death penalty figures are a state secret but where reportedly the majority of the 100 or so annual executions are carried out for drugs.²⁷

Some countries maintain a very high level of secrecy around their death penalty policies, but are known to sentence and/or execute high numbers of drug offenders annually. For example, in China the proportion of executions for drug offences is unknown. However, when considering the scale of China’s counter-narcotics efforts, it is probable that drug crimes represent a sizable portion of those executed each year. According to Xinhua, the official press agency of the Chinese government, Zhang Jun, Vice-President of the Supreme People’s Court, claimed that the courts handled 14,282 drug-related cases between January and May 2009, registering 6,379 convictions with ‘severe’ penalties ranging from imprisonment to capital punishment.²⁸ Despite the fact that China does not disclose how many people are executed each year, it has been quite open about executing drug offenders each year on 26 June, the UN International Day Against Drug Abuse and Illicit Trafficking.

In Malaysia, death sentences are well-reported, even if executions are not. In 2009, Malaysia sentenced about fifty people to death for drugs²⁹ out of a total of sixty-

eight.³⁰ Singapore maintains notoriously harsh mandatory punishments for drug offenders, even though the number of people executed annually has fluctuated significantly over the past twenty years. Currently, it appears fewer people are executed. However, between 1999 and 2003, 110 of the 138 people who had been executed were drug offenders.³¹

On the other end of the spectrum, some countries that have capital drug offences prescribed in law are considered 'de facto abolitionist' in practice, which means an execution has not been carried out in these countries for at least ten years. These countries include Sri Lanka, Lao PDR, Myanmar, South Korea and Brunei-Darussalam.³² However, even when not counting those countries which are 'de facto abolitionist', many, if not most of the death penalty states rarely (and in some cases never) actually carry out executions solely for drug offences. For example, it is not known whether anyone has ever been executed for a drug offence in the United Arab Emirates,³³ Bahrain³⁴ or India,³⁵ even though death sentences are pronounced for drug crimes. The United States is one of the world's leading executioners for all crimes, but it is not believed to have sentenced anyone to death solely for drugs.³⁶

In recent years there have been highly publicised death sentences for narcotics in Thailand and Indonesia. However, despite having high levels of death sentences, both countries appear ambivalent about executing drug offenders in practice.

Thailand's Narcotics Act 1979 allows for the discretionary imposition of capital punishment for certain drug crimes 'committed for the purpose of disposal' particularly 'if committed in excess of 20 grams'.³⁷ However, executions are relatively rare. For instance, two men were executed for drug trafficking in 2009, yet these were the first executions in Thailand in almost six years.³⁸ The same cannot be said for the imposition of death sentences. In mid-2009 there were allegedly 832 people on death row in Thailand,³⁹ many of which were there for drug offences.⁴⁰

Articles 80 and 82 of the Law of the Republic of Indonesia, No. 22 of 1997, as well as the Narcotics Law of the Republic of Indonesia, which was adopted by Parliament in 2009,⁴¹ prescribes an optional death penalty for those who produce, process, extract, convert, compose, prepare, import, export, offer for sale, distribute, sell, buy, deliver, act as broker or exchange cocaine, heroin, opium, marijuana and hashish. The law includes death penalty stipulations for recidivists, conspirators and those engaged in organised crime.⁴² In 2008, two Nigerians were killed by firing squad to mark the UN International Day against Drug Abuse and Illicit Trafficking, but these were the first drug offenders in Indonesia to be executed in four years.⁴³ The following year, no one was executed for any crimes,⁴⁴ despite pledges from Indonesian authorities that executions for drugs would be expedited.⁴⁵ According to the Attorney General's Office, of the 111 people awaiting execution, fifty-six have been condemned for drug crimes.⁴⁶

If these countries can be judged by their practice, it would appear that they are at least reluctant to execute drug offenders despite the fact that the courts regularly impose death sentences. In effect, these countries do not to use the death penalty as a routine

part of their drug enforcement regimes, despite the presence of such laws on the books.⁴⁷ Countries that behave in a similar manner include Pakistan, Egypt, Syria, Yemen, Bangladesh and Kuwait.⁴⁸

This means that even though many countries have the death penalty for drugs prescribed in law, the vast majority of countries rarely if ever actually carry out executions for drug-related crimes. However, the number of people executed worldwide each year for drug crimes reaches well into the hundreds, and is perhaps even over one thousand, as the small number of states that actively execute drug offenders often do so in significant numbers.

The Death Penalty for Drug Offences: A Lively Debate

The issue of the death penalty for drugs is one that is being actively debated by both jurists and legislators in many countries. For example, Viet Nam keeps its death penalty figures secret and is thought to be one of the world's leading executioners of drug offenders.⁴⁹ Yet the country considered removing drug offences from its list of capital crimes in 2009. It ultimately retained the death penalty for drug trafficking, but removed the death penalty as a punishment from Article 197, pertaining to 'organizing the illegal use of narcotics'.⁵⁰

There were similar political debates in Bahrain in 2007.⁵¹ Also, in late 2009 a legal committee appointed to amend Libya's penal code recommended that the death penalty be limited to those convicted of premeditated murder and terrorism offences though there were still some legislative hurdles that it needed to pass before it could become law.⁵² These discussions are concurrent to legal challenges in the courtrooms of Indonesia, Singapore and India.

China too has joined the ranks of countries that debate the issue actively. It was reported in 2010 that China's Supreme Peoples Court recommended removing the death penalty as a potential sanction for transporting drugs.⁵³ Unfortunately, this recommendation did not make it into the National People's Congress Standing Committee's review on the revision to the country's Criminal Law.⁵⁴

¹ Note by the Secretariat transmitting the report of the Secretary-General on capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty (E/2010/10) (18 December 2009)

² China, Iran, Saudi Arabia, Viet Nam, Singapore, Malaysia, Indonesia, Kuwait, Thailand, Pakistan, Egypt, Syria, Yemen, Bangladesh, Cuba, Oman, United Arab Emirates, Bahrain, India, Qatar, United States of America, North Korea, Iraq, Sudan, Libya Sri Lanka, Lao PDR, Myanmar, South Korea, Brunei-Darussalam.

³ P Gallahue and R Lines (2010) *The Death Penalty for Drug Offences: Global Overview 2010*. London: International Harm Reduction Association.

⁴ Gallahue and Lines.

⁵ Hood and Hoyle (2008) pp. 12-13

⁶ Hood R and Hoyle C (2008) *The Death Penalty: A Worldwide Perspective*. Oxford: Oxford University Press, p. 14.

⁷ Lines R (2007) *The Death Penalty for Drug Offences: A Violation of International Human Rights Law*. London: International Harm Reduction Association.

⁸ UN Commission on Narcotic Drugs (May 1948) *Annual Summary of Law and Regulations Relating to the Control of Narcotic Drugs, 1947*. UN Doc. No. E/NL.1947/Summary, pp. 25, 27-8.

- ⁹ Hood R and Hoyle C (2008) *The Death Penalty: A Worldwide Perspective*. Oxford: Oxford University Press, p. 137.
- ¹⁰ The numbers vary between sources. However, this rise was reported by UN Commission on Crime Prevention and Criminal Justice (2001), *Capital Punishment and Implementation of the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty*, 29 March, E/CN.15/2001/10; Lines (2007) 'The Death Penalty for Drug Offences', p. 8n4 op. cit.; Hood and Hoyle (2008) p. 137 op. cit.
- ¹¹ *ibid.*
- ¹² UN General Assembly (14 December 1984) Human rights in the administration of justice. Resolution A/RES/39/118: www.unhcr.org/refworld/docid/3b00f00e6c.html (last accessed 5 March 2010).
- ¹³ Lines R (2010) A "Most Serious Crime"? – The Death Penalty for Drug Offences and International Human Rights Law. *Amicus Journal* 21.
- ¹⁴ UN Human Rights Committee (8 July 2005), Concluding observations: Thailand. CCPR/CO/84/THA, para. 14; UN Human Rights Committee (29 August 2007) Concluding observations: Sudan. CCPR/C/SDN/CO/3, para. 19.
- ¹⁵ 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. 188.
- ¹⁶ UNODC (2010) Drug control, crime prevention and criminal justice: A human rights perspective. Note by the Executive Director (Commission on Narcotic Drugs, Fifty-third session, Vienna, 8–12 March), UN Doc. E/CN.7/2010/CRP.6*–E/CN.15/2010/CRP.1*.
- ¹⁷ Johnson D and Zimring F (2009) *The Next Frontier: National Development, Political Change and the Death Penalty in Asia*. Oxford: Oxford University Press, p. 104.
- ¹⁸ Amnesty International (11 January 2008) Uzbekistan abolishes the death penalty.
- ¹⁹ 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: 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.
- ²⁰ Kyrgyzstan reportedly legislated for the death penalty for drugs in 1998 the same year as a moratorium was implemented. International Crisis Group (26 November 2001) *Central Asia: Drugs and Conflict*. p. 17.
- ²¹ International Helsinki Federation for Human Rights (27 March 2007) Annual Report on Human Rights Violations 2007: Tajikistan. p. 175; AI (28 May 2009) Amnesty International Report 2009 – Tajikistan.
- ²² Gallahue and Lines.
- ²³ Agence-France Presse (1 December 2009) Hamas approves law to execute drug dealers; Reuters (3 December 2009) Gaza gets death penalty to halt drug scourge
- ²⁴ Netherlands Ministry of Foreign Affairs. Overview executions 2009 op. cit. However, Iran Human Rights reported that 140 people were executed for drug trafficking in 2009: <http://iranhr.net/spip.php?article1616> (last accessed 25 March 2010).
- ²⁵ Amnesty International (29 March 2010) Death Sentences and Executions in 2009. ACT 50/001/2010
- ²⁶ P Gallahue and R Lines (2010) *The Death Penalty for Drug Offences: Global Overview 2010*. London: IHRA
- ²⁷ Thanh Nien News (3 November 2006) Vietnam law commission wants death penalty for fewer crimes
- ²⁸ Xinhua News (27 June 2009) China executes four more drug traffickers on int'l anti-drug day.
- ²⁹ P Gallahue and R Lines (2010) *The Death Penalty for Drug Offences: Global Overview 2010*. London: IHRA
- ³⁰ Amnesty International (29 March 2010) Death Sentences and Executions in 2009. ACT 50/001/2010
- ³¹ Singapore Ministry of Home Affairs (30 January 2004) The Singapore government's response to Amnesty International's report Singapore: The Death Penalty: A Hidden Toll of Executions.
- ³² Gallahue and Lines.
- ³³ 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; Hands Off Cain (1 January 2009) Capital crimes under the constitution are: Murder, rape . . . : www.handsoffcain.info/news/index.php?idocumento=12001616 (last accessed 1 April 2010).

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- ³⁴ 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.
- ³⁵ US Department of State (27 February 2009) 2009 International Narcotics Control Strategy Report. Volume I (2009 INCSR).
- ³⁶ Gallahue and Lines.
- ³⁷ Narcotics Act, B.E. 2522 (1979), ch. 12: 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*. n411/2, p. 19.
- ³⁸ Amnesty International (26 August 2009) Thailand carries out first executions in six years: www.unhcr.org/refworld/docid/4a978362c.html (last accessed 18 March 2010).
- ³⁹ International Federation for Human Rights (28 July 2009) Executions in Thailand: FIDH calls for an immediate moratorium: www.unhcr.org/refworld/docid/4b47619c45.html (last accessed 3 March 2010).
- ⁴⁰ AI, Thailand carries out first executions in six years op. cit.
- ⁴¹ International Drug Policy Consortium (23 October 2009) 'Indonesia adopts new repressive narcotics law'
- ⁴² Text accessible from www.unodc.org/enl/browse_countries.jsp#i (last accessed 25 March 2010).
- ⁴³ The New York Times (11 July 2008) Indonesia widens use of death penalty.
- ⁴⁴ AI Death Sentences and Executions in 2009 op. cit. p. 6.
- ⁴⁵ Australian Associated Press, (June 26, 2008) 'Indonesia to speed up execution process for drug offenders' Printed in The Age
- ⁴⁶ Jakarta Globe (27 May 2009) Traffickers running out of time: www.thejakartaglobe.com/national/traffickers-running-out-of-time/277654 (last accessed 1 April 2010).
- ⁴⁷ As a means of categorisation the International Harm Reduction Association in its report, 'The Death Penalty for Drug Offences: Global Overview 2010', divided retentionist countries with capital drug laws into three categories -- symbolic commitment, low commitment and high commitment. These categories were inspired by Johnson and Zimring's 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'. IHRA found that only a small handful of countries sentence people to death for drugs in such numbers that they can be considered 'high commitment.'
- ⁴⁸ A compelling argument could be made that Kuwait is one of the more blood-thirsty countries when it comes to drugs – particularly in proportion to its population. In nine years, between 1998 and 2007, 14 drug offenders were executed. However, in the past few years, Kuwait has not killed at the pace or in the numbers as in the past.
- ⁴⁹ Gallahue and Lines (2010)
- ⁵⁰ 'Agence France-Presse (19 June 2009) Vietnam cuts list of death penalty crimes: Official.'
- ⁵¹ Amnesty International, Amnesty International Report 2008 - Bahrain, 28 May 2008
- ⁵² Times LIVE op. cit.
- ⁵³ Southern Weekend newspaper, interview with Tsinghua University professor Zhou Guangquan (August 26, 2010) – translation provided by the Dui Hua Foundation's blog, Dui Hua Human Rights Journal (1 September 2010)
- ⁵⁴ *ibid.*