

DEATH PENALTY AND DRUG CRIMES

Detailed Factsheet

13th World Day against the Death Penalty

On 10 October 2015, the World Coalition Against the Death Penalty along with abolitionist activists worldwide will mark the 13th World Day against the Death Penalty by drawing attention to the death penalty for drug crimes. While opposing the death penalty in all circumstances, abolitionists are also committed to seeing existing international human rights standards implemented. Among these is the restriction of crimes punishable by death for the most serious crimes- intentional killing.

Background

Thirty-three countries and territories¹ provide the death penalty, at least in name, for drug smuggling, according to Harm Reduction International, a drug-focused NGO and a member of the World Coalition. Most are either in Asia or in the Middle East, and in most of them executions are extremely rare. In some the death penalty for drug crimes is just symbolic. Only in seven countries are drug offenders known to be routinely executed. This list has for some time included **China, Iran, Saudi Arabia, Vietnam, Malaysia and Singapore. Indonesia is now included** following a number of executions in 2015.²

Throughout most of the 1980s and 1990s, the number of countries enacting capital drug laws rose dramatically. In 1979, about ten countries had the death penalty for drugs. By 1985, that number had risen to twenty-two and by 2000, to thirty-six. Today, the number has gone down to thirty-three countries. The reason this rise was so lamentable was that it corresponded with the remarkable global trend towards the abolition of the death penalty³. This briefing paper demonstrates why such executions must come to an end.

In the 1980s and 1990s, a trend emerged towards the abolition of the death penalty as countries repealed laws allowing capital punishment or simply ceased the practice of execution. According to Amnesty International, in 1977 only 16 countries had abolished the death penalty in law or practice. Today, that number has risen to 140⁴.

In a May 2015 blog, the authors of Harm Reduction International's Global Overview on the Death Penalty for Drug Offences, Rick Lines, Damon Barrett and Patrick Gallahue,⁵ argue that the death penalty for drug-related offences escalated as a consequence of the so called 'war on drugs'. "Most of the dozen States that actively execute drug offenders adopted these laws from the 1980s onwards, suggesting that rather than reflecting traditional 'values' of the region, these policies are instead a response to the anti-drugs climate of the period, and the drafting and adoption of the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs

¹ Unless otherwise specified, all the figures and data used in this factsheet come from Harm Reduction International, *The Death Penalty for Drug Offences: Global Overview 2010 – 2011 and 2012* available at: <http://bit.ly/1JB9jwB>

² The Economist, *Which countries have the death penalty for drug smuggling?*, 28 April 2015

³ Harm Reduction International, *The Death Penalty for Drug Offences: Global Overview 2011*, pp13-15

⁴ For more details, see the documents *Facts and Figures* available at www.worldcoalition.org/worldday

⁵ Rick Lines, Damon Barrett and Patrick Gallahue, *The Death Penalty for Drug Offences: 'Asian Values' or Drug Treaty Influence?* Opinion Juris, 21 May 2015, <http://opiniojuris.org/2015/05/21/guest-post-the-death-penalty-for-drug-offences-asian-values-or-drug-treaty-influence/>

and Psychotropic Substances⁶, the third UN drug treaty that established State obligations in international law to enact harsh penal provisions for drug offences at domestic level..”

In more recent years, many states started to bring their laws into compliance with international legal norms. In the past decade, for example, the Philippines, Uzbekistan and the Kyrgyz Republic abolished the death penalty for all offences, including drug-related offences. Tajikistan limited the number of crimes punishable by death in 2004, removing drug offences from that list. 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.

Keywords:

Death penalty for drug-related offences: legislation allowing for a sentence of death solely for drug offences. It does not address capital punishment for complicity in another’s death where drugs may have been a factor. For example, Afghanistan is not included in Harm Reduction International’s report, even though Article 31 of the national law on the Classification of Drugs and Precursors, Regulation of the Licit Activities, Drug Related Offences 2003 states: “If the armed resistance of the [drug] smuggler results in the death of a police officer or others assisting the police, he will be sentenced to death.” The more significant offence under this statute is the killing of a police officer or other bystanders. The drug trafficking is a lesser offence, and the context in which the more serious offence takes place⁷.

Drug trafficking: global illicit trade involving the cultivation, manufacture, distribution and sale of substances which are subject to drug prohibition laws⁸.

Abolitionist in practice: countries where the death penalty is still provided for in legislation but no executions have been carried out for at least ten years and there is an established practice not to carry out executions⁹.

Mandatory death penalty: the imposition of a death sentence is automatic upon conviction of a particular crime. The court (or other sentencing authority) retains no discretion to take into account the facts of the offence or the characteristics of each individual offender; instead, each offender is sentenced to death regardless of any mitigating circumstances that may apply¹⁰.

Drug-related deaths: the definition varies among UN Member States but includes all or some of the following: fatal drug overdoses, deaths due to HIV acquired through injecting drug use, suicide, and unintentional deaths and trauma due to drug use¹¹.

THE DEATH PENALTY FOR DRUGS COUNTRY BY COUNTRY

In order to demonstrate the differences between law and practice among states with the death penalty for drug offences, Harm Reduction International categorises countries into high application, low application or symbolic application states¹².

⁶ http://www.unodc.org/pdf/convention_1988_en.pdf

⁷ Harm Reduction International, *The Death Penalty for Drug Offences: Global Overview 2010*, p10

⁸ UNODC, *drug trafficking*, 20 January 2015: <https://www.unodc.org/unodc/en/drug-trafficking/index.html>

⁹ Amnesty International, *Death Sentences and Executions in 2014*, 2015

¹⁰ Death penalty worldwide Database, *Mandatory death penalty*, last accessed: 06 June 2015

¹¹ UNODC, *World drug report 2014*

¹² Harm Reduction International, *The Death Penalty for Drug Offences: Global Overview 2012*, p25

The task of identifying different categories of capital crimes is a challenging one that warrants further explanation. Drug-related offences often fall into different categories, such as crimes against the state or a violation of religious law. In Iraq, for example, drug trafficking is punishable by death only when it is committed “with the aim of financing or abetting the overthrow of the government by force”. As an example, Harm Reduction International includes Iraq as a state retaining the death penalty for drugs because of the potentially wide interpretation that could be applied to this condition. If the United States Supreme Court can categorise “drug kingpin activity” alongside “treason, espionage, terrorism” as a crime against the state, for example, it is conceivable that a wide range of aims could be suggested as a motive of drug-related offences in Iraq. To deal with this type of discrepancy, this report generally seeks to separate crimes associated with violence from crimes limited exclusively to drugs (i.e. trafficking, cultivation, possession), even where such drug crimes are legislated as being anti-religious or counter-state offences¹³.

High application states: China,¹⁵ Iran, Saudi Arabia, Malaysia, Indonesia,¹⁶ Singapore, Viet Nam

These states made death sentences and/or executions a regular part of their criminal justice system for drug-related offences. In some instances, such as in Singapore, the number of executions for drug offences has decreased in recent years and in Malaysia, the government has announced a reform on the use of mandatory death penalty. However, the number of death sentences in both countries in the past years remains high, justifying their continuing high application status.

Year	CHINA	
	Estimated executions ¹⁴	total
2010	At least 5,000	
2011	At least 4,000	
2012	At least 3,000	
2013	At least 3,000	
2014	At least 3,000	

Year ¹⁷	IRAN		SAUDI ARABIA		SINGAPORE	
	Total executions	Executions For Drugs	Total executions	Executions for Drugs	Total executions	Executions for Drugs
2010	650+	406	26+	No Data	1+	0
2011	676+	509	82+	1+	4 ¹⁸	2
2012	314+	439	79+	16	0	0
2013	624+	331	79+	No Data	0	0
2014	721+	367	90+	41+	2	2
2015-	329-688	No Data	102+	No Data	1	0

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 drug-related offences in Saudi Arabia in 2014, which accounts for around half of all that country’s executions.

¹³ Harm Reduction International, *The Death Penalty for Drug Offences: Global Overview 2010*, p10

¹⁴ Death penalty worldwide, China database, Cornell University law school, last updates 03/04/2015

¹⁵ In China, number of executions remains a state secret. According to estimations, China is the country executing the most.

¹⁶ Indonesia was considered as a low application states but after executing 2 persons for drug smuggling in 2013 and 14 for the same reason in the beginning of 2015, we can assume Indonesia is becoming a high application state.

¹⁷ Sources for the four tables and the chart pie below:

All the figure before 2012: Harm Reduction International, *The Death Penalty for drug offences: global review 2012*.

From 2012-2014: Amnesty International, *Death sentences and executions in 2013, 2014, 2015*

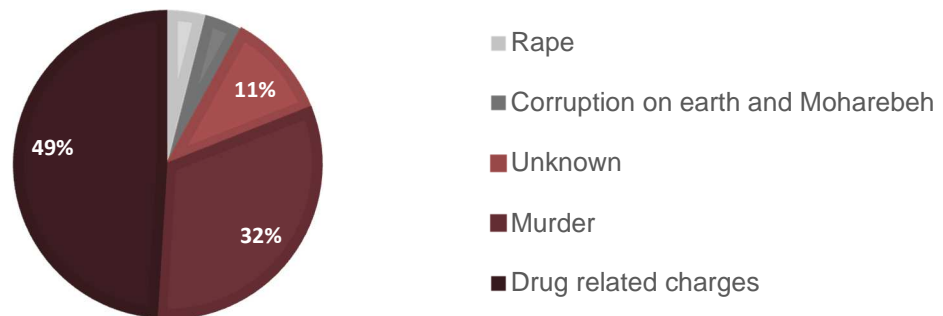
For 2015: Death Penalty Worldwide Database, Cornell University Law School, 03/04/2015

For Iran: Iran Human rights and ECPM, *Annual Report on the Death Penalty in Iran, 2013, 2014, 2015*

¹⁸ Singapore Prison Service report: http://www.sps.gov.sg/sites/default/files/SPS_2011_Annual_Report_Part%204.pdf

Year	MALAYSIA			VIETNAM		
	Death sentences	Sentences for drug offences	Total executions	Death sentences	Sentences for drug offences	Total executions
2010	114+	63+	At least 1	80+	24+	At least 1
2011	208+	83+	At least 1	69+	27+	At least 5
2012	60	No Data	0	86+	No Data	0
2013	76+	No Data	At least 2	148+	No Data	At least 7
2014	38	No Data	At least 2	72+	No Data	At least 3

EXECUTIONS IN IRAN IN 2014 CHARGES FOR ALL EXECUTIONS



Year	INDONESIA	
	Total executions	Executions for drug offences
2010	0	0
2011	0	0
2012	0	0
2013	5	2
2014	0	0
2015	14	14

The Vietnamese government admitted in a 2003 submission to the UN Human Rights Committee that “over the last years, the death penalty has been mostly given to persons engaged in drug trafficking.”¹⁹

Indonesia resumed executions in 2015 by sending 14 people to the firing squad for drug offences—and none for any other crime²⁰.

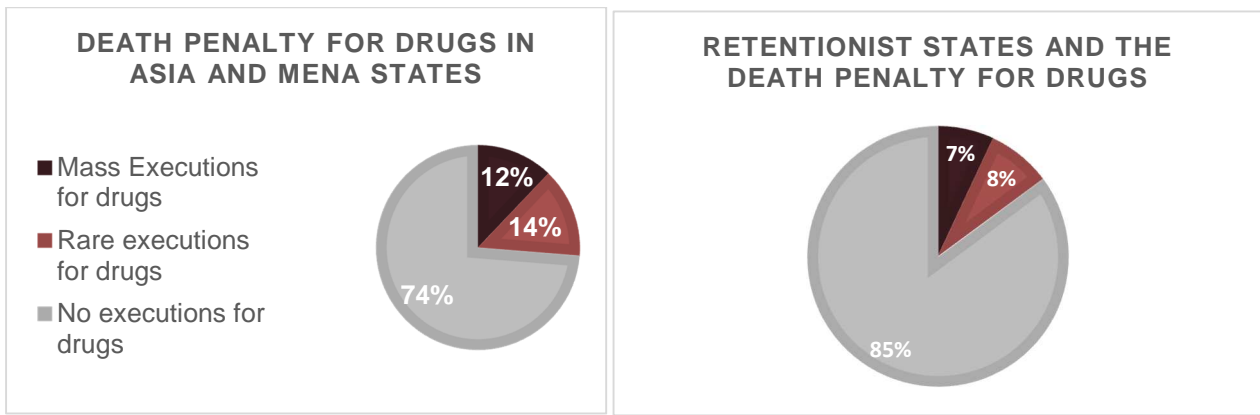
Low application states: Egypt, Kuwait, Thailand, Pakistan, Taiwan, Yemen²¹

In these countries, executions for drug offences are an exceptional occurrence. Although executions for drug offences may have been recently carried out, in practice such penalties are relatively rare, especially when compared with the small handful of high application countries.

¹⁹ UN Human Rights Committee, *Comments by the Government of Viet Nam on the concluding observations of the Human Rights Committee*, 21 July 2003, para. 1

²⁰ Harm Reduction international, *Submission to the Human Rights Council: impact of the world drug problem on the enjoyment of human rights*, 15 May 2015

²¹ Harm Reduction International, *The Death Penalty for drug offences: global review 2012*, pp31-36



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Symbolic application states: Bahrain, Bangladesh, Brunei-Darussalam, Cuba, Gaza, India, Lao PDR, Myanmar, Oman, Qatar, Sri Lanka, South Korea, United Arab Emirates, USA²³

These countries have the death penalty for drug offences within their legislation but do not carry out executions, or at least there is no record of executions for drug-related offences. Most of these countries are retentionist, which, according to Amnesty International, means that they retain the death penalty for ordinary crimes. Five of these symbolic application states are abolitionist in practice: they retain the death penalty but have not executed anyone during the last 10 years and are believed to have a policy or established practice of not carrying out executions.

Insufficient data: Iraq, Libya, North Korea, South Sudan, Sudan, Syria²⁴

This fourth category is used to denote instances where there is simply not enough information available to classify the country accurately.

THE REALITY OF THE DEATH PENALTY FOR DRUG CRIMES

Mandatory death penalty

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, Egypt, **Iran**, Kuwait, Lao PDR, **Malaysia**, Oman, **Singapore**, Sudan, Syria, United Arab Emirates and Yemen.²⁵

Mandatory death sentences have been criticised as being “over-inclusive” and “unavoidably violating human rights law”. 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.” Such mandatory sentences have also been criticised by the UN Human Rights Committee and the Inter-American Court of Human Rights, as well as by numerous national courts.

The court (or other sentencing authority) retains no discretion to take into account the facts of the offence or the characteristics of each individual offender; instead, each offender is sentenced to death regardless of any mitigating circumstances that may apply. For instance, in countries that have the mandatory death penalty for

²² Source for both pie charts above: Harm reduction international, Twitter page

²³ Harm Reduction International, *The Death Penalty for drug offences: global review 2012*, pp36-43

²⁴ Harm Reduction International, *The Death Penalty for drug offences: global review 2012*, pp44-45

²⁵ Harm Reduction International, *The Death Penalty for Drug Offences: Global Overview 2011*, p11

drug trafficking, a court would not be permitted to consider a defendant's lack of criminal record or the desperate circumstances that may have contributed to her/his decision to traffic in narcotics before imposing sentence.

The use of mandatory death penalty is, however, on the decline compared to the 2000s, largely as a result of judicial challenges to its application. National tribunals in the Americas, India, and Sub-Saharan Africa have concluded that the mandatory death penalty is unconstitutionally arbitrary and/or inhumane, and some have determined that it violates the right to life, the right to due process, and separation of powers principles.²⁶

Until recently, a few countries, such as Singapore and Malaysia, continued to uphold mandatory death penalty in the face of repeated constitutional challenges. However, in 2012, Singapore amended the Misuse of Drugs Act Chapter 185. Article 7 in the third part provides that "any person who is proved to have had in his/her possession more than" 100 gr of Opium, 3 grams of Morphine, 2 grams of diamorphine, 15 grams of Cannabis, 30 gr of Cannabis mixture, 10 grams of Cannabis resin, 3 grams of cocaine [...] "shall be presumed to have had that drug in possession for the purpose of trafficking unless it is proved that his/her possession of that drug was not for that purpose". Then article 33.B.1 states that "Where a person commits or attempts to commit an offence under section 5(1) or 7 [trafficking, manufacturing, importing and exporting controlled drugs] , being an offence punishable with death under the sixth column of the Second Schedule, and he/she is convicted thereof, the court" can impose a life term if the accused is found to be "only a drug courier" or suffering from such an abnormality of mind that it substantially impaired his mental responsibility for the committing offence."²⁷

Arbitrariness in the type of substance and in the amount of drugs for which the death penalty is applied

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.

Drug-related death is the most extreme form of harm that can result from drug use, and drug overdose is the primary cause of drug-related deaths globally. Opiates and opioids cause the highest number of drug-related deaths worldwide, and top the list of disease-causing problem drugs.

Yet the reality is more nuanced. Many of the people sentenced to death are not traders in so-called 'hard' drugs. Although opioids are the main source of overdoses, it is far from being the marijuana traffickers make up a large number, – and in some countries even a majority, – of drug-related offenders sentenced to death. Harm Reduction International reports that in **Malaysia**, most drug-related offenders sentenced to death were convicted of offences related to marijuana or hashish²⁸.

Saudi Arabia executions by drug 2007-2010²⁹

Drugs	Executions in Saudi Arabia
Heroin/morphine/opium	30
Marijuana/hashish/hemp	14
Cocaine	7
Mixture of heroin and Amphetamine-type stimulants	2
Unspecified	8

Malaysia death sentences by drug 2008-2010

Drugs	Death sentences in Malaysia
Marijuana/hashish/hemp	77
Heroin/morphine/opium	27
Amphetamine-type stimulants	17
Ketamine	4
Unspecified	4
Cocaine	3
Mixture of heroin and Amphetamine-type stimulants	2
Ecstasy	1

²⁶ Death penalty worldwide Database, *Mandatory death penalty*, last accessed: 06 June 2015

²⁷ Singapore, *Misuse of drugs act chapter 185 part 1 and 2*, 2012

²⁸ Harm Reduction International, *The Death Penalty for Drug Offences: Global Overview 2011*, p16-17

²⁹ Harm Reduction International, *The Death Penalty for drug offences global overview 2011*,

The death penalty for drugs is also arbitrarily applied with respect to the quantity of drugs for which a person may be sentenced to death, which is different in each country.

Country	Minimum of grams for which a person may be sentenced to death ³⁰
China	Opium, methylaniline or heroin: 1000 grams Other narcotic drugs: 50 grams ³¹
Thailand	20 grams of narcotics ³² Heroin: more than 100 grams ³³
Pakistan	More than 1 kg ³⁴
Iran	Heroin, morphine or cocaine: 30 gr Other drugs: more than 5 kg ³⁵

More generally, as shown in the table below, laws criminalising drug use and drug trafficking vary significantly from country to country and there are no clear standards to define the amount of drugs considered to be for personal consumption as contrasted with indicating drug trafficking.

³⁰ Death Penalty Worldwide, Death Penalty Database, 22 June 2015

³¹ Criminal Law of the People's Republic of China, art. 347, Jul. 1, 1979, as amended through to Feb. 25, 2011.

³² Intl. Federation for Human Rights, *The Death Penalty in Thailand*, p. 19, March 2005; Narcotics Act, sec. 66, B.E. 2522, 1979 amended by Narcotics Act, B.E. 2545, 2002

³³ Amnesty Intl., *When the State Kills*, p. 215, 1989

³⁴ Pakistan Control of Narcotic Substances Act, secs. 6- 9, Act No. 25, Jul. 7, 1997

³⁵ Iran Anti-Narcotics Law, arts. 4, 8, 1997, translation: United Nations, 2005.

Leechaianan, Y.; Longmire, D.R. The Use of the Death Penalty for Drug Trafficking in the United States (symbolic application state), Thailand (low application state) and Singapore, Malaysia and Indonesia (high application states): A Comparative Legal Analysis. *Laws* 2013, 2, 115-149.

Table 8. Similarities and differences with regard to narcotics laws across five countries.

No.	Variable	Similarities (YES)	Differences (NO)
1.	The death sentence is allowed for drug-related offenses	The US, Singapore, Malaysia, Indonesia and Thailand	-
2.	The amount of narcotics has a significant impact on judicial decision in sentencing	The US, Singapore, Malaysia, Indonesia and Thailand	-
3.	Possession of controlled substances over the limits prescribed in laws is assumed as possession for the purpose of trafficking	Singapore, Malaysia and Thailand	The US and Indonesia
4.	The death penalty can be imposed on offenders convicted only of drug offenses	The US, Singapore, Malaysia, Indonesia and Thailand	-
5.	Drug addicts are considered as patients	The US, Singapore, Malaysia, Indonesia and Thailand	-
6.	The drug scheduling system is clarified under narcotics laws	The US, Singapore, Malaysia, Indonesia and Thailand	-
7.	Drug trafficking and related offenses are determined the most serious crimes	Singapore, Malaysia, Indonesia and Thailand	The US (considering drug crime as serious, but not the most serious crime, since the death penalty is highly unlikely to be imposed on an offender convicted solely of drug offenses)
8.	Narcotics laws are criticized as violating the International Human Rights Law (ICCPR)	Singapore, Malaysia, Indonesia and Thailand	The US
9.	Asset forfeiture is used as a means to eradicate drug trafficking enterprise.	The US, Singapore, Malaysia and Thailand	Indonesia
10.	Based on important cases described in this study, a defendant was sentenced to death	Singapore, Malaysia and Indonesia	The US and Thailand
11.	Based on important cases described in this study, a defendant challenged the constitutional validity of capital punishment in narcotics law	Singapore and Indonesia	The US, Malaysia and Thailand

Discrimination in the use of the death penalty

- **Catching more mules than kingpins**

Senator Datuk Paul Low Seng Kuan, Minister in the Prime Minister's Department in Malaysia, opened the Asian Regional Congress Against the Death Penalty on 11 June 2015 by saying "*policies are not working; drug mules are being caught when kingpins go free*".

It should be borne in mind also that the majority of those facing the death penalty for drug offences are not people at the apex of the trafficking hierarchy. They are for the most part disadvantaged economic backgrounds, vulnerable people, ripe for exploitation by more senior figures.

Capital punishment policies, as well as draconian drug laws, are built on pillars of simplified generalisations. They rely on characterisations of people as 'evil', as well as the enforcement of judicially sanctioned death as the state's sovereign right to defend the citizenry from lethal threats.

- **Use of forced confessions and unfair trials**

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 few³⁶.

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. In **Indonesia**, for example, people convicted of drug-related crimes are held under special prison regimes, and suspected drug consumers and traders are particularly vulnerable to abuse, as ill-treatment is frequently used by the police to extract information on drug suppliers. Moreover, in many cases, their detention and/or forced treatment are not subject to judicial review. For instance, at the time of the Special Rapporteur's visit to **China**, "enforced drug rehabilitation" programs were a specific form of administrative detention³⁷.

Puri Kencana Putri, researcher for the Commission for "the Disappeared" and Victims of Violence (KontraS), also underlined the unfair trials some of the prisoners are exposed to. Rodrigo Gularte, who was mentally ill, was not accompanied by an interpreter and had no money to pay a lawyer. Putri also mentioned the issue of corruption and said that Andrew Chan and Myuran Sukumaran (two Australians later executed for drug smuggling) were asked by the judges to pay \$130,000 in exchange for a judgment of less than 20 years in jail.³⁸

3 presumptions of guilt - Steven Thiru, president of the Malaysian bar³⁹

"In **Singapore**, you have 3 presumptions of guilt:

- 1) When you are found with a certain quantity of drug you are presumed trafficking.
- 2) When you are found with an object in which there are drugs, you are presumed to be aware of it.
- 3) Finally, you are presumed to know the kind of drug it was".

³⁶ Harm Reduction International, *The Death Penalty for Drug Offences: Global Overview 2011*

³⁷ 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*

³⁸ Speech delivered at the Asian Regional Congress on 11 June 2015

³⁹ Speech delivered at the Asian Regional Congress on 11 June 2015

The United Nations Special Rapporteur on extrajudicial execution 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.”⁴⁰

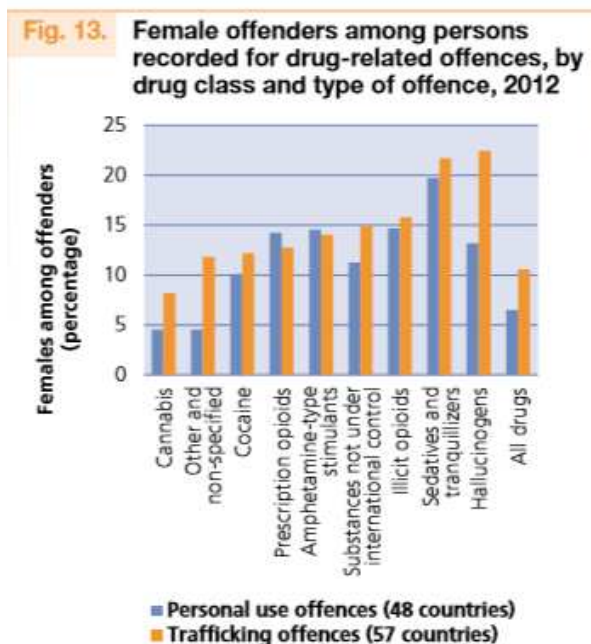
- **Women and drug trafficking**

Women are also victims as drug traffickers think they can cross borders unnoticed⁴¹.

An association of overseas Filipinos advised its compatriots – especially women – to be vigilant against international drug traffickers luring them with cash, lucrative jobs, love marriages and pleasure trips to use them as drug mules.

"Of the 710 [Filipinos] arrested, 265 (37%) are males while 445 (63%) are females. Women are usually targeted by syndicates because they generally attract mild suspicion from the inspectors," according to a member of the Philippines Drug Enforcement Agency. It said that the drug is either swallowed or inserted in the female body after minor surgery or hidden in luggage and handbags. Pregnant women are recruited to work as drug carriers because they will get sympathy as well as reduced punishment in some countries⁴².

In China, the number of women in prison surpassed 100,000 in 2013, and between 2003 and 2014, the number of women incarcerated in Chinese prisons soared 46 percent, 10 times faster than the growth of the male prison population. Drug- and property-related crimes were the most common offences committed by women surveyed in five Chinese prisons and detention centres by researchers from Renmin University of China Law School in the summer of 2013. The researchers noted that the “vast majority” of women involved in drug crime, which includes possession, trafficking, and sheltering others to use drugs, are illiterate and rely on drug trafficking as their primary source of income.⁴³



Source: UNODC estimates based on annual report questionnaire.

⁴⁰ The United Nations Special Rapporteur on extrajudicial executions, UN human rights expert calls for immediate halt to further executions in Indonesia, 13 February 2015

⁴¹ UNODC, *World drug report 2014*

⁴² Emirates24/7, *88 Filipinos face the death penalty in drug cases*, 17 April 2015

⁴³ Dui Hua Journal, “China: Women Prisoner Numbers Rise 10 Times Faster than Men”, 23 June 2015, available at: <http://www.duihuajournal.org/2015/06/china-women-prisoner-numbers-rise-10.html>

- **Foreigners (including migrant workers and refugees from Asia and Africa)**

In countries where capital punishment is imposed, 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 custody of the prosecuting state. However, in some countries capital punishment for drug-related offences appears to be disproportionately applied to non-nationals.⁴⁴

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."

The Special Rapporteur's comment in his 2009 report was directed at the Indonesian government's figures that 'of the 57 [people] awaiting execution on drugs trafficking charges 43 are foreigners'.

While, the figures in **Indonesia** are troubling (eighteen people have been executed for drugs since 2008: two Nigerians in 2008, a Malaysian and an Indonesian in 2013, one Dutch, two Australians, five Nigerians, two Brazilian, one Malawi, one Vietnamese and two Indonesian in 2015), 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.

In **Kuwait**, for example, fourteen people were hanged for a drug offence between 1998 and 2014. In 2006, among the 10 executions, 3 only were from Kuwait and among the foreign nationals, 3 were executed for drug offences. 5 people were hanged in 2013, 2 Egyptians, 1 Pakistani, 1 Saudi Arabian and 2 Bedouins. It would appear that none of them were nationals of Kuwait.⁴⁵

In **Saudi Arabia**, of the forty people executed for drug-related offences in 2007, 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.

In the **United Arab Emirates**, of seven people sentenced to death for a drug-related offence in 2010, six were non-nationals.

In the Islamic Republic of **Iran**, as many as 4,000 Afghan refugees are believed to be on death row for drug-related offences⁴⁶.

Migrant workers from Africa and Asia represent a significant proportion of the drug mules caught in retentionist countries. Many are from countries that themselves have the death penalty for drug-related offences.

⁴⁴ Harm Reduction International, *The Death Penalty for Drug Offences: Global Overview 2011*

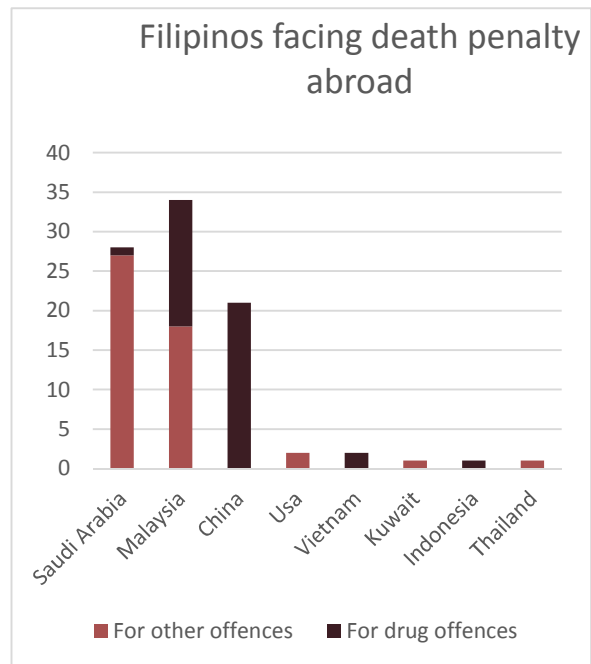
⁴⁵ <http://www.capitalpunishmentuk.org/kuwait.html>

⁴⁶ Economic and social council, report of the secretary general " capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty, 21-22 July 2015

Indonesian citizens, for example, are subjected to harsh penalties abroad. "Regarding the drug cases, 112 are in Malaysia, 15 in China, 2 in Laos, 1 in Singapore and another one in Vietnam," the Foreign Ministry's Directorate for the Protection of Indonesian Citizens and Legal Entities Abroad stated. The Foreign Ministry had handled 9,290 legal cases abroad as of September 2014, with most of the cases relating to migrant workers and ship crewmembers. 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.⁴⁷

Similarly, in **the Philippines**, an abolitionist country, the government has been very active in trying to protect over 80 citizens facing the death penalty abroad.⁴⁸

In Africa, the **Nigerian** National Drug Law Enforcement Agency said it has stopped 20 people from smuggling drugs out of Nigeria to Asia since January 2014.⁴⁹



INTERNATIONAL STANDARDS ON DRUG CRIMES AND CAPITAL PUNISHMENT

International law

International Covenant on Civil and Political Rights

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'⁵⁰.

Article 6. 2.

In countries which have not abolished the death penalty, sentence of death may be imposed only for **the most serious crimes** in accordance with the law in force at the time of the commission of the crime

Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances

International drug control law is based on three UN conventions from 1961, 1971 and 1988. The 1988 convention creates an obligation for countries to adopt a domestic law against drugs.

Article 3.5.⁵¹ The Parties shall ensure that their courts and other competent authorities having jurisdiction can take into account factual circumstances which make the commission of the offences established in accordance with paragraph I of this article **particularly serious**, such as:

⁴⁷ The Jakarta Post, "229 Indonesians face death penalty abroad", 24 February 2015

⁴⁸ Rie Takumi, "Aside from Mary jane veloso, over 80 other Pinoys facing death penalty abroad", 27 April 2015, GMA news

⁴⁹ Rick Halperin, newsletter Nigeria, 02/05/2015

⁵⁰ Harm Reduction International, *The Death Penalty for Drug Offences: Global Overview 2011*, p17

⁵¹ United Nations Convention Against Illicit Traffic In Narcotic Drugs And Psychotropic Substances, 1988, UN

- a) The involvement in the offence of an organized criminal group to which the offender belongs;
- b) The involvement of the offender in other international organized criminal activities;
- c) The involvement of the offender in other illegal activities facilitated by commission of the offence;
- d) The use of violence or arms by the offender;
- e) The fact that the offender holds a public office and that the offence is connected with the office in question;
- f) The victimization or use of minors;
- g) The fact that the offence is committed in a penal institution or in an educational institution or social service facility or in their immediate vicinity or in other places to which school children and students resort for educational, sports and social activities;
- h) Prior conviction, particularly for similar offences, whether foreign or domestic, to the extent permitted under the domestic law of a Party.”

Article 3.5 of this convention highlights aggravating circumstances for drug trafficking. As a consequence, without those aggravating charges, none of those drug crimes can be considered as most serious crimes in international law says Rick Lines, executive director of Harm Reduction International.⁵²

Paragraph 3.4.d is also relevant as it states that “the Parties may provide, either as an alternative to conviction or punishment, or in addition to conviction or punishment of an offence established in accordance with paragraph 2 of this article, measures for the treatment, education, aftercare, **rehabilitation** or social reintegration of the offender.” A part totally forgotten by states using the death penalty.

UN bodies

Over recent years, clear guidance has emerged from international human rights bodies and others 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 Economic and Social Council (ECOSOC)

United Nations political bodies further endorsed the ‘**most serious crimes**’ threshold in a 1984 resolution of the 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’.

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.

UN Human Rights Committee

The UN Human Rights Committee, the body of independent experts mandated with monitoring the implementation and interpretation of the Covenant, has clearly stated that drug crimes do not meet this threshold. The Committee has consistently been critical of countries that apply the death penalty to a large number of offences, noting the incompatibility of many of those offences with Article 6 and calling for repeal in those cases. It has addressed these criticisms to many states that apply capital punishment to drug offences, including Egypt, India, Iran, Sri Lanka, Sudan, Syria, Viet Nam and Thailand. Most definitively, the Committee concluded in its 2005 report on Thailand and 2007 report that drug trafficking was an offence that ‘cannot be characterized as the most serious’. Therefore, executions for drug offences violate international human rights law⁵³.

⁵² Speech delivered at the Asian Regional Congress on 11 June 2015

⁵³ Harm Reduction International, *The Death Penalty for Drug Offences: Global Overview 2010*, p13

UN Special Rapporteur on Extrajudicial, Arbitrary or Summary Executions

The UN Special Rapporteur on extrajudicial, arbitrary or summary executions recognises that the scope of 'most serious crimes' has not been precisely spelt out in human rights treaties, however, the debates that took place over its drafting and the extensive practice of international human rights mechanisms clarified its meaning and significance. He has suggested that the term 'most serious crimes' does not cover, inter alia, drug-related offences. Further, he concludes that the death penalty can be imposed only in cases "where it can be shown that there was an intention to kill which resulted in the loss of life⁵⁴."

UN Office on Drugs and Crimes (UNODC)

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 nature⁵⁵.

In the position paper of the UNODC regarding Human rights, there is a specific paragraph on the death penalty for drug offences. It says that in countries that retain the death penalty:

"If, in spite of all of the above, a country actively continues to apply the death penalty for drug offences, UNODC places itself in a very vulnerable position vis-à-vis its responsibility to respect human rights if it maintains support to law enforcement units, prosecutors or courts within the criminal justice system. Whether support technically amounts to aid or assistance to the human rights violation will depend upon the nature of technical assistance provided and the exact role of the counterpart in arrest, prosecutions and convictions that result in application of the death penalty. Even training of border guards who are responsible for arrest of drug traffickers ultimately sentenced to death may be considered sufficiently proximate to the violation to engage international responsibility."⁵⁶

International Narcotics Control Board (INCB)

The treaty body established to oversee implementation of the drug control treaties, the International Narcotics Control Board (INCB), wrote in 2003:

"The Board has considered the issue of capital punishment for drug trafficking offences. Capital punishment is neither encouraged nor prohibited by the international drug control conventions, which do not refer to it under provisions relating to penalties. Under the United Nations standards and norms in criminal justice, States are encouraged to avoid using the death penalty. The safeguards guaranteeing protection of the rights of those facing the death penalty (Economic and Social Council resolution 1984/50) endeavour to limit the scope of application of the death penalty to only the most serious crimes and provides for a number of safeguards".⁵⁷

President of the INCB **Raymond Yans**

(during the launch of the International Narcotics Control Board (INCB) annual report in March 2014):

"The INCB, taking into account the relevant international conventions on human rights, the various protocols, the various resolutions of the General Assembly, of the ECOSOC, and of UN human rights bodies concerning the death penalty, we encourage state parties, part of the conventions, that still provide for the death penalty

⁵⁴ Harm Reduction International, *The Death Penalty for Drug Offences: Global Overview 2012*, p22

⁵⁵ UNODC, *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

⁵⁶ UNODC, *UNODC and the promotion and protection of human rights-Position Paper, 2012*

⁵⁷ Harm Reduction International, *The Death Penalty for Drug Offences: Global Overview 2012*, p19

for drug-related offences in their national legislation and practice it, to consider the abolishing of the death penalty for drug-related offences.”⁵⁸

Regional bodies

Inter-American Commission on Human Rights

The Inter-American Commission on Human Rights has dealt with the death penalty as a crucial human rights challenge. While a majority of the member states of the Organization of American States abolished capital punishment, a substantial minority retains it.

The Inter-American Court has held that capital punishment is not per se incompatible with/prohibited by the American Convention on Human Rights. However, the Convention has set a number of strict limitations to the imposition of capital punishment, including that imposition of the death penalty must be limited to the most serious common crimes not related to political offences.

African Commission on Human and People’s Rights

In the African system, article 4 of the **African Charter on Human and Peoples’ Rights** recognises the right to life and does not refer expressly to the death penalty.⁵⁹

When information is received that execution is imminent in a retentionist state the Chairperson of the Working Group on the Death Penalty or the Chairperson of the Commission promptly issues Letters of Urgent Appeal to the state concerned not to carry out the executions and to consider abolishing capital punishment in law. For example, in 2011 the Chairperson sent Letters of Urgent Appeal on the death penalty to Gambia, focused on the extension of the scope of the death penalty to include human trafficking, robbery, rape, and drug-related crimes⁶⁰.

European Union

The European Union has a strong and unequivocal opposition to the death penalty in all times and in all circumstances. The death penalty must not be imposed for non-violent acts such as financial or economic crimes, or because of political offences or rivalries. It must also not be imposed for drug related crimes, religious practices or expression of conscience, or for sexual relations between consenting adults, it also being understood that its scope should never go beyond the most serious intentional crimes⁶¹.

Constitutionality of the death penalty

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.

India

In July 2011, the Bombay High Court struck down the mandatory death penalty for drug-related offences, 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

⁵⁸ IDPC, “INCB speaks out against death penalty”, 5 March 2014, available at: <http://idpc.net/incb-watch/updates/2014/03/incb-speaks-out-against-death-penalty>

⁵⁹ Inter-American Commission on Human Rights, *The Death Penalty In The Inter-American Human Rights System: From Restrictions To Abolition*, 2011

⁶⁰ ACHPR working group on the death penalty in Africa, *Death penalty in Africa: report of the African commission on human and peoples’ rights working group on the death penalty in Africa*, October 2012.

⁶¹ The Council of the European Union, *EU guidelines on Death Penalty*, 12 April 2013

the Court of the use of such discretion and scrutiny before pronouncing the preordained death sentence cannot but be regarded as harsh, unjust and unfair⁶².

Malaysia

In 2009, Malaysia was “considering ... proposed amendments to existing anti-drug trafficking legislation to reduce the maximum sentence to life imprisonment”. In October 2012, moreover, the Government proposed a moratorium on executions for drug offences pending a review of the use of mandatory death penalty. The number of death sentences in 2013 and 2014 however remained high.

Laos

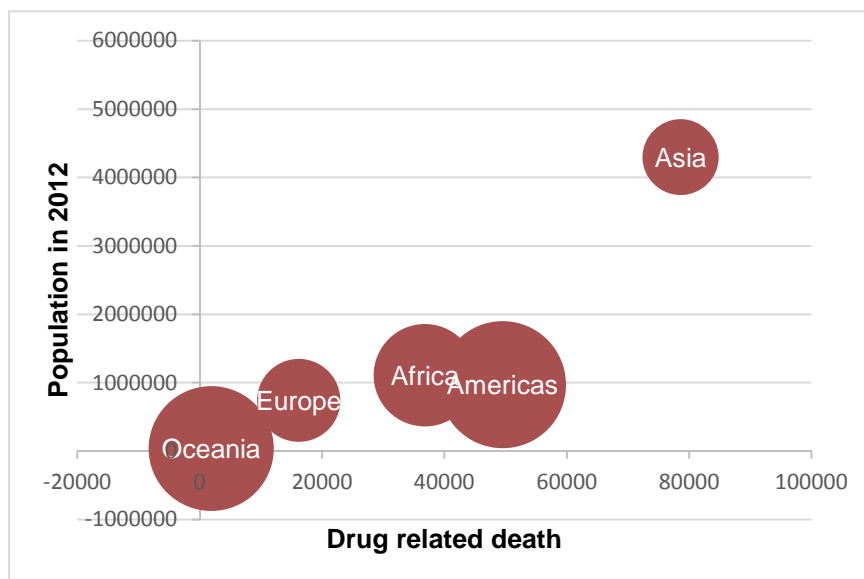
Lao PDR, although stating that it retains the death penalty as a deterrent measure, said in 2010 that it ‘would consider revising the Penal Code in the coming years, including with a view to limiting the scope of crimes to which the death penalty would apply’.

THE DEATH PENALTY DOES NOT SOLVE THE WORLD DRUG PROBLEMS

Contrary to the main arguments retentionist countries use to maintain the death penalty for drug-related offences, imposing or allowing the death penalty for such crimes does not deter drug abuse or drug trafficking.

The death penalty does not protect people from drug abuse

In an interview for Aljazeera in March 2015, the Indonesian president, Joko Widodo, explained his position towards the use of the death penalty for drug trafficking: “Drug use is a major problem in Indonesia. 18,000 people are killed by drugs every year, within 10 years it would be 180,000 people killed... The goal is to protect the new generation from drug abuses.”⁶³



In the World Drug Report 2014, the UN Office on Drugs and Crime (UNODC) estimates that in 2012, there were 183,000 drug-related deaths worldwide.

All the high application states are in Asia, where 78,600 people died from drug abuse in 2013, which is the highest number of drug-related death in the world.⁶⁴ However, Asia is the most populous continent in the world and as shown in the diagram opposite⁶⁵, the drug-related death to population ratio is much smaller in Asia, compared to the ratio in Americas or Oceania, for example.

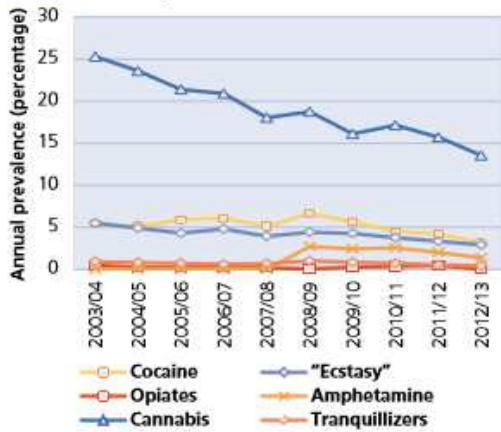
⁶² Tim Lindsey, *Bali Nine: hypocrisy, politics and courts play out in the death row lottery*, The conversation, 22 January 2015

⁶³ Aljazeera, *Interview of president Joko Widodo*, 7 March 2015

⁶⁴ UNODC, *World Drug Report 2014*, p4

⁶⁵ United nations, Department of economic and social affairs, Population division, *World Population 2012*. Available at: www.un.org/en/development/desa/population/publications/pdf/trends/WPP2012_Wallchart.pdf

Fig. 10. Trends in drug use in England and Wales, 2003/04-2012/13



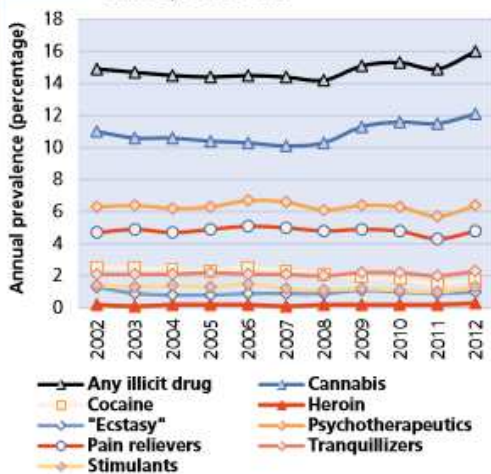
Source: United Kingdom, Home Office, "Drug misuse: findings from the 2012/13 Crime Survey for England and Wales" (London, July 2013).

The death penalty has not been proven to reduce drug consumption

According to the UNODC, during the period 2003-2012, the estimated number of drug users (as a percentage of the population in the 15-64 age bracket) has remained fairly stable.

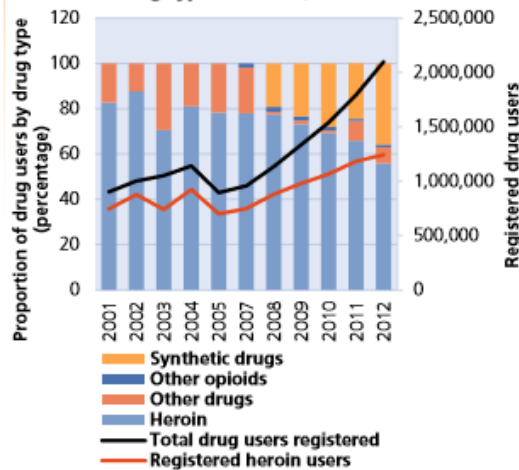
Moreover, if we compare the tables showing trends in drug use in an *abolitionist* state (England and Wales) a *symbolic application* state (USA) and a *high application* state (China), we see a clear decrease in England, and Wales; in the United States, the number of drug users seems to be pretty stable, while in **China** the number of registered drug users continues to increase.

Fig. 8. Prevalence of drug use in the United States, 2002-2012



Source: Substance Abuse and Mental Health Services Administration, Results from the 2012 National Survey on Drug Use and Health: Summary of National Findings, NSDUH Series H-46, HHS Publication No. (SMA) 13-4795. Rockville, MD: Substance Abuse and Mental Health Services Administration, 2013.

Fig. 9. Trends in registered drug users and proportion of registered drug users by drug type in China, 2000 - 2012



Source: Information provided by China in the UNODC annual report questionnaire and the annual reports on drug control in China published by the Office of the National Narcotics Control Commission.

The death penalty doesn't deter drug trafficking

Crime related to drug trafficking varies depending on the type of drug and the supply patterns in different regions. After many years of sentencing drug-related offenders to death, empirical evidence shows that the death penalty does not reduce drug trafficking.

An overview of global drug trafficking: cultivation and distribution worldwide⁶⁶

Opium (and products derived from the opium poppy plant, including morphine and heroin)
Afghanistan has the world's largest opium poppy cultivation and saw an increase in the area under cultivation (from 154,000 hectares in 2012 to 209,000 hectares in 2013). **Myanmar and Nepal** are two other important areas of cultivation, although with much less acreage.

⁶⁶ UNODC, *World Drug Report 2014*, pp.x-xii

Afghan heroin is increasingly reaching new markets, such as Oceania and South-East Asia, that had been traditionally supplied from South East Asia. The long-established Balkan route seems to remain a corridor for the transit of Afghan heroin to the lucrative markets in Western and Central Europe, but its importance has declined due to factors such as more effective law enforcement and a shrinking market in Western and Central Europe. The so-called “southern route” is expanding, with heroin reaching Europe through the area south of Afghanistan, via the Near and Middle East and Africa, or to Pakistan then directly to Europe.

Cocaine

While cocaine manufacture and trafficking have had a serious impact in the Western hemisphere, there are indications that overall global availability of cocaine has fallen.

Cocaine use is still relatively concentrated in the Americas, Europe and Oceania, and almost all of the world’s cocaine is produced in three countries in South America: **Colombia, Peru and Bolivia.**

Cannabis

Cultivation and production of cannabis herb (marijuana) remains widespread, while production of cannabis resin (hashish) remains confined to a few countries in North Africa, the Middle East and South-West Asia.

Global cannabis use seems to have decreased, according to estimates from a number of countries in Western and Central Europe. In the United States, however, the lower perceived risk of cannabis has led to an increase in its use.

Amphetamine-type stimulants (substances composed of synthetic stimulants, including ecstasy)

While it is difficult to quantify the global manufacture of amphetamine-type stimulants, the number of dismantled laboratories manufacturing these drugs - mostly methamphetamine - continued to rise. Manufacture of methamphetamine in North America expanded once again, with a large increase in the number of “meth labs” reported dismantled in the United States of America and Mexico.

Many offenders sentenced to death and executed are mere bit-players in the illicit drug trade. The majority of people facing the death penalty for drug-related offences are not at the top of the trafficking hierarchy. They are, for the most part, poor and vulnerable, ripe for exploitation by people higher up.

Singapore is a compelling example of how even harsh laws against drug-related crimes are ineffective in reducing trafficking. Singapore has had Draconian laws for drug-related offences since 1973, and has been notorious as one of the world’s leaders in imposing the death penalty for drug crimes. Still, Singapore's drug-related crime rate is far worse than other countries such as Costa Rica and Turkey, according to the European Institute for Crime Prevention and Control in 2010. The number of drug seizures in Singapore has continued to increase in recent years. The Central Narcotics Bureau of Singapore reported record numbers of seizures in 2012. The estimated street value of the drugs seized was S\$18.3 million (\$15 million, €11.3 million), 14% higher than in 2011. The escalating rate of drug trafficking in Singapore shows that harsh laws are ineffective in deterring drug trafficking and access to drugs.

Ayatollah Sadeqh Larijani,

Head of Iran’s judiciary, during a meeting of judiciary officials in December 2014:

“On the issue of drugs and trafficking, it feels necessary that we need a change in the legislation because the ultimate goal of the law should be implementing justice, while in reality, this goal is often not realized.” According to the conservative Etelaat newspaper, Sadeqh Larijani did not advocate for lenient treatment of drug smugglers. He said that drug smugglers need to be “dealt with seriously” but conceded, “Unfortunately, today, with respect to drugs and drug-related laws, we see that these laws have no impact.”

The deterrent argument is based on the idea that those involved in crimes are aware of the sentence they may face if caught and are more likely to consider that the risk is too high if they face execution. But this is far from always being the case. A striking example is the case of Nusakambangan, a prison guard on the Indonesian

island where the executions for drugs took place in January and April 2014. He was caught with drugs in May 2014⁶⁷.

The death penalty does not reduce drug-related deaths

Negative impact on the health of drug users

In countries where the “war on drugs” is zealously pursued or drug laws are enforced stringently, those who are dependent on drugs may be, and often are, discouraged from accessing health services. It is reported that in some countries this harsh approach has reinforced the status of people who use drugs as social outcasts. It drives drug use underground, compromising HIV/AIDS treatment, and discouraging people who use drugs from accessing treatment. Where HIV infections occur through unsafe injecting practices, seroprevalence (having the HIV virus) among injecting drug users can be as high as 50 per cent. Those who use drugs may avoid seeking medical attention for fear that information regarding their drug use will be shared with authorities, which could result in arrest, imprisonment or treatment against their will. Use of drug registries — where people who use drugs are identified and listed, and their civil rights curtailed — may also deter individuals from seeking treatment, as violations of patient confidentiality are documented frequently in such jurisdictions⁶⁸.

Negative impact in transit countries

Almost all of the world’s heroin and the vast majority of the world’s cocaine are produced in countries that have experienced political and paramilitary insurgencies. While both the opium poppy and the coca bush are optimally productive under specific climatic conditions, they could be grown in a much wider range of countries than is currently the case (and they have been, historically). The production of these drugs is reliant on crops that require large cultivation areas, however, and the international control system has compelled national governments to take strong action against any such cultivation that occurs within their borders. As a result, wide-scale cocaine or heroin production is only possible in countries where there are stretches of rural area that the state is struggling to fully control. The best examples of this phenomenon are the primary cultivation areas for the opium poppy, the crop from which heroin is derived: Afghanistan and Myanmar.⁶⁹

Latin America is a crucial geographic zone for drug production and trafficking. The Andean countries of Colombia, Peru and Bolivia are the world’s main cocaine producers, while Central America, Mexico and the Caribbean have become the principal corridors for transporting drugs into the United States and Europe⁷⁰. As a result, the countries of the region have suffered various consequences of drug trafficking and US-led eradication and interdiction efforts. In production countries, these include environmental and community damage from forced eradication of coca crops by aerial spraying and the funding of insurgent guerrilla groups: most notably, FARC in Colombia and the Shining Path in Peru -- through illicit crop cultivation and sales. Throughout the entire region, in both drug production and trafficking areas, there has been an upsurge of violence, corruption, impunity, erosion of rule of law, and human rights violations caused by the emergence of powerful organized crime groups and drug cartels. Central America is now home to some of the world’s most dangerous cities, with the highest global homicide rate found in Honduras, at 82.1 murders per 100,000 inhabitants.

⁶⁷ *Australian Associated Press, Executions fail to dent Jakarta’s drug war, 29 May 2015, Mailonline*

⁶⁸ UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, *Report to the General Assembly on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, A/65/255, 6 August 2010, para. 17

⁶⁹ https://www.unodc.org/documents/wdr/WDR_2010/3.0_Destabilizing_influence_of_drug_trafficking_Case_of_cocaine.pdf

⁷⁰ <http://www.drugpolicy.org/drug-trafficking-latin-america>

The death penalty is not a deterrent - innovative measures are needed

There is no evidence that the death penalty deters crime. Claims to the contrary are impossible to prove, especially considering the variety of drugs and how the use of one type may rise while another falls – to say nothing of the difficulty in identifying useful indicators (such as seizures, arrests, hospital admissions for overdose, admissions for treatment etc.)⁷¹.

A new paradigm to address the drug problem must be less centered on repressive measures and more mindful of national societies and cultures. This effort must involve not only governments but all sectors of society⁷².

ALTERNATIVES TO THE DEATH PENALTY

Governments and the international community developed a number of strategies to address the world drug problems in a comprehensive way, including:

- demand-reduction and harm-reduction programmes (prevention, treatment, education);
- supply-reduction interventions (drug interdiction, dismantling of drug trafficking organisations, alternative development programmes, eradication, control of precursor chemicals);
- efforts to control illicit financial flows; and
- fight against corruption.⁷³

Toward a paradigm shift

Over the last few decades, the international war on drugs has led to public health crises, mass incarceration, corruption, and black market–fuelled violence. Governments begun calling for a new approach, and reforms in some countries have spurred unprecedented momentum for change. Pressed by drug war–fatigued Latin American leaders, the UN General Assembly plans to hold a review of the drug control system in 2016.⁷⁴

The General Assembly is the principal policy-making organ of the United Nations (UN), one in which all 193 UN member states have equal representation. At the request of member states, it convenes UN General Assembly Special Sessions (UNGASS) on specific issues. There was an UNGASS on drugs in 1998 at which member states agreed on a Political Declaration on Global Drug Control.

The next UNGASS on drugs was due to be held in 2019. However in September 2012, the presidents of Colombia, Guatemala and Mexico called on the UN to host an international conference on drug policy reform and a resolution on drug policy – sponsored by Mexico, and co-sponsored by 95 other countries – to move up this global drug policy summit meeting to 2016 was adopted.⁷⁵

The 1998 UNGASS on drugs was held under the slogan “A drug free world – We can do it”.⁷⁶ Many have claimed that the world has clearly failed to achieve this and the UNGASS must focus instead on how the international drug control regime contributes to broader UN objectives such as public health, human security, social and economic development, and human rights.

For example, the Global Commission on Drug Policy stated: “A stale political declaration in 2016 that promises to ‘solve the drugs problem’ and make the world ‘drug-free’ is not going to be the answer the world needs...

⁷¹ Harm Reduction International, *The Death Penalty for Drug Offences: Global Overview 2012*

⁷² Latin American Commission on Drugs and Democracy, *Drugs and democracy: toward a paradigm shift*, February 2009.

⁷³ UNODC, *World Drug Report 2014*

⁷⁴ Open Society Foundations, “What Is UNGASS 2016?”, March 2014. Available at <http://www.opensocietyfoundations.org/explainers/what-ungass-2016>

⁷⁵ International Drug Policy Consortium, “The UN General Assembly Special Session on Drugs (UNGASS) 2016”, 2014, available at: <http://idpc.net/policy-advocacy/the-un-general-assembly-special-session-on-drugs-ungass-2016>

⁷⁶ www.un.org/ga/20special/

We ask that countries take advantage of the 2016 UNGASS as an opportunity to finally start getting drugs under control.”⁷⁷

Drug reform policies and harm reduction: alternatives that work

Why We Need Drug Policy Reform⁷⁸

Current drug policies are failing. Worse, they are causing enormous harm to individuals and communities. Around the world, poorly designed drug laws that seek to punish production, possession, use, and even dependence have fuelled violence, instability, and health crises.

Why shouldn't we punish people for using or producing drugs?

The fact is that punitive laws have not successfully reduced use or availability of drugs in the vast majority of countries. For example, as the number of people in U.S. jails and prisons on drug-related offences almost doubled from the late 1980s to today, the use of illicit drugs actually increased and street drug prices plummeted.

Even worse, the collateral damages from these laws have been disastrous. Some of the impacts they have include:

- **Drug-related violence:** According to some estimates, hundreds of thousands of murders in the Americas can be attributed to violence between criminal groups fighting for territory and power made possible by the drug trade.
- **Health epidemics:** In Eastern Europe and Central Asia the number of people living with HIV has almost tripled since 2000, and injecting drug use has been the leading route of transmission. These cases are entirely preventable, but “tough-on-drugs” laws prevent access to life-saving services such as needle exchange and opioid substitution therapy; such measures deter addicted drug users from seeking help and treatment.
- **Mass incarceration:** The total U.S. prison population has more than quadrupled over the last 30 years. Over half of U.S. federal inmates today are in prison on drug convictions—nearly a quarter of all incarcerated Americans. In many other parts of the world, including Thailand, Brazil, and Iran, between 25 and 50 percent of all prisoners have been convicted on drug offences.
- **Waste of law enforcement resources:** In 2011, someone in the United States was arrested for marijuana every 42 seconds. New York City alone spent \$75 million in 2010 to arrest and jail people for small amounts of marijuana.

If we stop punishing people for drug use, won't there be more crime and addiction?

In countries that have introduced alternative drug policies, crime and addiction did not increase but instead, important benefits were observed. In Portugal, for instance, where use of all drugs was decriminalized, drug use did not spike as some predicted. But there were major increases in the number of people accessing treatment and other services, in addition to a huge drop in drug-related HIV transmission. The proportion of drug offenders in the Portuguese prison system fell from 44 percent in 1999 to 21 percent in 2008.

Moreover, attempts to arrest drug users and sellers and bring the multi-billion dollar trade under control can have the opposite effect. Crackdowns often exacerbate violence by destabilizing illegal markets and informal controls, as was the case when Mexico's government waged an all-out war on drugs in 2006. In the following six years, more than 60,000 people died in drug-related violence as groups—including the Mexican government—fought to fill the power vacuum and take control.

⁷⁷ http://www.unodc.org/documents/ungass2016//Contributions/Civil/Global_Commission_on_drug_policy/1-English.pdf

⁷⁸ Open Society Foundations, “Why we need drug policy reform?”, July 2013. Available at <http://www.opensocietyfoundations.org/explainers/why-we-need-drug-policy-reform>

Shared Responsibility

In 2010, Harm Reduction International started highlighting the role of the United Nations Office on Drugs and Crime (UNODC), the European Commission and individual European governments all actively involved in funding and/or delivering technical assistance, legislative support and financial aid intended to strengthen domestic drug enforcement activities in states that retain the death penalty for drug offences.⁷⁹ Such funding, training and capacity-building activities – if successful – result in increased convictions of persons on drug charges and the potential for increased death sentences and executions.

Although the responsibility for death sentences and executions for drug offences lies primarily with retentionist governments themselves, there are ways in which abolitionist governments and international organisations play a role in contributing to this practice.

The death penalty for drug offences is a key indicator of the absence of human rights considerations in drug control. The absence of safeguards to limit the application of the death penalty as a result of funding, technical assistance and capacity building is therefore an indicator of major human rights gaps and shortfalls in international and bilateral funding, implementation and evaluation processes.⁸⁰

UN Secretary General Ban Ki Moon

“Donor states and international organizations supporting projects fighting against drugs in states in favor or maintaining the death penalty need to make sure that the grant they are giving is not leading to nor facilitating nor legitimating the use of death penalty in cases where it wouldn't be conform to international law”⁸¹.

According to a 2014 report by Reprieve, European nations have given almost \$60 million to counter-narcotics projects in Pakistan and Iran since 1985. \$14.9 million of this money went to Iran and \$43.4 million to Pakistan. Since 1979, Iran has executed at least 10,000 alleged drug traffickers caught by the Anti-Narcotics Police, and hanged over 300 in 2013 alone⁸².

For many years European nations have seen Iran and Pakistan as important partners in the “war on drugs”, as both countries represent critical supply routes for traffickers looking to transport heroin grown in the region to Europe.

However, because of a large number of executions, some countries - including Britain and Denmark - have in recent years stopped providing funding for UNODC drug control programs in Iran. Announcing his Government's decision to do so, Denmark's then-Trade and Development Minister stated that “the donations are leading to executions”.

⁷⁹ Harm Reduction International, *Complicity or Abolition? The Death Penalty and International Support for Drug Enforcement, 2010, p5*

⁸⁰ Harm Reduction International, *Complicity or Abolition? The Death Penalty and International Support for Drug Enforcement, 2010, p27*

⁸¹ UNODC, “UNODC and the Promotion and Protection of Human Rights, Position Paper”, 2012, p10

⁸² Reprieve, *European aid for Executions, November 2014*

WHAT NEEDS TO BE DONE

A number of actions by governments are needed to implement international human rights standards and ban executions for drug crimes all over the world:

- Civil society should use the opportunity of UNGASS to highlight human rights violations, including the death penalty;
- States that still apply the death penalty for drug crimes should abolish the death penalty for all crimes and pending abolition, states must respect international human rights safeguards such as the restriction to intentional killing and fair trials;
- UNODC should implement its own 2012 Position Paper entitled “UNODC and the Promotion and Protection of Human Rights”;
- UN member states and donors should attach this position paper to funds given to UNODC anti-drug programs.

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More information at: www.worldcoalition.org/worldday