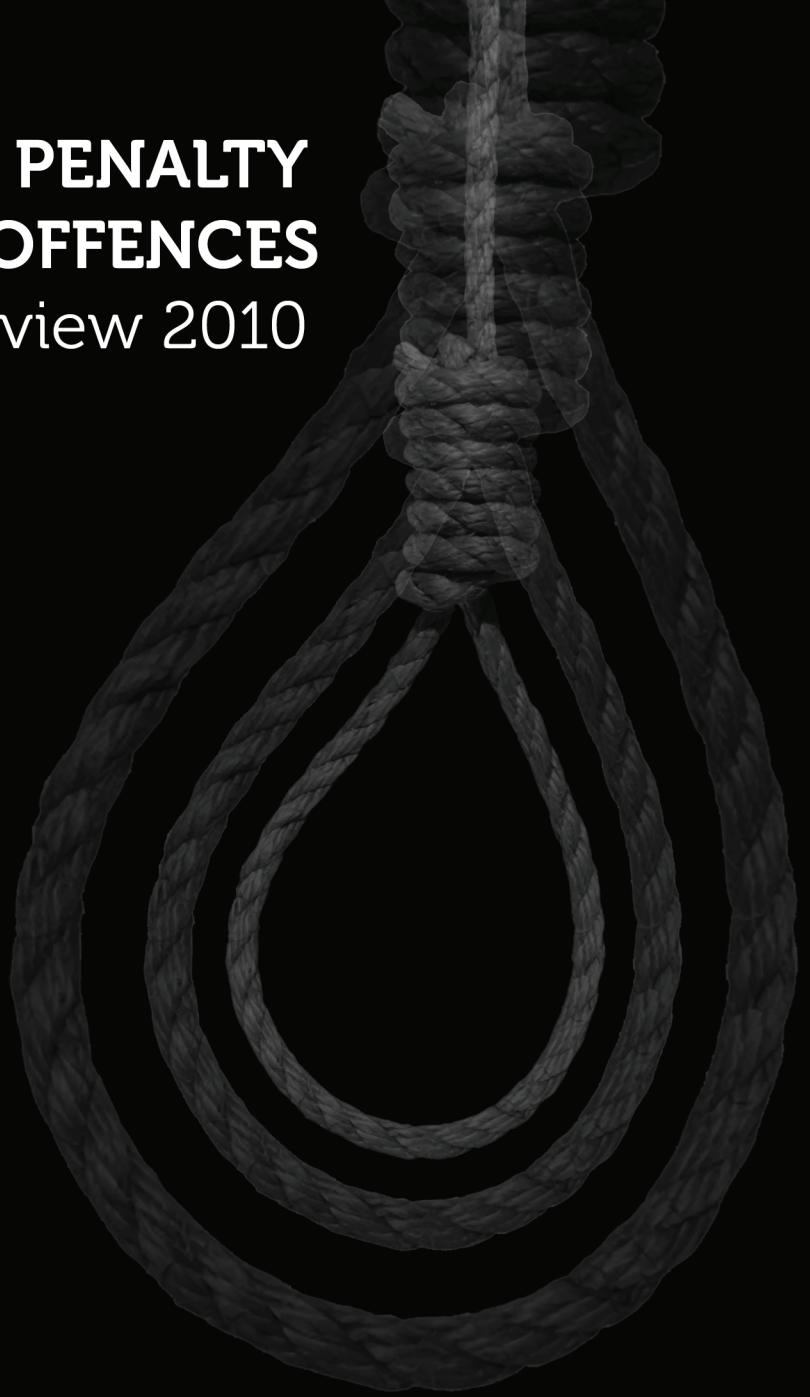


THE DEATH PENALTY FOR DRUG OFFENCES

Global Overview 2010



INTERNATIONAL
HARM REDUCTION
ASSOCIATION

The Death Penalty for Drug Offences Global Overview 2010

Patrick Gallahue and Rick Lines

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About the International Harm Reduction Association

The International Harm Reduction Association (IHRA) is one of the leading international non-governmental organisations promoting policies and practices that reduce the harms from all psychoactive substances, harms which include not only the increased vulnerability to HIV and hepatitis C infection among people who use drugs, but also the negative social, health, economic and criminal impacts of illicit drugs, alcohol and tobacco on individuals, communities and society. A key principle of IHRA's approach is to support the engagement of people and communities affected by drugs and alcohol around the world in policy-making processes, including the voices and perspectives of people who use illicit drugs.

IHRA is an NGO in Special Consultative Status with the Economic and Social Council of the United Nations.

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Dedicated to the memory of

Edith Yunita Sianturi

Edith was sentenced to death in Indonesia in 2001 for having 1 kilogram of heroin in her luggage.

In 2007 she was the lead plaintiff in an unsuccessful case before the Indonesian Constitutional Court challenging the legality of the death penalty for drug offences.

Edith died of HIV-related tuberculosis in Tangerang Women's Penitentiary in April 2009.

According to the Jakarta Post, 'she preferred to die rather than face the firing squad'.

FOREWORD

Professor Roger Hood

Those of us who have attempted to provide an accurate and up-to-date account of the status of capital punishment in all countries of the world know how difficult this task proves to be. This is especially so in relation to crimes other than murder, such as drug offences.

The researcher is faced with discovering whether existing laws prescribing the death sentence for such offences are still extant or whether new ones have been enacted and whether they mandate death as the sole sentence that can be imposed or whether the courts have discretion over when to impose the ultimate penalty. It is also, of course, necessary to gauge the extent to which in practice death sentences are imposed and executions carried out. It is not merely that information on legislation may be out of date, the statistical data on the number of death sentences imposed and persons executed in each year may be hidden from view by state security services or simply not reported by Ministries of Justice in a systematic fashion. Furthermore, many of the countries that actively retain the death penalty do not respond to the UN Secretary General's quinquennial surveys which seek such information, despite a resolution from the Economic and Social Council as long ago as 1989 (1989/64) calling upon all UN states to make such information available to the Secretary General on an annual basis.

The researcher is therefore reliant on reports from human rights NGOs, newspaper reports and other secondary sources, all of which can usually only estimate the extent to which nations have recourse to capital punishment for drug offences. Thus, in order to chart whether there has been any progress towards abolition of the death penalty for such offences, it is necessary to mount regular in-depth surveys of the situation.

This immensely valuable survey, carried out by Patrick Gallahue and Rick Lines at the International Harm Reduction Association, provides such an update. The message it conveys is admirably clear and gives cause for optimism. Article 6(2) of the International Covenant of Civil and Political Rights (ICCPR) grants an exception to the right to life guaranteed in Article 6(1) to countries that have not as yet abolished the death penalty, but only in relation to 'the most serious crimes'. The jurisprudence, as this paper shows, has developed to the point where human rights bodies have declared that drug offences are not among the 'most serious' crimes: indeed that the death penalty, pending universal abolition, should be restricted to wilful murder, and even then be a discretionary penalty.

Going beyond this, the authors' analysis shows that there are thirty-two countries that retain the death penalty in law for certain drug offences, but, in recent years, only six of them have enforced it through executions on a scale that could be described as indicating a 'high commitment' to the practice: China, Iran, Saudi Arabia, Viet Nam, Singapore and Malaysia. Among these, it appears that

Singapore and Malaysia have recently greatly reduced the number of persons they execute each year and that Viet Nam may be giving serious consideration to its policy and practice. There are indications too that the number of executions in China may fall as the Supreme People's Court further develops its guidelines to restrict the scope and application of the death penalty. It is now essential that all the countries in this small group of apparently committed states publish the data that would make their practices transparent to their own populations and the international community.

At the other end of the spectrum, five countries with the death penalty for drug offences on their statute books have executed no persons for any offence for over ten years and can therefore be truly regarded as abolitionist de facto. In another nine countries, executions for drug offences have dwindled so much and are so sporadically carried out (even though death sentences may continue to be imposed) that they can safely be classified as having only a 'symbolic commitment' to the policy of deterring the trade in illicit drugs through threatening certainty of execution for such crimes. Their practice of occasionally yet rarely carrying out executions is by definition arbitrary and therefore unjust. Given the political will, all fourteen of these countries could immediately abolish capital punishment for drug offences.

In the middle are eight countries that the authors describe as having a 'low commitment'. It is especially regrettable that almost all these countries fail to provide statistical data that would have enabled this survey to provide an accurate count of death sentences and executions and thus an analysis of the progress towards cessation of executions. Nevertheless the material provided suggests that several of them, such as Pakistan and Bangladesh, may be already moving to a symbolic use of capital punishment for drug offences.

Regrettably, there were four countries where the data was so insufficient that it was impossible to put them reliably into any of the three categories.

Nine of the thirty-two countries which threaten drug offenders with death are not parties to the ICCPR: three of them are 'high commitment' states – namely Saudi Arabia, Singapore and Malaysia (and China has yet to ratify the Covenant, twelve years after becoming a signatory in 1998). The other six countries appear to have only a 'symbolic' commitment. Ratification of the treaty by all these countries would be likely to move them further towards agreement that to kill prisoners for drug offences is a breach of their right to life and their right to be free from the threat of a cruel, inhuman and degrading punishment.

All those concerned about this issue will recognise their debt to the authors of this thorough and expert report.

All Souls College, Oxford
April 2010

1. INTRODUCTION AND EXECUTIVE SUMMARY

In December 2007 the International Harm Reduction Association (IHRA) produced a major report on the death penalty for drug offences. That report, entitled *The Death Penalty for Drug Offences: A Violation of International Human Rights Law*,¹ provided a detailed review of the use of capital punishment for drug offences worldwide and argued that the application of the death penalty for drugs was in violation of international law. Since that report, the issue of the death penalty for drugs has received increased attention from non-governmental organisations (NGOs) around the world. It has also received heightened scrutiny from international human rights monitors, including the UN High Commissioner for Human Rights and the UN Special Rapporteur on torture, who have also found the practice to violate international human rights law. Based upon the IHRA report, 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.

The Death Penalty for Drug Offences: Global Overview 2010 provides an updated review of the status of the death penalty for drugs worldwide, with a particular focus on national legislation and state practice.

The death penalty for drugs and state practice

- **58 countries retain the death penalty**
- **32 jurisdictions retain the death penalty for drug offences**
- **At least 12 of the 32 jurisdictions are known to have carried out an execution for drug offences in the past three years**
- **13 of the 32 jurisdictions retain a mandatory death penalty for certain categories of drug offences**
- **5 of the 32 jurisdictions are considered 'abolitionist in practice'**

According to Amnesty International, the death penalty has been abolished in law or practice in 139 countries.² The *Global Overview 2010* identifies 32 jurisdictions that currently have legislation prescribing capital punishment in drug cases, including five countries considered abolitionist in practice.³ These are Bahrain, Bangladesh, Brunei-Darussalam, China, Cuba, Egypt, Gaza (Occupied Palestinian Territories), India, Indonesia, Iran, Iraq, Kuwait, Lao PDR, Libya, Malaysia, Myanmar, North Korea, Oman, Pakistan, Qatar, Saudi Arabia, Singapore, South Korea, Sri Lanka, Sudan, Syria, Taiwan, Thailand, United Arab Emirates, United States of America, Viet Nam and Yemen.

In surveying the global state of the death penalty for drug offences, this report considers only those countries that have legislation allowing for a sentence of death solely for drug offences. It does not address those that impose capital punishment for complicity in another's death where drugs may

1 Lines R (2007) *The Death Penalty for Drug Offences: A Violation of International Human Rights Law*. London: IHRA.

2 Amnesty International: www.amnesty.org/en/deathpenalty/abolitionist-and-retentionist-countries (last accessed 17 March 2010).

3 This figure includes Taiwan and the Hamas-led government in Gaza (Occupied Palestinian Territories), neither of which are recognised as fully independent 'states' by the UN.

have been a factor. Typically the application of capital punishment is prescribed for drug trafficking, cultivation, manufacturing and/or importing/exporting. However, the definition of capital narcotics crimes is not limited to these offences. In fact, the types of drug offences carrying a sentence of death are broad and diverse, and include possession of illicit drugs in some countries.

In addition to the variation in how drug offences are defined in national law, there are also huge disparities in how these laws are enforced. The *Global Overview 2010* divides state practice in this regard into three categories: symbolic commitment, low commitment and high commitment death penalty states. Another small group of states simply cannot be accurately classified because of a dearth of information about the number of executions and offences for which it is usually imposed.

Some countries have the death penalty for drug offences in legislation, in some cases even as a mandatory sanction, yet in practice have gone years or even decades without an actual execution taking place. In these countries, drug statutes seem more a **symbolic commitment** of the nation's 'tough' stance against illegal narcotics than a functioning criminal justice policy. The *Global Overview* identifies fourteen jurisdictions in the symbolic commitment category.

Other states actively implement the death sentences provided for in law, yet such executions are exceptional. These countries have shown a **low commitment** to executing people for drug-related offences. In these instances, people may be executed sporadically – perhaps one or two persons every three or four years. These low commitment countries may go long periods without an execution, only to resume killing once again, perhaps in the context of needing to appear 'tough' on drugs. The *Global Overview* identifies eight jurisdictions in the low commitment category.

While the actions of low commitment states are regrettable, they cannot be compared with the practice of states with a **high commitment** to executing drug offenders. This category of countries executes drug offenders in high numbers on an annual basis. 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 seem a normalised part of the criminal justice process. Unlike the other two categories, 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. The *Global Overview* identifies six jurisdictions in the high commitment category.

The death penalty for drugs and international human rights law

The lawful application of capital punishment is significantly restricted under international law. Article 6(2) of the International Covenant on Civil and Political Rights states that the penalty of death may only be applied to the 'most serious crimes'. Over the past twenty-five years UN human rights bodies have interpreted Article 6(2) in a manner that limits the number and type of offences for which execution is allowable under international human rights law.

While many retentionist governments argue that drug offences fall under the umbrella of ‘most serious crimes’,⁴ this is not the perspective of the UN Human Rights Committee or the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, both of which have stated that drug offences do not constitute ‘most serious crimes’ and that executions for such offences are therefore in violation of international human rights law. In recent years there has also been increasing support for the belief that capital punishment in any form violates the prohibition of cruel, inhuman or degrading treatment or punishment, as enshrined in numerous UN and regional human rights treaties.

Although some retentionist governments claim that human rights are a foreign construct and that capital punishment reflects accepted social or cultural norms, within many death penalty states there is a keen domestic debate about the legitimacy of executing drug offenders. Official proposals to take drug offences off the list of those punishable by death have been considered in states as diverse as Viet Nam, Bahrain and Libya. In Singapore and Indonesia, court actions taken in the past three years have challenged the constitutionality of the death penalty for drugs. In addition, several countries that have the death penalty for drugs in law are observing moratoria, and several others may as well be, given the infrequency with which they use the death penalty. The diverse domestic advocacy against capital punishment in these states and, indeed, the wide variation in state practice regarding the death penalty for drugs undermines the suggestion that the death penalty represents some sort of cultural or regional norm.

The death penalty for drugs – a significant issue of concern for abolitionists

In its 2007 report on the death penalty for drug offences, IHRA found that, despite the global trend towards abolition of capital punishment, the number of states expanding their domestic death penalty legislation to include narcotics offences had actually increased over the past two decades.⁵ As reflected in the *Global Overview 2010*, this trend appears to have peaked and begun to reverse. The number of states carrying out the death sentences for drug offences prescribed in law appears to be declining, while a number of others are observing moratoria on all executions.

Despite these positive developments, the fact remains that those states responsible for the highest proportion of executions of drug offenders have continued to do so and in some cases have intensified the practice. In some countries, drug offenders continue to comprise a significant proportion of all annual executions. The *Global Overview 2010* has been able to identify hundreds of executions for drugs annually, yet the actual figure likely exceeds one thousand, as several of the leading death penalty states keep figures on executions secret.

4 Lines R (2010) A ‘Most Serious Crime’? – The Death Penalty for Drug Offences and International Human Rights Law. *Amicus Journal* 21.

5 Lines The Death Penalty for Drug Offences op. cit.

2. THE DEATH PENALTY FOR DRUG OFFENCES WORLDWIDE

An international perspective

According to Amnesty International, there are fifty-eight countries that retain the use of the death penalty.⁶ Of these 'retentionist' states, roughly half have laws prescribing the death penalty for certain categories of drug offences.⁷

In surveying the global state of the death penalty for drug offences, this report considers only those countries that have legislation allowing for a sentence of death solely for drug offences. It does not address those that impose capital punishment for complicity in another's death where drugs may have been a factor. For example, Afghanistan is not included in this 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.'⁸ 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 place.

The task of identifying different categories of capital crimes is a challenging one that warrants further explanation.

Drug offences often fall into different categories, such as crimes against the state⁹ or a violation of religious law.¹⁰ In Iraq, for example, drug trafficking is punishable with death only when it is committed 'with the aim of financing or abetting the overthrow of the government by force'.¹¹ The *Global Overview 2010* 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,¹² 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 offences.

6 Amnesty International: www.amnesty.org/en/deathpenalty/abolitionist-and-retentionist-countries (last accessed 17 March 2010).

7 Five countries with the death penalty prescribed for drug offences are considered by Amnesty International to be abolitionist in practice.

8 Text accessible from www.unodc.org/enl/browse_countries.jsp#A (last accessed 18 March 2010).

9 *Kennedy v. Louisiana* 128 S. Ct 2641 (2008).

10 World Coalition Against the Death Penalty (June 2008) *Fighting Against the Death Penalty in the Arab World: Protagonists, Arguments and Prospects*, p. 24.

11 Amnesty International (April 2007) *Iraq – Unjust and Unfair: The Death Penalty in Iraq*, MDE 14/014/2007, p. 10.

12 *Kennedy v. Louisiana* 128 S. Ct 2641 (2008).

Using these criteria, this report identifies that at least thirty-two jurisdictions currently have legislation allowing for the use of capital punishment in drug cases.¹³ These are Bahrain, Bangladesh, Brunei-Darussalam, China, Cuba, Egypt, Gaza (Occupied Palestinian Territories), India, Indonesia, Iran, Iraq, Kuwait, Lao PDR, Libya, Malaysia, Myanmar, North Korea, Oman, Pakistan, Qatar, Saudi Arabia, Singapore, South Korea, Sri Lanka, Sudan, Syria, Taiwan, Thailand, United Arab Emirates, United States of America, Viet Nam and Yemen.

However, this is not to suggest that all of these states are actively executing people for drug offences. Less than half are confirmed to have carried out an execution for drugs in the last three years, although death sentences continue to be pronounced even in countries not actively executing.

For example, while Brunei-Darussalam has a mandatory death sentence for drugs in law, it has not carried out an execution for drugs or any other offence since 1957.¹⁴ Taiwan has observed a de facto moratorium since 2006¹⁵ and South Korea's unofficial moratorium has been in effect since 1997.¹⁶ Laos¹⁷, Brunei-Darussalam¹⁸, Myanmar¹⁹ and Sri Lanka²⁰ have gone so long without a judicial execution that Amnesty International considers them to be countries that are 'abolitionist in practice'.²¹ It is also not known whether anyone has ever been executed for a drug offence in the United Arab Emirates²² or Bahrain,²³ although death sentences for drug offences have been pronounced in both. Similarly, Bangladesh rarely, if ever, executes persons convicted of drug offences despite imposing death sentences.²⁴ In addition, there are states such as India²⁵ and the United States²⁶ that allow the death penalty for certain categories of drug offences, but in practice do not execute for drug offences alone.

The trend towards abolition

At the time of IHRA's 2007 report on the death penalty, drug offences appeared to be the exception to the trend towards the global abolition of capital punishment.²⁷ Since the 1980s, as the number of countries worldwide retaining the death penalty dropped, there was a concurrent rise in the

13 This figure includes Taiwan and the Hamas-led government in Gaza (Occupied Palestinian Territories), neither of which are recognised as fully independent 'states' by the UN.

14 Hood R and Hoyle C (2008) *The Death Penalty: A Worldwide Perspective*. Oxford: Oxford University Press, p. 88.

15 Taiwan Alliance to End the Death Penalty, communication with author (9 November 2009).

16 Amnesty International (16 February 2009) South Korea must not resume use of the death penalty; AI (28 May 2009) Amnesty International Report 2009 – South Korea.

17 International Federation for Human Rights (16 July 2008) Laos: Official moratorium on the death penalty – an opportunity for Laos; AI (28 May 2009) Amnesty International Report 2009 – Laos.

18 Amnesty International (10 October 2008) Asia: Time to move towards abolition of the death penalty.

19 Hood and Hoyle op. cit. p. 88.

20 UK Home Office (18 February 2009) Country of Origin Information Report – Sri Lanka; AI (28 May 2009) Amnesty International Report 2009 – Sri Lanka.

21 Amnesty International: www.amnesty.org/en/deathpenalty/abolitionist-and-retentionist-countries (last accessed 17 March 2010).

22 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?iddocumento=12001616 (last accessed 1 April 2010).

23 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.

24 AI *The Death Penalty: No Solution to Illicit Drugs* op. cit. p. 18.

25 US Department of State (27 February 2009) 2009 International Narcotics Control Strategy Report. Volume I (2009 INCSR).

26 Death Penalty Information Center, communication with author (18 March 2010).

27 Lines *The Death Penalty for Drug Offences* op. cit.; Lines A 'Most Serious Crime'? op. cit.

number of states expanding the application of the death penalty to include drug offences.²⁸ This trend, however, appears to have reversed or at the very least stalled.²⁹

Since 2001 the Philippines,³⁰ Uzbekistan³¹ and Kyrgyz Republic³² have ceased executing people for drugs or any other offence.³³ Tajikistan formerly had the death penalty prescribed in law for certain quantities of drugs,³⁴ but has instituted a formal moratorium and in 2005 commuted all death sentences to prison terms.³⁵ In 2006 Jordan amended Articles 8 and 9 of Law No. 11 of 1988 on Narcotic Drugs and Psychotropic Substances, reducing the punishment for certain categories of drug crimes from the death penalty to life imprisonment.³⁶

In stark contrast, a very small group of states stiffened penalties on drug offences in recent years by introducing the death penalty, expanding its scope or intensifying its use. For example, North Korea is reported to have increased penalties in 2006³⁷ and again in 2008³⁸ for drug offences. In late 2009 the Hamas administration in Gaza (Occupied Palestinian Territories) announced its intention to begin enforcing the death penalty for drug offences.³⁹ There have also been worrying signs in Iran, where executions of drug offenders have widely fluctuated over the years. For example, in 2008 Iran executed at least 96 people for drug offences.⁴⁰ That number rose sharply in 2009 to an estimated 172.⁴¹ The number of people reported to have been sentenced to death for drugs in Malaysia also increased dramatically between 2008 and 2009, although it is not known how many executions are actually carried out each year. Thailand executed two convicted drug traffickers by lethal injection in 2009 after a six-year hiatus.⁴² In February 2010 Mauritius threatened to reinstate the death penalty for drug offences.⁴³

28 Lines The Death Penalty for Drug Offences op. cit.

29 Professor Hood, however, notes that, compared with surveys performed in 1979, the number of states with the death penalty for drug offences remains high. Thus, some may argue this point depending on what is considered the benchmark. Hood and Hoyle op. cit. p. 137.

30 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.

31 Amnesty International (11 January 2008) Uzbekistan abolishes the death penalty.

32 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.

33 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.

34 *ibid.*

35 Netherlands 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.

36 Penal Reform International, communication with author (14 March 2010); Amnesty International, communication with author (4 March 2010).

37 Hands Off Cain (18 March 2006) North Korea: Country issues death penalty decree for drug traffickers: www.handsoffcain.info/archivio_news/200603.php?iddocumento=8310651&mover=0 (last accessed 8 April 2010).

38 The Daily NK (13 May 2008) North Korea has introduced amendments to its criminal codes to save the regime from falling apart; US Department of State 2009 INCSR op. cit.

39 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.

40 Netherlands Ministry of Foreign Affairs, Human Rights Department (n.d.) Overview executions 2008: Iran.

41 Netherlands Ministry of Foreign Affairs, Human Rights Department (n.d.) Overview executions 2009: Iran. This estimate, however, is in contrast to Iran Human Rights' calculation of 140 in its annual report for 2009. In either case, it still represents a sharp increase.

42 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).

43 IHRA and Collectif Urgence Toxida (March 2010) Briefing to the Committee on Economic, Social and Cultural Rights on the Consolidated Second-Fourth Reports of Mauritius on the Implementation of the International Covenant on Economic, Social and Cultural Rights: Drug Use, HIV/AIDS, and Harm Reduction: Articles 2, 12 and 15.1.b.

International human rights law

The application of the death penalty for drug offences raises a number of human rights concerns, many of which have been identified by human rights monitoring bodies. Indeed, it has been concluded that, from various perspectives, the application of capital punishment for drug offences is a violation of international human rights law.

Under international human rights law, the death penalty's application is subject to significant limitations, as prescribed in multilateral human rights treaties. These limitations have received clarification in the jurisprudence of the independent expert bodies tasked with interpreting those treaties, as well as the opinions of international human rights monitors.

The most significant of these limitations is found in Article 6(2) of the International Covenant on Civil and Political Rights, which states that the death penalty may only be applied for what the treaty terms 'most serious crimes'.

The 'most serious crimes' threshold for the lawful application of capital punishment is also supported by UN political bodies. In 1984, for example, the Economic and Social Council of the United Nations (ECOSOC) passed a resolution upholding nine safeguards on the application of the death penalty, which affirmed that capital punishment should be used 'only for the most serious crimes'.⁴⁴ The 'most serious crimes' threshold was clarified to mean that such offences were limited to those 'with lethal or other extremely grave consequences'.⁴⁵ The safeguards were later endorsed by the UN General Assembly.⁴⁶

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,⁴⁷ India,⁴⁸ Iran,⁴⁹ Sri Lanka,⁵⁰ Sudan,⁵¹ Syria,⁵² Viet Nam⁵³ and Thailand⁵⁴. Most definitively, the Committee concluded in its 2005 report on Thailand⁵⁵ and 2007 report on the Sudan⁵⁶ that drug trafficking was an offence that 'cannot be characterized as the most serious'. Therefore, executions for drug offences violate international human rights law.

44 ECOSOC (25 May 1984) Implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty. Resolution 1984/50.

45 *ibid.*

46 UN General Assembly (14 December 1984) Human rights in the administration of justice. Resolution A/RES/39/118.

47 UN Human Rights Committee (28 November 2002) Concluding observations: Egypt. CCPR/CO/76/EGY, para. 12.

48 UN Human Rights Committee (30 July 1997) Concluding observations: India. CCPR/C/79/Add.81, para. 20.

49 UN Human Rights Committee A/(29 July 1993) Concluding observations: Iran. CCPR/C/79/Add.25, para. 8.

50 UN Human Rights Committee (26 July 1995) Concluding observations: Sri Lanka. A/50/40, s. 5.

51 UN Human Rights Committee (5 November 1997) Concluding observations: Sudan. CCPR/C/79/Add.85, para. 8.

52 UN Human Rights Committee (24 April 2001) Concluding observations: Syrian Arab Republic. CCPR/CO/71/SYR, para. 8.

53 UN Human Rights Committee (26 July 2002) Concluding observations: Viet Nam. CCPR/CO/75/VNM, para. 7.

54 UN Human Rights Committee (8 July 2005), Concluding observations: Thailand. CCPR/CO/84/THA, para. 14.

55 *ibid.*

56 UN Human Rights Committee (29 August 2007) Concluding observations: Sudan. CCPR/C/SDN/CO/3, para. 19.

The Committee's position in this regard has received support from UN human rights monitors on several occasions. For example, in 1996 the UN Special Rapporteur on extrajudicial, summary or arbitrary executions wrote:

[T]he death penalty should be eliminated for crimes such as economic crimes and drug-related offences. In this regard, the Special Rapporteur wishes to express his concern that certain countries, namely China, the Islamic Republic of Iran, Malaysia, Singapore, Thailand and the United States of America, maintain in their national legislation the option to impose the death penalty for economic and/or drug-related offences.⁵⁷

The Special Rapporteur restated this position in the 2006 annual report.⁵⁸

The view that the death penalty for drug offences violates international law is also shared by the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, who noted in a 2009 report that, in his view, 'drug offences do not meet the threshold of most serious crimes . . . Therefore, the imposition of the death penalty on drug offenders amounts to a violation of the right to life.'⁵⁹ In addition to concerns related to Article 6(2) of the Covenant, the Special Rapporteur argued that capital punishment in general raises significant concerns in the context of the prohibition of cruel, inhuman or degrading treatment or punishment, found in Articles 7 and 10 of the Covenant, Article 16 of the Convention Against Torture and all regional human rights treaties:

[C]orporal punishment in all its forms . . . has been qualified by all relevant intergovernmental human rights monitoring bodies as cruel, inhuman or degrading punishment, it follows that, under present international law, corporal punishment can no longer be justified, not even under the most exceptional situations.⁶⁰

Asking whether capital punishment is 'an aggravated form of corporal punishment', the Special Rapporteur requested that the Human Rights Council undertake a 'comprehensive legal study on the compatibility of the death penalty with the right not to be subjected to cruel, inhuman or degrading punishment under present human rights law'.⁶¹

The 'most serious crimes' threshold is not the only safeguard restricting the lawful application of capital punishment. Safeguard number 5 of the nine safeguards articulated in the 1984 ECOSOC resolution states:

Capital punishment may only be carried out pursuant to a final judgement rendered by

57 UN Commission on Human Rights, Extrajudicial, summary or arbitrary executions: Report by the Special Rapporteur, submitted pursuant to Commission on Human Rights resolution 1996/74, 24 December 1996, E/CN.4/1997/60.

58 UN Human Rights Council (29 January 2007) Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions. A/HRC/4/20, para. 51-52.

59 UN Human Rights Council (14 January 2009) Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. A/HRC/10/44, para. 66.

60 *ibid.* para. 37.

61 *ibid.* paras. 38 and 48.

a competent court after legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the International Covenant on Civil and Political Rights, including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings.⁶²

In essence, this means that capital punishment may be lawfully applied only after a fair trial that respects all the norms enshrined in the Covenant. However, numerous death penalty states have had their trial standards called into question. For example, concerns about fair trial norms in China have been raised with regard to confessions made under coercion or torture.⁶³ Similar allegations have been documented in a number of contexts including, but by no means limited to, Indonesia,⁶⁴ Saudi Arabia,⁶⁵ Sudan⁶⁶ and Egypt.⁶⁷

In some countries, drug cases are handled in special courts that do not respect fair trial standards. For example, drug smuggling cases in Iran are often referred to revolutionary courts.⁶⁸ The UN Working Group on Arbitrary Detention has called on these tribunals to be abolished because of their failure to provide adequate due process protections.⁶⁹ One report estimated that 99 per cent of the cases handled by the revolutionary courts involve drugs.⁷⁰ Concerns over fair trial standards have also been raised in Egypt⁷¹, Viet Nam,⁷² North Korea⁷³ and Cuba,⁷⁴ among many other countries.

Additional human rights concerns related to executions for drug offences include the proportion of foreigners sentenced to death (e.g. Saudi Arabia,⁷⁵ Indonesia⁷⁶ and Singapore⁷⁷) and countries that

62 ECOSOC Resolution 1984/50 op. cit.

63 UK Foreign and Commonwealth Office (March 2008) Human Rights Annual Report 2007 – China: www.unhcr.org/refworld/docid/4811eb5f0.html (last accessed 16 March 2010); International Commission of Jurists (11 July 2008) China – attacks on justice 2005: www.unhcr.org/refworld/docid/48a928170.html (last accessed 16 March 2010).

64 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. 172, 174–5.

65 *ibid.* p. 359.

66 Amnesty International (29 March 2010) Death Sentences and Executions in 2009. ACT 50/001/2010, p. 7.

67 Amnesty International (11 April 2007) Egypt – Systematic Abuses in the Name of Security. MDE 12/001/2007, pp. 24–7: www.unhcr.org/refworld/docid/4631c5762.html (last accessed 17 March 2010).

68 UK Home Office (28 April 2006) Country of Origin Information Report – Iran, p. 23.

69 UN Working Group on Arbitrary Detention (27 June 2003) Report. Visit to the Islamic Republic of Iran. E/CN.4/2004/3/Add.2.

70 UK Home Office Country of Origin Information Report – Iran op. cit. p. 23.

71 AI Egypt – Systematic Abuses in the Name of Security op. cit. p. 27.

72 US Department of State (11 March 2010) 2009 Country Reports on Human Rights Practices – Vietnam: www.unhcr.org/refworld/docid/4b9e52aac.html (last accessed 17 March 2010); Human Rights Watch (20 January 2010) World Report 2010 – Vietnam: www.unhcr.org/refworld/docid/4b586cd941.html (last accessed 17 March 2010).

73 Korea Institute for National Unification (July 2009) White Paper on Human Rights in North Korea 2009, p. 12; UK Home Office (21 July 2009) Country of Origin Information Report – Democratic People's Republic of Korea: www.unhcr.org/refworld/docid/4a6d64df2.html (last accessed 17 March 2010).

74 International Commission of Jurists (11 July 2008) Cuba – attacks on justice 2005: www.unhcr.org/refworld/docid/48a9281a2.html (last accessed 17 March 2010).

75 UN Human Rights Council A/HRC/11/2/Add.1 op. cit. p. 341.

76 UN Human Rights Council A/HRC/11/2/Add.1 op. cit. p. 174.

77 Amnesty International (15 January 2004) Singapore: The Death Penalty – A Hidden Toll of Executions. ASA 36/001/2004: www.unhcr.org/refworld/docid/402f8e974.html (last accessed 16 March 2010). However, on this particular charge, Singapore vigorously protested and claimed that the execution of foreigners was not disproportionate. Figures released by the Singapore government claimed that foreigners made up 37 of the 138 people executed between 1999 and 2003.

have carried out public executions (e.g. Iran,⁷⁸ Saudi Arabia⁷⁹ and North Korea⁸⁰).

Another concern is the presence in many states of legislation prescribing mandatory death sentences for certain categories of drug offences. Mandatory death sentences that do not consider the individual merits of a particular case have been widely criticised by human rights authorities. For example, in 2007 the UN Special Rapporteur on extrajudicial, summary or arbitrary executions wrote:

The experience of numerous judicial and quasi-judicial bodies has demonstrated that mandatory death sentences are inherently over-inclusive and unavoidably violate human rights law. The categorical distinctions that may be drawn between offences in the criminal law are not sufficient to reflect the full range of factors relevant to determining whether a death sentence would be permissible in a capital case. 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.⁸¹

Such mandatory sentences have also been criticised by the former UN Commission on Human Rights,⁸² the UN Human Rights Committee⁸³ and the Inter-American Court of Human Rights,⁸⁴ as well as in various national courts.⁸⁵ Professor Roger Hood and Dr Carolyn Hoyle, authors of the authoritative text *The Death Penalty: A Worldwide Perspective*, note that the recent repeal of mandatory death penalties in countries such as Malawi,⁸⁶ Uganda,⁸⁷ the Bahamas⁸⁸ and Grenada,⁸⁹ 'indicate[s] that international standards have become yet more firmly set against the mandatory imposition of capital punishment, and these countries which maintain such penalties are in breach of a widely accepted human rights norm'.⁹⁰

Mandatory death sentences are a prominent concern among states with the death penalty for drug offences. This report identifies thirteen countries that allow for mandatory capital punishment for

78 UN General Assembly (23 September 2009) The Situation of Human Rights in the Islamic Republic of Iran: Report of the Secretary-General. A/64/357: www.unhcr.org/refworld/docid/4ad87b962.html (last accessed 17 March 2010).

79 UN Commission on Human Rights (24 March 2006) Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions: Transparency and the Imposition of the Death Penalty. E/CN.4/2006/53/Add.3: www.unhcr.org/refworld/docid/45377b310.html (last accessed 17 March 2010); Amnesty International (1 June 2009) Man beheaded and crucified in Saudi Arabia: www.unhcr.org/refworld/docid/4a2620b31a.html (last accessed 17 March 2010).

80 Korea Institute for National Unification op. cit. p. 10; UN Commission on Human Rights E/CN.4/2006/53/Add.3 op. cit.

81 UN Human Rights Council A/HRC/4/20 op. cit. para. 4. See also paras. 54–9.

82 UN Commission on Human Rights (20 April 2005) Human Rights Resolution 2005/59, para. 6

83 UN Human Rights Committee (26 March 2002) Kennedy v. Trinidad and Tobago Communication No. 845/1998. CCPR/C/74/D/845/1998, para. 73.; UN Human Rights Committee (18 October 2000) Thompson v. Saint Vincent and the Grenadines Communication No. 806/1998. CCPR/C/70/D/806/1998, para. 8; UN Human Rights Committee (1995) Lubuto v. Zambia Communication No. 390/1990.

84 Hilaire, Constantine, Benjamin et al. v. Trinidad and Tobago Inter-American Court of Human Rights Series C No. 94 (21 June 2002).

85 Privy Council Appeal No. 44 of 2005 (1) Forrester Bowe (Junior) (2) Trono Davis v. The Queen, The Court of Appeal of the Bahamas (8 March 2006) para. 29(3); Attorney General v. Susan Kigula and 417 Others No. 03 of 2006, Uganda: S. Ct (21 January 2009); Amnesty International (22 January 2009) Mandatory death penalty ruled unconstitutional in Uganda.

86 Kafantayeni v. Attorney General, Constitutional Case No. 12 of 2005 [2007] MWHC 1.

87 Attorney General v. Susan Kigula and 417 Others op. cit.

88 Privy Council Appeal No. 44 of 2005 op. cit. para. 29(3).

89 Bernard Coard and others v. The Attorney General of Grenada UKPC7 (2007).

90 Hood and Hoyle op. cit. p. 284.

certain drug offences: Brunei-Darussalam,⁹¹ Egypt,⁹² India,⁹³ Iran,⁹⁴ Malaysia,⁹⁵ Singapore,⁹⁶ United Arab Emirates,⁹⁷ Kuwait,⁹⁸ Syria,⁹⁹ Laos,¹⁰⁰ Yemen,¹⁰¹ Oman¹⁰² and Sudan.¹⁰³ This list differs from the twelve countries identified by Professor Hood and Dr Hoyle in 2007,¹⁰⁴ mainly as a result of variations in what is considered a capital offence for drugs or recent changes in domestic legislation.¹⁰⁵

91 Misuse of Drugs Act 2001. But it is worth remembering that no one has been executed in this country since 1957. Laws and thresholds are listed at www.narcotics.gov.bn/ (last accessed 30 March 2010). This law also has a separate set of capital thresholds for possession for the purpose of trafficking.

92 Law No. 122 of 1989, Amending Certain Provisions of Decree-Law No. 182 of 1960 Concerning the Control of Narcotic Drugs and Regulation of Their Utilization and Trade in Them.

93 India's Narcotics Control Bureau: <http://narcoticsindia.nic.in/NDPSACT.htm> (last accessed 31 March 2010); Amnesty International (2 May 2008) *The Death Penalty in India: A Lethal Lottery*. ASA 20/006/2008, p. 137. AI's 2008 report states 'Under current Indian law, mandatory death sentences are prescribed in Section 27 of the Arms Act 1959; Section 31A of the Narcotic Drugs and Psychotropic Substances Act 1985 (NDPS); and Section 3(2) (i) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989.' This report explains some of the ambiguities surrounding the law. In any case, it is mostly a theoretical question because, as Hood and Hoyle note, 'no case has come before the Indian Supreme Court to test its constitutionality' op. cit. (p. 279).

94 Anti-Narcotics Drug Law of 25 October 1988, as Amended on 1 July 1989; International Federation for Human Rights (FIDH) (28 April 2009) *Iran/Death Penalty: A State Terror Policy*, p. 23.

95 Article 39B of the Dangerous Drugs Act 1952.

96 Misuse of Drugs Act: <http://statutes.agc.gov.sg/> (last accessed 1 April 2010).

97 Article 48 of Federal Law No. 14 of 1995 on the Countermeasures Against Narcotic Drugs and Psychotropic Substances states: 'Without prejudice to the provisions of article 39, violation of the provisions of articles 6, paragraphs 1, 35 and 36, shall be punished by imprisonment for a period of not less than ten years and not exceeding fifteen years and a fine of not less than fifty thousand dirhams and not exceeding two hundred thousand dirhams. If the offence was committed with the intention of trafficking or promotion, the penalty shall be execution.'

98 World Coalition Against the Death Penalty op. cit. p. 29; Hands Off Cain (n.d.) Kuwait: www.handsoffcain.info/bancadati/schedastato.php?idcontinente=23&nome=kuwait (last accessed 31 March 2010).

99 Article 39 of Syria's Narcotics Drugs Law of 1993, text accessible from www.unodc.org/enl/browse_countries.jsp#s (last accessed 26 March 2010). The law permits mitigating circumstances to be considered – allowing for a prison term and substantial fine instead – unless the suspect is a public official responsible for combating drugs, a minor was used, or the offender was involved with an international smuggling syndicate.

100 Amnesty International, communication with author (16 December 2009). According to AI, in 2001, Laos amended its 1990 penal code to make the death penalty mandatory for drug trafficking and possession above certain quantities.

101 Law 3 of 1993 on Control of Illicit Trafficking in and Abuse of Narcotics and Psychotropic Substances states: 'The death penalty shall be imposed on: (a) Persons who have exported or imported narcotic substances with the intention of trafficking or distribution prior to having obtained the permit provided for in article 3 of this Law; (b) Persons who have produced, extracted, separated or manufactured narcotic substances with the intention of trafficking, in contravention of the provisions of this Law.'

102 Law on the Control of Narcotic Drugs and Psychotropic Substances 2000 imposes the death penalty on certain drug-related crimes if the offender is a recidivist, a public official tasked with combating drugs, is involved with an international drug smuggling syndicate or uses a minor in the commission of the offence.

103 Narcotic Drugs and Psychotropic Substances Act 1994, Article 15: 'Crime of and penalty for trafficking in narcotic drugs and psychotropic substances: (1) Every person who commits for the purpose of trade any of the following acts shall be deemed to have committed the crime of trafficking in or manufacturing drugs or cultivating plants from which narcotic drugs and psychotropic substances are extracted and shall be punished by life imprisonment and a fine . . . (a) Production, manufacture, importation, exportation or transportation of any type of narcotic drug or psychotropic substance other than in the cases allowed by this Act or any other law; (b) Buying, selling, possessing, obtaining, dealing in or circulating in any way, including receiving, delivering or brokering in any of the said operations, any type of narcotic drug or psychotropic substance or any plant or seeds of plants from which such substances are extracted, except in the cases allowed by this Act or any other law; (c) Cultivation, importation, exportation, dealing in or circulating in any way, including possessing, obtaining, buying, selling, receiving, delivering or transporting, of any plant, in any phase of its growth or any condition, from which narcotic drugs and psychotropic substances are extracted; (d) Possession by the offender of arms or explosives with the intention of committing any of the offences mentioned in paragraph (1) of this article. (2) Every person who commits the crime specified in section (1) shall, in any of the following cases, be punished by death: (a) Reversion, after being sentenced to life imprisonment and a fine, to the commission of any of the acts specified in the said section. This includes similar foreign judicial sentences; (b) The fact that the offender is one of the public officials entrusted with combating offences related to narcotic drugs and psychotropic substances or with the activities of controlling and supervising the dealing in or circulation or possession of such drugs and substances in any of the ways allowed by this Act or any other law; (c) Commission by the offender of the said crime in association with any minor, mentally deranged person or addict or use by the offender of any such person in committing the crime.'

104 Hood and Hoyle op. cit. p. 279: Brunei-Darussalam, Egypt, Guyana, India, Iran, Jordan, Malaysia, Qatar, Saudi Arabia, Singapore, Thailand and the United Arab Emirates.

105 For example, Jordan eliminated the death penalty for drug offences in 2006. Also, Article 52 of Qatar's Law No. 9, 1987, to Control Narcotic Drugs and Dangerous Psychotropic Substances and to Regulate their Use and Trade therein, imposes a mandatory death sentence if the trafficker kills a law enforcement officer. This is quite different from the crime of drug trafficking by itself. Another example is Saudi Arabia, where 'The Law's vague scope has been maintained in a law on drugs issued by Royal Decree No. 39 of 10 August 2005, which states in its Article 37 (1) that the death penalty may be imposed for . . . – Amnesty International (14 October 2008) *Affront to Justice: Death Penalty in Saudi Arabia*. MDE 23/027/2008, p. 9.

3. A GLOBAL OVERVIEW OF NATIONAL LAW AND PRACTICE

This section provides a global overview of the death penalty for drugs within all thirty-two jurisdictions identified as enshrining these penalties in law.

State practice and legislation vis-à-vis the death penalty for drugs varies enormously between 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.

Some retentionist governments claim that human rights are a foreign construct and that capital punishment reflects their accepted social or cultural norms. For example, in 2007 Gan Yisheng, spokesperson for the Central Commission for Discipline Inspection of the Communist Party of China Central Committee, stated: 'The fact that China keeps the death penalty is due to its national conditions and cultural background. There is nothing to be criticized.'¹⁰⁶ However, a keen domestic debate over the legitimacy of executing drug offenders is taking place within many death penalty states.

Official proposals to take drug offences off the list of those punishable by death have been considered in states as diverse as Viet Nam, Bahrain and Libya. In Singapore and Indonesia, court action has been taken in recent years to challenge the constitutionality of the death penalty for drugs. In addition, several countries that have the death penalty for drugs in law are observing moratoria, and several others may as well be, given the infrequency with which they carry out the executions. The diverse domestic advocacy against capital punishment in many retentionist states, and indeed the wide variation in state practice regarding the death penalty for drugs among these countries, undermines the suggestion that the death penalty represents some sort of cultural or regional norm.

Below is a state-by-state analysis of those countries that have legislation prescribing the death penalty for drug offences and of how these policies are implemented in practice. The countries included in this overview represent a tremendous variety of cultural, political and legal traditions and, as with the broader issue of capital punishment, each state's application of the death penalty for drug offences is unique.

¹⁰⁶ China Daily/Xinhua News (2 August 2007) Official: China 'prudent' in using death penalty.

Methodology

The *Global Overview 2010* was compiled by examining relevant death penalty laws and state practices, using a variety of sources.

Some governments make their laws available on official websites or willingly shared current legislation with IHRA when requested. In other cases, there is far less transparency. The United Nations Office on Drugs and Crime (UNODC) maintains an online database of relevant national drug control laws for most countries.¹⁰⁷ Unfortunately, some of these laws are outdated as countries debate and modify their drug policies on a regular basis. Wherever possible, the *Global Overview* used the primary legislative sources as a basis for its reporting. However, in cases where the original statutes were unavailable, the report relied on credible secondary sources.

The national data on executions provided below have been drawn from and cross-checked against current NGO reports and databases, UN documents, media reports, scholarly books and articles, local death penalty abolitionist groups and, in some cases, the governments themselves. Although every effort has been made to minimise inaccuracies, the speed with which laws change and the variations in the quality of reporting mean there is always the potential for error. IHRA welcomes being alerted to any additional data not included here.

Categories

The countries identified all have laws in force that allow for the death penalty for drug offences. However, whether and to what degree these states implement these penalties varies considerably. The *Global Overview 2010* groups the countries below into three main categories, based upon state practice in implementing the death sentences provided for in legislation.

Some states never execute drug offenders despite laws prescribing capital punishment for such offences. In these countries, the laws appear to be symbolic statements of strong national opposition to drug use and trafficking, rather than a functioning death penalty policy. On this basis, these states are categorised as having a **symbolic commitment** to the death penalty for drug offences.

Low commitment death penalty states actively execute drug offenders, but do so very rarely. Their enthusiasm for capital punishment for drugs is comparatively low, especially when placed alongside the small number of states that display a **high commitment** to the death penalty for drug offences and execute death sentences with regularity.

There are also four states where the data is simply inadequate to reliably put them in a particular group. These countries have been categorised under insufficient data.

107 UNODC Country Pages: www.unodc.org/en/browse_countries.jsp (last accessed 25 March 2010).

Categorising countries is a useful tool when comparing and contrasting state practice in death penalty countries. However, given the secrecy surrounding the death penalty data in some states, this approach has necessary limitations. For example, although traditionally seen as a 'high commitment' executing nation, little is known about Singapore's recent use of capital punishment. Amnesty International reports that Singapore has 'significantly decreased its use of the death penalty in recent years'.¹⁰⁸ However, death sentences continue to be imposed on a regular basis, even if the volume of executions has decreased. For this reason, Singapore is placed in the 'high commitment' category.

HIGH COMMITMENT STATES

CHINA

China was the first country in the post-World War II period to implement the death penalty for drug offences. The first ever annual overview of national drug control legislation, prepared for the 1948 session of the UN Commission on Narcotic Drugs, identifies a range of capital drug offences in Chinese legislation, including for manufacture, planting, transportation and sale, and relapsing drug use. Additional death penalty offences are prescribed if the people involved in drug activities are civil servants or other public officials. China is the only member state identified in the report as having the death penalty for drug offences. Despite the fact that the report describes the legislation as 'a temporary emergency measure' following the war, China remains the leading global executor for drug offences today.¹⁰⁹

China guards its death penalty figures as a state secret. However, its use of capital punishment is widely thought to dwarf the combined total of the rest of the world. Reports citing 'informed sources' or other officials estimate as many as 7,500 executions in 2006.¹¹⁰ Estimates of executions in 2007 vary enormously, some being as low as 2,000 total executions and others as high as 15,000.¹¹¹ Amnesty International reported that China executed at least 1,718 people in 2008.¹¹² However, this figure is generally considered conservative.¹¹³

The proportion of executions for drug offences is unknown. However, when China's notoriously harsh drug policies are considered along with the scale of its counter-narcotics efforts, it is probable that drug crimes represent a sizable portion of those killed 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.¹¹⁴

108 AI Death Sentences and Executions in 2009 op. cit. p. 14.

109 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.

110 Johnson and Zimring op. cit. p. 237; New York Times (9 June 2007) With new law, China reports drop in executions: www.nytimes.com/2007/06/09/world/asia/09china.html?scp=2&sq=china+death+penalty+yardley&st=nyt (last accessed 19 April 2010).

111 Johnson and Zimring op. cit. p. 225.

112 Amnesty International (24 March 2009) Death Sentences and Executions in 2008. ACT 50/003/2009: www.unhcr.org/refworld/docid/49cb43182.html (last accessed 18 January 2010).

113 Johnson and Zimring op. cit. p. 235.

114 Xinhua News (27 June 2009) China executes four more drug traffickers on int'l anti-drug day.

China's criminal law makes it a potential capital offence to smuggle, traffic in, transport or manufacture more than 50 grams of heroin or 1,000 grams of opium.¹¹⁵ Since 1 January 2007 the Supreme People's Court has been empowered with final judicial review of all death sentences, which may lead to a decrease in the number of people executed.¹¹⁶ Some regional courts have reported such a reduction. David Johnson and Franklin Zimring write that officials from an area of Yunnan Province well known for drug trafficking recorded a one-third drop in death sentences following the implementation of the judicial review.¹¹⁷ Furthermore, in early 2010 China's High Court urged lower courts to limit capital punishment to only 'extremely serious' cases.¹¹⁸ Nevertheless, this decrease is impossible to verify without greater transparency and Amnesty International reports that the number of overall executions in 2009 remained in 'the thousands'.¹¹⁹

China refuses to disclose how many people have been sentenced to death each year, although Amnesty International reported more than 7,000 death sentences in 2008.¹²⁰ Some data are available from foreign embassies and sources. For example, the Philippines' foreign ministry reports that there are at least sixty-six Philippine nationals on death row for drug offences.¹²¹ Similarly, the *Korea Times* quoted officials stating that there are fifteen South Koreans on death row in China, most of them for drug offences.¹²² The Hong Kong-based Joint Committee for the Abolition of the Death Penalty claimed that more than eighty Hong Kong citizens have been executed for drugs.¹²³ Uganda is reported to be making efforts to get forty of its citizens who were convicted of drug trafficking off death row.¹²⁴

Sometimes China is quite open about its executions. Since 1991, for example, China has used 26 June, the UN International Day Against Drug Abuse and Illicit Trafficking, as an occasion to stage mass public trials and executions of drug offenders. In 1992 Amnesty International recorded a total of seventy-six executions during a seven-day period around 26 June.¹²⁵ In 2001 over fifty people were convicted and publicly executed for drug crimes at mass rallies, at least one of which was broadcast on state television.¹²⁶ The following year, 26 June was marked by sixty-four public executions in rallies across the country. The largest public execution took place in the south-western city of Chongqing, where twenty-four people were shot.¹²⁷

115 Article 347 of the Criminal Law of the People's Republic of China: www.cecc.gov/pages/newLaws/criminalLawENG.php (last accessed 1 April 2010); Decision on the Prohibition on Narcotic Drugs: www.unodc.org/enl/showDocument.do?documentUid=2511&country=IRA (last accessed 26 March 2010).

116 Johnson and Zimring op. cit. p. 272.

117 Johnson and Zimring op. cit. p. 281.

118 Associated Press (9 February 2010) China High Court stresses 'mercy' in death penalty: http://articles.sfgate.com/2010-02-09/world/17872404_1_death-sentences-death-penalty-china-executes-more-people (last accessed 26 March 2010).

119 AI Death Sentences and Executions in 2009 op. cit. p. 6.

120 AI Death Sentences and Executions in 2009 op. cit.

121 Agence France-Presse (10 January 2010) 66 Filipinos face death in China on drug charges: Manila: www.abs-cbrnews.com/nation/01/10/10/66-filipinos-face-death-china-drug-charges-manila (last accessed 16 April 2010).

122 The Korea Times (5 January 2010) Koreans have double-standard on death penalty.

123 Radio Free Asia (31 March 2010) China casts veil over executions: www.rfa.org/english/news/china/executions-03312010130242.html (last accessed 1 April 2010).

124 Hands Off Cain (27 March 2009) Ugandan Foreign Affairs Minister, Sam Kutesa: www.handsoffcain.info/news/index.php?iddocumento=12309950 (last accessed 25 March 2010).

125 AI The Death Penalty: No Solution to Illicit Drugs op. cit. p. 21.

126 Amnesty International (2002) The Death Penalty Worldwide: Developments in 2001. ACT 50/001/2002.

127 Associated Press (27 June 2002) China executes 64 to mark UN anti-drug day.

Chinese media reported multiple death sentences being pronounced, and executions being carried out, on and around 26 June 2008. On 24 and 25 June five death sentences for drug offenders were pronounced and three people were executed in the municipalities of Shanghai, Shenzhen, Fuzhou and Hefei.¹²⁸ On 26 June six drug offenders were executed in Yunnan and Henan provinces, as well as the Guangxi Zhuang Autonomous Region.¹²⁹ Commenting on the reason for staging such group convictions and executions, a deputy chief judge in Hefei noted that "The mass sentence aims at increasing public awareness."¹³⁰

China is a signatory to the International Covenant on Civil and Political Rights, although it has not ratified the treaty.¹³¹

IRAN

Year	Total Executions	Executions for Drug Offences
2007	317 ⁺¹³²	115 ¹³³
2008	346 ⁺¹³⁴	96 ¹³⁵
2009	388 ⁺¹³⁶	172 ¹³⁷

2007317⁺¹³²115¹³³ 2008346⁺¹³⁴96¹³⁵2009388⁺¹³⁶172¹³⁷

Iran has imposed the death penalty for drug offences in cases of recidivism since 1959, and for trafficking in specified quantities since 1969.¹³⁸

The Amendment of the Anti-Narcotics Law and Annexation of Other Articles to It (8 November 1997) allows for the death penalty for drug offences in a number of instances. Capital crimes include the cultivation of poppies, coca or cannabis for the purpose of producing narcotics after three previous convictions; the import, export, production, sale or distribution of more than 5 kilograms of bhang, Indian hemp juice, grass, opium and opium juice or residue; and the importation, exportation, distribution, production, possession or transportation of more than 30 grams of heroin, morphine, cocaine and other chemical derivatives of morphine or cocaine.¹³⁹ There is a sliding scale of quantities that may vary somewhat in instances of recidivism. In addition, Article 179 of the Islamic penal code allows for the death penalty for drinking alcoholic beverages after three convictions, but only where the suspect received punishment of eighty lashes in the previous two convictions.¹⁴⁰

128 Xinhua News (24 June 2008) Drug dealers sentenced to death, executed in China.

129 Xinhua News (27 June 2008) China executes six drug dealers on international anti-drug day.

130 Xinhua News (24 June 2008) Drug dealers sentenced to death, executed in China.

131 UN Treaty Collection: http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&rmtdsg_no=IV-4&chapter=4&lang=en (last accessed 19 January 2010). All subsequent references for accession, ratification or signing on to the ICCPR should be attributed to this site unless stated otherwise.

132 Amnesty International (15 April 2008) Death Sentences and Executions in 2007. ACT 50/001/2008.

133 Most of this data was collected through press monitoring or from the websites of the death penalty abolitionist groups Hands Off Cain: www.handsoffcain.info and Iran Human Rights: <http://iranhr.net>.

134 AI Death Sentences and Executions in 2008 op. cit.

135 Netherlands Ministry of Foreign Affairs. Overview executions 2008 op. cit.

136 AI Death Sentences and Executions in 2009 op. cit. p. 6.

137 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).

138 AI The Death Penalty: No Solution to Illicit Drugs op. cit. p. 26.

139 Text accessible from www.unodc.org/enl/showDocument.do?documentUId=25116&country=IRA (last accessed 26 March 2010); FIDH Iran/Death Penalty: A State Terror Policy op. cit. p. 16.

140 FIDH Iran/Death Penalty: A State Terror Policy op. cit. p. 12.

When compared with China, Iran has a relatively transparent death penalty policy and executions are commonly reported in the local and state-run media. However, the identities of the victims are not always available and details of their cases are usually sparse, making accurate counts difficult. Nevertheless, it is beyond dispute that Iran is one of the world's most active death penalty states and that drug offenders represent a significant proportion of those executed. Some sources estimate that Iran has executed 10,000 drug traffickers since the revolution of 1979,¹⁴¹ although a number of these are alleged to have been political dissidents who were charged with drug crimes.¹⁴² The country issued a judicial ban on executing minors for drug offences in late 2008.¹⁴³

Using media reports, as well as data compiled by government monitors and the Norway-based NGO Iran Human Rights, it is possible to arrive at an informed estimate of the number of people executed for drug offences in Iran in recent years. It is clear that drug offenders represent a significant proportion of all annual executions in the country.

As the table shows, of the 317 people estimated by Amnesty International to have been executed in Iran in 2007, at least 115 – over one-third – were executed for drug offences. Of the 346 executions documented by Amnesty International in 2008, 96 of were convicted for drug offences. In 2009 the total number of number of people executed for drug offences doubled to 172, almost half of all executions that year.

The number of people on death row in Iran is difficult to surmise, although past reporting indicates that drug offenders account for a large portion of those awaiting execution. It has been reported, for example, that 60 per cent of prisoners in Iran are incarcerated for drug offences.¹⁴⁴ The International Federation for Human Rights reports that in late 2008 there were 500 people on death row for drug-related offences in the north-eastern city of Mashhad alone.¹⁴⁵

In many instances it is doubtful that fair trial standards were met in the passing of death sentences for drugs. Drug smuggling cases are often handled by revolutionary courts; one report estimates that 99 per cent of the cases handled by these courts involve drugs.¹⁴⁶ The UN Working Group on Arbitrary Detention has called for the revolutionary courts to be abolished because of their failure to provide adequate due process protections.¹⁴⁷

Iran ratified the International Covenant on Civil and Political Rights in 1975.

141 US Department of State (1 March 2010) 2010 International Narcotics Control Strategy Report. Volume I (2010 INCSR). The bureau attributes these figures to Iranian government sources.

142 US Bureau of Democracy (11 March 2010) Human Rights, and Labor, 2009 Human Rights Report: Iran; UK Home Office Country of Origin Information Report – Iran op. cit. p. 79.

143 Associated Press (18 October 2008) Iran limits executions of juvenile offenders; The Guardian (20 October 2008) Iran maintains the death penalty for teenagers convicted of murder.

144 US Department of State 2009 INCSR op. cit.

145 FIDH Iran/Death Penalty: A State Terror Policy op. cit. p. 4.

146 UK Home Office Country of Origin Information Report – Iran op. cit. p. 23.

147 UN Working Group on Arbitrary Detention op. cit.

Year	Total Executions	Executions for Drug Offences
2007	143 ¹⁴⁹	40
2008	102 ¹⁵⁰	22

Year Total Executions Executions for Drug Offences 2007 143¹⁴⁹ 40 2008 102¹⁵⁰ 22

Saudi Arabia introduced capital punishment for drugs in 1987. This followed an edict providing for a mandatory sentence of death for anyone caught supplying or receiving drugs from abroad, as well as a discretionary death sentence for recidivists.¹⁵¹ Unfortunately, the government does not publish its official interpretation of sharia law or an interpretive text, therefore judicial discretion is considerably broad.¹⁵²

Article 37(1) of the subsequent Royal Decree No. 39 of 10 August 2005 states that the death penalty may be imposed for:

1. Trafficking in drugs and narcotics;
2. Receiving drugs and narcotics from a trafficker;
3. Bringing in, importing, exporting, processing, producing, converting, extracting, growing or receiving drugs and narcotics in cases other than those licensed under this law;
4. Complicity in committing any of the acts stipulated under the previous paragraphs;
5. Circulating drugs and narcotics for the second time by selling, donation, distribution, delivery, reception or transportation under the condition that an established previous ruling has been pronounced indicting him for circulation for the first time.
6. Circulation for the first time if he has been indicated for committing one of the acts stipulated in paragraphs 1, 2 and 3 of the Article.¹⁵³

Amnesty International recorded the first execution for drugs in Saudi Arabia on 29 July 1987 and the nine subsequent executions before the end of that year.¹⁵⁴ Since then, Saudi Arabia has developed into one of the world's most aggressive executors for drug crimes. Like Iran, it boasts a degree of transparency concerning its executions: the Ministry of Interior issues public statements after punishments are carried out,¹⁵⁵ including public beheadings.

It has been reported that 60 per cent of all prisoners are incarcerated for drug use or trafficking,

148 Prepared with the assistance of the Human Rights First Society – Saudi Arabia.

149 AI Death Sentences and Executions in 2007 op. cit.

150 AI Death Sentences and Executions in 2008 op. cit.

151 AI The Death Penalty: No Solution to Illicit Drugs op. cit. p. 36.

152 Human Rights Watch (10 September 2008) *The Last Holdouts: Ending the Juvenile Death Penalty in Iran, Saudi Arabia, Sudan, Pakistan, and Yemen*, p. 7.

153 AI *Affront to Justice* op. cit. pp. 9–10.

154 AI *The Death Penalty: No Solution to Illicit Drugs* op. cit. p. 26.

155 Human Rights First Society – Saudi Arabia, communication with author (29 March 2010).

and human rights monitors have raised well-founded concerns about the proportion of foreign nationals facing and suffering execution in Saudi Arabia.¹⁵⁶ Thirty-six of the forty executions for drugs identified in 2007 were of foreign nationals, including people from Iraq, Pakistan, India, Thailand, Nigeria and Afghanistan. In 2008 at least seventeen of the twenty-two drug offenders executed were foreigners, including citizens of Syria, Pakistan, Jordan, Nigeria, India and Iraq. Amnesty International estimates that out of '141 people on death row in Saudi Arabia [there are] at least 104 foreign nationals, mostly from developing countries in Africa, Asia and the Middle East'.¹⁵⁷

Human rights monitors have also raised significant concerns about the quality of safeguards surrounding the application of the death penalty.¹⁵⁸ The UN Special Rapporteur on extrajudicial, summary or arbitrary executions issued an urgent appeal in August 2008 for three convicted drug traffickers who claimed that their confessions had been extracted under torture.¹⁵⁹ The Special Rapporteur also raised concerns over thirty-eight Syrian men sentenced to death for drug trafficking, allegedly without access to legal counsel. Another sixteen Iraqis claimed their death sentences for smuggling drugs and arms followed trials without access to lawyers and statements made under torture or months of interrogation.¹⁶⁰

Saudi Arabia is not a state party to the International Covenant on Civil and Political Rights.

VIET NAM

Year	Total Death Sentences	Death Sentences for Drug Offences
2007–2009	at least 201 ¹⁶¹	at least 109 ¹⁶²

Year Total Death Sentences Death Sentences for Drug Offences 2007–2009 at least 201¹⁶¹ at least 109¹⁶²

Like China, Viet Nam zealously guards its death penalty figures, which creates problems in compiling accurate data. However, Viet Nam is widely acknowledged to have some of the harshest drug laws in the world, as well as some of the highest execution rates.¹⁶³

Article 193 of Viet Nam's 1999 penal code allows for the death penalty for producing poppy resin, marijuana resin or coca plasma, weighing 5 kilograms or more; heroin or cocaine weighing 100 grams or more; and other narcotic substances in solid form weighing 300 grams or more. Article 194 makes it a potential capital offence to stockpile, transport or trade in opium resin, marijuana resin or coca plasma weighing 5 kilograms or more; heroin or cocaine weighing 100 grams or

156 AI *Affront to Justice* op. cit.

157 AI *Death Sentences and Executions in 2009* op. cit. p. 20.

158 AI *Death Sentences and Executions in 2009* op. cit.

159 UN Human Rights Council A/HRC/11/2/Add.1 op. cit. p. 338.

160 UN Human Rights Council A/HRC/11/2/Add.1 op. cit. pp. 357–9.

161 AI *Death Sentences and Executions in 2009* op. cit. p. 6; AI *Death Sentences and Executions in 2008* op. cit.; AI *Death Sentences and Executions in 2007* op. cit.

162 Amnesty International, communication with author (16 December 2009).

163 UK Foreign and Commonwealth Office (26 March 2009) *Annual Report on Human Rights 2008 – Vietnam*.

more; marijuana leaves, flower, fruit or coca leaves weighing 75 kilograms or more; dried poppy fruit weighing 600 kilograms or more; fresh poppy fruit weighing 150 kilograms or more; other narcotic substances in solid form weighing 300 grams or more; other narcotic substances in liquid form measuring 750 millilitres or more.¹⁶⁴

Consistent figures on death sentences and executions are difficult to trace, although it has been noted that the majority of death sentences in Viet Nam are imposed for drug-related crimes.¹⁶⁵ According to the US State Department, in the first six months of 2006, forty-six death sentences were handed down in Viet Nam out of 6,205 convictions for trafficking.¹⁶⁶ This ratio of convictions to death sentences is consistent with data from UNODC for previous years. Between 1999 and 2004 UNODC reported that 55,828 people were tried for trafficking in the country, 357 of whom received death sentences.¹⁶⁷ The UK Foreign Office reports that the Vietnamese government estimated that 100 death sentences were handed down for all crimes in 2007, approximately half of which were carried out.¹⁶⁸

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'.¹⁶⁹ According to a 2006 media report, 'Around 100 people are executed by firing squad in Vietnam each year, mostly for drug-related offences'.¹⁷⁰ That same year, one UN human rights monitor noted that 'Concerns have been expressed that at least one third of all publicised death sentences [in Viet Nam] are imposed for drug-related crimes'.¹⁷¹

Amnesty International estimates that at least 109 people were sentenced to death for drug offences between January 2007 and late 2009.¹⁷² Of the nineteen people known to have been executed in 2008, three were drug offenders.¹⁷³ However, given the secrecy surrounding Viet Nam's use of the death penalty, such figures cannot be considered definitive.

In 2009 Viet Nam's National Assembly removed Article 197, pertaining to 'organizing the illegal use of narcotics' from its list of capital offences.¹⁷⁴ However, it kept drug trafficking on the list of capital crimes.¹⁷⁵

Viet Nam ratified the International Covenant on Civil and Political Rights in 1982.

164 The Socialist Republic of Viet Nam Penal Code (No. 15/1999/QH10), text accessible from www.unodc.org/enl/browse_countries.jsp#v (last accessed 25 March 2010); Amnesty International, communication with author (16 December 2009).

165 UN Human Rights Council (23 February 2009) 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 – Viet Nam. A/HRC/WG.6/5/VNM/3, p. 3.

166 US Department of State (March 2007) 2007 International Narcotics Control Strategy Report: www.state.gov/p/inl/rls/nrcrpt/2007/vol1/html/80859.htm (last accessed 16 April 2010).

167 UNODC (2005) Country Profile: Vietnam, p. 24: www.unodc.org/pdf/vietnam/country_profile_vietnam.pdf (last accessed 23 March 2010).

168 UK Foreign and Commonwealth Office (26 March 2009) Annual Report on Human Rights 2008 – Vietnam.

169 UN Human Rights Committee (24 July 2003) Concluding observations: Viet Nam. CCPR/CO/75/VNM/Add.2: www.unhcr.org/refworld/docid/3f44a8c12.html (last accessed 12 April 2010).

170 Thanh Nien News (3 November 2006) Vietnam law commission wants death penalty for fewer crimes.

171 UN Commission on Human Rights (27 March 2006) Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions. Addendum: Summary of cases transmitted to governments and replies received. E/CN.4/2006/53/Add.1.

172 Amnesty International, communication with author (16 December 2009).

173 *ibid.*

174 *ibid.*

175 Agence France-Presse (19 June 2009) Vietnam cuts list of death penalty crimes: Official.

SINGAPORE

Year	Total Executions	Executions for Drug Offences
1999-2003	138	110

Over the last two decades Singapore earned a reputation as one of the highest per capita executioners in the world, the majority of those executions being for drug offences.¹⁷⁶ However, in recent years Singapore's execution rates are believed to have declined dramatically. In fact, Singapore may actually belong in the 'low commitment' category of this report. Nevertheless, until the government begins releasing data on the number of people executed each year, it is impossible to confirm that such a transition has occurred.

Singapore has a mandatory death sentence for anyone found guilty of importing, exporting or trafficking in more than 500 grams of cannabis, 200 grams of cannabis resin or more than 1,000 grams of cannabis mixture; trafficking in more than 30 grams of cocaine; trafficking in more than 15 grams of heroin; and trafficking in excess of 250 grams of methamphetamine.¹⁷⁷ The mandatory death penalty for drugs was introduced in a 1975 Amendment to the Misuse of Drugs Act 1973 and was subsequently broadened.¹⁷⁸

Following a 2004 Amnesty International report, Singapore's Ministry of Home Affairs released death penalty figures revealing that between 1999 and 2003, 110 of 138 executions were carried out for drug offences.¹⁷⁹ Such candour has not been repeated.

The two people known to have been executed in 2007 were both convicted drug offenders from Nigeria, one of whom was just 21 years old.¹⁸⁰ There is a possibility that more people have been killed. Singapore's Central Narcotics Bureau announces arrests and the possible penalties for suspects on its website, which identifies cases involving seventy-three people from the beginning of 2007 to the end of 2009 in which capital punishment was explicitly stated as a possible penalty. An additional forty-six people during that same period appear to have been arrested in possession of quantities that could result in death, but where such a penalty was not explicitly mentioned.¹⁸¹ Without greater transparency from Singapore's government, it is impossible to know how many of these people have been condemned to death.

In a written statement distributed to delegations at the March 2009 session of the UN Human Rights Council, the government of Singapore strongly defended its use of the death penalty for drugs

176 AI Singapore: The Death Penalty op. cit. p. 1.

177 Misuse of Drugs Act (Cap. 185, 2008 Rev. Ed.): <http://statutes.agc.gov.sg/> (last accessed 29 March 2010); AI Singapore: The Death Penalty op. cit. p. 13; Johnson and Zimring op. cit. p. 415; Additional information on thresholds: www.cnb.gov.sg (last accessed 20 January 2009).

178 AI The Death Penalty: No Solution to Illicit Drugs op. cit. p. 29.

179 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.

180 BBC (26 January 2007) Singapore executes drug smugglers.

181 Central Narcotics Bureau: www.cnb.gov.sg/newsroom/currentnews/operations/operations_10.aspx (last accessed 11 April 2010).

following criticism made of the practice by the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

[W]e strongly disagree that States should refrain from using the death penalty in relation to drug-related offences. The death penalty has deterred major drug syndicates from establishing themselves in Singapore, where there are no widely prevalent syndicated drug activities linked to organised crime, in contrast to the hierarchical and organised drug syndicates and cartels that exist elsewhere. Based on estimates in the 2008 World Drug Report, published by the United Nations Office on Drugs and Crime (UNODC), Singapore has one of the lowest prevalence of drug abuse.¹⁸²

However, rather than being independently produced, the estimates referred to in the 2008 World Drug Report were provided by the government of Singapore itself. As described by UNODC, its 'Report is based on data obtained primarily from the annual reports questionnaire (ARQ) sent by Governments to UNODC'. Furthermore, UNODC admits the limitations of this approach: 'ARQ reporting is not systematic enough, both in terms of number of countries responding and of content, and . . . most countries lack the adequate monitoring systems required to produce reliable, comprehensive and internationally comparable data.'¹⁸³ On the specific question of levels of national opium consumption, the UNODC notes that the data provided by Singapore were 'not directly comparabl[e] with data from other countries'.¹⁸⁴ These limitations, and the self-reported nature of the data, at the very least raise questions about the reliability of Singapore's 2009 assertion.

In recent years Singapore has seen increased debate on this issue. Both the Reform Party and Singapore Democratic Party have expressed opposition to the death penalty for drug offences in public statements, however, neither party held seats in parliament at the end of 2009.¹⁸⁵ In addition, there is currently an ongoing legal challenge to the constitutionality of the mandatory death penalty for drug offences.¹⁸⁶

Singapore is not a party to the International Covenant on Civil and Political Rights.

182 Government of Singapore (2009) Statement by Singapore during the interactive dialogue at the 10th session of the Human Rights Council on 10 March 2009: www.ihrablog.net/2009/03/singapore-defends-its-right-to-beat-and.html (last accessed 14 April 2010).

183 UNODC (2009) 2008 World Drug Report. E.08.XI.1, p. 3.

184 *ibid.* p. 214 fn.

185 AI Death Sentences and Executions in 2009 *op. cit.* p. 14.

186 Court of Criminal Appeal in the Republic of Singapore, Criminal Case No. 26 of 2008: *Public Prosecutor v. Yong Vui Kong*, Criminal Appeal No. 13 of 2008; *Yong Vui Kong v. Public Prosecutor*, and in the matters of Article 9 and 12 of the Constitution, the Supreme Court Judicature Act cap. 322 and *Yong Vui Kong Fin No. G0623288X/Malaysian*.

MALAYSIA

Year	Total Death Sentences	Death Sentences for Drug Offences
2008	22+ ¹⁸⁷	at least 22
2009	68+ ¹⁸⁸	at least 50

200822+¹⁸⁷at least 22200968+¹⁸⁸at least 50

Like Singapore, Malaysia may actually belong in the 'low commitment' category of this report. The country is generally not considered to be a high-volume executing nation.¹⁸⁹ However, the number of people executed remains unknown,¹⁹⁰ even as reported death sentences for drugs appear to be increasing.

Malaysia imposes a mandatory death sentence for drug traffickers.¹⁹¹ Article 39B of the Dangerous Drugs Act 1952 states:

1. No person shall, on his own behalf or on behalf of any other person, whether or not such other person is in Malaysia—
 - (a) traffic in a dangerous drug;
 - (b) offer to traffic in a dangerous drug; or
 - (c) do or offer to do an act preparatory to or for the purpose of trafficking in a dangerous drug.
2. Any person who contravenes any of the provisions of subsection (1) shall be guilty of an offence against this Act and shall be punished on conviction with death.¹⁹²

Although in recent years the number of executions is believed to be low, Malaysia is estimated to have executed 229 drug traffickers between 1975 and 2005.¹⁹³ Death sentences for drugs are frequently imposed by the Malaysian courts. In 2008, for example, newspapers reported at least twenty-two instances where drug traffickers were sentenced to death, although some of these cases may have been reported as 'sentences' when in fact they were sentences being upheld on appeal. At least seven of those people were foreigners, from Indonesia, the Philippines or Thailand. What makes this figure remarkable is that Amnesty International reported for 2008 that at least 22 people were sentenced to death for all crimes.¹⁹⁴ Although methodologies for calculation may vary, at the very least this suggests that the majority of death sentences in Malaysia are very likely pronounced for drugs.¹⁹⁵

¹⁸⁷ AI Death Sentences and Executions in 2008 op. cit.

¹⁸⁸ AI Death Sentences and Executions in 2009 op. cit. p. 6.

¹⁸⁹ US Department of State, 2010 INCSR op. cit.

¹⁹⁰ AI (28 May 2009) Amnesty International Report 2009 – Malaysia: www.unhcr.org/refworld/docid/4a1fadd9c.html (last accessed 19 April 2010).

¹⁹¹ *ibid.*; US Department of State 2009 INCSR op. cit.

¹⁹² Act 234, Dangerous Drugs Act 1952; first enacted 1952 (Ordinance No. 30 of 1952); revised 1980 (Act 234 w.e.f. 17 July 1980).

¹⁹³ Agence France-Presse (17 September 2005) Malaysia issues death sentence for Achenese drug trafficker.

¹⁹⁴ AI Death Sentences and Executions in 2008 op. cit.

¹⁹⁵ This is consistent with a 2008 news story that claimed there were about 300 people on death row in Malaysia, mostly for drug offences. IPS (23 January 2008) Beijing's sentence shakes Malaysia's own policy.

In 2009 the number of reported death sentences for drug offences more than doubled, to fifty.¹⁹⁶ This increase is consistent with trends for arrests and investigations. According to the Deputy Director of Malaysia's Narcotics Crime Investigation Department, 'Cases investigated under Section 39B of the Dangerous Drugs Act 1952 have increased from 2,080 arrests in 2007, to 2,572 arrests in 2008 followed by 2,955 arrests [in 2009].'¹⁹⁷

Provisions of the Dangerous Drugs Act also give Malaysian authorities the power to detain drug trafficking suspects without warrant and without a court appearance for up to sixty days.¹⁹⁸ After such period, the Home Ministry can issue a detention order, which entitles the detainee to an appearance before a court to argue for his or her release.¹⁹⁹ Without the court's release of the suspect, the person can be held for successive two-year intervals.²⁰⁰ An advisory board reviews the suspect's detention, but such a process falls far short of the procedural rights of a court proceeding.²⁰¹ It has been alleged that police detain people under this Act after they have been acquitted by the courts.²⁰² In 2007, 798 people were detained under this Act; another 805 people were detained in the first eight months of 2008.²⁰³

Malaysia is not a state party to the International Covenant on Civil and Political Rights.

LOW COMMITMENT STATES

INDONESIA

Year	Total Executions	Executions for Drug Offences	Total on Death Row	Number on Death Row for Drug Offences
2007	1 ²⁰⁴	0		
2008	10 ²⁰⁵	2		
2009	0 ²⁰⁶	0		
As of mid-2009 ²⁰⁷			111	56

20071+²⁰⁴0200810²⁰⁵220090²⁰⁶0As of mid-2009²⁰⁷11156

196 Again, in some instances it seems these may have been reported as someone having been 'sentenced to death' when it may have been an earlier sentence that was upheld.

197 The Star Online (24 March 2010) All out war against drugs: <http://thestar.com.my/metro/story.asp?file=/2010/3/25/central/5927048&sec=central> (last accessed 29 March 2010).

198 UN Human Rights Council (27 October 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 – Malaysia. A/HRC/WG.6/4/MYS/3, p. 6.

199 US Department of State (25 February 2009) Human Rights and Labor, 2008 Country Reports on Human Rights Practices.

200 *ibid.* UN Human Rights Council A/HRC/WG.6/4/MYS/3 op. cit. p. 6.

201 US Department of State 2008 Country Reports on Human Rights Practices op. cit.

202 Human Rights Watch (24 August 2006) Convicted Before Trial: Indefinite Detention under Malaysia's Emergency Ordinance, C1809; US Department of State 2008 Country Reports on Human Rights Practices op. cit.

203 US Department of State 2008 Country Reports on Human Rights Practices op. cit.

204 AI Death Sentences and Executions in 2007 op. cit.

205 AI Death Sentences and Executions in 2008 op. cit.

206 AI Death Sentences and Executions in 2009 op. cit. p. 6.

207 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).

Articles 80 and 82 of the Law of the Republic of Indonesia, No. 22 of 1997, on Narcotics prescribes an option for the 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 Category I narcotics (which include cocaine, heroin, opium, marijuana and hashish). Additional death penalty provisions are also prescribed for recidivists, conspirators and those engaged in organised crime.²⁰⁸

The first person to be executed for a drug offence in Indonesia was a Malaysian national convicted of smuggling 420 grams of heroin in 1986 and executed by firing squad in 1995.²⁰⁹ In 2007 five convicted drug offenders on death row (two Indonesians and three Australians) challenged the constitutionality of the death penalty generally, and capital punishment for drugs specifically, under the Indonesian Constitution. The Indonesian Constitutional Court ruled in a vote of six to three that capital punishment was consistent with the Indonesian Constitution and that drug trafficking constituted a 'most serious crime' and therefore was a legitimate death penalty offence.²¹⁰ Subsequently, Indonesia executed two Nigerians on 26 June 2008 to mark the International Day Against Drug Abuse and Illicit Trafficking.²¹¹

In mid-2009 the Attorney General's Office in Indonesia reportedly disclosed that there were 111 prisoners on death row, 56 of them for drug offences.²¹²

Foreign nationals comprise a large portion of those on death row. According to a report of the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, of the 99 people sentenced to death in October 2007, 57 were for drug charges and 43 of those were foreigners.²¹³ In the same report, the Special Rapporteur raised concerns that measures to protect foreigners in conflict with the law, such as the provision of interpreters and consular assistance, may not have been provided.

Many people interviewed on death row claimed their confessions were coerced under torture and that they failed to receive assistance from legal counsel. Allegations of this type were received from Angkiem Soei, a Dutch citizen arrested in Jakarta in 2002 for drugs trafficking and sentenced to death; Hillary Chimenzie, a Nigerian charged and sentenced to die for drug trafficking and who claimed that both he and his lawyer were beaten; and Ekpeje Samuel, another Nigerian sentenced to death for drugs.²¹⁴

The UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Professor Manfred Nowak, wrote that 'The overwhelming majority of the detainees

208 Text accessible from www.unodc.org/enl/browse_countries.jsp#i (last accessed 25 March 2010).

209 AI The Death Penalty: No Solution to Illicit Drugs op. cit. p. 25.

210 Edith Yunita Sianturi, Rani Andriani (Melisa Aprilia), Myuran Sukumaran, Andrew Chan, Scott Anthony Rush 2-3/PUU-V/2007 [2007] IDCC 16 (30 October 2007).

211 The New York Times (11 July 2008) Indonesia widens use of death penalty.

212 Jakarta Globe Traffickers running out of time op. cit.

213 UN Human Rights Council A/HRC/11/2/Add.1 op. cit. p. 174.

214 UN Human Rights Council A/HRC/11/2/Add.1 op. cit. pp. 175-6.

interviewed indicated that the ill-treatment was used primarily to extract confessions or, in the cases of drug-related crimes, to receive information on drug suppliers.²¹⁵ In fact, he recounted, 'In three police stations, the Special Rapporteur arrived while beatings were taking place, and in several places he found persistent medical evidence of several types of ill-treatment, which are in line with reports by prisoners and various other credible sources received prior and during his visit.'²¹⁶

Indonesia ratified the International Covenant on Civil and Political Rights in 2006.

KUWAIT

Year	Total Executions	Executions for Drug Offences	Total on Death Row	On Death Row for Drug Offences
2007–2009	1	1		
End 2008			at least 12 ²¹⁷	
Early 2009				at least 2

least 12²¹⁷

Kuwait legislation has prescribed a compulsory death sentence for certain drug offences since 1995,²¹⁸ under the state's interpretation of sharia law.²¹⁹ The first drug traffickers to be executed were two Iranian nationals hanged in 1998.²²⁰ Capital Punishment UK recorded fourteen executions for drug offences between 1998 and 2007.²²¹

The last known execution in Kuwait was of a Pakistani national named Khan Anwar Islam, who was arrested at Kuwait airport with 813 grams of heroin.²²² From 2007 to 2009 at least two people, Sheikh Talal Nasser al-Sabah²²³ and an Iranian identified only as Hussein R,²²⁴ have been condemned to die for drug-related offences, although at the time of writing, these sentences have not been carried out.

Kuwait ratified the International Covenant on Civil and Political Rights in 1996.

215 UN Human Rights Council (10 March 2008) Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. Addendum: Mission to Indonesia. 1 A/HRC/7/3/Add.7: www.unhcr.org/refworld/docid/47eba2802.html (last accessed 12 April 2010).

216 *ibid.*

217 AI (28 May 2009) Amnesty International Report 2009 – Kuwait: www.unhcr.org/refworld/docid/4a1fadde37.html (last accessed 30 March 2010).

218 World Coalition Against the Death Penalty *op. cit.* p. 29; Amnesty International documented the passage of amendments to the Law on the Combat of Drugs (No. 74 of 1983), which widened the applicability of capital punishment for several categories of drug-related crimes: AI (1 February 1996) Five Years of Impunity: Human Rights Concerns Since the Withdrawal of Iraqi Forces. MDE/17/01/96: www.unhcr.org/refworld/docid/3ae6a98c2b.html (last accessed 11 April 2010).

219 UN General Assembly (15 August 2008) Moratoriums on the Use of the Death Penalty: Report of the Secretary-General. A/63/293, p. 9.

220 World Coalition Against the Death Penalty *op. cit.* p. 29; Times Online (13 August 2008) Sheikh sentenced to death begs for mercy from his royal family: www.timesonline.co.uk/tol/news/world/middle_east/article4517780.ece (last accessed 25 March 2010).

221 Capital Punishment UK (20 January 2009) Capital punishment in Kuwait 1964–2007: www.capitalpunishmentuk.org/kuwait.html (last accessed 26 March 2010).

222 Agence France-Presse (21 May 2007) Kuwait hangs Pakistani drug runner: www.dailytimes.com.pk/default.asp?page=2007/05/21/story_21-5-2007_pg7_10 (last accessed 25 March 2010).

223 Times Online *op. cit.*

224 Hands Off Cain (27 January 2008) The Criminal Court in Kuwait City, Kuwait, sentenced an Iranian: www.handsoffcain.info/news/index.php?iddocumento=10302144 (last accessed 25 March 2010).

THAILAND

Year	Total Executions	Executions for Drug Offences
2001 ²²⁵	10	7
2002 ²²⁶	5	2
2003 ²²⁷	4	3
2004–2008	0	0
2009 ²²⁸	2	2

2001²²⁵2002²²⁶2003²²⁷2004–20082009²²⁸

Thailand's Narcotics Act 1979 allows for the discretionary imposition of the death penalty for 'Any person who produces, imports or exports the narcotics of category I . . . [if] committed for the purpose of disposal.'²²⁹ Section 66 of the Act adds that any person who 'disposes of or possesses for disposal' drugs classified as category I in excess of 20 grams is liable to receive the death penalty. In practice, death sentences have been imposed for those who deal in heroin or methamphetamine.²³⁰

Between 1988 and 1995 Amnesty International recorded twenty-three death sentences imposed for drugs, although none were carried out.²³¹ From 1999 to 2002 at least ten convicted drug traffickers, including one woman, were executed.²³² This represented just under one-third of the executions for all crimes in Thailand recorded by Amnesty International during that period. In the past decade, drug offenders accounted for two-thirds of all reported judicial executions.

Although Thailand did not perform any judicial executions between 2004 and 2008, the practice resumed in 2009, when it executed two men.²³³

In mid-2009 there were reportedly 832 people on death row in Thailand,²³⁴ a high proportion of whom are believed to be there for drug offences.²³⁵ As of September 2006, 58 per cent of the 757 people appealing their death sentences were drug offenders.²³⁶ An overwhelming 84 per cent of the eighty-seven condemned women appealing their sentences had drug convictions.²³⁷

Thailand ratified the International Covenant on Civil and Political Rights in 1996.

225 AI (28 May 2002) Amnesty International Report 2002 – Thailand: www.unhcr.org/refworld/docid/3cf4bc0f10.html (last accessed 3 March 2010).

226 AI (28 May 2003) Amnesty International Report 2003 – Thailand: www.unhcr.org/refworld/docid/3edeb47e14.html (last accessed 3 March 2010).

227 Agence France-Presse (12 December 2003) Thailand moves to death by injection.

228 AI Death Sentences and Executions in 2009 op. cit. p. 6.

229 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.

230 FIDH The Death Penalty in Thailand op. cit. p. 11.

231 AI The Death Penalty: No Solution to Illicit Drugs op. cit. p. 43.

232 Amnesty International Report 2003 – Thailand op. cit.; Amnesty International Report 2002 – Thailand op. cit.; AI (1 June 2001) Amnesty International Report 2001 – Thailand: www.unhcr.org/refworld/docid/3b1de38f2.html (last accessed 3 March 2010); AI (1 June 2000) Amnesty International Report 2000 – Thailand: www.unhcr.org/refworld/docid/3ae6aa0f78.html (last accessed 3 March 2010).

233 AI, Thailand carries out first executions in six years op. cit.

234 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).

235 AI, Thailand carries out first executions in six years op. cit.

236 Johnson and Zimring op. cit. p. 400.

237 Johnson and Zimring op. cit. p. 400.

PAKISTAN

Year	Total Executions	Executions for Drug Offences	Total Death Sentences	Death Sentences for Drug Offences
2007 ²³⁸	134 ²³⁹	1	319 ²⁴⁰	2
2008 ²⁴¹	36 ²⁴²	0	237 ²⁴³	4
2009	0 ²⁴⁴	0	152* ²⁴⁵	4* ²⁴⁶

* Figures for 1 January to 1 September only. 2007²³⁸ 134²³⁹ 319²⁴⁰ 2008²⁴¹ 36²⁴² 237²⁴³ 0²⁴⁴ 152*²⁴⁵ 4*²⁴⁶

A number of laws allow for the death penalty for drug offences in Pakistan, including Section 9 of the Control of Narcotics Substances Act 1997, which deals with punishment for contraventions of the sections regulating the possession, import, export and trafficking of narcotics. It states that the punishment for those who contravene the provisions shall be:

... (c) death or imprisonment for life or imprisonment for a term which may extend to fourteen years and [they] shall also be liable to [a] fine which may be up to one million rupees, if the quantity of narcotic drug, psychotropic substance or controlled substance exceeds the limits [one kilogram] specified in clause (b):

Provided that if the quantity exceeds ten kilograms the punishment shall not be less than imprisonment for life.²⁴⁷

Such thresholds are problematic in Pakistan, where police officers and attorneys have complained that they are often not equipped with scales.²⁴⁸

Although Pakistan has been one of the world's leading executors in the last several years, this has not translated into significant use of capital punishment for drug offences. The Human Rights Commission of Pakistan has tracked capital punishment figures for several years. Of more than 300 death sentences imposed in 2007, two were for drug smuggling.²⁴⁹ The following year four of the 237 people sentenced to death were convicted of trafficking drugs.²⁵⁰ In the first nine months of 2009 at least 152 death sentences were pronounced, four of which were for drug crimes.²⁵¹

238 Human Rights Commission of Pakistan (HRCP) (n.d.) Summary: Death penalty (1 January 2007 – 31 December 2007): www.hrcp-web.org/PDF/2007%20-%20Death%20Penalty.pdf (last accessed 26 March 2010).

239 Amnesty International estimated at least 135, AI Death Sentences and Executions in 2007 op. cit. p. 6.

240 Amnesty International estimated at least 319, AI Death Sentences and Executions in 2007 op. cit. p. 7.

241 HRCP (n.d.) Summary: Death penalty (1 January 2008 – 31 December 2008): www.hrcp-web.org/PDF/2008%20-%20Death%20Penalty.pdf (last accessed 26 March 2010).

242 Amnesty International estimated at least 36, AI Death Sentences and Executions in 2008 op. cit.

243 Amnesty International estimated at least 236, AI Death Sentences and Executions in 2008 op. cit. p. 24.

244 AI Death Sentences and Executions in 2009 op. cit. p. 6.

245 HRCP (n.d.) Summary: Death penalty (1 January 2009 – 30 September 2009): www.hrcp-web.org/PDF/2009%20-%20Death%20Penalty.pdf (last accessed 26 March 2010). Amnesty International reported at least 270 people were sentenced to die in the whole of 2009. AI Death Sentences and Executions in 2009 op. cit. p. 13.

246 HRCP Summary: Death penalty (2009) op. cit.

247 Text accessible from www.unodc.org/enl/browse_countries.jsp#p (last accessed 25 March 2010).

248 International Federation for Human Rights (FIDH) (January 2007) Slow March to the Gallows: Death Penalty in Pakistan. n 464/2, p. 54.

249 HRCP Summary: Death penalty (2007) op. cit.

250 HRCP Summary: Death penalty (2008) op. cit.

251 HRCP Summary: Death penalty (2009) op. cit.

During this three-year period, one person convicted of drug offences has been executed.²⁵²

Amnesty International notes that the ruling Pakistan Peoples Party 'appears to have imposed a de facto moratorium on executions', even though death sentences continue to be pronounced.²⁵³

Pakistan became a signatory to the International Covenant on Civil and Political Rights in 2008, although it has yet to ratify it.

EGYPT

Article 33 of Law No. 182 of 1960 as amended by Law No. 122 of 1989 mandates capital punishment for anyone who imports, exports, produces, cultivates or sells narcotics with intent to traffic.²⁵⁴ Article 34 of the legislation allows for a discretionary death sentence to anyone who 'Manages or prepares any premises for the use of narcotic substances, for a consideration'. Article 34bis further states that 'Anyone who, by whatever means of force or deceit, induces any other person to take any narcotic substance, whether cocaine, heroin or any of the substances included in part I of Schedule No. 1, shall be punished by the death penalty.'

The first reported execution for drugs took place on 6 July 1989 when Anwar Hussein Kassar Hussein, aged twenty-seven, was hanged for bringing 2 kilograms of heroin into Egypt.²⁵⁵

The President has also invoked the Emergency Law to refer drug trafficking cases to emergency or military courts, which lack many of the due process protections of civilian courts.²⁵⁶ These courts can and do pass death sentences.²⁵⁷

There was a significant increase in reported death sentences for all crimes in 2009. Amnesty International recorded a jump from an estimated minimum of eighty-seven death sentences in 2008²⁵⁸ to 269 in 2009.²⁵⁹ The Arab Center for Independence of the Judiciary and the Legal Profession wrote that seventy-five people had been sentenced to die in the month of June alone,²⁶⁰ the majority of these for murder.²⁶¹

Egypt ratified the International Covenant on Civil and Political Rights in 1982.

252 HRCF Summary: Death penalty (2007) op. cit.

253 AI Death Sentences and Executions in 2009 op. cit. p. 13.

254 Summary: www.moiegypt.gov.eg/english/departments%20sites/anti-narcotics/legislationdevelopment/ (last accessed 31 March 2010); text accessible from www.unodc.org/en/browse_countries.jsp#e (last accessed 25 March 2010); International Federation for Human Rights (April 2005) *The Death Penalty in Egypt*. n415/2, p. 12.

255 AI *The Death Penalty: No Solution to Illicit Drugs* op. cit. p. 23.

256 US Department of State (25 February 2009) 2008 Country Reports on Human Rights Practices – Egypt: www.unhcr.org/refworld/docid/49a8f191af.html (last accessed 3 March 2010).

257 AI *Egypt – Systematic Abuses in the Name of Security* op. cit. pp. 33–4.

258 AI *Death Sentences and Executions in 2008* op. cit. p. 15.

259 AI *Death Sentences and Executions in 2009* op. cit. p. 6.

260 The Arab Center for Independence of the Judiciary and the Legal Profession (n.d.) 75 persons sentenced to death in one month a serious indicator of threat to the right to life.

261 The Arab Center for Independence of the Judiciary and the Legal Profession, communication with author (7 December 2009).

SYRIA

Year	Total Death Sentences	Death Sentences for Drug Offences
2008	at least 7 ²⁶²	at least 7 ²⁶³

2008 at least 7²⁶² at least 7²⁶³

Article 39 of Syria's Law No. 2 of 12 April 1993 states:

Capital punishment shall be imposed on:

- i. Anyone who smuggles narcotic drugs;
- ii. Anyone who manufactures narcotic drugs, in circumstances other than those authorized by this Law;
- iii. Anyone who cultivates any of the plants listed in Schedule No. 4, in circumstances other than those authorized by this Law, or who smuggles such plants in any stage of their growth, or who smuggles their seeds.²⁶⁴

Article 39 allows for mitigating circumstances to be considered (with a prison term and substantial fine as an alternative punishment) unless the suspect is a public official responsible for combating drugs, a minor was used in the commission of the offence or the offender was involved with an international smuggling syndicate.

Despite a dearth of information on the death penalty in Syria,²⁶⁵ the government launched a publicised crackdown on drugs in 2008 and announced that seven drug traffickers had been sentenced to death.²⁶⁶

There are severe shortfalls in due process protections in Syria's legal system and complaints have been lodged regarding lengthy periods in detention without being brought to trial and of courtroom irregularities.²⁶⁷

Syria ratified the International Covenant on Civil and Political Rights in 1969.

262 AI Death Sentences and Executions in 2008 op. cit. p. 25.

263 Hands Off Cain (1 April 2008) Syria: Seven sentenced to death for drug dealing: www.handsoffcain.info/news/index.php?iddocumento=10308425 (last accessed 1 April 2010).

264 Text accessible from www.unodc.org/enl/browse_countries.jsp#s (last accessed 26 March 2010).

265 World Coalition Against the Death Penalty op. cit. p. 32.

266 Hands Off Cain Syria: Seven sentenced to death for drug dealing op. cit.

267 US Department of State (11 March 2010) 2009 Country Reports on Human Rights Practices – Syria: www.unhcr.org/refworld/docid/4b9e52b78e.html (last accessed 12 April 2010).

YEMEN

Article 33 of the penal code imposes the death penalty on people who have exported, imported, produced, extracted, separated or manufactured narcotic substances with the intention of trafficking.²⁶⁸ Article 34 also allows for a discretionary death sentence for those who possess, purchase, sell or transport with the intent of trafficking or those who operate a premises for the consumption of drugs.²⁶⁹ Article 35 also allows a discretionary death sentence for anyone who offers drugs free of charge or facilitates their consumption.²⁷⁰

In 2008 at least one drug trafficker, a 50-year-old Pakistani national, is known to have been executed²⁷¹ and another man, a 33-year-old Iranian named Ayub Mohammed Houd, was sentenced to death for smuggling 1.5 tons of hashish,²⁷² although his sentence was later overturned.²⁷³ The NGO Hands Off Cain reported incidents where at least five drug traffickers were sentenced to death in 2009.²⁷⁴ Amnesty International reported that fifty-three people were sentenced to death for all crimes in 2009.²⁷⁵

Presenting a paper at a symposium in Sana'a in 2008, lawyer Ahmad Al-Wadei claimed as many as thirty-three executions had been committed under Yemen's anti-drug law, although a timeline was not included in the reporting of the event.²⁷⁶

Yemen ratified the International Covenant on Civil and Political Rights in 1971.

BANGLADESH

Bangladesh has had legislation prescribing the death penalty for drug offences since the passage of the Dangerous Drugs (Amendment) Act in 1988.²⁷⁷ The most recent law, the Narcotics Control Act 1990, makes it possible to sentence people to death if caught with more than 25 grams of heroin, cocaine or coca derivatives; 10 grams of pethidine or morphine tetrahydrocannabinol; two

268 Law 3 of 1993 on Control of Illicit Trafficking in and Abuse of Narcotics and Psychotropic Substances: www.unodc.org/enl/browse_countries.jsp (last accessed 26 March 2010).

269 *ibid.*

270 *ibid.*

271 Hands Off Cain (17 September 2008) Yemen: Pakistani drugs trafficker, one Yemeni executed: www.handsoffcain.info/archivio_news/200809.php?iddocumento=10317438&mover=0 (last accessed 25 March 2010).

272 Kuwait Times (16 November 2008) Iranian faces death penalty in Yemen for drug trafficking: www.kuwaittimes.net/read_news.php?newsid=MTI0ODU1MzI1MQ (last accessed 25 March 2010).

273 Hands Off Cain (24 June 2009) Yemen: Appeal overturns death sentence of Iranian: www.handsoffcain.info/news/index.php?iddocumento=12309083 (last accessed 25 March 2010).

274 Hands Off Cain (3 October 2009) Yemen: Two Pakistanis sentenced to death for drug smuggling: www.handsoffcain.info/news/index.php?iddocumento=12313348 (last accessed 25 March 2010); Hands Off Cain (26 December 2009) Yemen: Iranian sentenced to death for drug smuggling: www.handsoffcain.info/news/index.php?iddocumento=12319163 (last accessed 25 March 2010); Hands Off Cain (2 March 2009) Yemen: Court sentences Pakistani man to death for drug-trafficking: www.handsoffcain.info/news/index.php?iddocumento=12303747 (last accessed 25 March 2010); Hands Off Cain (14 November 2008) Yemen: Iranian sentenced to death for drug trafficking: www.handsoffcain.info/news/index.php?iddocumento=10321031 (last accessed 25 March 2010).

275 AI Death Sentences and Executions in 2009 op. cit. p. 6.

276 Yemen Times (8 December 2009) 315 death penalties legislated by four Yemeni laws: www.yementimes.com/DefaultDET.aspx?i=12366&p=local&a=1 (last accessed 25 March 2010).

277 AI The Death Penalty: No Solution to Illicit Drugs op. cit. p. 18.

kilograms of opium, cannabis resin or opium derivatives; or 50 grams of methadone.²⁷⁸

However, it does not appear that capital punishment is regularly enforced for drug offences. Bangladesh executed six people in 2007²⁷⁹ and five in 2008,²⁸⁰ all of them for terrorism-related offences or murder.

Despite the apparent lack of executions for drug offences in recent years, death sentences continue to be pronounced. On 17 May 2009 a court in Sylhet sentenced Saiful Islam to death for possession of 1,100 grams of heroin.²⁸¹ Amnesty International estimates there were at least 1,085 people on death row in Bangladesh at the beginning of 2009.²⁸²

Bangladesh ratified the International Covenant on Civil and Political Rights in 2000.

SYMBOLIC COMMITMENT STATES

LAO PEOPLE'S DEMOCRATIC REPUBLIC²⁸³

Year	Death row for Drug Offences
As of end 2008	83

Laos is considered to be abolitionist in practice and has not carried out a judicial execution since 1989. However, the death penalty remains mandatory for certain drug offences and death sentences are regularly handed down.

In 2001 Laos amended its 1990 penal code to make the death penalty mandatory for drug trafficking and possession. Article 135 states that 'Any person who produces, trades, distributes, possesses, imports, exports, transports or causes the transit through the Lao People's Democratic Republic of narcotics' (such as heroin, amphetamines, any ingredient used in the production of heroin or amphetamines, opium, and marijuana) shall receive the death penalty if the quantity exceeds 500 grams.²⁸⁴ Similarly, those found guilty of committing the same acts with regard to amphetamines or other psychotropic substances (in excess of 3,000 grams) or precursor chemicals (in excess of 10,000 grams) shall be punished with the death penalty.

278 The Narcotics Control Act 1990 (as amended in 2000, 2002 and 2004); Bangladesh Department of Narcotics Control, Ministry of Home Affairs, domestic law and rules on drugs: www.dnc.gov.bd/rulsacts.html (last accessed 24 February 2010); text accessible from www.unodc.org/enl/browse_countries.jsp#b (last accessed 25 March 2010); The Daily Star (27 June 2009) Star law review: Law and our rights.

279 The Daily Star (31 March 2007) Six JMB militants hanged: www.thedailystar.net/2007/03/31/d7033101011.htm (last accessed 25 March 2010).

280 The Daily Star (10 June 2008) Convict executed in Kashimpur jail: www.thedailystar.net/story.php?nid=40537 (last accessed 25 March 2010); The Daily Star (20 December 2008) Two convicts executed in Mymensingh jail: www.thedailystar.net/story.php?nid=67930 (last accessed 25 March 2010); The Daily Star (22 December 2008) 2 executed in Barisal jail: www.thedailystar.net/story.php?nid=68237 (last accessed 25 March 2010).

281 The Daily Star (18 May 2009) Heroin peddler to die: www.thedailystar.net/story.php?nid=88677 (last accessed 25 March 2010); Hands Off Cain (17 May 2009) Bangladesh: Man sentenced to death, another given life term in Sylhet: www.handsoffcain.info/news/index.php?iddocumento=12307939 (last accessed 25 March 2010).

282 AI (28 May 2009) Amnesty International Report 2009 – Bangladesh.

283 Amnesty International, communication with author (16 December 2009).

284 No law is on record with the UNODC.

The Lao government notified Amnesty International that, as of the end of 2008, eighty-three people had been sentenced to death for drug trafficking offences, although it did not provide the organisation with the dates of the sentences.

The Lao People's Democratic Republic ratified the International Covenant on Civil and Political Rights in 2009.

CUBA

An amendment to the penal code enacted in 1999 allows for the death penalty for certain drug offences.²⁸⁵ According to Law No. 87, the death penalty is a discretionary sentence for those who cultivate, manufacture, transport, traffic in, acquire, import, export or have in possession for the purpose of trafficking, drugs 'if the quantities of drugs or other substances involved in the acts . . . are relatively large'.²⁸⁶ However, the death penalty is rarely imposed²⁸⁷ and in recent years there have been no reported executions for drug offences.²⁸⁸

Cuba became a signatory to the International Covenant on Civil and Political Rights in 2008, although it has yet to ratify the treaty.

TAIWAN

According to the Taiwan Alliance to End the Death Penalty, there are fifty-two regulations in Taiwan that can lead to capital punishment, four of which are for drug offences.²⁸⁹ These include the Criminal Code as well as Articles 4, 6 and 15 of the Drug Control Act.²⁹⁰

Thirteen people were executed in Taiwan for narcotics offences between 1987 and 2002,²⁹¹ which was the last year an execution was carried out for a drug-related offence.²⁹² Taiwan had observed a moratorium on executions between 2006 and early 2010.²⁹³

Taiwan enacted the provisions of the International Covenant on Civil and Political Rights into its domestic legislation in 2009.²⁹⁴

285 Sito del Ministerio de Relaciones Exteriores de Cuba (n.d.) Principales normas jurídicas vinculadas a la prevención y el control de drogas: www.cubaminrex.cu/Narcotrafico/Articulos/Enfrentamiento/Marco-legal.html (last accessed 9 April 2010).

286 Text accessible from www.unodc.org/enl/browse_countries.jsp (last accessed 25 March 2010).

287 UN Human Rights Council (5 October 2009) Report of the Working Group on the Universal Periodic Review, Cuba. Interactive Dialogue and Responses by the State under Review. A/HRC/11/22, para. 126.

288 According to multiple press, NGO and government reports, the last known executions took place in 2003 and involved three young men who hijacked a ferry to flee the country.

289 Taiwan Alliance to End the Death Penalty (TAEDP), communication with author (11 September 2009).

290 International Federation for Human Rights (June 2006) The Death Penalty in Taiwan: Towards Abolition? n450/2, p. 46.

291 Johnson and Zimring op. cit. p. 201.

292 TAEDP, communication with author (11 September 2009); Johnson and Zimring op. cit. p. 201.

293 TAEDP, communication with author (11 September 2009).

294 Taipei Times (8 April 2009) A breakthrough in human rights; Radio Taiwan International (7 January 2010) Press office to set up human rights counselling committee; TAEDP, communication with author (11 September 2009).

OMAN

The Law on the Control of Narcotic Drugs and Psychotropic Substances 2000 allows for the death penalty for trafficking in certain drugs and also for drug offences involving officials, cases of recidivism, minors or an international drug smuggling organisation.²⁹⁵

Within two years of the law's enactment, Oman had executed 14 people,²⁹⁶ at least four of them for drug offences.²⁹⁷ There have been no executions in Oman since 2001.²⁹⁸

Oman is not a state party to the International Covenant on Civil and Political Rights.

UNITED ARAB EMIRATES

Drug trafficking has been a capital offence in the UAE since 1986, following the introduction of Federal Law No. 6 of 1986 Concerning the Fight Against Narcotics.²⁹⁹ Article 48 of the Federal Law No. 14 of 1995 on the Countermeasures Against Narcotic Drugs and Psychotropic Substances adds:

Without prejudice to the provisions of article 39, violation of the provisions of articles 6, paragraphs 1, 35 and 36 [regulating cultivation, import, export, purchase or use] shall be punished by imprisonment for a period of not less than ten years and not exceeding fifteen years and a fine of not less than fifty thousand dirhams and not exceeding two hundred thousand dirhams. If the offence was committed with the intention of trafficking or promotion, the penalty shall be execution.³⁰⁰

In 1992 three Pakistani nationals were sentenced to death for drug smuggling. However, it is not known whether these executions were carried out.³⁰¹ In fact, it is not known whether anyone has been executed in the UAE for drug crimes.³⁰²

The UAE is not a state party to the International Covenant on Civil and Political Rights.

295 Text accessible from www.unodc.org/en/browse_countries.jsp (last accessed 25 March 2010).

296 World Coalition Against the Death Penalty op. cit. p. 30.

297 Hands Off Cain (20 July 2001) Police said that three Pakistanis convicted of trafficking have been executed by firing squad: www.handsoffcain.info/news/index.php?iddocumento=1017203 (last accessed 25 March 2010); Hands Off Cain (31 January 2001) A Pakistani national, Murad Bkhit, was executed in Oman: www.handsoffcain.info/news/index.php?iddocumento=1011164 (last accessed 25 March 2010).

298 World Coalition Against the Death Penalty op. cit. p. 30; Hands Off Cain (1 January 2009) The death penalty is provided for under the penal laws of the Sultanate of Oman, which make reference to sharia law: www.handsoffcain.info/news/index.php?iddocumento=12001578 (last accessed 25 March 2010).

299 AI The Death Penalty: No Solution to Illicit Drugs op. cit. p. 43.

300 Text accessible from www.unodc.org/en/browse_countries.jsp#u (last accessed 25 March 2010).

301 AI The Death Penalty: No Solution to Illicit Drugs op. cit. p. 43.

302 UN Human Rights Council (6 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. 1, A/HRC/WG.6/3/ARE/3, p. 3.

BAHRAIN

Decretal Law No. 10 of 1984 on the Amendment of the First Article of Decretal Law No. 15 of 1983 on the Amendment of Articles 23 and 24 of Decretal Law No. 4 of 1973 on Controlling the Use and Circulation of Narcotic Substances and Preparations allows for the death penalty for drug trafficking.³⁰³ Although it has been reported that one person was sentenced to death in 1990,³⁰⁴ it is not known whether anyone has ever been executed under this law.³⁰⁵

There are conflicting reports about Bahrain's position on drug offences and capital punishment. In 2007 an amendment was proposed to remove the death penalty for drug offences from law, but this was rejected by the Shura Council.³⁰⁶ However, the same year Human Rights Watch reported that Bahrain enacted a new Drugs and Psychotropic Substances Law that prescribes the death penalty for certain offences.³⁰⁷

After a period of ten years during which Bahrain carried out no executions for any crime, the country resumed executions in 2006.³⁰⁸

Bahrain ratified the International Covenant on Civil and Political Rights in 2006.

INDIA

A 1989 amendment to the Narcotics and Psychotropic Substances Act imposes a mandatory death penalty for certain quantities of drugs, but only following a previous conviction.³⁰⁹ In the last decade, executions have been rare in India, and it is thought that no one has been executed under this Act.³¹⁰

India ratified the International Covenant on Civil and Political Rights in 1979.

303 Text accessible from www.unodc.org/enl/browse_countries.jsp#b (last accessed 25 March 2010). Human Rights Watch (31 January 2008) World Report 2008 – Bahrain also reported a new Drugs and Psychotropic Substances Law, enacted in August 2007, which prescribes the death penalty for certain offences: www.unhcr.org/refworld/docid/47a87bf741.html (last accessed 30 March 2010). This law, however, was not listed on the UNODC's Country Pages.

304 AI The Death Penalty: No Solution to Illicit Drugs op. cit. p. 17.

305 *ibid.* Hands Off Cain (14 January 2007) Death penalty stays for drug trafficking in Bahrain: http://english.nessunotocchicaino.it/archivio_news/200701.php?iddocumento=9303738&movier=2 (last accessed 25 March 2010); IPS (1 April 2010) Rights-Bahrain: It's time to abolish the death penalty – activists: www.ipsnews.net/news.asp?idnews=50879 (last accessed 6 April 2010).

306 AI (28 May 2008) Amnesty International Report 2008 – Bahrain; Hands Off Cain Death penalty stays for drug trafficking in Bahrain op. cit.

307 Human Rights Watch World Report 2008 – Bahrain op. cit.

308 UN Human Rights Council (27 May 2008) Question of the Death Penalty: Report of the Secretary-General. A/HRC/8/11, p. 5.

309 Text at <http://narcoticsindia.nic.in/NDPSACT.htm> (last accessed 31 March 2010) or accessible from www.unodc.org/enl/browse_countries.jsp#i (last accessed 25 March 2010). These thresholds were 10kg opium, 1kg morphine, 1kg heroin, 1kg codeine, 500g cocaine, 20kg hashish, 500g LSD and 1,500g methamphetamine.

310 US Department of State 2009 INCSR op. cit.

QATAR

Article 34, Law No. 9, 1987, to Control Narcotic Drugs and Dangerous Psychotropic Substances and to Regulate Their Use and Trade therein allows for the optional death penalty for producing, manufacturing or trafficking drugs in instances of recidivism.

Death sentences are occasionally passed in drug smuggling cases, according to reports. In 2004 three Iranians were sentenced to die for attempting to bring 108 kilograms of hashish into Qatar, although these sentences were later commuted to life imprisonment.³¹¹ In 2008 Iranian national Adil Sher Ali Mohamed al-Sharshani was sentenced to death in absentia for attempting to smuggle 160 kilograms of hashish into the country.³¹²

No executions for any crimes have been carried out in Qatar since 2003.³¹³

Qatar is not a state party to the International Covenant on Civil and Political Rights.

GAZA (OCCUPIED PALESTINIAN TERRITORIES)

The Gaza Strip is subject to Egyptian law,³¹⁴ which allows capital punishment for drug offenders. Until recently the Palestinian Authority in Gaza observed Israeli law, which does not have the death penalty for drugs. However, the Hamas government announced in late 2009 that it would enact Egyptian Law 19 until the Palestinian Authority in Gaza could meet to pass a new law for drugs.³¹⁵

According to Gaza's Attorney-General, Mohammed Abed, 'We saw the Egyptian law as better in dealing with the developing crime and this kind of criminal . . . It is stronger and has tougher punishments including the death penalty.'³¹⁶

Approximately 100 of the 300 prisoners in Gaza's main jail are drug offenders.³¹⁷ In April 2010 two men accused of 'collaborating' with Israel were executed by firing squad.³¹⁸

311 Hands Off Cain (7 May 2007) Qatar Appeal Court commutes death sentences of three Iranians: www.handsoffcain.info/news/index.php?iddocumento=9316407 (last accessed 25 March 2010).

312 Hands Off Cain (27 March 2008) Man in drug haul attempt gets death: www.handsoffcain.info/news/index.php?iddocumento=10308791 (last accessed 25 March 2010).

313 Amman Center for Human Rights (ACHRS) (2009) Death Penalty in the Arab World 2008, 3rd Annual Report, p. 13; World Coalition Against the Death Penalty op. cit. p. 31.

314 World Coalition Against the Death Penalty op. cit. p. 30.

315 Agence-France Presse (30 November 2009) Hamas approves law to execute drug dealers: www.google.com/hostednews/afp/article/ALeqM5h-WfxV-FJGxAxT6L_AQnG16lun6Jw (last accessed 25 March 2010). When Egypt administered the Gaza Strip (1948 to 1967) the territory was subject to Egyptian law, which allows the death penalty for drug offences. Reuters (3 December 2009) Gaza gets death penalty to halt drug scourge: <http://in.reuters.com/article/worldNews/idINIndia-44435120091203> (last accessed 25 March 2010).

316 Reuters Gaza gets death penalty to halt drug scourge op. cit.

317 Reuters Gaza gets death penalty to halt drug scourge op. cit..

318 BBC (16 April 2010) UN criticises executions of 'collaborators' in Gaza.

MYANMAR

National law prescribes the option of capital punishment for the production, distribution, sale, import and export of a narcotic drug or psychotropic substance.³¹⁹ Trafficking is said to be committed by someone who possesses or transports, transmits or transfers in excess of 3 grams of heroin, morphine or cocaine; 100 grams of crude opium; 75 grams of cannabis; or 100 grams of coca leaf.³²⁰

Myanmar is considered to be abolitionist in practice as no judicial executions have taken place in the country since 1989.³²¹

Myanmar is not a state party to the International Covenant on Civil and Political Rights.

SOUTH KOREA

South Korea has observed an unofficial moratorium on the death penalty since 1998.³²² However, legislation remains prescribing the death penalty as an optional punishment for drug trafficking.³²³ Although South Korea has continued to pronounce death sentences, all fifty-seven people on death row have been sentenced for murder-related offences.³²⁴

In 2003 South Korea's Constitutional Court ruled that the death penalty for drug offences was an 'excessive abuse of state power'.³²⁵ However, in practice, it is doubtful that this means those who profit from drugs, such as traffickers, are ineligible for capital punishment.³²⁶

South Korea ratified the International Covenant on Civil and Political Rights in 1990.

SRI LANKA

Sri Lanka has not carried out a judicial execution since 1976,³²⁷ although the death penalty is still an optional punishment for anyone who manufactures, traffics, possesses imports or exports, heroin, cocaine, morphine or opium, as provided by the Poisons, Opium and Dangerous Drugs (Amendment) Act No. 13 of 1984.³²⁸

319 Narcotic Drugs and Psychotropic Substances Law (27 January 1993), The State Law and Order Restoration Council Law No. 1/93: www.unodc.org/enl/browse_countries.jsp (last accessed 25 March 2010).

320 *ibid.*

321 Hood and Hoyle *op. cit.* p. 88.

322 AI (28 May 2009) Amnesty International Report 2009 – South Korea; AI (16 February 2009) South Korea must not resume use of the death penalty.

323 Act on Special Cases Concerning the Prevention of Illegal Trafficking in Narcotics, Psychotropic Substances and Hemp as Amended on 31 December 1997: www.unodc.org/enl/browse_countries.jsp (last accessed 25 March 2010).

324 British Embassy in Seoul, communication with author (22 January 2010).

325 Johnson and Zimring *op. cit.* p. 181.

326 British Embassy in Seoul, communication with author (22 January 2010).

327 Johnson and Zimring *op. cit.* p. 323 n. 27.

328 Text at www.police.lk/divisions/pnb_legislation.asp (last accessed 6 April 2010) or accessible from www.unodc.org/enl/browse_countries.jsp

In 2004 then President Chandrika Kumaratunga threatened to begin executing for certain offences including drug trafficking. The issue was raised again in 2009, although as yet no such action has been taken.³²⁹

Although no one has been executed for more than thirty years, Sri Lanka continues to impose death sentences upon people for drug offences. For example, in 2007 a Colombo court sentenced Mohammed Samoon Mohammed Shiyam to death for drugs.³³⁰ It has been reported that during the past thirty-seven years, seventy-four people have been sentenced to death for drug offences, including four women and thirteen foreign nationals.³³¹

Sri Lanka ratified the International Covenant on Civil and Political Rights in 1980.

BRUNEI-DARUSSALAM

According to Brunei's Misuse of Drugs Act 2001, the death penalty is mandatory for anyone convicted of trafficking above certain thresholds.³³² Capital crimes include unauthorised trafficking in more than 1,200 grams of opium; a drug with more than 15 grams of morphine or diamorphine; more than 30 grams of cocaine; more than 500 grams of cannabis and more than 200 grams of cannabis resin.³³³ The government's Narcotics Control Bureau also warns that 'trafficking of Methylamphetamine of more than 50 gram will be sentenced to a mandatory death penalty'.³³⁴

Brunei is considered abolitionist in practice as no one has been executed since 1957.³³⁵ However, the death penalty continues to be pronounced with some regularity. For example, in May 2006 a 28-year-old fisherman was reportedly sentenced to die for possession of more than 279 grams of Methylamphetamine, although the conviction was later overturned.³³⁶

Brunei-Darussalam is not a state party to the International Covenant on Civil and Political Rights.

(last accessed 25 March 2010).

329 Hands Off Cain (26 July 2009) Sri Lanka mulls reintroducing death penalty: www.handsoffcain.info/news/index.php?iddocumento=12311163 (last accessed 25 March 2010); Hands Off Cain (2 September 2009) Sri Lanka: No decision to impose the death penalty: www.handsoffcain.info/news/index.php?iddocumento=12311779 (last accessed 15 April 2010); Johnson and Zimring op. cit. p. 323 n. 27.

330 Hands Off Cain (17 December 2007) Sri Lanka: Drug lord sentenced to death: www.handsoffcain.info/news/index.php?iddocumento=10300504 (last accessed 25 March 2010).

331 Daily Mirror (5 April 2010) 229 sentenced to life imprisonment and 74 to death under drug law: www.dailymirror.lk/print/index.php/news/news/7564.html (last accessed 6 April 2010).

332 Text accessible from www.unodc.org/enl/browse_countries.jsp#b (last accessed 25 March 2010).

333 The Misuse of Drugs Act 2001 also has a separate set of capital thresholds for possession for the purpose of trafficking.

334 Brunei Darussalam Narcotics Control Bureau: www.narcotics.gov.bn/ (last accessed 30 March 2010).

335 Hood and Hoyle op. cit. p. 88.

336 Hands Off Cain (28 November 2008) Brunei: Death penalty quashed by Appeals Court: www.handsoffcain.info/news/index.php?iddocumento=10321835 (last accessed 25 March 2010).

UNITED STATES OF AMERICA

The Federal Death Penalty Act of 1994 introduced the death penalty for drug offences committed in furtherance of a continuing criminal enterprise involving large quantities.³³⁷

In 2008 the US Supreme Court ruled in *Kennedy v. Louisiana* that capital punishment could not be meted out in the case of a rape of a child without that crime being accompanied by the child's death, and stated that 'the death penalty should not be expanded to instances where the victim's life was not taken'. However, its decision was 'limited to crimes against individual persons. We do not address, for example, crimes defining and punishing treason, espionage, terrorism, and drug kingpin activity, which are offenses against the State.'³³⁸

The Death Penalty Information Center reports that no one has been executed or is currently on death row solely for drug offences that were not accompanied by violence.³³⁹

The USA ratified the International Covenant on Civil and Political Rights in 1992.

INSUFFICIENT DATA

NORTH KOREA

Date	Alleged Executions of Drug Offenders
2007	Public execution of unnamed drug dealer ³⁴⁰
December 2007	Execution of Kim Young-man for 'ice' dealing ³⁴¹
8 December 2007	Public execution of five unidentified drug traffickers ³⁴²
22 December 2007	Private execution of two unidentified 'ice' smugglers ³⁴³
11 October 2008	Public execution of an unidentified drug dealer ³⁴⁴
14 December 2008	Public execution of three unidentified drug producers ³⁴⁵

dealer³⁴⁰ dealing³⁴¹traffickers³⁴² smugglers³⁴³dealer³⁴⁴producers³⁴⁵

In North Korea, executions are carried out in secret and death penalty figures, as with almost any other piece of official information, are closely guarded.³⁴⁶ However, a handful of reports indicate

337 18 USC § 3591(b); UN Human Rights Council (28 May 2009) Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions. Addendum: Mission to the United States of America. A/HRC/11/2/Add.5, para. 23; AI The Death Penalty: No Solution to Illicit Drugs op. cit. p. 44.

338 *Kennedy v. Louisiana* 128 S. Ct 2641 (2008).

339 Death Penalty Information Center, communication with author (18 March 2010); Death Penalty Information Center (n.d.) Death penalty for offenses other than murder: www.deathpenaltyinfo.org/death-penalty-offenses-other-murder (last accessed 3 March 2010).

340 Korea Institute for National Unification op. cit. p. 68.

341 *ibid.*

342 North Korea Today (January 2008) no. 105.

343 North Korea Today (January 2008) no. 107.

344 North Korea Today (October 2008) no. 237.

345 North Korea Today (January 2009) no. 261.

346 UN Human Rights Council (28 August 2009) 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 – Democratic People's Republic of Korea. A/HRC/WG.6/6/PRK/3, p. 4.

that North Korea stiffened its penalties for drug trafficking in 2006³⁴⁷ and for possession in 2008.³⁴⁸ The latter amendment is said to have made possession of more than 300 grams of narcotic drugs punishable with death.³⁴⁹ Just one year before this change took effect, North Korea ratified the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.³⁵⁰

The Seoul-based organisation Good Friends has collected sporadic reports of executions for drug offences. Its newsletter, *North Korea Today*, reported the public execution of five 'ice' dealers on 8 December 2007;³⁵¹ the private execution of two 'ice' smugglers on 22 December 2007;³⁵² the public execution of a convicted drug dealer on 11 October 2008;³⁵³ and the public execution of three drug dealers on 14 December 2008³⁵⁴. A White Paper from the Korea Institute for National Unification also claimed an 'ice' dealer named Kim Young-man was executed publicly in December 2007 and another unnamed drug dealer was executed publicly earlier that year.³⁵⁵ Although these reports give some insight into the situation in North Korea, they can hardly be considered comprehensive.

The Democratic People's Republic of Korea ratified the International Covenant on Civil and Political Rights in 1981.

IRAQ

Following the removal of Saddam Hussein, Decree no. 3 of 2004 was introduced allowing for the death penalty for drug offences, although only when committed 'with the aim of financing or abetting the overthrow of the government by force'.³⁵⁶

In recent years Iraq has also become one of the world's most prolific executioners,³⁵⁷ although it has been reported that the majority of those killed were former senior officials in Saddam Hussein's government³⁵⁸ or those accused of terrorism offences.³⁵⁹ It is unknown whether any of these people were drug traffickers charged 'with the aim of financing or abetting the overthrow of the government'.

Following international criticism of its use of capital punishment, Iraqi authorities have kept statistics surrounding the death penalty shrouded in secrecy.³⁶⁰ Furthermore, multiple concerns have

347 Hands Off Cain, North Korea: Country issues death penalty decree for drug traffickers op. cit.

348 The Daily NK (13 May 2008) North Korea has introduced amendments to its criminal codes to save the regime from falling apart; US Department of State 2009 INCSR op. cit.

349 *ibid.*

350 UN Treaty Collection op. cit.

351 North Korea Today (January 2008) no. 105.

352 North Korea Today (January 2008) no. 107

353 North Korea Today (October 2008) no. 237.

354 North Korea Today (January 2009) no. 261.

355 Korea Institute for National Unification op. cit. p. 68.

356 AI Iraq – Unjust and Unfair op. cit. p. 10.

357 Amnesty International (4 December 2009) Over 900 people on death row in Iraq face imminent execution.

358 ACHRS Death Penalty in the Arab World 2008 op. cit. p. 8.

359 Hands Off Cain (5 January 2010) Iraq: 77 people executed last year: www.handsoffcain.info/news/index.php?iddocumento=12319360 (last accessed 25 March 2010).

360 Amnesty International (1 September 2009) Iraq: A thousand people face the death penalty, p. 5.

been voiced regarding the due process safeguards in Iraq.³⁶¹ For example, Amnesty International documented complaints that confessions were extracted under torture while suspects were held incommunicado in detention. These allegations were reportedly not investigated, despite such confessions being used as evidence.³⁶²

Iraq ratified the International Covenant on Civil and Political Rights in 1971.

SUDAN

Sudan imposes the death penalty for drug trafficking³⁶³ under the Narcotic Drugs and Psychotropic Substances Act 1994. The law states that anyone who produces, manufactures, imports, exports, buys or sells drugs faces a mandatory death sentence if the offence is committed in association with an 'international criminal group' or with another criminal offence such as gun-running or forgery.³⁶⁴

In 1989 an Egyptian named Sayed Ahmed Ali Gaballa became the first person to be executed for drugs in the country under earlier legislation.³⁶⁵ Seventeen people were condemned to die for drug offences over the next six years, nine of them women.³⁶⁶ More recently, however, a lack of available information makes it unclear how many people have been sentenced to death for drugs.

Sudan ratified the International Covenant on Civil and Political Rights in 1986.

LIBYA

Libya has reportedly had the death penalty prescribed in law for certain drug and alcohol offences since 1996.³⁶⁷

The scarcity of information surrounding the death penalty in Libya³⁶⁸ has led to conflicting reports on state practice. For example, there was considerable controversy in 2009 when it was reported that there were more than 200 Nigerians on death row in Libya for all offences.³⁶⁹ The President's office in Nigeria countered that the number was actually fourteen, including some drug offenders.³⁷⁰

361 AI Iraq – Unjust and Unfair op. cit.

362 AI, Iraq: A thousand people face the death penalty op. cit.

363 UN Human Rights Committee (29 August 2007) Concluding observations: Sudan. CCPR/C/SDN/CO/3, para. 19.

364 Text accessible from www.unodc.org/enl/browse_countries.jsp#s (last accessed 25 March 2010).

365 AI The Death Penalty: No Solution to Illicit Drugs op. cit. p. 41.

366 AI The Death Penalty: No Solution to Illicit Drugs op. cit. pp. 41–2.

367 World Coalition Against the Death Penalty op. cit. p. 30; Hands Off Cain (1 January 2009) A large number of offences, including political offences and economic 'crimes' are punishable by death: www.handsoffcain.info/news/index.php?iddocumento=12001310 (last accessed 7 April 2010). No laws are listed with UNODC. A story on the website of the South African newspaper The Times, stated: 'Under the existing code, which dates back to 1953, 21 crimes are punishable by death including drug trafficking and attacks on the security of the state.' Times LIVE (24 November 2009) Libya to allow NGOs, limit death penalty: Magistrate: www.timeslive.co.za/news/africa/article207503.ece (last accessed 8 April 2010).

368 World Coalition Against the Death Penalty op. cit. p. 30.

369 Hands Off Cain (1 October 2009) Libya halts execution of Nigerians on death row: www.handsoffcain.info/archivio_news/index.php?iddocumento=12313200&move=0 (last accessed 25 March 2010).

370 Hands Off Cain (13 August 2009) Nigeria: Presidential spokesman says 'only 14 Nigerians' on death row in Libya: www.handsoffcain.info/news/index.php?iddocumento=12311118 (last accessed 25 March 2010).

However, subsequent reports claimed that between thirty-two and forty Africans, mostly from Nigeria, had already been secretly executed.³⁷¹

Amnesty International reported that at least nine people had been executed for all crimes in 2007³⁷² and at least eight people in 2008.³⁷³ The Chief Justice of the Supreme Court told Human Rights Watch that between thirty-five and forty people are sentenced to death each year, and roughly 5 to 7 per cent of those sentences are carried out.³⁷⁴

It was reported in late 2009 that the head of a legal committee appointed to amend Libya's penal code had announced that the death penalty would be limited to those convicted of premeditated murder and of committing acts of terrorism.³⁷⁵ However, at the time that law still needed to be ratified by the People's Congresses.

Libya ratified the International Covenant on Civil and Political Rights in 1970.

371 Hands Off Cain (14 August 2009) Relatives reveal Nigerians executed in Libya: www.handsoffcain.info/news/index.php?iddocumento=12311377 (last accessed 25 March 2010); The Day Online (14 August 2009) FG: No Nigerian was killed in Libya.

372 AI Death Sentences and Executions in 2007 op. cit. p. 6.

373 AI Death Sentences and Executions in 2008 op. cit. p. 23.

374 Human Rights Watch (12 December 2009) Truth and Justice Can't Wait: Human Rights Developments in Libya Amid Institutional Obstacles, p. 67.

375 Times LIVE op. cit.

4. CONCLUSION

Of the fifty-eight states worldwide that retain the death penalty, about half – thirty-two jurisdictions in all³⁷⁶ – maintain laws that prescribe the death penalty for drug offences. In some states, drug offenders make up a significant portion – if not the outright majority – of those executed each year. In a few countries, Malaysia for example, it would seem that capital punishment is maintained solely to punish drug-related offences.

The figures collected for the *Global Overview 2010* demonstrate that the number of executions worldwide each year for drug offences is at least in the hundreds, and is likely well over a thousand when factoring in estimates from countries such as China, Singapore and Viet Nam, which keep their death penalty data secret. In many more countries, death sentences for drugs continue to be pronounced even if actual executions are rarely, if ever, carried out.

Numerous scholars, human rights monitors and UN human rights bodies agree that the death penalty for drug offences is a violation of international law. Despite this finding, many jurisdictions continue to use death penalty legislation as part of their domestic drug control and criminal justice policies. In many countries, this violation is compounded by related human rights abuses such as mandatory death penalties for drug offences, confessions extracted under torture, specialised courts for drug cases or capital drug trials lacking the most basic safeguards.

Nevertheless, not all countries with legislation providing for the death penalty for drug offences enforce these sanctions with equal enthusiasm. Indeed, state practice in this regard varies enormously from one country to the next. Many retentionist countries do not actively execute for drug offences and seem only to preserve their legislation as a way of appearing ‘tough’ on drugs. States retaining this ‘symbolic commitment’ to the death penalty for drugs comprise the largest grouping of the thirty-two retentionist jurisdictions identified in this report.

Even among states that do actively execute for drug offences, there is a marked difference in the ferocity with which they enforce the penalty of death. There are relatively few countries with a ‘high commitment’ to implementing the death penalty for drug offences, i.e. those that regularly impose death sentences and carry out executions. China, Iran, Saudi Arabia and Viet Nam are widely known to execute high numbers of drug offenders each year. Historically, Malaysia and Singapore have also put many people to death for drug-related crimes. Despite the small number of these high commitment states, these countries carry out the majority of executions for drug offences worldwide every year.

Although both Malaysia and Singapore appear to have reduced their use of the death penalty in recent years, it is difficult to take them out of the high commitment category without greater

³⁷⁶ Including the states classified by Amnesty International as ‘abolitionist in practice.’

transparency from these governments on their use of capital punishment. In both countries, death sentences are known to be pronounced frequently and executions, albeit in decreased quantity, are still carried out with some consistency.

Among the countries identified as having a 'low commitment' to the death penalty for drug offences, there appears to be a stubborn refusal to abolish capital punishment for narcotics offences even though executions are very rarely carried out. For example, Thailand recently went through a six-year period without any judicial executions at all, only to resume the practice in 2009 with the killing of two drug traffickers. Despite the fact that Indonesia's death row is populated mostly by drug offenders, the country went for four years without executing anyone for narcotics crimes before resuming executions in 2008.

As the steady trend towards the global abolition of the death penalty over the past twenty-five years demonstrates, state practice and legislation in this area is always liable to change. Even when focusing on the single issue of the death penalty for drug offences, the categories identified above are not fixed and countries can easily move from one grouping to another based upon their practice. A jurisdiction such as Taiwan, for example, which consistently carried out executions for drugs in the 1990s, was moving away from capital punishment. It had been observing an unofficial moratorium since 2006, only to execute four people in early 2010. Taiwan has not executed a drug offender since 2002.

National discourse on the death penalty for drug offences is far from stagnant and there is ongoing debate over its legitimacy in many states. For example, official proposals to remove drug offences from the list of capital crimes have been considered in countries as diverse as Viet Nam, Bahrain and Libya. In Singapore and Indonesia, court actions have been taken in the past three years to challenge the constitutionality of the death penalty for drugs. Several countries that have the death penalty for drugs in law are observing moratoria and several others may as well be, given the infrequency with which they carry out executions. The diverse domestic advocacy against capital punishment in many retentionist states, and indeed the wide variation in state practice regarding the death penalty for drugs among these countries, undermines the suggestion that the death penalty represents some sort of cultural or regional norm.

It is also worth noting that the alarming growth in the number of states prescribing the death penalty for drug offences since the mid-1980s appears to have stalled, and begun to reverse. Since the publication of IHRA's 2007 report, *The Death Penalty for Drug Offences: A Violation of International Human Rights Law*, a number of states have initiated unofficial moratoria and others have abolished the death penalty for drugs outright.

The death penalty for drug offences is an issue of considerable human rights concern, one demanding the attention of abolitionists, harm reductionists and drug policy reformers alike. Its imposition

violates international human rights law and dehumanises, in the most final and irreversible of ways, those convicted of drug offences. It is in many ways the ultimate example of the absence of human rights considerations in the push to 'get tough' on drugs.

Attention to the human rights impacts of drug policy and legislation, however, is growing. Just as the gradual abolition of the death penalty over time became a yardstick by which to measure the growing respect for human rights around the world, so too may the gradual abolition of the death penalty for drug offences serve as a measure for the increased respect for human rights in drug control.



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