

# The Death Penalty for Drug Offences: Global Overview 2012

Tipping the Scales for Abolition



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## TIPPING THE SCALES FOR ABOLITION

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## **About Harm Reduction International**

Harm Reduction International is one of the leading international non-governmental organisations promoting policies and practices that reduce the health and social harms associated with drug use and the negative social, health, economic and criminal impacts of drug laws and policies on individuals, communities and society.

Our vision is a world in which individuals and communities benefit from drug laws, policies and practices that promote health, dignity and human rights.

We work to reduce drug-related harms by promoting evidence-based public health policy and practices and human-rights-based approaches to drug policy through an integrated programme of research, analysis, advocacy and civil society strengthening.

## **About Harm Reduction International's Human Rights Programme**

Harm Reduction International's human rights programme aims to promote a human-rights-based approach to international drug policy. We advocate for an international legal and policy environment that is conducive to the expansion of harm reduction policies and services and to the realisation of the human rights of people who use drugs and those who are affected by drug use, drug policies and the drug trade.

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# 1. INTRODUCTION AND EXECUTIVE SUMMARY

This Global Overview 2012 is the sixth publication on the issue of the death penalty for drug offences that Harm Reduction International has produced since December 2007, and the third annual overview on the status of the practice worldwide.

Several trends are discernible. The first is that despite the fact that 33 countries or territories have capital drug laws on the books, only a small minority of countries actually impose and enforce these sanctions. Harm Reduction International estimates that executions for drug offences have taken place in only twelve to fourteen countries over the past five years. In 2011, it is probable that executions for drug offences occurred in fewer than nine countries.<sup>1</sup>

In fact, the number of countries retaining the death penalty for drug offences in both law and practice constitutes only between 5 and 7 per cent of the world's national governments. (The range in this figure results from the difficulty of accurately assessing how drug laws are enforced in some countries, for instance in Iraq, Libya and the Democratic Republic of North Korea). State practice internationally clearly leans against executions for drug offences.

A second visible trend, however, entails the rise and fall of capital drug laws. Despite an unprecedented global trend towards abolition of the death penalty for all crimes in the past 60 years, the 1980s and 1990s witnessed a surprising increase in the number of countries enacting capital drug laws. In 1979, around ten countries prescribed the death penalty for drug offences. By 1985, that number had risen to 22.<sup>2</sup> By 2000, it appeared that the number of states that imposed the death penalty for drug offences had reached 36.<sup>3</sup> All of this in the era of the global 'war on drugs'.

That trend appears to have finally reversed and the scales are tipping back towards abolition for drug offences. In the past decade, for example, the Philippines,<sup>4</sup> Uzbekistan<sup>5</sup> and the Kyrgyz Republic<sup>6</sup> have abolished the death penalty for all offences, including drugs. Tajikistan limited the number of crimes punishable by death in 2004, removing drug offences from the list.<sup>7</sup> Jordan amended Articles 8 and 9 of Law No. 11 of 1988 on Narcotic Drugs and Psychotropic Substances in 2006, reducing the punishment for certain categories of drug crimes from the death penalty to life imprisonment.<sup>8</sup>

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1 Known executions have taken place in China, Iran and Saudi Arabia. It is probable that executions have taken place in Viet Nam, Malaysia and North Korea. It is unknown but possible that executions have occurred in Syria, Yemen and Iraq.

2 R. Hood and C. Hoyle, *The Death Penalty: A Worldwide Perspective* (Oxford: Oxford University Press, 2008), p. 137.

3 The numbers vary between sources. This figure was reported in UN Commission on Crime Prevention and Criminal Justice, *Capital Punishment and Implementation of the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty*, E/CN.15/2001/10, 29 March 2001; R. Lines, *The Death Penalty for Drug Offences: A Violation of International Human Rights Law* (Harm Reduction International, 2007); R. Hood and C. Hoyle, *The Death Penalty: A Worldwide Perspective* (Oxford: Oxford University Press, 2008), p. 137.

4 D. Johnson and F. Zimring, *The Next Frontier: National Development, Political Change and the Death Penalty in Asia* (Oxford: Oxford University Press, 2009), p. 104.

5 Amnesty International, 'Uzbekistan abolishes the death penalty', 11 January 2008.

6 Council of Europe, '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, 17 March 2010, available at: [www.consilium.europa.eu/uedocs/cms\\_Data/docs/pressdata/en/cfsp/113417.pdf](http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/cfsp/113417.pdf); Institute for War and Peace Reporting, 'Return to death penalty floated in Kyrgyzstan', RCA no. 595, 13 November 2009.

7 Hands Off Cain, 'The death penalty was retained for five crimes', 1 January 2006.

8 Penal Reform International, communication with author, 14 March 2010; Amnesty International, communication with author, 4 March 2010.

Pressure to abolish capital drug laws has come from different directions. In some cases, there was political pressure, while in others there was legal pressure. In the past decade there have been a number of constitutional challenges to the death penalty for drug offences around the world, the most prominent of which have been in Asia.

There has been no single entry point for these challenges. In some cases they took on the mandatory death penalty, either in general or more specifically for drug offences, as in Singapore. In others they took on the constitutionality of the death penalty for drug offences in all circumstances. As would be expected, these cases were adjudicated in varying ways – with each approach reflecting differences in legal context and argumentation. Judges also engaged with international law in contrasting ways. Nevertheless, this report shows that there were also similarities.

The focus of this year's Global Overview is 'challenging the status quo' and this report considers challenges to capital drug laws and highlights how these laws have been discussed in their national legal contexts.

Harm Reduction International's two past Global Overviews on the death penalty for drug offences, and one specific legal analysis, have discussed international standards on capital drug law as articulated by United Nations human rights bodies.<sup>9</sup> Such analysis leaves little doubt that capital punishment for drug offences is a practice that is in violation of international law.<sup>10</sup> This position has been asserted by:

- » UN Human Rights Committee, the body of independent experts mandated with monitoring the implementation and interpretation of the International Covenant on Civil and Political Rights<sup>11</sup>
- » UN Office on Drugs and Crime (UNODC)<sup>12</sup>
- » UN Special Rapporteur on extrajudicial, summary or arbitrary executions<sup>13</sup>
- » UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment<sup>14</sup>
- » UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.<sup>15</sup>

9 For a more thorough discussion on the international standards on the death penalty for drugs, including trial standards, mandatory capital drug laws, presumptions of guilt, and more, see P. Gallahue, *The Death Penalty for Drug Offences: Global Overview 2011 – Shared Responsibility and Shared Consequences* (London: Harm Reduction International, 2011).

10 According to Amnesty International, 58 states retain the death penalty. See *Death Sentences and Executions in 2011*, ACT 50/001/2012, 27 March 2012, p. 3. Of Amnesty's 58 states, 25 prescribe the death penalty for drugs. This differs from the figure of 33 states that prescribe the death penalty for drugs stated in this report. Amnesty's figure does not include two states that are not fully recognised by the UN, and another five states that Amnesty considers abolitionist de facto. According to the UN Secretary-General's eighth quinquennial report on capital punishment, 'de facto abolition is the result of government policy and is effected, in a legal sense, through a refusal by the authorities to actually order an execution or by the mechanism of official commutation or pardon'. See *Report of the Secretary General on capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty*, UN Economic and Social Council, E/2010/10, 18 December 2009, p. 14.

11 Human Rights Committee, *Concluding Observations: Thailand*, CCPR/CO/84/THA, 8 July 2005, para. 14; Human Rights Committee, *Concluding Observations: Sudan*, CCPR/C/SDN/CO/3, 29 August 2007, para. 19.

12 United Nations Office on Drugs and Crime, *Drug Control, Crime Prevention and Criminal Justice: a Human Rights Perspective, 2010*, 'Note by the Executive Director' (Commission on Narcotic Drugs, Fifty-third Session, Vienna, 8–12 March 2010) E/CN.7/2010/CRP.6–E/CN.15/2010/CRP.1\*.

13 UN Special Rapporteur on extrajudicial, summary or arbitrary executions, *Report to Commission on Human Rights on question of the violation of human rights and fundamental freedoms in any part of the world, with particular reference to colonial and other dependent countries and territories*, E/CN.4/1997/60, 24 December 1996; UN Special Rapporteur on extrajudicial, summary or arbitrary executions, *Report to the Human Rights Council on the questions of disappearances and summary executions*, A/HRC/4/20, 29 January 2007, paras. 51–52; UN Special Rapporteur on extrajudicial, summary or arbitrary executions, *Report to the Human Rights Council: addendum on communications to and from governments*, A/HRC/14/24/Add.1, 18 June 2010, pp. 45–46.

14 UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, *Report to the Human Rights Council on promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development*, A/HRC/10/44, 14 January 2009, para. 66.

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

This clear position, however, has not always persuaded judges in national contexts to strike these laws down. When confronted with the jurisprudence of international quasi-judicial bodies and UN independent experts, judges have taken differing views of their relevance. Some judges have chosen to ignore their applicability. Some have acknowledged them but only as non-binding guidance. Others have given greater significance to the three core UN drug control treaties that say nothing about specific penalties but do require certain drug-related activities to be made illegal and for 'particularly serious crimes' to attract commensurate penalties.

In two of the cases described in the next section of this report, the arguments of the abolitionists won out, at least partially. In two others, they were defeated but with deeply flawed reasoning.

There are many routes towards abolition of the death penalty. The courtroom is just one of them, as is the reduction of the number of offences for which the death penalty may be applied. However, considering how clearly international human rights bodies have set out the international norms against these laws, governments should now be forced to defend these international standards against the use of the death penalty.

It is hoped that the domestic legal communities will continue to take aim at these laws to bring their national practices into line with international standards.



## 2. TIPPING THE SCALES FOR ABOLITION: CHALLENGING THE DEATH PENALTY FOR DRUG OFFENCES

Capital drug laws are hotly debated in courtrooms and legislatures around the world, including in many countries generally regarded as strongly in favour of the death penalty. For example, both China in 2010<sup>16</sup> and Viet Nam in 2009<sup>17</sup> considered removing drug offences from their respective lists of capital crimes.

In 2009, Malaysia was 'considering ... proposed amendments to existing anti-drug trafficking legislation to reduce the maximum sentence to life imprisonment'.<sup>18</sup> In October 2012, moreover, the Government proposed a moratorium on executions for drug offences pending a review of the mandatory death penalty. The number of death sentences in fact pronounced in the past year has, however, remained high.

Lao PDR, although stating that it retains the death penalty as a deterrent measure, said in 2010 that it 'would consider revising the Penal Law in the coming years, including with a view to limiting the scope of crimes to which the death penalty would apply'.<sup>19</sup>

In Pakistan, in March 2010, the Federal Law Minister requested an amendment to the Control of Narcotics Substances Act 1997 in order to remove the death penalty provision. The minister held that the 'death sentence under Section 9 (C) of the Control of Narcotics Substances Act is uncalled for, harsh and un-Islamic'. He gave the ministry two weeks to formulate and submit a draft law for approval by the cabinet after taking all stakeholders on board. However, the draft law was not submitted and the capital provision remained unchanged.<sup>20</sup>

In courtrooms around the world, lawyers have turned to international standards to argue that the death penalty for drug offences is a violation of their government's international legal obligations. These challenges have met with varying degrees of success – some less tangible than others. But the debates, deliberations and judgments involved offer some insight into how courts view capital drug laws and their relationship to international standards that proclaim the death penalty for drug offences to be a violation of human rights law.

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16 Newspaper interview with Tsinghua University Professor Zhou Guangquan, *Southern Weekend*, 26 August 2010, translation provided by the Dui Hua Foundation's blog, *Dui Hua Human Rights Journal*, 1 September 2010.

17 Agence France-Presse, 'Vietnam cuts list of death penalty crimes: official', 19 June 2009.

18 UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review – Malaysia: Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the state under review*, A/HRC/11/30/Add.1, 3 June 2009, p. 5.

19 UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review – Lao People's Democratic Republic*, A/HRC/15/5, 15 June 2010, para. 11.

20 Human Rights Commission of Pakistan, *State of Human Rights in 2010*, April 2011, p. 101, available at: <http://www.hrcp-web.org/Publications/AR2010.pdf>.

## A. Constitutional Challenges: Four Cases

### 1) Republic of Korea (South Korea): Aggravated Punishment for Crimes Concerning Narcotics, Korean Constitutional Court, 27 November 2003

This complaint challenged a provision of the Aggravated Punishment Act. The provision stated that the purchase or possession of certain drugs with the intent to sell would be punished by capital punishment, life imprisonment or imprisonment of a term of ten years or longer. It was argued that punishment for possession of drugs without distinguishing certain factors was unconstitutional.

The court held that Article 10 of the Constitution protecting human dignity and value, as well as Article 37 (2) guaranteeing protection against excessive legislation, required individualised sentencing.<sup>21</sup> The justices distinguished between purchasing drugs for use versus distribution: 'The above provision of the Aggravated Punishment Act nonetheless aggravates the punishment uniformly for such conduct without distinguishing such conduct from narcotics crimes for profit. This is an excessive abuse of the state authority to criminally punish.'<sup>22</sup>

Furthermore, the judges protested the law's restriction of judicial discretion or ability to consider mitigating factors 'even for, for example, purchase or possession of narcotics in an extremely small amount'.<sup>23</sup>

It is quite clear from the judgment that even while retaining the death penalty for certain profit-seeking drug-related crimes the judges felt strongly that discretion was critical. One analyst noted, 'Thus, the Court concluded that this punishment [mandatory death penalty] was unconstitutional. Needless to say, if a mandatory death penalty law such as those that exist in Singapore and Malaysia were to be reviewed in South Korea, it would undoubtedly be held unconstitutional.'<sup>24</sup>

Subsequent debate indicates that South Korea's capital drug laws would probably not survive a present-day constitutional challenge. In 2010, the Constitutional Court upheld provisions of its criminal code, and other relevant national laws that prescribe the death penalty for murder and some sexual offences. While the decision was disappointing to abolitionists, it did make reference to the standards articulated in international human rights law.

For example, the opinion of five justices read: 'The sentence of death in its practice has been rarely imposed [and] only for the most serious crimes, such as vicious killings of many people.'<sup>25</sup> In a concurring opinion, Justice Hyeong-ki Min wrote, 'Crimes that can result in capital punishment should be confined to particular crimes such as the intentional taking of life, crime with a highly

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21 Aggravated Punishment for Crimes Concerning Narcotics (15-2(B) KCCR 242, 2002Hun-Ba24, 27 November 2003), The Constitutional Court of Korea, *Decisions of the Korean Constitutional Court 2003, 2005*, p. 240.

22 *Ibid.*, p. 241.

23 *Ibid.*

24 K. Cho, 'Death penalty in Korea: from unofficial moratorium to abolition?', *Asian Journal of Comparative Law* (2008) 3, p. 22.

25 161 KCCG 452, 2008Hun-Ka23, 25 February 2010.

probable cause of depriving any person of life, cruel crime causing fatal killing, and crime directly involved in the outcome of war or national security.<sup>26</sup>

It stands to reason that the death penalty for drug offences would not withstand scrutiny – although it remains an abstract point. Harm Reduction International’s research concluded that, as of early 2010, no one was on death row in South Korea for a drug offence.<sup>27</sup>

## **2) Indonesia: Constitutional Court of the Republic of Indonesia, 2-3/PUU-V/2007, 30 October 2007<sup>28</sup>**

Two petitions have been filed to the Constitutional Court of Indonesia to challenge the constitutionality of the death penalty. The first involved two Indonesian citizens and two Australian citizens. The second was brought by one Australian citizen. All the petitioners had been convicted of drug-related offences such as possession and trafficking. The two constitutional claims were merged into one decision.

The petitioners argued that capital punishment is contrary to the right to life, which is otherwise protected by the Indonesian Constitution, under Article 28A. Additionally, according to Article 28I, the right to life is considered as one of the non-derogable rights that cannot be limited in any circumstances. The petitioners also argued that Indonesia’s international treaty obligations under Article 6 of the International Covenant on Civil and Political Rights (ICCPR), which Indonesia ratified in 2005, specifically required the government to abolish the death penalty for drug offences. The petitioners recognised the worldwide trend towards abolition and questioned capital punishment’s deterrent value.

With respect to the claim that capital punishment violates the Indonesian Constitution, the court argued that ‘from the perspective of the original intent of the 1945 constitution makers, the application of all human rights set forth in Chapter XA of the 1945 Constitution can be limited.’<sup>29</sup>

The justices paid particular attention in their final judgment to the so-called ‘victims’ of drugs.<sup>30</sup> The court argued that protecting the right to life of vicious criminals (such as those convicted of premeditated murder) would negate the right to life of victims and offend the victims’ families. Therefore, the absolute nature of the right to life is not sustained. The application of the death penalty, according to the court, also finds its relevance in addressing social disharmony that emerged because of the crimes committed by the perpetrators. The court also expressed scepticism towards

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<sup>26</sup> *Ibid.*

<sup>27</sup> British Embassy in Seoul, communication with author, 22 January 2010.

<sup>28</sup> For the purpose of this report, references shall be made to the Indonesian version of the Constitutional Court’s decision, given that it is the official language of the decision. The official English translation provided by the Constitutional Court is available at: [www.mahkamahkonstitusi.go.id/putusan/putusan\\_sidang\\_eng\\_PUTUSAN%20\\_PUU\\_V\\_07%20-%20Hukuman%20Mati%20\(Eng\).pdf](http://www.mahkamahkonstitusi.go.id/putusan/putusan_sidang_eng_PUTUSAN%20_PUU_V_07%20-%20Hukuman%20Mati%20(Eng).pdf).

<sup>29</sup> Constitutional Court of the Republic of Indonesia, 2-3/PUU-V/2007, 30 October 2007, pp. 411–413.

<sup>30</sup> *Ibid.*, pp. 405–407.

studies that show capital punishment has no deterrent value<sup>31</sup> and compared Indonesia's laws with the comparatively more strict laws in neighbouring Singapore and Malaysia.<sup>32</sup>

It is interesting to see the court's reasoning on the possibility of the death penalty only applying to the most serious crimes, as Article 6 (2) of the ICCPR states that in countries where the death penalty is still in place, it may be imposed only for the 'most serious crimes'. The UN Special Rapporteur on extrajudicial, summary or arbitrary executions and the UN Human Rights Committee have made clear that the concept of 'most serious crimes' in this context does not cover economic crimes such as drug-related offences.<sup>33</sup> The petitioners in this case relied on this argumentation in their petitions.<sup>34</sup> However, in spite of the jurisprudence of UN quasi-judicial bodies and independent experts, the judges suggested that drug offences qualify, or at least ought to, as 'most serious crimes'.<sup>35</sup> The judges chose to relegate the views of UN treaty bodies to 'subsidiary means for the determination of rules of law' as prescribed by Article 38 of the statute of the International Court of Justice, thereby making the UN drug control treaties a superior source. They wrote:

In other words, in relation to the a quo petition, if according to Indonesia, more severe measures are needed to prevent and eradicate such crimes, such measures are not contradictory to but rather are justified and suggested instead by the [drug control] Convention. ... The consequences of Indonesia's participation in the Narcotic Drugs and Psychotropic Substances Convention in order to take more strict national measures in legally eradicating Narcotics crimes shall have a higher degree of binding force in the light of international law sources, as regulated in Article 38 Paragraph (1) of the Statute of International Court of Justice than the opinion of the Human Rights Commission of the United Nations to the effect that crimes related to the drugs abuse do not belong to the category of the most serious crimes.<sup>36</sup>

The judges argued that this opinion was supported by the penal provisions of the 1988 Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. They referred to the penal provisions contained in Article 3 of the 1988 Convention, paragraph (6) of which states, 'The parties shall ensure that their domestic courts and other competent authorities having jurisdiction can take into account factual circumstances which make the commission of the offences established in accordance with Paragraph I of this article particularly serious.'<sup>37</sup>

The justices also turned to Article 24 of the same treaty to support this view.<sup>38</sup> It states, 'A Party may adopt more strict or severe measures than those provided by this Convention if, in its opinion, such measures are desirable or necessary for the prevention or suppression of illicit traffic.'<sup>39</sup>

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31 *Ibid.*, pp. 408–409.

32 *Ibid.*, pp. 429–430.

33 For an overview of relevant jurisprudence, see R. Lines, 'A most serious crime? The death penalty for drug offences in international law', *Amicus Journal* (2010) 21, pp. 21–28.

34 Constitutional Court of the Republic of Indonesia, 2-3/PUU-V/2007, 30 October 2007, p. 43.

35 *Ibid.*, pp. 422–426.

36 *Ibid.*, p. 427.

37 *Ibid.*, p. 423.

38 *Ibid.*, p. 427.

39 UN Economic and Social Council (ECOSOC), *United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*, 19 December 1988.

The preamble to the 1988 Convention refers to 'the illicit production of, demand for and traffic in narcotic drugs and psychotropic substances, which pose a serious threat to the health and welfare of human beings and adversely affect the economic, cultural and political foundations of society'. The justices concluded, 'Thus, the crime qualifications in the Articles of the Narcotics Law above can be equalled with the most serious crime under the provisions of Article 6 of ICCPR'.<sup>40</sup>

The court ruled that the law did not conflict with the international obligations of Indonesia and therefore the petitioners' claims were unfounded.<sup>41</sup> The judges also found that foreign petitioners do not have legal standing. They argued that Article 51 paragraph (1) of the Law on Constitutional Court clearly and explicitly states that only Indonesian citizens can file a constitutional complaint to the Constitutional Court. Thereby, petitions from foreigners are ineligible for the court to adjudicate.<sup>42</sup>

The reasoning of the court is problematic. First, in considering the interaction of international law sources, the Court generated a somewhat clumsy hierarchy that does not take into account the respective obligations imposed by the various instruments. The drug control treaties do, in fact, require states to make certain activities illegal, but, they do not prescribe specific sanctions.

Indeed, the commentary on Article 3 of the 1988 Convention, on penal provisions, states, 'there is nothing to prevent parties from adopting stricter measures than those mandated by the text should they think fit to do so, subject always to the requirement that such initiatives are consistent with applicable norms of public international law, in particular norms protecting human rights' (emphasis added).<sup>43</sup>

This could create a situation in which the justices would have to consider the interpretative maxim *lex specialis derogat lex generali*, with respect to the penal provisions. If the drug control conventions say nothing on specific penalties, then the human rights treaties must be examined at the very least to understand the limits of punishment.

Writing with HRI's Damon Barrett, Professor Manfred Nowak was of the view that: 'Human rights law applies at all times in international drug policy. Specifically, where the drug conventions fail to legislate or are unclear, human rights law must fill the gaps, and it is within these gaps that human rights law serves as *lex specialis* for determining what is "appropriate"'.<sup>44</sup>

Additionally, in *Penal Aspects of the UN Drug Conventions*, Professor Neil Boister wrote: 'Given the general international protection in human rights instruments of the right to life, imposition of the death penalty cannot be regarded as being called for by the drugs conventions' provisions for adequate punishment'.<sup>45</sup>

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40 Constitutional Court of the Republic of Indonesia, 2-3/PUU-V/2007, 30 October 2007, p. 426.

41 *Ibid.*, p. 431.

42 *Ibid.*, pp. 368–369.

43 United Nations, *Commentary on the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988*, E/CN.7/589, Vienna, 20 December 1988.

44 D. Barrett and M. Nowak, 'The United Nations and drug policy: towards a human rights-based approach', pp. 449–477, in A. Constantinides and N. Zaikos, eds., *The Diversity of International Law: Essays in Honour of Professor Kalliopi K. Koufa* (Leiden: Martinus Nijhoff, 2009).

45 N. Boister, *Penal Aspects of the UN Drug Conventions* (The Hague: Kluwer Law International, 2001), p. 185.

### 3) Singapore: *Yong Vui Kong v. Public Prosecutor*, submissions on behalf of the appellant, criminal appeal no. 13 of 2008 and criminal appeal no. 26 of 2008

In 2009, the Singapore Court of Appeals agreed to hear a constitutional challenge to the Misuse of Drugs Act brought by a young man who was awaiting execution. He had been arrested with 47 grams of heroin in 2007, when he was just nineteen years old, and after conviction was sentenced to death.

His attorney, Mr M. Ravi, argued that the mandatory death penalty was unconstitutional. First, he asserted that the law prescribing a mandatory death penalty fails to take the person's individual circumstances into consideration and results in grossly disproportionate sentences, thus depriving the accused of fundamental due process guarantees.<sup>46</sup> He argued that the law therefore allows for a punishment that is cruel and inhuman, a violation of customary international law and an infringement on the defendant's right to life, which is protected by Article 9 (1) of Singapore's Constitution.<sup>47</sup>

The second part of the appellant's argument was built on the premise that the 15 grams capital threshold that makes a sentence of death mandatory 'draws an arbitrary distinction between capital and non-capital cases'. This, it was argued, is not remedied by the pardon process, making the law inconsistent with Article 12 (1) of the Singapore Constitution, which states, 'All persons are equal before the law and entitled to equal protection of the law.'<sup>48</sup>

On the point that the mandatory death penalty amounted to cruel and inhuman punishment, the court struggled to find value in jurisprudence from the numerous national courts<sup>49</sup> that had found mandatory capital punishment unlawful. This is difficult to accept as the decisions referred to come from countries of the Commonwealth, of which Singapore is a member. As those courts had adhered to the human rights values upon which the Commonwealth is supposed to be based, the Singaporean court should have found the decisions relevant and valuable.

While the challenge singled out the Misuse of Drugs Act,<sup>50</sup> it was in effect arguing that the mandatory death penalty violates customary international law, thereby bringing additional offences, including murder, into the analysis.<sup>51</sup> Most of the national jurisdictions referred to have abolished the death penalty for murder – which the judges did not believe was comparable. In fact, the court held that drug traffickers are potentially even more deserving of the mandatory death penalty than murderers: 'even if the Appellant's Art 9 (1) cases bear out the conclusion that the [mandatory death penalty] is an inhuman punishment when prescribed as the punishment for murder, it does not necessarily follow that the [mandatory death penalty], when prescribed for drug trafficking, is likewise an inhuman punishment'.<sup>52</sup>

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46 *Yong Vui Kong v. Public Prosecutor*, submissions on behalf of the appellant, criminal appeal no. 13 of 2008 and criminal appeal no. 26 of 2008, para. 1.4 (I).

47 *Ibid.*

48 *Ibid.*, para. 1.4 (II).

49 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 Supreme Court, 21 January 2009; Amnesty International, 'Mandatory death penalty ruled unconstitutional in Uganda', 22 January 2009; *Kafantayeni v. Attorney General*, constitutional case no. 12 of 2005 [2007] MWHC 1; *Bernard Coard and Others v. The Attorney General of Grenada*, UKPC7 (2007).

50 *Yong Vui Kong v. Public Prosecutor*, submissions on behalf of the appellant, criminal appeal no. 13 of 2008 and criminal appeal no. 26 of 2008, para. 1.4.

51 *Ibid.*, para. 7.

52 *Ibid.*, para. 49.

The court said this was supported by state practice among the countries that imposed the death penalty for drug offences, weakening the customary law contentions. It stated:

[A]lthough the majority of States in the international community do not impose the MDP [mandatory death penalty] for drug trafficking, this does not make the prohibition against the MDP a rule of CIL [customary international law]. Observance of a particular rule by a majority of States is not equivalent to extensive and virtually uniform practice by all States ... The latter, together with *opinio juris*, is what is needed for the rule in question to become a rule of [customary international law].<sup>53</sup>

The expectation that 'extensive and virtually uniform practice' is required in order to establish a customary rule of international law is contradicted by the opinion of the International Court of Justice, which wrote in its *Nicaragua* decision that it 'does not consider that, for a rule to be established as customary, the corresponding practice must be in absolutely rigorous conformity with the rule.'<sup>54</sup>

Nevertheless, the Singapore court stated, 'In our view, a rule of [customary international law] is not self-executing in the sense that it cannot become part of domestic law until and unless it has been applied as or definitively declared to be part of domestic law by a domestic court.'<sup>55</sup> This argument is unpersuasive. If custom only exists after local authorities have incorporated it into domestic law there would be little reason to petition for its application since there would be domestic legislative sources to refer to, negating the need for *opinio juris*. It would also mean that *jus cogens* norms such as freedom from torture or slavery would be deprived of their status.

This reasoning appeared to contradict the government's own lawyers. In the respondent's arguments, the Attorney General wrote, 'customary international law may be recognised and given effect to without the need for specific legislation.'<sup>56</sup> However, the court chose to reinterpret these comments and wrote, 'From his other submissions, it seems clear enough to us that what the AG meant when he said that the expression 'law' should be interpreted to include [customary international law] was that this expression would include a [customary international law] rule which had already been recognised and applied by a domestic court as part of Singapore law.'

The court did not identify which submissions they were relying on to come to this conclusion.

Even though it dismissed the customary law arguments, the court did consider the claims of inhuman punishment. It ultimately held that 'the Singapore Constitution does not contain any express prohibition against inhuman punishment.'<sup>57</sup> Therefore, the court felt no compulsion to 'decide whether the [mandatory death penalty] is an inhuman punishment'.<sup>58</sup>

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<sup>53</sup> *Ibid.*, para. 96.

<sup>54</sup> International Court of Justice, *Nicaragua v. United States of America*, judgment, 27 June 1986, para. 186.

<sup>55</sup> *Yong Vui Kong v. Public Prosecutor*, submissions on behalf of the appellant, criminal appeal no. 13 of 2008 and criminal appeal no. 26 of 2008, para. 91.

<sup>56</sup> *Yong Vui Kong v. Public Prosecutor*, criminal appeal no. 13 of 2008, 15 March 2010, respondent's arguments. See also *Yong Vui Kong v. Public Prosecutor*, judgment, para. 44.

<sup>57</sup> *Yong Vui Kong v. Public Prosecutor*, 14 May 2010 in the Court of Appeal of the Republic of Singapore, judgment, criminal appeal no. 13 of 2008 and criminal appeal no. 26 of 2008, paras. 61, 73–74. In para. 75, however, the court does state an explicit prohibition on torture. It says, 'This explicit recognition by the Government that torture is wrong in the local context stands in sharp contrast to the absence of any statement on its part (in the context of our national policy on combating drug trafficking in Singapore) that the [mandatory death penalty] is an inhuman punishment. In addition, torture, in so far as it causes harm to the body with criminal intent, is already criminalised under Ch XVI of the Singapore Penal Code, which sets out the types of offences affecting the human body.'

<sup>58</sup> *Ibid.*, para. 120.

This is disappointing because the court's own jurisprudence recognises a customary law prohibition on inhuman punishment. In *Nguyen Tuong Van v. Public Prosecutor* [2005], the appellant's counsel argued that the practice of hanging was contrary to Article 5 of the Universal Declaration on Human Rights, which provides that 'No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.' To this the court wrote, 'there is no difficulty with the first part of the appellant's argument. It is quite widely accepted that the prohibition against cruel and inhuman treatment or punishment does amount to a rule in customary international law.'<sup>59</sup> The court's rejection of this in *Nguyen*, however, hinged on the opinion that there was not sufficient state practice to prove that there was a customary international law prohibition against hanging or the death penalty generally.<sup>60</sup>

On the second challenge, the court spent far less time reasoning whether the 15 grams threshold was arbitrary and thereby in violation of the guarantee that 'All persons are equal before the law and entitled to equal protection of the law.' The court sided with a 'rational relation' test used in *Nguyen*, which states that a differentiating measure is valid if (a) 'the classification is founded on an intelligible differentia' and (b) 'the differentia bears a rational relation to the object sought to be achieved by the law in question.'<sup>61</sup>

The court decided that there is a 'rational relation' between 15 grams and 14.99 grams, although it hedged that this difference 'should not, however, be taken to mean that this differentia is the best and that there is no other better differentia which would further the social object of the MDA [Misuse of Drugs Act]'.<sup>62</sup>

The court here acknowledged that there may be a better distinction 'than merely the quantity of controlled drugs trafficked' but this is ultimately a 'question of social policy, and, as the Privy Council stated in *Ong Ah Chuan ...* it lies within the province of the Legislature, not the Judiciary'.<sup>63</sup> The court added, 'Our judiciary has to respect the constitutional role of our legislature as delineated in the Singapore Constitution (under Art 38), and this is why our courts will only act to ensure that the differentia employed in the MDA for determining when the [mandatory death penalty] is to be imposed bears a rational relation to the social object of that statute.'<sup>64</sup>

This comment raises some concerns. Does it mean that the courts are powerless to rein in any excesses of the legislature as long as the means employed bear 'a rational relation to the social object of that statute'? And if it is not the role of the judiciary to interpret the laws made by the legislature, then why is it even considering the case against the mandatory death penalty in the first place?

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59 *Nguyen Tuong Van v. Public Prosecutor* [2005], Court of Appeal, 1 SLR 103; [2004] SGCA 47, para. 92. Interestingly, on the subject of customary international law, the court also said at para. 88, 'The common law of Singapore has to be developed by our Judiciary for the common good. We should make it abundantly clear that under the Constitution of our legal system, Parliament as the duly elected Legislature enacts the laws in accordance and consistent with the Constitution of Singapore. If there is any repugnancy between any legislation and the Constitution, the legislation shall be declared by the Judiciary to be invalid to the extent of the repugnancy. Any customary international law rule must be clearly and firmly established before its adoption by the courts. The Judiciary has the responsibility and duty to consider and give effect to any rule necessarily concomitant with the civil and civilised society which every citizen of Singapore must endeavour to preserve and protect.'

60 *Ibid.*, para. 92.

61 *Ibid.*, para. 109.

62 *Ibid.*, para. 113.

63 *Ibid.* *Ong Ah Chuan* refers to *Ong Ah Chuan v. Public Prosecutor*, [1981] AC 648, 15 October 1980.

64 *Ibid.*



What is the 'social object' of the Misuse of Drugs Act? Singapore often refers to its 'tough laws and penalties' as a 'strong deterrent signal to would-be traffickers'.<sup>65</sup> However, the Court of Appeal wrote,

It is not within the purview of this court to determine the efficacy or otherwise of the MDP as a deterrent vis-à-vis the offence of drug trafficking. In *Ong Ah Chuan*, the Privy Council addressed this very point when it said (at 672–673): Their Lordships would emphasise that in their judicial capacity they are in no way concerned with arguments for or against capital punishment or its efficacy as a deterrent to so evil and profitable a crime as trafficking in addictive drugs.<sup>66</sup>

This statement would seem to undermine the Misuse of Drugs Act's justification as a deterrent and leave open the question of the law's social object, which the court addressed elsewhere. Curiously, the court again turned to the *Ong Ah Chuan* decision in saying that, the 'social object of the [Misuse of Drugs Act] is to prevent the growth of drug addiction'.<sup>67</sup> Coupled with the statement that 'It is not within the purview of this court to determine the efficacy or otherwise of the MDP as a deterrent vis-à-vis the offence of drug trafficking', one is left asking if this means that the point is deterrence but no one cares whether it actually works?

In *Ong Ah Chuan*, the court wrote that the purpose was to catch traffickers nearer to the 'apex of the distributive pyramid', which was to be determined using an 'appropriate quantitative boundary [that] lies between these two classes of dealers'.<sup>68</sup> Yet in considering all the paradoxical statements it is hard to find any justification for the statute other than to establish a random threshold – an admittedly imperfect one<sup>69</sup> – which allows the authorities to suppose that the accused is a trafficker so that he or she can be punished with death.

#### **4) India: *Indian Harm Reduction Network (IHRN) v. Union of India (UOI)*, 2012 Bom CR (CRI) 121**

This constitutional challenge to Section 31-A of the Narcotic Drugs and Psychotropic Substances Act 1985 (NDPS) was brought by the Indian Harm Reduction Network (IHRN) – a consortium of NGOs working for humane drug policies in India. IHRN's challenge was heard and decided together with petition no. 1790 of 2010, which was filed by Gulam Mohammed Malik, a repeat offender, who had been sentenced to death for possession of hashish.

The petitioners argued that the mandatory death penalty for drugs violates the right to life – protected under Article 21 of the Constitution – due to its failure to consider the individual circumstances of a

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<sup>65</sup> See, for example, Michael Teo, 'Singapore's policy keeps drugs at bay', *Guardian*, 5 June 2010.

<sup>66</sup> *Yong Vui Kong v. Public Prosecutor*, 14 May 2010 in the Court of Appeal of the Republic of Singapore, judgment, criminal appeal no. 13 of 2008 and criminal appeal no. 26 of 2008, para. 117.

<sup>67</sup> Quoted in the *Yong Vui Kong* decision at para. 112.

<sup>68</sup> *Ong Ah Chuan v. Public Prosecutor*, [1981] AC 648, 15 October 1980, para. 674.

<sup>69</sup> In the court's own words (at para. 113): 'Our finding that there is a rational relation between the 15g differentia and the social object of the MDA should not, however, be taken to mean that this differentia is the best and that there is no other better differentia which would further the social object of the MDA. In this regard, we appreciate the points made in Mr Ravi's second, third and fourth arguments at [104]–[106] above, all of which suggest possible reasons for expanding the differentia to take into account something more than just the quantity of controlled drugs trafficked. We should also point out that although a differentia which takes into account something more than merely the quantity of controlled drugs trafficked may be a better differentia than the 15g differentia, what is a better differentia is a matter on which reasonable people may well disagree.'

case. The petitioners also argued that drug offences do not qualify as a 'most serious crime' under international legal norms. In India, capital punishment is attracted for a subsequent offence involving a fairly large quantity of drugs. The threshold for imposing a death sentence under Indian law is higher than in most other countries.

The petition states, 'Article 21 of the Constitution forbids the State from interfering with a person's life and liberty, except in accordance with procedure established by law. It is a settled position that "procedure established by law" does not simply refer to a validly enacted legislation, but it requires that legislation be fair, just and reasonable, substantively as well as procedurally.'<sup>70</sup>

Mandatory capital sanctions, it was argued, are also excessive, disproportionate and arbitrary, and thus in violation of Article 14, which ensures equal protection under the law. The petitioners further argued that making 'death the norm' for a particular category of offenders is arbitrary and unjust.

Like the Indonesian courts, the judges referred to the obligations of the UN drug control treaties. They noted that one of the reasons for the NDPS was 'to implement the provisions of the International Convention on Narcotic Drugs and Psychotropic Substances, to which India was a party'.<sup>71</sup> Unfortunately, any in-depth discussion of balancing international obligations imposed by drug control treaties and human rights law was mostly cast aside. The court wrote:

Reliance was placed on Article 7 of the ICCPR, which provides that no one shall be subjected to cruel, inhuman or degrading punishment. That argument need not detain us, in view of the well-established position expounded by the Supreme Court that, as per the municipal law and the constitutional scheme as applicable in India, providing for death penalty is within the domain of the Legislature. Further, the International Covenants and judicial decisions cannot be the basis to overlook the express provision in the municipal law.<sup>72</sup>

With regard to the 'most serious crime' question, the court argued:

Reliance was placed on Article 6, paragraph 2, of the ICCPR, which stipulates that the State-Parties may retain the death penalty to the most serious crime. As per the International Human Rights' norms, the phrase 'most serious crime' refers to crime involving intentional taking of life. For that, reliance was placed on materials, including pertaining to the International Conventions. However, it is well-established position that the International Conventions cannot be the governing law. It is the Municipal Law which ought to prevail.<sup>73</sup>

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<sup>70</sup> *Indian Harm Reduction Network v. Union of India*, High Court of the Judicature at Bombay, criminal writ petition no. 1784 of 2010, June 2010.

<sup>71</sup> *Indian Harm Reduction Network v. Union of India*, High Court of Judicature at Bombay in its criminal jurisdiction under Article 226 of the Constitution of India, criminal writ petition no. 1784 of 2010, judgment, 16 June 2011.

<sup>72</sup> *Ibid.*, para. 63.

<sup>73</sup> *Ibid.*, para. 80.

The justices added that they were comfortable allowing the legislature to determine the proportionality of sanctions with respect to crimes, including the application of the death penalty.<sup>74</sup> However, the court was less at ease with being stripped of its ability to consider mitigating circumstances. Fearing that mandatory sanctions would 'sacrifice justice at the altar of blind uniformity',<sup>75</sup> the court wrote:

[T]he use of wise and beneficent discretion by the Court in a matter of life and death after reckoning the circumstances in which the offence was committed and that of the offender is indispensable; and divesting the Court of the use of such discretion and scrutiny before pronouncing the preordained death sentence cannot but be regarded as harsh, unjust and unfair, thereby violative of the tenets of Article 21 of the Constitution.<sup>76</sup>

The provisions relating to the death penalty were thus not struck down as unconstitutional, but were 'read down' so as to allow for judicial discretion.

While there are many elements of this decision that may disappoint abolitionists and drug policy reformers, the fact remains that it was a ground-breaking decision to remove the mandatory death penalty for drug offences. Given the number of countries in the region that prescribe the mandatory death penalty for drug offences – including Malaysia, Singapore, Myanmar, Lao PDR and Brunei-Darussalam – it is hoped that some momentum will be gained from this ruling. As India had a fairly high threshold for capital punishment for drug offences, its weakening of the death penalty for drug offences may influence other countries positively when they review their capital drug laws.<sup>77</sup>

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74 *Ibid.*, para. 69.

75 *Ibid.*, para. 57.

76 *Ibid.*, para. 57.

77 Lawyers Collective (India), communication with author, 3 October 2012.

## B. Exploring Similarities and Differences

### 1) Engagement with international human rights law

There is always a danger in comparing decisions imposed by courts in different national jurisdictions. Constitutions, legal systems and jurisprudence vary. Moreover, states are not all parties to the same treaties, and international obligations therefore also vary. But it is worth noting that to some degree all of the judgments considered in this report engage with international legal norms. As the discourse towards human rights was disappointing in many respects, the willingness to engage with these treaty norms is perhaps surprising. This is particularly true for Singapore, which considered the 'most serious crimes' provision even though it is not a party to the ICCPR or most other core human rights treaties. Nevertheless, international human rights law did not tip the balance in any jurisdiction. All the decisions make clear that while international treaty obligations can be a departure point for such constitutional challenges, they are not enough to carry the decision through by themselves.

One area that would benefit from further clarity is the balance of international human rights norms with the obligations imposed by the international drug control treaties. As written above, Indonesian justices opted to place the drug control treaties above the terms of the ICCPR as interpreted by the UN Human Rights Committee. The importance of human rights law in sentencing provisions must be emphasised and understood.

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

The Board has considered the issue of capital punishment for drug trafficking offences. Capital punishment is neither encouraged nor prohibited by the international drug control conventions, which do not refer to it under provisions relating to penalties. Under the United Nations standards and norms in criminal justice, States are encouraged to avoid using the death penalty. The safeguards guaranteeing protection of the rights of those facing the death penalty (Economic and Social Council resolution 1984/50, annex) endeavour to limit the scope of application of the death penalty to only the most serious crimes and provides for a number of safeguards.<sup>78</sup>

In fact, the INCB recognised capital punishment as a potential impediment to 'international mutual legal assistance, extradition and transfer of proceeding case work if the requesting State's legislation provides for the death penalty and the requested State's legislation does not. The prospect of the death penalty often constitutes under national legislation a compulsory or discretionary ground for refusal of international mutual assistance.'<sup>79</sup>

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<sup>78</sup> INCB, *2003 Annual Report of the International Narcotics Control Board*, E/INCB/2003/1, 2003, para. 213.

<sup>79</sup> *Ibid.*, para. 214.

Similarly, the United Nations Office on Drugs and Crime (UNODC) maintains the stance that the death penalty for drug offences is a violation of international law. In an official paper in 2010 to the UN Commissions on Narcotic Drugs and on Crime Prevention and Criminal Justice, for example, the then Executive Director stated, 'UNODC advocates the abolition of the death penalty and calls upon Member States to follow international standards concerning prohibition of the death penalty for offences of a drug-related or purely economic nature.'<sup>80</sup>

In addition, as noted in the introduction above, and as alluded to in the Singaporean decision, state practice is also important. It is clear from our Global Overviews that state practice leans strongly against executions for drug offences. Very few states continue to put people to death for such crimes, and the abolitionist trend is again taking hold in relation to those states that retain capital drug laws.

These sources should guide judges away from the argument that the drug control treaties are a defence or that they are compatible with international law. As this argument continues to be regularly introduced, it is clear that stronger statements from the INCB are sorely needed on this issue.

While the terms of the ICCPR have so far had limited effect on constitutional challenges in Asia, elsewhere the right to life as articulated in Article 6 (1) and (2) has made headway. For example, in April 2011, the government of Gambia abolished a short-lived law that prescribed the death penalty for drug trafficking, 'observing that it had overlooked the constitutional prohibition against the death penalty for offences not resulting in death when adopting that piece of legislation.'<sup>81</sup>

## **2) Legislators as judges?**

An issue that raised concerns among judges in India and in South Korea was the need for individualised sentencing. Justices did appear to recognise the need to apply sentences based on the circumstances of the case and were not prepared to surrender their discretion in sentencing to legislators. In Singapore, however, judges appeared comfortable to defer sentencing entirely to legislators.

## **3) Regional norms?**

Courts often compare their country's laws with those of their neighbours in order to show either that their own laws are more merciful or that a regional norm exists. In dismissing *Yong Vui Kong's* challenge, the Singapore Court of Appeals went to incredible pains to stress the contention that the mandatory death penalty in general – and for drug offences in particular – is imposed in law and practice by 'a significant number of states'.<sup>82</sup> This is simply not correct.

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<sup>80</sup> UNODC, *Drug Control, Crime Prevention and Criminal Justice: a Human Rights Perspective*, 2010, 'Note by the Executive Director' (Commission on Narcotic Drugs, Fifty-third Session, Vienna, 8–12 March 2010) E/CN.7/2010/CRP.6\*–E/CN.15/2010/CRP.1\*.

<sup>81</sup> UN Secretary General, *Report to the General Assembly on question of the death penalty*, A/HRC/18/20, 4 July 2011, para. 13.

<sup>82</sup> *Yong Vui Kong v. Public Prosecutor*, 14 May 2010, in the Court of Appeal of the Republic of Singapore, judgment, criminal appeal no. 13 of 2008 and criminal appeal no. 26 of 2008, para. 96.

The court argued that 31 states continue to impose a mandatory death sentence for a variety of offences, including violent crimes.<sup>83</sup> However, had the court chosen to consider this in its review of state practice, it would have confronted a very different international situation. As stated above, most countries do not impose the death penalty for drug offences. In the court's analysis it highlighted the Attorney General's assertion that 31 states 'still retain the [mandatory death penalty] for drug-related and other serious offences' (emphasis added).<sup>84</sup> On this issue, the Singapore court stated:

[S]ome of the other States ... are abolitionist de facto, which means that they retain the MDP [mandatory death penalty] on their statute books, but in practice do not carry out that penalty. Leaving aside those [abolitionist de facto] States and India [which has a death penalty policy that is difficult to interpret], this still leaves a significant number of States which impose, both in law and in practice, the MDP for drug-related and other serious offences. As a result, although the majority of States in the international community do not impose the MDP for drug trafficking, this does not make the prohibition against the MDP a rule of CIL [customary international law].<sup>85</sup>

The court's willingness to isolate the mandatory death penalty for drug trafficking in its consideration of state practice is somewhat commendable but nonetheless the mandatory death penalty for drug offences is lumped in with other crimes.

Harm Reduction International's research found that only thirteen states impose mandatory death sentences for certain categories of drug offence, far less than half of the 31 states referred to by the court. In practice, the number of those states that actually execute people is even lower. From this group, Lao PDR, Myanmar and Brunei-Darussalam are 'abolitionist in practice'. The United Arab Emirates is not known to have ever executed a drug offender. This means that only about 5 per cent of the world's countries impose, both in law and in practice, the mandatory death penalty for drug offences – a point Mr Ravi made clear in his submission.<sup>86</sup> As evidence of state practice, this is significant.

#### 4) Deterrence and ideology

In each of the cases considered above it seems to be taken on faith that the death penalty is a deterrent. It is impossible to prove this, positively or negatively, considering the variety of drug types and how use of one type may rise while another falls – to say nothing of the difficulty in identifying useful indicators (such as seizures, arrests, hospital admissions for overdose, admissions to treatment).<sup>87</sup>

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83 *Ibid.*, para. 93.

84 *Ibid.*, para. 94.

85 *Ibid.*, para. 96.

86 Although he estimated approximately 7 per cent maintained the mandatory death penalty for drugs (at para. 94).

87 A plethora of indicators could be used to consider deterrence with drugs. Might it be arrests for drug offences? Representation of drug offenders in the prison population? Hospital admissions for drug-related issues? Overdose statistics (which can be brought down anyway with simple and cheap harm reduction interventions)? Moreover, which drugs: marijuana, cocaine, heroin, so-called 'party drugs' like ecstasy? Would a reduction in arrests for marijuana represent a successful indicator for all drugs? Trying to prove or disprove the deterrent value of drug laws is extraordinarily difficult. Anecdotally, one could say harsh drug laws do not work. For example, Iran has some of the toughest drug laws in the world and a high prevalence of injection drug use. Sweden does not have the death penalty and it has comparatively low rates of problematic drug use.

While deterrence and criminal behaviour are generally better understood in the context of murder than drug offences, the judges mostly appeared reluctant to even consider the evidence. This is very troubling, considering it cuts to the very heart of the 'rational relation' test, as it was called in Singapore, and in cases of life and death.

Moreover, in several instances judges appear to be driven in their opinion by ideological views on drugs. The assertion in the Bombay High Court that drug crimes may be worse than murder due to their effect on individuals and on society is very worrying. In many environments, people convicted of offences related to marijuana and hashish account for the majority of those on death row for drug offences.<sup>88</sup> In others they make up a significant proportion. It should be borne in mind also that the majority of those facing the death penalty for drug offences are not people at the apex of the trafficking hierarchy. They are for the most part poor, vulnerable people, ripe for exploitation by more senior figures.

### 5) Drug offences as 'most serious' or 'extremely grave'

With respect to Article 6 (2) of the ICCPR the answer must simply be that drug offences are neither 'most serious' nor 'extremely grave'. The myriad statements of varying international authorities are quite extensive on this point and were covered in previous reports.<sup>89</sup>

Other instruments are less clear. The 1984 resolution of the Economic and Social Council of the United Nations (ECOSOC) states, 'In countries which have not abolished the death penalty, capital punishment may be imposed only for the most serious crimes, it being understood that their scope should not go beyond intentional crimes with lethal or other extremely grave consequences.'<sup>90</sup> This resolution was endorsed by the UN General Assembly.<sup>91</sup> Although, it does not seem to be clear what that phrase encompasses, Professor Nigel Rodley and Matt Pollard point out that the words 'other extremely grave' were added because there are some acts that could result in large-scale loss of life, although the lethal results of the offence could not necessarily be proven.<sup>92</sup>

The UN Special Rapporteur on extrajudicial, arbitrary or summary executions recognises that the scope of 'most serious crimes' has not been precisely spelt out in human rights treaties, however, the debates that have taken place over its drafting and the extensive practice of international human rights mechanisms have clarified its meaning and significance.<sup>93</sup> He has suggested that the term 'most serious crimes' does not cover, inter alia, drug-related offences.<sup>94</sup> Further, he concludes that the death penalty can be imposed only in cases 'where it can be shown that there was an intention to kill which resulted in the loss of life'.<sup>95</sup>

88 See P. Gallahue, *The Death Penalty for Drug Offences: Global Overview 2011 – Shared Responsibility and Shared Consequences* (London: Harm Reduction International, 2011), p. 16.

89 See R. Lines, *The Death Penalty for Drug Offences: A Violation of International Law* (London: International Harm Reduction Association, 2007); P. Gallahue and R. Lines, *The Death Penalty for Drug Offences: Global Overview 2010* (London: International Harm Reduction Association, 2010); and P. Gallahue, *The Death Penalty for Drug Offences: Global Overview 2011 – Shared Responsibility and Shared Consequences* (London: Harm Reduction International, 2011).

90 UN General Assembly, 'Human rights in the administration of justice', Resolution A/RES/39/118, 14 December 1984.

91 *Ibid.*

92 N. Rodley and M. Pollard, *The Treatment of Prisoners Under International Law*, 3rd ed. (Oxford: Oxford University Press, 2009), p. 299.

93 UN Special Rapporteur on extrajudicial, summary or arbitrary executions, *Report submitted to the Human Rights Council, A/HRC/4/20, 2007, 29 January 2007*, para. 39.

94 UN Special Rapporteur on extrajudicial, summary or arbitrary executions, *Report to Commission on Human Rights on question of the violation of human rights and fundamental freedoms in any part of the world, with particular reference to colonial and other dependent countries and territories, E/CN.4/1997/60, 24 December 1996*, para. 91.

95 UN Special Rapporteur on extrajudicial, summary or arbitrary executions, *Report submitted to the Human Rights Council, A/HRC/4/20, 2007, 29 January 2007*, para. 53.

As internationally renowned expert on the death penalty, Professor William Schabas has stated, there is usually no choate lethal or grave offence with respect to drug trafficking. In most cases, the trafficker has been captured and the drugs have been confiscated without having reached the public. In other words, even if one were to stand by the argument that selling drugs leads to a loss of life (which, if taken seriously, is more so the case for alcohol and tobacco), the interdiction of the drugs before they hit the streets means that the person sentenced to death could not have sold the drugs, nor could anyone else – and no lives have been lost.



### 3. GLOBAL OVERVIEW 2012

This section provides a global overview of the 33 states and territories identified as retaining capital punishment for drug offences in law.

There remains a great disparity between law and practice. For example, Brunei Darussalam prescribes a stringent mandatory death penalty, but in practice has not sanctioned a judicial execution in more than 50 years. Other countries impose death sentences in high numbers, yet rarely carry out executions. A small handful both sentence many drug offenders to death and carry out these executions with regularity and in high numbers.

Below is a state-by-state analysis of those countries that have capital drug laws, including relevant figures describing how these laws are enforced in practice. The information presented here updates and builds upon the data presented in the Global Overviews for 2010<sup>96</sup> and 2011.<sup>97</sup>

#### Methodology

This Global Overview was compiled by examining relevant death penalty laws and state practices, pulling together data and information from a variety of sources.

Some governments make their laws available on official websites or willingly share current legislation when requested. The United Nations Office on Drugs and Crime (UNODC) also maintains an online database of relevant national drug laws for most countries. Unfortunately this information is not always up to date. For this report, every effort has been made to identify the most current legislation. In a few instances, the report relies on credible secondary sources.

With respect to data on death sentences and executions, the margin for error is even greater. In most cases, the figures cited in this report on executions and death sentences cannot be considered comprehensive. Rather, they are broadly illustrative of how capital punishment is carried out for drug-related offences. Where information is incomplete, we have attempted to identify the gaps. For example, human rights groups have documented numerous executions in Iran that were not reported in the media. In some countries, information on the application of the death penalty remains a state secret.

The numbers that have been included are drawn from, and cross-checked against, NGO reports and databases, UN documents, media reports, scholarly books and articles, local death penalty abolitionist groups and, in some cases, the governments themselves. Every effort has been taken to minimise inaccuracies but there is always the potential for error. Harm Reduction International welcomes being alerted to any additional data not included here.

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<sup>96</sup> For more details on the laws or in some cases of the recent histories of the death penalty for drug offences in law and practice, see P. Gallahue and R. Lines, *The Death Penalty for Drug Offences: Global Overview 2010* (London: International Harm Reduction Association, 2010).

<sup>97</sup> For more details on the laws and impacts on foreign nationals, see P. Gallahue, *The Death Penalty for Drug Offences: Global Overview 2011 – Shared Responsibilities and Shared Consequences* (London: Harm Reduction International, 2011).

## Categories

According to Amnesty International, 58 countries retain the death penalty. However, this figure excludes countries considered 'abolitionist in practice', which are states that 'are believed to have a policy or established practice of not carrying out executions'.<sup>98</sup> Harm Reduction International identifies 33 countries and territories that retain the death penalty for drug offences.<sup>99</sup> Five of those states are abolitionist in practice or de facto abolitionist.

In order to demonstrate the differences between law and practice among states with the death penalty for drug offences, Harm Reduction International categorises countries into high application, low application or symbolic application states.<sup>100</sup>

*High application states* are those that have made the sentencing of those convicted of drug offences to death and/or carrying out executions a regular part of their criminal justice system. In some instances, such as in Singapore and Malaysia, the number of executions for drug offences has decreased in recent years and there is increasing discomfort with the mandatory death penalty. However, the number of death sentences pronounced in both countries in the past year remains high, justifying their continuing high application status.

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

*Symbolic application states* are those countries that have the death penalty for drug offences within their legislation but do not carry out executions or at least there has not been any record of executions for drug-related offences. Most of these countries are retentionist, which, according to Amnesty International, means that they retain the death penalty for ordinary crimes – but a few of them are abolitionist in practice. Some of these countries may occasionally pass death sentences, but there is little or no chance that such a sentence will be carried out.

A fourth category, *insufficient data*, is used to denote instances where there is simply not enough information to classify the country accurately.

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98 Amnesty International, *Death Sentences and Executions in 2009*, ACT 50/001/2010, 29 March 2010, p. 29. According to the UN Secretary-General's eighth quinquennial report on capital punishment, 'de facto abolition is the result of government policy and is effected, in a legal sense, through a refusal by the authorities to actually order an execution or by the mechanism of official commutation or pardon'. See *Report of the Secretary General on capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty*, UN Economic and Social Council, E/2010/10, 18 December 2009, p. 14.

99 The figures used in this report include two territories that are not recognised as fully independent 'states' by the UN – Gaza OPT and Taiwan – and that therefore fall outside the bounds of the retentionist states typically enumerated by other death penalty monitors. This means that it would be accurate to assert that only 25 of the 58 states classified as retentionist by Amnesty International prescribe the death penalty for drugs, as Amnesty does not include Gaza or Taiwan as separate unique states within its figures.

100 These categories were inspired by D. Johnson and F. Zimring's book, *The Next Frontier: National Development, Political Change, and the Death Penalty in Asia* (Oxford: Oxford University Press, 2009).

## A. High application states

### CHINA

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Official figures on the use of death penalty in 2011/12 in China are not available because the official statistics on all death sentences and executions are a state secret. Yet, it is believed that China continues to execute more people than any other country. According to the *China Law Yearbook*, as reported by the Anti-Death Penalty Asia Network (ADPAN), China has a nearly 100 per cent conviction rate.<sup>101</sup> This suggests that if someone is indicted with a death penalty crime, he or she is very likely to be sentenced to death.

In May 2011, however, China reduced its list of crimes that are punishable by death sentence from 68 to 55, which is a promising development.<sup>102</sup> The thirteen crimes that are no longer on the list are mainly financial and non-violent crimes, but do not include drug trafficking. Moreover, few people were sentenced to death for the crimes that have been removed from the list, meaning that the impact on actual sentencing is minimal.

Since 2007, the Supreme People's Court has been required to review all verdicts involving capital punishment before executions are carried out. It has been claimed that the number of executions has since fallen by one-third to one-half, but no hard data has been provided to substantiate this claim.

### IRAN

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*Laws in effect:* 2010 Anti-Narcotics Law of the Islamic Republic of Iran (amended the 1997 Law).<sup>103</sup> A new law came into effect in January 2011, introducing the death penalty for trafficking or possessing more than 30 grams of specified synthetic, non-medical psychotropic drugs, and for recruiting or hiring people to commit any of the crimes under the law, or organising, running, financially supporting, or investing in such activities, in cases where the crime is punishable with life imprisonment. It also provides for a mandatory death sentence for the 'heads of the gangs or networks', although there is no definition provided of a gang or network.

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101 Anti-Death Penalty Asia Network (ADPAN), 'When justice fails: thousands executed in Asia after unfair trials', December 2011, p. 25.

102 *China Daily*, '13 crimes exempted from death penalty', 2 May 2011, available at: [http://europe.chinadaily.com.cn/china/2011-05/02/content\\_12429666.htm](http://europe.chinadaily.com.cn/china/2011-05/02/content_12429666.htm)

103 For a list of capital offences in Iran, see: [www2.ohchr.org/english/bodies/hrc/docs/ngos/ELEI\\_IRN\\_CCPR\\_ResponseList\\_of\\_Issues\\_DeathPenalty\\_Apendix-I-IranCCPR103.pdf](http://www2.ohchr.org/english/bodies/hrc/docs/ngos/ELEI_IRN_CCPR_ResponseList_of_Issues_DeathPenalty_Apendix-I-IranCCPR103.pdf).

| Year  | Total Executions             | Executions for Drug Offences  |
|---|------------------------------|---|
| First six months of 2012  | At least 140 <sup>104</sup>  | Large majority  |
| 2011  | At least 676                 | At least 540 (more than 80 per cent of total documented) <sup>105</sup> |
| 2010  | More than 650 <sup>106</sup> | Approx. 590 <sup>107</sup>  |
| 2009  | At least 346 <sup>108</sup>  | At least 172 <sup>109</sup>   |
| 2008  | At least 317 <sup>110</sup>  | At least 96 <sup>111</sup>  |
| Executions for drug offences 1979–2011: More than 10,000 <sup>112</sup> |                              |   |
| Mandatory death penalty for drug offences: Yes                          |                              |   |

Drug offences accounted for over 80 per cent of the 676 executions in Iran in 2011.<sup>113</sup> Many of these executions were carried out in public. According to Amnesty International there were around four times more public executions in 2011 than in 2010.<sup>114</sup>

An interim report of the UN Secretary-General on the situation of human rights in Iran acknowledges that a 'dramatic surge in the number of executions has been recorded since the beginning of 2011. According to Iranian press reports, at least 66 people were executed in the month of January, with some sources indicating the figure to be as high as 83 executions. The majority of executions were reportedly carried out in relation to drug offences.'<sup>115</sup>

Since the entry into force of new legislation on drug repression in December 2010, drafted by the Expediency Council and approved by Supreme Leader Ayatollah Ali Khamenei, Human Rights Watch reported that the 'number of executions increased even further ... Since then Iran has executed more than 400 prisoners – including 67 drug offenders in January 2011 alone – according to rights groups. Authorities have refused to acknowledge more than half these executions.'<sup>116</sup>

In October 2012, Iran executed 10 drug traffickers in a prison in Tehran.<sup>117</sup>

104 UN Special Rapporteurs condemn ongoing executions in Iran, 28 June 2012, available at: <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12301&LangID=E>

105 Iran Human Rights, *Annual Report on the Death Penalty in Iran 2011*, pp. 4–5, available at: <http://iranhr.net/spip.php?article2440>.

106 UK Foreign and Commonwealth Office, *Human Rights and Democracy: The 2010 Foreign & Commonwealth Office Report*, March 2011, p. 204. There are varying estimates on this. For additional data with individual reports, see Iran Human Rights, *Annual Report on the Death Penalty in Iran in 2010*, available at: <http://iranhr.net/spip.php?article1984>. Amnesty International, *Death Sentences and Executions in 2010*, ACT 50/001/2011, 28 March 2011, p. 5, reported more than 252 executions. However, it should be added that according to this report (p. 26), 'Amnesty International received credible reports of more than 300 other executions which were not officially acknowledged, mostly in Vakilabad Prison, Mashhad. Most were of people convicted of alleged drugs offences.' Amnesty International detailed credible reports of many of the same instances that were outlined by Iran Human Rights.

107 UK Foreign and Commonwealth Office, *Human Rights and Democracy: The 2010 Foreign & Commonwealth Office Report*, March 2011, p. 204. The proportion of drug offenders is consistent with Harm Reduction International sources that claim the Iranian government has attested that 90 per cent of those executed were drug offenders.

108 Amnesty International, *Death Sentences and Executions in 2009*, ACT 50/001/2010, 29 March 2010.

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

110 Amnesty International, *Death Sentences and Executions in 2008*, ACT 50/003/2009, 24 March 2009.

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

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

113 Iran Human Rights, *Annual Report on the Death Penalty in Iran 2011*, pp. 4–5, available at: <http://iranhr.net/spip.php?article2440>.

114 Amnesty International, *Death Sentences and Executions in 2011*, ACT 50/001/2012, 27 March 2012, p. 35

115 UN Human Rights Council, *Interim report of the Secretary-General on the situation of human rights in Iran*, A/HRC/16/75, 14 March 2011.

116 Human Rights Watch, *Annual Report 2012 – Iran Country Summary*, available at: [www.hrw.org/sites/default/files/iran\\_2012.pdf](http://www.hrw.org/sites/default/files/iran_2012.pdf).

117 Agence France-Presse, 'Iran hangs 10 drug traffickers despite Amnesty appeal', 22 October 2012.

## VIET NAM

Laws in effect: Article 193 of Viet Nam's Penal Code

| Year  | Total Death Sentences      | Death Sentences for Drug Offences |
|---|----------------------------|-----------------------------------|
| 2011  | At least 69 <sup>118</sup> | At least 27 <sup>119</sup>        |
| 2010  | At least 80 <sup>120</sup> | At least 24 <sup>121</sup>        |
| Mandatory death penalty for drug offences: No |                            |                                   |

Statistics on the death penalty in Viet Nam are a state secret, but media reports indicate that Viet Nam sentenced at least 69 persons to death in 2011, including 27 for drug smuggling, and has officially reported five executions.<sup>122</sup> There are more than 360 people on death row,<sup>123</sup> many for drug offences.<sup>124</sup>

## SAUDI ARABIA

Laws in effect: Article 37 (1) of Royal Decree No. 39 of 10 August 2005.

| Year  | Total Executions                     | Executions for Drug Offences         |
|---|--------------------------------------|--------------------------------------|
| First six months of 2012                      | At least 45 <sup>125</sup>           | At least 16 (at least 3 for hashish) |
| 2011  | At least 82 <sup>126</sup>           | 1                                    |
| 2007-2010                                     | At least 64 (at least 53 foreigners) | No information is available          |
| Mandatory death penalty for drug offences: No |                                      |                                      |

After a steep decline in executions for drug offences in Saudi Arabia in 2009, 2010 and 2011, there appears to have been a sharp rise again in 2012. It has long been known that foreigners disproportionately suffer the death penalty in Saudi Arabia. For instance, in September 2011, Pakistan's Senate Standing Committee on Interior was informed that of the 1,600 Pakistani prisoners detained in Saudi Arabia, 400 were charged with drug trafficking and faced the death penalty on conviction.<sup>127</sup> In February 2012, it was reported that around 119,000 people of different nationalities were arrested connection with drug trafficking in the past three years.<sup>128</sup> In September 2012, a Pakistani national was beheaded in Saudi Arabia for drug trafficking.<sup>129</sup>

118 Hands Off Cain, *The Death Penalty Worldwide 2012 Report, Viet Nam*, 30 April 2012.

119 Agence France-Presse, 'Viet Nam: five sentenced to death for trading heroin', 30 December 2011, available at Hands Off Cain website.

120 Statistics from state-controlled media reports. Nigeria News Report, 22 March 2011, available at: <http://news2.onlinenigeria.com/news/top-stories/85788-michael-ikenna-nduanyanigerian-sentenced-to-death-for-drugs-in-vietnam.html>

121 Amnesty International, communication with author, 17 January 2011.

122 Hands Off Cain, *The Death Penalty Worldwide 2012 Report, Viet Nam*, 30 April 2012.

123 Amnesty International, *Death Sentences and Executions in 2011*, ACT 50/001/2012, 27 March 2012.

124 *Ibid.*

125 Agence France-Presse, 'Five beheaded in Saudi Arabia for murder, drugs', 26 June 2012.

126 Amnesty International, *Death Sentences and Executions in 2011*, ACT 50/001/2012, 27 March 2012. Agence France-Presse put the tally at 76, see Agence France-Presse, 'Five beheaded in Saudi Arabia for murder, drugs', 26 June 2012.

127 Dawn, 'Pakistani prisoners languishing in jails', 7 September 2011, available at: <http://dawn.com/2011/09/07/pakistani-prisoners-languishing-in-jails-senate-panel-asks-fo-to-take-up-issue-with-saudi-govt/>.

128 Arab News, '119,000 held in 3 years for drug peddling', 20 February 2012, available at: <http://www.arabnews.com/node/406968>

129 Agence France-Presse, 'Saudi beheads Pakistan national for drug smuggling', 19 September 2012.

## SINGAPORE

Laws in effect: Misuse of Drugs Act 1973<sup>130</sup>

| Year | Total Executions <sup>131</sup> | Executions for Drug Offences <sup>132</sup> |
|------|---------------------------------|---|
| 2011 | 4                               | 2   |
| 2010 | 0                               | 0   |
| 2009 | 5                               | 3   |

Mandatory death penalty for drug offences: Yes

*Developments in the justice system:* Singapore has executed 326 people for drug offences since 1991.<sup>133</sup> Nevertheless, progress in Singapore can be identified in recent years. The government has become more transparent in its application of the death penalty. For example, the Singapore Prison Service now identifies the number of executions performed each year in its annual report, including the offence for which the offender was convicted. In addition, the number of people executed has declined dramatically. For example, in 1999, 2000 and 2001 Singapore executed 35, 17 and 22 people for drug offences respectively.<sup>134</sup> In 2011, that number was two. Moreover – although only anecdotal – there have been several recent reports of cases being reviewed or death sentences being overturned on appeal.

In mid-2012, the Singaporean government proposed to reconsider its mandatory death penalty for drug trafficking. Teo Chee Hean, Deputy Prime Minister of Singapore, told parliament that the death penalty would no longer be mandatory and in certain circumstances would be imposed at the discretion of the court.<sup>135</sup> According to a press release issued by the Ministry of Home Affairs of Singapore in October, amendments to the Misuse of Drugs Act have been adopted.<sup>136</sup> Changes to the mandatory death penalty regime for drug trafficking under the new amendment set out two specific conditions where the death penalty will no longer be mandatory for drug trafficking:

1. 'the trafficker must have only played the role of courier, and must not have been involved in any other activity related to the supply or distribution of drugs'
2. 'discretion will only apply if, having satisfied this first requirement, either the trafficker has cooperated with the Central Narcotics Bureau in a substantive way, or he has a mental disability which substantially impairs his appreciation of the gravity of the act'.<sup>137</sup>

130 Misuse of Drugs Act 1973 (Chapter 185), Second Schedule. Singapore's threshold quantities for importation of drugs are 15 grams of heroin, 250 grams of methamphetamine and 500 grams of cannabis.

131 Singapore Prison Service, 'Annual statistics 2011', available at: [www.prisons.gov.sg/content/dam/sps/publication\\_latest/2012%20Singapore%20Prison%20Service%20Annual%20Statistics%20Release.pdf](http://www.prisons.gov.sg/content/dam/sps/publication_latest/2012%20Singapore%20Prison%20Service%20Annual%20Statistics%20Release.pdf)

132 *Ibid.*

133 *Straits Times*, 'Trending down: the number of people hanged in Singapore', 29 February 2012, figures attributed to Ministry of Home Affairs, available at: [www.straitstimes.com/ST/STIMEDIA/pdf/20120229/ST\\_IMAGES\\_VANEWEDEATH.pdf](http://www.straitstimes.com/ST/STIMEDIA/pdf/20120229/ST_IMAGES_VANEWEDEATH.pdf).

134 *Ibid.*

135 Jeremy Grant, 'Singapore to reconsider death penalty', *Financial Times*, 9 July 2012, available at: [www.ft.com/cms/s/0/56879c74-c9c8-11e1-a5e2-00144feabdc0.html#axzz271OkJJK](http://www.ft.com/cms/s/0/56879c74-c9c8-11e1-a5e2-00144feabdc0.html#axzz271OkJJK). See also S. Ramesh and I. Saad, 'Singapore completes review of mandatory death penalty', *Channel News Asia*, 9 July 2012, available at: [www.channelnewsasia.com/stories/singaporelocalnews/view/1212485/1/html](http://www.channelnewsasia.com/stories/singaporelocalnews/view/1212485/1/html).

136 Ministry of Home Affairs of Singapore, 'Amendments to the Misuse of Drugs Act', 15 October 2012, available at: [www.mha.gov.sg/news\\_details.aspx?nid=MjY4NA%3D%3D-9UYlY1f1Aog%3D](http://www.mha.gov.sg/news_details.aspx?nid=MjY4NA%3D%3D-9UYlY1f1Aog%3D).

137 *Ibid.*

## MALAYSIA

Laws in effect: Dangerous Drugs Act 1952, Act 234<sup>138</sup>

| Year   | Total Death Sentences       | Death Sentences for Drug Offences          | Total Executions          |
|--|-----------------------------|--|---------------------------|
| 2011   | At least 108 <sup>139</sup> | At least 83 (22 foreigners) <sup>140</sup> | 0                         |
| 2010   | At least 114 <sup>141</sup> | 63 (at least 20 foreigners) <sup>142</sup> | At least 1 <sup>143</sup> |
| 2009   | At least 68 <sup>144</sup>  | 50 (at least 19 foreigners)                | + <sup>145</sup>          |
| Mandatory death penalty for drug offences: Yes |                             |  |                           |

The number of persons arrested for drug trafficking under the Section 39B of the Dangerous Drugs Act has been increasing: there were 2,955 people arrested in 2009, 3,700 in 2010 and 3,845 in 2011.<sup>146</sup> In February 2012, there were 860 people on death row<sup>147</sup> and 449 foreigners on remand awaiting trial for offences that carry the mandatory death penalty.<sup>148</sup> In cases where the death sentence is mandatory, it is possible to avoid the sentence based on technicalities or the evidence at hand.

Malaysia seems to reflect Singapore's growing discomfort with the mandatory death penalty for, at least, drug trafficking. In its response to the recommendation put forward to Malaysia following the UN Human Rights Council's Universal Periodic Review of the country, the government said it is considering reducing the maximum sentence from death to life imprisonment for drug trafficking.<sup>149</sup> However, no legislation has yet been put forward to realise this proposal.<sup>150</sup>

According to Harm Reduction International's local partner, from January to August 2012, at least 44 people were sentenced to death, at least 21 of whom were foreigners.

While at the time of writing still a high application state, recent developments in Malaysia are promising. In October 2012, Malaysia is considering applying a moratorium on executions for those on death row for drug offences pending a review of the mandatory death penalty for drugs. According to Datuk Seri Mohamed Nazri Aziz, Minister in Prime Minister's Department, the moratorium was

138 Dangerous Drugs Act 1952, Act 234 (Laws of Malaysia), Section 37(da). Malaysia practices a statutory presumption of trafficking upon possession of drugs above a certain amount, and the offence of drug trafficking attracts the mandatory death penalty. The statutory presumption applies where the individual is found in possession of 15 grams (or more) of heroin, 200 grams of cannabis, 50 grams of methamphetamine, or 50 grams or more of a combination of the drugs listed in Section 37(da) of the Act.

139 Amnesty International, *Death Sentences and Executions in 2011*, ACT 50/001/2012, 27 March 2012.

140 Harm Reduction International tally from news reports.

141 P. Gallahue, *The Death Penalty for Drug Offences: Global Overview 2011 – Shared Responsibilities and Shared Consequences* (London: Harm Reduction International, 2011), p. 28.

142 *Ibid.*

143 Amnesty International, *Death Sentences and Executions in 2010*, ACT 50/001/2011, 28 March 2011, p. 21.

144 P. Gallahue, *The Death Penalty for Drug Offences: Global Overview 2011 – Shared Responsibilities and Shared Consequences* (London: Harm Reduction International, 2011), p. 28.

145 Amnesty International, *Death Sentences and Executions in 2009*, ACT 50/001/2010, 30 March 2010. According to Amnesty International "+" indicates that there were executions but it was not possible to calculate a figure.

146 According to Harm Reduction International's local partner.

147 H. Sivanandam, '860 on death row for various offences', *The Sun Daily*, 26 March 2012.

148 *Bernama News*, 'Parliament: 449 foreigners awaiting trial where penalty is death sentence', 21 March 2012, available at: [www.bernama.com/bernama/v6/newsindex.php?id=653863](http://www.bernama.com/bernama/v6/newsindex.php?id=653863)

149 UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review – Malaysia: Addendum. Views on conclusions and/or recommendations, voluntary commitments and replies presented by the state under review*, A/HRC/11/30/Add.1, 3 June 2010, response no. 10.

150 Anti-Death Penalty Asia Network (ADPAN), 'When justice fails: thousands executed in Asia after unfair trials', December 2011, p. 21.

necessary given that more than half of the 900 prisoners on death row were drug offenders.<sup>151</sup> Although further action is required if this proposal to be realised, it is an important and encouraging initiative, and one to be supported.

## B. Low application states

### THAILAND

*Laws in effect:* Section 66 of Narcotics Act 1979

| Year                                       | Total Death Sentences     | Death Sentences for Drug Offences | Total Executions   | Executions for Drug Offences |
|--|---------------------------|-----------------------------------|--------------------|------------------------------|
| 2011                                       | 40 <sup>152</sup>         | 9 <sup>153</sup>                  | 0                  | 0                            |
| 2010                                       | At least 7 <sup>154</sup> | Not Known                         | 0                  | 0                            |
| Last known executions for drug offences:   |                           |                                   | 2009               |                              |
| Executions for drug offences 2001–2010:    |                           |                                   | 14 <sup>155</sup>  |                              |
| Death row for drug offences:               |                           |                                   | 245 <sup>156</sup> |                              |
| Mandatory death penalty for drug offences: |                           |                                   | No                 |                              |

In February 2012, there were 245 people on death row for drug-related offences in Thailand, all of them male, with many being foreign nationals.

Deputy Prime Minister Chalerm Yubamrung, in February 2012, explicitly backed an amendment to the Narcotics Act to shorten appeals processes and expedite executions of those convicted of drug offences.<sup>157</sup> This contradicts Thailand's commitment to abolish the death penalty contained in the second national human rights action plan. Hungary raised concerns about a 'lack of advancement in abolishing the death penalty' during Thailand's Universal Periodic Review at the UN Human Rights Council.<sup>158</sup>

151 *New Strait Times*, 'Possible moratorium on death sentence pending gov't final decision', 20 October 2012, available at: <http://www.nst.com.my/latest/possible-moratorium-on-death-sentence-pending-govt-s-final-decision-1.159690#>

152 Amnesty International, *Death Sentences and Executions in 2011*, ACT 50/001/2012, 27 March 2012, p. 27.

153 *Ibid.* However, it is estimated that the actual number is higher than this. According to Harm Reduction International's local partner, the number of people who were sentenced to death for drug offences in Thailand in 2011 may be at least 26.

154 Amnesty International, *Death Sentences and Executions in 2010*, ACT 50/001/2011, 28 March 2011, p. 23.

155 Amnesty International, 'Annual Report 2002 – Thailand', 28 May 2002; Amnesty International, 'Annual Report 2003 – Thailand', 28 May 2003; Agence France-Presse, 'Thailand moves to death by injection', 12 December 2003.

156 As of early 2012. Information provided by Union for Civil Liberty, communication with author, February 2012.

157 *Bangkok Post*, 'Chalerm: death to drug dealers', 7 February 2012.

158 UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review – Thailand*, A/HRC/19/8, 8 December 2011, para. 89.26.



## INDONESIA

Laws in effect: Chapter XV, Law of the Republic of Indonesia No. 35 of 2009 regarding Narcotics

| Year  | Total Executions  | Executions for Drug Offences |
|---|-------------------|------------------------------|
| 2011  | 0                 | 0                            |
| 2010  | 0 <sup>159</sup>  | 0                            |
| 2009  | 0 <sup>160</sup>  | 0                            |
| 2008  | 10 <sup>161</sup> | 2 (both foreigners)          |
| Mandatory death penalty for drug offences: No |                   |                              |

*Developments in the justice system:* There are approximately 100 people on death row<sup>162</sup> in Indonesia. Of the 58 people there for drug offences, 41 are foreigners.<sup>163</sup> Although Indonesia does not have the mandatory death penalty for drug crimes, a majority of death sentences are for such offences.

Officials in Indonesia, however, have expressed increasing discomfort with the application of the death penalty. On 14 February 2012, the Attorney General stated that such laws should be exercised 'carefully' as they involved the taking of a human life.<sup>164</sup> The President of Indonesia, Susilo Bambang Yudhoyono, is known to have reservations about capital punishment.<sup>165</sup> In 2011, likely motivated by the high number of Indonesians on death row or facing capital charges in foreign countries such as Malaysia and Saudi Arabia,<sup>166</sup> he made an official decision to form a taskforce to provide legal assistance to Indonesian nationals facing the death penalty abroad, and to provide him with an evaluation of the handling of those cases in the respective prosecuting states.<sup>167</sup>

During its second cycle of the Universal Periodic Review (2012), Indonesia refused to accept recommendations to abolish the death penalty from its legal system as well as to establish a moratorium on executions.<sup>168</sup> Moreover, Gories Mere, Head of the National Narcotics Board, hoped that, at the end of 2011, convicts sentenced to death for drug offences would soon be executed.<sup>169</sup>

159 Amnesty International, *Death Sentences and Executions in 2010*, ACT 50/001/2011, 28 March 2011, p. 5.

160 *Ibid.*, p. 6.

161 Amnesty International, *Death Sentences and Executions in 2008*, ACT 50/003/2009, 24 March 2009.

162 According to the Attorney General's office, per October 2010, initially there were 116 convicts on death row, but seven of them had their sentences commuted, six escaped and three died in prison. Therefore, there were 100 convicts on death row in October 2010. Source: *Antara News*, 'AGO to recount drug offenders on death row', 14 February 2012, available at: [www.antaraneews.com/en/news/79891/ago-to-recount-drug-offenders-on-death-row](http://www.antaraneews.com/en/news/79891/ago-to-recount-drug-offenders-on-death-row). See also: *Jakarta Globe*, 'Indonesian Narcotics Agency stresses need to seize drug assets', 13 December 2010, available at: [www.thejakartaglobe.com/home/indonesian-narcotics-agency-stresses-need-to-seize-drug-assets/411531](http://www.thejakartaglobe.com/home/indonesian-narcotics-agency-stresses-need-to-seize-drug-assets/411531). Information attributed to the spokesperson for the National Narcotics Agency (BNN); *Jakarta Post*, 'Hundreds of Indonesians overseas jailed for drugs', 2 January 2011, available at: [www.thejakartapost.com/news/2011/01/02/hundreds-indonesians-overseas-jailed-drugs.html](http://www.thejakartapost.com/news/2011/01/02/hundreds-indonesians-overseas-jailed-drugs.html); *Antara News*, '58 drug convict cases ready to be executed', 10 March 2011. For the sake of comparison with other countries, it should be said there may be variations on how these numbers are counted based on which death sentences have been approved by higher courts.

163 Information attributed to the head of the National Narcotics Board, Gories Mere. *Indonesia Today*, '2012 Narapidana Narkoba Dihukum Mati', 27 December 2011, available at: [www.itoday.co.id/sosial-budaya/2012-hukuma-mati-narapidana-narkotika-diterapkan](http://www.itoday.co.id/sosial-budaya/2012-hukuma-mati-narapidana-narkotika-diterapkan).

164 *Suara Merdeka*, 'Kejagung Janjikan Inventarisasi Terpidana Mati Kasus Narkoba', 14 February 2012, available at: [www.suaramerdeka.com/v1/index.php/read/news/2012/02/14/109526/Kejagung-Janjikan-Inventarisasi-Terpidana-Mati-Kasus-Narkoba](http://www.suaramerdeka.com/v1/index.php/read/news/2012/02/14/109526/Kejagung-Janjikan-Inventarisasi-Terpidana-Mati-Kasus-Narkoba).

165 *The Economist*, 'Migrant workers in Indonesia: beheading the golden goose', 3 July 2011, available at: [www.economist.com/blogs/banyan/2011/07/migrant-workers-saudi-arabia](http://www.economist.com/blogs/banyan/2011/07/migrant-workers-saudi-arabia).

166 I.L.F. Malau and M. Iyus, 'Arab holds 54 death row Indonesian prisoners', 21 March 2012, available at [Vivanews.com](http://us.en.vivanews.com/news/read/298269-around-54-death-row-prisoners-still-in-arab): <http://us.en.vivanews.com/news/read/298269-around-54-death-row-prisoners-still-in-arab>.

167 Decision of the President of the Republic of Indonesia, no. 17 of 2011, regarding the establishment of a taskforce on the handling of cases of Indonesian citizens/Indonesian migrant workers who face the death penalty abroad.

168 UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review – Indonesia: Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the state under review*, A/HRC/21/7/Add.1, 5 September 2012, para. 6.6.

169 Information attributed to the head of the National Narcotics Board, Gories Mere. *Indonesia Today*, '2012 Narapidana Narkoba Dihukum Mati', 27 December 2011, available at: [www.itoday.co.id/sosial-budaya/2012-hukuma-mati-narapidana-narkotika-diterapkan](http://www.itoday.co.id/sosial-budaya/2012-hukuma-mati-narapidana-narkotika-diterapkan).

## KUWAIT

Laws in effect: Ministerial Decree No. 259/81 Of 28 July 1981 regarding the Reorganisation of the Importation and Circulation of Psychotropic Substances in Kuwait, and amendments 1984/30, 1984/31, 1984/32, and 1984/33.<sup>170</sup>

| Year  | Total Death Sentences      | Death Sentences for Drug Offences           |
|---|----------------------------|---|
| 2011  | At least 17 <sup>171</sup> | At least 3 <sup>172</sup>                   |
| 2010  | At least 3 <sup>173</sup>  | At least 2 (both foreigners) <sup>174</sup> |
| Last known executions for drug offences: 2007                             |                            |   |
| Executions for drug offences 1998–2007: 14 (most, if not all, foreigners) |                            |   |
| Mandatory death penalty for drug offences: Yes                            |                            |   |

## PAKISTAN

Laws in effect: Section 9 of Control of Narcotics Substances Act (CNSA) 1997,<sup>175</sup> Sections 13 and 14 of Dangerous Drugs Act 1930

| Year   | Total Death Sentences | Death Sentences for Drug Offences | Total Executions | Executions for Drug Offences |
|--|-----------------------|-----------------------------------|------------------|------------------------------|
| 2011   | 313                   | At least 16 <sup>176</sup>        | 0                | 0                            |
| 2010   | 332 <sup>177</sup>    | At least 13 <sup>178</sup>        | 0 <sup>179</sup> | 0                            |
| 2009   | 277                   | At least 5 <sup>180</sup>         | 0 <sup>181</sup> | 0                            |
| Last known executions for drug offences: 2007 <sup>182</sup> |                       |                                   |                  |                              |
| Mandatory death penalty for drug offences: No                |                       |                                   |                  |                              |

Pakistan retains the death penalty for over two dozen offences but has kept an informal moratorium on executions since December 2008. However, the courts continue to sentence people to death. The last execution of a person convicted of a drug offence in Pakistan was believed to be carried out in 2007.

170 Available on UNODC website: [http://www.unodc.org/en/browse\\_country.jsp?country=KUW](http://www.unodc.org/en/browse_country.jsp?country=KUW)

171 Amnesty International, *Death Sentences and Executions in 2011*, ACT 50/001/2012, 27 March 2012, p. 40.

172 Al Qabas, 1 November 2011, available at: [www.alqabas.com.kw/Article.aspx?id=746649&searchText=%D9%85%D8%AE%D8%AF%D8%B1%D8%A7%D8%AA&date=06022012](http://www.alqabas.com.kw/Article.aspx?id=746649&searchText=%D9%85%D8%AE%D8%AF%D8%B1%D8%A7%D8%AA&date=06022012).

173 Amnesty International, *Death Sentences and Executions in 2010*, ACT 50/001/2011, 28 March 2011, p. 25.

174 *Arab Times*, 'Court upholds death sentence against Bangladeshi drug smuggler', 17 December 2010; Hands Off Cain, 'Kuwait: Pakistani carrier to die for drugs', 4 January 2010.

175 Section 9 of the Control of Narcotics Substances Act 1997: 'Whoever contravenes the provisions of Section 6, 7, or 8 shall be punishable with: (c) death or imprisonment for life or imprisonment for a term which may extend to fourteen years and shall also be liable to fine which may be up to one million rupees, if the quantity of narcotics drug, psychotic substance or controlled substance exceeds the limits specified in clause (b); Provided that if the quantity exceeds 10 kilograms the punishment shall not be less than imprisonment for life' (emphasis added).

176 In the province of Punjab only. Statistics provided by the Punjab Prisons Department to the Human Rights Commission of Pakistan (HRCP).

177 HRCP, communication with author, 6 January 2011. (This figure is as of December 2010.) Amnesty International reported 365 for the year, see Amnesty International, *Death Sentences and Executions in 2010*, ACT 50/001/2011, 28 March 2011, p. 5.

178 In the province of Punjab only. Statistics provided by the Punjab Prisons Department to the HRCP.

179 Amnesty International, *Death Sentences and Executions in 2010*, ACT 50/001/2011, 28 March 2011, p. 5.

180 In the province of Punjab only. Statistics provided by the Punjab Prisons Department to the HRCP.

181 Amnesty International, *Death Sentences and Executions in 2009*, ACT 50/001/2010, 29 March 2010, p. 6.

182 HRCP, 'Summary: death penalty (1 January 2007 – 31 December 2007)', (n.d.), available at: [www.hrcp-web.org/PDF/2007%20-%20Death%20Penalty.pdf](http://www.hrcp-web.org/PDF/2007%20-%20Death%20Penalty.pdf)

At the end of 2011, there were an estimated 8,000 people on death row in Pakistan's jails and prisons,<sup>183</sup> constituting over 11 per cent of roughly 78,000 prisoners in the country.<sup>184</sup> Punjab, the largest province of Pakistan and home to around 57 per cent of the country's population, had at least 6,175 prisoners on death row, more than 75 per cent of the national death row population.<sup>185</sup> Of the death row convicts in Punjab, 59 were convicted of drug offences.<sup>186</sup> This was the second largest group of people on death row in the province, but well behind those convicted for murder (5,945 people).<sup>187</sup> All 59 were adult men and all were convicted under Section 9 of the CNSA.<sup>188</sup> The number of people sentenced to death for drug offences seemed to be returning to the pre-moratorium rate. Of the 59 prisoners under sentence of death in Punjab, 5 had been convicted in 2009, another 13 in 2010 and 16 in 2011.<sup>189</sup> The rest had been convicted in previous years.

*Developments in the justice system:* In April 2010, the Federal Law Minister asked the Ministry of Law to amend the CNSA in order to remove the death penalty provision. The minister said that death sentences under Section 9 (c) of the Act were 'uncalled for, harsh and un-Islamic'.<sup>190</sup> He directed the ministry to submit a draft law for approval by the federal cabinet within a fortnight. No such law was submitted and neither the minister nor the Law Ministry has publicly commented on the death penalty under the CNSA since then. President Asif Zardari said in April 2012 that no change would be made to Pakistan's law on capital punishment.<sup>191</sup>

In May 2012, however, the Federal Law Minister was reported to have said during a meeting with Gabriela Knaul, the UN Special Rapporteur on the independence of judges and lawyers, that a draft bill for the progressive restriction of the death penalty for certain offences was being prepared.<sup>192</sup> The minister said that the bill would propose abolition of the death penalty in cases of Tazir,<sup>193</sup> while capital punishment would continue to apply in cases that come under the purview of Hadd.<sup>194</sup> Details were not shared with the public or the media regarding the offences for which abolition of the death penalty was being considered. There was no indication whether drug offences would be among them.

A petition moved in the Supreme Court in July 2011 called for abolition of the death penalty, arguing that the right to life was a basic right guaranteed by the Constitution, and the death penalty violated

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183 HRCP, *State of Human Rights in 2011*, March 2012, p. 61, available at: [www.hrcp-web.org/pdf/AR2011/Complete.pdf](http://www.hrcp-web.org/pdf/AR2011/Complete.pdf).

184 *Ibid.*, p. 65.

185 Statistics provided by the Punjab Prisons Department, as of 31 December 2011.

186 Statistics provided by the Punjab Prisons Department, as of 3 April 2012.

187 *Ibid.*

188 *Ibid.*

189 Since HRCP monitored executions from media reports, which it has noted did not always mention the offence the convict was punished for, it is possible that some executions or convictions for drug offences might not have been recognised as such. This is reflected by the fact that the Punjab Prisons Department stated that 5, 13 and 16 people were given capital punishment for drug offences in 2009, 2010 and 2011 respectively, in the Punjab province alone. However, HRCP compiled statistics that show that only 4, 1 and 10 capital convictions occurred in the same years, respectively, for the whole country. For the purpose of this report, Harm Reduction International relies on the official data provided by the Punjab Prisons Department to the HRCP.

190 *Dawn*, 'Awan wants to abolish the death penalty for drug offence', 13 April 2010; HRCP, *State of Human Rights in 2010*, April 2011, p. 101, available at: [www.hrcp-web.org/Publications/AR2010.pdf](http://www.hrcp-web.org/Publications/AR2010.pdf).

191 *The News*, 'To me parliament is supreme: President', 15 April 2012, available at: [www.thenews.com.pk/article-44550-To-me-Parliament-is-supreme-President](http://www.thenews.com.pk/article-44550-To-me-Parliament-is-supreme-President).

192 *The Nation*, 'Bill to abolish death penalty under study', 24 May 2012, available at: [www.nation.com.pk/pakistan-news-newspaper-daily-english-online/national/24-May-2012/bill-to-abolish-death-penalty-under-study](http://www.nation.com.pk/pakistan-news-newspaper-daily-english-online/national/24-May-2012/bill-to-abolish-death-penalty-under-study).

193 *Tazir* is any punishment other than *Hadd* and is at the discretion of the judge.

194 *Hadd* means a stringent or maximum punishment enjoined by Islam for an offence and the judge does not have discretion in the quantum of punishment if the accused is found guilty.

this constitutional guarantee and was also 'illegal' and 'cruel'.<sup>195</sup> There is no indication when this petition will be heard. The petitioner filed the petition again, in September 2012, to urge the Supreme Court to hear the petition.<sup>196</sup> If the court agrees, the hearing of the 2011 petition will be commenced.

## EGYPT

*Laws in effect:* The Anti-Drug Law No. 182 of 1960 and its amendment by Law No. 22 of 1989. This law contains the death penalty for drug dealing and drug smuggling.

| Year   | Total Executions          | Executions for Drug Offences |
|--|---------------------------|------------------------------|
| 2011   | At least 1 <sup>197</sup> | No information is available  |
| Mandatory death penalty for drug offences: Yes |                           |                              |

Very little information is made publicly available about the death penalty's application in Egypt.<sup>198</sup> No specific information is available regarding death sentences or executions for drug offences.

## YEMEN

*Laws in effect:* Articles 33, 34 and 35 of Law 3 of 1993 on Control of Illicit Trafficking in and Abuse of Narcotics and Psychotropic Substances

| Year   | Total Death Sentences      | Death Sentences for Drug Offences                     | Total Executions           | Executions for Drug Offences |
|--|----------------------------|---|----------------------------|------------------------------|
| 2011   | At least 29 <sup>199</sup> | At least 10 <sup>200</sup>                            | At least 41                | No information is available  |
| 2010   | At least 27 <sup>201</sup> | At least 12 <sup>202</sup><br>(at least 6 foreigners) | At least 53 <sup>203</sup> | No information is available  |
| Mandatory death penalty for drug offences: Yes |                            |   |                            |                              |

Yemen is an aggressive executioner, but not for drug offences. The numbers presented here cannot be considered comprehensive.

195 *Daily Times*, 'Supreme Court moved to abolish capital punishment', 26 July 2011, available at: [www.dailytimes.com.pk/default.asp?page=20110726story\\_26-7-2011\\_pg13\\_2](http://www.dailytimes.com.pk/default.asp?page=20110726story_26-7-2011_pg13_2).

196 *Dawn*, 'Plea moved for abolishing capital punishment from Pakistan', 17 September 2012, available at: <http://dawn.com/2012/09/17/plea-moved-for-abolishing-death-penalty-in-pakistan/>

197 Amnesty International, *Death Sentences and Executions in 2011*, ACT 50/001/2012, 27 March 2012, p. 34.

198 Amnesty International, 'Egypt: Submission to the UN Universal Periodic Review Seventh Session of the UPR Working Group of the Human Rights Council', February 2010.

199 Amnesty International, *Death Sentences and Executions in 2011*, ACT 50/001/2012, 27 March 2012.

200 This number was collected using Hands Off Cain's online database, see 'Yemen hands down death sentence to Somali drug dealer', 2 January 2011, available at: [www.handsoffcain.info/news/index.php?iddocumento=15300143](http://www.handsoffcain.info/news/index.php?iddocumento=15300143); 'Yemen: seven sentenced to death', 20 February 2011, available at: [www.handsoffcain.info/news/index.php?iddocumento=15302226](http://www.handsoffcain.info/news/index.php?iddocumento=15302226); 'Yemen: death sentence for drug trafficking', 28 February 2011, available at: [www.handsoffcain.info/news/index.php?iddocumento=15302825](http://www.handsoffcain.info/news/index.php?iddocumento=15302825); 'Yemeni court upholds death penalty on Syrian of bringing drugs', 23 April 2011, available at: [www.handsoffcain.info/news/index.php?iddocumento=15305585](http://www.handsoffcain.info/news/index.php?iddocumento=15305585).

201 Amnesty International, *Death Sentences and Executions in 2010*, ACT 50/001/2011, 28 March 2011, p. 5.

202 Most of these figures were collected through information provided by Hands Off Cain. There is some confusion over whether the more accurate number is 12 or 10, since two Pakistani men, Salim Dawod Abdulrahim and Imam Bakhsh Eyepub Yakoub, were reported to have been sentenced to death in both 2009 and 2010. Thus, there is a chance their sentences were upheld in 2010 having been originally imposed in 2009.

203 Amnesty International, *Death Sentences and Executions in 2010*, ACT 50/001/2011, 28 March 2011, p. 5.

## TAIWAN<sup>204</sup>

Laws in effect: Articles 4, 6 and 15 of Drug Control Act<sup>205</sup>

| Year  | Death sentences by the High Court for drug offences <sup>206</sup> |
|---|--|
| 2011  | 0 <sup>207</sup>   |
| 2010  | 1  |
| 2009  | 2  |
| 2008 <sup>208</sup>                                       | 0  |
| 2007  | 8  |
| Last known executions for drug offences: 2002             |  |
| Executions for drug offences 2001–2010: 13 <sup>209</sup> |  |
| Mandatory death penalty for drug offences: No             |  |

### C. Symbolic application states<sup>210</sup>

## OMAN

Laws in effect: Article 43 of Law on the Control of Narcotic Drugs and Psychotropic Substances 2000<sup>211</sup>

|  |
|--|
| Last known execution for drug offences: 2001               |
| Executions for drugs 2000–2001: At least 14 <sup>212</sup> |
| Mandatory death penalty for drug offences: Yes             |

204 This section was completed with the assistance of the Taiwan Alliance to End the Death Penalty.

205 International Federation for Human Rights, *The Death Penalty in Taiwan: Towards Abolition?*, June 2006, n 450/2, p. 46.

206 According to information collected by the Taiwan Alliance to End the Death Penalty, there have been no death sentences for drug offences issued by the Supreme Court since 2002.

207 Taiwan Alliance to End the Death Penalty, communication with author, 24 May 2012.

208 During 2008, one drug offender was sentenced to death by a district court, according to information collected by the Taiwan Alliance to End the Death Penalty.

209 D. Johnson and F. Zimring, *The Next Frontier: National Development, Political Change and the Death Penalty in Asia* (Oxford: Oxford University Press, 2009), p. 201.

210 If not stated, the country status under this category is retentionist.

211 Text available from UNODC Country Pages at: [www.unodc.org/enl/browse\\_countries.jsp](http://www.unodc.org/enl/browse_countries.jsp).

212 World Coalition Against the Death Penalty, *Fighting Against the Death Penalty in the Arab World: Protagonists, Arguments and Prospects*, June 2008, p. 30.

## QATAR

Laws in effect: Article 34 of Law No. 9, 1987, to Control Narcotic Drugs and Dangerous Psychotropic Substances and to Regulate Their Use and Trade therein

|   |
|---|
| Last known executions for any crime: 2003 <sup>213</sup>          |
| Last known execution for drug offences: Not Known                 |
| Last known death sentences for drug offences: 2008 <sup>214</sup> |
| Mandatory death penalty for drug offences: No                     |

## INDIA

Law in Force: Narcotic Drugs and Psychotropic Substances (NDPS) Act 1985<sup>215</sup>

| Year   | Total Death Sentences | Death Sentences for Drug Offences |
|--|-----------------------|-----------------------------------|
| As of June 2012  | 2                     | 2                                 |
| 2011   | 110                   | 1                                 |
| Death Row: Hundreds <sup>216</sup> (2 <sup>217</sup> for drugs)  |                       |                                   |
| Last known executions for drug offences: Never <sup>218</sup>  |                       |                                   |
| Mandatory death penalty for drug offences: Yes (on the books, but 'read down' in recent Bombay High Court case) <sup>219</sup> |                       |                                   |

One person was sentenced to death in India in 2011 for a repeat drug offence under Section 31-A of the NDPS Act. Two people were given the death penalty under that provision of the law in 2012.

In May 2012, the Bombay High Court (BHC) commuted into life in prison the death sentence of Gulam Mohammed Malik, the man convicted in 2011. He had been found in possession of more than 188 kilograms of hashish. He had previously been found guilty by a Gujarat court on similar charges. The BHC declined to confirm the capital punishment awarded to Gulam Mohammed Malik by a designated NDPS court under a provision of the NDPS Act that allowed for a death sentence to repeat offenders found trafficking a commercial quantity of contraband. The BHC observed that the extreme penalty was not warranted in the case and added that if a pending appeal by the convict in

213 World Coalition Against the Death Penalty, *Fighting Against the Death Penalty in the Arab World: Protagonists, Arguments and Prospects*, February 2010, 2nd ed., p. 32.

214 Hands Off Cain, 'Man in drug haul attempt gets death', 27 March 2008, available at: [www.handsoffcain.info/news/index.php?ddocumento=10308791](http://www.handsoffcain.info/news/index.php?ddocumento=10308791). The man, an Iranian, was sentenced to death *in absentia*.

215 Section 31-A, NDPS Act 1985: a person with a prior conviction under the Act – for the commission of, attempt, abetment or criminal conspiracy to commit any one of a range of offences related to drug trafficking – can be sentenced to death if convicted for a serious repeat drug offence.

216 *Times of India*, 'Pak has 7,000 on death row to India's 300', 29 June 2009. Since this number was reported many more people have been sentenced to death. For example, Amnesty reported that 105 people were sentenced to death in 2010, Amnesty International, *Death Sentences and Executions in 2010*, ACT 50/001/2011, 28 March 2011, p. 33. It should also be said that Amnesty warned, 'The authorities failed to make public information detailing the number of executions and people on death row', Amnesty International, *Amnesty International Report 2009 – India*, 28 May 2009.

217 Two people who are on death row were sentenced to death for offences under Section 31-A of the NDPS Act. In both cases capital punishment was awarded by the NDPS Special Court. They have appealed against this decision in the High Court, and their appeals are pending.

218 US Department of State, *2007 International Narcotics Control Strategy Report*, available at: [www.state.gov/p/inl/rls/nrcrpt/2007/vol1/html/80859.htm](http://www.state.gov/p/inl/rls/nrcrpt/2007/vol1/html/80859.htm)

219 India has written a law which stipulates the mandatory death penalty for drug offences. However, in a recent case of *Indian Harm Reduction Network v. Union of India* 2012 Bom CR (Cri) 121, the Bombay High Court ruled that the death penalty for drug offences is no longer mandatory. See Section 2 of this report for further discussion.

the Supreme Court against the conviction and sentence recorded by the Gujarat High Court (for the first drug offence) was dismissed, he would be sentenced to 30 years in prison and a fine of 0.3 million rupees. If the appeal before the apex court was allowed, he was to face rigorous imprisonment of 20 years and 0.2 million rupees as a fine.<sup>220</sup>

In January 2012, an Indian court sentenced Paramjeet Singh to death following his conviction on a charge of trafficking 10 kilograms of heroin.<sup>221</sup> In March 2012, a court in Chandigarh awarded the death sentence to Balwinder Singh on charges of smuggling over 4 kilograms of heroin from Amritsar to Chandigarh.

Developments in the justice system: In May 2012, the Finance Minister informed the upper house of parliament that the government was considering dropping the mandatory death penalty provision for drug offences through an amendment to the NDPS Act. The minister said that in view of the observations that the Standing Committee on Finance had made in its report on the NDPS (Amendment) Bill 2011, 'it is proposed to amend Section 31-A of the NDPS Act and replace the words "shall be punishable with death" with the words "may be punishable with death"'.<sup>222</sup> Following this development, the Parliamentary Standing Committee asked the government to review provision of the mandatory death penalty.<sup>223</sup>

In a landmark decision in June 2011, the Bombay High Court declared the mandatory death penalty for drug offences unconstitutional, becoming the first court anywhere in the world to do so. The court described mandatory capital punishment as harsh, 'unjust and unfair'<sup>224</sup> for the crime of dealing in drugs.<sup>225</sup> It declared that Section 31-A of the NDPS Act, which imposed a mandatory death sentence for a subsequent conviction for drug trafficking, was unconstitutional. However, the BHC did not strike down the law but rather informed the courts that there was no longer the obligation to impose capital punishment on repeat drug offenders under Section 31-A.

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220 *Vipin Nair v. Gulam Mohammed Malik* Bombay High Court, 7 May 2012, criminal appeal no. 582 of 2008, details available at: <http://indiankanoon.org/doc/96923382/>.

221 A. Grover and R. Lines, 'Say NO to death for drugs', *The Hindu*, 23 February 2012, available at: [www.thehindu.com/opinion/op-ed/article2920551.ece](http://www.thehindu.com/opinion/op-ed/article2920551.ece). See also, *Indian Express*, 'In a first, death penalty in drug trafficking case', 29 January 2012, available at: [www.indianexpress.com/news/in-a-first-death-penalty-in-drug-trafficking-case/905153/](http://www.indianexpress.com/news/in-a-first-death-penalty-in-drug-trafficking-case/905153/); *India Today*, 'Court awards death penalty in drug case for the first time', 28 January 2012, available at [www.indiatoday.intoday.in/story/death-sentence-in-drug-case-for-the-first-time/1/171036.html](http://www.indiatoday.intoday.in/story/death-sentence-in-drug-case-for-the-first-time/1/171036.html).

222 *Times of India*, 'Government may relax "death penalty" clause under Narcotics Act', 8 May 2011, available at: [http://articles.timesofindia.indiatimes.com/2012-05-08/india/31626023\\_1\\_death-penalty-section-31a-second-conviction](http://articles.timesofindia.indiatimes.com/2012-05-08/india/31626023_1_death-penalty-section-31a-second-conviction).

223 Parliamentary Standing Committee, *50th report on the Narcotic Drugs and Psychotropic Substances (Amendment) Bill, 2011, presented to Lok Sabha on 21 March 2012*, paras. 35–38.

224 *Indian Harm Reduction Network v. Union of India*, in the High Court of Judicature at Bombay in its criminal jurisdiction under Article 226 of the Constitution of India, criminal writ petition no. 1784 of 2010, judgment, 16 June 2011, para. 57.

225 Lawyers Collective, 'Bombay High Court overturns mandatory death penalty for drug offences', 16 June 2011, available at: [www.lawyerscollective.org/news/archived-news-a-articles/119-bombay-high-court-overturns-mandatory-death-penalty-for-drug-offences-first-in-the-world-to-do-so.html](http://www.lawyerscollective.org/news/archived-news-a-articles/119-bombay-high-court-overturns-mandatory-death-penalty-for-drug-offences-first-in-the-world-to-do-so.html).

## BANGLADESH

Laws in effect: The Intoxicant Control Act 1990<sup>226</sup>

|   |
|---|
| Last known execution for drug offences: Unknown                   |
| Last known death sentences for drug offences: 2009 <sup>227</sup> |
| Mandatory death penalty for drug offences: No                     |

## UNITED ARAB EMIRATES

Laws in effect: Article 48 of Federal Law No. 14 of 1995 on the Countermeasures Against Narcotic Drugs and Psychotropic Substances.<sup>228</sup> Under the law, any death sentences must be presented in four different courts and to 19 judges before it can be passed to the President or ruler of the emirate for approval.

| Year  | Total Death Sentences      | Death Sentences for Drug Offences |
|---|----------------------------|-----------------------------------|
| 2011  | At least 31 <sup>229</sup> | At least 7 <sup>230</sup>         |
| 2010  | At least 28 <sup>231</sup> | At least 13 <sup>232</sup>        |
| Last known executions for drug offences: Not known if ever <sup>233</sup> |                            |                                   |
| Mandatory death penalty for drug offences: Yes                            |                            |                                   |

226 Article 9, Intoxicant Control Act 1990, available at: [www.commonlii.org/bd/legis/num\\_act/ica1990230/](http://www.commonlii.org/bd/legis/num_act/ica1990230/). This law outlaws the cultivation, manufacture, processing, carrying, transport, import, export, supply, purchase, sale, possession, preservation, storage, display, administration and use or any attempt, financing, establishment, management or patronising of any organisation of any drugs or substance or plant. Under Article 19, even small quantities of drugs can lead to capital punishment. Possession of heroin, cocaine and cocaine derivatives in excess of 25 grams, more than 10 grams of pethidine, morphine and tetrahydrocannabinol, over 2 kilograms of opium, cannabis resin or opium derivatives and more than 50 grams of methadone is punishable either by death or by mandatory lifelong imprisonment.

227 *Daily Star*, 'Heroin peddler to die', 18 May 2009.

228 Text available from UNODC Country Pages at: [www.unodc.org/enl/browse\\_countries.jsp](http://www.unodc.org/enl/browse_countries.jsp)

229 Amnesty International, *Death Sentences and Executions in 2011*, ACT 50/001/2012, 27 March 2012.

230 This figure was gathered using Hands Off Cain's online database.

231 Amnesty noted 28 death sentences for all crimes in UAE, 'mostly for drug trafficking, murder and rape'. Amnesty International, *Death Sentences and Executions in 2010*, ACT 50/001/2011, 28 March 2011, p. 33.

232 This figure was gathered using Hands Off Cain's online database.

233 UN Human Rights Council, *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*, AHRC/WG.6/3/ARE/3, 16 September 2008, p. 3.



## SRI LANKA

Laws in effect: Poisons, Opium and Dangerous Drugs Ordinance<sup>234</sup>

Country status: abolitionist in practice

| Year  | Total Death Sentences       | Death Sentences for Drug Offences |
|---|-----------------------------|-----------------------------------|
| As of March 2012                                    | No information is available | 6 <sup>235</sup>                  |
| 2011  | 106                         | 2                                 |
| Last known judicial executions: 1976 <sup>236</sup> |                             |                                   |
| Last known executions for drug offences: Not known  |                             |                                   |
| Mandatory death penalty for drug offences: No       |                             |                                   |

Alarming, in the first three months of 2012, Sri Lanka sentenced to death at least six people, including a woman, for carrying miniscule amounts of drugs. These include Pallegama Ralalage Sunil Karunaratna Bandara for possessing and trafficking (6.58 grams of heroin);<sup>237</sup> N.I. Darshana for possession (3.1 grams of heroin)<sup>238</sup> and Kiriwala Mudalige Chaminda for possession (6.4 grams of heroin)<sup>239</sup>. Such low quantities can very easily net drug users, rather than traffickers, considering that a problematic heroin user can consume as much as 3 grams a day through smoking, depending on the purity.<sup>240</sup>

As Sri Lanka has not executed anyone in many years, death sentences have traditionally been commuted to life imprisonment. However, Sri Lanka suspended that process in the late 1990s, and many inmates on death row today have no idea what the future holds. Sri Lankan courts continue sentencing people to die. However, exact figures on the number of people on death row cannot be verified. According to local news, since 2000, at least 1,164 death row inmates<sup>241</sup> have been awaiting execution or a final decision on commutation of their sentences. In June 2012, it was reported that there were 818 prisoners on death row.<sup>242</sup>

234 Schedule 3, Parts II and III, Poisons, Opium and Dangerous Drugs Ordinance. The manufacture of a number of narcotic substances and the possession, traffic, import or export of a number of substances beyond a certain quantity is punishable by death or life imprisonment.

235 *Daily Mirror*, 'Trishaw driver sentenced to death for trafficking heroin', 30 January 2012; *News First*, 'Death sentence for possessing heroin', 25 January 2012; *Sri Lanka Mirror*, 'Death sentence for heroin possession', 15 March 2012; *Daily News*, 'Death sentence for heroin peddler', 3 February 2012; *Daily Mirror*, 'Death sentence for heroin smuggler after 26 years', 22 March 2012; *Daily Mirror*, 'Peddling heroin: woman to serve death sentence', 7 February 2012.

236 D. Johnson and F. Zimring, *The Next Frontier: National Development, Political Change and the Death Penalty in Asia* (Oxford: Oxford University Press, 2009), p. 323.

237 *Daily Mirror*, 'Trishaw driver sentenced to death for trafficking heroin', 30 January 2012, available at: [www.dailymirror.lk/news/16418-trishaw-driver-sentenced-to-death-for-trafficking-heroin.html](http://www.dailymirror.lk/news/16418-trishaw-driver-sentenced-to-death-for-trafficking-heroin.html).

238 *News First*, 'Death sentence for possessing heroin', 25 January 2012, available at: [http://newsfirst.lk/english-news/index.php?view=news\\_more&id=8639](http://newsfirst.lk/english-news/index.php?view=news_more&id=8639).

239 *Sri Lanka Mirror*, 'Death sentence for heroin possession', 15 March 2012, available at: <http://english.srilankamirror.com/2012/03/death-sentence-for-heroin-possession/>.

240 Information provided by the International Network of People who Use Drugs.

241 *Colombo Page*, 'Female applicants for the vacant executioner position in Sri Lanka', 9 April 2012, available at: [www.colombopage.com/archive\\_12/Apr09\\_1333948483KA.php](http://www.colombopage.com/archive_12/Apr09_1333948483KA.php).

242 *Hands Off Cain*, 'Sri Lanka: death row prisoners now at 818', 7 June 2012, available at: [www.handsoffcain.info/archivio\\_news/index.php?iddocumento=16306825&mover=0](http://www.handsoffcain.info/archivio_news/index.php?iddocumento=16306825&mover=0).

## BAHRAIN

Laws in effect: 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.<sup>243</sup> Under the law, no one under the age of 19 can be sentenced to death. Thus far, no one under the age of 21 has ever been sentenced to death. According to the law, no execution can be carried out before the official approval from the King.

| Year  | Total Death Sentences     | Death Sentences for Drug Offences | Total Executions          | Executions for Drug Offences |
|---|---------------------------|-----------------------------------|---------------------------|------------------------------|
| 2010  | At least 1 <sup>244</sup> | 0 <sup>245</sup>                  | At least 1 <sup>246</sup> | 0 <sup>247</sup>             |
| Last known executions for drug offences: Not known if ever <sup>248</sup> |                           |                                   |                           |                              |
| Mandatory death penalty for drug offences: No                             |                           |                                   |                           |                              |

In 2010 and 2011, 1,815 people were arrested in Bahrain for drug related offences, according to an official report by the Bahraini Police, including 795 of them were arrested in 2011.<sup>249</sup> From January to April 2012, 325 new arrests were made in relation to drug offences.<sup>250</sup>

## UNITED STATES OF AMERICA

Laws in effect: 18 USC § 3591(b)

| Year  | Total Death Sentences       | Death Sentences for Drug Offences | Total Executions  | Executions for Drug Offences |
|---|-----------------------------|-----------------------------------|-------------------|------------------------------|
| 2010  | At least 110 <sup>251</sup> | 0 <sup>252</sup>                  | 46 <sup>253</sup> | 0 <sup>254</sup>             |
| Last known executions for drug offences: Never <sup>255</sup> |                             |                                   |                   |                              |
| Mandatory death penalty for drug offences: No                 |                             |                                   |                   |                              |

243 Text available from UNODC Country Pages at: [www.unodc.org/enl/browse\\_countries.jsp](http://www.unodc.org/enl/browse_countries.jsp)

244 Amnesty International, *Death Sentences and Executions in 2010*, ACT 50/001/2011, 28 March 2011, p. 5.

245 Hands Off Cain, 'Bahrain: Bangladeshi national executed', 8 July 2010. According to Hands Off Cain's report, a person from Bangladesh was executed for murder.

246 Amnesty International, *Death Sentences and Executions in 2010*, ACT 50/001/2011, 28 March 2011, p. 5.

247 Hands Off Cain, 'Bahrain: death sentence for murder', 23 March 2010.

248 Amnesty International, *The Death Penalty: No Solution to Illicit Drugs*, October 1995, p. 17; Hands Off Cain, 'Death penalty stays for drug trafficking in Bahrain', 14 January 2007, available at: [http://english.nessunotocchicaino.it/archivio\\_news/200701.php?iddocumento=9303738&mover=2](http://english.nessunotocchicaino.it/archivio_news/200701.php?iddocumento=9303738&mover=2); Inter Press Service, 'Rights-Bahrain: it's time to abolish the death penalty - activists', 1 April 2010, available at: [www.ipsnews.net/news.asp?idnews=50879](http://www.ipsnews.net/news.asp?idnews=50879)

249 Ministry of Interior, Bahraini Police, available at: <http://police.gov.bh/en/statsFig.aspx?statId=9>

250 *Ibid.* Of 325, 168 were Bahrainis, 120 were Gulf nationals, 6 were Arabs and 31 were foreigners.

251 Amnesty International, *Death Sentences and Executions in 2010*, ACT 50/001/2011, 28 March 2011, p. 5.

252 *Ibid.*

253 *Ibid.*

254 Death Penalty Information Center, communication with author, 24 March 2011.

255 Death Penalty Information Center, communication with author, 18 March 2010; Death Penalty Information Center, 'Death penalty for offenses other than murder', (n.d.), available at: [www.deathpenaltyinfo.org/death-penalty-offenses-other-murder](http://www.deathpenaltyinfo.org/death-penalty-offenses-other-murder)

## GAZA – OPT

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Laws in effect: Egyptian Law 19 (to be enforced as of 2010)<sup>256</sup>

|  |
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| Death Sentences for drug offences in 2010: 0                 |
| Last known executions for drug offences: Never               |
| Mandatory death penalty for drug offences: No <sup>257</sup> |

## SOUTH KOREA

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Laws in effect: Act on Special Cases concerning the Prevention of Illegal Trafficking in Narcotics, Psychotropic Substances and Hemp as amended on 31 December 1997<sup>258</sup>

Country status: abolitionist in practice

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| Last known judicial executions: 1997 <sup>259</sup>        |
| Last known executions for drug offences: Not known if ever |
| Mandatory death penalty for drug offences: No              |

## MYANMAR

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Laws in effect: Narcotic Drugs and Psychotropic Substances Law, 27 January 1993; The State Law and Order Restoration Council Law No. 1/93

Country status: abolitionist in practice

|  |
|--|
| Last known judicial executions: 1989 <sup>260</sup>        |
| Last known executions for drug offences: Not known if ever |
| Mandatory death penalty for drug offences: Yes             |

In May 2011, a prisoner amnesty was announced by President U Thein Sein, which commuted all death sentences to life imprisonment.<sup>261</sup> However, at least 33 new death sentences were handed

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256 This is somewhat unclear. Hamas has said repeatedly that it would adopt Egyptian Law – as when Egypt administered the Gaza Strip (1948 to 1967) the territory was subject to Egyptian law – which allows the death penalty for drug offences. See Agence France-Presse, 'Hamas approves law to execute drug dealers', 30 November 2009. This appears to have been done, according to official announcements. See Ynetnews.com, 'Hamas: death sentence for drug dealers', 19 September 2010, available at: [www.ynetnews.com/articles/0,7340,L-3956631,00.html](http://www.ynetnews.com/articles/0,7340,L-3956631,00.html). According to Amnesty, all death sentences in Gaza/OPT must be ratified by the President of the Palestinian Authority before they can be carried out. However, the Hamas de facto administration has been carrying out executions without the requisite approval of the President. Amnesty International, 'Three executed in Gaza', 10 April 2012, available at: [www.amnesty.org/en/library/asset/MDE21/002/2012/en/f38b9918-5680-47cd-bf52-2510ce2cbdc6/mde210022012en.pdf](http://www.amnesty.org/en/library/asset/MDE21/002/2012/en/f38b9918-5680-47cd-bf52-2510ce2cbdc6/mde210022012en.pdf).

257 As reported by Maan News Agency, in Gaza, the death penalty for drug offences can be issued for a second conviction for drug dealing. Maan News Agency, 'Gaza court sentenced drug dealer to 10 years', 24 July 2012, available at: [www.maannews.net/eng/ViewDetails.aspx?ID=507111](http://www.maannews.net/eng/ViewDetails.aspx?ID=507111)

258 Text available from UNODC Country Pages at: [www.unodc.org/enl/browse\\_countries.jsp](http://www.unodc.org/enl/browse_countries.jsp)

259 Amnesty International, *Amnesty International Report 2009 – South Korea*, 28 May 2009; Amnesty International, 'South Korea must not resume use of the death penalty', 16 February 2009.

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

261 *Myanmar Times*, 'Lives of Dayalu bandits saved by commutation of death sentences', 30 May 2011, available at: [www.mmtimes.com/2011/news/577/news57708.html](http://www.mmtimes.com/2011/news/577/news57708.html)

down in 2011.<sup>262</sup> Myanmar is abolitionist in practice, and has not carried out any executions since 1989.<sup>263</sup> During the 2011 Universal Periodic Review, however, Myanmar rejected calls for abolition.<sup>264</sup>

## LAO PEOPLE'S DEMOCRATIC REPUBLIC

*Laws in effect:* Article 146 of Lao PDR Criminal Code

*Country status:* abolitionist in practice

| Year   | Total Death Sentences       | Death Sentences for Drug Offences |
|--|-----------------------------|-----------------------------------|
| 2011   | No information is available | No information is available       |
| 2010 <sup>265</sup>  | 4                           | 4                                 |
| Last known executions for drug offences: No information is available |                             |                                   |
| Mandatory death penalty for drug offences: Yes                       |                             |                                   |

## BRUNEI DARUSSALAM

*Laws in effect:* Misuse of Drugs Act 2001<sup>266</sup>

*Country status:* abolitionist in practice

|  |
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| Last known judicial executions: 1957 <sup>267</sup>        |
| Last known executions for drug offences: Not known if ever |
| Mandatory death penalty for drug offences: Yes             |

## CUBA

*Laws in effect:* 1999 Amendment to the Penal Code, Law No. 87<sup>268</sup>

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|--|
| Last known judicial executions: 2003                       |
| Last known executions for drug offences: Not known if ever |
| Death Row: 0 <sup>269</sup>                                |
| Mandatory death penalty for drug offences: No              |

<sup>262</sup> Amnesty International, *Death Sentences and Executions in 2011*, ACT 50/001/2012, 27 March 2012, p. 27.

<sup>263</sup> UN Human Rights Council, *National report submitted in accordance with paragraph 15 (a) of the Annex to Human Rights Council resolution 5/1*, 19 July 2011, para. 37, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/172/58/PDF/G1017258.pdf?OpenElement>

<sup>264</sup> Amnesty International, *Death Sentences and Executions in 2011*, ACT 50/001/2012, 27 March 2012, p. 24.

<sup>265</sup> Amnesty International, communication with author, 16 December 2011.

<sup>266</sup> Brunei Darussalam Narcotics Control Bureau: [www.narcotics.gov.bn](http://www.narcotics.gov.bn); text also available at: [www.unodc.org/enl/browse\\_countries.jsp#b](http://www.unodc.org/enl/browse_countries.jsp#b)

<sup>267</sup> R. Hood and C. Hoyle, *The Death Penalty: A Worldwide Perspective* (Oxford: Oxford University Press, 2008), p. 88.

<sup>268</sup> Sito del Ministerio de Relaciones Exteriores de Cuba, 'Principales normas jurídicas vinculadas a la prevención y el control de drogas', (n.d.), available at: [www.cubaminrex.cu/Narco trafico/Articulos/Enfrentamiento/Marco-legal.html](http://www.cubaminrex.cu/Narco trafico/Articulos/Enfrentamiento/Marco-legal.html).

<sup>269</sup> BBC, 'Cuba commutes sentence of last death row inmate', 29 December 2010, available at: [www.bbc.co.uk/news/world-latin-america-12087865](http://www.bbc.co.uk/news/world-latin-america-12087865).

## D. Insufficient data

### NORTH KOREA

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North Korea increased penalties for drug-related offences in 2006<sup>270</sup> and 2008 to include the death penalty.<sup>271</sup> The 2008 amendment is said to have made possession of more than 300 grams of narcotic drugs punishable with death.<sup>272</sup>

### LIBYA

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Libya has reportedly had the death penalty prescribed in law for certain drug and alcohol offences since 1996.<sup>273</sup> There have been conflicting reports over the number of people sentenced to death and executed for drug offences.

### SUDAN

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Under the Narcotic Drugs and Psychotropic Substances Act 1994, anyone who produces, manufactures, imports, exports, buys or sells drugs faces a mandatory death sentence in Sudan if the offence is committed in association with an 'international criminal group'.<sup>274</sup>

### SOUTH SUDAN

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South Sudan became an independent state on 9 July 2011. According to South Sudan's Penal Code Act - Chapter XXVI, Article 383 (2) – those convicted of 'dealing in a dangerous drug', when committed in aggravating circumstances, shall be sentenced to death or life imprisonment.<sup>275</sup>

### IRAQ

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Iraq introduced Decree No. 3 of 2004, which prescribes the death penalty for drug offences, although only when committed 'with the aim of financing or abetting the overthrow of the government by force', following the removal of Saddam Hussein.<sup>276</sup> Between 2005 and late 2010, 257 people, including six women, were executed, according to the Deputy Justice Minister.<sup>277</sup> However, the Iraqi government has not reported detailed death penalty data nor disaggregated these numbers according to crimes.<sup>278</sup>

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270 Hands Off Cain, 'North Korea: country issues death penalty decree for drug traffickers', 18 March 2006, available at: [www.handsoffcain.info/archivio\\_news/200603.php?iddocumento=8310651&mover=0](http://www.handsoffcain.info/archivio_news/200603.php?iddocumento=8310651&mover=0).

271 *Daily NK*, 'North Korea has introduced amendments to its criminal codes to save the regime from falling apart', 13 May 2008; US Department of State, 2009 *International Narcotics Control Strategy Report, Volume I*, 27 February 2009.

272 *Ibid.*

273 World Coalition Against the Death Penalty, *Fighting Against the Death Penalty in the Arab World: Protagonists, Arguments and Prospects*, 2nd ed., February 2010, p. 30; Hands Off Cain, 'A large number of offences, including political offences and economic "crimes" are punishable by death', 1 January 2009, available at: [www.handsoffcain.info/news/index.php?iddocumento=12001310](http://www.handsoffcain.info/news/index.php?iddocumento=12001310). No laws are listed with UNODC. An article on the website of the South African newspaper *Times LIVE* 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', 'Libya to allow NGOs, limit death penalty: magistrate', 24 November 2009, available at: [www.timeslive.co.za/news/africa/article207503.ece](http://www.timeslive.co.za/news/africa/article207503.ece)

274 Text available at: [www.unodc.org/enl/browse\\_countries.jsp#s](http://www.unodc.org/enl/browse_countries.jsp#s)

275 Act No. 9 (2008) Penal code Act, 2008. Available at: [www.goss-online.org/magnoliaPublic/en/Laws--Legislation--Policies/mainColumnParagraphs/0/content\\_files/file12/15.pdf](http://www.goss-online.org/magnoliaPublic/en/Laws--Legislation--Policies/mainColumnParagraphs/0/content_files/file12/15.pdf). It should be noted that none of the 'aggravating circumstances' refers to intentional loss of life. The use of weapons or violence is included, but other factors include inciting young people to use drugs or abusing public office.

276 Amnesty International, 'Iraq – unjust and unfair: the death penalty in Iraq', April 2007, p. 10.

277 Agence France-Presse, 'Iraq has executed 257 since 2005: minister', 16 December 2010.

278 Amnesty International, 'Iraq: a thousand people face the death penalty', 1 September 2009, p. 5.

## SYRIA

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Article 39 of Syria's Law No. 2 of 12 April 1993 states that capital punishment shall be imposed on anyone who smuggles narcotic drugs; manufactures narcotic drugs, in circumstances other than those authorised by this law; or cultivates any of the plants listed in Schedule No. 4, in circumstances other than those authorised by this law, or who smuggles such plants in any stage of their growth, or who smuggles their seeds.<sup>279</sup> Article 39 (b) 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.

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279 Text available at: [www.unodc.org/enl/browse\\_countries.jsp#s](http://www.unodc.org/enl/browse_countries.jsp#s)

## 4. CONCLUSION

The scales are tipping back towards the abolition of the death penalty for drug offences. But far too many people continue to be sentenced to death and executed in a small number of countries that insist on remaining at the fringes of international consensus. In Iran's case, execution rates for drug offences, including public executions, have skyrocketed.

Legal challenges in multiple jurisdictions, however, show that change is possible. In the Republic of Korea and in India, judicial discretion has won out over arbitrary and abusive mandatory death penalty laws. Other cases provide key insights into the extent to which 'tough on drugs' ideology has so permeated criminal justice systems as to deny evidence-based and legally accurate decisions from the highest of courts – to deny a fair hearing.

These cases also show just how influential the UN drugs conventions have been and continue to be. The death penalty for drug offences became more prevalent after the adoption of the 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. As the case studies in this report show, the convention's stringent approach and hyperbolic language are used today to justify ongoing death sentences. The argument is deeply flawed.

To date there has been no international study on whether the implementation of the UN drugs conventions is in line with human rights law. This is an issue that Harm Reduction International has raised previously in relation to other human rights abuses carried out in the name of drug control, such as denial of HIV prevention services and violence inflicted on drug users in the name of 'treatment'. A study applying 50 years of human rights law and jurisprudence to the UN drugs conventions is required.

Human rights have taken a back seat to drug control nationally as well as internationally. So long as the 'scourge' or 'evil' of drugs is being fought, it seems that human rights may be side-stepped. The evidence of this can be seen in the ongoing executions for drug offences and the way they are justified. Drug laws and policies must be scrutinised at national level for human rights compliance. This applies to all states, not only those that retain the death penalty for drug offences.

The death penalty for drug offences, whether mandatory or not, cannot survive such scrutiny.

*The Death Penalty for Drug Offences: Global Overview 2012 – Tipping the Scales for Abolition* is Harm Reduction International's third annual overview on the status of the death penalty for drug offences worldwide.

*Tipping the Scales for Abolition* documents the 33 countries and territories that retain death penalty for drug offences, including 13 in which the sentence is mandatory. In the past year many hundreds of people have been executed for drug offences in violation of international law in just a small minority of states that continue to operate at the fringes of international consensus.

The trend towards abolition is, however, moving back in the right direction. This report details court cases and recent political debates that show an increasing discomfort with the death penalty for drugs, and in particular with mandatory death sentences.

## **About Harm Reduction International**

Harm Reduction International is one of the leading international non-governmental organisations promoting policies and practices that reduce the health and social harms associated with drug use and the negative social, health, economic and criminal impacts of drug laws and policies on individuals, communities and society.

Our vision is a world in which individuals and communities benefit from drug laws, policies and practices that promote health, dignity and human rights.

We work to reduce drug-related harms by promoting evidence-based public health policy and practices and human-rights-based approaches to drug policy through an integrated programme of research, analysis, advocacy and civil society strengthening.



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