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AGAINST THE DEATH PENALTY

# The Death Penalty For Drug Crimes in Asia

Report

**Cover photo:** Chinese police wear masks as they escort two convicted drug pedlars who are suffering from AIDS, for their executions in the eastern city of Hangzhou 25 June 2004 – © AFP

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# Introduction

Despite the global move towards abolition over the last decade, whereby more than four out of five countries have either abolished the death penalty or do not practice it, the progress towards abolition or even establishing a moratorium in many countries in Asia has been slow. On the contrary, in The Maldives there was a recent increase in the number of crimes that are punishable by death, and in countries such as Pakistan and Indonesia, who had *de-facto* moratoriums for several years, executions have resumed.

Of particular concern, notably in Asia, is the continued imposition of the death penalty for drug crimes despite this being a clear violation of international human rights standards. Thirty-three countries and territories provide the death penalty, at least in name, for drug smuggling, many of which are in Asia. In some countries, the death penalty for drug crimes is just symbolic legislation but rarely executed. However, drug offenders are known to be routinely executed in seven countries around the world; and six of these countries are in Asia: China, Iran, Vietnam, Malaysia, Singapore, and now Indonesia following a number of executions over the past 6 months.<sup>1</sup> In Iran for example, more than 300 alleged drug offenders were hanged in 2014 alone, and 70-80% of executions in the last 5 years are thought to have been for alleged drug offences.<sup>2</sup> In Indonesia, a 5-year moratorium ended in 2013, and 14 executions, all for drug offences, took place in the first four months of 2015 alone. These examples reflect the broader trend in the region of a disregard for international law and human rights in the name of 'the war on drugs'.

FIDH, the World Coalition Against the Death Penalty, and their respective member organisations stand firmly against the death penalty in any and all circumstances. On the occasion of 2015 World Day Against the Death Penalty and its theme, we are publishing this report focused specifically on the death penalty for drug crimes in Asia.<sup>3</sup> This report aims to shed light on the laws, policies, and narratives related to the death penalty for drug crimes in the region with the greatest number of death sentences and executions for drug crimes in the world. It also aims to clearly articulate that the death penalty for non-violent drug crimes is a clear violation of international human rights standards, and should thus be abolished.

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1. The seventh country is Saudi Arabia.

2. UN Special Rapporteur on the Situation of Human Rights in Iran, Report to the Human Rights Council, A/HRC/25/61, 13 March 2014, para 80.

3. 'Asia' as referred to in this report includes 23 countries, as per the regional demarcation used by FIDH: Afghanistan, Bangladesh, Bhutan, Burma, Cambodia, China, India, Indonesia, Iran, Japan, Laos, Malaysia, Maldives, Nepal, North Korea, Pakistan, Philippines, Singapore, South Korea, Sri Lanka, Taiwan, Thailand, Vietnam.

# I. The death penalty for drug-related offences: illegal in principle and in practice

International law does not permit the death penalty for drug-related offences. For the large majority of the countries in the world who have ratified the key international legal instruments on human rights and on counter-narcotics, they are bound by international standards that do not permit laws that impose the death penalty for drug crimes, nor the practical ways in which the death penalty is applied in most countries in Asia.

## **LEGISLATION IMPOSING THE DEATH PENALTY FOR DRUG CRIMES: A VIOLATION OF INTERNATIONAL LEGAL STANDARDS**

There are several international instruments that establish the legal framework around when and how the death penalty may be imposed in compliance with international law, and that show that it should not be applied for drug crimes. These include the International Covenant on Civil and Political Rights, the 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, and the Convention against Torture.

### **The International Covenant on Civil and Political Rights (ICCPR)**

The ICCPR is an international treaty that sets out protections for civil and political rights. States that have ratified it are obligated to take the necessary administrative, judicial and legislative measures to ensure that those rights are protected and respected in their countries. This includes the right to life, liberty and security of person, and right to fair trial, among other rights. To date, 168 States in the world have ratified the ICCPR.<sup>4</sup> Of the 23 countries in Asia, 5 have yet to ratify the ICCPR.

As it stands, the text of the ICCPR does not place a blanket prohibition on the death penalty, but does set limitations on when the death penalty may be imposed, notably that the death penalty can only be applied to those crimes deemed to be "the most serious". The ICCPR states in Article 6, that

"Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes."<sup>5</sup>

With regards to the definition of which crimes are deemed to be "the most serious", the United Nations (UN) Human Rights Committee, the body charged with monitoring whether States are respecting the ICCPR and with interpreting the practical implementation

4. In addition, Taiwan, despite not being a UN Member State and therefore not eligible to become an official State Party to the Covenant, has symbolically ratified it at the national level.

5. International Covenant on Civil and Political Rights, Article 6.

of the Covenant, has stated explicitly that "the expression 'most serious crimes' must be read restrictively to mean that the death penalty should be a quite exceptional measure."<sup>6</sup> Therefore, for countries with a very high number of crimes that are punishable by death, such as Iran that counts 17 distinct drug crimes amid the numerous other crimes that are subject to capital punishment, it can be argued that the death penalty is not applied on an exceptional basis, but is rather a routine practice.

Some countries have cited the social harms that drug problems cause to argue that drug offences meet the threshold of "most serious crimes." However, the UN Human Rights Committee has explicitly stated that drug crimes do not fall within the limits of "most serious crimes." In 2013, during its most recent assessment of Indonesia's compliance of the ICCPR, the Committee regretted that "death sentences are imposed by courts for drug crimes, which do not meet the threshold of the 'most serious crimes' set under article 6 of the Covenant" and recommended Indonesia to "review its legislation to ensure that crimes involving narcotics are not amenable to the death penalty."<sup>7</sup> Since the views of the Human Rights Committee are the authoritative interpretation of the provisions of the ICCPR, it is clear that imposing the death penalty for drug offences is a violation of the ICCPR, applicable not only to Indonesia but to all States party to the Covenant.

## **The 1988 Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988 Drug Convention)**

The 1988 Drug Convention is the most recent of the three UN drug control treaties, which provides a legal framework for counternarcotics efforts of the States that have ratified it. To date, 185 UN Member States have ratified the 1988 Drug Convention, including all of the UN Member States in Asia.

In its article 3.1, the Convention lays out a list of acts related to drug production and trafficking that are deemed criminal offences and thus "liable to sanctions ... such as imprisonment or other forms of deprivation of liberty, pecuniary sanctions and confiscation."<sup>8</sup> The Convention goes on to explain that there are certain circumstances that make the commission of these drug crimes listed in the Convention "particularly serious," including the involvement of an organised criminal group or the victimization of minors.<sup>9</sup> It can thus be concluded that the commission of the drug crimes listed in the 1988 Drug Convention that occur without extenuating circumstances are by inference not considered "particularly serious," and thus also fall short of the "most serious crimes" threshold set out in the ICCPR for crimes that are punishable by death. Nevertheless, most drug crimes that carry the death penalty in Asia are those listed out in article 3.1 of the 1988 Drug Convention and do not include any of the circumstances that would render them "particularly serious."

Even for drug crimes that do fulfil any of those "particularly serious" circumstances outlined in article 3.5, nowhere does the 1988 Convention prescribe the death penalty as an appropriate punishment for even the most serious of drug crimes. The sanctions for drug crimes suggested by the Convention include imprisonment, fines, and/or confiscation, but at no point in the entire Convention is capital punishment mentioned as an appropriate punishment. In fact, the Convention instead suggests several rehabilitative measures such as "treatment, education, aftercare, rehabilitation or social reintegration"<sup>10</sup> as appropriate consequences for those convicted of drug crimes, as an alternative or in addition to conviction or punishment. The prescription of such rehabilitative measures denotes an underlying understanding within the 1988 Drug Convention that those convicted of drug

6. Human Rights Committee, General Comment 6 on Article 6 (Right to life), para 7.

7. Human Rights Committee, Concluding Observations on Indonesia, CCPR/C/IDN/O/1, 21 August 2013, para 10.

8. United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988, Article 3.4.

9. United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988, Article 3.5.

10. United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988, Article 3.4.

crimes can be re-educated and/or healed in order for them to re-enter society and not become recidivist, which is absolutely undermined by the irreversible nature of a punishment like the death penalty.

In fact, the overall approach of the international drug control system – based on the 1988 Drug Convention and the other two Conventions preceding it – is “health-centred.” The United Nations Office on Drugs and Crimes has stated that “the intention [of the three Conventions] is to make essential medications available for the relief of pain and the alleviation of suffering, while protecting the people, particularly the most vulnerable, from the potentially dangerous effects of these controlled drugs.”<sup>11</sup> This is also the often-stated objective of most States in Asia for why they carry harsh penalties for drug crimes – that they are aiming to promote life and health – while perversely imposing a punishment for drug crimes that violates the right to life.

The death penalty, insofar as it violates human rights including the most basic right to life, is therefore not compatible with the objective of the international drug control system to promote health and life. This was expressed clearly in March 2014, when the International Narcotics Control Board (INCB), the body established to monitor the implementation of the drug control treaties including the 1988 Drug Convention, issued a statement encouraging States to abolish the death penalty for drug-related offences:

INCB's position takes into account the relevant international conventions and protocols, and resolutions of the General Assembly, the Economic and Social Council and UN bodies pertaining to the death penalty. INCB encourages those State Parties that still provide for the death penalty for drug-related offences in their national legislation and continue to impose it to consider the abolition of the death penalty for drug-related offences.<sup>12</sup>

## **The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)**

The Convention against Torture is the international treaty that outlines the right of every person not to be subjected to torture or other acts of cruel, inhuman or degrading treatment or punishment, including both physical and mental torture. States who are party to the Convention have the obligation to prevent, prohibit and punish torture. To date, 158 States in the world have ratified the Convention. Of the 23 countries in Asia, only 15 have ratified it.

The imposition of the death penalty has also been argued to be a violation of the prohibition against torture and cruel, inhuman or degrading treatment and punishment, as outlined in this Convention, due to the physical and mental trauma inflicted on those who are convicted to death. Firstly, the death penalty constitutes cruel and inhuman punishment by depriving victims of their right to life, and is often executed in a particularly cruel fashion which amounts to physical torture, such as the agonizing process of executions by stoning. Secondly, death row inmates too often experience acute physical and mental torture while waiting for their execution, which can often stretch out over decades. In many countries in Asia being on death row involves languishing in terrible conditions, with the possibility of being executed with little or no notice.

11. UNODC, “Drug policy provisions from the international drug control Conventions”, p2, [https://www.unodc.org/documents/ungass2016//Drug\\_policy\\_provisions\\_from\\_the\\_international\\_drug\\_control\\_Conventions.pdf](https://www.unodc.org/documents/ungass2016//Drug_policy_provisions_from_the_international_drug_control_Conventions.pdf)

12. UN Information Service, “INCB encourages States to consider the abolition of the death penalty for drug-related offences”, UNIS/NAR/1199, 5 March 2014, [https://www.incb.org/documents/Publications/PressRelease/PR2014/press\\_release\\_050314.pdf](https://www.incb.org/documents/Publications/PressRelease/PR2014/press_release_050314.pdf)

# THE APPLICATION OF THE DEATH PENALTY FOR DRUG CRIMES IN ASIA IN VIOLATION OF INTERNATIONAL STANDARDS

In addition to their drug laws violating the international treaties as described above, countries in Asia who impose the death penalty for drug crimes often violate additional international legal standards in the way that they apply the death penalty to those convicted of drug crimes.

Several UN bodies<sup>13</sup> have established some basic safeguards guaranteeing protection of the rights of those facing the death penalty, including standards for fair trial and due process,<sup>14</sup> guarantees against the arbitrary deprivation of life,<sup>15</sup> and standards of transparency.<sup>16</sup> Special protections<sup>17</sup> should also be given to those in vulnerable situations, such as juveniles,<sup>18</sup> pregnant women and mothers with dependent infants,<sup>19</sup> and persons with mental or intellectual disabilities.<sup>20</sup> However, in most countries in Asia that impose the death penalty for drug crimes, these safeguards are often not respected, raising additional concerns about the violations to international law and human rights that accompany the death penalty for drug crimes in Asia.

## Violations of the right to a fair trial

The right to fair trial, which ensures equal access to courts amongst other procedural guarantees, is critical to ensuring the proper administration of justice. This right, established in Article 14 of the ICCPR and reinforced through multiple resolutions adopted by various UN bodies, includes equality before courts, the right to be presumed innocent until proven guilty, and the right to a higher review or appeal, among other procedural guarantees. The Human Rights Committee has insisted that "scrupulous respect of the guarantees of fair trial is particularly important in the imposition of the death penalty."<sup>21</sup> Imposing the death penalty without respecting the fair trial rights guaranteed in Article 14 thus constitutes a violation of international law.

In the countries in Asia that impose the death penalty for drug crimes, the right to a fair trial and due process is regularly violated. Defendants accused of drug crimes that carry the death penalty are often denied access to a lawyer of their choosing, and in many countries they do not have the option to appeal their conviction or seek pardon or commutation of their death sentence.

## Arbitrary use of death sentences for drug crimes

The ICCPR explicitly prohibits the arbitrary deprivation of life in its article 6. The UN Special Rapporteur on extrajudicial, summary or arbitrary executions has stated that in order to comply with their obligation to uphold article 6 of the ICCPR, States who retain the death

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13. UN General Assembly, UN Economic and Social Council, UN Commission on Human Rights.

14. ECOSOC, Resolution 1996/15, Resolution 1984/50, Commission on Human Rights Resolution 2003/67, Resolution 2005/59.

15. ECOSOC, Resolution 1984/50, Commission on Human Rights Resolution 2003/67, Resolution 2005/59.

16. ECOSOC, Resolution 1989/64, Commission on Human Rights Resolution 2003/67.

17. ECOSOC, Resolution 1984/50, Commission on Human Rights Resolution 2003/67, Resolution 2005/59.

18. GA Resolution 67/176.

19. GA Resolution 67/176.

20. ECOSOC, Resolution 1989/64.

21. Human Rights Committee, General Comment 32, para 59.

penalty in their legislation must, among other safeguards, guarantee that fair trial standards be upheld, limit the death penalty to only the most serious crimes, and ensure that its application of the death penalty is consistent.<sup>22</sup> In addition to the numerous violations of the first two safeguards as explained in the sections above, the death penalty for drug crimes is also applied in a very inconsistent manner across different countries in Asia. From one country to another in the region, the types of drug crimes punishable by death vary greatly, as do the specific amounts of drugs that must be involved in the crime in order for it to be punishable by death.

For example, there is a lack of a clear and consistent definition of what constitutes drug trafficking, and even though most countries in Asia now no longer impose death sentences for mere possession, the difference between possession and trafficking is often unclear and ill-defined. There is no set standard or legally-justified definition across national legislations as to what constitutes a drug crime punishable by death, resulting in an arbitrary application of the death penalty between and across neighbouring countries in Asia.

## **Mandatory death penalty**

In several countries in Asia, such as in Brunei, Iran, Laos, Malaysia, and Singapore, some drug crimes carry a mandatory death sentence. The practice of mandatory sentences does not allow for judicial discretion, and eliminates the court's ability to consider a defendant's situation and what might have pushed him/her to engage in a drug crime before deciding on a sentence as absolute and irreversible as the death penalty. By removing the possibility for judges to assess each case based on its factual circumstances and to determine the appropriate penalty for the offence, States that retain and impose the mandatory death penalty for drug offences are violating the rights of those facing a mandatory death penalty. This practice is a violation of the right to life and the right to a fair trial and due process guarantees, and also indicates a fundamental problem in the lack of independence of the judiciary since the executive has limited the courts' powers of determination in a trial.

## **Lack of transparency**

There are several ways in which transparency must be upheld in the application of the death penalty, as identified by the Special Rapporteur on extrajudicial, summary or arbitrary executions. Firstly, consistent with the right to fair trial, relevant and sufficiently information should be provided to those accused of drug crimes, their families and legal representatives, to ensure that the accused persons have the adequate resources and time to prepare for their defence. This should include the charges, documents and other evidence that the prosecution plans to use against him or her. In addition, in order to avoid subjecting those sentenced to death and their families to particularly cruel treatment and mental torture, sufficient clear and advance notification of the execution date must be given to those sentenced to death. However, in practice these basic transparency standards are rarely respected with the regards to those persons sentenced to death in Asia, including those sentenced to death for drug crimes. When executions are carried out, reasonable advance warning is often not given to the convicted persons or their families. Sometimes, executions are even carried out in secret and announced only after the fact if at all. There have been several cases of sudden executions taking place before the convicted person's appeal petitions had been decided on.

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22. UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Report to the General Assembly, 9 August 2012, A/67/275, para 14.

In addition to these violations of transparency standards with regards to communication with prisoners and their families and lawyers, there is also an important standard of transparency with regards to public information concerning the death penalty. The UN Human Rights Committee has stated that information about a State's use of the death penalty is of public interest and should be shared publicly.<sup>23</sup> Such transparency around the use of the death penalty is essential for informed public debate and democratic accountability.

However, statistics regarding death sentences and executions, especially those related to drug crimes, are often not published, and sometimes even classified as State secrets. Even in the few countries that do publish general information on the number of executions carried out in a given year, they rarely disaggregate this information to indicate for which crimes individuals have been executed. Research by human rights organizations has shown that in many cases, official statistics also underreport the number of death sentences and executions that take place, sometimes by several hundreds of executions, as is the case in Iran.

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23. Human Rights Committee, Toktakunov v. Kyrgyzstan, CCPR/C/101/D/ 1470/2006, 21 April 2011, para 6.3.

## II. Refuting common justifications for imposing the death penalty for drug crimes

The death penalty for drug crimes clearly violates international human rights standards applicable to all countries, and the legally-binding obligations of States that have ratified relevant international treaties. However, a large majority of the countries in Asia continue to impose the death penalty for drug crimes, with various arguments given to defend the practice.

Based on an analysis of the countries in Asia where the legislations permit the death penalty for drug crimes, four main arguments are principally used across the region by governments to justify their retention of the death penalty for drug crimes:

- (1) the death penalty is an effective deterrent against drug crimes;
- (2) there is strong public support for the death penalty;
- (3) the death penalty for drug crimes is in line with religious principles; and
- (4) the death penalty helps protect our population, especially those in vulnerable situations, from the social ills of drugs.

Each of these arguments, however, is either factually incorrect, or has been seriously questioned by experts in the field and cannot be taken at face value. Below is an overview of some of the explanations why the arguments listed above are inaccurate and do not justify the use of the death penalty for drug crimes.

### **“The death penalty is an effective deterrent against drug crimes”**

**The deterrent effect of the death penalty on crimes has never been proven. Moreover, capital punishment does not address the motivations of those most often convicted of drug crimes.**

Many governments in Asia who impose the death penalty for drug crimes claim that they do so as a way to combat crime, since the harshness of the death penalty will deter those who may consider engaging in drug crimes. However, there has been no conclusive evidence presented to date to suggest that the death penalty has any deterrent effect against drug crimes. There is no statistical data proving that the death penalty has had a direct impact in reducing drug crimes. There are no studies that have been able to prove conclusively that the possible threat of death as punishment has been the reason why potential drug offenders or re-offenders have refrained from committing drug crimes. The fundamental assumption that the death penalty will deter criminals and reduce drug crime is therefore not supported by any existing reliable evidence. In fact, some data analyses show that there is no significant difference in the rate of drug crimes between States that execute people for drug crimes, and those that do not. In fact, it has been shown that, in some countries where the death penalty is abolished, drug crimes are even lower.<sup>24</sup>

24. Fact check: No proof the death penalty prevents crime”, 4 May 2015, <http://www.abc.net.au/news/2015-02-26/fact-check3a-does-the-death-penalty-deter3f/6116030>

Secondly, the “deterrent effect” argument ignores the complexity of why many individuals engage in drug crimes, and that the threat or risk of punishment may not be the decisive factor when someone is considering whether or not to engage in a drug crime. Some individuals might consider that the potential benefit they may gain out of such a crime outweighs the risk of being punished. This is especially so for individuals in particularly vulnerable situations. For example, those who are economically marginalized constitute a large number of those who engage in low-level drug crimes. Their economic prospects are often so limited that engaging in drug crime presents a worthwhile risk, even if it carries the risk of the death penalty. Without analyzing the motivations and situations of those who are most often convicted of drug crimes, it is impossible to judge whether any given punishment, including the death penalty, will have a genuinely deterrent effect.

Thirdly, there is no proof to show that the death penalty is a more deterrent punishment against drug crime than other consequences such as imprisonment or rehabilitation.

## “There is strong public support for the death penalty”

**Governments often impose policies and laws that do not enjoy public support, including many countries when abolishing the death penalty. In addition, genuine public opinion is very difficult to measure accurately, especially in countries with little publicly accessible information or space for open public debate on the death penalty.**

Many countries in Asia justify their use of the death penalty claiming that public opinion is in favour of this practice, so they are right to retain it. However, public opinion is not a sufficient justification for the retention of any law or policy, especially when said policy contravenes international law and human rights standards. Governments often act in opposition to general public opinion, whether ignoring popular demands for reforms or imposing laws against the will of the people. In fact, many countries that have abolished the death penalty around the world did so in opposition to the majority public opinion at the time, and legislative reform preceded progressive social views on the subject.

Moreover, genuine public opinion is very difficult to measure accurately. Studies cited by governments indicating public support for the death penalty are often biased and inconclusive, either because they are not representative of the population or they do not take into account factors that influence and mitigate public opinion.

One such factor is the public's access to reliable information on the death penalty in order to inform their opinion. In most countries in Asia, reliable information on the imposition of the death penalty is not publicly available, either because the government refuses to release statistics (such as in China and Vietnam), or because the information published by the government is known to be incomplete or false (such as in Iran). As a consequence, the public does not have a realistic impression of how the death penalty is imposed in their country, and thus cannot form an informed opinion.

Another factor that can affect the opinions expressed by the public is the level of freedom of expression and association they enjoy. If individuals live in a country that punishes criticism of the government and represses the free exchange of ideas, many people will be too afraid to share their sincere views on subjects such as the death penalty, especially if they disagree with the government's position. This in turn reduces the prevalence of diverging views that are shared in society, further limiting people's ability to develop an informed opinion.

## **“The death penalty for drug crimes is in line with religious principles”**

**Religious doctrines can be interpreted in many ways, and as such, several scholars and leaders from all religious backgrounds have shown that their religious tenets do not necessarily support the death penalty.**

In countries such as Iran, Malaysia, and Pakistan, religious doctrine, specifically Sharia law, has been referenced to support the imposition of the death penalty, including for drug crimes. It has been argued that the application of the death penalty for drug crimes is consistent with the tenets of Islam.

However, as with most religious doctrines, Islam and Sharia law are open to interpretation, and are read and implemented distinctly by different religious leaders and scholars. This is especially true in the case of the death penalty for drug crimes, since there is no specific punishment prescribed for drug offences in Sharia law. The Koran has explicitly mentioned and prohibited the consumption of alcohol, but not other intoxicating drugs. It is only by the interpretation of Islamic jurists who have inferred that since alcohol has been prohibited because of its intoxicating quality, drugs should therefore be prohibited as well for the same intoxicating quality. The prohibition on drugs has only been established through interpretation and does not constitute primary law in Islam. Therefore, many Muslim scholars have argued that drug crimes cannot be punishable by death, because this would be in violation of the Koranic principle that a person's life can only be taken as explicitly specified under Sharia law.<sup>25</sup>

Moreover, many Muslim scholars have noted that the death penalty in general is not particularly encouraged in Islam, but that repentance and forgiveness are seen as preferable instead. Abolishing the death penalty for drug crimes and adopting a more rehabilitative approach to drug offences is thus compatible with and supported by the teachings of Islam.<sup>26</sup>

## **“The death penalty protects our population, especially individuals in vulnerable situations, from the social ills of drugs”**

**Harsh drug laws in Asia disproportionately target individuals in vulnerable situations instead of protecting them, since they are the ones who often commit low-level crimes that are prone to arrest.**

Despite claims by governments with harsh penalties for drug crimes that their objective is to protect people in vulnerable situations from the problems associated with drug abuse, it has been noted that most people who are targeted by these harsh drug laws are actually those same individuals coming from vulnerable situations. As illustrated by the cases of Iran and Thailand among others, the death penalty for drug crimes is most often imposed on drug carriers at the bottom of the drug trafficking hierarchy, who tend to be people who are economically marginalised and are willing to risk being caught in exchange for an opportunity for economic advancement.

### **Women and drug trafficking**

Women are often targeted to be recruited as drug carriers based on the perception that they attract less suspicion from the authorities and are therefore less likely to be inspected

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25. Penal Reform International, Sharia law and the death penalty, July 2015.

26. Dr. Khaled Abou El Fadl, “The Death Penalty, Mercy and Islam: A Call for Retrospection”, in *Religion and the Death Penalty: A Call for Reckoning*, Wm. B. Eerdmans Publishing Company, 2004.

when crossing borders. Pregnant women have also been specifically recruited to work as drug carriers since they supposedly invoke greater sympathy and are also eligible for reduced punishment in certain countries.<sup>27</sup> Given that women are among the most economically marginalised individuals in the world, they are also more prone to turn to illicit activities such as drug crimes as a source of income.

### **Foreigners, particularly migrant workers and refugees**

In countries where the death penalty is still imposed for drug crimes, it applies to both nationals and foreigners. Considering the fact that drug trafficking transcends national boundaries and is a transnational crime, it is unsurprising that foreigners are often involved in drug crimes uncovered by law enforcement officials in Asia. Even taking this into consideration, the number of death sentences imposed on foreigners for drug crimes in certain countries is disproportionately high, such as in Iran and Indonesia.

This over-representation suggests that there may be fundamental problems with the sentencing procedure that directly or indirectly discriminates against foreigners. For example, foreigners may not speak the local language, which is usually also the language of the court and its proceedings. Some countries do not provide an interpreter to ensure that the persons accused of a crime understand the charges brought against them and the proceedings of their trial, in violation of international human rights standards. Additionally, a foreign national with limited financial resources may find it difficult to secure a lawyer of their choice and navigate a foreign legal system in order to ensure they are properly defended in court.

Other reasons, such as sentencing foreigners to death in high-profile cases as a way to demonstrate political strength in the face of international pressure, may also play a role in explaining the imbalanced rate of death sentences handed down against foreigners.

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27. Pregnant women are not subjected to capital punishment in most countries that still impose the death penalty.

# III. Country profiles

The country profiles in this section provide an overview of the types of drug crimes which are punishable by death in each country, whether that country has ratified the relevant international treaties with regards to the death penalty and drug crimes, and the number of death sentences and executions for drug crimes over the past 10 years (if available). In addition, an analysis of the most prevalent narratives on the death penalty are explored, including government positions and public opinion, with a view to provide insight into the political and social context surrounding the death penalty for drug crimes in each country. Finally, some country profiles include a testimonial from an individual who has been affected by the death penalty for drug crimes in that country, to illustrate the many ways that the death penalty for drug crimes affects individuals across the region and the varying points of view on the issue from diverse parts of society.

All of the information in this section was collected and analysed in collaboration with FIDH and WCADP's members and partners throughout Asia. We would have liked to include profiles of all 23 countries in Asia in this report, but in some countries reliable information was not available at this time. In some cases this was due to a lack of local civil society groups working on the issue of the death penalty (notably in Cambodia and Nepal, where civil society has focused their limited resources on other issues after the death penalty was abolished in these countries). Unfortunately, in several cases the limited amount of reliable information available is due to a serious crackdown on civil society in many countries in the region, making it difficult for organisations and human rights defenders to speak openly about government policies and human rights violations without facing serious risks. Nevertheless, the countries highlighted in this section illustrate many of the common trends regarding the death penalty for drug crimes in Asia, in addition to highlighting the diversity of narratives and policies in the region.

# LEGEND FOR DRUG CRIMES PUNISHABLE BY DEATH IN ASIA

This legend provides a summary of the drug crimes punishable by death in the countries in Asia where the laws are publicly available. This is an exhaustive list of all the drug crimes punishable by death in the laws of these countries, with similar types of offences grouped together. Each group of offences is defined, followed by a list of all the offences that fall into each group, citing the countries where these offences are punishable by death.<sup>28</sup>

**A. Production** is the act of producing, making or manufacturing a drug.<sup>29</sup> In Asia, production is defined as any of the following:

- Manufacturing (China, Iran, Malaysia, South Korea, Sri Lanka, Taiwan)
- Cultivating poppies, coca, or cannabis for the purpose of producing drugs (Iran)
- Transforming a narcotic plant into a drug (Burma)
- Processing, preparing and manufacturing drugs (Burma)
- Producing a drug and refining or transforming a drug into another (Brunei, Singapore)
- Producing, manufacturing, extracting or preparing drugs (Pakistan)
- Cultivating, producing, refining (Bangladesh)
- Obtaining extraction from plants used as raw material for drugs (South Korea)
- Preparing (South Korea)

**B. Possession** is the act of holding a drug in one's control. In Asia, *possession* is defined as any of the following:

- Keeping, storing, concealing (Iran, Malaysia)
- Possessing prescribed amounts of certain drugs (Laos, Iran, Pakistan)
- Keep, preserve, store, exhibit or use (Bangladesh)

**C. Trafficking** is the act of trading, buying and selling, and/or transportation of drugs. In Asia, *trafficking* is defined as any of the following:

- Trafficking, offering to traffic, doing or offering to do any act preparatory to or for the purpose of trafficking (Brunei, Malaysia, Singapore)
- Import, export (Bangladesh, Brunei, Burma, Indonesia, Iran, Laos, Malaysia, Pakistan, Singapore, South Korea, Sri Lanka, Thailand)
- Facilitating import, facilitating export (Burma)
- Purchasing (Bangladesh, Indonesia, Iran, Malaysia, Pakistan)
- Sale (Bangladesh, Brunei, Burma, Indonesia, Iran, Malaysia, Pakistan, Singapore, South Korea, Taiwan)
- Distribution (Brunei, Burma, Indonesia, Iran, Laos, Malaysia, Pakistan, Singapore)
- Dispatching (Pakistan)
- Supply (Bangladesh, Indonesia, Iran, Malaysia)
- Giving (Brunei, Malaysia, Singapore, South Korea)
- Sending (Brunei, Singapore)
- Receiving (Indonesia, Malaysia, South Korea)
- Delivering (Brunei, Indonesia, Malaysia, Pakistan, Singapore, South Korea)
- Trading (Laos, South Korea, Vietnam)
- Assisting in the trade of (South Korea)
- Transportation (Bangladesh, Brunei, China, Iran, Laos, Malaysia, Pakistan, Singapore, Taiwan, Vietnam)
- Transshipping (Pakistan)
- Causing the transit of (Laos)
- Disposal and possessing for disposal (Thailand)
- Smuggling (China, Iran, Vietnam)
- Participating in international drug trafficking (China)
- Stockpiling, appropriating (Vietnam)
- Dealing in (Iran)
- Carrying, transporting (Iran)
- Offering for sale (Indonesia, Pakistan)

28. Wherever possible, official translations have been used. When official translations were not publicly available, unofficial translations checked by jurists from the country in question have been used. Some of the specific offences were also paraphrased for ease of understanding, but the verb or operational word used in the text of the original legislation remained unchanged.

29. For simplicity, the term "drug" has been used throughout, which can stand for narcotics and/or psychotropic substances.

- Acting as an intermediary for a transaction, or exchanging (Indonesia)
- Administering (Brunei, Malaysia, Singapore)
- Carrying (Bangladesh, Malaysia)
- Sending, procuring (Malaysia)
- Dosing (South Korea)
- Using drugs against another person or providing another person with drugs, resulting in death or permanent handicap (Indonesia)
- Possession of a prescribed quantity of drugs which is presumed to be for drug trafficking (Bangladesh, Brunei, Burma)
- Holding or possessing drugs for manufacture, import, export, trade, assistance in trade, giving or receiving (South Korea)
- Trafficking drugs into prisons or rehabilitation centres (Iran)

**D. Involving children or other vulnerable persons in drug crimes** is the act of implicating minors or other persons deemed to be vulnerable in the commission of drug crimes. In Asia, *involving children or other vulnerable persons in drug crimes* is defined as any of the following:

- Forcing a minor or a mentally impaired person to commit drug crimes (Iran)
- Using children under the age of 16 while carrying out drug crimes (Burma)
- Deliberately allowing a child to become involved, involving or ordering the involvement of a child in drug crimes (Indonesia)
- Instruct, provide or promise something, give a chance, suggest, facilitate, threaten with force, deceive, or persuade any child to commit drug crimes (Indonesia)
- Making use of minors and aiding and abetting them to engage in drug crimes (China)

**E. Organised crime involving drugs** is the coordination of a group of persons with the aim of engaging in drug crimes. In Asia, *organised crime involving drugs* is defined as any of the following:

- Being part of a criminal organisation engaging in drug crimes (Burma)
- Hiring or recruiting others to commit drug crimes (Iran)
- Organising, running, financially supporting or investing in drug crimes (Iran)
- Organising, managing, or financing drug crimes (Pakistan)
- Leading or heading a gang or network that commits drug crimes (China, Iran)
- Organising the use of drugs which has serious consequences, including causing widespread harm to many persons or the death of more than one person (Vietnam)

**F. Using public office to commit drug crimes** is the exploitation of the position of a government official to engage in drug crimes. In Asia, *using public office to commit drug crimes* is defined as any of the following:

- As a civil servant, engaging in drug crimes under the pretext of authority, opportunities, or means given by the position (Taiwan)
- As a government official, diverting state-controlled drugs for illegal sale (China)
- Using the influence of a public servant while carrying out drug crimes (Burma)

**G. Armed drug crimes** are drug offences committed with the use of a firearm, explosive, or other weapon. In Asia, *armed drug crimes* is defined as any of the following:

- Using arms or violence to cover up drug crimes or to resist arrest or detention (China)
- Using arms or explosives while carrying out drug crimes (Burma)
- Committing any drug crime with the use of a gun (Sri Lanka)
- Using violence or arms to commit or attempt to commit drug crimes (Pakistan)

**H. Repeat convictions of drug crimes** is the situation whereby a person who has been previously convicted of at least one drug crime is convicted of an additional drug crime. In Asia, *repeat convictions of drug crimes* is defined as any of the following:

- After being convicted of the commission of, attempt to commit, abatement of, or criminal conspiracy to commit a drug crime, committing another drug crime (India)
- Being convicted a prescribed number of times of a given drug crime, including as part of a network (Iran)
- After being convicted of a drug crime, subsequently being convicted of the same offence (Burma)

**I. Coercing others to take drugs** is the act of using force or influence to compel others to use drugs. In Asia, *coercing others to take drugs* is defined as any of the following:

- Compelling others to use drugs by means of violence, menace, fraud or other illegal means (Taiwan)
- Forcing others to consume drugs (Iran)
- Coercing a woman or a person without legal competence to take drugs through deception, threats, using violent force, influence, or coercion by any other means (Thailand)

# AFGHANISTAN

## Drug crimes punishable by death

None

NUMBER OF EXECUTIONS PER YEAR***											
Year	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015*
Total executions	n/a	n/a	15	17	0	0	2	14	2	6	1

Note: "n/a" indicates that no official or verifiable information was found.

NUMBER OF NEW DEATH SENTENCES PER YEAR***											
Year	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015*
Total new sentences	n/a	n/a	n/a	131	133+	100+	n/a	n/a	174	12+	n/a

Note: "n/a" indicates that no official or verifiable information was found.  
 "+" indicates that the actual number of sentences is likely higher.

RATIFICATION OF RELEVANT INTERNATIONAL INSTRUMENTS	
Instrument	State Party
ICCPR	Yes, since 1983
CAT	Yes, since 1987

At present, Afghanistan does not have legislation that prescribes the death penalty as punishment for drug crimes. However, it does continue to sentence large numbers of people to death for other crimes, and reports of executions are confirmed every year, despite Afghanistan not publishing any official statistics on the death penalty. Even though drug crimes are not currently a capital offence in Afghanistan, it is still an important issue to consider in the context of Afghanistan.

## Reasons why more strict counter-narcotics laws may soon be implemented

### Rising drug abuse

Afghanistan is the world's number one opium producer, and the availability of drugs in the country has contributed to increasing domestic rates of addiction over the past several years. The government estimates that there are now approximately three million people addicted to drugs in the country, and concerns around the increasing rate of drug abuse could compel the government to pursue tougher drug laws in the name of protecting the health of the Afghan people.

\* From 1 January 2015 to 31 July 2015

\*\*\* Based on documented cases

## National security and regional stability

However, unlike many other countries in the region that cite combating drug abuse and addiction as one of the main reasons for their tough drug laws, in Afghanistan the more pressing concern related to drugs seems to be the immensely negative effect that the drug trade has on the country's security and stability. Drug production and trade, facilitated by a lack of rule of law in Afghanistan, are known to be major sources of funding for armed militant groups such as the Taliban, and contribute to ongoing armed conflict and instability in the country and the region. This has put the "war on drugs" among the top stated priorities for the Afghan government and its international allies.

On 26 September 2015, the Afghan authorities publicly presented the Afghanistan National Drug Action Plan. Supported by the UN Office on Drugs and Crime, the National Drug Action Plan aims to reduce drug supply by decreasing poppy cultivation by 90% over the next ten years, and thus reducing opium production and trafficking. It also aims to reduce drug demand by improving drug treatment services.<sup>30</sup>

Although the details of the Action Plan have yet to be announced, statements made by Afghan authorities indicate that Afghanistan's counter-narcotics strategy is broad and extensive, not only cross-cutting its national development agenda, but permeating its national security strategy. Afghanistan's laws concerning enforcement, prosecution and accountability will be amended to support the Action Plan.<sup>31</sup> Given the high importance given to the war on drugs by the Afghan authorities and their allies, they may start to consider more extreme measures to combat drug crimes, and potentially follow the lead of neighbouring countries that impose the death penalty for such crimes.

## Response to the number of Afghans executed in Iran for drug offences

The imposition of the death penalty for drug crimes is also relevant in Afghanistan with regards to the very high number of Afghans who are convicted and executed in Iran for drug offences. The UN Special Rapporteur on the situation of human rights in Iran stated that as of 2013, an estimated 4000 Afghan citizens were on death row in Iran for drug-related crimes. A large proportion of the Afghans detained for drug offences in northern Iran appear to come from the district of Ghoryan in Afghanistan's north-western Herat province.

Iranian authorities have stated that drug traffickers along the Afghanistan-Iran border pose a serious security threat to Iran and must thus be punished severely. The government of Afghanistan has so far responded by urging Iran to halt or suspend the executions of Afghans. However, this diplomatic pressure has so far not been successful, and Afghans continue to be disproportionately targeted by Iran's drug laws and put to death. There is therefore a risk that Afghanistan may take a tougher and more retaliatory stance on this issue in the future.

30. Embassy of Afghanistan in Vienna, "Statement by H.E. Salamat Azimi, Minister of Counter Narcotics", Afghanistan Special UNGASS Event, 11 September 2015, <http://www.afghanistan-vienna.org/tag/counter-narcotics/>

31. *The Kabul Times*, "Statement of Dr. Abdullah on Afghan national drug action plan in New York", 29 September 2015, <http://thekabultimes.gov.af/index.php/newsnational/8185-statement-of-dr-abdullah-on-afghan-national-drug-action-plan-in-new-york.html>

# BURMA

## Drug crimes punishable by death

- Production<sup>32</sup>
- Trafficking<sup>33</sup>
- Involving children or other vulnerable persons in drug crimes<sup>34</sup>
- Organised crime involving drugs<sup>35</sup>
- Using public office to commit drug crimes<sup>36</sup>
- Armed drug crimes<sup>37</sup>
- Repeat convictions of drug crimes<sup>38</sup> (mandatory death penalty)

NUMBER OF EXECUTIONS PER YEAR***											
Year	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015*
Total executions	0	0	0	0	0	0	0	0	0	0	0
Executions for drug crimes	0	0	0	0	0	0	0	0	0	0	0

NUMBER OF NEW DEATH SENTENCES PER YEAR***											
Year	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015*
Total new sentences	n/a	n/a	n/a	n/a	n/a	n/a	33	17	0	1	16
New sentences for drug crimes	0	0	0	0	0	0	0	0	0	0	0

Note: "n/a" indicates that no official or verifiable information was found.

RATIFICATION OF RELEVANT INTERNATIONAL INSTRUMENTS	
Instrument	State Party
ICCPR	No
CAT	No

\* From 1 January 2015 to 31 July 2015

\*\*\* Based on documented cases

32. Myanmar Narcotic Drug and Psychotropic Substances Law (1993), article 20.

33. Myanmar Narcotic Drug and Psychotropic Substances Law (1993), article 20, article 26.

34. Myanmar Narcotic Drug and Psychotropic Substances Law (1993), article 22.

35. Myanmar Narcotic Drug and Psychotropic Substances Law (1993), article 22.

36. Myanmar Narcotic Drug and Psychotropic Substances Law (1993), article 22.

37. Myanmar Narcotic Drug and Psychotropic Substances Law (1993), article 22.

38. Myanmar Narcotic Drug and Psychotropic Substances Law (1993), article 23.

Burma has not executed anyone since the 1980s, but it continues to hand down death sentences, and at least 67 people have been reportedly sentenced to death between January 2011 and September 2015, particularly for murder.<sup>39</sup> Since all existing death sentences were commuted to life imprisonment in January 2014 by President Thein Sein<sup>40</sup>, and no new death sentences have been passed for drug offences since then, no one is presently on death-row for drug offences.

## Possible progress towards reducing the death penalty

Despite not executing the death penalty in practice, and regularly commuting existing death sentences to life imprisonment, there has been little progress towards formally abolishing the death penalty, be it for drug crimes or in general. However, it might be inferred from Burma's recent abstention on the vote on the resolution for a moratorium on the use of the death penalty at the UN General Assembly, that there is lesser resistance to the idea of abolition, since it has previously consistently voted against the resolution moratorium in 2007, 2008, 2010, and in 2012.

Nevertheless, regional pressure regarding the "war on drugs" may push Burma to consider imposing tougher sentences on convicted drug criminals. Existing laws on drug offences are extensive and very strict as they criminalise use, possession, cultivation, production and trafficking with long sentences and even penalise drug users for failing to register for treatment. Nevertheless, Burma remains the world's number two opium producer, and the main producer in South-East Asia, and concerns from neighbouring countries about the increasing rate of drug trafficking in the region could compel the Burmese government to take a tougher stance on drug producers and traffickers.

However, in 2015 the government initiated a consultative process engaging both internal and external stakeholders, including relevant ministries, UN agencies and civil society organisations to look into revising existing drug control legislation.<sup>41</sup> It is still unclear how successful this process might be in yielding a less punitive approach towards drug crimes and drug users, but it could be an avenue for Burma's laws achieving greater compliance with international human rights standards.

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39. FIDH and the World Coalition against the Death Penalty, Joint Submission to the Human Rights Council for the Universal Periodic Review on Myanmar, 9 November 2015.

40. Commutations were made on humanitarian grounds and to mark the 66th anniversary of independence of the country on 4 January. The Irrawaddy, "Government Commutes Death Sentences, Jail Terms", 3 January 2014, <http://www.irrawaddy.org/burma/government-commutes-death-sentences-jail-terms.html>

41. UN Office on Drugs and Crime, "UN Collaboration on Drug Law Review in Myanmar: Government consulting experts and communities to promote public health driven responses", 25 March 2015, <https://www.unodc.org/southeastasiaandpacific/en/myanmar/2015/03/drug-law/story.html>

# CHINA

## Drug crimes punishable by death

- Production<sup>42</sup>
- Trafficking<sup>43</sup>
- Involving children or other vulnerable persons in drug crimes<sup>44</sup>
- Organised crime involving drugs<sup>45</sup>
- Using public office to commit drug crimes<sup>46</sup>
- Armed drug crimes<sup>47</sup>

NUMBER OF EXECUTIONS PER YEAR***											
Year	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015*
Total executions	n/a	2400+	2370+	n/a							
Executions for drug crimes	n/a	n/a	n/a	n/a	n/a	4+	n/a	n/a	n/a	190+	n/a

Note: "n/a" indicates that no official or verifiable information was found.  
 "+" indicates that the actual number of executions is likely higher.

NUMBER OF NEW DEATH SENTENCES PER YEAR***											
Year	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015*
Total new sentences	n/a										
New sentences for drug crimes	n/a										

Note: "n/a" indicates that no official or verifiable information was found.

RATIFICATION OF RELEVANT INTERNATIONAL INSTRUMENTS	
Instrument	State Party
ICCPR	No
CAT	Yes, since 1988

\* From 1 January 2015 to 31 July 2015

\*\*\* Based on documented cases

42. Criminal Law of the People's Republic of China (1979) (last amended 25 February 2011), article 347.

43. Criminal Law of the People's Republic of China (1979) (last amended 25 February 2011), article 347.

44. Criminal Law of the People's Republic of China (1979) (last amended 25 February 2011), article 347.

45. Criminal Law of the People's Republic of China (1979) (last amended 25 February 2011), article 347, article 355.

46. Criminal Law of the People's Republic of China (1979) (last amended 25 February 2011), article 347, article 355.

47. Criminal Law of the People's Republic of China (1979) (last amended 25 February 2011), article 347.

China has one of the highest rates of execution in the world, and the death penalty is imposed for a variety of crimes, including drug offences. However, the extent of executions is unknown, since information on death sentences and executions is kept secret and there are no official or reliable statistics. Some non-governmental organisations have estimated that China alone executes more people each year than the rest of the world combined. In 2014 alone, at least 190 people are known to have been executed for drug crimes in China, though the actual number is likely much higher. Some human rights groups have estimated that approximately 10% of the thousands of executions that are thought to be carried out in China each year are for drug-related crimes.

## **Additional human rights concerns related to the imposition of the death penalty**

### **Lack of transparency and fair trial guarantees**

There is almost absolute secrecy surrounding the practice of the death penalty in China. The authorities do not publish any official statistics, and executions are often carried out in secret and not even announced to the executed prisoner's family.

Given the lack of available reliable information, there is absolutely no oversight on China's compliance with procedural safeguards and due process guarantees when applying the death penalty. However, the few reports from lawyers and individuals who have had contact with persons facing the death penalty for drug crimes state that accused persons are often denied access to legal counsel, and even if they do have a lawyer representing them, the latter is often denied access to case files and evidence presented by the State. Moreover, lawyers working on death penalty cases have reported that they often face pressure from judges to not defend their clients too efficiently so as to allow a guilty verdict to be easily reached. Lawyers who ignore this pressure and attempt to defend their clients effectively are sometimes accused of falsifying evidence and risk facing criminal charges themselves.

These violations of transparency and fair trial standards are extremely concerning in a country with so many drug crimes that are punishable by death and such a high number of executions. In addition, this severe lack of transparency not only makes it difficult for external oversight, but it also allows for impunity of these violations of human rights standards and thus perpetuates these violations.

### **Repression of lawyers and civil society**

The Chinese government initiated a nationwide crackdown on human rights lawyers and activists in July 2015, detaining more than 200 lawyers known for their work on cases seen as controversial in China, such as death penalty cases. Even after the release of some of these lawyers, the Chinese government continues to monitor their activities, which has increased fears that any criticism of the government will trigger even greater repression and more reprisals from the State authorities.

By targeting human rights lawyers and activists who question laws and government institutions and advocate for reform, the authorities have silenced those who provide the minimal oversight that exists in China's centralised and opaque criminal justice system. This intolerance of criticism poses great challenges for ensuring that fair trial and due process guarantees are respected, all the more important in a country that hands down such a high number of death sentences every year.

Moreover, by preventing civil society from speaking out about government policies, the Chinese government limits the amount of information and views on the death penalty that the public can access, thus limiting public discourse on the subject. This directly impacts the capacity of people to have an informed opinion on the death penalty.

## Possible progress towards reducing the death penalty

In recent years, China has made some positive reforms to its policies and laws regarding the death penalty. On 1 January 2007, a reform took effect making all death penalty

sentences eligible for appeal to the Supreme Court, instead of the provincial High Courts as it was before.<sup>48</sup> By centralising the authority to grant appeal in the highest court, this reform reduced the possibility of inconsistency across provincial courts. As a result, the number of confirmed death sentences decreased by 15% in the first year after this reform was implemented. This indicates that before this reform was implemented, about 15% of the people who were sentenced to death would not have been sent to death row had they been given the chance to appeal to the highest court. This is a clear illustration of the importance of fair trial and due process standards in ensuring that innocent people are not put to death.

Additionally, China has also reduced the number of crimes punishable by death over the past few years. In 2011, it removed the death penalty for 13 economic crimes, and in November 2015 newly approved amendments to the country's Criminal Law will take effect and remove the death penalty for nine more crimes.<sup>49</sup> Nevertheless, none of these reforms have removed the death penalty for existing drug crimes, and a large number of crimes that do not qualify as "most serious" remain punishable by death.

"The death penalty is not an effective way to deter drug-related crime. After many years of 'strike-hard' crackdowns and use of the death penalty, China has not been able to halt the wave of drug crime, especially in the south-western border area where, on the contrary, China's drug related crime has got worse and worse.

The southwest border region of China is situated near the Golden Triangle, an area that historically has a tradition of cultivating opium, and is also a region of high mountains and dense forests, and is thus economically isolated. Growing and trafficking drugs is perhaps the most important, if not only, source of income for people living in this border area.

Many drug offenders, especially residents of the southwestern border area, are not evil people; the majority are not repeat offenders and they have also not been organizing criminal gangs. Many residents in the border region have smuggled or passed on drugs because of short term difficulties making ends meet. Only by raising the standard of living in the border areas, strengthening awareness about the law, improving access to good education, eliminating the motive for offending, will we be able to effectively reduce or prevent drug crime. Simply relying on the death penalty as a deterrent won't work. Most people don't think they will be caught, and even if they did, they are so affected by poverty they are willing to take the risk."

Liang Xiaojun, Defence lawyer in China

48. Standing Committee of the National People's Congress, "Decision on Amending the Law of the People's Republic of China on the Organization of the People's Courts", 31 October 2006.

49. These crimes include smuggling weapons, ammunition, nuclear materials or counterfeit currency; counterfeiting currency; raising funds by means of fraud; arranging for or forcing another person to engage in prostitution; obstructing a police officer or a person on duty from performing his duties; and fabricating rumors to mislead others during wartime.

# INDIA

## Drug crimes punishable by death

- Repeat convictions of drug crimes<sup>50</sup>

NUMBER OF EXECUTIONS PER YEAR***											
Year	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015*
Total executions	0	0	0	0	0	0	0	1	1	0	1
Executions for drug crimes	0	0	0	0	0	0	0	0	0	0	0

NUMBER OF NEW DEATH SENTENCES PER YEAR***											
Year	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015*
Total new sentences	165	129	186	126	137	98+	110+	78+	72+	68+	n/a
New sentences for drug crimes	n/a										

Note: "n/a" indicates that no official or verifiable information was found.  
 "+" indicates that the actual number of sentences is likely higher.

RATIFICATION OF RELEVANT INTERNATIONAL INSTRUMENTS	
Instrument	State Party
ICCPR	Yes, since 1979
CAT	No

There was a moratorium on executions in India between 1995 and 2004, and again between 2005 and 2011. Since 2011, three executions have taken place in India, all for terrorism-related charges.

In a landmark decision in June 2011, the Bombay High Court ruled in the case of *India Harm Reduction Network v. Union of India* that the mandatory death penalty for drug offences was "unconstitutional."<sup>51</sup> Although the Court did rule that *mandatory* death sentences under this law were not to be imposed, it did not completely strike down article 31 of the Narcotic Drugs and Psychotropic Substances Act of 1985 that prescribes the death penalty for certain repeat drug convictions, leaving Courts with the option to decide whether or not to hand down the death penalty for repeat drug offenders.

\* From 1 January 2015 to 31 July 2015

\*\*\* Based on documented cases

50. Narcotics Drugs and Psychotropic Substances Act of India (1985), section 31A.

51. For more information, see Death Penalty Worldwide Database: <http://www.deathpenaltyworldwide.org/country-search-post.cfm?country=India&region=&method>

According to official statistics of the National Crimes Records Bureau, between 2001 and 2011, an average of 132 death sentences were handed down each year by first instance courts. However, the Supreme Court has confirmed only around 3 to 4 death sentences each year. Since the 1980 case of *Bachan Singh v. State of Punjab*, in which the Court held that the death penalty should only be applied for the most heinous offenses ("the rarest of the rare"), the Supreme Court has in fact overturned a majority of the death sentences handed down by first instance courts. Although this results in only a small proportion of death sentences being confirmed, there is still very high number of death sentences handed down by courts of first instance, indicating a dissonance between lower courts and the Supreme Court that is concerning with regards to the administration of justice in India. Moreover, defendants and their families face constant mental anguish as they go through the process of appealing a sentence, even if it is overturned in the end.

## **Possible progress towards abolishing the death penalty**

Despite the prevalence of death sentences handed down by first instance courts, there is some movement within the government towards abolition. In August 2015, the Law Commission of India, comprised of legal experts mandated by the Government of India to advise the Ministry of Law and Justice on legal reform, published a report sharing its conclusions of an extensive study on the death penalty in India, which recommends the abolition of the death penalty. The report concluded that the death penalty does not serve the goal of deterrence of crime, and loses sight of the restorative and rehabilitative aspects of justice. The Commission also raised concerns about the arbitrary sentencing of capital cases and the lack of adequate safeguards to protect the rights of death row prisoners.<sup>52</sup>

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52. Government of India, Law Commission of India, "Report No. 262: The Death Penalty", August 2015, ii, p213-218, <http://lawcommissionofindia.nic.in/reports/Report262.pdf>

# INDONESIA

## Drug crimes punishable by death

- Production<sup>53</sup>
- Trafficking<sup>54</sup>
- Organised crime involving drugs<sup>55</sup>
- Involving children or other vulnerable persons in drug crimes<sup>56</sup>

NUMBER OF EXECUTIONS PER YEAR***											
Year	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015*
Total executions	n/a	n/a	1	10	0	0	0	0	5	0	14
Executions for drug crimes	n/a	n/a	0	2	0	0	0	0	2	0	14

Note: "n/a" indicates that no official or verifiable information was found.

NUMBER OF NEW DEATH SENTENCES PER YEAR***											
Year	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015*
Total new sentences	n/a	n/a	11+	10+	n/a	7+	6+	12+	16+	6+	n/a
New sentences for drug crimes	n/a										

Note: "n/a" indicates that no official or verifiable information was found.  
 "+" indicates that the actual number of sentences is likely higher.

RATIFICATION OF RELEVANT INTERNATIONAL INSTRUMENTS	
Instrument	State Party
ICCPR	Yes, since 2006
CAT	Yes, since 1998

At its last Universal Periodic Review in front of the UN Human Rights Council on 23 May 2012, Indonesia rejected recommendations to impose an official moratorium on the death penalty, despite not having executed anyone during the previous 4 years. It defended its retention of the death penalty as a punishment of last resort and insisted that it was used only for serious crimes. Indonesia resumed executions the next year in 2013, and executed 5 people without prior announcement, violating basic due process guarantees. As of December 2014, at least 130 people remained on death row, 64 of them for drug trafficking.<sup>57</sup> Indonesia again attracted significant international attention when 14 executions were carried out in mid-2015, all for drug crimes.

\* From 1 January 2015 to 31 July 2015

\*\*\* Based on documented cases

53. Indonesia Narcotics Law (2009), article 113, article 118.

54. Indonesia Narcotics Law (2009), article 113, article 114, article 116, article 118, article 119, article 121.

55. Indonesia Law on Psychotropic Substances (1997), article 59.

56. Indonesia Law on Child Protection (2002), article 89; Indonesia Narcotics Law (2009), article 133.

57. Amnesty International, Death Sentences and Executions 2014, ACT 50/001/2015, 2015, p.31.

## Historical context of the imposition of the death penalty for drug crimes

The death penalty was inherited from Dutch colonial rule over Indonesia, and remains in Indonesia's laws until today. The law permitting the use of the death penalty for drug crimes was expanded when the Narcotics Law<sup>58</sup> and the Law on Psychotropic Substances were passed in 1997.

The use of the death penalty was challenged in front of the Constitutional Court in 2007 specifically on its applicability for drug crimes, and again in 2008 regarding the methods of execution used in Indonesia. In both cases, the Court decided after judicial review that the use of the death penalty in Indonesia is not unconstitutional.

The issue of the death penalty has become an accessory to electoral campaigns in Indonesia, used to gain political capital and win votes. Electoral candidates, in the most recent and past elections, declared their support for using the death penalty to demonstrate commitment to a firm stance on fighting crime in the country. Not only is this used as a tool to garner enough support to be elected into office, it has also been used to build greater domestic legitimacy whilst in power. The current government under President Joko Widodo's leadership has had a firm and uncompromising attitude towards the use of capital punishment. In 2015, President Widodo declared a "war on drugs," emphasizing how many young people in Indonesia die every year due to drug overdoses, and stating that he has refused to grant clemency to drug traffickers.<sup>59</sup>

## Justifications given for retaining the death penalty for drug crimes

### Protecting the population from the harm of drugs

The current government under President Widodo's leadership has defended the death penalty for drug crimes primarily with the argument that drug crimes are a very serious problem in Indonesia, serious enough to justify the use of the death penalty. In a recent speech by President Widodo at a national coordination meeting on tackling the drug problem, he made reference to findings by the Indonesian Narcotics Agency (the Badan Narkotika Nasional). The severity of the problem has been illustrated with statistics compiled by the agency, which allege that 4.5 million Indonesians are drug addicts, and 40-50 people die every day because of narcotics, and claim that there is a "state of emergency" due to drug problem. These statistics have however been contested by leading health experts and academics, as the methodology used to calculate these numbers is questionable.<sup>60</sup>

### Religious principles

Even though Indonesia is a secular country that recognises various religions, Islam is still the religion of the majority of the population, and has been referenced by the government and public supporters of the death penalty to justify its retention. However, this has been contested by several Muslim scholars, including Indonesian professor Siti Musdah Mulia, who stated that "the Islamic teaching is not compatible with the death penalty."<sup>61</sup>

58. Later amended in 2009

59. BBC, "Indonesia executions: Joko Widodo stands firm", 28 April 2015, <http://www.bbc.co.uk/news/world-asia-32502385>

60. *The Guardian*, "Data used by Indonesia to justify drug laws is 'questionable', say experts", 5 June 2015, <http://www.theguardian.com/world/2015/jun/05/experts-criticise-data-used-by-indonesia-to-justify-punitive-drugs-policies>; and *The Jakarta Globe*, "Commentary: Indonesia's Executions of Drug Convicts Based on Faulty Stats", 6 February 2015, <http://jakartaglobe.beritasatu.com/opinion/executions-based-on-faulty-stats/>

61. United Nations Office of the High Commissioner for Human Rights, *Moving Away from the Death Penalty: Arguments, Trends and Perspectives*, p.178-179.

## Public opinion

There is generally strong public support for the death penalty, since it has been framed by the government as a necessary approach to combat serious crimes in Indonesia. An independent analysis in 2012 of several opinion polls conducted by the media revealed that support for the death penalty in general has consistently been at about 75%.<sup>62</sup>

There are some groups in particular within Indonesia that strongly support the death penalty, which have religious affiliations or connections to the government. Religious groups such as the Nadhlatul Ulama have relied on their interpretations of verses in the Koran to make the argument that a lifestyle that involves drug use and the harm it causes is contrary to standards prescribed by Islam. Groups such as the National Anti-Drugs Movement (Granat) that have a strong relation with the government have also advocated for the use of the death penalty against drug crimes.

## Additional human rights concerns related to the imposition of the death penalty

The justice system in Indonesia is plagued by corruption, which contributes to ineffective law enforcement and undermines the rule of law in the country.<sup>63</sup> This is of particular concern in a country that actively imposes the death penalty, as fair trial and due process guarantees are often violated in cases that involve life and death. For example, during the trial of the Australian nationals eventually convicted and executed in 2015 for drug trafficking in Indonesia, the Australian government alleged that the trials were tainted by corruption, with judges accused of requesting money in exchange for handing down reduced sentences instead of the death penalty.<sup>64</sup>

## Possible progress towards reducing the death penalty

Public debate surrounding the use of the death penalty increased significantly in 2015, with greater open support or opposition, particularly on online media such as social media. Among those most active in this debate are individuals from the middle class who have access to various sources of information to inform their understanding about the death penalty, underlying the importance of providing the public with information and opportunities to discuss and debate such policies.

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62. Lowly Institute for International Policy, "A Key Domino: Indonesia's Death Penalty Politics", 1 March 2012, <http://www.lowlyinstitute.org/publications/key-domino-indonesias-death-penalty-politics>

63. The Economist, "Corruption in Indonesia: A damnable scourge", 6 June 2015, <http://www.economist.com/news/asia/21653671-jokowis-arduous-task-cleaning-up-government-damnably-scourge>

64. Reuters, "Indonesia rebuffs last-ditch bids to delay drug-convict executions", 27 April 2015, <http://www.reuters.com/article/2015/04/27/us-indonesia-executions-trials-idUSKBN0NI08M20150427>

# IRAN

## Drug crimes punishable by death

- Production<sup>65</sup> (mandatory death penalty)
- Possession<sup>66</sup> (mandatory death penalty)
- Trafficking<sup>67</sup> (mandatory death penalty)
- Involving children or other vulnerable persons in drug crimes<sup>68</sup> (mandatory death penalty)
- Organised crime involving drugs<sup>69</sup> (mandatory death penalty)
- Armed drug crimes<sup>70</sup> (mandatory death penalty)
- Repeat convictions for drug crimes<sup>71</sup> (mandatory death penalty)
- Coercing others to take drugs<sup>72</sup> (mandatory death penalty)
- Framing others for drug crimes<sup>73</sup> (mandatory death penalty)

NUMBER OF EXECUTIONS PER YEAR								
Year	2005		2006		2007		2008	
	official statistics	documented cases						
Total executions	94	n/a	117	n/a	335	n/a	346	n/a
Executions for drug crimes	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a

NUMBER OF EXECUTIONS PER YEAR								
Year	2009		2010		2011		2012	
	official statistics	documented cases						
Total executions	389	n/a	253	553+	360	659+	314	544+
Executions for drug crimes	n/a	166+	n/a	172+	n/a	488+	n/a	351+

65. Anti-Narcotics Law of 1997, amended 2010 ('Anti-Narcotics Law'), article 2, article 5, article 8, article 40.

66. Anti-Narcotics Law, article 5, article 8, article 40. .

67. Anti-Narcotics Law, article 4, article 5, article 8, article 12, article 40.

68. Anti-Narcotics Law, article 35

69. Anti-Narcotics Law, article 18.

70. Anti-Narcotics Law, article 11.

71. Anti-Narcotics Law, article 5, article 6, article 9, article 40.

72. Anti-Narcotics Law, article 35

73. Anti-Narcotics Law, article 26.

NUMBER OF EXECUTIONS PER YEAR						
Year	2013		2014		2015*	
	official statistics	documented cases	official statistics	documented cases	official statistics	documented cases
Total executions	369	704+	289	743+	n/a	694+
Executions for drug crimes	n/a	325+	n/a	367+	n/a	453+

Note: "n/a" indicates that no official or verifiable information was found.  
 "+" indicates that the actual number of executions is likely higher.

NUMBER OF NEW DEATH SENTENCES PER YEAR***											
Year	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015*
Total new sentences	n/a	n/a	n/a	n/a	n/a	n/a	156+	79+	91+	81+	n/a
New sentences for drug crimes	n/a										

Note: "n/a" indicates that no official or verifiable information was found.  
 "+" indicates that the actual number of sentences is likely higher.

RATIFICATION OF RELEVANT INTERNATIONAL INSTRUMENTS	
Instrument	State Party
ICCPR	Yes, since 1975
CAT	No

Domestic law in Iran provides for extensive application of the death penalty, with capital punishment applicable for a wide range of offenses beyond the "most serious crimes," and even imposed on minors. Following the announcement of a crackdown on drug trafficking by the Judiciary in late 2010 and amendments to the Anti-Narcotics Law that came into force in January 2011, there has been a very large and still increasing rise in the number of executions, particularly for drug crimes. Iran is believed to have one of the highest rate of executions per capita in the world, and drug offenses continue to account for a majority of these executions. Iranian authorities have acknowledged that 75% - 80% of executed convicts are convicted of drug-related offences but they have not provided an exact number.<sup>74</sup>

\* From 1 January 2015 to 31 July 2015

\*\*\* Based on documented cases

74. Euronews, "Tehran's top human rights official says some Iranian laws need reforming", 15 March 2015, <http://www.euronews.com/2013/03/15/tehran-s-top-human-rights-official-says-some-iranian-laws-need-reforming/>

# Justifications given for retaining the death penalty for drug crimes

## Religious principles

The legal system in Iran is largely based on a traditional interpretation of Islamic Shariah law, which allows for the imposition of the death penalty for "corruption on earth." Several judicial authorities in Iran have supported the interpretation that drug crimes constitute "corruption on earth" and should thus carry the death penalty,<sup>75</sup> such as Minister of Justice Mostafa Pourmohammadi, who stated in 2014 that "those who distribute drugs and contaminate countless number of people and deprive them of their human identity are corruptors [on earth] and deserve to be executed."<sup>76</sup>

## Deterrent effect

The Iranian authorities claim that retaining the death penalty for drug crimes acts as an effective deterrent and thus protects Iranian society from the grave negative consequences of drug trafficking. The Head of Justice Department of Yazd province, Mohammareza Habibi, has stated that "people who distribute home-ruining and destructive drugs must be severely punished" and "executions would reduce the availability of drugs and control their presence in the country."<sup>77</sup>

Protecting national security is often also cited as a reason for Iran's severe sentences for drug crimes, particularly insofar as they are imposed on Afghans charged with drug offences along the Afghanistan-Iran border. Afghanistan is one of the world's largest producers and exporters of drugs, and Iran has argued that drug smuggling is currently the major source of funding for terrorists and extremist groups, which pose a significant security threat to Iran and the region. It has argued that the security threat to Iran and its neighbours, exacerbated by funding from drug trafficking is serious enough to warrant the death penalty for drug crimes.

## Support from international donors

The international support and praise that Iran has received for its counternarcotics efforts, including from the UN Office on Drugs and Crime (UNODC)<sup>78</sup>, has also allowed the Iranian authorities to justify their approach to combating drug crimes. Iran has received financial and other assistance for its counter-narcotics programmes and forces, both through multilateral agencies such as the UNODC, and bilaterally from other countries who prioritise controlling drug trafficking in the region. For example, equipment, training and intelligence sharing from Europe have substantially developed the capacity of Iran's Anti-Narcotics Police. It has however been argued that this increased capacity, and targets set by donors for amounts of drugs to be seized as a condition for aid, have ended up enabling and encouraging arrests and convictions for crimes which carry the death

75. Aftabir news website, "Circular Letter No. 1/44483 from Supreme Judicial Council issued to all courts, dated 7 December 1988", which deems the death penalty in relation to drug crimes to be in compliance with Islamic tenets when the perpetrator's action is extensive enough to warrant the title of "corruptor on earth.", 2 July 2007, <http://www.aftabir.com/articles/view/social/law/c4c1183387988p1.php/%D9%85%D8%AC%D8%A7%D8%B2%D8%A7%D8%AA-%D8%A7%D8%B9%D8%AF%D8%A7%D9%85-%D8%AF%D8%B1-%D8%AC%D8%B1%D8%A7%D8%A6%D9%85-%D9%85%D9%88%D8%A7%D8%AF-%D9%85%D8%AE%D8%AF%D8%B1> (in Farsi, unofficial translation)

76. Iranian Students' News Agency, "We do not accept positions of human rights claimers in the fight against drugs", 18 November 2014, <http://isna.ir/fa/news/93082714299/%D9%85%D9%88%D8%A7%D8%B6%D8%B9-%D9%85%D8%AF%D8%B9%DB%8C%D8%A7%D9%86-%D8%AD%D9%82%D9%88%D9%82-%D8%A8%D8%B4%D8%B1-%D8%B1%D8%A7-%D8%AF%D8%B1-%D9%85%D8%A8%D8%A7%D8%B1%D8%B2%D9%87-%D8%A8%D8%A7-%D9%85%D9%88%D8%A7%D8%AF> (in Farsi, unofficial translation)

77. Dadiran (website of the Judiciary of the Islamic Republic of Iran) "Head of Justice Department of Yazd: Execution of drug traffickers plays a deterrent role", 24 December 2014, <http://dadiran.ir/Default.aspx?tabid=2351&articleType=ArticleView&articleId=76867> (in Farsi, unofficial translation)

78. UNODC, "UNODC Director Praises Iran's Drug Control Efforts, Calls For Greater International Support", 20 May 2009, <https://www.unodc.org/islamicrepublicofiran/en/unodc-director-praises-irans-drug-control-efforts.html>

penalty in violation of human rights standards.<sup>79</sup> A direct correlation has therefore been drawn between international assistance and increasing executions for drug crimes in Iran, and has led to calls by human rights groups and others for donor countries and the UN to ensure that they do not support counternarcotics efforts that contravene international human rights standards, such as those that apply the death penalty for drug crimes.

## **Additional human rights concerns related to the imposition of the death penalty**

### **Disproportionate impact on those in vulnerable situations**

The use of the death penalty for drug crimes in Iran has disproportionately affected disadvantaged groups in society, especially ethnic and religious minorities, migrants, and women.<sup>80</sup> These individuals are particularly vulnerable to extreme poverty and have little access to economic opportunities. Driven to desperation, they often turn to carrying or smuggling drugs to survive. Drug trafficking is directly linked to poverty in many cases in Iran, a problem that cannot be addressed through harsh penalties for drug crimes. Iran's strict drug laws do not take the socio-economic motivations of low-level drug traffickers into account, and thus result in the disproportionate targeting of individuals in vulnerable situations.

### **Execution of juvenile offenders**

The ICCPR clearly prohibits the imposition of the death penalty on individuals who are under the age of 18 when they allegedly committed the crime. However, human rights groups have documented several juvenile offenders that have been sentenced to death and even executed for drug crimes in Iran, including a number of young Afghan nationals. In April 2014, a 17 year-old Afghan national was executed in Isfahan for drug trafficking; he was 15 years old at the time that he allegedly committed the crime.<sup>81</sup>

### **Lack of fair trial and procedural guarantees**

The lack of safeguards to ensure fair trial and due process in the Iranian justice system makes the widespread imposition of the death penalty for drug crimes even more concerning. Persons accused of drug crimes are often denied access to a lawyer of their choice, and sometimes given access to legal counsel only minutes before their trial is due to commence, if at all. There have also been cases where the death sentence has been handed down despite a lack of evidence proving

"Between 2009 and 2011, I represented five defendants—two men and three women — in a drug crimes case. All were executed.

These individuals came from very poor families in Hamadan. All three women were heads of their households. Two of them had husbands who had previously been sentenced to life in prison, and they did not have any means to support themselves. The third had a husband who was a drug addict who could not work. When one of them was executed, her family did not have any funds available for her burial.

The case involved the sale of 6 kilograms of heroin, which was transported from Tehran to Hamadan. Although the authorities knew about the transaction in advance, they did not arrest the driver of the vehicle delivering the heroin. It appeared that this person was working with the police.

Most individuals arrested for alleged drug-related offenses are tortured to elicit false confessions. In this case, one of my clients was tortured, and she always stated that she was not aware of the illicit drugs being transported.

The two men had previously been serving sentences on other drug charges. They had been granted temporary leave from prison, and in an attempt to solve financial difficulties caused by years of imprisonment, they transported these drugs for others. The real owner of the drugs was never identified. We requested further investigations, but they were never carried out. During this time, I was threatened a number of times by the prosecutor and employees of the Revolutionary Court of Hamadan."

**Hossein Raeesi, Legal Advisor, Iran  
Human Rights Documentation Center**

79. Reprieve, "European Aid for Executions: How European counternarcotics aid enables death sentences and executions in Iran and Pakistan", November 2014, p.5.

80. Sanaz Alasti, "Women and the Death Penalty in Iran", in Ensemble contre la peine de mort, "On the death penalty in Iran", p.71.

81. Office of the UN High Commissioner for Human Rights. "Iran: Execution of juvenile offenders breaches international law – Pillay", 26 June 2014, <http://www.ohchr.org/FR/NewsEvents/Pages/DisplayNews.aspx?NewsID=14780&LangID=F>

the defendant's guilt, since the "religious intelligence of judges" is valued over physical evidence.<sup>82</sup> Additionally, the law does not afford the right to appeal to individuals convicted of drug crimes. The failure to ensure these fair trial and procedural standards is a direct violation of Article 14 of the ICCPR.

As the law is written, the death sentence appears to be the only punishment prescribed for some drug offences. However, whether the death penalty is practically imposed in a mandatory fashion is hard to determine due to the lack of independence and transparency of Iran's judicial system. Article 38 of Iran's Anti-Narcotics Law does allow for the consideration of mitigating factors when determining sentencing, but for cases involving the death penalty, the request for amnesty and punishment mitigation must be referred to the Judiciary's Central Commission on Pardons and Amnesty. The Commission's Rules of Procedure require it to ask the opinion of the official bodies concerned (i.e. the Anti-Narcotics HQ for drug-related charges) to determine if a sentence can be reduced. The Rules of Procedure also rule out amnesty for "professional traffickers," a term that is defined on a case-by-case basis by the Head of the Judiciary. In addition, judges are known to be corruptible and the judiciary is not independent from the other branches of government, sometimes resulting in reduced sentences for drug crimes that supposedly carry a mandatory death sentence when bribes are given or political influence exerted.

## Possible progress towards reducing the death penalty

Individuals who openly support the death penalty in Iran often cite that it is in line with Islamic principles. Others state that they believe the death penalty is necessary to prevent the negative impacts that drug trafficking has on society. However, the culture of fear and intimidation created by the Iranian government, by repressing freedom of expression and frequently imprisoning those who speak out against the regime, has prevented informed public debate around the issue of the death penalty and made it difficult to gauge whether those who publicly express support for the death penalty are doing so out of genuine belief that it is a good policy, or are simply trying to appear supportive of the government.

It has been observed however, that public opinion on the use of the death penalty in general might be shifting as a result of various factors. Prominent Iranians including artists and actors have called on families of murder victims to not demand the death penalty for these crimes,<sup>83</sup> and helped to promote pardon instead of retribution. Additionally, increasing discontent with the despotic and corrupt practices of the State has been contributing to a growing consciousness about the problems with public institutions, which has led many Iranians to question the government's policies and practices, including the death penalty.

In addition, pressure from the international community on Iran to address the many human rights violations in the country, including the use of the death penalty, seems to have resulted in some statements from Iranian authorities referring to the possibility of reducing death sentences and executions.<sup>84</sup> At the same time, the Judiciary has publicly stated that it has no plans to reduce the scope of the death penalty, and no concrete steps have been undertaken as of yet to reduce punishments for drug crimes.<sup>85</sup> These contradicting statements from the authorities indicate either a lack of consensus within the government, or that statements made in support of reducing the use of the death penalty are not genuine.

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82. Hossein Raeesi, "Lawyers in Death Penalty Cases", in Ensemble contre la peine de mort, "On the death penalty in Iran", p.31.

83. According to Iranian law, the family of a murder victim has the right to demand that the murderer, if convicted, be put to death.

84. Etemad Newspaper, "Secretary of the Human Rights HQ of the Judiciary has reported the possibility of amending the laws concerning execution of drug traffickers", 7 December 2014, <http://etemadnewspaper.ir/1393/09/16/Main/PDF/13930916-3126-13-11.pdf>

85. Fars News Agency, 84th press conference of the Judiciary's spokesperson, 30 August 2015, <http://www.farsnews.com/newstext.php?nn=13940608000876>

# JAPAN

## Drug crimes punishable by death

None

NUMBER OF EXECUTIONS PER YEAR***											
Year	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015*
Total executions	n/a	n/a	9	15	7	2	0	7	8	3	1

Note: "n/a" indicates that no official or verifiable information was found.

NUMBER OF NEW DEATH SENTENCES PER YEAR***											
Year	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015*
Total new sentences	n/a	n/a	n/a	27	34	14	10	3	5	2	n/a

Note: "n/a" indicates that no official or verifiable information was found.

RATIFICATION OF RELEVANT INTERNATIONAL INSTRUMENTS	
Instrument	State Party
ICCPR	Yes, since 1979
CAT	Yes, since 1999

Japan may not impose the death penalty for drug crimes, but the government has traditionally taken a tough public stance against drug offences and the multiples laws that exist for drug control impose life imprisonment for certain drug crimes.

## Justifications given for retaining the death penalty in general

### Public opinion

Even though the death penalty is not imposed for drug crimes, it is still being practiced for other crimes and public opinion is used as an argument by the government to retain the death penalty in general. A survey carried out by the government of Japan's Cabinet Office in 2015 concluded that more than 80% of the public "accept" the death penalty.<sup>86</sup>

\* From 1 January 2015 to 31 July 2015

\*\*\* Based on documented cases

86. *Japan Times*, "Cabinet Office poll: 80% of respondents think death penalty 'permissible'", 25 January 2015, <http://www.japantimes.co.jp/news/2015/01/25/national/cabinet-office-poll-80-of-respondents-think-death-penalty-permissible/#.VhHkGHjFt-U>

However, there are nuances to this apparently broad support for the death penalty that have been explored by other studies.

According to a study by independent researchers in February to March 2015, which asked respondents to rate their level of support for the death penalty along a spectrum, only 27% of respondents were strongly in favour of the death penalty. These researchers also examined the Cabinet Office survey further, and found that of the respondents who "accepted" the death penalty, only 30% were strongly in favour and the other 70% would accept abolition if initiated by the government. The research shows that only a minority of the general public are really committed to keeping the death penalty, and that public opinion does not pose a serious obstacle to the abolition of the death penalty.<sup>87</sup>

## **Tension between domestic policy against the death penalty for drugs and diplomatic relations with China**

Even though the death penalty is not imposed for drug crimes in Japan, the Japanese government has not voiced much opposition to the execution of its citizens for drug crimes abroad. Since 2010, 6 Japanese nationals are known to have been put to death in China for drug-related crimes (but the actual number may be higher, given the high rate of executions in China, and that many are carried out in secrecy). The Japanese government apparently communicated an "interest" in these cases to the Chinese authorities, but did not make many public statements or demands regarding these cases.<sup>88</sup> This stands in stark comparison to the strong public positions taken by other governments around the world when their own nationals are at risk of execution abroad. There was however, strong criticism from the Japanese public over both the executions by the Chinese authorities and the weak response by the Japanese authorities.<sup>89</sup>

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87. *Japan Times*, "Public support for death penalty not overwhelming, researchers say", 16 September 2015, <http://www.japantimes.co.jp/news/2015/09/16/national/public-support-death-penalty-not-overwhelming-researchers-say/#.VgvzdBNVikr>

88. *Japan Times*, "China executes Japanese man for drug trafficking", 17 July 2015, <http://www.japantimes.co.jp/news/2015/07/17/national/crime-legal/china-executes-japanese-man-drug-trafficking/#.VhIrfnjFt-U>

89. Center for Prisoners' Rights Japan, "Statement on Imminent Execution of Japanese Citizens by China", 4 April 2010, [http://www.cpr.jca.apc.org/sites/all/themes/cpr\\_dummy/Doc/CPR%20Statement%20on%20Imminent%20Execution\\_20100404.pdf](http://www.cpr.jca.apc.org/sites/all/themes/cpr_dummy/Doc/CPR%20Statement%20on%20Imminent%20Execution_20100404.pdf)

# LAOS

## Drug crimes punishable by death

- Production<sup>90</sup> (mandatory death penalty)
- Trafficking<sup>91</sup> (mandatory death penalty)
- Possession<sup>92</sup> (mandatory death penalty)

NUMBER OF EXECUTIONS PER YEAR**											
Year	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015*
Total executions	0	0	0	0	0	0	0	0	0	0	0
Executions for drug crimes	0	0	0	0	0	0	0	0	0	0	0

NUMBER OF NEW DEATH SENTENCES PER YEAR***											
Year	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015*
Total new sentences	n/a	n/a	n/a	n/a	n/a	4+	n/a	n/a	3+	n/a	n/a
New sentences for drug crimes	n/a	n/a	n/a	n/a	n/a	4	n/a	n/a	3	n/a	n/a

Note: "n/a" indicates that no official or verifiable information was found.  
 "+" indicates that the actual number of sentences is likely higher.

RATIFICATION OF RELEVANT INTERNATIONAL INSTRUMENTS	
Instrument	State Party
ICCPR	Yes, since 2009
CAT	Yes, since 2012

Laos has not officially executed anyone since 1989, but has continued to hand down death sentences. Since the government does not publish statistics, it is not clear how many actual death sentences have been handed down and for what type of offences. At the end of 2008, the government stated that there were 85 people on death row for drug crimes, but this number could not be confirmed by independent sources.

\* From 1 January 2015 to 31 July 2015

\*\* Based on official statistics

\*\*\* Based on documented cases

90. Lao People's Democratic Republic, Penal Law (2005), article 146.

91. Lao People's Democratic Republic, Penal Law (2005), article 146.

92. Lao People's Democratic Republic, Penal Law (2005), article 146.

As of September 2015, human rights groups have documented at least 92 people convicted for drug crimes currently on death row in Laos. The lack of transparency coupled with existing mistrust in the government has raised scepticism over the authenticity of official information that the government releases. The Laotian government rarely gives precise facts and detailed data, especially on matters relating to detention, and have also denied the arrest and detention of prisoners of conscience in the past, which raises doubt as to whether its statements regarding death sentences and executions reflect its actions in reality.<sup>93</sup>

## Justifications given for retaining the death penalty for drug crimes

"It seems that most Lao people accused or charged with drug crimes, are in practice often not represented or defended by a lawyer, unless they happen to be from a rich family. So it goes in Laos for Lao citizens, despite what it says in the law.

It is different when it concerns foreigners, particularly European nationals who are charged with drug crimes when they can contact their family. I am thinking of the case of a 19 year-old British woman who was charged with drug crime back in 2009/2010. She saw her death sentence reduced to life sentence because she became pregnant in jail. After a very mediated case in Britain and negotiations between the two countries, she was returned to British custody under a treaty that agreed to enforce her life sentence for smuggling heroin. She had lawyers from England. But that's not the case with Lao people."

Human rights defender  
from MLDH, a Lao NGO

### Deterrent effect

The Laotian government has defended its retention of the death penalty before the UN stating that it "retains death penalty in its legal system merely as a measure to deter the most serious crimes."<sup>94</sup> The authorities have also publicly stated that "the use of the death penalty is unavoidable" as the "death penalty is necessary to punish people who have committed crimes that are harmful to the state, economy and society" and to "fight crimes like drug trafficking."<sup>95</sup>

### Possible progress towards reducing the death penalty

In June 2015, during its last review by the UN regarding the human rights situation in Laos, the Laotian government stated that they were "in the process of creating a new comprehensive Penal Code. In this process, the list of offenses subject to death penalty under the current Penal Law is being revised so as to be fully in compliance with Article 6 of the ICCPR."<sup>96</sup> In order for this to be achieved, the use of the death penalty for drug crimes would have to be completely removed from the Penal Code. Despite these pledges, civil society groups in Laos doubt that these reforms will actually take place, noting that the government has never made any effort to adjust the Constitution or the Penal Code to conform to international law.

### Additional human rights concerns related to the imposition of the death penalty

#### Lack of fair trial and procedural guarantees

Given the lack of transparency surrounding the death penalty, and Laos's reputation for violating due process rights and engaging in arbitrary detentions, there is good reason for concern that Laos is failing to ensure that the highest standards

93. Examples of government misinformation regarding detentions are numerous, including the case of 5 leaders of *Students Movement of 26 October 1999* who were arrested in 1999 and whom the government officially claims have been released but who have not been seen since their arrest.

94. Lao People's Democratic Republic responses to the Universal Periodic Review, A/HRC/29/7/Add.1, 23 June 2015.

95. Laos National Assembly Members, Debate on the amendment of the Law on Criminal Procedure in 2012.

96. Lao People's Democratic Republic responses to the Universal Periodic Review, A/HRC/29/7/Add.1, 23 June 2015.

of procedural safeguards and due process guarantees are met in cases of the death penalty, including for drug crimes. There are several reports of persons accused of drug crimes being either denied access to a lawyer or not provided with legal aid, particularly certain foreigners with few financial resources.

There have also been several reports that indicate that sentences are applied inconsistently for the same crimes, with a distinct disparity in the severity of punishment imposed on foreigners as compared to Laotians. Foreign diplomatic pressure has been successful in reducing the sentences of certain high profile cases, likewise for foreigners who have been able to pay for good legal counsel and to put media attention on their case. At the same time, Laotians and foreigners in disadvantaged economic situations find themselves facing harsher sentences for drug crimes and other offences, are denied access to legal counsel, and are often mistreated in prison.

# MALAYSIA

## Drug crimes punishable by death

- Production<sup>97</sup> (mandatory death penalty)
- Trafficking<sup>98</sup> (mandatory death penalty)
- Possession<sup>99</sup> (mandatory death penalty)

NUMBER OF EXECUTIONS PER YEAR***											
Year	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015*
Total executions	n/a	n/a	1+	1+	1+	1+	1+	0	2+	2+	0
Executions for drug crimes	n/a	n/a	n/a	n/a	n/a	0	n/a	0	n/a	n/a	0

Note: "n/a" indicates that no official or verifiable information was found.  
 "+" indicates that the actual number of executions is likely higher.

NUMBER OF NEW DEATH SENTENCES PER YEAR***											
Year	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015*
Total new sentences	n/a	n/a	12+	22+	68+	114+	108+	60+	76+	38+	n/a
New sentences for drug crimes	n/a										

Note: "n/a" indicates that no official or verifiable information was found.  
 "+" indicates that the actual number of sentences is likely higher.

RATIFICATION OF RELEVANT INTERNATIONAL INSTRUMENTS	
Instrument	State Party
ICCPR	No
CAT	No

Drug trafficking, broadly defined, carries a mandatory death penalty in Malaysia, but the Malaysian government does not release official statistics on the number of people sentenced to death or executed, so it is difficult to determine how often the death penalty is actually imposed as a punishment for drug offenses. Recently, the Prison Department Director-General Zulkifli Omar stated that as of mid-May 2015, there were 1043 death row inmates nationwide.<sup>100</sup>

\* From 1 January 2015 to 31 July 2015

\*\*\* Based on documented cases

97. Malaysia Dangerous Drugs Act (1952), Article 39B. Note that in the legislation, the crimes of production, trafficking and possession are all defined as acts of "trafficking" under article 2.

98. Malaysia Dangerous Drugs Act (1952), Article 39B.

99. Malaysia Dangerous Drugs Act (1952), Article 39B.

100. Free Malaysia today, "Sabah's death row inmates in prison since the 1990s", 13 May 2015, <http://www.freemalaysiatoday.com/category/nation/2015/05/13/sabahs-death-row-inmates-in-prison-since-the-1990s/>

## Historical context of the imposition of the death penalty for drug crimes

With the rapid rise in drug use in the 1980s, Malaysia became a major drug-user nation and authorities declared that the distribution of drugs and the spread of addiction posed a “threat to national security.”<sup>101</sup> The government argued that tough drug laws were necessary to curb the rising drug problem, and the Dangerous Drugs Act enacted in 1952 was amended to increase the powers of drug enforcement officers, shift the burden of proof to the accused person, and institute the death penalty as the only punishment for drug trafficking.

Given that drug production and trafficking continue to plague the region, the government of Malaysia has prioritised the control of drug trafficking and smuggling into and through Malaysia, which has allegedly contributed to the increase in drug use in the country as well.

## Justifications given for retaining the death penalty for drug crimes

### Public opinion

In general, there appears to be support for the death penalty among the Malaysian public, which the State uses as a justification for retaining the death penalty in law and in practice. However, there are nuances to public opinion on the death penalty that the State fails to mention when citing this public support, which are important for accurately understanding under which circumstances the general public actually supports the use of the death penalty. According to a 2013 study conducted on public opinion regarding the mandatory death penalty in Malaysia<sup>102</sup>, support for the latter is influenced by several factors, including the type of offence for which it is imposed, how serious the offence is, and whether there were mitigating circumstances. This study yielded the following results that provide a fuller picture of the public opinion on the use of the death penalty:

- Depending on the type of offence, support for imposing the death penalty varied. Murder was the only offence for which a majority of respondents favoured imposing the death penalty.
- Within the category of drug offences, support for imposing the death penalty varied depending on the type and amount of drugs involved.
- Various real-life scenarios relating to drug trafficking were described to respondents, who were then asked if they supported imposing the death penalty in

101. Malaysia, Ministry of Home Affairs, National Anti-drugs Agency, “National Drug Policy”, <http://www.adk.gov.my/web/english/drug-policy>

102. The NGO Death Penalty Project commissioned Professor Roger Hood to conduct a public opinion survey on the mandatory death penalty in Malaysia for drug trafficking, firearms offences and murder. See the Death Penalty Project, “The Death Penalty in Malaysia: Public opinion on the mandatory death penalty for drug trafficking, murder and firearms offences”, 2013, <http://www.deathpenaltyproject.org/legal-resources/research-publications/the-death-penalty-in-malaysia/>

“I met my friend on the roadside and he asked me to direct him to a carpark nearby. I jumped into his car and physically brought him there. Once he had parked, I came out and said goodbye to him and walked towards the staircase. This is when a group of police came towards us and arrested us. They said the car contained drugs.

I don't know how, but my lawyer said I lost the case and I had been sentenced to death. I was on death row for 5 years. I have no family except for my mother. She has no more money to pay the lawyer for appeal. Luckily my counsellor who visited me every Monday helped me get an appeal lawyer. I won the appeal and am free now.

I felt that the judge at my trial didn't even evaluate my case properly, and didn't hesitate to sentence me to death since I could appeal until the highest court. It is very unfair as I have spent 5 years in prison without committing the offence.”

**Former death row prisoner, convicted to death for drug trafficking in Malaysia. She was on death row for more than five years before her final appeal was allowed.**

each of the cases described. This exercise showed that respondents generally did not support imposing the death penalty for the most common drug cases for which the death penalty is imposed in Malaysia

"My son is innocent. He trusted his friends. He didn't know that the luggage he was carrying contained drugs; he really didn't know it. He said that his friend told him it contained a gold bar. I know my son very well. He would not have carried it if he knew it contained drugs.

He loves me a lot. He wants to earn more money to ease my burden. I am a petty trader in a night market. He helped me with my business before he was sent to jail.

For the past many years, I have been going to Singapore to see my son every Monday. I take the motorbike early in the morning like 5am, to reach there at 8am. I thank his lawyer Ravi and his friends for helping him. He is a good boy. He is always happy. Every time I see him, he tells me not to worry, but how can I not worry?! He wants me to take care of myself but I cannot sleep as I'm thinking of him all the time.

He does not have to die now but still he has to sit inside prison for 20 years and be caned. Why? I just want him to come home. He is innocent."

**Cheong Kah Pin, father to Cheong Chun Yin, a Malaysian sentenced to death in Singapore for drug trafficking. Following amendments to the drug law, Chun Yin sentence was reduced to life imprisonment plus 15 strokes of caning.**

- Support was even lower for mandatory death sentences. Respondents indicated that they felt the penalty should be adjusted to the circumstances of each individual case
- Most respondents were neither strongly opposed nor strongly in favour of the death penalty, and their opinion on its use changed depending on the details of each case

Respondents who supported the death penalty were asked to explain why they did, and the number one reason given was a belief in retribution – the idea that punishments should be commensurate to the crimes for which they are imposed, and that certain crimes are so heinous that the only commensurate punishment is death. It is worth noting that even though the government uses public opinion as a justification for the retention of the death penalty, the government does not refer to the idea of retribution as a rationale for the imposition of the death penalty for drug crimes. Instead, the government most often puts forth arguments about how the death penalty is allegedly effective in preventing crime. This illustrates that although the government claims that public opinion supports its use of the death penalty for drug crimes, the reason some of the public is in favour of the death penalty is different than the reason given by the government for why the death penalty is imposed.

Religious beliefs can also explain why some members of the general public may support the death penalty for drug crimes. Despite having a great racial, cultural, and religious diversity, Malaysia does have a Malay-Muslim majority, Islam is the State religion, and Malaysia has a dual justice system with Sharia laws supposedly applied only to Muslims in addition to the civil and criminal laws. Although implemented through the general criminal justice system, Malaysia's tough drug laws and death penalty for trafficking are often presented as consistent with Islam and receive the support of some people from the majority Malay-Muslim electorate.

## **Additional human rights concerns related to the imposition of the death penalty**

### **Lack of fair trial and procedural guarantees**

With regards to how crimes related to drug trafficking are prosecuted, the Malaysian criminal justice system violates several international human rights standards. One of the most concerning violations, especially due to the imposition of a mandatory death sentence if one is found to be guilty of drug trafficking, is the fact that Malaysia's counternarcotics legislation does not uphold the principle of the presumption of innocence as set out in Article 14.2 of the ICCPR. The Dangerous Drug Act sets out a long list of circumstances whereby if drugs are found in a person's possession or in their home or vehicle, the person is presumed to know the nature of the drug and to have concealed or trafficked the drug purposefully, until they can prove otherwise.<sup>103</sup> The burden of proof is placed entirely on the accused.

<sup>103</sup> Malaysia Dangerous Drugs Act 1952, Articles 35.1, and 37a to 37k.

## **Lack of transparency and public information**

Another important concern related to the imposition of the death penalty for drug crimes in Malaysia is the dearth of informed public debate regarding the death penalty. This is especially concerning since the Malaysian government cites public support as a main reason for its retention of the death penalty, yet does not provide the public the information they need in order to inform their opinion about the death penalty and reach an educated conclusion on the issue. For example, Malaysian lawyers and activists have observed that most Malaysians they speak with do not understand the distinction between the death penalty and the mandatory imposition of the death penalty as is set out for drug trafficking in Malaysia's legislation. The lack of understanding of what mandatory sentencing means in practice is likely one reason why there is no public mobilization or vocal opposition towards the mandatory death penalty for drug crimes.

Instead of offering clear and transparent statistics on the imposition of the death penalty for drug crimes and encouraging healthy public debate around these issues, the Malaysian government refuses to be transparent regarding the imposition of the death penalty, and instead focuses the public's attention on the threat of drug crimes in Malaysia to justify its harsh laws. The authorities promote a view that if drug use is not controlled through strict laws and harsh punishments, this will result in a sharp increase of drug addicts and will lead to the increase of other related crimes, and that the best defence against this is to dole out severe punishments for drug crimes. However, the authorities have yet to present any conclusive evidence to prove the assertion that the death penalty has been effective in deterring drug crimes in Malaysia.

# PAKISTAN

## Drug crimes punishable by death

- Production<sup>104</sup>
- Trafficking<sup>105</sup>
- Possession<sup>106</sup>
- Organised crime involving drugs<sup>107</sup>
- Armed drug crimes<sup>108</sup>

NUMBER OF EXECUTIONS PER YEAR***											
Year	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015*
Total executions	52	83	134	36	0	0	0	1	0	7	200
Executions for drug crimes	0	0	1	0	0	0	0	0	0	0	0

NUMBER OF NEW DEATH SENTENCES PER YEAR***											
Year	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015*
Total new sentences	362	445	319	237	277	356	313	242	227	231	254
New sentences for drug crimes	5	1	2	4	4	1	9	2	1	1	1

RATIFICATION OF RELEVANT INTERNATIONAL INSTRUMENTS	
Instrument	State Party
ICCPR	Yes, since 2010
CAT	Yes, since 2010

\* From 1 January 2015 to 31 July 2015

\*\*\* Based on documented cases

104. Control of Narcotics Substances Act (1997), section 6, section 9.

105. Dangerous Drugs Act (1930), section 13, section 14; Control of Narcotics Substances Act (1997), section 6, section 7, section 8, section 9.

106. Control of Narcotics Substances Act (1997), section 6, section 9.

107. Control of Narcotics Substances Act (1997), section 8, section 9.

108. Control of Narcotics Substances Act (1997), section 8, section 9.

Given its proximity to Afghanistan, one of the world's top producers and exporters of drugs, Pakistan has traditionally taken a tough stance against drug trafficking, including imposing the death penalty for several drug-related offences. In practice however, the death penalty has been imposed more for other offences than for drug crimes.

After a nearly seven-year moratorium<sup>109</sup>, Pakistan resumed executions in late 2014. Following a terrorist attack on a school in Peshwar in December 2014, the government announced that it would resume executions for those convicted of terrorism charges, promptly executing over 20 people in the two months that followed. Then in April 2015, the government decided to completely lift the moratorium and move ahead with executions for death row prisoners who had exhausted their avenues for appeal, regardless of their crime, and the rate of executions has been consistently high since then. Although the moratorium was supposedly lifted as a response to the threat of terrorism in Pakistan, only about 20 of the 239 people that have been executed between December 2014 and 22 September 2015 were convicted of terrorism charges.

## Justifications given for retaining the death penalty for drug crimes

### Religious principles

One of the main justifications used by the Pakistani government to defend its use of the death penalty is that it is sanctioned by Sharia. In Pakistan, the Federal Shari'at Court has authority over the Islamic interpretation of laws. Following a judgement by the Federal Shari'at Court, the government passed wide ranging amendments to the Pakistan Penal Code in 1997 identifying certain crimes as unacceptable to the orders of Islam and punishable by death.<sup>110</sup>

However, defining laws and punishments based on the opinions of the Federal Shari'at Court is particularly problematic since the latter has not been consistent with regards to what is permissible when it comes to the death penalty, and is not independent from the Executive. For instance, the Federal Shari'at Court ruled in 1981 that death by stoning is not Islamic, but reversed this decision when the then-President removed its Chief Justice and added new members to the Court.<sup>111</sup>

### Public opinion

Civil society groups in Pakistan estimate that there is generally broad support for the death penalty among the public. The death penalty for drug crimes in particular enjoys support for a variety of reasons. Firstly, the general public seems to believe that the death penalty is an effective deterrent for drug crimes, which is perceived to be important to reduce the social harm from the increasing influx of narcotics from Afghanistan. Secondly, given that the State has consistently responded to serious crimes with harsh punishments including the death penalty, this approach to criminal justice is seen as the norm by much of the public and perceived as an appropriate response to crime, including drug crimes. Thirdly, given the majority Muslim population and the government's reference to Islamic principles to justify its use of the death penalty, there is also significant support from people who believe that drug-related offences are prohibited by Islam and that the death penalty for such crimes is sanctioned by Sharia.

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109. Pakistan instituted a de-facto moratorium on judicial executions in 2008, which lasted until December 2014. The only official execution to take place during that time was a hanging in 2012 of an army soldier convicted of murder by a military court.

110. Martin Lau, "The Role of Islam in the Legal System of Pakistan", London-Leiden Series on Law, Administration and Development, Vol 9, Martinus Nijhoff Publishers, 2006, p132, 137.

111. Federal Shariat Court, Justice Shahzad Shaikh, "Historiographic Glimpses of Federal Shariat Court of Pakistan", 18 November 2011, 8, <http://www.federalshariatcourt.gov.pk/Books/Historiographic%20Glimpses%20of%20Federal%20Shariat%20Court%20of%20Pakistan.pdf>

## **Additional human rights concerns related to the imposition of the death penalty**

### **Disproportionate impact on those in vulnerable situations**

There is a general consensus among human rights groups and lawyers in Pakistan that the retention of the death penalty for drug crimes has done little to tackle drug trafficking in the country. This is likely due to the fact that most individuals who are arrested for drug crimes in Pakistan are low-level drug carriers, and rarely, if ever, do higher-level drug dealers and heads of trafficking groups get caught. Instead, most individuals arrested for drug crimes are from disadvantaged and poor communities and turn to the drug trade due to the lack of economic alternatives.

# THE PHILIPPINES

## Drug crimes punishable by death

None (Abolished the death penalty for all crimes in 2006)

RATIFICATION OF RELEVANT INTERNATIONAL INSTRUMENTS	
Instrument	State Party
ICCPR	Yes, since 1986
CAT	Yes, since 1986

As one of the few countries in Asia that has completely abolished the death penalty, the Philippines offers an interesting example of how abolition can come to pass in a country with a complicated political history and proximity to many countries who use their geographic location as a justification for imposing the death penalty for drug crimes.

## Historical context of the imposition of the death penalty for drug crimes

Under the presidency of Ferdinand Marcos (1965-1986), the death penalty was widely used, and the number of capital crimes increased substantially to include several non-violent crimes including drug-related offenses.

With a change of government in 1986, a new Constitution was adopted in 1987 that called for the death penalty to no longer be imposed and reduced all existing death sentences to life imprisonment. The deliberations by the members of the committee which drafted the 1987 Constitution articulated the arguments for why the Philippines should abolish the death penalty. These included:<sup>112</sup>

- (1) Capital punishment is inhuman because it is traumatic for the death-row inmate's family
- (2) There is no evidence of capital punishment as an effective deterrent against crimes
- (3) Life is a divine gift and it should not be decided by a human judge
- (4) Reformatory punishments are preferred over vindictive punishment

Following an upsurge of violent crimes in the Philippines in the early 1990s, in 1993 the newly-elected government passed the Republic Act No. 7659 which reinstated the death penalty for 46 different offences, including several drug crimes. The preamble of this Act states that the death penalty must be imposed because the offences listed in the Act had an "inherent or manifest wickedness, viciousness, atrocity and perversity" and thus merited capital punishment.<sup>113</sup> 1100 people were sentenced to death in the first five years

112. Amnesty International, "The Death Penalty Criminality, Justice and Human Rights". ASA/35/09/97, 1 October 1997.

113. Republic of the Philippines, Congress of the Philippines, Republic Act No. 7659, 13 December 1993, <http://www.gov.ph/1993/12/13/republic-act-no-7659/>

after this law was passed, yet none were actually executed until 1999. Between 1999 and 2000, seven executions took place in the Philippines, the first since 1976. 1999 also saw a 65-fold increase in the number of prisoners condemned to death from the previous five years.<sup>114</sup>

In March 2000, then-President Estrada announced a nine-month moratorium on executions in honour of the Christian Jubilee Year.<sup>115</sup> It is believed this was in response to the mounting pressure from Christian groups in the Philippines calling for an end to the death penalty. These calls were countered by other groups who demanded the death penalty be reinstated in the face of rising crime, echoing statements made by President Estrada that executions would serve as a warning to would-be criminals, especially rapists and drug-traffickers.<sup>116</sup> In spite of consistently high crime rates in the early 2000s, no more judicial executions took place. In mid-2006, then President Arroyo signed a bill into law that officially abolished the death penalty for all crimes in the Philippines. The bill was passed by both chambers of the Philippines Congress by an overwhelming majority.<sup>117</sup>

## **Factors that contributed towards abolition**

### **Political leadership**

The positions taken by subsequent heads of State in the Philippines were often the determining factor affecting the status of the death penalty in the Philippines. Many governments in Asia argue that they cannot abolish the death penalty because public opinion is in favour of it. However, in the Philippines, like many abolitionist countries around the world, the death penalty was abolished despite strong public support for capital punishment at the time. This was largely due to decisions taken by government leaders to push forward reforms that were in line with international human rights standards, regardless of the domestic public debate around the issue.

### **Advocacy by human rights groups and the Roman Catholic church**

In 1997 a civil society Task Force to campaign against the death penalty was formed between the Free Legal Assistance Group, the Coalition against the Death Penalty, the Catholic Bishops Conference, and Amnesty International. Despite attempts at re-introduction of the death penalty by proponents of capital punishment, the sustained campaign efforts of non-governmental organisations and strong opposition by the Philippines Commission on Human Rights contributed to the eventual abolition of the death penalty.<sup>118</sup>

In addition, the Roman Catholic Church and its influence over the majority Catholic population in the Philippines played an important role in the abolition effort. The church also contributed to the 1986 Constitutional Commission's debates, emphasizing the importance of respecting life and calling for reformatory measures in crime management.

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114. BBC, "Philippines execution first of millennium", 4 January 2000, <http://news.bbc.co.uk/2/hi/asia-pacific/590220.stm>

115. BBC, "Philippines suspends death sentence", 24 March 2000, <http://news.bbc.co.uk/2/hi/asia-pacific/689440.stm>

116. BBC, "Philippines execution first of millennium", 4 January 2000, <http://news.bbc.co.uk/2/hi/asia-pacific/590220.stm>

117. David T. Johnson and Franklin E. Zimring, "A Lesson Learned", in *The Next Frontier: National Development, Political Change, and the Death Penalty in Asia*, Oxford University Press, 2009.

118. International Commission against the Death Penalty, "How States abolish the death penalty", 15 April 2013, 20-21.

# SINGAPORE

## Drug crimes punishable by death

- Production<sup>119</sup> (mandatory death penalty)
- Trafficking<sup>120</sup> (mandatory death penalty)

NUMBER OF EXECUTIONS PER YEAR								
Year	2005		2006		2007		2008	
	official statistics	documented cases						
Total executions	8	n/a	8	n/a	3	2+	6	1+
Executions for drug crimes	n/a	1+	n/a	n/a	2	2+	2	n/a

NUMBER OF EXECUTIONS PER YEAR								
Year	2009		2010		2011		2012	
	official statistics	documented cases						
Total executions	5	1+	0	1+	4	0	0	0
Executions for drug crimes	3	n/a	0	n/a	2	0	0	0

NUMBER OF EXECUTIONS PER YEAR						
Year	2013		2014		2015*	
	official statistics	documented cases	official statistics	documented cases	official statistics	documented cases
Total executions	0	0	2	2	1	1
Executions for drug crimes	0	0	2	2	0	0

Note: "n/a" indicates that no official or verifiable information was found.  
 "+" indicates that the actual number of executions is likely higher.

\* From 1 January 2015 to 31 July 2015

119. Singapore Misuse of Drugs Act (1973) (last amended 31 March 2008), article 6.

120. Singapore Misuse of Drugs Act (1973) (last amended 31 March 2008), article 5, article 7.

NUMBER OF NEW DEATH SENTENCES PER YEAR***											
Year	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015*
Total new sentences	n/a	n/a	2+	5+	6+	8+	5+	2+	1+	3	n/a
New sentences for drug crimes	n/a	3	n/a								

Note: "n/a" indicates that no official or verifiable information was found.  
 "+" indicates that the actual number of sentences is likely higher.

RATIFICATION OF RELEVANT INTERNATIONAL INSTRUMENTS	
Instrument	State Party
ICCPR	No
CAT	No

In July 2011, Singapore halted executions to review its use of the mandatory death penalty. This review led to the passing of two bills on 14 November 2012 to abolish the mandatory death penalty for non-intentional murders and drug trafficking, and introduced greater discretion for judges to decide on sentencing. These laws came into force in January 2013.

Despite these legislative reforms, civil society is concerned that the attitude and approach of the authorities in tackling the problem of drug offences has not changed. Emphasizing the need to protect its citizens from the danger of drugs, the government has ignored the rights of those accused and convicted of drug crimes and violated international standards on restricting the death penalty to the "most serious crimes." Even though the mandatory death penalty has been repealed and greater judicial discretion has been introduced in capital cases, the death penalty is still retained for drug crimes and without greater public oversight.

## Justifications given for retaining the death penalty for drug crimes

### Deterrent effect

The government has often stated that the death penalty is an effective form of deterrence against drug offences, and that such a deterrent is necessary given Singapore's geographic proximity to key drug producing areas and the fact that its ports, among the busiest in the world, make Singapore an attractive transit point for drug trafficking.<sup>121</sup> However, civil society and other critics of the death penalty have countered this argument with statistical evidence and studies disproving the supposed deterrent effect of the death penalty on

\* From 1 January 2015 to 31 July 2015

\*\*\* Based on documented cases

121. Singapore, Ministry of Law, "Response by Minister for Law, Mr K Shanmugam, during the Second Reading of the Misuse of Drugs (Amendment) Bill", 14 November 2012, para 14, <https://www.mlaw.gov.sg/news/parliamentary-speeches-and-responses/response-by-minister-for-law--mr-k-shanmugam--during-the-second-.html>

crime.<sup>122</sup> The government has yet to present evidence in support of the deterrence argument, and has simply restated that Singapore's success in reducing drug crime and its status as one of the safest places in the world is sufficient proof that the death penalty can be an effective deterrent.<sup>123</sup> In this statement, the authorities have ignored the fact that there are other factors that have likely contributed to reducing the rate of drug crimes in Singapore, and have not provided evidence to show that the death penalty directly causes lower crime rates.

## Public opinion

The government has also claimed that there is general support among the public for the death penalty. Nevertheless, government claims regarding public opinion on this issue are troublesome for several reasons. Firstly, the media space in Singapore is very limited, and mainstream media has been observed to be aligned with the government and its views. The introduction of new licensing rules in 2013 increased regulation of the media, and Internet-based news sources that sought to provide an alternative voice and a forum for critical debate and discussion were considerably censored.<sup>124</sup> Given that the majority of the population obtains their news from traditional mainstream media, most people are only exposed to news that backs the government narrative supporting the use of the death penalty.

The restrictions placed on the media contribute to the extreme lack of public information on the use of the death penalty in Singapore. Despite the publication of annual official statistics by the Singapore Prison Service that indicate the number of executions disaggregated by types of offences, there are no statistics published on the number of people on death row nor the number of people sentenced to death each year. Without much information or space for public debate, there is little to sustain public interest on the topic, as there is a lack of awareness about the issue and lack of understanding about its illegality according to international standards.

"These 7 years have been especially hard for Uncle Cheong and his family. His son, Cheong Chun Yin, was arrested and charged for drug trafficking on 18th June 2008. He was convicted and given a death sentence, and later re-sentenced to life imprisonment with 15 strokes of the cane.

"Its tough. I hope he can come home early", Uncle Cheong tells us tearfully. "I am old already and might be gone soon but I still hope to live to be able to see my son come home". Uncle Cheong has often told us that he will kill himself should Chun Yin be hanged.

This was the other side of the death penalty nobody really knew, much less cared about. Most of us have never considered that those on death row have people who love them too, much less consider how their executions impact on their family and loved ones. Although the condemned family and loved ones are the most deeply affected by the death penalty, their voices have been excluded from the debate surrounding the death penalty."

**Priscilla Chia, Director at We Believe in Second Chances, Singapore NGO**

122. Franklin E. Zimring, Jeffrey Fagan, and David T. Johnson, "Executions, Deterrence and Homicide: A Tale of Two Cities", Columbia Law School: Public Law and Legal Theory Working Paper Group, Paper Number 09-206, 10 July 2009, [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1436993](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1436993)

123. Today Online, "In death penalty debate, consider larger interest of society: Shanmugam", 26 September 2014, <http://www.todayonline.com/singapore/death-penalty-debate-consider-larger-interest-society-shanmugam>

124. Straits Times, "MDA rolls out licence scheme for news websites", 28 May 2013, <http://www.straitstimes.com/singapore/mda-rolls-out-licence-scheme-for-news-websites>

# SOUTH KOREA

## Drug crimes punishable by death

- Production<sup>125</sup>
- Trafficking<sup>126</sup>

NUMBER OF EXECUTIONS PER YEAR**											
Year	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015*
Total executions	0	0	0	0	0	0	0	0	0	0	0
Executions for drug crimes	0	0	0	0	0	0	0	0	0	0	0

NUMBER OF NEW DEATH SENTENCES PER YEAR**											
Year	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015*
Total new sentences	n/a	n/a	n/a	n/a	1+	n/a	n/a	n/a	n/a	n/a	n/a
New sentences for drug crimes	n/a										

Note: "n/a" indicates that no official or verifiable information was found.  
 "+" indicates that the actual number of sentences is likely higher.

RATIFICATION OF RELEVANT INTERNATIONAL INSTRUMENTS	
Instrument	State Party
ICCPR	Yes, since 1990
CAT	Yes, since 1995

Although South Korea still retains the death penalty in its legislation, including for drug crimes, the last known execution took place in 1997 and the last publicly recorded death sentence to be handed down was in 2009. Nevertheless, human rights groups estimate that there are still at least 60 people currently on death row in South Korea.

\* From 1 January 2015 to 31 July 2015

\*\* Based on official statistics

125. South Korea Narcotics Act (2000) (last amended 30 July 2013), article 58.

126. South Korea Narcotics Act (2000) (last amended 30 July 2013), article 58.

## Justifications given for retaining the death penalty for drug crimes

### Public opinion

Public opinion polls are often used as a justification by the government for why they do not abolish the death penalty. However, the public remains largely unaware of the human rights considerations around the death penalty, and there have been almost no campaigns to educate the public about the death penalty.<sup>127</sup>

### Possible progress towards abolishing the death penalty

Since 1996, bills proposing the formal abolition of the death penalty have been presented before the National Assembly seven times. All of these bills failed to pass the Legislation and Judiciary Committee (LJC), which must consider them before a second and decisive vote by the full National Assembly. The most recent bill was presented to the National Assembly on 7 July 2015, when 172 members of parliament, a majority of the National Assembly, proposed a special law relating to the abolition of the death penalty. The proposition is now under consideration by the LJC. Whether the bill will be passed or not still remains uncertain as the general election (April of 2016) approaches.<sup>128</sup>

Support for the abolition of the death penalty has also been reflected in the Judiciary. When in 2010 the Supreme Court ruled that the death penalty was constitutional, the decision passed by only one vote.<sup>129</sup>

However, there are also examples of government authorities attempting to reinforce South Korea's retention of the death penalty. For example, in 2010 the Minister of Justice ordered an investigation to examine the possibility of installing additional facilities for carrying out executions of the death penalty.<sup>130</sup> No public announcements have been made as to whether this investigation actually took place or what the results were, but the statement itself indicates an openness by high-level government officials to retain the death penalty and even possibly resume executions, which makes the prospect for abolition in South Korea uncertain.

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127. South Korean Human Rights Organizations Network, Joint submission on the Republic of Korea to the 115th session of the UN Human Rights Committee, 22 September 2015.

128. South Korean Human Rights Organizations Network, Joint submission on the Republic of Korea to the 115th session of the UN Human Rights Committee, 22 September 2015.

129. BBC, "South Korea court rules death penalty legal", 25 February 2010, <http://news.bbc.co.uk/1/hi/world/asia-pacific/8536355.stm>

130. South Korean Human Rights Organizations Network, Joint submission on the Republic of Korea to the 115th session of the UN Human Rights Committee, 22 September 2015.

# SRI LANKA

## Drug crimes punishable by death

- Production<sup>131</sup>
- Trafficking<sup>132</sup>
- Armed drug crimes<sup>133</sup>

NUMBER OF EXECUTIONS PER YEAR**											
Year	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015*
Total executions	0	0	0	0	0	0	0	0	0	0	0
Executions for drug crimes	0	0	0	0	0	0	0	0	0	0	0

NUMBER OF NEW DEATH SENTENCES PER YEAR***											
Year	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015*
Total new sentences	n/a	n/a	0	2	108	n/a	106	7+	13+	61+	n/a
New sentences for drug crimes	0	0	0	0	0	0	0	0	0	0	0

Note: "n/a" indicates that no official or verifiable information was found.  
 "+" indicates that the actual number of sentences is likely higher.

RATIFICATION OF RELEVANT INTERNATIONAL INSTRUMENTS	
Instrument	State Party
ICCPR	Yes, since 1980
CAT	Yes, since 1994

Sri Lanka has not officially executed anyone since 1976, even though there are several drug offences that are still punishable by death.

\* From 1 January 2015 to 31 July 2015

\*\* Based on official statistics

\*\*\* Based on documented cases

131. Sri Lanka Poisons, Opium and Dangerous Drugs Ordinance (last amended 8 May 1984), section 54A, section 54B.

132. Sri Lanka Poisons, Opium and Dangerous Drugs Act Ordinance (last amended 8 May 1984), section 54A, section 54B.

133. Sri Lanka Firearms Ordinance (amended by Act No 22 of 1996), article 44.

## Recent developments regarding the death penalty

### Support for resumption of executions

Following the rape and murder of a five-year old girl in September 2015, there have been several public calls for the resumption of executions in Sri Lanka.<sup>134</sup> Even though there have been similar public calls in previous years when violent crimes garnered particular media attention, these did not result in any serious consideration by the government to lift the moratorium on executions. However, the protests in September 2015 were followed by statements from high-level government authorities indicating support for capital punishment. President Maithripala Sirisena stated that he intends to open a parliamentary dialogue on enforcing capital punishment for convicts of "heinous crimes" such as rape and murder.<sup>135</sup>

### Renewed momentum behind counter-narcotics efforts

As part of the government's current "Drug Free Country" campaign, President Sirisena declared in September 2015 that the government "will take every possible step to eradicate the drugs menace by strengthening laws related to drug raids."<sup>136</sup> It is not clear how exactly the government plans to toughen its anti-narcotics efforts, but the fact that Sri Lanka retains the death penalty for drug crimes in its legislation makes the active imposition of the death penalty for drug crimes a possible recourse. Given the proximity in time between the calls for the resumption of executions and the campaign to strengthen counter-narcotics efforts, discussions in the Sri Lankan government on these issues in the coming months may have an important impact.

"The return of executions will diminish and degrade us all.

The integrity and reliability of the police investigation is crucial, for it is here that the evidence emerges on which a man may be convicted. Can we really say that our investigative, law enforcement and legal system is such that there is no real possibility of innocent people being convicted and scapegoats being hanged?

The cruel nature of many murders, and appalling suffering of the victim's relatives, is recognised. But to end a particular individual's life at a particular place, date and time, as a deliberate and predetermined act of the State, is in turn extreme cruelty."

**Civil Rights Movement, Sri Lankan NGO**

134. Colombo Page, "Sri Lankans stage protests demanding capital punishment for suspects of child's murder", 19 September 2015, [http://www.colombopage.com/archive\\_15B/Sep19\\_1442680601CH.php](http://www.colombopage.com/archive_15B/Sep19_1442680601CH.php)

135. Colombo Page, "Sri Lanka President considers enforcing death penalty for heinous crimes", 18 September 2015, [http://www.colombopage.com/archive\\_15B/Sep18\\_1442584412CH.php](http://www.colombopage.com/archive_15B/Sep18_1442584412CH.php)

136. PMD News, "Laws against illicit drugs will strengthen' – President", 21 September 2015, <http://www.pmdnews.lk/laws-against-illicit-drugs-will-strengthen-president/>

# TAIWAN

## Drug crimes punishable by death

- Production<sup>137</sup>
- Trafficking<sup>138</sup>
- Coercing others to take drugs<sup>139</sup>
- Using public office to commit drug crimes<sup>140</sup>

NUMBER OF EXECUTIONS PER YEAR***											
Year	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015*
Total executions	3	0	0	0	0	4	5	6	6	5	6
Executions for drug crimes	0	0	0	0	0	0	0	0	0	0	0

NUMBER OF NEW DEATH SENTENCES PER YEAR***											
Year	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015*
Total new sentences	8	11	5	3	13	4	16	7	3	1	n/a
New sentences for drug crimes	0	0	0	0	0	0	0	0	0	0	n/a

Note: "n/a" indicates that no official or verifiable information was found.

RATIFICATION OF RELEVANT INTERNATIONAL INSTRUMENTS	
Instrument	State Party
ICCPR	Implemented domestically, since 2009 <sup>b</sup>
CAT	No

\* From 1 January 2015 to 31 July 2015

\*\*\* Based on documented cases

<sup>b</sup> Taiwan is not a UN member state, and thus cannot officially ratify most international treaties. Nevertheless, Taiwan passed a law entitled the Act to Implement the ICCPR and the ICESCR that came into force on 10 December 2009. As a result of this Act, the content of the ICCPR is binding upon Taiwan.

137. Controlled Drugs Act (1929) (last amended 26 January 2011), article 4, article 5, article 9, article 37; Statute for Narcotics Hazard Control, article 4.

138. Controlled Drugs Act (1929) (last amended 26 January 2011), article 4, article 5, article 9, article 37; Statute for Narcotics Hazard Control, article 4.

139. Statute for Narcotics Hazard Control, article 6.

140. Statute for Narcotics Hazard Control, article 15.

The last known completed death sentence for drug crimes in Taiwan was handed down in 2002, and that death-row convict was executed. Since then, even though the District Court and High Court have sentenced people to death for drug crimes, these have been overturned after appeals to the Supreme Court and there have been no drug offenders under a final sentence of death after appeals. However, Taiwan still continues to execute criminal offenders convicted of other crimes.

In relation to the application of the death penalty in general, the Constitution of Taiwan enshrines the right to life and subsistence and the protection of physical personal freedoms. These rights are however not absolute, which suggests that the right to life can be restricted in certain cases. The Constitutional Court has thus upheld that capital punishment is constitutional, but it must be compliant with due process and respect the principle of proportionality. However, these are not necessarily respected in practice, as executions are often carried out in secrecy and without informing the death-row inmates, their families, or their lawyers in advance, and people accused of crimes are often presumed to be guilty before their guilt is proven with adequate evidence.<sup>141</sup>

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141. Taipei Times, "Executions to continue despite criticism", 30 March 2014, <http://www.taipetimes.com/News/taiwan/archives/2014/03/30/2003586872>

# THAILAND

## Drug crimes punishable by death

- Production<sup>142</sup>
- Trafficking<sup>143</sup>
- Coercing others to take drugs<sup>144</sup>

NUMBER OF EXECUTIONS PER YEAR**											
Year	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015*
Total executions	0	0	0	0	2	0	0	0	0	0	0
Executions for drug crimes	0	0	0	0	2	0	0	0	0	0	0

NUMBER OF NEW DEATH SENTENCES PER YEAR**											
Year	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015*
Total new sentences (by first instance courts)	n/a	n/a	n/a	n/a	n/a	392	160	189	294	n/a	n/a
New sentences for drug crimes	n/a										

Note: "n/a" indicates that no official or verifiable information was found.

Official statistics for new sentences per year were not available for the years 2005 – 2009 and 2014 – 2015. However, the Department of Corrections periodically releases statistics on the total number of people on death row on a given date. Data was collected for the following dates:

NUMBER OF DEATH ROW PRISONERS			
Date	Drug crimes	Other crimes	Total
14 September 2006	525	323	848
8 June 2009	390	467	857
16 August 2010	339	369	708
11 April 2011	353	406	759
26 October 2012	308	341	649
1 May 2013	314	392	706
25 February 2014	305	380	685
31 January 2015	302	343	645
31 May 2015	183	254	437

\* From 1 January 2015 to 31 July 2015

\*\* Based on official statistics

142. Thailand Narcotics Act (1979), section 65.

143. Thailand Narcotics Act (1979), sections 65 and 66.

144. Thailand Narcotics Act (1979), section 93.

RATIFICATION OF RELEVANT INTERNATIONAL INSTRUMENTS	
Instrument	State Party
ICCPR	Yes, since 1996
CAT	Yes, since 2007

Even though no executions have taken place in Thailand since 2009, the authorities continue to hand down high numbers of death sentences every year, notably for drug crimes. Figures from the Thailand Department of Statistics indicate that there were 649 prisoners on death row as of 31 January 2015, of whom 45 to 50% were for drug-related charges according to estimates by human rights groups in the country. This is despite public pledges by the Thai government that they are exploring the possibility of limiting and even abolishing the death penalty. The government's 1st, 2nd and 3rd National Human Rights Plans (the latter currently in effect until 2018) have all included proposals to bring the country towards abolition but have not resulted in any concrete changes in the law and practice on the death penalty.

## Historical context of the imposition of the death penalty for drug crimes

The overt "war on drugs" in Thailand was initiated by then Prime Minister Thaksin Shinawatra in 2003 as a response to a large increase in methamphetamine use in the region throughout the previous decade. Through the Prime Minister's Order 29/B.E. 2546, issued in January 2003, law enforcement officials were instructed to crack down on drug users and dealers. Blacklists were drawn up, and targets for arrests of drug traffickers and seizures of narcotics were given, and some police allegedly executed their own informants extrajudicially in order to meet those quotas. This crackdown resulted in at least 2000 extrajudicial killings in the first three months of instituting the policy.<sup>145</sup> Despite concerns raised by the international community and commitments by authorities to conduct thorough investigations, none of the perpetrators of these extra-judicial killings have ever been held accountable.

The government's tough stance on drugs since 2003 is also reflected in Thailand's criminal justice system. Of all criminal convictions over the last 10 years, more than half have been for drug offences, and at least 40 % of all death sentences handed down in Thailand are believed to be for drug crimes.

## Justifications given for retaining the death penalty for drug crimes

### Public opinion

One of the main reasons given by the Thai authorities for continuing to impose the death penalty for drug crimes is that public opinion supports this approach. According to Justice Minister Mr. Paiboon Koomchaya, Thailand is still unable to abolish capital punishment because it is "deeply rooted in the mind-sets and attitude of Thai people, so [they] cannot abolish it yet."<sup>146</sup> According to a survey on public opinion conducted by the Department of

145. This is a conservative estimate and some have cited higher numbers.

146. Khaosod English, "Thai Minister Asks French Diplomat to Extradite Lese Majeste Suspects", 14 July 2015, <http://www.khaosodenglish.com/detail.php?newsid=1436851966>

Rights and Liberties Protection of the Ministry of Justice and Mahidol University in 2014, 68.7% of respondents were in favour of the death penalty. However, the survey results cannot be taken as indicative of the general public opinion since the sample of respondents were not representative of the population as a whole. Not only were respondents not identified through random selection, they also consisted largely of people who had personal contacts with the Ministry and thus were likely to have views that were more aligned with those of the authorities. Additionally, the information about the death penalty that was given to the survey participants was not comprehensive and did not present a variety of views and sources, which likely influenced the answers given by respondents and thus skewed the overall results of the survey.

“Bangkwang prison is where prisoners condemned to death are held, and where all prisoners are executed.

Thai prisons are grossly overcrowded and the ratio of wardens to prisoners is very inadequate. Prisoners are condemned to excessively long sentences that can be reduced by complying with strict and exacting rules. Prisoners are eligible for a reduction of their sentence only when the legal proceedings of their case are complete, which may take a long time. Those without outside help or legal representation can spend many years waiting for their case to come to an end. One prisoner in Bangkwang prison has been waiting 25 years for his sentence to be finalised by the courts.

Some prisoners can have their time in prison reduced by up to 33% of their remaining sentence, but those convicted on drug charges are only eligible for an 11% reduction at the most.

Prisoners on drug charges see other prisoners, convicted of heinous crimes, be granted sentence reduction and release while they remain on the long road of waiting for the chance of just an 11% reduction of their sentence.”

**Prisoner in Bangkwang prison, originally condemned to death for drug crimes and now serving 50 years in prison after he qualified for a reduction in his sentence**

Presently, there is no reliable or conclusive research that has been conducted on public opinion in Thailand regarding the death penalty or the government's approach to combating drug crimes. However, even if representative surveys of public opinion were to be conducted, the results would still be unreliable due to a lack of information and public debate on the subject of the death penalty. The government's decade-long campaign of combating the flow of drugs through extra-judicial and judicial executions has promoted a belief among the general public in Thailand that the appropriate response to the proliferation of drugs is executing those involved.

Another element that certainly influences public opinion on the death penalty is people's religious identity and beliefs. Most of Thailand's population is Buddhist, a religion whose principles have been interpreted in a variety of ways both in favour and against the death penalty. On the one hand, the respect for and sacredness of life that is one of the basic tenets of the religion has led many Buddhist groups to advocate for the abolition of the death penalty in Thailand, consistent with its notion of rehabilitation and forgiveness. On the other hand, some have interpreted the Buddhist principle of karma, whereby one's fate is a reflection of one's actions, as a justification for retributive justice and the imposition of the death penalty on those they believe to be responsible for deaths linked to drug abuse and addiction. These tensions between different interpretations of Buddhism regarding the death penalty illustrate the complexity and nuances inherent in assessing the general public opinion in Thailand with regards to the death penalty.

## Factors hindering progress towards abolition

### Political instability

One of the real and fundamental obstacles hindering abolition can be attributed to domestic political instability. At the time of writing, Thailand is under the control of a military junta following the 12th successful coup in the country since 1932, and has had a new Constitution about every four years since 1932. With each new government coming into power, and the associated amendments to Constitutional law, a new wave of political and legislative instability

is created. The constant change of leadership has resulted in an inability for any existing government to implement and follow through with any long-term policies and plans. In

addition, to maintain its precarious hold in power in such an unstable context, authorities are likely unwilling to push forward any policy reforms that could be controversial.

### **Lack of political will and engagement**

Whether linked to Thailand's unstable political climate or not, there has been a clear lack of political will to seriously engage in the issue of abolition. Even though the 1st, 2nd and 3rd National Human Rights Plans have included proposals to bring the country towards abolition, such as "[changing] capital punishment to life imprisonment through parliamentary deliberation,"<sup>147</sup> these provisions have yet to be implemented and there has been no concrete follow-up on the part of the authorities. The Department of Rights and Liberties Protection within the Ministry of Justice is tasked with following up on and exploring the issue of abolition, however it has not been allocated the necessary resources or the appropriate budgetary allowance to facilitate its work. Additionally, the lack of engagement on this issue on the part of the authorities is indicative from the dearth of political discussions surrounding abolition.

Even though the 1988 Drug Convention suggests rehabilitative and re-educative measures be provided either as an alternative or a supplement to conviction or punishment for drug crimes, Thailand has not invested in developing the institutions and policies to encourage the use of more rehabilitative alternatives to the death penalty. Prisons are massively overcrowded with death-row inmates, but rehabilitation centres are under-resourced and remain largely empty. The authorities rarely refer those convicted of drug crimes to such centres, relying instead on the traditional and severely punitive approach to combating drug crime. A lack of education and promotion by the government of the potentially positive impacts of rehabilitative measures has resulted in a general view by law enforcement agents that these measures are neither a serious nor effective approach to combating drug crime.

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147. Thailand, Rights and Liberties Protection Department, Ministry of Justice, "Summary of Thailand's 3rd National Human Rights Action Plan (2014-2018)", 23, <http://www.mfa.go.th/humanrights/images/the%20summary%20of%20thailands%203rd%20national%20human%20rights%20plan%202014-2018.pdf>

# VIETNAM

## Drug crimes punishable by death

- Production<sup>148</sup>
- Smuggling<sup>149</sup>
- Organised crime involving drugs<sup>150</sup>

NUMBER OF EXECUTIONS PER YEAR***											
Year	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015*
Total executions	n/a	n/a	25+	19+	9+	1+	5+	0	7+	3+	0
Executions for drug crimes	n/a	0	n/a	n/a	0						

Note: "n/a" indicates that no official or verifiable information was found.  
 "+" indicates that the actual number of executions is likely higher.

NUMBER OF NEW DEATH SENTENCES PER YEAR***											
Year	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015*
Total new sentences	n/a	n/a	83+	59+	59+	34+	23+	86+	148+	72+	8+
New sentences for drug crimes	n/a	n/a	2+	n/a	n/a	n/a	n/a	1+	2+	57+	8

Note: "n/a" indicates that no official or verifiable information was found.  
 "+" indicates that the actual number of sentences is likely higher.

RATIFICATION OF RELEVANT INTERNATIONAL INSTRUMENTS	
Instrument	State Party
ICCPR	Yes, since 1982
CAT	Yes, since 2015

It is believed that Vietnam consistently hands down high numbers of death sentences every year, but it is not clear what offences these are for, since there is a lack of transparency from the government about its use of the death penalty. According to media reports, there have been approximately 70-80 death sentences handed down every year since 2004.

\* From 1 January 2015 to 31 July 2015

\*\*\* Based on documented cases

148. Viet Nam Penal Code (1999), article 193.

149. Viet Nam Penal Code (1999), article 153, article 194.

150. Viet Nam Penal Code (1999), article 197.

Public opinion polls conducted in 2007 indicate that the public is generally in favour of the death penalty, and it has been observed that public opinion has not varied much since then.<sup>151</sup> However, given that the state has systematically repressed freedom of expression, it is not clear how reliable such opinion polls are.

## **Additional human rights concerns related to the imposition of the death penalty**

### **Lack of transparency and public information**

Given that figures on the death penalty have been classified as "state secrets" since 2004, it has not been possible to gauge definitively, how often, and for what crimes the state executes people. What is more problematic however, about the secrecy surrounding the executions is that it is difficult to assess if and how these executions have respected international standards on the procedural guarantees that have to be upheld when it comes to the imposition of the death penalty. According to news reports, this has indeed been a problem since "the prosecutors' office had launched a review of 16 convictions that showed signs of miscarriage of justice" earlier in 2015.<sup>152</sup>

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151. Thanh Nien News, "Is Vietnam ready to abolish death penalty?", 22 January 2015, <http://www.thanhniennews.com/politics/is-vietnam-ready-to-abolish-death-penalty-37916.html>

152. Thanh Nien News, "Is Vietnam ready to abolish death penalty?", 22 January 2015, <http://www.thanhniennews.com/politics/is-vietnam-ready-to-abolish-death-penalty-37916.html>

# Recommendations

## **To States who still impose the death penalty for drug crimes, in law and/or in practice**

o Abolish the death penalty for all crimes. Pending abolition:

- Impose an immediate official moratorium on executions and new death sentences;
- Restrict the number of offences carrying the death sentence to only the "most serious crimes" as defined by international human rights standards;
- Repeal the mandatory death sentence where it currently exists;
- Ensure that legislation provides a clear definition for all offences, especially those punishable by death;
- Refrain from defining new crimes entailing capital punishment;
- Provide legal aid to those accused persons who cannot afford a lawyer;
- Respect international human rights standards such as fair trial and due process guarantees, including the right to appeal to a higher court;
- Ensure meaningful, expeditious judicial review of death penalty convictions;
- Guarantee the right of anyone sentenced to death to seek pardon or commutation of sentence;
- Ensure humane conditions on death row;
- Publish complete and regular statistics regarding the number of death sentences handed down and executed every year, disaggregated by gender, age, and criminal charges, in order to allow for an informed public debate on the issue;
- Extend a standing invitation to all UN Special Procedure mandate-holders and accept, as a matter of priority, visit requests by the UN Special Rapporteurs on extrajudicial, summary or arbitrary executions and on torture and other cruel, inhuman or degrading or punishment;
- Respond promptly and substantively to individual communications by UN Special Procedures, including urgent appeals and letters of allegation, taking into account the urgency of the communications;

o Become a party to the Second Optional Protocol to the ICCPR.

## **To the international community, in particular the UN Human Rights Council and its Member and Observer States**

- o Increase support for civil society initiatives working towards the abolition of the death penalty;
- o Raise issues related to drug-related crimes and the death penalty in the framework of debates under various agenda items of the UN Human Rights Council, in particular interactive dialogues with the UN Special Rapporteurs on extrajudicial, summary or arbitrary executions and on torture and other cruel, inhuman or degrading or punishment, and biennial panels on the question of the death penalty;
- o On the occasion of the Universal Periodic Review (UPR) of states that have not yet imposed a moratorium on the death penalty or abolished it:
  - Raise the question of the administration of criminal justice in general, and of the use of the death penalty in particular;
  - Recommend that states, as a first step towards abolition, restrict the number of offences carrying the death sentence to only the “most serious crimes” and to suppress mandatory death sentences when they exist, in particular for drug-related crimes, in accordance with international standards;
- o To the UN Special Rapporteurs on extrajudicial, summary or arbitrary executions and on torture and other cruel, inhuman or degrading or punishment:
  - seek visits to states that retain the death penalty for drug crimes in order to enquire both into the legislation on drug crimes and the death penalty, and how it is applied in practice, particularly with regards to the respect for international human rights standards and fair trial and due process guarantees.

## **To the European Union and its Member States**

- o In accordance with the EU Guidelines on the death penalty, raise the issue of the death penalty in the framework of bilateral meetings with third countries;
- o Provide technical assistance to and share information with governments working towards reducing or abolishing the death penalty;
- o Support efforts to develop professional and public human rights education and judicial and prosecutorial training in all countries, particularly those that retain the death penalty;
- o Increase support for civil society initiatives working towards the abolition of the death penalty;
- o Freeze all financial support and aid to counter-narcotics programmes until accountability mechanisms are put in place to ensure that aid is not being used to support counter-narcotics strategies that involve the imposition of the death penalty for drug crimes;
- o Make future funding to counter-narcotics programmes conditional on a commitment not to impose the death penalty for drug crimes, and cease funding if these terms are breached;
- o Encourage and provide assistance for rehabilitative programs for drug users.
- o Support sustainable economic development initiatives in regions dependent on the cultivation of psychoactive plants such as poppy.

## **To the UN Office on Drugs and Crime**

- o Implement the 2012 Position Paper entitled "UNODC and the Promotion and Protection of Human Rights";
- o Encourage and provide assistance for rehabilitative programs for drug users;
- o Freeze all financial support and aid to counter-narcotics programmes until accountability mechanisms are put in place to ensure that aid is not being used to support counter-narcotics strategies that involve the imposition of the death penalty for drug crimes;
- o Make future funding to counter-narcotics programmes conditional on a commitment not to impose the death penalty for drug crimes, and cease funding if these terms are breached.

## **To civil society**

- o Use the opportunity of UN General Assembly Special Session (UNGASS) on Drugs in 2016 to highlight human rights violations in relation to the "war on drugs", including the imposition of the death penalty for drug crimes;
- o Increase public awareness programmes on the death penalty;
- o Coordinate between non-governmental organisations advocating for drug policy reforms (<http://idpc.net/members>) and organisations campaigning for the abolition of the death penalty (<http://www.worldcoalition.org/Member-organizations.html>).

# LEGISLATION ON DRUG CRIMES

Below is a list of all publicly available laws in Asia that allow for the death penalty for drug crimes. Legislation not listed below was not publicly available online at the time this report was published.

## Bangladesh

- **Bangladesh Intoxicant Control Act (1990):** <http://www.sai.uni-heidelberg.de/work-groups/bdlaw/1990-a20.htm>

## Brunei

- **Brunei Misuse of Drugs Act (2001):** <http://www.asean.org/communities/asean-political-security-community/item/compilation-of-asean-national-laws-on-drugs>

## Burma

- **Myanmar Narcotic Drug and Psychotropic Substances Law (1993):** [http://www.burmalibrary.org/docs11/Narcotic\\_Drugs\\_Law\\_of\\_1993.pdf](http://www.burmalibrary.org/docs11/Narcotic_Drugs_Law_of_1993.pdf)

## China

- **Criminal Law of the People's Republic of China (1979) (last amended 25 February 2011):** [http://www.npc.gov.cn/englishnpc/Law/2007-12/13/content\\_1384075.htm](http://www.npc.gov.cn/englishnpc/Law/2007-12/13/content_1384075.htm)

## India

- **Narcotics Drugs and Pyschotropic Substances Act of India (1985):** <http://cbn.nic.in/html/ndpsact1985.pdf>

## Indonesia

- **Indonesia Narcotics Law (2009):** <https://dl.dropboxusercontent.com/u/64663568/library/Indonesia%20Narcotics%20Law%202009%20Eng.pdf>
- **Indonesia Law on Child Protection (2002):** [http://www.internationalresourcecentre.org/en\\_X2/Indonesia\\_Law\\_on\\_Child\\_Protection.pdf](http://www.internationalresourcecentre.org/en_X2/Indonesia_Law_on_Child_Protection.pdf)
- **Indonesia Law on Psychotropic Substances (1997):** <http://www.asean.org/images/archive/Law%20of%20the%20Republic%20of%20Indonesia%20Number%2022,%20Year%201997%20on%20Narcotics.doc>

## Iran

- **Anti-Narcotics Law of 1997 (in Farsi):** <http://www.refworld.org/docid/4c35b0a52.html>; <http://rc.majlis.ir/fa/law/show/99642?keyword=%D9%82%D8%A7%D9%86%D9%88%D9%86%D9%85%D8%A8%D8%A7%D8%B1%D8%B2%D9%87%D8%A8%D8%A7%D9%85%D9%88%D8%A7%D8%AF%D9%85%D8%AE%D8%AF%D8%B1>
- **Anti-Narcotics Law of 1997 (amended 2010) (in Farsi):** <http://rc.majlis.ir/fa/law/show/789916?keyword=%D9%82%D8%A7%D9%86%D9%88%D9%86%D9%85%D8%A8%D8%A7%D8%B1%D8%B2%D9%87%D8%A8%D8%A7%D9%85%D9%88%D8%A7%D8%AF%D9%85%D8%AE%D8%AF%D8%B1>

## Laos

- **Lao People's Democratic Republic, Penal Law (2005):** <https://www.google.fr/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0CCcQFjABahUKewjn74XthJrIAhXI0BoKHTadADY&url=http%3A%2F%2Fwww.vientianetimes.org.la%2FLaws%2520in%2520English%2F2.%2520Law%2520on%2520Penal%2520%282005%29%2520Eng.pdf&usq=AFQjCNGj1epOn-NTJzYAWp57ed2giuwMyA>

## Malaysia

- **Malaysia Dangerous Drugs Act (1952):** <http://www.agc.gov.my/Akta/Vol.%205/Act%20234.pdf>

## Pakistan

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This publication has been produced by FIDH in partnership with the World Coalition Against the Death Penalty and with the support of the Ministry for Foreign Affairs of Finland. The contents of this publication are the sole responsibility of FIDH and the World Coalition and can in no way be taken to reflect the views of the Ministry for Foreign Affairs of Finland.

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## World Coalition Against the Death Penalty

The World Coalition Against the Death Penalty is an alliance of more than 150 NGOs, bar associations, local authorities and unions. The aim of the World Coalition is to strengthen the international dimension of the fight against the death penalty. Its ultimate objective is to obtain the universal abolition of the death penalty. The World Coalition gives a global dimension to the sometimes isolated action taken by its members on the ground. It complements their initiatives, while constantly respecting their independence.

The World Coalition Against the Death Penalty created the World Day against the Death Penalty in 2003 to help activists worldwide rally to oppose the death penalty and unite behind the struggle for universal abolition.



This report was produced thanks to information contributed by the following organisations:



Komisi untuk Orang Hilang dan Korban Tindak Kekerasan  
The Commission for the Disappearances and Victims of Violence



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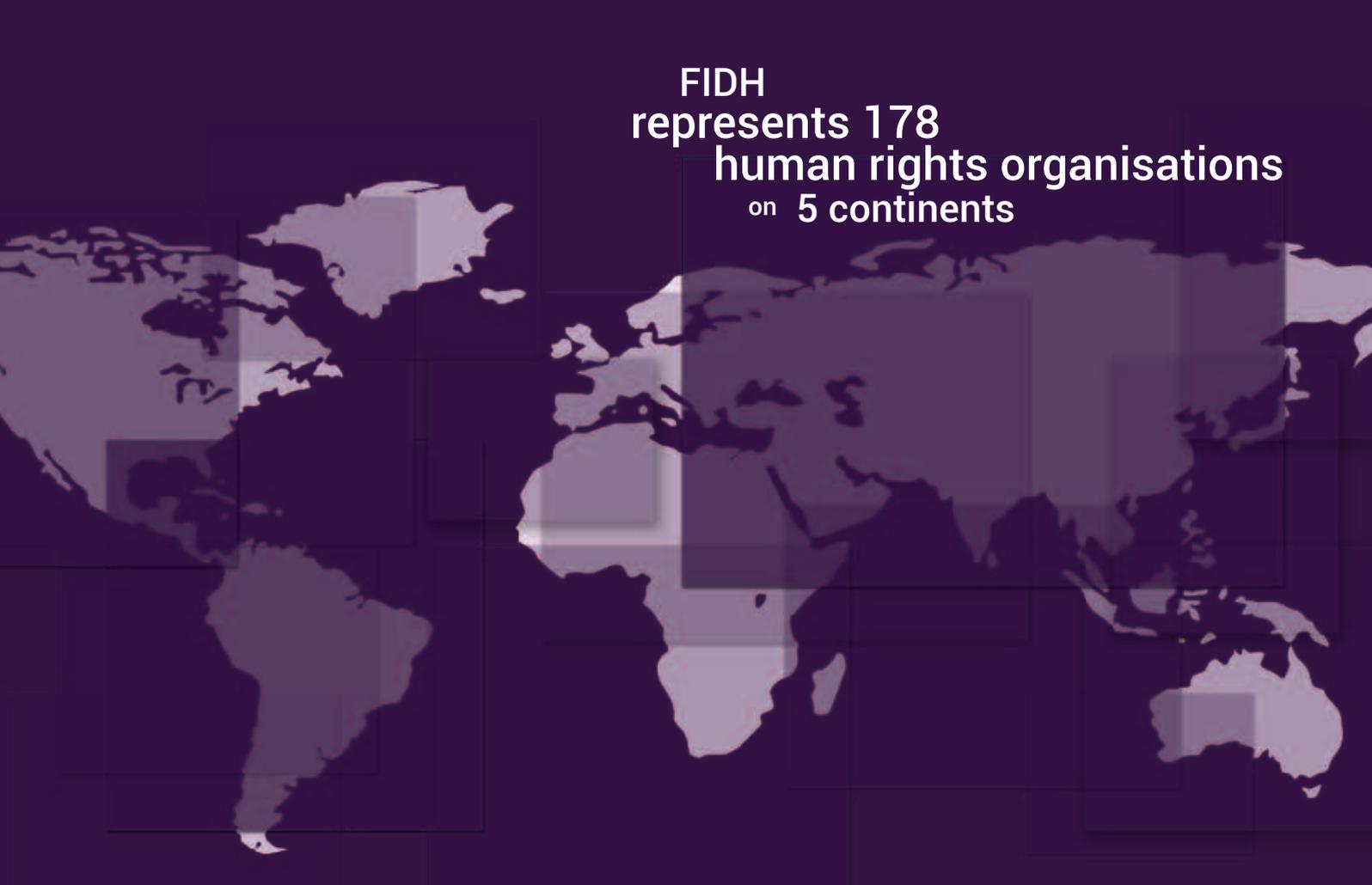
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