



THE DEATH PENALTY FOR DRUG OFFENCES AND INTERNATIONAL SUPPORT FOR DRUG ENFORCEMENT

There are 32 jurisdictions in the world with laws allowing for the death penalty to be applied to drug offences.¹ Hundreds of people are known to be executed for drug-related offences each year, a figure that very likely reaches a thousand when states that keep their death penalty figures a secret are counted. The vast majority of these killings take place in a small handful of countries.

According to multiple UN treaty bodies, UN human rights monitors and legal scholars, the death penalty for drug-related offences is a violation of the right to life as enshrined in the International Covenant on Civil and Political Rights (ICCPR). Regrettably, in some instances, this violation of human rights law is aided by international assistance for drug control. Counter-narcotics programmes funded by abolitionist states in these contexts have been shown to have the unintended consequence of increasing the number of those sentenced to death, and IHRA's research has identified individuals who have been executed as a result of counter-narcotics programmes receiving financial assistance from states that oppose capital punishment.

Recommendations

- » Governments should review their policies on supplying funding for drug enforcement activities in countries which retain the death penalty for drug-related offences.
- » Governments should make clear statements criticising the death penalty for drug offences and reassert their positions that funds for law enforcement activities should not result in executions or death sentences.
- » The abolition of the death penalty for drug-related offences, or at the very least evidence of an ongoing and committed moratorium on executions, should be made a pre-condition of financial assistance and other support for drug enforcement.
- » Donors should provide specific funding for the development of human rights capacity within the United Nations Office on Drugs and Crime and for the development of international guidelines on human rights and drug control.
- » European donor states should develop and apply similar human rights guidelines to bilateral funding agreements for drug enforcement.

The International Harm Reduction Association (IHRA) is one of the leading international non-governmental organisations promoting policies and practices that reduce the harms from all psychoactive substances, harms which include not only the increased vulnerability to HIV and hepatitis C infection among people who use drugs, but also the negative social, health, economic and criminal impacts of illicit drugs, alcohol and tobacco on individuals, communities and society.

Human Rights Watch is one of the world's leading independent organizations dedicated to defending and protecting human rights. By focusing international attention where human rights are violated, we give voice to the oppressed and hold oppressors accountable for their crimes. Our rigorous, objective investigations and strategic, targeted advocacy build intense pressure for action and raise the cost of human rights abuse. Human Rights Watch accepts no government funds, directly or indirectly.

Penal Reform International (PRI) is an international, non-governmental organisation working on penal and criminal justice reform worldwide. It aims to develop and promote international standards for the administration of justice, reduce the unnecessary use of imprisonment, promote the use of alternative sanctions which encourage reintegration while taking into account the interests of victims and abolish the death penalty. PRI has Consultative Status at the United Nations Economic and Social Council (ECOSOC) and Council of Europe, and Observer Status with the African Commission on Human and People's Rights. PRI has regional programmes in the Great Lakes, the Middle East and North Africa, Central and Eastern Europe, Central Asia and the South Caucasus. Its head office is based in London, United Kingdom.

International Human Rights Law

The death penalty for drug offences is a violation of international human rights law. Although capital punishment is not absolutely prohibited under international law, its application is limited in significant ways. Article 6(2) of the International Covenant on Civil and Political Rights states that the penalty of death may only be applied to the 'most serious crimes'. For more than two decades United Nations (UN) human rights bodies have interpreted Article 6(2) in a manner that limits the number and types of offence for which execution is allowable under international human rights law, explicitly excluding drug offences.

The UN Human Rights Committee, the body of independent experts tasked with monitoring the implementation and interpretation of the Covenant, has consistently criticised countries that apply the death penalty for drugs.² Human rights monitors such as the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, as well as the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment³ have also argued that the death penalty for drug-related offences is a violation of international human rights law.

The United Nations Office on Drugs and Crime (UNODC) also acknowledged in a 2010 report that, 'As an entity of the United Nations system, UNODC advocates the abolition of the death penalty and calls upon Member States to follow international standards concerning prohibition of the death penalty for offences of a drug-related or purely economic nature.'⁴

International Law Enforcement Programmes

Although the responsibility for death sentences and executions for drug offences lies primarily with governments that carry out these penalties, there are ways in which abolitionist governments and international organisations play a role in contributing to this practice. For example, UNODC, the European Commission and individual European governments are all actively involved in funding and/or delivering technical assistance, legislative support and financial aid intended to strengthen domestic drug enforcement in countries that retain the death penalty for drugs. These activities are either specifically designed to assist in increased drug seizures and arrests through the provision of funds and equipment or relate to law enforcement training and prosecutorial capacity building. In countries that have legislation allowing for the death penalty for drug offences, such funding, training and capacity-building activities – if successful – result in increased convictions of persons on drug charges and therefore potentially increase death sentences and executions.

Case Study

In 1993 UNODC (then known as the UN Drug Control Programme, UNDCP) helped initiate a Memorandum of Understanding (MOU) between six East Asian countries, all but one of which – Cambodia – retain the death penalty for drug offences. The agreement has since expanded to include HIV prevention, demand reduction, alternative development and judicial co-operation, but the majority of funds (61%) and the focus of the agreement remain on law enforcement. The major donors of the total \$26 million budget for various programmes are the United Kingdom (24%), United States (24%), Japan (24%) and Australia (10%). Other donors include the European Commission (3%), Sweden (3%), Canada (2%) and UNAIDS (5%). The vast majority of these donors are abolitionist.⁵ While there are many projects that come under the scope of the MOU, a centrepiece of the agreement is the establishment of at least seventy border liaison offices throughout the region. The objective of these offices is to 'foster greater cross-border law enforcement cooperation ... on drug traffickers to enable fast and effective interventions by law enforcement officers on the other side of the border'.⁶

According to UNODC, between 1999 and 2005 the BLOs were active in more than 700 cases, 'often accompanied by huge seizures'.⁷ One of the 'larger successes' of the project, as identified by UNODC, was the arrest of Han Yongwan, a major regional drug trafficker, by Lao PDR authorities in September 2005 as part of a joint operation with China, Thailand and Myanmar under the MOU agreement and border liaison office project. He was subsequently extradited to China, where he was executed on 26 June 2008 to mark the UN's International Day Against Drug Abuse and Illicit Drug Trafficking.⁸ Cross-border cooperation facilitated by MOU projects also led to arrests in Myanmar of Nyein Kyaw and Kyaw Hlaing in October 2001, as well as, Twan Sin Htan and Aik Tun in April of 2001.⁹ All were subsequently sentenced to death.¹⁰

Complicity

States have legal obligations under the various human rights treaties they have ratified, as well as under customary international law. In the case of European countries, these include obligations under the International Covenant on Civil and Political Rights, which all EU countries have ratified, and Protocol 6 to the European Convention on Human Rights, which commits all Council of Europe member states to abolishing the death penalty.¹¹ These legal obligations are neither lessened nor negated in the context of drug control activities or when the activities in question are conducted via international organisations rather than directly by the individual states.¹² In the case of European donor states, the European Court of Human Rights emphasised these obligations in a 1999 judgment

...where States establish international organisations in order to pursue or strengthen their cooperation in certain fields of activities, and where they attribute to these organisations certain competences and accord them immunities, there may be implications as to the protection of fundamental rights. It would be incompatible with the purpose and object of the [European] Convention [on Human Rights], however, if the Contracting States were thereby absolved from their responsibility under the Convention in relation to the field of activity covered by such attribution.¹⁵

International organisations and donor states that provide counter-narcotics assistance to countries that retain the death penalty for drug offences run the risk of being complicit in resulting human rights abuses. The Office of the High Commissioner for Human Rights (OHCHR) briefing paper on understanding spheres of influence and complicity defines those 'relationships with a broader range of actors over whom it has the ability to exert influence with varying degrees with regard to human rights' as falling within a company's sphere of influence.¹⁴ These actors can include joint venture partners, host governments and governmental/intergovernmental policy-making bodies.¹⁵ Based upon this definition, national governments and law enforcement agencies in receipt of support for drug enforcement activities clearly fall within the sphere of influence of both UNODC and/or the original donors.

1 Gallahue P and Lines R, (2010) *The Death Penalty for Drug Offences: Global Overview 2010*, International Harm Reduction Association. This figure includes Taiwan and the Palestinian Authority in Gaza

2 For example, UN Human Rights Committee (8 July 2005), Concluding observations: Thailand. CCPR/CO/84/THA, para. 14.; UN Human Rights Committee (29 August 2007) Concluding observations: Sudan. CCPR/C/SDN/CO/3, para. 19.

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

4 UNODC (2010) Drug control, crime prevention and criminal justice: A human rights perspective. Note by the Executive Director (Commission on Narcotic Drugs, Fifty-third session, Vienna, 8–12 March), UN Doc. E/CN.7/2010/CRP.6*–E/CN.15/2010/CRP.1*.

5 UNODC (n.d.) The M.O.U. Countries of S.E. Asia (poster series) at: www.unodc.org/documents/eastasiaandpacific/2009/03/cnd/MOU_Poster_small.pdf (last accessed 4 June 2010).

6 *ibid*

7 *ibid*

8 *ibid*. Xinhua News Agency (19 January 2007) Court hears cross-border heroin trafficking case; Xinhua News Agency (27 June 2008) China executes six drug dealers.

9 Eastern Horizons (March 2002) Myanmar strengthens international cooperation and intensifies apprehension of drug traffickers, p. 17.

10 New Light of Myanmar (7 January 2003) Cooperations with the world nations in Myanmar's anti-narcotics drive, New Light of Myanmar (8 January 2003) Drug trafficker gets death sentence; New Light of Myanmar (17 September 2001) Drug traffickers get death sentences.

11 Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty as amended by Protocol No. 11, Strasbourg, 28 April 1983.

12 In this context it is important to note that international organisations such as the UN have legal personality. See, for example, International Court of Justice (11 April 1949) Advisory opinion: Reparations for injuries suffered in the service of the United Nations, ICJ Reports 1949, p. 174; and International Court of Justice (20 December 1980) Advisory opinion: Interpretation of the agreement of 25 March 1951 between the WHO and Egypt, ICJ Reports 1980, p. 73.

13 Waite and Kennedy v Germany (Application 26083/94), European Court of Human Rights judgment of 18 February 1999, para. 67.

14 OHCHR (2004) *The Global Compact and Human Rights: Understanding the Sphere of Influence and Complicity*. Geneva: OHCHR, p. 9.

15 *Ibid*



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