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**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

### **Joint written statement\* submitted by International Harm Reduction Association (IHRA), IDPC Consortium, Intercambios Asociación Civil, Penal Reform International, non-governmental organizations in special consultative status**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[01 February 2021]

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\* Issued as received, in the language(s) of submission only.



## **The Death Penalty for Drug Offences: Lack of Deterrent Effect**

International Harm Reduction Association (IHRA) (further below: Harm Reduction International (HRI)) and co-signing organisations welcome the opportunity to provide information ahead of the Biennial High-Level Panel on Death Penalty at the 46th Session of the Human Rights Council, with a focus on whether the use of the death penalty has a deterrent effect on crime rates. This submission focuses on the deterrent effect of the death penalty for drug offences; as a comprehensive analysis of the issues greatly exceeds the available space, reference to additional material that could help inform the debate are available in the footnotes.

While we welcome this important debate and the timely focus on deterrence, we reiterate that the death penalty for drug offences is an inhuman practice in clear violation of international human rights as well as drug control law,<sup>1</sup> and that abolition is urgent regardless of any relation between its imposition and crime levels.

### **Global trends**

As of January 2021, 35 countries and territories prescribe the death penalty as a punishment for drug offences in their legislation, in violation of international law.<sup>2</sup> At least 4,143 people have been executed for drug offences between 2010 and 2020 (excluding figures from China, where information related to the death penalty is subject to state secret). After a peak in 2015, drug-related executions decreased between 2016 and 2018 when – for the first time since HRI started tracking - less than 100 executions were recorded globally for drug offences (excluding figures from China – the world’s leading executioner - and Viet Nam). After a slight increase in 2019, a record-low number of executions was recorded in 2020. Contributing factors were COVID-19 pandemic (which shifted governments’ priorities and paused judicial proceedings), civil society and legal activism, and – perhaps most notably – a moratorium on drug-related executions announced in Saudi Arabia in March 2020, pending discussions on abolition of this measure.

Over 150 people are sentenced to death for drug trafficking yearly, and at least 3,000 individuals remain on death row for drug offences worldwide. Due to the systemic lack of transparency, these figures are to be understood as an underestimation of the phenomenon. In 12 countries death is the mandatory punishment for at least certain drug offences.<sup>3</sup>

### **Differential deterrence and drug offences**

A rigorous, definitive proof of the impact of the death penalty on drug use and drug crime is virtually impossible to obtain, because of how complicated it would be to design a solid research methodology (for example, defining what indicators should be used to assess deterrence, and how those should be measured).<sup>4</sup> Further, data collection would be extremely difficult, in light of the widespread lack of transparency by governments on the use of capital punishment, and a parallel paucity of updated, disaggregated, reliable information on drug use, drug-related harms, drug prices, drug seizures, and drug flows. Even if available, drug-related data are themselves impacted by numerous independent variables (for example, how much of a priority drug control is for a country, and its ability

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<sup>1</sup> HRI (2020), “The Death Penalty for Drug Offences: Global Overview 2019” (London: Harm Reduction International). Available at: <https://www.hri.global/death-penalty-2019>.

<sup>2</sup> Ibid.

<sup>3</sup> Brunei Darussalam, the Islamic Republic of Iran, Jordan, Kuwait, the Lao People’s Democratic Republic, Malaysia, Myanmar, Oman, Singapore, the Sudan, the United Arab Emirates, Yemen.

<sup>4</sup> See HRI (2013), ‘The Death Penalty for Drug Offences: Global Overview 2012 – Tipping the Scales for Abolition’ (London: Harm Reduction International), [https://www.hri.global/files/2014/08/06/HRI\\_-\\_2012\\_Death\\_Penalty\\_Report\\_-\\_FINAL.pdf](https://www.hri.global/files/2014/08/06/HRI_-_2012_Death_Penalty_Report_-_FINAL.pdf).

to intercept drug flows). Finally, even if any correlation was to be found between drug use/crime and capital punishment, the causal links between the two would be close to impossible to establish.

To date, none of the recurring claims that the death penalty deters drug crime or drug use<sup>5</sup> rests on solid scientific evidence. Rather, these are normally unsubstantiated and presented as self-evident,<sup>6</sup> or based on public opinion on the deterrent impact on capital punishment which – although widespread – cannot be construed as evidence.<sup>7</sup>

On the contrary, available figures strongly suggest that the introduction of capital punishment as a tool of drug control did not lead to a reduction in drug trafficking. The death penalty for drugs is a relatively new phenomenon, with a number of countries introducing this measure in the 1980s. Since then, there has been no significant reduction in drug trafficking in retentionist countries. In fact, the opposite appears to be true. The 2018 United Nations Office on Drugs and Crime (UNODC) World Drug Report concluded that (despite punitive approaches to drug control) the drug market is booming, and a “potential supply-driven expansion of drug markets, with production of opium and manufacture of cocaine at the highest levels ever recorded” is expected.<sup>8</sup> Also in 2018, the UNODC Regional Office for Southeast Asia – where most retentionist countries for drugs are located – acknowledged that the production and trafficking of methamphetamine in the region had been increasing steadily.<sup>9</sup> Support for the deterrence argument is also being abandoned in retentionist states. For example, the deputy head of the Iranian judiciary recently acknowledged that “execution of drug smugglers has had no deterrent effect”.<sup>10</sup>

Further, the argument that capital punishment can deter future crime implies a rational choice by the would-be perpetrator.<sup>11</sup> The argument results deeply flawed when considering the characteristics of many (if not most) people sentenced to death for drugs. Often, these are individuals from vulnerable backgrounds who were either tricked or coerced into trafficking drugs, or moved to do so by economic need.<sup>12</sup> In any case, drug laws are designed in such a way (targeting those in possession of illicit substances, rather than those that benefit the most, economically, from the drug trade) to make them inherently unfit to punish, and consequently deter, those with the most power in the drug market – who are those least likely to personally carry, smuggle, or otherwise be in possession of drugs.<sup>13</sup>

Finally, even if it was demonstrated (and it has not) that capital punishment deterred a fraction of those involved in the drug market, it cannot possibly be claimed that such effect

<sup>5</sup> Among others see: Fagan, J (2019) ‘The Feasibility of Systematic Research on the Deterrent Effects of the Death Penalty in Indonesia’ (London: Death Penalty Project), <https://www.deathpenaltyproject.org/knowledge/the-feasibility-of-systematic-research-on-the-deterrent-effects-of-the-death-penalty-in-indonesia/>; Transformative Justice Collective (2020), ‘The Death Penalty: A deterrent?’, <https://transformativejusticecollective.org/2020/10/14/the-death-penalty-a-deterrent/>.

<sup>6</sup> ABC (2015), ‘Fact check: No proof the death penalty prevents crime’, <http://www.abc.net.au/news/2015-02-26/fact-check3a-does-the-death-penalty-deter3f/6116030>.

<sup>7</sup> On Singapore: Yuan-C, T (2020), ‘Death Penalty is a Deterrent: Shanmugam’ (Straits Times), <https://www.straitstimes.com/politics/death-penalty-is-a-deterrent-shanmugam>.

<sup>8</sup> UNODC (2018) World Drug Report 2018, Executive Summary, 1. Vienna: United Nations Office for Drugs and Crime, [https://www.unodc.org/wdr2018/prelaunch/WDR18\\_Booklet\\_1\\_EXSUM.pdf](https://www.unodc.org/wdr2018/prelaunch/WDR18_Booklet_1_EXSUM.pdf).

<sup>9</sup> Berlinger J (2018) ‘Meth trafficking in SE Asia reaching “alarming Levels,” UN warns.’ CNN, <https://edition.cnn.com/2018/05/21/asia/methamphetamine-mekongintl/index.html>.

<sup>10</sup> Reuters (2016) ‘Death penalty failing to deter drug trafficking in Iran,’ Reuters. Available from: <https://uk.reuters.com/article/uk-iran-rights-executions/death-penalty-failing-todeter-drug-trafficking-in-iran-official-idUKKCN1120A6>.

<sup>11</sup> For more, see Fagan, J (2019) ‘The Feasibility of Systematic Research on the Deterrent Effects of the Death Penalty in Indonesia’, 12.

<sup>12</sup> Among others, Girelli, G and Harry, L (2019), ‘The Death Penalty for Drug Offences: The Impact on Women’ (London: Harm Reduction International), [https://www.hri.global/files/2019/12/16/HRI\\_Oxford\\_BriefingPaper\\_March2019\\_ImpactOnWomen\\_2\\_DecemberEdit\\_web.pdf](https://www.hri.global/files/2019/12/16/HRI_Oxford_BriefingPaper_March2019_ImpactOnWomen_2_DecemberEdit_web.pdf).

<sup>13</sup> Edwards, G et al. (2009), ‘Drug Trafficking: Time to Abolish the Death Penalty’ *Addiction* 104(8). Available at: <https://pubmed.ncbi.nlm.nih.gov/19624315/>.

would be unique to the death penalty. In other words, any deterrent effect the death penalty may have is certainly not unique, and the same objective could be pursued with more proportionate, humane, and fair means.

### **Deterrence and public opinion**

Another central issue regarding deterrence and the death penalty is the public belief in such effect. Although of varying quality and credibility, public opinion surveys on death penalty – both generally and for drugs – consistently show that deterrence is an important, if not the main, justification for public support of capital punishment. Conversely, surveys found that if a ‘definitive proof’ of the lack of deterrent effect was to be found, it would significantly decrease public support for the death penalty.<sup>14</sup> Such findings highlight the importance of educating the public, raising awareness, and countering misconceptions on crime and punishment. This is an essential exercise (and a critical issue to address in any debate around deterrence and death penalty), for at least two reasons. First, because absent evidence-based information, the public may resist attempts to restrict or abolish the death penalty on the basis of faulty but recurrent arguments; and second, because – as abovementioned – belief in the deterrent effect of capital punishment is too often adduced as evidence, in itself, of deterrent; thus creating a vicious, self-reinforcing cycle which stands in the way of positive reform.

### **Conclusions**

We encourage the Council to integrate into the debate a distinct focus on drug offences – as one of the main category of crimes for which capital punishment is imposed – and to firmly acknowledge the lack of deterrent effect of the death penalty on drug use and drug crime. We urge the Council to reiterate its opposition to the death penalty and to encourage all Member States that retain the death penalty to establish a moratorium on executions, and take immediate steps towards abolition of the death penalty.

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Centre on Drug Policy Evaluation, World Coalition Against the Death Penalty, NGO(s) without consultative status, also share the views expressed in this statement.

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<sup>14</sup> Girelli, G (2019), ‘The Death Penalty for Drug Offences: What Public Opinion Surveys in Asia Teach Us’ (FilterMag), <https://filtermag.org/death-penalty-drugs-public-opinion-asia/>. A more detailed analysis is available upon request.