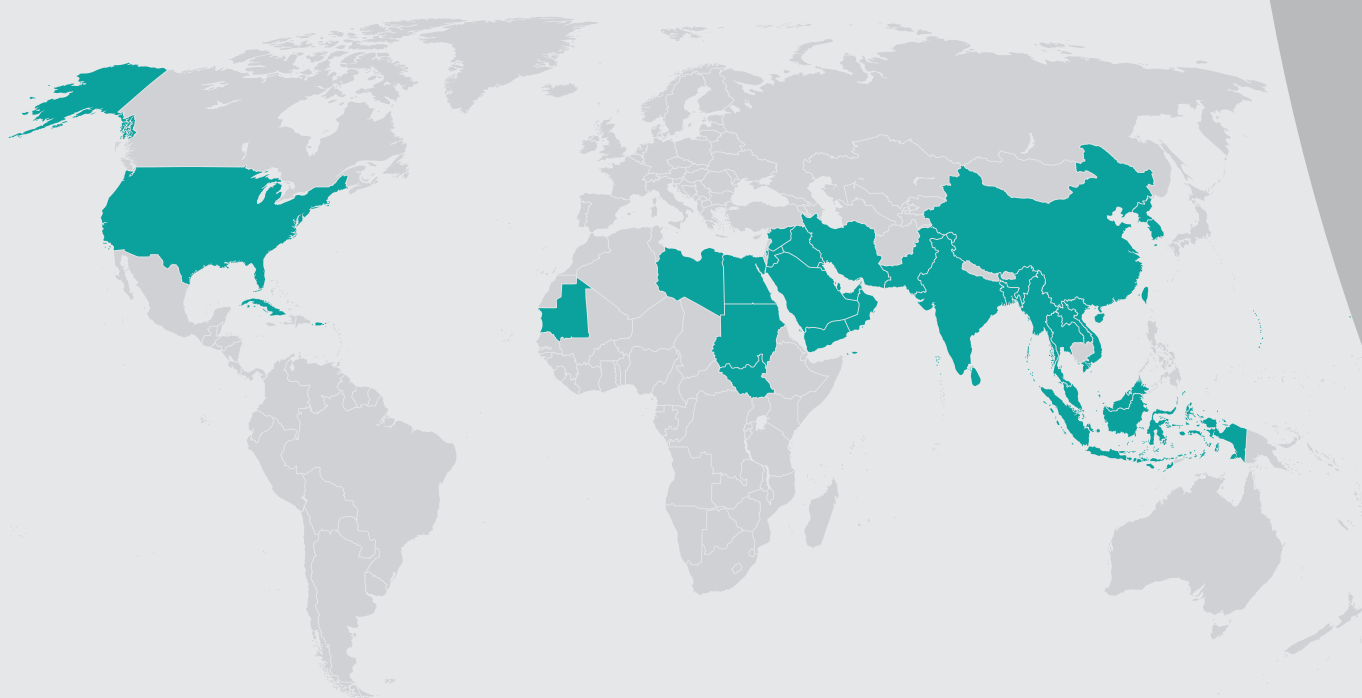


# The Death Penalty for Drug Offences: Global Overview 2019

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# The Death Penalty for Drug Offences: Global Overview 2019

Gen Sander, Giada Girelli and Adrià Cots Fernández  
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Designed by Mark Joyce

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61 Mansell Street, Aldgate, London E1 8AN

Telephone: +44 (0)20 7324 3535

E-mail: [office@hri.global](mailto:office@hri.global)

Website: [www.hri.global](http://www.hri.global)



**Harm Reduction International** (HRI) is a leading non-governmental organisation dedicated to reducing the negative health, social and legal impacts of drug use and drug policy. We promote the rights of people who use drugs and their communities through research and advocacy to help achieve a world where drug policies and laws contribute to healthier, safer societies.

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



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Any errors are the responsibility of Harm Reduction International.



# The Death Penalty for Drug Offences:

## Global Overview 2019

### Introduction

Harm Reduction International (HRI) has monitored the use of the death penalty for drug offences worldwide since our first ground-breaking publication on this issue in 2007. This report, our ninth on the subject, continues our work of providing regular updates on legislative, policy and practical developments related to the use of capital punishment for drug offences, a practice which is a clear violation of international law.

The 2019 *Global Overview* highlights some of the most common violations of fair trial standards reported in capital drug cases across a range of jurisdictions, revealing systemic flaws and a particularly grave impact on vulnerable defendants. Indeed, many if not most individuals charged and sentenced to death for a drug offence have limited economic resources, and are from

ethnic or racial minorities or are foreign nationals; they mostly occupy low-level positions in the drug trade and may have been deceived or coerced into taking part in drug-related activities. The legal analysis reflects the principle in international law that the imposition of a death sentence following conviction for a drug offence (not involving intentional killing) in proceedings which fail to meet international standards of fairness compounds the violations of the rights of the individual to life, to a fair trial, and to be free from torture or other cruel, inhuman or degrading treatment or punishment.

Harm Reduction International opposes the death penalty in all cases without exception, regardless of the person accused and their guilt, the nature of the crime and the method of execution.

## Methodology

Drug offences (also referred to as drug-related offences or drug-related crimes) are drug-related activities categorised as crimes under national laws; for the purposes of this report, this definition excludes activities which are not related to the trafficking, possession or use of controlled substances and related inchoate offences (inciting, assisting or abetting a crime).

In the 35 states that retain the death penalty for drug offences, capital punishment is typically applied for the following offences: cultivation and manufacturing, and the smuggling, trafficking or importing/exporting of controlled substances. However, in some of these states, the following drug offences may also be punishable by the death penalty (among others): possession, storing and hiding drugs, financing drug offences, and inducing or coercing others into using drugs. For more information on the drug offences punishable by death by jurisdiction, visit: <https://www.hri.global/death-penalty-2019>.

HRI's research on the death penalty for drug offences excludes countries where drug offences are punishable with death *only* if they involve, or result in, intentional killing. For example, in Saint Lucia (not included in this report), the only drug-related offence punishable by death is *murder committed in connection with drug trafficking* or other drug offences.<sup>1</sup>

The death penalty is reported as 'mandatory' when it is the only punishment that can be imposed following a conviction for at least certain categories of drug offences (without regard to the particular circumstances of the offence or the offender). Mandatory sentences hamper judicial sentencing discretion and thus according to international human rights standards they are inherently arbitrary.<sup>2</sup>

The numbers that have been included in this report are drawn from and cross-checked against: official government reports (where available) and state-run news agencies; court judgments; non-governmental

organisation (NGO) reports and databases; United Nations (UN) documents; media reports; scholarly articles; and communications with local activists and human rights advocates, organisations and groups. Every effort has been taken to minimise inaccuracies, but there is always the potential for error. HRI welcomes information or additional data not included in this report.

Identifying current drug laws and controlled drugs schedules in some countries can be challenging, due to limited reporting and recording at national level, together with language barriers. Some governments make their laws available on official websites; others do not. Where it was not possible for HRI to independently verify a specific law, the report relies on credible secondary sources.

With respect to data on death row population, death sentences and executions, the margin for error is even greater. In many countries, information about the use of the death penalty is shrouded in secrecy, or opaque at best. For this reason, many of the figures cited in this report cannot be considered comprehensive, and instead have to be considered minimum numbers of confirmed sentences and executions, illustrative of how capital punishment is carried out for drug offences. It is likely that real numbers are higher, in some cases significantly. Where information is incomplete, there has been an attempt to identify the gaps. In some cases, information among sources is discordant due to this lack of transparency. In these cases, HRI has made a judgment based on available evidence.

When the symbol '+' is found next to a number, it means that the reported figure refers to the minimum confirmed number, but according to credible reports the actual figure is likely to be higher. Global and yearly figures are calculated by using the minimum confirmed figures.

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## Foreword by Mr Justice Richard Malanjum Former Chief Justice of Malaysia

As a knee-jerk reaction to increased drug use among younger generations in the late 1970s and 1980s, countries around the world legislated to impose severe penalties for drug use and trafficking. In many countries, the penalty for drug trafficking is the death penalty – mandatory in some countries, and left for judges to decide in others. Mere possession of drugs, depending on the quantity, can attract imprisonment for life or for a defined period.

Yet, statistics prove that this tough approach has not reduced drug use or trafficking. And despite some highly publicised executions of people for drug offences, the number of drug couriers arrested in retentionist countries has not decreased.

Instead, these executions generated support for the removal of the death penalty for drug offences.

The arguments in favour of removing the death penalty for drug offences are many: the death penalty has no deterrent effect and it is often society's most marginalised who bear the brunt of it; often, financially disadvantaged people or even those people committing a crime in the name of 'love' fall victims of the death penalty for drug offences; there is no determinable loss of life imputable to these crimes; and the reliance on presumptions in securing convictions by the

prosecution and the courts in some countries has increased the probabilities of miscarriages of justice. Further, the length of time between conviction and actual execution makes the death penalty for drug offences even harder to defend.

It is therefore not surprising that many countries that impose the death penalty for drug offences are now taking a critical look at their legislation, including my home country of Malaysia. Some are restricting the applicability of the mandatory death penalty to allow for judicial discretion guided by sentencing guidelines. This is a step in the right direction. Hopefully, over time, the death penalty for drug offences will become history.

Malaysia has already shown serious commitment by setting up a Special Committee to study alternative sentences to the mandatory death penalty, not only for drug offences but for all offences that carry capital punishment. A report by this committee to the government was submitted on 11 February 2020.

There is no doubt that any change in the laws on the death penalty should be accompanied by a comprehensive review of the criminal justice system as a whole. Such an initiative will preserve public confidence in the justice system, if not increase it. Justice may be blind, but it must aim to always be fair.



## Executive Summary

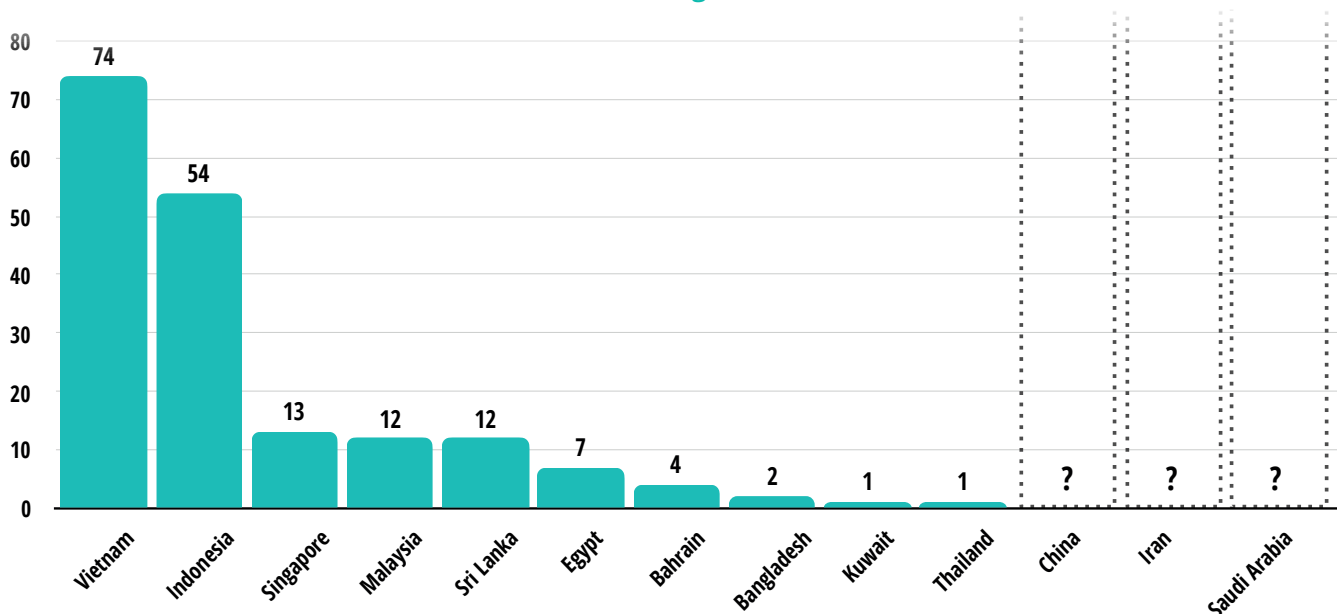
Thirty-five countries retain the death penalty for drug offences, and both the handing down of death sentences and executions for drug offences – often following unfair trials – continued in 2019. Laws which permit or mandate the imposition of the death penalty for a drug-related offence are inconsistent with the right to life. Furthermore, the sentencing of a person to death or their execution for a drug offence following a trial that fails to meet international standards of fairness is an arbitrary deprivation of life – violating the right to life, the right to a fair trial, and the prohibition of inhuman or degrading treatment or punishment guaranteed by international human rights law and standards.

In the last decade, the application of the death penalty for drug offences has fluctuated, with known executions peaking at 755 in 2015. Since then, Harm Reduction International (HRI) has documented a predominant downward trend. Following important reforms, particularly in Iran, known executions<sup>3</sup> for drug offences dropped to 93 in 2018, the lowest figure HRI has recorded since it began working on this issue in 2007.<sup>4</sup> 122 drug-related executions were confirmed

for 2019, accounting for 18% of total known executions carried out around the world. While still lower than figures recorded between 2008 and 2017, these numbers represent a 31% increase from 2018, and may signal a reversal in the encouraging trend reported in recent years.

Historically, international attention has been focused on the carrying out of executions more than pronouncing of sentences, and it is possible that states have become more reluctant to actually carry out the punishment as a result. The data on sentencing, however, suggests that support for capital punishment is still very strong. Currently, at least 3,000 people convicted of drug offences languish on death row (with the actual figure likely to be much higher), many of whom have been there for a decade or more, and hundreds more continue to be sentenced to death every year. Recently, the number of known death sentences for drug offences has been fluctuating, rising between 2016 and 2018<sup>5</sup> and decreasing slightly in 2019, despite an overall global decline in the sentencing of people to death for all crimes during the same period.

Chart 1: Minimum confirmed death sentences for drug offences, 2019



This report demonstrates the need to monitor much more closely the entire criminal justice process in capital cases, and capital drug cases in particular. Indeed, violations of the right to a fair trial occur, often on a systemic level, in states that hand down sentences for drug offences. The correlation between the two is not a coincidence. The cases reviewed in the following pages reveal that violations of fair trial rights play a central role in the imposition of death sentences for drug offences.

Fair trial concerns recurring in capital drug cases are the focus of the present report. As respect for fair trial guarantees in all capital cases is of paramount importance, this report looks at the various ways in which established international human rights standards and safeguards are systemically flouted in six states that retain the death penalty for drug offences. Particular attention is given to legal mechanisms or sentencing

practices that disproportionately impact capital drug defendants as a manifestation of the exceptionalism of drug control. What emerges is a clearer picture of the criminal justice systems of retentionist countries, which gravely impede the chances of individuals charged with capital drug offences of receiving a fair trial. The result is that capital drug defendants, often already some of the most vulnerable individuals in both society and the drug trade, are placed at greater risk of receiving a death sentence and of being executed.

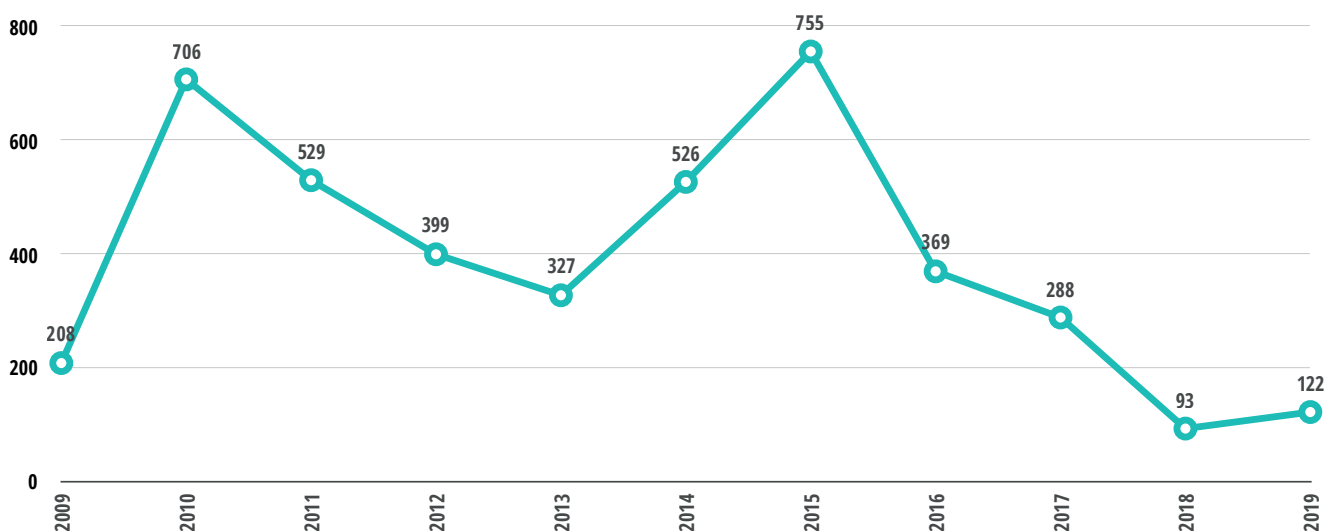
With death sentences for drug offences continuing to be meted out and hundreds of people awaiting execution following unfair judicial procedures, there is an urgent need to draw more attention to this issue, and to work with retentionist states to reform their criminal justice systems, all while taking steps to ultimately abolish the death penalty altogether.

## 2019 in a snapshot

- Drug offences are punishable by death in at least **35 countries** worldwide, but only four (China, Saudi Arabia, Iran and Singapore) are confirmed to have carried out executions for these offences in 2019. Executions for drug offences are also likely to have taken place in Vietnam, but this is impossible to confirm due to state secrecy around the practice.
- At least **122** people were executed for drug offences in 2019, representing a **31%** increase from 2018 (excluding executions in China and Vietnam).
- Saudi Arabia executed at least **84** people for drug offences in 2019, making it the worst year on record for the country since HRI started tracking drug-related executions in 2007.
- At least **3,000** people are currently confirmed to be on death row for drug offences globally, though this number is likely much higher.
- At least **13** countries sentenced a minimum of **180** people to death for non-violent drug offences in 2019, a large proportion following trials that did not meet international standards of fairness.
- The UN Human Rights Council and the UN Office on Drugs and Crime once again reiterated that the death penalty can never be imposed for drug offences.

Chart 2: Global confirmed executions for drug offences, 2009 - 2019

(\*excluding China)



## Fair trial violations in capital drug cases

Respect for due process guarantees is essential to the fairness of any criminal justice system. The respect of these guarantees is particularly critical in capital cases, where the life of the defendant is at stake.

In the past decades, states and intergovernmental bodies have agreed a detailed set of fair trial standards that must always be upheld, including in processes that may conclude with a sentence of death. Human rights bodies and mechanisms have clarified that sentencing a person to death following a proceeding that fails to comply with international fair trial standards would result in a violation not only of the individual's right to a fair trial, but also their right to life,<sup>6</sup> and the prohibition of torture and cruel, inhuman or degrading treatment or punishment.<sup>7</sup>

Under international human rights law and standards, the death penalty may only be applied – in states that retain this punishment – to the most serious crimes.<sup>8</sup> It has been clarified that drug offences, as with all crimes not involving intentional killing, do not qualify as such. Thus any law that permits the imposition of a death sentence for drug offences is inconsistent with a state's duty to respect the right to life. Furthermore, the passing of a death sentence or execution of an individual following conviction for a drug offence is by nature a violation of the prohibition of arbitrary deprivation of life, as well as of the prohibition of torture and cruel, inhuman or degrading treatment or punishment<sup>9</sup> – regardless of whether fair trial standards were upheld.

Nevertheless, noting the widespread and systemic fair trial violations that characterise many capital drug cases in states that retain the death penalty for these offences,<sup>10</sup> the analysis below holds that stronger adherence to fair trial standards would reduce the application of the death penalty for drug offences.

The following section will critically assess the implementation of selected elements of the right to a fair trial in the context of proceedings for drug offences in which death is a possible penalty (also referred to as *capital drug cases*). This analysis draws from contemporary examples in retentionist states where information is available thanks to the research of dedicated national and international civil society organisations working on these issues, such as the Abdorrahman Boroumand Center for Human Rights in Iran, Amnesty International, the Institute for Criminal Justice Reform and Justice Project Pakistan.

The overview is not intended to cover all possible violations of fair trial standards in capital drug cases. Its main purpose is to highlight some of the key challenges to the enjoyment of the right to a fair trial (and the right to life) in judicial proceedings that may conclude with a sentence of death for drug offences. Specifically, this report will examine four elements of the right to a fair trial that appear to be systemically violated in capital drug cases: (1) the right to competent and effective legal counsel; (2) the prohibition of torture and coerced confessions; (3) the right to the presumption of innocence; and (4) the right to appeal and the right to seek pardon or sentence commutation, the latter being recognised to apply to individuals sentenced to death as deriving from the right to life.

## The right to a fair trial under international law

Respect for the right to a fair trial is one of the central pillars of international law, and it is essential to ensure the proper administration of justice and protect individuals against arbitrary punishment. The right to a fair trial is made up of several interrelated constituent rights and is often linked to the enjoyment of other rights, such as the right to life and the prohibition against torture and other cruel, inhuman or degrading treatment or punishment (torture and other ill-treatment).<sup>11</sup>

Since it was affirmed in the Universal Declaration of Human Rights in 1948, the right to a fair trial has been recognised and elaborated on in several legally binding international and regional treaties,<sup>12</sup> as well as non-treaty standards adopted by the UN and other intergovernmental and expert bodies.<sup>13</sup> The right to a fair trial is legally binding on states as part of customary international law<sup>14</sup> and therefore must be respected at all times, regardless of whether or not a state has ratified the International Covenant on Civil and Political Rights (ICCPR) or other human rights treaties enshrining it.

Many elements of the right to a fair trial are codified in Article 14 of the ICCPR, including (but not limited to):

- the right to be presumed innocent until proven guilty;
- the right to be heard by a competent, independent and impartial tribunal;
- the right to be tried without undue delay;
- the right to an adequate defence;
- the right to effective legal counsel at all stages of the proceedings;
- the right to interpretation and translation;
- the right not to be compelled to testify against oneself or to confess guilt;
- the right to appeal.

In addition, international standards, including Article 6 of the ICCPR (the right to life) guarantee the right of all persons sentenced to death to seek pardon or commutation of a death sentence.<sup>15</sup> Accordingly, executions shall not take place before such requests are meaningfully considered. Clemency procedures should be fair and transparent; officials with the power to grant amnesties, pardons or commutations should give genuine consideration to all requests, and should not exclude certain categories of sentenced prisoners *a priori*.<sup>16</sup>

Adherence to fair trial standards, from the time of arrest to the end of the criminal justice process, is critically important in death penalty cases. The UN Human Rights Committee has stressed that “[i]n cases of trials leading to the imposition of the death penalty scrupulous respect of the guarantees of fair trial is particularly important” and concluded that “[t]he imposition of a sentence of death upon conclusion of a trial, in which the provisions of Article 14 of the Covenant have not been respected, constitutes a violation” not only of the fair trial guarantees, but also “of the right to life”.<sup>17</sup> Indeed, a death sentence would be arbitrary in nature if the trial which led to it did not adhere to international standards of fairness,<sup>18</sup> and the arbitrary deprivation of life, together with torture and other ill-treatment, is absolutely prohibited under customary international law.<sup>19</sup>

## The right to competent and effective legal counsel

Under international human rights standards, all persons detained or accused of a criminal offence have the right to competent and effective legal counsel at all stages of criminal proceedings, including immediately on arrest and during detention, during questioning, at preliminary stages of the proceedings, at trial and at appeal.<sup>20</sup> If the individual cannot afford to pay, such counsel must be assigned to them free of charge.<sup>21</sup> As explained by the UN Human Rights Committee, “[t]he availability or absence of legal assistance often determines whether or not a person can access the relevant proceedings or participate in them in a meaningful way”.<sup>22</sup> Amnesty International also points out that it is a critical safeguard against coerced confessions or other self-incriminating statements, and against torture and other ill-treatment.<sup>23</sup>

Access to competent legal counsel is particularly important in cases of offences carrying the death penalty.<sup>24</sup> In fact, human rights authorities have specified that states are required to ensure that capital defendants have adequate assistance of counsel at every stage of the proceedings “above and beyond” the protection afforded in non-capital cases.<sup>25</sup> In other words, states have a heightened obligation in death penalty cases to ensure that any lawyer appointed to represent an accused is competent, effective, and both able and willing to represent the interests of the defendant.<sup>26</sup> The UN Human Rights Committee has stated that if counsel demonstrates “blatant misbehaviour or incompetence”, the state may be responsible for a violation of the right to fair trial under the ICCPR,<sup>27</sup> and that death penalty cases should not proceed unless the defendant is assisted by competent and effective counsel.<sup>28</sup>

Yet in capital cases – including capital drug cases – the right to legal counsel is one of the elements of a fair trial that is most frequently violated. The case studies

below highlight pervasive violations of the right to counsel, undermining the fairness of capital drug cases in several countries. The violations described range from limiting access to competent counsel to restricting the role or independence of counsel, to denying a person accused of a capital offence access to counsel altogether. Ultimately, the availability of competent legal representation is a key factor in determining whether a defendant receives a death sentence in capital drug cases.<sup>29</sup>

It is worth noting here that instrumental to the protection and promotion of the right to legal counsel is the right to an interpreter. This is particularly relevant when assessing capital drug cases, where foreign nationals are disproportionately represented. International human rights standards recognise the right to free assistance of a competent interpreter to all defendants who do not understand or speak the language used by the authorities or their lawyer. This right, which also implies a right to interpretation and translation of documents, applies to all stages of the proceedings, and is essential in guaranteeing the full and effective participation of the defendant.<sup>30</sup>

As has been demonstrated time and time again, and as the examples in the following pages further reveal, people charged with capital drug offences are often from poor and/or marginalised backgrounds. A key reason for this is the nature of the drug market, combined with the way in which drug offences are defined and the drug offences which are punishable by death. Punishment for drug offences is normally based on possession/vicinity to the drug, and on the class and weight of the substance. This is however inadequate and counterproductive, as normally those within the drug market who carry drugs – especially high quantities – are in fact those in the lowest position in the drug hierarchy; in turn, these are normally individuals from poor and/or marginalised backgrounds. Because of their limited resources, they often cannot afford to hire a lawyer of their own choosing. Due to limited or inadequate legal aid

services, these individuals often do not have access to competent, suitably experienced and effective legal representation, and run a higher risk of being sentenced to death and executed. In extreme cases, the right to legal counsel is denied by law, or as a consequence of capital drug cases being heard in special courts in proceedings in which the defendant's fair trial rights are more limited. This is not only evidence of social inequality in the criminal justice system, but a clear violation of the right to a fair trial and the right to life.

In **Malaysia**, while the right to legal counsel is guaranteed in the constitution,<sup>31</sup> its enjoyment is considerably obstructed in practice, particularly for those who cannot afford to hire a lawyer independently. According to research published by Amnesty International in 2019, legal representatives are reportedly not assigned to a case until the trial is due to start, leaving defendants without legal assistance immediately following arrest, during questioning and for pre-trial periods that may extend from two to five years.<sup>32</sup> In many of the cases considered by Amnesty International, if and when legal assistance was available, concerns were expressed that counsel was incompetent, inexperienced, or did not conduct themselves appropriately when representing people of less advantaged backgrounds during trial.<sup>33</sup> Due to limited resources available to them, local court appointed lawyers often face obstacles in gathering and challenging evidence, which would inevitably impede their ability to provide adequate and effective legal representation.<sup>34</sup>

Insufficient access to interpreters for accused persons who do not speak or understand the language used by the authorities is another serious barrier to the enjoyment of the rights to counsel and to a fair trial in Malaysia, including in capital drug cases. While the right to interpretation in court is enshrined in Malaysian law, the same right does not apply outside the courtroom.<sup>35</sup> Indeed, Amnesty International has reported cases where people who did not understand Malay were

asked by police to sign documents in Malay which were later used in court.<sup>36</sup> Similarly, in 2017 the NGO Iran Human Rights denounced the fact that dozens of Iranian nationals accused of drug trafficking and facing the death penalty in Malaysia were not provided with a translator during their interrogation.<sup>37</sup> According to official figures, foreign nationals make up over 40% of all death row prisoners in Malaysia, the large majority of whom have been charged with drug offences.<sup>38</sup> Not only do many of them face language and/or financial barriers, but they are also likely to possess limited knowledge of the Malaysian legal system.<sup>39</sup> As rights groups have indicated, when foreign nationals are unable to secure effective legal representation, and/or are denied access to interpreters and translators (including when speaking to counsel) at the initial stages of the proceeding, it becomes very difficult to ensure a fair trial.<sup>40</sup>

The right to legal counsel is guaranteed in **Indonesia's** Criminal Procedure Code (KUHAP), yet Amnesty International noted in its 2015 report that people arrested for drug offences are often either not permitted nor provided access to a lawyer until weeks or months after their arrest.<sup>41</sup> Out of 100 death penalty cases analysed by the Institute of Criminal Justice Reform (ICJR) between 2017 and 2019, legal assistance at the investigation phase has only been confirmed in 11.<sup>42</sup> The ICJR has also revealed that, because defendants generally cannot afford to pay for a lawyer of their choosing, most lawyers in capital drug cases in Indonesia are state-appointed.<sup>43</sup>

Recent joint research by the NGOs ADPAN, Ensemble contre la peine de mort (ECPM) and Kontras – which also interviewed seven people on death row in Indonesia – concluded that when an accused detainee is finally granted access to legal counsel, the quality of the legal assistance provided by such counsel is often poor, with lawyers reportedly not concerned about protecting the rights of the defendant.<sup>44</sup> The seven people sentenced to death interviewed in the above-mentioned research indicated that their lawyers were not

interested in their cases, met with them infrequently, were not always present during their trials and did not challenge the evidence.<sup>45</sup> In one example reported by Amnesty International in 2015, an Indonesian national arrested for drug trafficking in 2007 was denied the use of a lawyer of his choice and instead appointed a lawyer by the police, which was explained to be his only option. The lawyer's advice was to answer "yes" to any questions from the investigator. The defendant, who expressed doubt that his legal counsel was actually a lawyer, was convicted and sentenced to death in 2008, and the Supreme Court upheld his sentence in 2009.<sup>46</sup>

Amnesty International attributed the delays in providing legal counsel, as well as the lack of competent representation, in part to the scarce resources allocated to legal aid in Indonesia.<sup>47</sup> Other rights groups have noted that the KUHAP falls short of explicitly guaranteeing *competent and effective* legal assistance.<sup>48</sup> This reflects domestic jurisprudence: even at the Supreme Court level, judges often fail to take the lack of effective legal counsel into consideration.<sup>49</sup>

In **Iran**, drug-related cases are dealt with in the Islamic Revolutionary Courts, which reportedly operate with considerably lower transparency and guarantee fewer human rights standards than ordinary courts in the country.<sup>50</sup> As is the case in many other drug-related trials around the world, many defendants charged with drug offences in Iran reportedly rely on court appointed lawyers as they lack the funds to pay for their own lawyer.<sup>51</sup> According to The Foreign Policy Centre, most people accused of drug-related offences have reported not having access to a lawyer throughout their detention and trials, or only meeting their court appointed lawyer during trial.<sup>52</sup>

Article 48 of the 2015 Code of Criminal Procedure provides for the right to legal counsel from the start of detention, but stipulates defendants accused of certain capital crimes may be denied access to an independent lawyer of their own choosing during the investigation phase – a period which may last for

months.<sup>53</sup> Moreover, some defendants that have been able to hire their own lawyers have reported that their lawyer of choice was prohibited from defending them during the trial and only given permission to submit a written defence.<sup>54</sup> Finally, the Abdorrahman Boroumand Center for Human Rights in Iran reported that experienced lawyers sometimes avoid criminal cases because of the physical and mental stress these entail, in turn caused by the fact that "authorities conducting pre-trial investigations have a negative perception of defense lawyers and, despite the recent amendments to criminal procedure, continue to disregard the defendant's right to legal representation".<sup>55</sup>

The case of Ali Reza Madadpur – reported in the Omid Memorial – stands out as one particularly horrific example of a capital drug case in which the defendant's right to legal counsel (among other fair trial rights) was violated. As reported by the Abdorrahman Boroumand Center for Human Rights in Iran, in November 2011, scraping to make ends meet, Ali Reza agreed to a cleaning job offered by an acquaintance. As he waited outside on his first day, police raided the house and found 990 grammes of crystal meth. He was arrested and then subjected to incommunicado detention and interrogation without access to a lawyer for weeks. The court appointed a lawyer at most two weeks before his trial, and during the trial the lawyer was only permitted to read from a prepared statement. Despite his co-defendants' insistence that he had played no part in the drug manufacturing activities for which he was charged, Ali Reza was sentenced to death following trial proceedings that lasted just 20 minutes. His request for a retrial was denied, and he was executed in August 2016.<sup>56</sup>

In **China**, a report by NGO The Rights Practice confirms that the role and independence of lawyers is so restricted by the state that effective legal counsel simply cannot be provided in death penalty cases.<sup>57</sup> Chinese lawyers report barriers to providing effective legal representation, including obstacles to meeting their clients and accessing information about the case,



limited disclosure by the prosecution, restrictions on conducting their own defence investigations, restrictions on presenting potentially mitigating evidence and calling witnesses, and having their submissions discounted by judges.<sup>58</sup> The level of performance of some criminal defence lawyers has also been criticised: experienced lawyers brought in to provide legal assistance at the Supreme People's Court review stage have reported that lawyers in earlier stages of the trial often fail to keep comprehensive case files and leave out key information. This poor-quality legal representation has been attributed, at least in part, to a lack of specialisation, the general absence of performance standards and a shortage of legal aid funding.<sup>59</sup>

One case that has received a lot of attention from the UN, including the Working Group on Arbitrary Detention, has been that of Mark Swidan, an American detained for drug manufacturing in November 2012 whose trial was postponed for 63 months.<sup>60</sup> According to the Working Group on Arbitrary Detention's sources, Mr Swidan's first lawyer was ineffective and refused to visit his client because he claimed it was too far to travel. Additionally, he refused to send Mr Swidan's family any information, despite specific requests and them having power of attorney.<sup>61</sup> Mr Swidan was later assigned a different lawyer, but this one did not speak English and rarely answered letters from the family. During his sentencing hearing on 30 April 2019, where he received a death sentence, Mr Swidan was not allowed to speak to his lawyer.<sup>62</sup>

The role of lawyers is also restricted in **Pakistan**. In a recent report on the death penalty by the Human Rights Commission of Pakistan and the International Federation for Human Rights (FIDH), public defence (legal aid provided by the state) was found to be inadequate, with legal aid provided too late – when provided at all – to a significant number of defendants.<sup>63</sup> It is reportedly common for defendants to be without access to legal counsel following arrest (and during questioning) until they make their first

court appearance, when “judges appoint public defenders, who can be the first lawyer they see in the courtroom, regardless of their existing caseload of their qualifications to take on that particular case”.<sup>64</sup>

A review undertaken by the Foundation for Fundamental Rights of judgments from 76 capital cases tried under Pakistan's drug laws revealed that not one case took into account testimony from an independent witness, suggesting that there are barriers to lawyers introducing independent witnesses in drug-related cases specifically.<sup>65</sup> Restricting witness statements to people directly employed by the Anti-Narcotics Force or other law enforcement agencies makes it extremely difficult to overcome the presumption of guilt that operates, a grave fair trial concern which is further discussed on page 21.<sup>66</sup> Furthermore, it can render the entire trial more vulnerable to influence by law enforcement authorities.

Finally, despite the constitution guaranteeing the right to “consult and be defended by a legal practitioner of his choice” to all persons arrested in **Singapore**,<sup>67</sup> law enforcement officials can – and do – refuse a person's request to meet a lawyer after their arrest for a “reasonable” period of time;<sup>68</sup> as summarised by the academic Ho Hock Lai, such “reasonable time has been interpreted by the courts as lasting up to 19 days”.<sup>69</sup> In explaining to the prosecutor the reasons for such a delay, investigating officers pointed to the risk that permitting a suspect to consult a lawyer might result in “the accused shutting up”.<sup>70</sup>

## The prohibition of torture and coerced confessions

The absolute prohibition of torture and other ill-treatment is enshrined in international human rights law<sup>71</sup> and is a norm of customary international law that applies at all times, regardless of the offence committed.<sup>72</sup> As affirmed in the Convention against Torture, there are no exceptional circumstances that can ever be used to justify the use of torture, including public emergencies.<sup>73</sup>

It is widely acknowledged that people deprived of their liberty, including following arrest and during detention, are particularly vulnerable to torture and other ill-treatment, including before and during questioning by the authorities.<sup>74</sup>

A crucial fair trial right in international law is what is commonly known as the *exclusionary rule*: an absolute prohibition on the use of information obtained through torture or other ill-treatment in any proceedings.<sup>75</sup> The UN Human Rights Committee has clarified that this exclusion applies not only to statements and confessions, but also to other forms of evidence elicited as a result of torture or ill-treatment, at all times.<sup>76</sup> Not only is this rule fundamental to safeguarding the prohibition of torture by removing incentives to carry out such acts,<sup>77</sup> but is key to safeguarding the right to a fair trial, including the right to the presumption of innocence and the right to not self-incriminate.<sup>78</sup>

Importantly,<sup>79</sup> any allegation of torture or ill-treatment requires state authorities to conduct a prompt, independent, impartial and effective investigation to ensure not only that information elicited as a result of torture or other ill-treatment is not used in proceedings (except against the alleged perpetrator of the torture), but also that those responsible are brought to justice, and victims can access effective remedies and receive adequate reparations.<sup>80</sup> Even without an explicit complaint, whenever there are reasonable grounds

to believe that torture or other ill-treatment may have taken place, an investigation is required.<sup>81</sup>

Despite clear international law as well as state laws prohibiting it, instances continue to emerge of torture and other ill-treatment on the part of police and state officials as a means of gathering information and evidence against suspects arrested on drug charges, some of which are described in the following paragraphs.

As recently reported by Amnesty International, torture and other ill-treatment at police stations continues to be a widespread concern in **Malaysia**.<sup>82</sup> This is particularly likely when the accused is not assisted by counsel during police questioning; as highlighted in the previous section, this is a recurring situation for those individuals who cannot afford to hire a lawyer on their own, as in these cases legal representatives are only assigned to a case when the trial is due to start.

After its visit to Malaysia in 2010, the UN Working Group on Arbitrary Detention noted that “virtually all detainees interviewed stated that they had been subjected to ill-treatment and even torture in police stations and detention centres in order to obtain confessions or incriminatory evidence”.<sup>83</sup> The use of confessions or other self-incriminating statements (including those obtained through torture or ill-treatment), while otherwise proscribed under Malaysian law, can be admissible as evidence in capital cases under Malaysia’s Dangerous Drugs Act 1952.<sup>84</sup> While Amnesty International reports that, in practice, the Attorney General’s Chambers follow an informal policy of not entering these statements into evidence in such cases, lawyers remain concerned that they are nevertheless used by the prosecution to strengthen their case against the defendant.<sup>85</sup>

Rights groups report the use of torture is also routine and widespread during police investigations in **Indonesia**.<sup>86</sup> While officially prohibited by several Indonesian laws, torture is not defined as a specific criminal offence under the Criminal Code.<sup>87</sup>

The Institute for Criminal Justice Reform reported “rampant” psychological torture during the investigation phase against individuals who are not accompanied by a lawyer, together with instances of physical and even sexual abuse.<sup>88</sup> According to the same source, statements made under such duress continue to be admitted as evidence in proceedings, including in capital drug cases.<sup>89</sup> In practice, torture allegations are often not investigated by authorities,<sup>90</sup> and judges often do not sufficiently take them into account in their judgments.<sup>91</sup> An illustrative example recounted by Amnesty International in 2015 is that of a Pakistani national who was arrested on drug charges in 2004. Police kept him detained in a house for three days and punched, kicked and threatened him with death unless he signed a ‘confession’, which he later did. The man’s health deteriorated so much that he was sent to a police hospital for 17 days, where he required stomach and kidney surgery due to the damage caused by the beatings he endured. During his trial, he described the torture to which he had been subjected, but the judges still allowed the ‘confession’ to be admitted as evidence. He was eventually sentenced to death, and died of cancer on death row in May 2018.<sup>92</sup>

In **China**, the use of evidence obtained through torture has been explicitly prohibited since 2012.<sup>93</sup> Any confession obtained without audio or video recording is considered illegal, and new regulations were introduced to strengthen this prohibition in 2017.<sup>94</sup> As reported by The Rights Practice, while these steps were widely viewed as a sign of progress among Chinese lawyers and scholars,<sup>95</sup> torture and ill-treatment are still considered to be deeply entrenched in China’s criminal justice system.<sup>96</sup> At the same time, judges reportedly remain reluctant to discount evidence provided by the police, and the overreliance on confessions to bring about convictions persists.<sup>97</sup> The result is a system that has been criticised for both incentivising coerced confessions and producing wrongful convictions, including in cases that result in executions.<sup>98</sup> The conviction rate of Chinese courts is estimated to be 99.9%.<sup>99</sup> The Dui Hua Foundation has reported on a number of cases in which suspects’ silence in response

to police questioning is taken as incriminating (‘zero confessions’) in capital drug cases in particular, again signalling that the role of confessions in China remains problematic.<sup>100</sup>

In the case of Mark Swidan, sources described the evidence against him as “weak and circumstantial and [...] based almost entirely on hearsay”; no drugs were found on him, in his room or in his system, and no “forensic nor telecommunications evidence, such as emails, phone calls or letters” was produced by the prosecution.<sup>101</sup> Additionally, he was not in China at the time of the alleged offence and none of the other accused individuals could identify him.<sup>102</sup> At his original indictment in November 2013, Mr Swidan was even described as “having played a second role fit for lenient or reduced penalty”.<sup>103</sup> However, five-and-a-half years later, after being subjected to “severe psychological torture to extract a confession”, the court found him to be the “principal offender in manufacturing and trafficking drugs” and sentenced him to death.<sup>104</sup> The UN Working Group on Arbitrary Detention has asserted that the violations of the right to a fair trial and due process in Mr Swidan’s case were so grave as to give his deprivation of liberty an arbitrary character,<sup>105</sup> and that his death sentence was disproportionate given the “serious irregularities” outlined above.<sup>106</sup>

Similarly, while the use of torture to extract confessions is prohibited by **Iran’s** constitution,<sup>107</sup> the criminal justice system continues to rely on confessions to convict, and the use of torture and ill-treatment is reportedly widespread, particularly in capital drug cases. Rights groups report that almost all prisoners who are arrested for drug offences are kept in solitary confinement and are subjected to torture during the investigation phase that follows their detention, while they are being denied access to a lawyer.<sup>108</sup>

According to testimonies received by Iran Human Rights, people facing the death penalty for drug offences are routinely “tortured in various ways and beaten with wooden sticks, hoses and cables, hung

by their hands from the ceiling for hours while being beaten, [or have] spent weeks in solitary confinement with handcuffs and shackles”.<sup>109</sup> In many cases, the ‘confessions’ elicited during detention have been the only evidence submitted to judges.<sup>110</sup> An amendment to the Anti-Narcotics Law limiting the use of capital punishment was introduced in 2017, but it has been criticised for its failure to address credible and systematic reports of torture and ill-treatment suffered by those arrested for drug offences with the aim of forcing confessions.<sup>111</sup> Iran’s laws on investigating allegations of torture remain deeply flawed, and no procedures for the automatic investigation into allegations of torture and ill-treatment when they are brought to the attention of authorities are foreseen.<sup>112</sup>

The use of torture to extract confessions has also been identified as an endemic problem in capital drug cases in **Saudi Arabia**. For example, Justice Project Pakistan has reported that many Pakistanis on death row for drug offences in Saudi Arabia (at least 28 of whom were executed in 2019)<sup>113</sup> have been subjected to ill-treatment, including slapping, beating with a belt and shocking with an electronic device during interrogation.<sup>114</sup>

One particular case that received the attention of several UN Special Procedures was that of Jordanian national Hussain Abo-Alkhair. In May 2014, Mr Abo-Alkhair was stopped by border police officers while he was travelling from Jordan to Saudi Arabia as a driver. Following his arrest for possession of illicit substances found in the car, “police officers allegedly hanged him upside down from his legs and beat him on his abdomen, head, feet, hands and face, forcibly extracting a confession from him”.<sup>115</sup> Despite affirming in court that he had no knowledge that the drugs were in his car, he was sentenced to death by beheading in May 2015.<sup>116</sup> Notably, he was only allowed to contact a lawyer after he was sentenced. In addition to the flagrant fair trial violations, the authorities also failed to inform the Jordanian embassy of his detention, in violation of his right to consular assistance.<sup>117</sup>

This was not an isolated incident. Foreign nationals – who in 2019, represented 56% of all people known to have been executed for drugs in Saudi Arabia<sup>118</sup> – are reported by the European Saudi Organisation for Human Rights (ESOHR) to have been subjected to particular violations of fair trial rights in the Kingdom, including: failure to inform consular authorities, denial of translators and interpreters, refusal to investigate reports of coercion, and denial of legal assistance.<sup>119</sup>

## Use of torture and coerced confessions in Iran: Sa’id Baluchi case

Sa’id Baluchi was subjected to a warrantless arrest in September of 2012, reportedly after law enforcement failed to arrest another suspect in a smuggling case for whom an arrest warrant had been issued. He was reportedly held in solitary confinement and denied contact with his family for five days, then transferred to Chahbahar Prison.

As reported by the Abdorrahman Boroumand Center for Human Rights in Iran, he was subjected to torture in prison, including electrical shocks and drilling of the feet – marks of which were later evident on his body – in order to extract a confession. He was sentenced to death following a 20-minute trial. His court appointed attorney reports that exculpatory testimony from community leaders were removed from the case file and not presented in court. The Supreme Court struck down the verdict and ordered a retrial over a lack of reports of a discovered weapon. However, the Supreme Court decision was nullified when authorities introduced the sworn testimony of members of the Iranian anti-narcotics forces, and the retrial never took place. Mr Baluchi was executed in March 2015.

*Reference:* Abdorrahman Boroumand Center and Harm Reduction International (28 March 2019) *Joint Stakeholder Submission to the Working Group for The Universal Periodic Review, Third Cycle*; Omid Memorial entry for Sa’id Baluchi. Available from: <https://www.omidmemorial.org/memorial/story/-7669/said-baluchi>.

## The right to the presumption of innocence

Described as the “golden thread” running through criminal law,<sup>120</sup> the right to the presumption of innocence is the legal principle that requires that a person suspected of a criminal offence be considered and treated as innocent until proven guilty in a court of law. For this right to be upheld, it is essential that the burden of proof sit with the prosecution, and that a court only convict the defendant if their guilt is proven beyond a reasonable doubt.<sup>121</sup>

That the burden of proof should never weigh on the defendant has been authoritatively acknowledged both in national legislation and by international bodies, including the UN Human Rights Committee.<sup>122</sup> Also a norm of customary international law, the right to be presumed innocent until proven guilty beyond reasonable doubt is particularly important in death penalty cases, where errors are literally a matter of life and death.<sup>123</sup> The 1984 UN Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty stipulate that “[c]apital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts”.<sup>124</sup> As recently reiterated by the UN Human Rights Committee, failure to respect fair trial guarantees as provided for in Article 14 of the ICCPR, including the presumption of innocence, in proceedings resulting in the imposition of the death penalty render the sentence arbitrary and in violation of the right to life.<sup>125</sup>

Legal presumptions are in conflict with this fundamental right, as they shift the burden of proof from the prosecution to the defendant. Despite this, in some retentionist countries the use of statutory presumptions is recurring in capital drug cases, placing capital drug defendants at a particular disadvantage. The problematic nature of these statutory presumptions has also been acknowledged by high-level courts in some retentionist countries, as detailed in the following paragraphs.

As noted by the Foundation for Fundamental Rights, the Control of Narcotic Substances Act (CNSA) regime in **Pakistan** is deliberately designed to reverse the presumption of innocence. Section 29 of the CNSA provides that “in trials conducted under this Act”, a defendant found in possession of narcotics is presumed to have committed an offence unless the contrary is proven. While it must still be established that the drugs in question were recovered from the defendant’s possession, it is the defendant’s responsibility to prove that they have not committed an offence under the CNSA.<sup>126</sup> Under this presumption-of-possession approach, it is not possible for judges to take mitigating circumstances into account, and the presumption that the accused must be merely in possession of – or physically near – the drugs in order for a conviction to be successful is built into the law.<sup>127</sup> With senior traffickers far too removed from the actual substances to ever be convicted, the result is a system that is rigged against low-level drug couriers, who represent some of the poorest and most vulnerable people in society, frequently coerced, tricked or pushed into drug trafficking by difficult circumstances.<sup>128</sup>

One illustrative example of this is the case of Dilawar, a 65-year-old truck driver who was found to be carrying 380 kilogrammes of cannabis on his way to Kashmir. He was reportedly oblivious to the nature of the cargo, which was valued at the equivalent of 76 years of his salary, and he was able to identify, with detailed precision, the people who had employed him to drive the truck. While those people were briefly detained and then released without any charge, Dilawar was convicted as the principal smuggler and sentenced to life imprisonment four years later.<sup>129</sup> In another example, in 2011 in Lahore, police stopped a car and found it to contain large quantities of cannabis and opium. The three passengers got vastly different sentences based on their coincidental proximity to the drugs in the car: the man in the front seat, who had 2.4 kilogrammes of cannabis product under his feet and was sentenced to five years in prison; the driver, who had 12 kilogrammes under his seat and in the

cavity of the car door, was sentenced to life in prison; and the man in the rear, who had 90 kilogrammes of cannabis and 24 kilogrammes of opium behind him, was sentenced to death.<sup>130</sup>

A review of 133 capital drug crime cases under the CNSA undertaken by the Foundation for Fundamental Rights revealed that every single one had been for possession-based offences.<sup>131</sup> Given that many people charged with drug offences are unable to pay for competent legal representation, that testimonies from independent witnesses are generally discounted and that mitigating factors are not considered, it is difficult for defendants to overcome the presumption of guilt applied under the law governing these cases.<sup>132</sup> Under these circumstances, the CNSA court system has maintained a conviction rate of between 89% and 92%.<sup>133</sup> Notably, between 2010 and 2019, every single death sentence for a drug offence was overturned or commuted by the Supreme Court due to insufficient evidence or flaws in the trial, revealing the extent to which the CNSA regime is in need of reform.<sup>134</sup>

The situation is similar in **Malaysia**, where statutory presumptions are included in Section 37 of the Dangerous Drugs Act 1952. The law effectively stipulates that anyone found with specified amounts of certain drugs, or in possession or control of objects or premises in which specified amounts of certain drugs are discovered, can be found guilty of drug trafficking and sentenced to death without any further evidence linking them to the drugs.<sup>135</sup> In these circumstances, the burden of proof is again effectively shifted to the defendant. Amnesty International recently highlighted that under Malaysian law, criminal cases cannot be reopened on the grounds of newly discovered facts following a final judgment,<sup>136</sup> and noted that these fair trial violations are particularly concerning in a country where over 70% of people on death row have been convicted of drug trafficking.<sup>137</sup> In April 2019, the Malaysian Federal Court declared the double presumption (of possession and control of the substances *and therefore* of intent to traffic) contained

in Section 37A unconstitutional, because of the “real risk that an accused might be convicted of drug trafficking in circumstances where a significant reasonable doubt remains”.<sup>138</sup>

Another country whose drug law explicitly contains statutory presumptions which violate the presumption of innocence is **Singapore**, which also retains the death penalty as the mandatory punishment for drug trafficking in a range of circumstances. Section 18 of the Misuse of Drugs Act stipulates that persons found with specified amounts of certain drugs, or even in possession merely of keys to a building or vehicle in which drugs are found, are presumed guilty of drug trafficking.<sup>139</sup> The courts have interpreted this provision rather narrowly, where the presumed knowledge is knowledge of the precise nature of the controlled drug in question.<sup>140</sup>

As noted by Amnesty International, it is not sufficient for a defendant to raise a reasonable doubt to rebut these presumptions, but instead the accused is required to meet a higher and considerably more challenging burden of proof of “on a balance of probabilities”.<sup>141</sup> This happened in the case of a young man arrested for trafficking drugs in Singapore in November 2004 when he was just 18, and sentenced to death a year later. During his trial, the judge ruled that although there was no direct evidence that he knew the capsules contained heroin, “ignorance did not exculpate him”.<sup>142</sup> The appeal court rejected the trial court’s suggestion that it was irrelevant whether he had knowledge of what he was carrying, but still upheld his conviction, reasoning that under Singapore law such knowledge is presumed until the defendant rebuts that presumption “on a balance of probabilities” and not merely by raising reasonable doubt.<sup>143</sup> He was executed in January 2007.<sup>144</sup>

## The right to appeal and the right to seek pardon or sentence commutation

As summarised by Amnesty International, under international human rights law, every person convicted of a criminal offence – including those sentenced to death – must have a meaningful right to appeal their conviction and sentence to an independent and impartial court of higher jurisdiction.<sup>145</sup> Fulfilling this right requires that laws permitting review by a higher tribunal be in place, as well as measures to ensure that the right to appeal can be accessed and exercised effectively in practice.<sup>146</sup> These measures include, among others, “reasonable time to lodge an appeal, access to the trial transcript, reasoned judgments and rulings on the appeal within a reasonable time”.<sup>147</sup> As a general rule, appeal proceedings should be held in public, with the parties present.<sup>148</sup>

In addition, respect for the right to life requires that all persons sentenced to death have the right to seek pardon or commutation of their sentence.<sup>149</sup> While states retain discretion in terms of how these procedures are carried out, the UN Human Rights Committee has confirmed that these must be specified in domestic legislation and offer certain “essential guarantees” with regard to certainty of process and transparency.<sup>150</sup> Additionally, conditions for pardon or commutation cannot be “ineffective, unnecessarily burdensome, discriminatory in nature or applied in an arbitrary manner”.<sup>151</sup> This right is individual to the person, and therefore automatic denials or exclusions of clemency based on categories of offence are incompatible with the state’s obligations to give consideration to the individual circumstances of each case.<sup>152</sup>

To safeguard these two distinct rights, as specified in UN Safeguard 8 of the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, an execution “shall not be carried out pending any appeal or other recourse procedure or other

proceeding relating to pardon or commutation of the sentence”.<sup>153</sup>

It goes without saying that both the right to appeal and the right to seek pardon or commutation are seriously undermined by restrictions on the right to legal counsel and lack of effective assistance of counsel, among other fair trial violations.

The case studies below show the endemic limitations in both the judicial appeal and (executive) pardon processes related to capital drug offences, exposing people on death row for drug offences to the risk of arbitrary or discriminatory decisions that could lead to their execution, in violation of their rights to a fair trial and to life.

As reported by The Rights Practice, the right to appeal in death penalty cases in **China** is reportedly compromised by the reluctance of appeal courts to undertake substantive reviews of law and fact, and restrictions on the right to legal counsel.<sup>154</sup> Participation of lawyers in the appeal process is reportedly limited, with the lack of comprehensive legal aid disproportionately impacting socio-economically marginalised defendants.<sup>155</sup> In a survey of 255 death penalty cases reviewed by the Supreme People’s Court between 2014 and 2016, only 9% had legal counsel.<sup>156</sup> This is reported to be one of the factors behind the court’s incredibly low reversal rate. In the same sample, death sentences with immediate execution (as opposed to suspended sentences)<sup>157</sup> were approved in 250 (98%) of 255 cases.<sup>158</sup>

In **Singapore**, the effective enjoyment of the right to appeal for those facing the death penalty for drug offences is considerably hampered by a new sentencing discretion introduced in 2013. This discretion allows the judge to provide an alternative sentence to the mandatory death penalty only if the prosecutor issues the defendant a ‘certificate of assistance’ showing they have provided information that can disrupt drug trafficking activities. Many of those facing the death penalty for drug charges are the least likely to be able to provide meaningful ‘assistance’, because they are

too low in the drug trafficking hierarchy to have any useful information to share. As noted by Amnesty International in its 2017 report, the limited grounds available for appealing decisions on the issuing of certificates of assistance, coupled with the lack of transparency inherent in the process and reasoning behind these, have meant in practice that death sentences for drug offences are extremely difficult to appeal.<sup>159</sup>

Pardons are also reportedly limited, with only six having been granted since Singapore gained independence in 1965, the last of which was in 1998.<sup>160</sup> Earlier this year, news reports indicated that more than 13 people had had their applications for clemency rejected, with Singapore being criticised for “[d]ismissing clemency petitions as a matter of policy” which, it was pointed out, “is unlawful and a breach of international norms”.<sup>161</sup>

Before November 2015, anyone convicted of drug offences in **Iran**, including those facing the death penalty, did not have a right to appeal and their sentences were immediately implementable.<sup>162</sup> After a unanimous order on the matter was passed in November 2015, those sentenced to death for drug offences were afforded the right to appeal to the Supreme Court. While this sparked hope due to the systemic fair trial violations in drug cases, a number of people convicted prior to November 2015 have since been executed without having been able to exercise their right to appeal.<sup>163</sup> Problems with the appeal process also remain, including the fact that the Supreme Court is the sole level of appeal, and appeals can only be done in writing – meaning that the defendant and their lawyers cannot be present at the appeal.<sup>164</sup>

In **Malaysia**, the right to seek pardon is enshrined in Article 42 of the constitution, but according to local civil society there are no clear rules governing the process.<sup>165</sup> With Board of Pardon meetings being infrequent and sporadic, petitioners generally do not have the opportunity to present their case. The board is also not required to disclose how it reaches its decision.<sup>166</sup> Moreover, Amnesty International has noted that Malaysian law does not guarantee

the right to legal counsel for the pardon application process.<sup>167</sup> While several pro-bono initiatives have been established to fill this gap, the organisation reports that a lack of resources renders the service quite limited and intermittent.<sup>168</sup> Unsurprisingly, the quality of pardon petitions has been found to vary enormously, depending on whether they have been prepared with the support of a legal representative.<sup>169</sup> The lack of access to legal counsel disproportionately impacts foreign nationals, who make up 49% of the population on death row for drug offences.<sup>170</sup> According to research by Amnesty International, as of February 2019 over half of the foreign nationals on death row had not filed a pardon application.<sup>171</sup>

The appeal and pardon processes in neighbouring **Indonesia** have been shaped by a particularly punitive – and discriminatory – approach to drug offences. National law stipulates that an application for a constitutional review of any provisions in law can only be made by an Indonesian national,<sup>172</sup> which has resulted in the Constitutional Court rejecting applications for constitutional review submitted by foreign nationals facing the death penalty.<sup>173</sup> In a country where 29% of people on death row are foreign nationals, all convicted for drug offences,<sup>174</sup> this is particularly worrying. Like Malaysia, Indonesia has executed people who were in the process of judicial review: Michael Titus Igweh and Humphrey Jefferson Ejike Eleweke, both convicted and sentenced to death for drug offences, were executed in July 2016 while in the process of submitting a petition for judicial review; Jefferson was further awaiting a clemency decision from President Joko Widodo.<sup>175</sup> With regards to the right to pardon, in late 2014<sup>176</sup> and then again in 2015,<sup>177</sup> President Widodo singled out individuals convicted of and sentenced to death for drug crimes, expressing that they would not be granted clemency. This purported blanket denial is particularly concerning when one considers that 61% of people on death row in 2019 were sentenced to death for drug-related offences; and that the number of death sentences pronounced for drug offences in 2019 is more than double those of 2018.<sup>178</sup>



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## Conclusions

This section described fair trial violations – including of the right to effective legal counsel, the right to the presumption of innocence, the prohibition of torture and coerced confessions, the right to appeal and the right to seek pardon or sentence commutation – reported by local and international human rights organisations in capital drug cases in six countries. It laid bare the systemic flaws within these criminal justice systems that greatly hinder the chances of people facing the death penalty for drug offences of receiving a fair trial, placing these individuals, already some of the most vulnerable within society and the drug markets, at greater risk of receiving a death sentence and of being executed.

The violations described are not isolated incidents or exceptional cases, but rather a manifestation of systemic issues. Their interplay creates a system that further disadvantages those who need the most protection; limits judicial discretion and ability to deliver just and fair judgments; and impinges on the credibility and authority of the criminal justice system.

As HRI has noted before, death penalty reform which falls short of total abolition will never be fair.<sup>179</sup> However in the meantime, with thousands of people on death row around the world, often for long periods, and death sentences for drug offences still being meted out, steps must be taken to curb the application of the death penalty. Enhanced protection and promotion of the fair trial rights of people charged with capital offences represents one strategic way of doing so.

Going forward, HRI calls for governments to invest in robust legal aid systems, undertake structural reforms to uphold the prohibition on torture and the right to be presumed innocent – including in capital drug cases, commit to full implementation of the right to appeal, and refrain from excluding any particular category from seeking clemency or commutation of death sentences. Hardline political agendas to combat drugs are in conflict with fundamental rights, and are not effective in stopping drug trafficking, nor in addressing drug use. Robust adherence to the rule of law, respect for international fair trial standards and the implementation of safeguards will be important for meaningful change, but so too will be examining and modifying existing practice, and the punitive culture that underpins drug control.

## Country-by-country analysis

This part of the *Global Overview* provides a state-by-state mapping of those countries that have capital drug laws, and an analysis of how these laws are enforced, applied or changing in practice. The information presented here updates and builds upon the data presented in previous editions of the *Global Overview*.

### Categories

HRI has identified 35 countries and territories that retain the death penalty for drug offences in law. Only a small number of these countries carry out executions for drug offences on a regular basis. In fact, six of these states are classified by Amnesty International as abolitionist in practice.<sup>180</sup> This means that they have not carried out executions for any crime in the past ten years (although in some cases death sentences are still pronounced), and are believed to have a policy or established practice of not carrying out executions.<sup>181</sup> Others have neither sentenced to death nor executed anyone for a drug offence, despite having dedicated laws in place.

In order to demonstrate the differences between law and practice among states with the death penalty for drug offences, HRI categorises countries into high application, low application or symbolic application states.

**High Application States** are those in which the sentencing of those convicted of drug offences to death and/or carrying out executions is a regular and mainstream part of the criminal justice system.

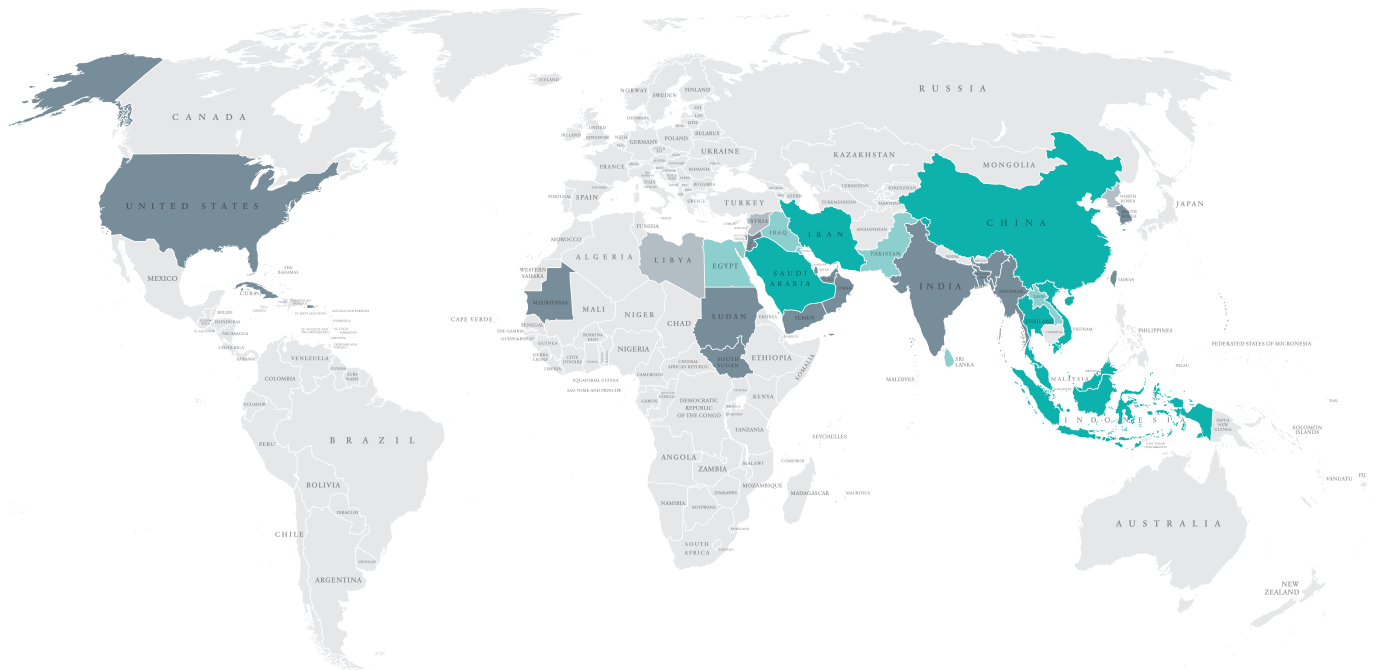
**Low Application States** are those where executions for drug offences are an exceptional occurrence, although executions for drug offences may have been carried out, while death sentences for drug offences are relatively common.

**Symbolic Application States** are those that have the death penalty for drug offences within their legislation but do not carry out executions, or at least there has not been any record of executions for drug offences in the past ten years; although some of these countries occasionally pass death sentences for drug offences.

Bangladesh, South Sudan, the US and Yemen are symbolic application countries confirmed to have carried out executions in 2019, but not for drug offences. The section below therefore only provides figures on death sentences and death row populations.

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

Most of these countries are retentionist; which, according to Amnesty International, means that they retain the death penalty for “ordinary crimes”.<sup>182</sup> However, a few are what Amnesty International defines as “abolitionist in practice”.



High Application	Low Application	Symbolic Application	Insufficient Data
China	Bahrain	Bangladesh	Libya
Indonesia	Egypt	Brunei Darussalam	North Korea
Iran	Iraq	Cuba	Syria
Malaysia	Kuwait	India	
Saudi Arabia	Lao PDR	Jordan	
Singapore	Pakistan	Mauritania	
Thailand	Sri Lanka	Myanmar	
Vietnam		Oman	
		Qatar	
		South Korea	
		South Sudan	
		State of Palestine	
		Sudan	
		Taiwan	
		United Arab Emirates	
		United States of America	
		Yemen	

## High Application States

Country	People on death row for drug offences (total number of people on death row)		Executions for drugs (executions total)	
	2018	2019	2018	2019
China	Unknown (unknown)	Unknown (unknown)	Unknown (unknown)	Unknown (unknown)
Indonesia	130 <sup>183</sup> (308+) <sup>184</sup>	166 <sup>185</sup> (271) <sup>186</sup>	0 (0)	0 (0)
Iran	5,300+ <sup>187</sup> (unknown)	2000+ <sup>188</sup> (unknown)	23 (254+) <sup>189</sup>	36+ (273+) <sup>190</sup>
Malaysia	932 <sup>191</sup> (1,280) <sup>192</sup>	899 (1280) <sup>193</sup>	0 (0)	0 (0)
Saudi Arabia	Unknown (58+) <sup>194</sup>	Unknown (47+) <sup>195</sup>	59 (149+) <sup>196</sup>	84+ (185+) <sup>197</sup>
Singapore	16+ (46+) <sup>198</sup>	27+ (54+) <sup>199</sup>	11 (13) <sup>200</sup>	2 (4) <sup>201</sup>
Thailand	319 (552) <sup>202</sup>	200 (312) <sup>203</sup>	0 <sup>204</sup> (1) <sup>205</sup>	0 (0)
Vietnam	Unknown (650+) <sup>206</sup>	Unknown (600+)	Unknown (85+) <sup>207</sup>	Unknown (unknown)

### China

Although data on the use of the death penalty in China continues to be classified as a state secret, the country remains the world's top executioner.<sup>208</sup> According to Amnesty International, China continues to execute and sentence to death hundreds of people every year, mostly for murder and drug-related charges.<sup>209</sup> According to research by The Rights Practice, drug crimes are considered a threat to social stability in China, and policies that encourage harsher punishments for drug offences continue to be promoted.<sup>210</sup> There are reports, however, that judges are increasingly using their discretion to impose death sentences only for crimes involving large quantities of drugs.<sup>211</sup>

China continues using publicity around capital drug cases for political purposes.<sup>212</sup> This was the case with the two Canadian men sentenced to death for drug offences in 2019, which made international headlines amid a period of escalating tension between the two countries.<sup>213</sup> One of the two, Robert Lloyd Schellenberg, was reportedly handed his sentence after a one-day retrial following an appeal against an earlier 15-year sentence for drug trafficking.<sup>214</sup>

Mark Swidan is reportedly the first American to be sentenced to death (although with a suspended sentence) by a Chinese court. The judgment was passed on 30 April 2019, despite the fact that "[n]o drugs were found on Mr. Swidan or in his room. Drugs were found in the room of another suspect. No forensic evidence has been produced – no drugs in his system, no DNA on the packages, no fingerprints on the packages or drug paraphernalia – tying Mr. Swidan to the drugs. No emails, letters, or phone calls have been found that link Mr. Swidan to any drug transaction".<sup>215</sup>

It has also been suggested that the nine convictions for fentanyl trafficking meted out in November 2019, one of which was a death sentence, were intended to send a message to Washington that China is cracking down on the drug on which the US has long blamed its opioid overdose deaths.<sup>216</sup> The defendant, the first ever to be sentenced to death for a fentanyl-related offence, had been arrested after a joint American-Chinese investigation.<sup>217</sup>

## Indonesia

2019 marks the third year in a row in which there were no executions in Indonesia. However, there was an increase in the number of death sentences issued by Indonesian courts. From October 2018 to October 2019, a total of 70 new death sentences were handed down by either first instance or appellate courts, more than double those pronounced in 2018.<sup>218</sup> Of these, 77% were for drug offences. In total, 61% of the 271 people that were on death row in October 2019 were there for drug offences.<sup>219</sup> It is also worth noting that at least 188 Indonesians are facing the death penalty abroad.<sup>220</sup>

President Joko Widodo continues to push the ‘war on drugs’, despite its proven inability to tackle drug use and drug crime in the country,<sup>221</sup> and its impact on prison overcrowding. This punitive approach has driven at least 51,000 people who use drugs, and over 75,000 people convicted for some form of drug trafficking, into Indonesia’s already overcrowded prisons.<sup>222</sup> In late 2019, Indonesia’s attorney general called for executions to be resumed as soon as possible.<sup>223</sup>

Indonesia provides an example of how women are disproportionately impacted by capital punishment for drugs. Of the 22 women charged with capital offences between 2000 and 2018, 18 were convicted of a drug offence.<sup>224</sup> In an in-depth review of five judicial procedures against women sentenced to death for drugs, the Institute for Criminal Justice Reform found that none had held a major role in the drug activity that led to their conviction, and that they had been following the instructions of men who were exploiting their traditional gender roles.<sup>225</sup>

## Iran

With a total of 273 confirmed executions,<sup>226</sup> Iran remained the world’s largest executioner after China in 2019. Subsequent to a 2017 amendment to Iran’s anti-narcotics laws, the rate of known executions for drug offences dropped from 221 in 2017 to 23 in 2018.<sup>227</sup> Although 2019 has not seen a return to 2017 figures, the number of persons executed for drug offences reported by either official sources or local civil society has risen to 36.<sup>228</sup>

The 2017 amendment to the anti-narcotics law also triggered the review of at least 3,300 death sentences for drug offences. Rights groups have criticised the review process as opaque and tainted by insufficient resources, as well as by allegations of corruption.<sup>229</sup> Many of the people who have had their death sentence commuted have received prison sentences as long as 30 years, and hefty financial penalties.<sup>230</sup>

In February 2019, the UN Special Rapporteur on the human rights situation in Iran noted that the death penalty is applied in circumstances that raise due process concerns, and called on Iran to put an end to the death penalty.<sup>231</sup> In September 2019, the UN Secretary General reported credible accounts of gross fair trial rights violations, such as arrests without a warrant, detention without charge or access to legal counsel, and forced confessions used as evidence for conviction.<sup>232</sup> In the November 2019 Universal Periodic Review (UPR), Iran received 41 death penalty-related recommendations, including 16 recommendations to abolish capital punishment for drug offences.<sup>233</sup>

## Malaysia

In March 2019, just a few months after publicly committing to abolish the death penalty,<sup>234</sup> the Malaysian government backtracked to only considering removing the *mandatory* death penalty; and only for a limited number of crimes,<sup>235</sup> which initially would not include drug offences.<sup>236</sup> In September 2019, the cabinet appointed a Special Committee, including academics and legal experts, to prepare a reform proposal.<sup>237</sup> The official report was submitted to the government on 11 February 2020, and declared by the law Minister, Liew Vui Keong, to be “a significant study bound to alter the landscape of the nation’s entire criminal sentencing policy as the government moves to abolish the mandatory death penalty in Malaysia”.<sup>238</sup>

While these debates take place, news emerged of at least 17 death sentences in 2019, 12 of which were for drug offences.<sup>239</sup> As the government does not publish official figures, this is likely to be only a proportion of all death sentences: while 31 death sentences were publicly reported in 2018,<sup>240</sup> figures provided by official sources to Amnesty International indicated the actual figure to be 190.<sup>241</sup> In 2019, at least five women are known to have been sentenced to death for drug offences.<sup>242</sup> As a result of the moratorium established in 2018, no executions took place in 2019.

According to official sources, as of 3 December 2019 there were 1,280 people on death row.<sup>243</sup> Research by Amnesty International reveals that over 70% were sentenced to death for drug offences, around half of whom were foreign nationals. Of the 141 women on death row as of February 2019, an overwhelming 95% have been sentenced to death for drug offences, 90% of which were foreign nationals.<sup>244</sup> A close review of 30 cases of women on death row for drug trafficking by Amnesty International revealed that most are low-level drug couriers, with many of them claiming they were coerced or tricked into that role.<sup>245</sup> In a landmark case in November 2019, the Federal Court in Kuala Lumpur acquitted an Australian woman who had been deceived into transporting drugs by online scammers.<sup>246</sup>

In October 2019, Amnesty International reported numerous violations of the right to a fair trial in Malaysian death penalty proceedings,<sup>247</sup> and confirmed that “those on death row for drug trafficking were frequently convicted after they were found in possession of and transporting relatively small quantities of drugs without having committed or being involved in any form of violence, and were often people that are at the low-end of the drug chain (drug couriers)”. As such, they had limited – if any – control over the substance they were carrying.<sup>248</sup>

In July 2019, the Malaysian government announced a plan to overhaul its drug laws in order to adopt a public health approach to drug policy, including the decriminalisation of drug use.<sup>249</sup> If implemented, this plan would be a welcome and necessary novelty in Southeast Asia, where punitive drug laws are prevalent. However, by the end of 2019, no legislation had yet been proposed.

## Saudi Arabia

With at least 185 persons executed, 84 of which for drug offences, 2019 was the worst year on record for capital punishment in Saudi Arabia since HRI started tracking executions in 2007. As a result, Saudi Arabia remains the world’s top executioner for drug offences with the probable exception of China, which does not publish any data on executions.

Even though Crown Prince Mohammed Bin Salman announced in April 2018 that he planned to reduce the number of executions conducted by Saudi authorities,<sup>250</sup> in 2019 the number of people executed for drug offences rose 42% by comparison to 2018. No data on the number of death sentences issued in 2019 is publicly available.

Several reports published in 2019 show that the Saudi criminal justice process is marred by gross violations of the most basic human rights, from detention to execution. These include indefinite incommunicado detention before trial,<sup>251</sup> a widespread use of torture

and coerced confessions,<sup>252</sup> and other serious fair trial violations (detailed in the previous section), and gruesome mass executions that have been found to constitute a form of inhuman and degrading treatment or punishment.<sup>253</sup>

Foreign nationals constituted a significant proportion of those executed for drug offences in Saudi Arabia in 2019: at least 47 out of 84, of which at least 28 were Pakistani nationals.<sup>254</sup>

From March to July 2019, Saudi authorities received at least six letters from UN Special Rapporteurs regarding cases of human rights violations, including two letters on the situations of individuals that had been sentenced to death.<sup>255</sup> During its Universal Periodic Review in February 2019, Saudi Arabia received 22 recommendations to establish a moratorium on executions, none of which was supported.<sup>256</sup> While the Saudi government accepted Germany's recommendation to restrict the death penalty to the "most serious crimes",<sup>257</sup> it rejected Cyprus's recommendation to abolish the death penalty for "non-violent drug smuggling".<sup>258</sup>

## Singapore

The government of Singapore continues to be an outspoken advocate for the use of the death penalty as a legitimate tool of drug control, both in the media<sup>259</sup> and in UN fora.<sup>260</sup> Singaporean courts issued at least 13 death sentences, all for drug offences, in 2019.<sup>261</sup> Four people were executed, including two for drug offences, one of which was a drug courier convicted for transporting no more than 16.56 grammes of heroin into Singapore.<sup>262</sup> This figure represents a significant decline from the 13 persons executed in 2018, but this might only be a temporary respite; in July 2019, several reports noted that the government was preparing up to 13 executions.<sup>263</sup>

In 2013 Singapore amended its Misuse of Drugs Act in order to allow for the imposition of life imprisonment, instead of a mandatory death sentence, for drug couriers that receive a certificate of substantive assistance in disrupting drug trafficking activities by the public prosecutor. This amendment has been severely criticised by rights groups as it violates the principle of fairness, opens up substantial space for corruption and abuse, and discriminates against low-level couriers that are unable to provide useful information to law enforcement officials.<sup>264</sup> Out of the 13 persons confirmed to have been sentenced to death in 2019, at least four were couriers who were not granted this certificate.<sup>265</sup>

Foreign nationals continue to be disproportionately impacted by the death penalty in Singapore. The nationality of those sentenced to death was noted in only five out of the 13 death sentences published in 2019. Three of these individuals were Malaysian.<sup>266</sup> At least two of the individuals executed in 2019 were also Malaysian, a trend that prompted complaints by the government and civil society of Malaysia.<sup>267</sup>

## Thailand

Despite a nine-year *de facto* moratorium coming to an end in 2018,<sup>268</sup> no executions took place in Thailand in 2019. However, at least ten people were sentenced to death, one of them – a woman from Myanmar – for a drug offence.<sup>269</sup>

According to official sources, there were 312 people on death row in Thailand on 12 December 2019, 64% of whom were convicted of drug offences.<sup>270</sup> This reflects Thailand's broader approach to drug control: 79% (290,159 persons) of the total prison population are convicted of drug offences.<sup>271</sup> Because of the significant number of individuals on death row for drug offences, which appear to be the main crimes for which death sentences are handed down in the country, the decision was taken to reclassify Thailand from a 'low application' to a 'high application' state.

Thailand is another clear example of how capital drug laws disproportionately impact women, with 58 out of 59 women on death row convicted of drug offences.<sup>272</sup> After visiting nine ‘model’ prisons for women, the International Federation for Human Rights (FIDH) and Thai rights organisation the Union for Civil Liberty reported that conditions in women’s prisons in Thailand were below international standards. The main problems were overcrowding – with some prisons recording occupancy levels of up to 652%, deficiencies in the arrangements for pregnant women and women with children, and inadequate access to water, food and healthcare.<sup>273</sup>

## Vietnam

In 2019, Vietnam continued to keep all figures on death sentences and executions secret, against the explicit recommendations of the UN Human Rights Committee.<sup>274</sup> In its 2019 annual report to Vietnam’s national assembly, the chief justice of the Supreme People’s Court avoided any reference to capital punishment, even though it provided a review of

Vietnamese courts’ activities on criminal cases.<sup>275</sup> While the UN Human Rights Committee repeatedly requested data on the application of the death penalty during Vietnam’s periodic review,<sup>276</sup> the Vietnamese delegation provided none.

According to media reports, Vietnamese courts handed down at least 75 death sentences in 2019, 74 of them for drug offences.<sup>277</sup> At least 14 out of the 74 individuals sentenced to death for drug offences (almost 20%) were women. Reflecting the reported surge of the illicit drug markets in the region, a minimum of 30 defendants were convicted for transnational drug activities, including smuggling drugs to and from Lao PDR, Cambodia and China.<sup>278</sup>

UN human rights bodies expressed concern at the fact that capital trials in Vietnam can be unfair and marred by procedural irregularities, including forced confessions and pre-trial torture.<sup>279</sup> Of the 28 recommendations regarding the death penalty addressed to Vietnam in the January 2019 Universal Periodic Review, the Vietnamese authorities only accepted two recommendations to restrict the scope of the death penalty to the “most serious crimes”.<sup>280</sup>



## Low Application States

Country (all figures 2019) <sup>281</sup>	Death row for drugs	Death row total	Executions for drugs	Executions Total	Death sentences for drugs	Death sentences total
Bahrain	6	24 <sup>282</sup>	0	3	4	4+
Egypt	30+	2,400+	0	35+ <sup>283</sup>	7+ <sup>284</sup>	385+ <sup>285</sup>
Iraq	4+	8,000+ <sup>286</sup>	Unknown	100+ <sup>287</sup>	Unknown	Unknown
Kuwait	1+	42	0	0	1 <sup>288</sup>	8+
Lao PDR	311+	315+	0	0	Unknown	Unknown
Pakistan	Unknown	4,225 <sup>289</sup>	0	15 <sup>290</sup>	None known	584 <sup>291</sup>
Sri Lanka	60+	1,330	0	0	12+	31+

### Bahrain

In January 2019, one Bahraini and one other Gulf national were sentenced to death in Bahrain on charges of smuggling and cultivating drugs for the purpose of trafficking, following the seizure of over 20 kilogrammes of hashish intercepted on the King Fahd Causeway connecting Bahrain and Saudi Arabia. They were convicted alongside five other defendants, who received prison sentences ranging from six months to life imprisonment.<sup>292</sup> In February 2019, a further two men of undisclosed nationality were sentenced to death for attempting to smuggle 65 kilogrammes of hashish from Iran.<sup>293</sup> The Supreme Court of Appeals upheld this decision in June 2019.<sup>294</sup>

According to rights groups, by the end of 2019 at least 24 persons were on death row, six of them for drug offences.<sup>295</sup> The two drug-related death sentences passed in 2018, and the four handed down in 2019, represent an increase in the use of capital punishment as a tool of drug control in Bahrain. Accordingly, the country was reclassified from 'symbolic' to 'low application'.

In 2019, consistent allegations of serious fair trial violations in capital cases emerged in Bahrain as the UN Working Group on Arbitrary Detentions published two

separate Opinions reporting cases of torture and forced confession, including in capital cases.<sup>296</sup> In November, a group of 52 Members of the European Parliament signed an open letter denouncing the arbitrary denial of medical care for inmates held in Bahraini prisons, a conduct that constitutes ill-treatment and could result in permanent damage to their health.<sup>297</sup>

### Egypt

Since President el-Sisi came to power, the use of the death penalty has become prevalent in Egypt. A May 2019 report from the NGO Reprieve found that from July 2013 to September 2018, Egyptian courts handed down at least 2,443 preliminary death sentences, many of which were issued after mass trials featuring dozens, if not hundreds, of defendants.<sup>298</sup> During the same period, at least 144 people were executed.<sup>299</sup>

Although the government of Egypt does not provide official figures on the death penalty, rights group report that in 2019 at least 385 persons were sentenced to death in 205 cases, most of them for terrorism or murder charges.<sup>300</sup> At least seven defendants were sentenced to death for drug offences, including one migrant worker from India accused of attempting to smuggle drugs from Iran.<sup>301</sup> A minimum of 35 people were executed, none for drug offences.<sup>302</sup>

In 2019, Egyptian authorities intensified their punitive approach to drugs. In January, the Egyptian cabinet passed a law that expanded the scope of drug offences punishable by death,<sup>303</sup> while in March the government approved a bill that required mandatory drug testing of all state employees.<sup>304</sup>

The situation inside Egyptian prisons continues to be abysmal, with several human rights bodies reporting that detainees are held in cruel and inhuman conditions.<sup>305</sup> Since 2013, at least 600 people have died in Egyptian prisons due to medical neglect and the denial of care.<sup>306</sup> This is particularly concerning given that Egypt is adding hundreds of people to its death row every year.

In its November 2019 Universal Periodic Review, countries including Argentina, Australia and Germany called on Egypt to establish a moratorium on executions with a view to abolish the death penalty permanently.<sup>307</sup> Throughout el-Sisi's presidency, the Egyptian government has forbidden UN Special Procedures on civil and political rights from visiting the country.<sup>308</sup>

## Iraq

Official statistics on the use of capital punishment in the country are not available. However, in August 2019, the Iraqi High Commission for Human Rights disclosed that there had been at least 100 executions since January 2019 alone, while 8,022 people were on death row.<sup>309</sup> This represents a more than 100% increase in executions from 2018, which seems to be driven by terrorism-related charges. There is no data available on sentences and executions for drug offences.

In November 2019, Iraq underwent its third Universal Periodic Review, providing an opportunity to examine the country's human rights performance. In this context, several civil society organisations denounced systemic issues surrounding the imposition of the death penalty, including forced confessions under torture,<sup>310</sup> misuse of capital punishment for political purposes<sup>311</sup> and mass executions.<sup>312</sup>

## Kuwait

For the second year in a row, no executions took place in Kuwait in 2019.<sup>313</sup> However, Kuwaiti courts handed down at least eight death sentences, one of which was for drug trafficking.<sup>314</sup> The defendant is an Indian migrant worker who, according to media reports, has been unable to hire a lawyer for the appeal due to a lack of financial resources.<sup>315</sup>

## Lao PDR

In 2019, Lao maintained an ongoing *de facto* moratorium on executions. The last known execution in Lao took place in 1989.<sup>316</sup>

Despite repeated calls by UN bodies to publish disaggregated data, the government of Lao PDR has failed to provide official and updated figures on its use of the death penalty in 2019. In line with the information provided in 2018 to the UN Human Rights Committee,<sup>317</sup> in November 2019 the Office of the High Commissioner for Human Rights noted that Lao primarily imposes the death penalty for drug offences.<sup>318</sup>

In the last five years, transnational drug trafficking across Lao's borders with Myanmar, Thailand and Vietnam – all retentionist countries – has boomed.<sup>319</sup> As a result, a significant number of Laotians have been detained for drug offences in neighbouring countries, with at least four sentenced to death in Vietnam in 2019.<sup>320</sup> Foreign nationals are especially vulnerable in capital trials abroad due to their precarious socio-economic status, lack of fluency in the language of the host country and lack of understanding of the local laws.<sup>321</sup> As noted by the UN Special Rapporteur on extrajudicial, summary or arbitrary executions in August 2019, states that fail to provide consular assistance to their own nationals facing the death penalty abroad violate their duty to protect them from arbitrary executions.<sup>322</sup>

## Pakistan

Absent official information, figures on the use of capital punishment in the country are reported by local civil society, which recorded 15 executions<sup>323</sup> and 584 death sentences<sup>324</sup> in 2019; it is not known whether any of these were for drug-related offences.<sup>325</sup> In April 2019, Pakistan introduced Model Criminal Trial Courts (MCTC) throughout the country to administer expedited trials in homicide and narcotic cases, as a way to confront the significant backlog within the criminal justice system.<sup>326</sup> These courts adjudicated over 12,000 cases in five months,<sup>327</sup> awarding 175 death sentences in the first 75 days of operation alone.<sup>328</sup>

There are 10,895 Pakistani nationals in foreign prisons, with 3,248 in Saudi Arabia, 2,600 in the UAE and 657 in Oman, many of whom are believed to be detained for drug-related crimes.<sup>329</sup> At least 28 Pakistani nationals were executed in Saudi Arabia in 2019 for drug offences.<sup>330</sup>

Non-governmental sources disclosed that there were 33 women on death row in Pakistan as of June 2019, mostly convicted of drug offences and domestic violence-related crimes.<sup>331</sup> These women are overwhelmingly from fragile socio-economic backgrounds, and were often driven to engage with drugs in an attempt to make ends meet. Because of the intersecting stigma of having transgressed gender norms and having engaged with drugs,<sup>332</sup> they reportedly have less support from and contact with their family members than men on death row.<sup>333</sup>

## Sri Lanka

In Sri Lanka, 2019 was marked by the intensification of the political and public discourse over the resumption of executions, specifically for those convicted of trafficking and dealing drugs. In June 2019, President Maithripala Sirisena announced the signing of a death warrant for four people sentenced to death for drug offences<sup>334</sup> as part of a broader attempt to crack down

on drugs.<sup>335</sup> If executions are resumed, they will put an end to a 43-year moratorium on executions in Sri Lanka. The announcement of this decision drew widespread international condemnation from the European Union<sup>336</sup> to the United Nations Office on Drugs and Crime (UNODC), which issued a public statement stressing that international drug control conventions cannot be used to justify the death penalty. The UNODC also reiterated that application of the death penalty may prevent international cooperation, thus hampering efforts to counter drug trafficking.<sup>337</sup>

At the national level, Sri Lanka's Supreme Court stayed the executions due to a judicial challenge, the admissibility of which will be heard by a five-judge bench in March 2020.<sup>338</sup> The challenge is grounded on the incompatibility of the death penalty with Sri Lanka's constitution and international law, as well as on the severe due process violations that surround the death warrants, including the fact that the names of the prisoners at imminent risk of execution are yet to be disclosed.<sup>339</sup> President Gotabaya Rajapaksa, who took office in November 2019, remained silent on the execution of the death warrants during the campaign,<sup>340</sup> although his party had initially opposed them.<sup>341</sup>

In spite of this decades-long moratorium on executions, Sri Lankan courts have continued to hand down a large number death sentences every year. In 2019, at least 31 people were sentenced to death, 12 of them for drug offences.<sup>342</sup> In light of this high proportion of drug-related death sentences, and the centrality of capital punishment and drug offences in the national debate, Sri Lanka has been reclassified from a 'symbolic' to a 'low application' state.

After a country visit to Sri Lanka in December 2017, the UN Working Group on Arbitrary Detention noted that the judicial system is tainted by severe fair trial violations, including the excessive length of judicial proceedings and numerous allegations of torture and coerced confessions.<sup>343</sup>

## Symbolic Application States

Country (all figures 2019) <sup>344</sup>	Death row for drugs	Death row total	Death sentences for drugs	Death sentences total
Bangladesh	Unknown	1,800+	2 <sup>345</sup>	327+ <sup>346</sup>
Brunei Darussalam	1	2 <sup>347</sup>	0	0
Cuba	0	0	0	0
India	None known	378 <sup>348</sup>	0 <sup>349</sup>	102 <sup>350</sup>
Jordan	0	180+ <sup>351</sup>	0	22 <sup>352</sup>
Mauritania	0	115 <sup>353</sup>	None known	Unknown
Myanmar	Unknown	12+	Unknown	3+
Oman	0	4+	0	0
Qatar	Unknown	12+	None known	2
South Korea	0	62	0	1 <sup>354</sup>
South Sudan	Unknown	345+	None known	4+
State of Palestine	5	49	0	3
Sudan	None known	4+	None known	300+
Taiwan	None known	44	0	2
United Arab Emirates	Unknown	53+	0	16+
United States of America	0	2,656 <sup>355</sup>	0	34 <sup>356</sup>
Yemen	Unknown	Unknown	0	30+ <sup>357</sup>

### Bangladesh

In 2019, Bangladesh executed two people, both for homicide,<sup>358</sup> and sentenced at least 327 to death.<sup>359</sup> The absence of disaggregated data means that figures for drug-related offences are unknown.<sup>360</sup> Nevertheless, at least two death sentences for drug dealing were confirmed by media sources.<sup>361</sup>

The government continued to pursue its violent war on drugs throughout 2019. Local civil society reported 391 extrajudicial killings in the context of anti-drug operations.<sup>362</sup> The circumstances of these killings are strikingly similar, with most victims reportedly killed in 'gunfights', in some cases after being forcibly disappeared.<sup>363</sup>

In its August 2019 Concluding Observations on Bangladesh, the UN Committee Against Torture expressed concern at the expansion of the applicability of the death penalty for drug offences through the Narcotics Control Act of 2018,<sup>364</sup> as well as the number of death sentences handed down, the poor conditions of detention and the uncertainty faced by death row prisoners.<sup>365</sup>

### Brunei Darussalam

There were no reported death sentences or executions in Brunei in 2019. Two people, both foreign nationals, are known to be on death row – one of which is a Malaysian national convicted of drug smuggling in 2017.<sup>367</sup> On 3 April 2019, the Syariah Penal Code Order

(SPCO) was enacted, allowing for the imposition of the death penalty and corporal punishment for consensual same sex conduct and adultery. Responding to the resulting international outcry, the Sultan of Brunei publicly announced that Brunei will be ratifying the UN Convention against Torture and will not be imposing death sentences to “uphold international commitments and obligations of human rights”.<sup>368</sup>

## India

Although the last execution dates back to 2015, Indian courts continue to hand down death sentences: 102 death sentences were pronounced in 2019, with the bulk of the convictions being for rape and murder.<sup>369</sup> No new death sentences for drug offences were pronounced. A death sentence for drug trafficking was commuted to imprisonment for 30 years in November 2019, citing as justification the old age of the defendant (currently over 75 years old), the impossibility that he will offend again, and the “absence of clear and unequivocal evidence with regard to the deterrent impact of death penalty on crime statistics”.<sup>370</sup>

Despite its limited use, the death penalty for drug offences continues to enjoy strong support by some public officials. For example, Ajit Pawar, the leader of the Nationalist Congress Party, called for amendments to the current legislation expanding the imposition of the death penalty for drug offences, and for foreign nationals trafficking drugs to be banned from the country.<sup>371</sup>

## Jordan

The death penalty can only be imposed for drug trafficking in Jordan when aggravating circumstances are present – such as if the offender participated in an international drug trafficking gang or committed the crime in conjunction with other international crimes (such as arms smuggling or money counterfeiting).<sup>372</sup> No drug-related death sentences have been recorded in the past five years; however, it cannot be excluded that some were passed, due to the extremely limited amount of information available on the practice.

While no executions took place in Jordan for the second year in a row, in 2019 there were at least 22 death sentences, none for drug offences. Jordanian nationals continue to be executed for drug offences in other countries, including at least four in Saudi Arabia in 2019.<sup>373</sup>

## Mauritania

A *de facto* moratorium is in place in Mauritania, where the last execution dates back to 1987.<sup>374</sup> The government of Mauritania disclosed that there were 115 people on death row at the end of 2018 (90 of which had a final sentence), all for ‘voluntary homicide’.<sup>375</sup>

In its 2019 Concluding Observations on Mauritania, the UN Human Rights Committee expressed concern at the large number of non-“most serious crimes” punishable by death in the country, and recommended that death sentences be commuted and steps be taken towards the abolition of capital punishment.<sup>376</sup>

## Myanmar

Myanmar is a *de facto* abolitionist country, as it has conducted no executions since 1988.<sup>377</sup> However, courts continue to hand down death sentences and at least three people were sentenced to death in 2019, all for murder.<sup>378</sup> Even though the mandatory death penalty is the prescribed punishment for certain drug offences,<sup>379</sup> no death sentences for drugs were reported in 2019. Despite the 2018 National Drug Control Policy including the goal of considering the abolition of the death penalty for drug offences,<sup>380</sup> no legislation has yet been adopted in that regard.

## Qatar

There were two confirmed death sentences in Qatar in 2019, both for murder.<sup>381</sup> While there were no death sentences for drug offences reported in 2019, within the first seven months of the year, 96 Indian nationals

were arrested at Doha airport for smuggling drugs.<sup>382</sup> Another 200 Indian nationals are already in prison in Qatar facing drug charges.<sup>383</sup> Many of these couriers, both women and men, report a similar pattern of being propositioned to fly to Qatar for a job interview at the expense of a ‘talent-hunter’ and being given bags to carry which are found on arrival to contain drugs.<sup>384</sup>

In May 2019, Qatar underwent its third Universal Periodic Review, and received 12 recommendations concerning capital punishment; of these, only one was supported, relating to fair trials.<sup>385</sup>

## South Korea

No executions were recorded in South Korea in 2019, for the 22nd year in a row. Courts handed down one death sentence for homicide to a man with schizophrenia,<sup>386</sup> bringing the total number of people on death row to 62.<sup>387</sup>

In February 2019, the national bishops’ conference joined abolitionist voices calling for an end to the death penalty in the country.<sup>388</sup> For the sixth consecutive year, a joint motion for the abolition of capital punishment was submitted to the national assembly.<sup>389</sup>

## South Sudan

Information on the use of the death penalty in South Sudan is extremely limited. However, Amnesty International reported that at least 345 people are currently on death row in the country. It is unclear whether any of them have been sentenced for drug offences.<sup>390</sup>

In February 2019, seven people were executed – four for murder and three for undisclosed crimes<sup>391</sup> – and at least four people were sentenced to death during 2019, all for murder.<sup>392</sup> In February 2019, the Commission on Human Rights in South Sudan expressed concern over the number of executions taking place in the country as well as the high number of death row prisoners, and called for a moratorium on executions.<sup>393</sup>

## State of Palestine

In the State of Palestine, the death penalty can be imposed for drug offences only in the Gaza Strip. In 2019, the State of Palestine sentenced three people to death, all for murder.<sup>394</sup> Absent updated information, it is assumed that the five individuals sentenced to death for drug offences in the Gaza Strip in 2017 remain on death row.

On 18 March 2019, Palestine formally acceded to the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty, which entered into force in June 2019.<sup>395</sup> Accession to the protocol, which is irrevocable, equals a commitment to renounce executions everywhere in the country – including in the Gaza Strip – and to take direct steps towards abolition of the death penalty.

In light of the absence of drug-related executions in the past ten years, and the limited amount of death sentences imposed for drugs, the State of Palestine has been reclassified as a ‘symbolic application’ country.

## Taiwan

While there have been no executions in Taiwan since August 2018,<sup>396</sup> 2019 saw one new and one upheld death sentence in the country, both for murder.<sup>397</sup> On 4 October 2019, Premier Su Tseng-Chang publicly endorsed the continued use of the death penalty “in accordance with the law” – in reaction to the more cautious approach of the minister of justice.<sup>398</sup> In March 2019, the premier also approved a draft amendment to the criminal code which, if it enters into force, will expand the death penalty to cases of murder while driving under the influence of alcohol or drugs.<sup>399</sup>

As no one appears to be on death row for drug offences in the country, and the last confirmed death sentence for drug offences dates back to 2010, Taiwan has been moved from the ‘low application’ to the ‘symbolic application’ category.

## United States of America

In 2019, seven US states carried out 22 executions,<sup>400</sup> and 34 new death sentences were imposed,<sup>401</sup> none for drug offences. While President Donald Trump continues suggesting that the death penalty should be expanded to drug offences,<sup>402</sup> analyses of death sentences and executions in the past 40 years reveal that reliance on this measure in the country is in fact shrinking.<sup>403</sup> As further evidence of this, in 2019 New Hampshire became the 21st state to abolish the death penalty, and California (the state with the most populous death row in the country) declared a moratorium on executions.<sup>404</sup>

Nevertheless, the federal administration's support for capital punishment for drug offences is having ripple effects beyond US borders. In February 2019, President Trump expressed his excitement for China's decision to add fentanyl to the list of substances whose trafficking is punishable by death, reportedly as a result of trade negotiations between the two countries.<sup>405</sup> This amendment quickly resulted in the first fentanyl-related death sentence in China, in November 2019.<sup>406</sup> This was warmly praised by the White House, which reiterated that "the concrete action taken by China is a direct result of President Trump's strong leadership on this issue".<sup>407</sup>

In July 2019, the US Justice Department reinstated the use of the death penalty at the federal level – which is concerning, considering that it is federal law that prescribes the death penalty for drug offences<sup>408</sup> – after a 16-year suspension, and immediately scheduled five executions.<sup>409</sup>

## Yemen

In spite of the ongoing conflict and instability in the country, more information is gradually emerging on the use of capital punishment in Yemen. Accordingly, it is now possible to classify Yemen as a 'symbolic application' state.

At least three individuals – two men and a female accomplice – were executed in Yemen in 2019, for rape and murder.<sup>410</sup> While no one appears to have been

sentenced to death or executed for drug offences, Yemeni nationals are being executed for drug offences abroad. For example, at least four Yemeni nationals were executed for drug offences in Saudi Arabia in 2019.<sup>411</sup>

The lack of transparency makes it impossible to report on the exact number of death sentences handed down in 2019. However, as reported by Amnesty International, the Huthi-run Specialized Criminal Court (SCC) alone sentenced 30 men to death for espionage.<sup>412</sup> On 12 July 2019, the Office of the High Commissioner for Human Rights denounced the sentences, citing reliable reports of torture and ill-treatment in custody, as well as arbitrary detention.<sup>413</sup>

Yemen underwent its third Universal Periodic Review in 2019, receiving seven recommendations on the death penalty. Of these, two were accepted, recommending the imposition of a moratorium on the death penalty, and ensuring that capital punishment is not imposed on persons under the age of 18 at the time of the commission of the offence.<sup>414</sup>

## Other countries

Other countries which HRI categories as 'symbolic application' states are Cuba, Oman, Sudan and the UAE.

Although retaining the death penalty in its legislation, **Cuba** has not issued a death sentence since 2003, and there is currently no-one on death row.<sup>415</sup> There were no reported death sentences in **Oman** in 2019, and there are a low number of people on death row.<sup>416</sup> Information on the death penalty in **Sudan** remains minimal. While there continues to be no sign of capital punishment being imposed for drug offences, at least four death sentences, all for murder, were handed down in 2019.<sup>417</sup> Sudan has recently taken steps to move towards peace and 'rebuild confidence' in the armed groups, including rescinding the death sentences of eight rebels from Darfur and 17 members from the Sudan People's Liberation Movement-North.<sup>418</sup> In the **United Arab Emirates**, no executions were reported in 2019 for the second consecutive year, although news emerged of 16 death sentences, all for murder.<sup>419</sup>

## Insufficient Data

According to the latest available research, narcotics laws were in place in **Libya**, **North Korea** and **Syria** prescribing the death penalty for certain drug offences. However, ongoing conflicts in **Libya** and **Syria**, and an extremely secretive dictatorship in **North Korea**, make it impossible to confirm that such laws are still in place and implemented by the courts, or to provide updated figures on the use of the death penalty.

In **Libya**, there were no public reports of death sentences or executions in 2019, although the ongoing civil war – with different authorities in control of different territories – makes it impossible to verify whether any took place. A 2019 report by the International Commission of Jurists assessing the Libyan criminal justice system denounced systemic issues surrounding the imposition of the death penalty, including its mandatory nature for certain crimes, the limited grounds envisaged for appeal and the risk of denial of family visits.<sup>420</sup> In its 2019 Concluding Observations on Libya, the UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families expressed concerns at the heightened vulnerability of migrant workers to arbitrary detention, violence and denial of due process rights for drug offences, among others.<sup>421</sup>

Data on the use of the death penalty in **North Korea** is virtually non-existent. However, a recent report by the Seoul-based Transitional Justice Working Group published in June 2019 shed some light on the secretive practice. The report identifies over 300 sites where public executions routinely take place; and reveals that public executions are used to instil fear in the population and are often preceded by an on-the-spot ‘trial’, in which charges are announced and sentences issued without a lawyer being provided for the accused.<sup>422</sup> The most common charges are reportedly for violent crimes such as murder, rape and assault, although executions have also been carried out for non-violent offences including manufacturing, selling or using drugs.<sup>423</sup>

The ongoing civil war in **Syria** makes it very difficult to determine figures on the use of the death penalty in the country. In September 2019, news emerged of President Bashar al-Assad issuing yet another amnesty for certain crimes, reducing death sentences to a life sentence of hard labour; although it reportedly does not cover people convicted of drug offences, among others.<sup>424</sup>



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- Notably, all these figures do not account for executions that have taken place in China and Vietnam. Despite credible and systematic accounts of frequent executions in the country, the governments of the two countries maintain absolute secrecy on the use of the death penalty, and thus it is not possible to provide realistic figures.
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Harm Reduction International is a leading NGO dedicated to reducing the negative health, social and legal impacts of drug use and drug policy. We promote the rights of people who use drugs and their communities through research and advocacy to help achieve a world where drug policies and laws contribute to healthier, safer societies.

If you would like to find out more about Harm Reduction International, please contact us at:

**Harm Reduction International**

61 Mansell Street,  
London, E1 8AN,  
United Kingdom

**Phone:** +44 (0) 20 7324 3535

**Email:** [office@hri.global](mailto:office@hri.global)

**Web:** [www.hri.global](http://www.hri.global)



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