

Report to the UN Secretary-General on 'moratorium on the use of the death penalty',  
pursuant to General Assembly Resolution 73/175

14/04/2020

Reporting organisation:



Harm Reduction International (HRI) is a leading NGO dedicated to reducing the negative health, social and legal impacts of drug use and drug policy. HRI promotes 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.

Since 2007, HRI has been at the forefront of advocating for the abolition of the death penalty for drug-related offences worldwide; including via the [Death Penalty for Drug Offences: Global Overview](#) series.

## Introduction

Harm Reduction International (HRI) welcomes the opportunity to comment on crucial issues and developments concerning the use of the death penalty; and urges the Secretary-General to continue prioritising this issue. We further reaffirm the call for a moratorium on the death penalty, as a step towards its definitive abolition worldwide.

This submission will provide information on developments that have taken place since 17 December 2018 on the question of the moratorium on the use of the death penalty and other issues included in resolution 73/175, with a focus on drug offences.

For detailed information about issues covered by resolution 73/175 with specific reference to drug offences – including transparency, miscarriage of justice, denial of consular assistance, see [The Death Penalty for Drug Offences: Global Overview 2019](#).

## GLOBAL TREND

As of April 2020, 35 countries and territories prescribe the death penalty as a possible punishment for drug offences in their legislation, in violation of international law.<sup>1</sup> Paragraph 7(e) of Resolution 73/175 calls upon states to reduce the number of offences for which the death penalty can be imposed. Since December 2018, no country retaining the death penalty for drugs has abolished this form of punishment, which is mandatory for certain drug offences in 12 jurisdictions.<sup>2</sup>

Of these 35 countries, in 2019 only Palestine adopted formal steps toward abolition, by formally acceding the Second Optional Protocol to ICCPR.<sup>3</sup> Six more (Cuba, Laos, Mauritania, Myanmar, South Korea, Sri Lanka) are categorised as *de facto* abolitionists. Two countries – China and Egypt – expanded the drug crimes to which the death penalty can be imposed, in contrast with Paragraphs 7(d) and 7(e) of Resolution 73/175.

After a significant decrease in executions for drug offences between 2016 and 2018, known drug-related executions increased 31% between 2018 and 2019: 122 drug-related executions were confirmed in 2019 (excluding figures from China and Vietnam), accounting for 18% of total known executions. While 2019 figures are lower than figures recorded until 2017, these numbers may signal a reversal in the trend reported in recent years.

By the end of 2019, at least 3,000 individuals remained on death row for drug offences around the world. Due to systemic lack of transparency, this figure is likely to underestimate of the phenomenon.

## COUNTRY-SPECIFIC INFORMATION

**Bahrain** sentenced four people to death for drugs in 2019. These death sentences, in addition to the two passed in 2018, represent an increase in the use of capital punishment as a tool of drug control in the country.<sup>4</sup> Although the details of the cases remain unknown due to lack of transparency by the state, there are concerns regarding fair trial rights and the prohibition of torture in these cases, also in line with findings by the UN Committee Against Torture about the “continued and consistent allegations of widespread torture” to elicit confessions, as well as “widespread acceptance” of forced confessions by Bahraini judges.<sup>5</sup>

**China** continues to be reported as the world’s top executioner, despite state secrecy hampering a realistic documentation of the phenomenon. Drug offences are believed to be the main crimes for which executions are carried out, together with

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<sup>1</sup> Bahrain, Bangladesh, Brunei Darussalam, China, Cuba, Egypt, India, Indonesia, Iran, Iraq, Jordan, Kuwait, Lao PDR, Libya, Mauritania, Malaysia, Myanmar, North Korea, Oman, Pakistan, Palestine, Qatar, Saudi Arabia, Singapore, South Korea, South Sudan, Sri Lanka, Sudan, Syria, Taiwan, Thailand, United Arab Emirates, United States of America, Vietnam, Yemen

<sup>2</sup> Brunei Darussalam, Iran, Jordan, Kuwait, Lao PDR, Malaysia, Myanmar, Oman, Singapore, Sudan, United Arab Emirates, Yemen.

<sup>3</sup> Source

<sup>4</sup> Sander et al. (2020), *The Death Penalty for Drug Offences: Global Overview 2019* (London: Harm Reduction International). Available at: <https://www.hri.global/death-penalty-2019>.

<sup>5</sup> 5 UNHRC, Committee against Torture: Concluding observations on the second and third periodic 214 reports of Bahrain (9 May 2017) pp.2, 4 [https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/BHR/INT\\_CAT\\_COC\\_BHR\\_27465\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/BHR/INT_CAT_COC_BHR_27465_E.pdf)

homicide, and Chinese authorities often step up their imposition of death sentences and executions as a warning against drug use and trafficking.<sup>6</sup> In 2019, China further expanded the drug crimes that can be punished by death by including fentanyl in the list of substances whose production and trafficking can be punished by death. This legislative amendment was followed, shortly after, by the first death sentence for fentanyl-related offences in November 2019.<sup>7</sup>

**Egypt** also expanded the range of crimes that can be punished by death in January 2019.<sup>8</sup> At least seven defendants were sentenced to death for drug offences in 2019, including one vulnerable Indian migrant worker accused of attempting to smuggle drugs from Iran.<sup>9</sup>

**India** seems to be restricting its use of the death penalty for drugs. No new death sentences for drug offences were pronounced in 2019,<sup>10</sup> and a death sentence for drug trafficking was commuted to imprisonment in November 2019, citing as justification the old age of the defendant (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>11</sup>

**Indonesia** did not carry out executions for the third year in a row. Nevertheless, the number of drug-related death sentences significantly increased from 34 in 2018 to 54 in 2019. 61% of the 271 people on death row in October 2019 were convicted for drug offences.<sup>12</sup>

The 2017 reform to the Anti-Narcotics Law in **Iran** had a significant impact on drug-related executions, which dropped from 221 in 2017 to 24 in 2018 (minimum confirmed figures). Regrettably, a reversal of this trend has been recorded in 2019, with 36 drug-related executions confirmed.<sup>13</sup> The 2017 amendment also triggered the review of at least 3,300 death sentences for drug offences. Rights groups have criticised the review process as opaque, tainted by insufficient resources and allegations of corruption,<sup>14</sup> and excessive alternative punishments: many of the people who have had their death sentence commuted received prison sentences as long as 30 years, and hefty financial penalties.<sup>15</sup>

In October 2018, the government of **Malaysia** pledged to abolish the death penalty for all offences.<sup>16</sup> Throughout 2019 this was reframed as a commitment to merely abolishing the *mandatory* death penalty.<sup>17</sup> In September 2019 the cabinet appointed a Special Committee, including academics and legal experts, to prepare an official report on the reform,<sup>18</sup> which was submitted to the government on 11 February 2020.<sup>19</sup>

In April 2019, the Malaysian Federal Court declared the double presumption of possession and knowledge of the drugs and consequently of the purpose of trafficking drugs - envisaged in Article 37(A) of the Dangerous Drugs Act - unconstitutional.<sup>20</sup>

<sup>6</sup> Girelli (2019, *The Death Penalty for Drug Offences: Global Overview 2018* (London: Harm Reduction International).

<sup>7</sup> Myers, SL (7 November 2019) ‘China sentences man to death for trafficking fentanyl to the U.S.’ *New York Times*. Available from: <https://www.nytimes.com/2019/11/07/world/asia/china-fentanyl-death-penalty.html>.

<sup>8</sup> Al-Youm, A (30 January 2019) ‘Egypt’s cabinet approves death penalty for drug dealers.’ *Egypt Independent*. Available from: <https://www.egyptindependent.com/egypts-cabinet-approves-death-penalty-for-drug-dealers/>.

<sup>9</sup> Express News Service (22 November 2019) ‘Andhra Pradesh gets death penalty in Egypt for drug smuggling.’ *The New India Express*. Available from: <https://www.newindianexpress.com/states/andhra-pradesh/2019/nov/22/andhra-pradesh-man-gets-death-in-egypt-for-drug-smuggling-2065320.html>.

<sup>10</sup> Project 39A (2020) *Death Penalty in India: Annual Statistics Report 2019* (Delhi: National Law University)

<sup>11</sup> Calcutta High Court (Appellate Side) (2019) *State Of West Bengal vs Ansar Rahman @ Ramesh Giri & Anr, 26 November 2019, AS/SDAS/AP/TKM/ss& PA Item No.213*. Available from:

<https://indiankanoon.org/doc/12734817/>.

<sup>12</sup> *Ibid*, 21.

<sup>13</sup> Based on a Harm Reduction International dataset on death sentences and executions for drug offences. On file with the authors and available upon request.

<sup>14</sup> ECPM and Iran Human Rights (2019) *Annual Report on the Death Penalty in Iran 2018* (Paris: Ensemble Contre la Peine de Mort). Available from: <http://www.ecpm.org/wp-content/uploads/Rapport-iran-2019-GB-BD.pdf>.

<sup>15</sup> Abdorrahman Boroumand Center and Harm Reduction International (28 March 2019) *Joint Stakeholder Submission to the Working Group for The Universal Periodic Review, Third cycle, 6-7*. Available at: <https://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRIRStakeholdersInfoS34.aspx> (joint submission 11)

<sup>16</sup> Among others, see Agence France-Presse (2018) ‘Malaysia set to abolish death penalty, in move which could spare lives of women accused of Killing Kim Jong-Nam.’ *The Telegraph*. Available at: <https://www.telegraph.co.uk/news/2018/10/11/malaysia-set-abolish-death-penalty-move-could-spare-lives-women/>.

<sup>17</sup> Associated Press (14 March 2019) ‘Malaysia backtrack on plans to abolish death penalty.’ *Bloomberg*. Available at:

<https://www.bloomberg.com/news/articles/2019-03-14/malaysia-backtracks-on-plans-to-abolish-death-penalty>; Zahiid, SJ (17 June 2019) ‘Putrajaya looks to Apex Court ruling for cue to repeal death sentence.’ *Malaymail*. Available at: <https://www.malaymail.com/news/malaysia/2019/06/17/putrajaya-looks-to-apex-court-ruling-for-cue-to-repeal-death-sentence/1763019>.

<sup>18</sup> Media Statement by Liew Vui Keong, minister in the Prime Minister’s Department for Legal Affairs, 20 September 2019. Available (in Malaysian) from: [https://www.amerbon.com/wp-content/uploads/2019/09/KENYATAAN-MEDIA-Taskforce-alternative-sentence-for-DP\\_20-9-2019.pdf](https://www.amerbon.com/wp-content/uploads/2019/09/KENYATAAN-MEDIA-Taskforce-alternative-sentence-for-DP_20-9-2019.pdf).

<sup>19</sup> Bedi, Rashvinjeet (12 February 2020) ‘Committee on alternatives to mandatory death penalty hands over report to govt.’ *The Star Online*. Available from:

<https://www.thestar.com.my/news/nation/2020/02/12/committee-on-alternatives-to-mandatory-death-penalty-hands-over-report-to-govt>.

<sup>20</sup> <https://www.thestar.com.my/news/nation/2019/04/06/double-presumptions-for-drugtrafficking-conviction-struck-down/>

As of 3 December 2019 there were 1,280 people on death row in Malaysia;<sup>21</sup> according to Amnesty International, over 70% of these were sentenced to death for drug offences, around half of whom were foreign nationals.<sup>22</sup> The same source reports that 95% of the 141 women on death row as of February 2019 have been sentenced to death for drug offences, 90% of which foreign nationals.<sup>23</sup>

Paragraph 8 of resolution 73/175 calls upon abolitionist states not to reintroduce the death penalty. Direct steps have been taken with this objective in the **Philippines**, which abolished capital punishment in 2006 and ratified the second Optional Protocol to ICCPR. As of December 2019, at least 24 bills had been introduced in the Senate alone, of which at least 15 seeking to impose the death penalty for drug offences specifically.

**Saudi Arabia** has increased its use of the death penalty in 2019. At least 185 persons were executed in 2019, 84 of which for drug offences – representing a 42% increase by comparison to 2018. 2019 was the worst year on record for capital punishment in Saudi Arabia since HRI started tracking executions for drug offences in 2007.<sup>24</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>25</sup> and non-governmental sources report a systemic denial of consular assistance to capital defendants.<sup>26</sup> Saudi Arabia does not provide figures on death sentences.

In June 2019, **Sri Lanka's** President announced his intention to execute 19 convicted drug traffickers. This decision drew widespread international condemnation and the executions are now stayed due to a judicial challenge, the admissibility of which will be heard by a five-judge bench in 2020 (the March hearing was postponed in light of the COVID-19 emergency).<sup>27</sup> If carried out, the executions would constitute a concerning retrogressive step and end the country's 43-year-long de facto moratorium. In 2019, at least 31 people were sentenced to death, 12 of them for drug offences.<sup>28</sup>

The death penalty is predominantly imposed for drugs in **Singapore**. In 2019 at least 13 death sentences were pronounced, all for drug offences, and four people were executed, including two for drug offences.<sup>29</sup> One victim was a drug courier convicted for transporting no more than 16.56 grammes of heroin.<sup>30</sup> In May 2019, the Singapore Court of Appeal rejected an appeal to the death sentence for drug trafficking of Nagaenthran s/o K Dharmalingam, a Malaysian man suffering from an intellectual disability.<sup>31</sup>

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<sup>21</sup> Sinar Project (3 December 2019) 'Parliamentary question and answer on the death penalty.' Available from: <https://pardocs.sinarproject.org/documents/2019-oct-dec-parliamentary-session/oral-questions-soalan-lisan/2019-12-03-parliamentary-replies/par14p2m3-soalan-lisan-9.pdf>. Translation provided by ADPAN.

<sup>22</sup> Amnesty International (2019) *Fatally Flawed: Why Malaysia Must Abolish the Death Penalty*, 20. London: Amnesty International.

<sup>23</sup> Amnesty International (2019) *Fatally Flawed: Why Malaysia Must Abolish the Death Penalty*, 20. London: Amnesty International.

<sup>24</sup> ESOHR (2019) *2018 Death Penalty Report: Saudi Arabia's False Promise* (Berlin: European Saudi Organisation for Human Rights). Available from: <http://www.esohr.org/en/?p=2090>.

<sup>25</sup> Based on a Harm Reduction International dataset on death sentences and executions for drug offences. On file with the authors and available upon request.

<sup>26</sup> Among others, see European Saudi Organisation for Human Rights [ESOHR], "In 13 Years Saudi Arabia Deprived 504 Foreigners of the Right to Life through Beheading after Unfair Sentences, Violating International Law," June 19, 2018, <https://www.esohr.org/en/?p=1725>.; European Saudi organisation for Human Rights [ESOHR], "2018 Death Penalty Report: Saudi Arabia's False Promise

<sup>27</sup> Tamil Guardian (9 December 2019) 'Sri Lanka maintains a moratorium on the death penalty until March 2020.' *Tamil Guardian*. Available from: <https://www.tamilguardian.com/content/sri-lanka-maintains-moratorium-death-penalty-until-march-2020>.

<sup>28</sup> Based on dataset on death sentences and executions for drug offences. On file with the authors and available upon request.

<sup>29</sup> Based on a Harm Reduction International dataset on death sentences and executions for drug offences. On file with the authors and available upon request.

<sup>30</sup> *Ibid.*

<sup>31</sup> See [https://www.singaporelawwatch.sg/Portals/0/Docs/Judgments/\[2018\]20SGHC%20112%20\(amended\).pdf](https://www.singaporelawwatch.sg/Portals/0/Docs/Judgments/[2018]20SGHC%20112%20(amended).pdf); <https://www.theonlinetizen.com/2019/05/27/malaysian-drug-mule-nagaenthrans-death-sentence-a-clear-violation-of-international-law-due-to-his-mental-illness-or-intellectual-disability-human-rights-lawyer-m-ravi/>

Drug offences dominate the imposition of death sentences in **Thailand** as well: there were 312 people on death row in Thailand on 12 December 2019, 64% of whom were convicted of drug offences.<sup>32</sup> 58 of the 59 women on death row in Thailand are detained for drug offences.<sup>33</sup>

Figures on executions and death sentences in **Vietnam** for 2019 were not made public, against the explicit recommendations of the UN Human Rights Committee.<sup>34</sup> According to media reports, Vietnamese courts handed down at least 75 death sentences in 2019, 74 of them for drug offences.<sup>35</sup> At least 14 out of the 74 individuals sentenced to death for drug offences (almost 20%) were women.<sup>36</sup>

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<sup>32</sup> Department of Corrections of Thailand (2019) *Statistical Report on Death Penalty Prisoners – 12 December 2019*. Suanyai Sub-district: Ministry of Justice. Available from: <http://www.correct.go.th/executed/index.php>.

<sup>33</sup> Source

<sup>34</sup> UN Human Rights Committee (29 August 2019) *Concluding Observations on the Third Periodic Report of Viet Nam*, UN Doc CCPR/C/VNM/CO/3, para 25.

<sup>35</sup> Based on a Harm Reduction International dataset on death sentences and executions for drug offences. On file with the authors and available upon request.

<sup>36</sup> Sander et al. (2020), *The Death Penalty for Drug Offences: Global Overview 2019* (London: Harm Reduction International)