

Submission to the UN Universal Periodic Review

China

31st Session of the UPR Working Group of the Human Rights Council
March 2018

The Death Penalty for Drug Offences in China

Submitted by Harm Reduction International and
the International Network of People who Use Drugs



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1. This report is being submitted in conjunction with the Universal Periodic Review of China during the 31st Session of the UPR Working Group of the Human Rights Council. This report is being submitted by Harm Reduction International and the International Network of People who Use Drugs (INPUD).
2. **Harm Reduction International** is a leading non-governmental organisation working to reduce the negative health, social and human rights impacts of drug use and drug policy by promoting evidence-based public health policies and practices, and human rights based approaches to drugs. Our vision is a world in which individuals and communities benefit from drug laws, policies and practices that promote health, dignity and human rights. **The International Network of People who Use Drugs (INPUD)** is a global peer-based organisation that seeks to promote the health and defend the rights of people who use drugs.
3. This report critically examines the imposition of the death penalty in China, in particular for drug offences, in light of international human rights standards. It has been compiled from a combination of sources, including international law, NGO reports, news reports and other relevant commentary.

Death penalty for drug offences in China

4. China is one of only 33 countries that currently retain the death penalty for drug offences in its domestic law. Statistics on death sentences and executions, however, are considered so sensitive that they remain a State secret, making it impossible to know the true number of death sentences and executions that take place each year. For the last two years, even credible estimates have been impossible to compile.
5. Nevertheless, China continues to be considered the world's top executioner, executing more people than all other countries combined in 2016.¹ Based on figures retrieved by Amnesty International from the China Judgements Online Database, which has been criticised as being far from comprehensive, only a handful of offences frequently resulted in individuals being sentenced to death by the Supreme People's Court between 2011 and 2016: homicide (57%), robbery (23%) and drug-related offences (13%).²
6. Although media coverage of the death penalty in China is sporadic at best, in June 2017 it was reported that 13 men and women accused of drug offences were sentenced to death in front of a crowd of 10,000 in Guangdong Province.³

The death penalty for drug offences under international law

7. A broad consensus has emerged among legal scholars and human rights authorities that the death penalty for drug-related offences is wholly incompatible with fundamental tenets of human rights and constitutes a violation of international law. Not only does it severely undermine human dignity, it is also a clear violation of the right to life. The UN Human Rights Committee has authoritatively and repeatedly made clear that drug-related offences do not

meet the threshold of “most serious crimes” under Article 6.2 of the International Covenant on Civil and Political Rights that defines the legal limits within which capital punishment may be allowed.⁴

8. Although China is still not party to the International Covenant on Civil and Political Rights, despite numerous recommendations to consider doing so during its last Universal Period Review, the threshold of “most serious crimes” has been supported by the highest political bodies of the United Nations. The Economic and Social Council of the United Nations (ECOSOC) endorsed a resolution in 1984 upholding nine safeguards on the application of the death penalty which affirmed that capital punishment should be used only for the most serious crimes.⁵ This threshold was specified to mean crimes that were limited to those ‘with lethal or other extremely grave consequences’,⁶ and was endorsed by the UN General Assembly.⁷ Furthermore, the death penalty in any context is increasingly considered to be contrary to an emerging customary norm that its imposition and enforcement is a breach of the prohibition of torture or cruel, inhuman or degrading treatment or punishment.⁸
9. A strong argument can also be made that most drug offences for which the death penalty is applied in national courts do not even meet the threshold of “particularly serious” crimes under international drug control law.⁹

Disproportionate impact of the use of the death penalty on vulnerable individuals

10. Recent research undertaken by Amnesty International found that, as is the case in many other retentionist States, the death penalty in China seems to be disproportionately meted out to individuals who are poor, have lower levels of educational attainment, and who are members of racial, ethnic and religious minorities.¹⁰
11. Foreign nationals, largely from other Asian countries, also appear to be disproportionately impacted, particularly in cases relating to drug trafficking.¹¹ The UN Secretary General recently identified arrested foreign nationals as a vulnerable group deserving of particular protection.¹² Equipped with little understanding of the local legal system, foreign nationals also frequently face financial and/or linguistic barriers. If they are unable to secure effective legal counsel at the outset, it becomes very difficult – if not impossible – to ensure a fair trial, which can make the difference between arrest and charge, conviction and acquittal and, in cases of the death penalty, life and death.

Unfair trials

12. While international law guarantees those facing the death penalty the right to seek pardon or commutation of their death sentences, there are currently no legal provisions to allow those sentenced to death to apply for these clemency measures in China.¹³

Transparency, accountability and the right to information

13. During China’s last Universal Periodic Review in 2013, a large number of States raised concerns not only about the continued use and broad application of the death penalty in the country, but also about the lack of transparency around death sentences and executions.¹⁴ Regrettably, China refused to accept any of the recommendations made in this regard.¹⁵ In reference to ensuring greater transparency, the country simply replied: “[t]he statistics of death penalty

and death penalty with reprieve is included in that of fixed-term imprisonment of more than five years and life imprisonment. There is no separate statistics on death penalty.”¹⁶

14. UN bodies have on several occasions expressed their dissatisfaction with China’s lack of cooperation, particularly with regards to sharing explicitly requested information about the number of death sentences and executions. During its very first review of China in 1990, the Committee against Torture asked for data on the number of executions carried out, and the offences that gave rise to those executions. This request is still being ignored almost 30 years later. In fact, according to Amnesty International, as of March 2017, China had not cooperated with any UN bodies or procedures in providing requested information on the death penalty.¹⁷
15. Amnesty International has pointed out that lack of transparency in relation to the death penalty in China is particularly problematic in crimes related to terrorism and drugs. In fact, it has been reported that the police, prosecuting authorities and courts in different provinces and regions have varying standards and understandings with regards to how to apply the death penalty for drug-related offences.¹⁸
16. Transparency has long been recognised as an important requirement for States that still retain the death penalty. This requirement covers many elements, including making judgments and figures on death sentences and executions consistently and publicly available.¹⁹ As the UN Secretary General recently asserted, “[t]ransparency is a prerequisite to assess whether the death penalty is being carried out in compliance with international human rights standards.”²⁰ Indeed, the absence of this data hampers the identification of possible patterns of abuse requiring attention, and making sure it is available is a critical safeguard to protect against unlawful executions and unfair trials, and is essential to ensuring accountability and preventing State power from being abused.²¹
17. Under international law, disclosure of statistical data and information in the public’s interest must be the norm, while any exception to this general rule must be formally justified. States can impose certain limitations on the right to information, but they must be provided by law and necessary for respect of the rights or reputations of others, for the protection of national security, public order, or public health and morals.²² The Human Rights Committee has further explained that any restrictions must also conform to the strict tests of necessity and proportionality.²³ In 2011, the Human Rights Committee stated that information on the use of the death penalty was of public interest and that a right to access that information therefore existed in principle.

Recommendations for action by the State under review

Harm Reduction International and INPUD call on the government of China to:

- Immediately establish a moratorium on all executions and commute existing death sentences with a view to full abolition of the death penalty in national legislation;
- Pending full abolition of the death penalty, make publicly available relevant information regarding:
 1. the number of people sentenced to death and for which crimes;
 2. the number of people on death row and for which crimes;
 3. the number of executions carried out and for which crimes.

- Reduce the scope of crimes subject to the death penalty, including eliminating all crimes that are not the “most serious crimes”, such as drug-related offences.
- Sign and ratify without reservation the International Covenant on Civil and Political Rights and the Convention against Torture and bring all domestic law into conformity with the provisions of these human rights treaties.

¹ Amnesty International. *Death Sentences and Executions 2016*. April 2017.

² Amnesty International. *China’s Deadly Secret*. 2017. <https://www.amnesty.org/en/latest/campaigns/2017/04/chinas-deadly-secrets/>

³ Joey Lee. “Chinese court sentences 13 drug dealers to death in front of thousands.” *Asia One*. 29 June 2017.

<http://www.asiaone.com/china/chinese-courts-sentences-13-drug-dealers-death-front-thousands>

⁴ See, for example: UN Human Rights Committee. Concluding Observations: Thailand. UN Doc. CCPR/CO/84/THA, para 14. 8 July 2005; UN Human Rights Committee. Concluding Observations: Sudan. UN Doc. CCPR/C/SDN/CO/3, para. 19. 29 August 2007.

⁵ ECOSOC. Implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty Resolution 1984/50. 25 May 1984.

⁶ Ibid.

⁷ UN General Assembly. Human rights in the administration of Justice. Resolution A/RES/39/118. 14 December 1984.

⁸ See, for example, UNHCR. *Using the death penalty to fight drug crimes violates international law, UN rights experts warn World Day Against the Death Penalty*. 10 October 2015.

⁹ Rick Lines. “The Death Penalty for Drug Offences: What do the international drug control treaties say about ‘most serious crimes?’” *Human Rights Centre Blog, University of Essex*. 3 March 2016. <https://hrcessex.wordpress.com/2016/03/03/the-death-penalty-for-drug-offences-what-do-the-international-drug-control-treaties-say-about-most-serious-crimes/>

¹⁰ Amnesty International. *China’s Deadly Secret*. 2017. <https://www.amnesty.org/en/latest/campaigns/2017/04/chinas-deadly-secrets/>

¹¹ Ibid.

¹² United Nations General Assembly. Moratorium on the use of the death penalty. Report of the Secretary-General. UN doc A/71/332, 15 August 2016.

¹³ Amnesty International. *China’s Deadly Secret*. 2017. <https://www.amnesty.org/en/latest/campaigns/2017/04/chinas-deadly-secrets/>

¹⁴ United Nations General Assembly. Report of the Working Group on the Universal Periodic Review, China. UN Doc. A/HRC/25/5. 4 December 2013, paras 186.107 and 186.108.

¹⁵ United Nations General Assembly. Report of the Working Group on the Universal Periodic Review. China. Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review. UN Doc. A/HRC/25/5/Add.1, 27 February 2014, paras 186.107 and 186.108

¹⁶ Ibid, para 186.108.

¹⁷ Amnesty International. *China’s Deadly Secret*. 2017. <https://www.amnesty.org/en/latest/campaigns/2017/04/chinas-deadly-secrets/>

¹⁸ Amnesty International. *China’s Deadly Secret*. 2017. <https://www.amnesty.org/en/latest/campaigns/2017/04/chinas-deadly-secrets/>

¹⁹ See, for example, Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment of punishment. UN Doc. A/HRC/17/279, 9 August 2012.

²⁰ United Nations Secretary-General. *Remarks at Panel on “Transparency and the death penalty.”* Antonio Guterres. 10 October 2017. <https://www.un.org/sg/en/content/sg/speeches/2017-10-10/sgs-transparency-and-death-penalty-remarks>

²¹ Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, UN Doc. E/CN.4/2006/53/Add.3, 24 March 2006, paras 7-8.

²² International Covenant on Civil and Political Rights. Article 19(3).

²³ Human Rights Committee, *General Comment No. 34*, para 22.