



Submission to the UN Working Group on Arbitrary Detention
In Support of the Report on Arbitrary Detention Relating to Drug Policies:
Detention on Death Row for Drug Offences

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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 drug policy. Since 2007, Harm Reduction International has been at the forefront of advocating for the abolition of the death penalty for drug offences worldwide.

The World Coalition Against the Death Penalty, an alliance of more than 150 NGOs, bar associations, local authorities and unions, was created in Rome on 13 May 2002. The aim of the World Coalition is to strengthen the international dimension of the fight against the death penalty. Its ultimate objective is to obtain the universal abolition of the death penalty. To achieve its goal, the World Coalition advocates for a definitive end to death sentences and executions in those countries where the death penalty is in force. In some countries, it is seeking to obtain a reduction in the use of capital punishment as a first step towards abolition.

Harm Reduction International and the World Coalition Against the Death Penalty congratulate the UN Working Group on Arbitrary Detention (Working Group) for conducting a study on arbitrary detention relating to drug policies, pursuant to Human Rights Council Resolution 42/22.

In this context, we invite the Working Group to include a review of detention on death row, or those imprisoned under a death sentence, for drug-related offences and its compatibility the prohibition of arbitrary detention.

The question of the lawfulness of a deprivation of liberty is to be determined in accordance not only to domestic but also to international law. This Working Group has specified that “legal provisions incompatible with fundamental rights and freedoms guaranteed under international human rights law would also give rise to qualification of detention as arbitrary.”¹ In this regard, it is now unquestionable that drug offences do not meet the threshold of ‘most serious crimes’ to which Article 6(2) of the International Covenant on Civil and Political Rights (ICCPR) mandates that the death penalty be

¹ A/HRC/22/44, para. 65

restricted, in countries which have not yet abolished this measure. This was most recently reiterated in General Comment No. 36 on the Right to Life published by the Human Rights Committee.² The same source also clarified that a death sentence imposed for crimes which do not qualify as “the most serious” also violate Article 7 ICCPR.³

The death penalty for drug offences is also in contrast with international drug control law, as clarified by the UN Office on Drugs⁴ and Crimes and the International Narcotics Control Board.⁵

Executions carried out under internationally-prohibited grounds are deemed as arbitrary, thus in the same way holding an individual on death row for crimes to which the death penalty cannot be imposed should also be denounced, and assessed, as an arbitrary form of detention.

In this context, we note that a death sentence, and thus the ensuing detention, is also arbitrary when imposed as a result of a trial that does not qualify as ‘fair’ under international law.⁶ This appears to be the case for many, if not most, capital drug cases around the world.⁷

Most retentionist states fail to provide update, credible, and disaggregated data on their death row population. Nevertheless, civil society reports indicate that thousands of people are on death row for drug offences in at least 19 countries.⁸ Conditions of detention on death row vary considerably between states, regions, and prisons. However, individuals awaiting execution systematically endure abusive and dehumanising conditions, particularly when the detention is extended to several years. The severe conditions of detention, and the physical and psychological violence death row prisoners are subjected to, often result in permanent physical and/or psychological trauma; in extreme cases, they lead to suicide.⁹

Considering the above, we hold that detention following a death sentence for drug offences should be recognised in itself as a form of arbitrary detention.

² Human Rights Committee, *General Comment No. 36 on Article 6 of the International Covenant on Civil and Political Rights, on the Right to Life*, 30 October 2018, CCPR/C/GC/36, Para. 26

³ *Ibid.*, para. 52

⁴ UNODC (27 June 2019) ‘Statement attributable to the UNODC spokesperson on the use of the death penalty.’ Available from: <https://www.unodc.org/unodc/en/press/releases/2019/June/statement-attributable-to-the-unodcspokesperson-on-the-use-of-the-death-penalty.html>

⁵ International Narcotics Control Board (January 2020), *Report of the International Narcotics Control Board for 2019*. Available from: https://www.incb.org/documents/Publications/AnnualReports/AR2019/Annual_Report_Chapters/English_ebook_AR2019.pdf

⁶ Human Rights Committee, *General Comment No. 36 on Article 6 of the International Covenant on Civil and Political Rights, on the Right to Life*, 30 October 2018, CCPR/C/GC/36., para. 40

⁷ For more information, see Harm Reduction International (2020), *The Death Penalty for Drug Offences: Global Overview 2019*. https://www.hri.global/files/2020/02/28/HRI_DeathPenaltyReport2019.pdf

⁸ Harm Reduction International (2019), *The Death penalty for Drug Offences: Conditions of Detention on Death Row*. <https://www.hri.global/files/2019/03/12/death-row-conditions-2018.pdf>

⁹ *Ibid.*