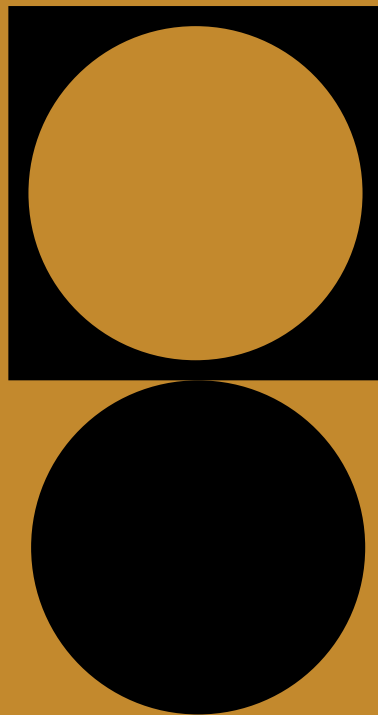


GAINING GROUND

HOW STATES ABOLISH OR RESTRICT APPLICATION OF
THE DEATH PENALTY FOR DRUG OFFENCES



Gaining Ground: How States abolish or restrict application of the death penalty for drug offences

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Harm Reduction International (HRI) envisions a world in which drug policies uphold dignity, health and rights. We use data and advocacy to promote harm reduction and drug policy reform. We show how rights-based, evidence informed responses to drugs contribute to healthier, safer societies, and why investing in harm reduction makes sense.

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

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INTRODUCTION

1.1 BACKGROUND

The death penalty is an ineffective and inhumane punishment, and a prohibited one when imposed for drug offences. Still, as of 2024 it is retained in over 30 countries, and its implementation as a tool of drug control is a key driver of the use of capital punishment worldwide.

At a time when its use is intensifying, by the part of an increasingly restricted but radical group of countries, it is critical to interrogate why and how governments around the world have abolished this measure or taken steps towards reducing its application. Such an assessment is key to understanding which actors and factors – social, political, cultural, economic – have influenced these processes, and which legal and policy steps were adopted to achieve that goal. In turn, this can offer important lessons to advocates, policymakers and practitioners on effective pathways to remove or restrict the application of the death penalty for drug offences in practice; as a step towards total death penalty abolition, and towards drug policies centred around dignity, health and rights.

After a brief overview of the death penalty for drug offences, which builds upon Harm Reduction International (HRI) *The Death Penalty for Drug Offences: Global Overview* series (hereinafter: *Global Overview*), this report is divided into two main parts. The first one is a review of 17 case studies of countries and territories which have removed the death penalty for drug offences from their laws, or adopted reforms aimed at reducing its use. The second is an analysis of commonalities in and recurring features of these experiences, with a focus on agents of change, narratives, other influencing processes, and the role of transparency. The report closes with some recommendations for policymakers, experts and activists, building on the lessons that can be learnt from these case studies.

1.2 OBJECTIVES AND METHODOLOGY

This report reviews and analyses case studies of national developments which aimed to or had the effect of removing or restricting the use of the death penalty for drug offences. A primary purpose is to provide a comparative review of driving forces that practitioners and abolitionist activists can draw upon to develop strategies aimed at restricting use of the death penalty for drug offences in their own country. Attention is thus limited to (a) countries and territories with laws prescribing death as a punishment for drug offences at some point in their history; and (b) legal, policy, judicial or other developments which had at least the potential of restricting the use of this punishment; considering developments related to the death penalty for drug offences specifically, as well as developments related to the death penalty generally in countries where this punishment was prescribed for drug crimes.

The findings described in this report are the result of a study designed with the Great Britain China Centre (GBCC) and conducted by HRI between December 2023 and April 2024, through a mix of desk-based and qualitative research. The first phase consisted of a desk-based literature review, starting from previous editions of HRI's Global Overviews and expanding into other available material, including reports by United Nations (UN) bodies and the Organization for Security and Cooperation in Europe (OSCE), academic articles, documentation by non-governmental organisations (NGOs), judgments, laws and policies, official press releases, and Hansards. This allowed to identify and select relevant processes, collect baseline information, and identify experts to approach. The second phase consisted of semi-structured key informant interviews and questionnaires, aimed at reviewing available information as well as gathering expert insights on the driving forces and context of the selected developments. Requests were sent out to 42 experts, including local, regional, and international activists, representatives of multilateral institutions, lawyers, academics, members of national human rights institutions, and members of parliament. Of these, 21 agreed to answer questions either in writing or through interviews, held between February and March 2024. Key informants are cited while relevant, and some only agreed to provide answers in anonymised form, due to safety concerns.

This study uses the same definitions as those in HRI's Global Overview and related publications; which were also used as primary references for figures.¹ Most notably, for the purposes of this report the term 'drug offences' (also referred to as drug-related offences or drug related crimes) denotes drug-related activities categorised as crimes under national laws. 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). HRI's research on the death penalty for drug offences excludes countries and territories where drug offences are punishable with death only if they involve, or result in, intentional killing.

The study was affected by several limitations. Language barriers prevented the authors from accessing relevant material when it was not available in English, Bahasa Indonesia, or Malay, particularly official documents (when available, unofficial translations were used). A limited timeframe to conduct the research also impacted on the ability to review all processes in depth – thus the decision was made to focus on key actors, factors, and impact (to the extent this could be gauged) of the analysed developments; and to prioritise insights from experts and practitioners from the countries and territories reviewed. Further, for developments dating back to the 1980s and 1990s there was limited access to resources (some of which are lost or are only available as hard copies in local archives, thus inaccessible) and actors; as it was not always possible to identify and make contact with experts who were active at that time. For example, no experts could be interviewed for Uzbekistan and Tajikistan, thus the information included in the report is all from existing literature. This adds to another barrier, meaning the significant lack of transparency that characterises use of the death penalty in many countries and territories, affecting a full, realistic reconstruction of patterns and trends.²

1 A full review of the *Global Overview* definitions and methodology can be accessed at: Giada Girelli, Marcela Jofré, and Ajeng Larasati, 'The Death Penalty for Drug Offences: Global Overview 2022' (London: Harm Reduction International, 2023), https://hri.global/wp-content/uploads/2023/03/HRI_DeathPenalty_Report2022_REV.pdf.

2 Among others, see Human Rights Council, 'Question of the Death Penalty - Report of the Secretary-General'. UN Doc A/HRC/48/29 (17 December 2021); Human Rights Commission, 'Extrajudicial, Summary or Arbitrary Executions. Report of the Special Rapporteur, Philip Alston: Transparency and the Imposition of the Death Penalty', UN Doc. E/CN.4/2006/53/Add.3 (24 March 2006).

For these reasons, this report does not attempt to provide a comprehensive, exhaustive overview of all domestic developments in all relevant countries and territories which had the potential or effect to restrict recourse to the death penalty for drug offence. Rather, it only describes and reviews some relevant developments, selected based on their perceived relevance for practitioners and experts, as well as availability of sufficient information and access to informants.

THE DEATH PENALTY FOR DRUG OFFENCES: AN OVERVIEW

By the end of 2023, 34 countries and territories retained the death penalty for a range of drug offences. Of these, roughly half are in Asia, followed by Middle East and North Africa.

A review of domestic trends shows **significant differences both in law and in practice**. With regards to the law, there are sometimes extreme differences between countries in the substances the production, possession or trade of which can be punished with death, the minimum quantities which make a crime punishable by death (ranging from three grams of heroin in Sri Lanka to two kgs in Iran) as well as circumstances needed for a drug crime to attract the death penalty (for example, in India capital punishment can only be imposed for repeated offences). In 11 of these countries, the death penalty is prescribed as a mandatory punishment for at least certain drug offences. In others, judicial discretion is limited to specific circumstances. Laws and policies change regularly, with some countries restricting the list of drug crimes punishable by death and others expanding it. This suggests countries have inconsistent understandings of what qualifies as a 'serious crime', 'deserving' of extreme punishment. This is even though international human rights and drug control standards are clear that drug offences do not meet the threshold of 'most serious crimes' to which imposition of capital punishment must be limited to in retentionist countries.³

With regards to the practice, implementation is equally inconsistent among jurisdictions. HRI classifies countries into three categories, based on trends on death sentences and executions, with an additional category for countries where data is insufficient.⁴ The high application category, grouping countries which more regularly employ the death penalty as a tool of drug control, has been mostly stable, with China, Iran, Malaysia, Saudi Arabia, Singapore and Vietnam regularly part of it. Indonesia was added to the category in 2015, following the execution of 14 people; all for drug offences. North Korea and Kuwait were added to the category in 2021 and 2023 respectively, when HRI monitoring documented sufficient evidence that drug-related death sentences and executions had taken place in the five years prior.

The low application category has experienced more changes. Some countries, like the United Arab Emirates, Pakistan, and Sri Lanka, have stayed in this group continuously at least since 2014. Egypt and the State of Palestine were

3 For a full overview of international and regional standards on the death penalty for drug offences see: Ajeng Larasati and Marcela Jofré, 'Special Issue: A Decade-Long Review on the Death Penalty for Drug Offences' (London: Harm Reduction International, 2024), https://hri.global/wp-content/uploads/2024/04/HRI_DeathPenalty_A-decade-review_AW.pdf.

4 The classification differentiates among countries in which executions for drug offences were carried out and/or at least ten drug-related death sentences were imposed per year in the past five years (categorised as High Application States); countries where executions for drug offences have not been carried out in the past five years but where death sentences for drug offences were imposed in the same period but does not meet the threshold required for classification as 'high application' (categorised as Low Application States); and countries that have the death penalty for drug offences within their legislation but have not carried out executions nor sentenced individuals to death for drug offences in the past five years (categorised as Symbolic Application States). Countries are moved in-between categories as they fit the relevant criteria. For more information see: Giada Girelli, Marcela Jofré, and Ajeng Larasati, 'The Death Penalty for Drug Offences: Global Overview 2023' (London: Harm Reduction International, 2024), <https://hri.global/wp-content/uploads/2024/03/HRI-GO2023-final-WEBSITE.pdf>.

added in 2017 after the first documented death sentence for drug offences. Bahrain and Bangladesh were added, for the same reason, in 2018.

Meanwhile, nine countries and territories have not executed nor sentenced people to death for drug offences in the past ten years. These are Cuba, Jordan, Mauritania, Oman, South Korea, South Sudan, Sudan, Taiwan and the United States of America (USA).

What many of these countries have in common, despite these differences, is the process which led to them introducing this measure. **Punishing drug crimes with death is quite a recent phenomenon**: as explained by Lines, Barret and Gallahue, “for the majority of States actively executing drug offenders, the practice is about as ‘traditional’ in legal or historical legal terms as the microwave oven is in cooking terms”. Many of the countries which impose the death penalty for drug offences introduced it in domestic legislation around the 1970s, to coincide with the launch of a global ‘war on drugs’ spearheaded by the USA. A spike can be observed contextually to or after the signing or ratification the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (or 3rd UN Drug Convention),⁵ which sanctifies this punitive, repressive approach in the international drug control regime. This suggests that in many, if not most, cases, imposing death as a tool of drug control is not the result of domestic, homegrown considerations. Rather, this decision was strongly influenced by international pressure, or at the very least it was an outcome, and perhaps the most extreme manifestation, of punitive international drug control policy. In other words, the death penalty for drug offences is not a cultural or traditional phenomenon, but rather an inherently political one. Not by chance, the experiences described in this report will show the impact that broader political processes have on its legislation and use.

5 Rick Lines, Damon Barrett, and Patrick Gallahue, ‘Guest Post: The Death Penalty for Drug Offences: “Asian Values” or Drug Treaty Influence?’, *Opinio Juris* (blog), 22 May 2015, <https://opiniojuris.org/2015/05/21/guest-post-the-death-penalty-for-drug-offences-asian-values-or-drug-treaty-influence/>.

2.1 KEY TRENDS

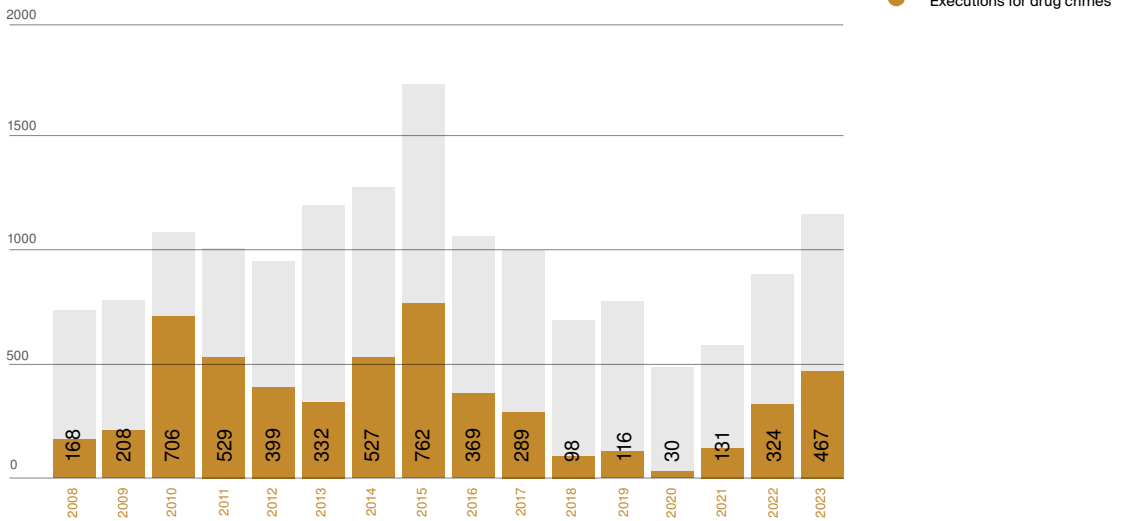
All figures on the death penalty risk being a gross underestimation of the phenomenon, due to widespread lack of transparency, when not censorship, on information on this practice at the domestic level. Nevertheless, HRI confirmed at least 5455 executions globally for drug offences between 2008 (the year HRI started systematically monitoring and reporting on the phenomenon) and 2023. Figures on the number of known executions fluctuate, with peaks of over 700 individuals executed in 2015, and a record low figure – 30 – confirmed for 2020. These differences can be attributed in part to external developments, such as COVID-19, and in part to some of the very domestic processes that will be discussed in the report.

Between 2008 and 2023 at least 2610 people were sentenced to death for drug offences. The very fact that this figure is significantly lower than the total number of executions for the same period illustrates how partial available information on death sentences is.

Available figures also show how **drug offences drive overall imposition of the death penalty**, insomuch that any debate on reducing the use of the death penalty must incorporate a critical assessment of drug control. Between 2008

and 2023, an average of 36% of known global executions have been carried out for drug crimes (1 in 3), with peaks of 65% in 2010. After a regular decrease between 2015 (45%) and 2020, when drug offences accounted for 6% of known global executions, a record high percentage was recorded again in 2023 (42%).

Known drug-related executions globally



This disproportionate impact also emerges when looking at states. The death penalty for drugs is actively used in a handful of countries at the ‘extreme fringe’ of the international community. In 2023 for example, executions were confirmed in five countries, and believed to have taken place in two more; meaning, in less than one in 20 countries around the world. However, in the same year drug offences were responsible for almost 1 in 2 known executions globally. While at least 16 countries have fully abolished the death penalty between 2014 and 2023,⁶ none of these were countries retaining the death penalty for drug offences.

Some **concerning trends** emerge from decades of application of the death penalty for drug offences. Two of these are (a) the widespread, often systemic violation on the right to a fair trial, and (b) the disproportionate impact of death penalty for drug offences on marginalised groups.

The right to a fair trial is a non-derogable right, a central tenet of any criminal justice system, and a precondition for the enjoyment of many other rights. It encompasses fundamental principles such as the right to equality before courts and tribunals (including equality before arms, access to legal representation, and legal aid; the right to a fair and public hearing by a competent, independent, and impartial tribunal; the presumption of innocence; the right to be informed of the criminal charge promptly and in detail in a language that they understand; and other rights, all of which are interconnected and interlinked. In capital

6 ‘Countries That Have Abolished the Death Penalty Since 1976’, Death Penalty Information Center, accessed 24 June 2024, <https://deathpenaltyinfo.org/policy-issues/international/countries-that-have-abolished-the-death-penalty-since-1976>; Amnesty International, ‘Death Sentences and Executions 2023’ (London: Amnesty International, 2024).

cases, the right to a fair trial is one of the most crucial rights to be safeguarded, as executions are irreversible.

Unfair trials cloud the application of the death penalty for drug offences. Examples include, among many others, lack of legal representation, torture and ill-treatment to extort confessions, and denial of the right to appeal and to seek pardon or commutation. Restrictions of the role and independence of legal counsel were documented in Pakistan and Singapore, among other countries. Although some states - such as Malaysia, China, Indonesia and Pakistan - provide court-appointed lawyers or legal aid, the limited resources and time these lawyers have often leads to subpar evidence gathering and poor quality of representation.

Lack of quality legal representation also increases the risk of torture and ill-treatment, both upon arrest and during interrogation and detention. Rights groups from Malaysia, Indonesia, Iran and Saudi Arabia, among others reported the widespread and routine use of ill-treatment in capital drug cases.⁷

Another persistent issue is that of discrimination, and overrepresentation of marginalised groups among those sentenced to death and executed for drug offences. Foreign nationals are a uniquely impacted group, also due to the transnational nature of drug markets and the increased likelihood of being apprehended for drug crimes when crossing borders. Foreign nationals face increased vulnerability to human rights violations and abuse, including during trials, due to socio-economic status, language fluency, and understanding of laws and criminal processes, among others. They often lack power, resources, and support networks, making them more susceptible to human rights violations by law enforcement and the criminal justice system.⁸

7 For more on this see: Giada Girelli and Ajeng Larasati, 'The Death Penalty for Drug Offences: Global Overview 2021' (London: Harm Reduction International, 2022).

8 Carolyn Hoyle and Giada Girelli, 'The Death Penalty for Drug Offences: Foreign Nationals' (London: Harm Reduction International (HRI), March 2019), <https://www.hri.global/files/2019/03/12/death-penalty-foreign-nationals.pdf>.

CASE STUDIES

The trends and figures summarised above show how use of the death penalty as a tool of drug control is not static, but rather subject to frequent changes both in law and in practice. In the past four decades, countries have taken significant steps to review this measure, with an eye to abandoning it or reducing its use. The 17 case studies identified, spanning from 1987 to 2023, represent a broad range of processes, quite different from each other in timeframe, involved actors, political and institutional contexts, driving justifications, and outcomes. Despite their differences, these experiences can be grouped into five broad categories based on their intended outcome, meaning:

- (1) ABOLITION FOR ALL CRIMES, INCLUDING DRUG CRIMES;
- (2) ABOLITION FOR DRUG OFFENCES SPECIFICALLY;
- (3) REDUCTION OF DEATH-ELIGIBLE DRUG CRIMES;
- (4) INTRODUCTION OR EXPANSION OF ALTERNATIVE PUNISHMENTS TO THE DEATH PENALTY; AND
- (5) INTRODUCTION OF SENTENCING GUIDELINES APPLICABLE IN DEATH-ELIGIBLE DRUG CASES.

The following sections provide a brief review of selected domestic processes which aimed at or resulted in removing or restricting the use of the death penalty for drug offences.

(1) ABOLITION FOR ALL CRIMES, INCLUDING DRUG CRIMES



3.1.1. MAURITIUS (1995)

Section 38(4) of the Dangerous Drugs Act of 1986 prescribed death as a mandatory punishment for drug trafficking in Mauritius. The Section was declared unconstitutional by the Judicial Committee of the Privy Council in February 1992;⁹ but was quickly reinstated by the Mauritius National Assembly in that same year.¹⁰

In its 1995 report to the Human Rights Committee, the government disclosed that 12 people had been sentenced to death for drug trafficking between 1987 and 1993; all were foreign nationals, and two were women. Of these, eight had had their sentence quashed or commuted on appeal; while four more cases were pending.¹¹ Amnesty International reported four more death sentences for drug trafficking in 1994; and highlighted fair trial concerns related to another capital drug case.¹² Notably, no one had been sentenced to death for murder since 1987, suggesting drug trafficking was the main crime for which people were awaiting execution.¹³

The last execution in the country had taken place in 1987, and in February 1995 the Prime Minister declared an official moratorium.¹⁴ This decision was the result of a compromise among the ruling parties at the time, as part of broader political negotiations. Full death penalty abolition was one of the conditions imposed by Sir Gaetan Duval (politician and attorney for a death row prisoner) for the Parti Mauricien Social-Democrate (PMSD) to join a coalition government in 1987.¹⁵ No drug-specific arguments in favour or against the policy change could be found.

Ongoing debates came to fruition in May 1995, when, as reported by Amnesty International, “a bill was tabled to amend the Dangerous Drugs Act of 1986 by replacing the death penalty for drug-trafficking with 20 years’ imprisonment. In July the Abolition of the Death Penalty Bill was tabled to amend the Criminal Code and Criminal Procedure Act by banning the death penalty entirely. In August Parliament passed the two bills [...] by large majorities. However, President Cassam Uteem refused to sign the bills and sent them back to Parliament later in August. In the case of the Dangerous Drugs Bill, he recommended that Parliament should consider amending the bill to prescribe 30 years’ imprisonment for drug-trafficking, to which Parliament subsequently agreed. He gave no reason for refusing to sign the Abolition of the Death Penalty Bill. In November Parliament passed both the Abolition of the Death Penalty Bill and the amended Dangerous Drugs Bill for a second time, thus making Presidential assent a formality.”¹⁶

It is unclear whether anyone was on death row for drug trafficking at the time of abolition, when death sentences were commuted to long-term imprisonment.

9 Mohammed Mukhtar Ali v The Queen and S.M.A.H Gulam Rassool v The Queen (Mauritius Privy Council 18 February 1992).

10 Economic and Social Council, ‘Capital punishment and implementation of the safeguards guaranteeing the protection of the rights of those facing the death penalty’, UN Doc. E/1995/78 (8 June 1995).

11 Amnesty International, ‘Amnesty International Report 1994’ (London: Amnesty International, 1994), 199, <https://www.amnesty.org/en/documents/pol10/0002/1994/en/> Human Rights Committee, ‘Third periodic reports of State parties due in 1990: Addendum – Mauritius’, UN Doc. CCPR/C/64/Add.12 (15 September 1995), <https://www.refworld.org/reference/statepartiesrep/hrc/1995/en/29158>.

12 Amnesty International, ‘Amnesty International Report 1994’.

13 Human Rights Committee, ‘Third periodic reports of State parties due in 1990: Addendum – Mauritius’, CCPR/C/64/Add.12.

14 Ibid.

15 Interview with Jacques Achille, 23 February 2024; ‘Les derniers moments de la peine capitale à Maurice’, *l’express.mu*, 1 March 2016, <https://l’express.mu/node/277048>.

16 Amnesty International, ‘Amnesty International Annual Report 1996’ (London: Amnesty International, 1996), <https://www.refworld.org/reference/annualreport/amnesty/1996/en/15907>.

3.1.2 PHILIPPINES (2006)¹⁷

The Philippines introduced and abolished the death penalty twice; first in 1987, and then in 2006.

The death penalty was first introduced as a punishment for drug offences in the Dangerous Drugs Act of 1972 (Republic Act No. 6425), during the Marcos dictatorship; and subsequently expanded and made mandatory for some offences. The end of the dictatorship led to the adoption of a new Constitution in 1987, which prohibited imposition of the death penalty “unless, for compelling reasons involving heinous crimes, the Congress hereafter provides for it.”¹⁸ This made the Philippines the first country in Asia to fully abolish capital punishment.

Abolition was short-lived, as members of Congress, military personnel including future President Ramos, and some civil society (particularly victims’ families) quickly began to advocate for reintroduction of the punishment. Among key justifications was a perceived rise in ‘heinous crimes’ such as ‘drug-fuelled’ violent crimes (meaning crimes in which the perpetrator was reported as having used drugs before committing the crime).¹⁹ Such narrative found fertile ground in a society in which drugs were often depicted as the root of all evils:²⁰ in the Philippines, an ongoing narrative has been highlighted dating back to the Marcos dictatorship which identified drugs as the root of societal ills; justifying crackdowns against people suspected of using drugs, but also allowing to target opponents with little scrutiny.²¹ This narrative persisted after the dictatorship, and while the death penalty was not primarily used for drug offences, drug use was often pointed to as a cause of violent crimes. This narrative had to be undone during the abolition process, but it lingered, and was conveniently weaponised by President Duterte to pursue his violent ‘war on drugs’.²²

In late 1993 President Ramos reinstated the death penalty for several crimes, including 20 drug offences. The move was opposed by a broad group of actors which a year earlier had converged into a newly formed Coalition Against the Death Penalty (CADP). CADP was a diverse, highly coordinated group comprising the Catholic Bishop Conference of the Philippines, the Free Legal Assistance Group (FLAG) – a leading network of human rights lawyers – prison volunteers, clergymen, local NGOs, human rights defenders, families of political prisoners, and families of people on death row, with close ties with the Commission on Human Rights and anti-death penalty members of Congress. The Coalition and its members pushed incessantly for death penalty abolition; including through constitutionality challenges, appeals to international bodies (such as the Human Rights Committee), research, advocacy with members of Congress and other decisionmakers, capacity building, campaigns and protests, and public education; while also providing legal support to people facing death sentences, and volunteering in the country’s death rows.

Among the main arguments used by CADP against the death penalty were its being in violation of the right to life; its being a form of cruel, inhuman and degrading treatment; its disproportionate imposition against the poor; judicial errors and the risk of wrongful convictions; moral and religious, catholic arguments on the sanctity of life; and its lack of deterrent effect, including on drug crimes.

17 Unless specified, see Joan Orendain, *Not in Our Name: The Story of the Abolition of the Death Penalty in the Philippines* (Quezon City: Free Legal Assistance Group, 2008).

18 ‘The Constitution of the Republic of the Philippines’ (1987), <https://www.officialgazette.gov.ph/constitutions/1987-constitution/>.

19 See for example Human Rights Committee, ‘Consideration of reports submitted by State Parties under Article 40 of the Covenant. Second periodic report – The Philippines’, UN Doc. CCPR/C/PHL/2002/2 (18 September 2002).

20 Interview with Karry Sison, 19 February 2024.

21 *Ibid.*

22 Human Rights Council, ‘Situation of human rights in the Philippines: Report of the United Nations High Commissioner for Human Rights’, UN Doc. A/HRC/44/22 (29 June 2020).

After seven highly contested executions between 1999 and 2000, President Estrada declared a moratorium in March 2000. In December of the same year, the President announced the commutation of all death sentences to life imprisonment. Meanwhile, and also as a consequence of CADP's intensified lobbying, abolition bills began to be tabled in Congress.

Abolition gained traction when Gloria Macapagal Arroyo became President in January 2001. The new President, a devout Catholic identified by many as the charismatic, persistent force behind abolition,²³ announced she would not have executions carried out due to her religious beliefs. The moratorium was kept in place through most of the following years, though it was temporarily lifted in 2003 only for kidnapping and drug trafficking, due to a perceived increase in such crimes.²⁴ Coordinated and sustained lobbying by CADP and the Human Rights Commission with support from international experts, advocates and diplomats, coupled with Macapagal Arroyo's influence and resolve, eventually led to abolition. In April 2006, the President announced she would commute all death sentences to life imprisonment; in June Congress approved the bill abolishing the death penalty (which had been drafted by FLAG members); and on 24 June 2006 President Macapagal Arroyo signed into law Republic Act no.9346 prohibiting imposition of the death penalty in the Philippines. The Act abolishes this form of punishment and replaces it with life imprisonment.

Shortly thereafter the Philippines acceded to the second Optional Protocol to the ICCPR (OPII), which bars state parties from reintroducing the death penalty. While no one was executed for drug offences in the country between 1993 and 2006, death sentences were imposed for drug offences. A FLAG study reported 1121 people on death row in 2004, of which 26 for drug offences.²⁵ People on death row at the time of abolition had their sentence commuted to life imprisonment; though issues with implementation were reported.

Abolition did not put an end to the narrative identifying drug use as a root cause of violent crimes.²⁶ Rather, calls for reinstatement as a tool of drug control continued, and reached new levels with the election of Rodrigo Duterte to President in 2016. His term was characterised by a brutal war on drugs in which up to 30,000 people were killed and hundreds of thousands were arbitrarily arrested, incarcerated, and discriminated against for their suspected association with drugs.²⁷ Central to his 'war' were attempts to reinstate the death penalty for drug offences; resisted thanks to renewed, sustained activism by a broad range of local and international actors including CADP, the Commission on Human Rights, and drug policy activists.²⁸ OPII, and the fact that by signing the Protocol the country committed not to reintroduce capital punishment, was an essential tool employed by anti-death penalty activists in Congress and beyond, and among the most effective.²⁹

3.1.3 TURKMENISTAN (1999)

Like other countries in Central Asia, Turkmenistan abolished the death penalty as part of a broader process of democratisation and integration of human rights standards into domestic legislation.

23 Interview with Karen Gomez Dumpit, 13 February 2024.

24 Among others Human Rights Committee, 'Concluding Observations on The Philippines', UN Doc. C/PR/CO/79/PHL (1 December 2003); Orendain, *Not in Our Name: The Story of the Abolition of the Death Penalty in the Philippines*.

25 FLAG, 'Socio-Economic Profile of Capital Offenders in the Philippines' (Philippines: Free Legal Assistance Group, 2004), <https://www.yumpu.com/en/document/view/26111214/socio-economic-profile-of-capital-offenders-in-the-philippines>.

26 Among others see Orendain, *Not in Our Name: The Story of the Abolition of the Death Penalty in the Philippines*, 29.

27 Among many others, see 'They Just Kill: Ongoing Extrajudicial Executions and Other Violations in the Philippines 'War on Drugs' (Amnesty International, July 2019), <https://www.amnesty.org/download/Documents/ASA3505782019ENGLISH.PDF>.

28 'Philippines Death Penalty: A Fight to Stop the Return of Capital Punishment', 15 August 2020, <https://www.bbc.com/news/world-asia-53762570>.

29 'The UDHR @ 75 - The Right to Life and the Anti-Death Penalty Campaign – Lessons from the Philippines | Diplomacy Training Program', <https://dtp.org.au/>, accessed 2 July 2024, <https://dtp.org.au/general-news/the-right-to-life-and-the-anti-death-penalty-campaign/>, put

Turkmenistan achieved independence from the Soviet Union in 1991. The Criminal Code adopted in 1997 prescribed the death penalty for, among others, illegal production, processing, acquisition, storage, transportation, transfer of narcotic drugs or psychotropic substances for the purpose of sale; and for theft or extortion of narcotic drugs or psychotropic substances.³⁰ Death sentences were imposed for drug crimes before 1997, though it is unclear according to which laws.³¹

At a meeting of the Organization for Security and Cooperation in Europe (OSCE) in December 1998, Turkmenistan first announced it would stop executions.³²

On 6 January 1999, the President of Turkmenistan announced a moratorium on all executions; and Parliament adopted a Law on the procedure of implementation of this moratorium. As justifications, the decree mentioned “implement[ation of] the fundamental principles of the creation and development of Turkmenistan as a democratic, legal, secular state, based on Turkmenistan’s consistent commitment and implementation in domestic and foreign policy of generally recognized norms of international law, principles and goals of the United Nations and the Organization for Security and Cooperation in Europe, guided by the ideals of humanism, goodness, justice.”³³

On 27 December 1999, the People’s Council agreed on accession to the Second Optional Protocol to the ICCPR aiming to the abolition of the death penalty. The day after, the President issued a Decree abolishing the death penalty, endorsed by the People’s Council; making Turkmenistan the first country to abolish capital punishment in Central Asia. The Decree reiterated moral values, international law, and the democratisation process as key justifications.³⁴ On 29 December 1999 Parliament adopted amendments to the Constitution, including a clause on “full abolition and perpetual prohibition” of the death penalty in Turkmenistan. On 23 March 2000, the Criminal Code of Turkmenistan was amended as to exclude all references to the death penalty and introduce a maximum punishment of 25-year imprisonment.³⁵

Though information on the use of capital punishment is scant, in the early 1990s Turkmenistan was considered one of the countries with the highest ratio of executions per capita in the world, and it appears that drug control was driving use of capital punishment. Reportedly, 90% of the 700 people sentenced to death in 1997 were convicted of drug trafficking.³⁶ Drug-related executions were also common. Amnesty International reported that

“A Turkmen government publication Isker (Warrior) early in 1997 wrote that, according to official statistics in the second half of 1996, 59 people were executed, most for drug trafficking. In another media report published in Kyrgyzstan it was reported that 123 people had been executed in Turkmenistan during 1996 for the offence of drug trafficking. This figure was attributed to official sources in Turkmenistan.”³⁷

Despite that, no drug-specific considerations could be found related to the decision to abolish the death penalty. People on death row at the time of abolition had their sentence commuted to one of imprisonment. Due to the length of the punishment and the poor conditions of detention, however, international observers questioned the practical impact of the reform.³⁸

30 Communication with Farid Tukhbatullin, 27 February 2024.

31 Amnesty International, “Measures of Persuasion” - Recent Concerns About Possible Prisoners of Conscience and Ill-Treatment of Political Opponents’ (London: Harm Reduction International, 1 March 1996), <https://www.amnesty.org/es/documents/EUR61/003/1996/en/>.

32 Neal Georges, ‘The Process of Abolishing the Death Penalty in Member States of the Organisation of Islamic Cooperation’ (France: Ensemble Contre la Peine de Mort, 2020), <https://www.ecprn.org/en/the-process-of-abolishing-the-death-penalty-in-member-states-of-the-organisation-of-islamic-cooperation-oi/>.

33 ‘Decree of the President of Turkmenistan on the Introduction of a Moratorium on the Use of the Death Penalty as a Criminal Penalty’, Pub. L. No. PP-2736 (1999), https://base.spininform.ru/show_doc.fwx?rgn=2486 [translated]

34 ‘Decree of the President of Turkmenistan on the Abolition of the Death Penalty in Turkmenistan’, Pub. L. No. PP-3003 (1999), https://base.spininform.ru/show_doc.fwx?rgn=23108 [translated]

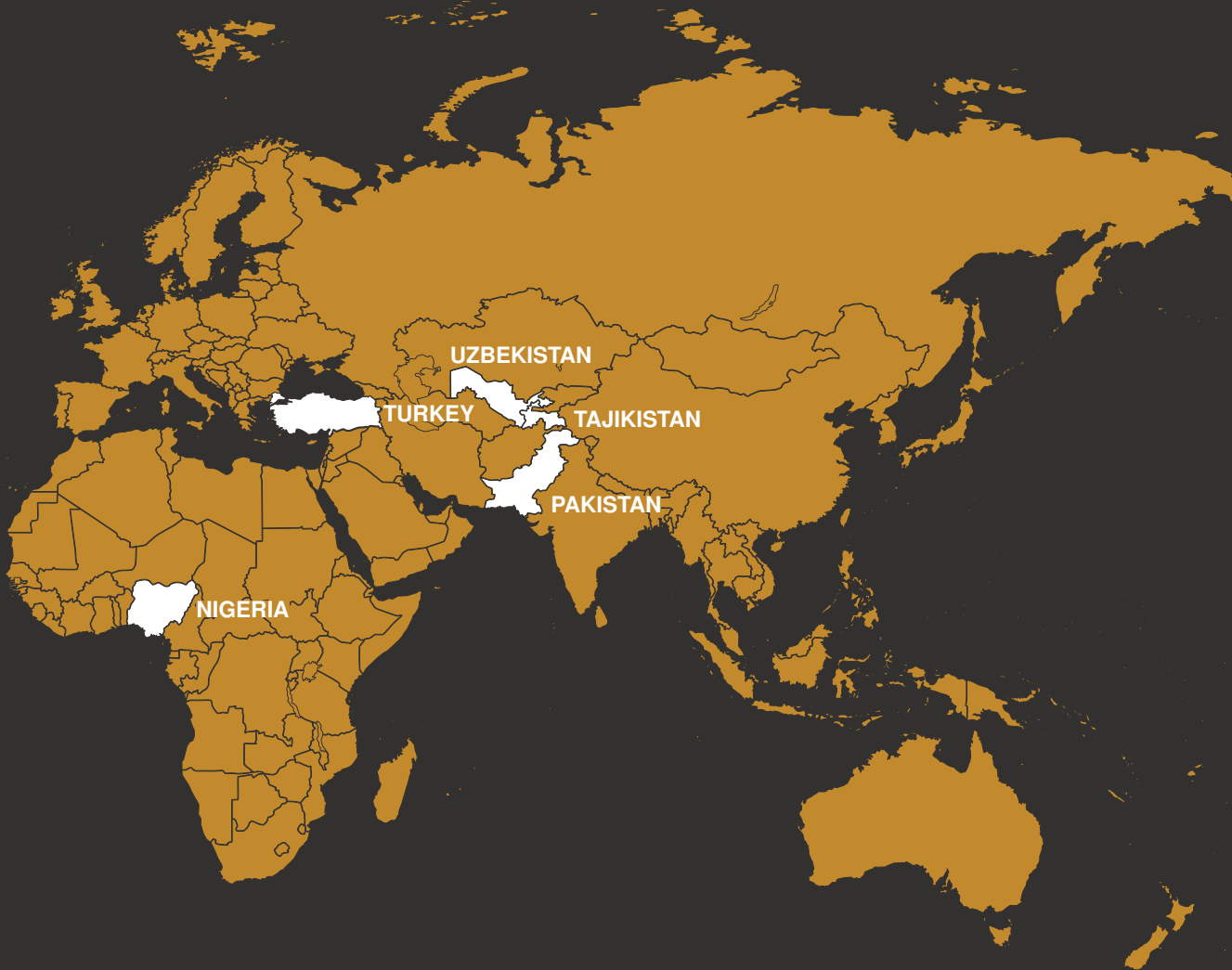
35 Georges, ‘The Process of Abolishing the Death Penalty in Member States of the Organisation of Islamic Cooperation’; ‘The Death Penalty in OSCE Area. A Survey: January 1998 - June 2001’ (OSCE, 2001), <https://www.osce.org/odihr/16654>.

36 ICG, ‘Central Asia: Drugs and Conflict’ (Brussels: International Crisis Group, 2001), <https://www.crisisgroup.org/asia/south-asia/afghanistan/central-asia-drugs-and-conflict>; Roger N Mc Dermott, ‘Border Security in Tajikistan: Countering the Narcotics Trade?’ (Cambridge: Conflict Studies Research Centre, Defence Academy of the UK, 2001), <https://globalinitiative.net/analysis/border-security-in-tajikistan-countering-the-narcotics-trade/>.

37 Amnesty International, ‘Fear of Imminent Execution: Possible Prisoner of Conscience’ (London: Harm Reduction International, 10 June 1997), <https://www.amnesty.org/en/documents/eur61/006/1997/en/>.

38 Among others, ‘The Death Penalty in OSCE Area. A Survey: January 1998 - June 2001’.

(2) ABOLITION FOR DRUG OFFENCES SPECIFICALLY



3.2.1. NIGERIA (1986)

Nigeria reportedly removed death as a possible punishment for drug offences twice, in 1975 and the in 1986, though information on the first process is scarce. The Indian Hemp Decree of 1966 introduced the death penalty for importing and selling cannabis,³⁹ but a 1975 amendment replaced death with imprisonment. According to Klein, this was due to a more generalised and socially accepted use of cannabis in the country.⁴⁰

Capital punishment was reintroduced by decree in 1984 as a possible punishment for a range of drug offences, which could be imposed retroactively by special military tribunals.⁴¹ This move was reportedly part of a “war against indiscipline” launched by the military regime of Muhammadu Buhari.⁴²

In April 1985, three men - Bartholomew Azubike Owoh (26), Bernard Ogedengbe (29), and Lawal Akanni Ojuola (30) - were publicly executed by firing squad. They had been convicted of drug offences, and at least two of them had been sentenced for crimes committed before the adoption of the decree.⁴³ The blatant violation of basic fair trial standards and the brutality of the execution methods triggered widespread protests among intellectuals, activists, and the public; further fuelled by the mysterious death in detention of Gloria Okon, a woman who had been arrested for drug trafficking.⁴⁴ Outcry against these executions was so intense and widespread that experts identified it as one of the leading causes for the toppling of the Buhari regime, in August 1985, by another military leader, Ibrahim Badamasi Babangida (IBB).⁴⁵

More people were sentenced to death for drug offences throughout the year. Among them was Gladys Iyama, the first woman to be sentenced to death in Nigeria.⁴⁶ Yet, no additional executions took place since then. In 1986, IBB amended the 1984 Decree by removing death as a possible punishment for drug offences.⁴⁷

As of July 2024, Nigeria retains the death penalty for a range of offences, but not for drug crimes.⁴⁸ Calls for reinstatement of the death penalty as a tool of drug control are routinely reported. They have so far been unsuccessful, but things may be on the verge of changing. In May 2024, the Nigerian Senate passed a strongly contested bill which, if adopted, will reinstate capital punishment for producing and selling drugs.⁴⁹

3.2.2 PAKISTAN (2023)

The death penalty was prescribed in Pakistan by the 1997 Control of Narcotics Substances Act (CNSA) for a range of drug offences; though according to reports it was first extended to drug trafficking in 1994.⁵⁰ While death sentences were routinely imposed, it is unclear whether anyone was ever executed for drug offences. Courts enforcement of CNSA was markedly inconsistent, including when it came to the death penalty. In 2009 the Lahore High Court, led by Justice Khosa (who in 2019 was appointed Chief Justice), tried to address this issue. In the landmark case of *Ghulam Murtaza and another v The State* (*'Ghulam Murtaza'*), the court introduced a comprehensive set of sentencing guidelines

39 'The Indian Hemp Decree 1966', Pub. L. No. Decree No. 19, Supplement to Official Gazette Extraordinary No. 33, Vol. 53 (1966).
40 Axel Klein, 'Nigeria & the Drugs War', *Review of African Political Economy* 26, no. 79 (1999): 51–73, <https://doi.org/128.111.121.42>.

41 Amnesty International, 'The Death Penalty: No Solution to Illicit Drugs' (London: Amnesty International, 1995), <https://www.amnesty.org/en/documents/act51/002/1995/en/>;

42 Interview with Angela Uwandu, 23 February 2024.

43 'Three Nigerians Executed - UPI Archives', UPI, accessed 24 June 2024, <https://www.upi.com/Archives/1985/04/10/Three-Nigerians-executed/7080481957200/>.

44 'Exclusive: Gloria Okon, The Story of Nigeria's Most Mysterious Drug Pusher', accessed 24 June 2024, <https://desertherald.ng/exclusive-gloria-okon-the-story-of-nigerias-most-mysterious-drug-pusher/>.

45 Interview with Angela Uwandu, 23 February 2024; Amnesty International, 'The Death Penalty: No Solution to Illicit Drugs'; 'Roundtable on Revisiting Death Penalty in Nigeria - Communiqué' (Lagos: Nigerian Institute of Advanced Legal Studies, 10 August 2010), http://www.nials-nigeria.org/round_tables/10th_aug_10Roundtable-CommuniquenDeathPenalty.pdf.

46 'ANALYSIS: Between Buhari the Military Dictator and Buhari the "Reformed Democrat"', accessed 24 June 2024, <https://www.premiumtimesng.com/features-and-interviews/368143-analysis-between-buhari-the-military-dictator-and-buhari-the-reformed-democrat.html?tztc=1>.

47 For a fuller reconstruction of the abolition process in Nigeria see Amnesty International, 'The Death Penalty: No Solution to Illicit Drugs'.

48 'Federal Republic of Nigeria': Database — Cornell Center on the Death Penalty Worldwide', 24 December 2019, <https://deathpenaltyworldwide.org/database/>.

49 Timothy Obiezu, 'Nigerian Lawmakers, Activists Divided over Drug Abuse Penalties', Voice of America, 15 May 2024, <https://www.voanews.com/a/nigerian-lawmakers-activists-divided-over-drug-abuse-penalties/7613084.html>.

50 Amnesty International, 'Pakistan: The Death Penalty' (London: Amnesty International, 1996), <https://www.amnesty.org/fr/wp-content/uploads/2021/06/asa330101996en.pdf>.

for drug offences, including for imposing capital punishment. This judgment, then confirmed by the Supreme Court of Pakistan, and its impact will be further discussed in section 5.1.2.

Although significant discrepancies in sentencing by lower courts persisted, after *Ghulam Murtaza* the vast majority of death sentences were struck down by higher courts, and reportedly no drug-related death sentence has been confirmed by the Supreme Court since.⁵¹

As reconstructed by Justice Project Pakistan (JPP), the first indications that the government was considering reviewing the death penalty for some offences, including drug-related ones, came in October 2021, when the then-Law Minister proposed replacing death with life imprisonment in the relevant section of the CNSA. In January 2022, abolition of the death penalty for drugs was included in the Criminal Law and Justice Reforms 2022. In April 2022 then-Prime Minister Imran Khan was ousted and replaced by a new government, so the reform stalled. In August 2022 the Law Minister tabled the Control of Narcotics Substances (Amendment) Act, 2022,⁵² but the bill lapsed between the National Assembly and the Senate. The Act was tabled once again the following year, and on 25 July 2023 it was adopted in a joint session of the Senate and the National Assembly.⁵³ This made Pakistan the first country to repeal the death penalty for drug crimes in over a decade.

The Act explicitly states, as reasons, the right to life, the risk of executing innocent people, and the risk of arbitrary application of the death penalty. Experts however attribute primary importance to Pakistan's efforts to enhance its international standing. The European Union (EU)'s Generalised Scheme of Preferences (GSP+), for example, was identified as a key pressure point. GSP+ is a trade agreement between the EU and selected countries – including Pakistan – which allows to export products into the EU without tariffs, or with tariffs reductions, provided that the country respects 27 core international conventions⁵⁴ among which key international human rights treaties (such as the ICCPR, ICESCR, and CAT) and the three UN drug control conventions.⁵⁵ Retention of the death penalty, particularly for crimes which do not qualify under international law as 'most serious', was reportedly a priority point of contention by the EU in reviewing Pakistan's compliance with GSP+ conditionalities, to a degree that it motivated the government to consider reforms. At the same time, the government was committed to show an improvement in its human rights record ahead of upcoming reviews of compliance with human rights treaties. Perhaps most notably, in its 2022 report to the Human Rights Committee, which monitors implementation of the ICCPR, Pakistan indicated it was examining its domestic legislation to determine "if the scope of the death penalty can be narrowed."⁵⁶ Abolition therefore sent a strong message to the international community about Pakistan's willingness to align with international standards.⁵⁷ Finally, the *Ghulam Murtaza* judgment is credited with reducing use of capital punishment for drug crimes and thus opening space for reform. Its impact was so significant that in JPP's view the 2023 Act "merely formalised" the phasing out of the death penalty for drugs in Pakistan which the judgment had kickstarted.⁵⁸ As of July 2024, the impact of the reform remains unclear, and news of death sentences imposed for drug offences after July 2023 suggest roll-out is still to be undertaken. It also remains unclear whether the measure is retroactive, and

51 Interview with Justice Project Pakistan, 15 February 2023.

52 JPP, 'Death Penalty in Pakistan: Data Mapping Capital Punishment' (Lahore: Justice Project Pakistan, 2022), <https://jpp.org.pk/report/death-penalty-in-pakistan/>.

53 Ibid.

54 'Special Incentive Arrangement for Sustainable Development and Good Governance (GSP+) | Gspub', accessed 24 June 2024, <https://gspub.eu/about-gsp/gsp-plus>.

55 'Conventions', accessed 24 June 2024, <https://gspub.eu/conventions>.

56 Human Rights Committee, 'Second periodic report submitted by Pakistan under article 40 of the Covenant, due in 2020', UN Doc. CCPR/C/PAK/2 (7 December 2022).

57 Interview with Justice Project Pakistan, 15 February 2024.

58 JPP, 'Death Penalty in Pakistan: Data Mapping Capital Punishment', 2023.

what the immediate outcome will be for the around 400 people with a drug-related death sentence imposed by lower courts as of October 2023.⁵⁹

59 Ibid.

3.2.3 TAJIKISTAN (2003)

Tajikistan retained the death penalty for 44 crimes, including drug crimes, when it gained independence from the Soviet Union in 1991. With the adoption of a Criminal Code in 1998, the death penalty was repealed for 30 offences, but codified for a range of other crimes, including drug trafficking and the illegal cultivation of forbidden crops containing narcotic substances.⁶⁰

60 PRI, 'The Abolition of the Death Penalty and Its Alternative Sanction in Central Asia: Kazakhstan, Kyrgyzstan and Tajikistan' (London: Penal Reform International, 2012), <https://www.penalreform.org/resource/abolition-death-penalty-alternative-sanction-central-asia-kazakhstan/>; 'The Death Penalty in OSCE Area 2002' (Warsaw: Organization for Security and Cooperation in Europe, 2002).

In 1999 Tajikistan ratified the ICCPR. As part of this ongoing process to limit resort to capital punishment, in 2003 the death penalty was abolished for ten more crimes, including all drug offences it was envisaged for.⁶¹ A year later, the government declared an official moratorium, which is in place as of July 2024. Among the justifications identified for the gradual reduction in death-eligible crimes are: a commitment to 'humanise' criminal legislation and uphold the value of life; its being part of a process of state-building founded on a new set of values and laws (against the 'old beliefs' of the Soviet Union); and, a commitment to respect international law obligations, principles and standards.⁶² International pressure may also have played a role, due to the economic and diplomatic influence of European countries.⁶³ Another relevant factor may have been the example of other Central Asian countries which had recently gained independence and were undertaking a similar process; such as Turkmenistan (see section 3.1.3) and Uzbekistan (see section 3.2.5). No drug specific arguments could be identified.

61 Ibid.

62 'The Death Penalty in the OSCE Area' (Warsaw: Organization for Security and Cooperation in Europe, 2006), <https://www.osce.org/odihr/20752>.

63 Amnesty International, 'Tajikistan: Deadly Secrets - The Death Penalty in Law and Practice' (London: Amnesty International, 2002), <https://www.amnesty.org/es/wp-content/uploads/2021/09/eur60082002en.pdf>; 'The Death Penalty in OSCE Area'.

Though a 2002 article reported that death sentences for drugs were "extremely rare",⁶⁴ it is impossible to fully reconstruct the scale of the phenomenon, due to state secrecy on imposition of capital punishment in the country.⁶⁵

64 'Отмены Смертной Казни в Таджикистане Не Предвидится – DW – 22.11.2002', dw.com, accessed 24 June 2024, <https://shorturl.at/Bapzx>.

65 Amnesty International, 'Tajikistan: Deadly Secrets - The Death Penalty in Law and Practice'.

3.2.4 TURKEY (1990)

In 1953, Turkey expanded the death penalty to a range of drug offences and made it mandatory in certain circumstances.⁶⁶ Between 1978 and 1984, drug offences remained punishable by death under martial law. Martial law was lifted in 1987, and in the following year a process started of gradual reduction in death-eligible crimes. The Turkish Human Rights Association IHD reports that Law No. 3679 of 1990⁶⁷ removed the death penalty from 15 articles of the Penal Code, including those envisaging it for drug offences; and replaced it with life imprisonment.⁶⁸ The death penalty remained in place for 13 other offences⁶⁹ but no executions were carried out.

66 Communication with Human Rights Association (IHD), 14 February 2024.

67 Law 3679 of 21/11/1990 is accessible at https://www.tbmm.gov.tr/tutanaklar/KANUNLAR_KARARLAR/kanunbtmmc074/kanunbtmmc074/kanunbtmmc07403679.

68 Communication with Human Rights Association (IHD), 14 February 2024.

69 Georges, 'The Process of Abolishing the Death Penalty in Member States of the Organisation of Islamic Cooperation'.

The 1990 amendment was a step in a longer, incremental abolition process finalised in 2004, in which the Council of Europe (CoE) and the EU played an essential role. Starting in the 1980s the CoE, of which Turkey is a member, made death penalty abolition a priority, aiming at the creation of a 'death penalty free zone'.⁷⁰ This was first signalled by the adoption, in 1983, of Protocol 6 to the European Convention on Human Rights (ECHR) requiring Member States

70 'Abolition of the Death Penalty in Europe - Abolition of the Death Penalty - www.Coe.int', Abolition of the death penalty, accessed 24 June 2024, <https://www.coe.int/en/web/abolition-death-penalty/abolition-of-death-penalty-in-europe>.

to abolish capital punishment in peacetime. Turkey indicated its intention to fully abolish capital punishment to the CoE in 1997, and had to commit to full abolition as a prerequisite to obtain candidate status by the European Union.⁷¹ In 2003 Turkey ratified Protocols 6 and 13 to the ECHR (2003), and abolished the death penalty for all crimes, including through constitutional amendments (2001 – 2004).⁷²

It is unclear if and how many death sentences were imposed for drug offences before 1990. While some sources report that death was never imposed as a punishment of drug crimes, others indicate that there were people on death row for drug crimes at the time of the repeal,⁷³ and that throughout April 1991 death sentences for drug smuggling were commuted to long-term imprisonment.⁷⁴

Statistics on drug crimes in 1959-1981, retrieved by IHD, suggest that the death penalty did not have a deterrent effect on drug crimes.⁷⁵

3.2.5 UZBEKISTAN (2001)

Repeal of the death penalty for drug crimes in Uzbekistan was part of an incremental process towards full abolition first announced in 1998.

The 1994 Criminal Code of Uzbekistan, which had gained independence from the Soviet Union in 1991, prescribed the death penalty for the 'unlawful sale of narcotics'.⁷⁶ In 1998, Parliament removed death as a possible sentence for a number of crimes, but not drug offences. In 1999, Uzbekistan ratified the ICCPR. Capital punishment for drug crimes was eventually abolished in 2001,⁷⁷ leaving death as a possible punishment for four other crimes. The abolition process continued in the following years: the last execution was carried out in 2005, and three years later the President signed a decree determining abolition of the death penalty effective 1st January 2008.

Similarly to other states in Central Asia, abolition was reportedly an integral part of a broader set of post-independence reforms aimed at incorporating democratic values and human rights in domestic legislation. Uzbekistan's 2000 report to the Human Rights Committee explicitly links abolition to "the implementation of international legal provisions through domestic law and the vigorous rights campaigns of extra-judicial protection bodies such as the National Centre for Human Rights, the Ombudsman and other NGOs."⁷⁸ Diplomatic pressure may also have played a role: according to Amnesty International, in 1999 Uzbekistan entered into a Partnership and Co-operation agreement with the EU under which the two sides committed to "endeavour to cooperate on matters pertaining to the ... protection and promotion of human rights."⁷⁹ No drug-specific debates could be found, surrounding abolition.

There was near-total lack of transparency on the use of capital punishment in Uzbekistan, and no official statistics exist. Nevertheless, a high number of executions (up to 100 per year) and death sentences were reported by independent sources.⁸⁰ Amnesty International reported that "virtually all" death sentences were imposed for murder,⁸¹ but at least four death sentences for drug trafficking were confirmed in 1996.⁸² The government reported a 44% decrease in death sentences between 2001 and 2002 (double the decrease reported for 2000 and 2001); though no crime disaggregation was provided.⁸³

71 Douglas Frantz, 'Turkey's Choice: Europe-Union or the Death Penalty', *The New York Times*, 30 May 2001, sec. World, <https://www.nytimes.com/2001/05/30/world/turkey-s-choice-european-union-or-the-death-penalty.html>.

72 Georges, 'The Process of Abolishing the Death Penalty in Member States of the Organisation of Islamic Cooperation', ICOMDP, 'How States Abolish the Death Penalty' (Madrid: International Commission Against the Death Penalty, 2018), <https://icomdp.org/wp-content/uploads/2020/10/ICDP-2018-MAYO-PENA-DE-MUERTE-V3.pdf>.

73 Georges, 'The Process of Abolishing the Death Penalty in Member States of the Organisation of Islamic Cooperation'.

74 Amnesty International, 'Death Penalty News' (London: Harm Reduction International, June 1991), <https://www.amnesty.org/en/documents/act53/003/1991/en/>.

75 Communication with Human Rights Association (IHD), 14 February 2024.

76 Art 272(5). For more information see Human Rights Committee, 'Initial reports of States parties due in 1996 – Uzbekistan', UN Doc. CCPC/C/UZB/99/1 (15 February 2000).

77 'The Death Penalty in OSCE Area 2002'.

78 Human Rights Committee, 'Initial reports of States parties due in 1996 – Uzbekistan', UN Doc. CCPC/C/UZB/99/1 (15 February 2000).

79 Amnesty International, "Justice Only in Heaven": The Death Penalty in Uzbekistan' (London: Amnesty International, 2003), <https://www.amnesty.org/en/wp-content/uploads/2021/06/eur620112003en.pdf>.

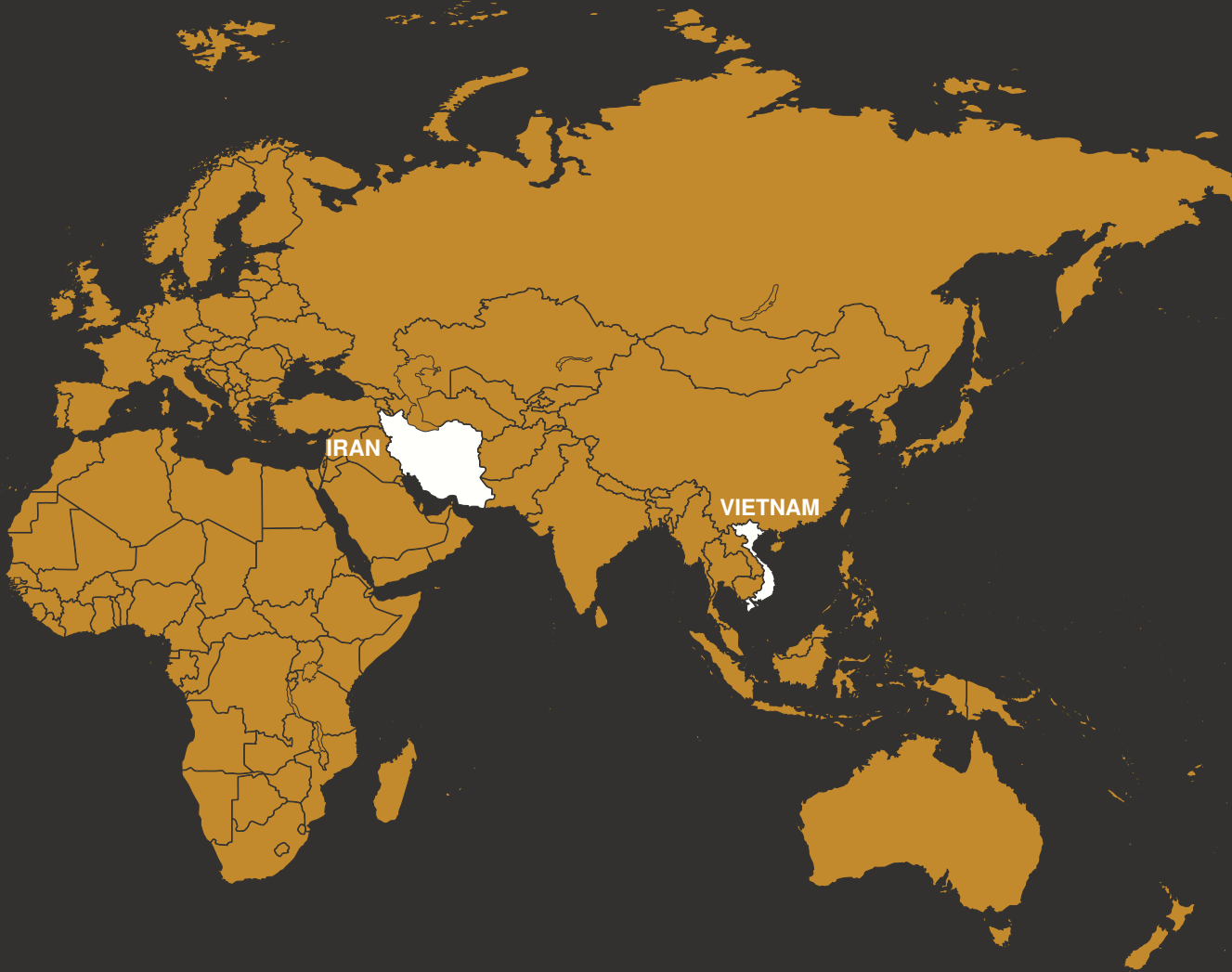
80 Amnesty International, "Justice Only in Heaven: The Death Penalty in Uzbekistan"; 'The Death Penalty in OSCE Area 2002'.

81 Amnesty International, "Justice Only in Heaven: The Death Penalty in Uzbekistan";

82 Amnesty International, 'Amnesty International Annual Report 1998' (London: Amnesty International, 1998), <https://www.amnesty.org/en/documents/poi10/0001/1998/en/>.

83 Human Rights Committee, 'Second periodic report – Uzbekistan', UN Doc. CCPR/C/ UZB/2004 (23 August 2004).

(3) REDUCTION OF DEATH-ELIGIBLE DRUG CRIMES



3.3.1 IRAN (2017)

Iran is one of the world's leading executioners both overall and specifically for drug crimes; and among the first countries to envisage death as a possible punishment for drug offences.⁸⁴ Drug policy in the country is markedly punitive, often wielded as an instrument of social control, and subject to frequent review following changes in the country's political scene.⁸⁵ The same can be said of the death penalty, and of its purported use in the context of drug law enforcement. For example, describing a toughening of drug laws in the country, an expert commented:

*"We didn't have a drug crisis. [...] So why suddenly decide to kill people for a little bit of drug possession? Unless you need, as they say, 'necks for your ropes'...And drug offenders were the least problematic and politically costly people to kill."*⁸⁶

This theme characterises much of Iran's recent history. Iranian regimes have always made extensive use of capital punishment, though lack of transparency only allows to paint a partial picture. Hundreds of executions were likely carried out every year since at least the 80s and into the 2010s, many – if not most – of which for drug crimes.

What emerges both from available figures and expert analysis a spike in executions – both overall and for drug crimes specifically – during times of social and political instability and upheaval.⁸⁷ For example, after the end of the Iran-Iraq war (1980 – 1988) "Iranian authorities mass executed several thousand political prisoners [...]. The next three years, roughly, according to official sources 2,000 to 3,000 people were executed for drug offenses."⁸⁸ Similarly after the 2009 'Green Movement' Protests, executions increased 76% for all crimes; and 250% when considering drug offences alone. This illustrates how Iran regularly employs capital punishment as a tool of control; with people convicted of drug offences seen as the most expendable, due to their low socioeconomic status and the stigma attached to association with drugs. This pattern persisted without much international condemnation until the late 2000s, when more information on both trends and individual cases started filtering out of the country to Iran-focused human rights organisations, which raised concerns about the executions and connected human rights violations. This led to more criticism by international NGOs, UN Agencies, and governments; and Iran's use of capital punishment became a key issue in international fora, including the Human Rights Council.

A crucial juncture was advocacy against international funding for drug control operations in Iran, which civil society linked to drug-related executions. Since roughly 2010, Iran-focused NGOs with support from international colleagues started condemning this form of aid, much of which was channelled through the UN Office on Drugs and Crime (UNODC), and calling for its suspension.⁸⁹ Sustained advocacy led to countries pulling funding from anti-narcotics UNODC programmes in Iran. These included the United Kingdom,⁹⁰ Ireland, which said it "could not be party" to imposition of the death penalty,⁹¹ and Denmark, which admitted that "the donations are leading to executions".

84 Lines, Barrett, and Gallahue, 'Guest Post'.

85 Interview with Roya Boroumand, 20 February 2024. For a review of the legislation see Iran Human Rights and ECPM, 'The Death Penalty in Iran' (Oslo and Paris: IHR and ECPM, 2024), <https://www.ecpm.org/app/uploads/2024/03/Full-Report-The-death-penalty-in-Iran-2023.pdf>, 33.

86 Interview with Roya Boroumand, 20 February 2024

87 Interview with Roya Boroumand, 20 February 2024; interview with Mahmood Amiry-Moghaddam, 1 March 2024; 'Iran: The Regime Uses Executions to Maintain Its Grip on Power through Fear and Intimidation', accessed 3 July 2024, <https://www.civicus.org/index.php/media-resources/news/interviews/6846-iran-the-regime-uses-executions-to-maintain-its-grip-on-power-through-fear-and-intimidation>.

88 Interview with Mahmood Amiry-Moghaddam, 1 March 2024

89 Among others see: 'Call for Joint Action to Stop Drug-Related Executions in Iran', WCADP, 3 May 2024, <https://worldcoalition.org/2024/05/03/call-for-joint-action-to-stop-drug-related-executions-in-iran/>.

90 'The Death Penalty for Drug Offences: UNODC and Donor State Responsibility', Reprieve, May 2015, <https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/DrugProblem/Reprieve.pdf>

91 'Govt Ceased Funding over Iran Death Penalty Fears', 8 November 2013, <https://www.rte.ie/news/2013/11/08/485366-ireland-anti-drug-iran/>.

This heightened scrutiny, and the threat posed to the renewal of UNODC programmes, led high-level representative of the regime to reconsider the policy. Besides signalling to the international community that Iran was open to reconsider its stance, statements by institutional actors had the effect of catalysing debates at domestic level. According to rights experts there were, inside of Iran, actors sceptical of the use of capital punishment for drug crimes, and of punitive drug control more generally; including among politicians, (drug) law enforcement, civil society, and health professionals. However, criticism was isolated. It was only after these statements that such concerns reached the mainstream and started affecting policymakers and public opinion's understanding of drug control. Among the recurring arguments in favour of a reform were the lack of deterrent effect of the death penalty, and of punitive drug control, and the fact that these policies disproportionately affected the poorest and most marginalised in Iranian society, also reinforcing intergenerational cycles of poverty and criminality.⁹² As summarised by Roya Boroumand:

*“It was a combination of factors that involved civil society, experts in prevention, harm reduction, and even former officials of the Anti Narcotics police, judges, individuals in the Expediency Council and deputies in the Parliament who pushed for the drug law reform, for whatever reason [...] initially there were isolated statements, published research on poverty, lack of effectiveness of drug policies etc... but they didn't get the attention of decision makers. It was only when the international community showed more determination that they finally got their attention and the need for reforming the law was discussed in Parliament [...] in 2015 the issue was debated in the mainstream media... and the arguments of those who had pushed for change for years were more widely heard”*⁹³

This combination of domestic and international pressure eventually led to reform. In November 2017, an Amendment to the Anti-Narcotics Law was adopted. Among others, the amendment significantly raises the minimum quantity of drugs required for drug crimes to be punishable with death. For example, the minimum amount of heroin, cocaine, and amphetamines required for punishing drug production or distribution with death was raised from 30 grams to two kilos. Previous death sentences would be reviewed and, if eligible, commuted to a maximum of 30 years' imprisonment and a fine.⁹⁴

The Amendment had significant shortcomings, which NGOs immediately raised. Nevertheless, its impact was evident, as its implementation “led to the most significant reduction in the number of implemented death sentences in the Islamic Republic's history.⁹⁵ After an average 480 drug-related executions yearly between 2010 and 2016, confirmed drug-related executions dropped from 222 in 2017 to 27 in 2018. The figure remained roughly stable in 2019 (30) and 2020 (25). Such drop had a notable impact both on total executions in Iran, and on known global executions.⁹⁶ Despite the lack of transparency, it is also believed that thousands of death sentences were commuted to imprisonment, though sometimes accompanied by crippling fines.⁹⁷

This was a significant achievement, particularly in light of how central the death penalty and drug control are for the Iranian regime. However, more recent developments are showing its limitations, confirming civil society concerns:

92 Among others Iran Human Rights and ECPM, 'The Death Penalty in Iran: Annual report 2023'.

93 Interview with Roya Boroumand, 20 February 2024.

94 Islamic Republic of Iran (1988) Law for Combating Illicit Drugs, as amended 2017.

95 Iran Human Rights and ECPM, 'The Death Penalty in Iran: Annual report 2023'.

96 Figures from HRI internal database, available upon request. All to be considered minimum confirmed figures, due to lack of official data.

97 Giada Girelli, 'The Death Penalty for Drug Offences: Global Overview 2018' (London: Harm Reduction International, 2019).

Known drug-related executions started to climb again in 2021 (131) reaching 459 in 2023. The reasons are complex and multifaceted, but connected to Iran's political use of capital punishment and drug control highlighted above, and include:

- Iran's ongoing resort to capital punishment as a tool of social control in times of political instability, and its disproportionate impact on people convicted of drug offences as the "low cost victims of this policy."⁹⁸ This steep increase in executions can be linked to the regime's extreme response to the protests which began in 2020 and were inflamed by the murder of Mahsa Amini in 2022;
- Inherent limitations of the reform, which amended technical elements of the law but failed to address in systemic issues of Iran's criminal justice system and drug policy; including widespread corruption, abuse of drug law enforcement for repression of dissent, lack of fair trial, torture and ill-treatment. As explained by Amiry-Moghaddam,
*"It was very clear to us that this is not a fundamental change because as long as there is no due process, as long as Revolutionary Courts are responsible, as long as the proof of guilt is confessions, basically, they can decide what they want [...]. If until yesterday they wanted you to confess to 30 grams of something, tomorrow they can make you confess to two kilograms. We have talked to many, many death row prisoners for drugs, and all of them had the same story that they were arrested, transferred [...] and beaten, until they signed a paper which was the charges. So as long as they don't have due process, when the regime comes in a position where it needs more executions, they can just increase them again."*⁹⁹
- Potentially, the end of the resentencing process; meaning executions which were paused while sentences were reviewed after 2017 started being implemented; and
- A lack of renewed scrutiny by the international community in recent years. While much criticism was directed to Iran's repression of recent protests, many fellow states and UN Agencies – most notably UNODC – failed to adequately respond to Iran's resumption of drug-related executions and continued cooperation with the country on antinarcotic operations; indirectly signalling these would be tolerated.

98 Interview with Mahmood Amiry-Moghaddam, 1 March 2024.

99 Interview with Mahmood Amiry-Moghaddam, 1 March 2024.

3.3.2 VIETNAM (1999-2015)

Vietnam amended its legislation and policy on the death penalty for drug offences multiple times in its history; often as part of broader reforms aimed at reducing the number of death-eligible crimes.

As reconstructed by Tran and Nguyen, the 1985 Criminal Code – the first comprehensive code since Vietnam's reunification – envisaged the death penalty for 44 crimes, none of which were drug crimes. Capital drug crimes were only introduced in 1989 with Article 96a, prescribing the death penalty for illegally producing, stockpiling, transporting, and trading in narcotics. Three more capital crimes were introduced in 1997 (illegally appropriating narcotics;

forcing or inducing others to use narcotics; and, organising the illegal use of narcotics).

The first step in reducing death-eligible crimes was taken in 1999, with a Criminal Code amendment narrowing the scope of the death penalty to 29 crimes. Among others, 'forcing or inducing others to use narcotics' was removed as a capital crime. Another amendment in 2009 reduced the number of articles envisaging the death penalty to 22, also removing death as a possible punishment for the crime of organising the illegal use of narcotics. One more amendment in 2015 left 18 articles prescribing the death penalty; three of which are drug-related (illegal production, transport, and trade of narcotics).¹⁰⁰ These reforms were not retroactive.

This progressive reduction in capital crimes is part of a precise state policy affirmed, among others, in Politburo Resolution 49 of 2005 outlining the country's strategy for judicial reform by 2020.¹⁰¹ A key justification is Vietnam's stated effort to bring domestic criminal law in line with international standards, including those on the death penalty. Notably, Vietnam is a party to the ICCPR and has accepted UPR recommendations to reduce the scope of crimes punishable by death.¹⁰² In turn, this is part of a process of gradual integration of Vietnam in the international legal and economic community, through perceived improvement in human rights performance.¹⁰³ International pressure more generally is likely to have played some role, with academics identifying pressure by the EU as an important driver.¹⁰⁴ Vietnamese authorities also regularly reference, as a driving factor, a "tendency" of Vietnam's legal system towards modernisation, "legal humanization and harmonisation;" coupled with the rise of human rights as a tenet of the domestic criminal justice system.¹⁰⁵

The impact of these reforms remains unclear, also due to state secrecy on the use of capital punishment which prevents any realistic reconstruction of the phenomenon. Vietnam is believed to rank among the top global executioners, with use of capital punishment likely driven by drug control. In contravention of international standards, Vietnam sees drug crimes as fitting the category of 'most serious crimes', and has justified retention of the death penalty pointing to a perceived increase in the reach and complexity of drug trafficking.¹⁰⁶ While some experts concluded that the Criminal Code amendments led to a reduction in the number of death sentences,¹⁰⁷ others do not believe that happened, due to a rise in crimes.¹⁰⁸ A key informant suggested the number of drug-related death sentences may in fact have increased, also due to a failure by prosecutors and courts to differentiate between people with different roles in drug trafficking operations; so that minor accessories are also sentenced to death.¹⁰⁹

100 Thu Thuy Tran and Tien Duc Nguyen, 'Not There Yet, but Getting There – Death Penalty for Drug Offenses in International and Viet Nam's Laws', n.d., https://law.unimelb.edu.au/_data/assets/pdf_file/0007/3609430/Tran-T-Thu-Thuy_Nguyen-Tien-Duc.pdf; Kien Tran and Cong Giao Vu, 'The Changing Nature of Death Penalty in Vietnam: A Historical and Legal Inquiry', *Societies* 9, no. 56 (2019), <https://doi.org/10.3390/soc9030056>.

101 'Resolution of the Politburo of the Communist Party of Vietnam on the Judicial Reform Strategy to 2020', 49/NQ-TW § (2005), https://procurement-notice.undp.org/view_file.cfm?doc_id=5085 [translated].

102 'Study on the Possibility of Viet Nam Ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights Aiming at the Abolition of the Death Penalty' (Ha Noi: Ministry of Justice, European Union, UNDP, 2019).

103 Tran and Vu, 'The Changing Nature of Death Penalty in Vietnam: A Historical and Legal Inquiry'.

104 Tran and Vu; Hai Thanh Luong, 'Reprint of: Why Vietnam Continues to Impose the Death Penalty for Drug Offences: A Narrative Commentary', *International Journal of Drug Policy* 92, no. 7 (2021), <https://doi.org/10.1016/j.drugpo.2021.103132>; Roger Hood and Carolyn Hoyle, *The Death Penalty: A Worldwide Perspective* (Oxford: Oxford University Press, 2008), 97.

105 E-mail communication with Expert 1, 19 February 2024. Tran and Vu, 'The Changing Nature of Death Penalty in Vietnam: A Historical and Legal Inquiry'.

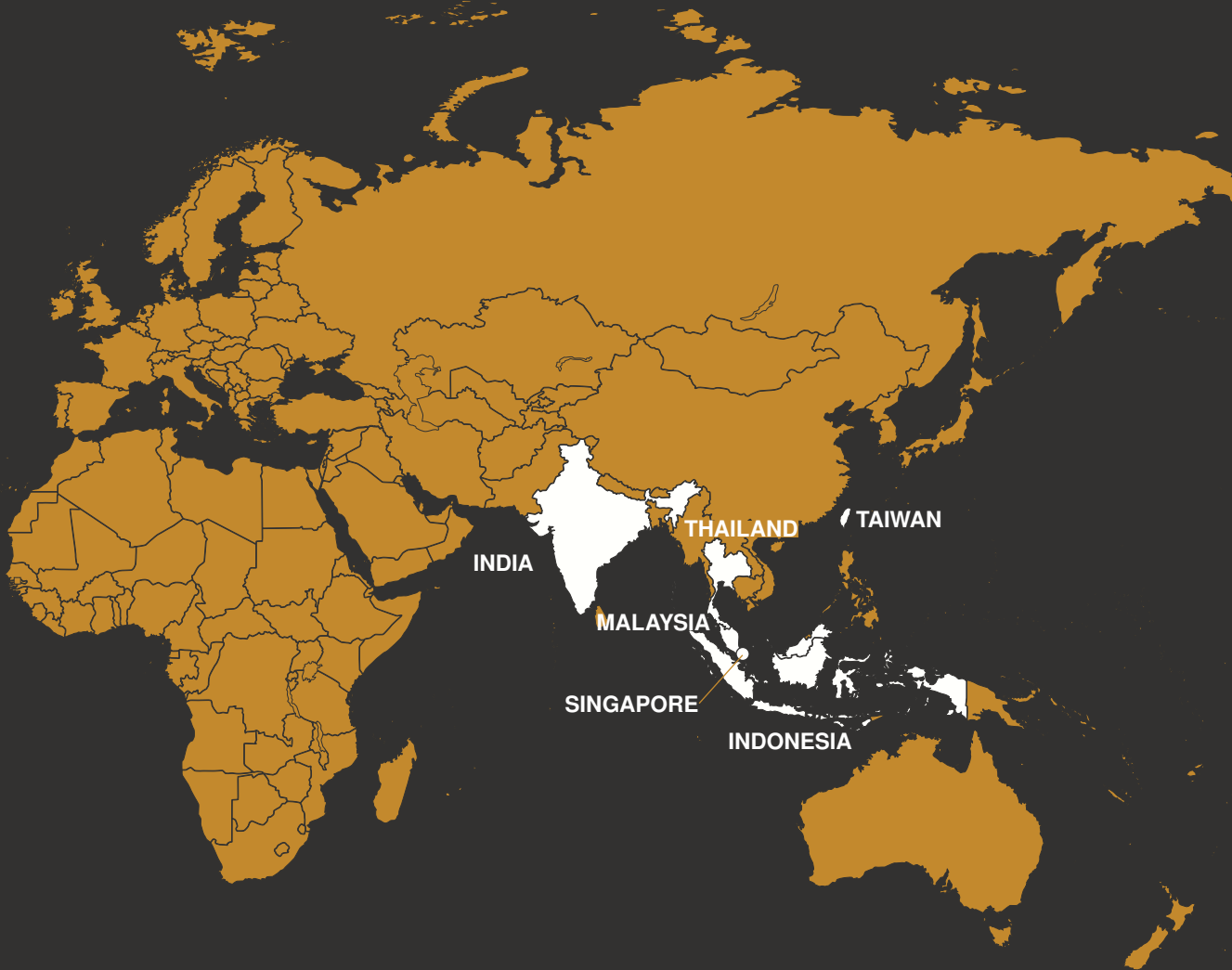
106 Among others, 'Study on the Possibility of Viet Nam Ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights Aiming at the Abolition of the Death Penalty'; communication with Expert 3, 23 February 2024.

107 Hood and Hoyle, *The Death Penalty: A Worldwide Perspective*.

108 Tran and Vu, 'The Changing Nature of Death Penalty in Vietnam: A Historical and Legal Inquiry'.

109 E-mail communication with Expert 1, 19 February 2024.

(4) INTRODUCTION OR EXPANSION OF ALTERNATIVE PUNISHMENTS TO THE DEATH PENALTY



3.4.1 INDIA (2011-2014)

Section 31-A of the Narcotic Drugs and Psychotropic Substances Act 1985 (NDPS) of India, introduced in 1989, prescribed the mandatory death penalty for certain repeat drug offences.¹¹⁰ The punishment was almost never imposed, and there was hardly any public or legal discussion on this measure; insomuch that in 1998 the Bombay High Court had rejected a petition against the mandatory death penalty for drug crimes claiming no death sentence was ever imposed under Section 31-A NDPS. Only three death sentences could be confirmed between 1998 and 2001.¹¹¹

Things changed in 2008, when according to a local expert two men were sentenced to death for cannabis-related offences in two different Indian states. Both cases were picked up by the Indian Harm Reduction Network, which - with support by local lawyers - filed public interest petitions against the sentences. The purpose was twofold: spare defendants from death row; and, allow courts to review the constitutionality of the mandatory death penalty for repeat drug offences. The petitioners argued that the measure was against Articles 14 (right to equality before the law) and Article 21 (right to life and liberty) of the Indian Constitution and asked the court to declare the section unconstitutional.¹¹²

In June 2011, the Bombay High Court found Section 31-A in violation of Article 21 of the Constitution. Also building on previous jurisprudence, the Court agreed that the mandatory nature of the death penalty stripped judges of discretion which is essential to ensure a sentence is just and fair based on all relevant circumstances; insomuch that a mandatory death sentence “cannot but be regarded as harsh, unjust and unfair.”¹¹³ The Court rejected several of the petitioners’ arguments, including those based in international law and on drug offences not meeting the ‘rarest of rare’ threshold. Further, the Court did not declare the death penalty for drugs unconstitutional, nor repealed Section 31-A. Rather, it merely directed courts to apply it as if it prescribed death as a *discretionary* punishment. Because of these limitations, the petitioners filed an appeal to the Supreme Court, which was eventually withdrawn due to a NDPS Amendment.¹¹⁴

The court decision was indeed codified into law with the adoption of a 2014 amendment to the NDPS, which – among others – made the death penalty for drug offences fully discretionary. Local experts advocated for the death penalty to be removed completely from the NDPS, but lawmakers decided against it. A key argument was that in such a strategic region for drug trafficking, capital punishment was an essential deterrent, even if rarely imposed.¹¹⁵

The new discretion afforded by the judgment and subsequent reform is believed to have had some impact on individual cases and judicial attitudes. The petitioner in the Bombay High Court case, for example, was re-tried and sentenced to 30 years’ imprisonment, then further reduced by the Supreme Court to 16 years. The other person who had been sentenced in 2008 also saw his sentence commuted to the judgment thanks. More broadly, since 2011 there are few records of death sentences imposed by lower courts for drug crimes, and none of them appears to have been confirmed on appeal. This also suggests a renewed sensibility of judges towards drug offences and the circumstances of the accused.¹¹⁶

110 For a review of the Section see: Indian Harm Reduction Network v. Union of India (Bombay High Court 16 June 2011).

111 Amnesty International, ‘Lethal Lottery: The Death Penalty in India’ (London: Amnesty International and People’s Union for Civil Liberties, 2008), <https://www.amnesty.org/en/wp-content/uploads/2021/07/asa200072008eng.pdf>.

112 Interview with Expert 2, 6 February 2024.

113 Indian Harm Reduction Network v. Union of India.

114 Interview with Expert 2, 6 February 2024.

115 Ibid.

116 Ibid.

A lawyer with expert knowledge of the case also stressed its symbolic importance as one of the first and only instances in which the death penalty for drug offences specifically was scrutinised in front of Indian courts:

“A lot of our arguments were actually rejected. But we’re still happy that we had a chance to make those arguments. In a society where [the death penalty for drug offences] was a non-issue, even among human rights groups... It was a chance to say what you feel should be said before the court, and the court has recorded all of our submissions. So it is recorded in a judgment that there is this constant in international law, that drug offences are not the most serious crimes. [...] It is for someone to then pick up these thoughts and take them to another level. That opportunity is now there.”

3.4.2 INDONESIA (2022)

As reconstructed by the Institute for Criminal Justice Reform (ICJR),¹¹⁷ the Indonesian government first expanded the death penalty to drug crimes in 1976 with a bill on ‘Ratification of the Single Convention on Narcotic Drugs and its Protocols’, and Law No. 9 of 1976. This was reformed two decades later with Laws No.5 and No.22 of 1997, also to incorporate in domestic legislation the 1971 and 1988 UN drug control conventions recently ratified by the county. Law No.22 of 1997 retains the death penalty as a possible punishment for several drug offences.¹¹⁸ This law was soon amended, also in light of a perceived exacerbation of drug-related issues in the country. Law No. 35 of 2009 maintains death as a punishment for drug offences, justifying it with a supposed deterrent effect and the serious threat that illicit drugs were seen as posing to Indonesian society.

Indonesia has regularly sentenced people to death and carried out executions for drug crimes, which as of 2024 are the main crimes for which people are sentenced to death in the country. The first drug-related execution reportedly took place in 1995, against a Malaysian national who had been convicted in 1986. More executions took place since, with available figures suggesting a disproportionate use of this measure against foreign nationals.

The situation exacerbated under the Presidency of Joko ‘Jokowi’ Widodo, who took office in late 2014. Jokowi pointed to drugs as a grave issue in Indonesian society, and accordingly “rejected clemency request from 64 death convicts of narcotic cases and ordered the Attorney General to immediately conduct [executions].”¹¹⁹ In 2015, 14 people were executed for drug offences; double the executions who had been carried out in the previous 15 years. Four more executions, all for drugs, took place in 2016. Of all people executed between 2015 and 2016, fifteen were foreign nationals, and two were women. Although these were the last executions to have taken place in the country for any crime as of 2024, Indonesia’s ‘zero tolerance’ approach to drugs and the heavy reliance on the death penalty as part of its drug control strategy has resulted in dozens of death sentences imposed by courts for drug crimes.

117 Unless specified, the following reconstruction is from: Supriyadi Widodo Eddyono (ed.), ‘Death Penalty Policy in Indonesia’ (Jakarta: Institute for Criminal Justice Reform, n.d.), <https://icjr.or.id/wp-content/uploads/2018/08/DEATH-PENALTY-POLICY-final-1.pdf>.

118 Ibid., 121.

119 Ibid., 122.

Meanwhile, for almost five decades Indonesian policymakers have discussed reforming the country's Criminal Code (Kitab Undang-Undang Hukum Pidana, or KUHP) which had been issued during colonial times. The reform process was kick-started by the Executive in 1970, with the creation of a team of experts tasked with drafting a new Code. The process was paused and then resumed several times up until 2012, when the government submitted the first draft to Parliament. After significant debate, the new Criminal Code was approved on 6 December 2022, and is set to enter into force in 2026.¹²⁰

Among others, the new Criminal Code introduces important amendments to the provisions governing implementation of the death penalty in the country. Most notably, as summarised by Pascoe:¹²¹

- A. A shift in 'approach' on the death penalty, which is framed as an alternative or last resort punishment; rather than the primary or default choice (Articles 67 and 98); pursuant to this, judges should only impose a death sentence if imprisonment is not deemed appropriate.
- B. The introduction of a death sentence with a 10 years' 'probation' (Article 100), which judges can impose taking into account the defendant's remorse and prospects of rehabilitation; and their role in the crime. If during the probationary period the person shows good behaviour, the death sentence can be commuted to life imprisonment by Presidential Decree, following a non-binding opinion from the Supreme Court.
- C. The President's ability to reconsider a rejected clemency petition (Article 101): the President will have the power to reconsider a request for clemency which had been rejected after ten years from the rejection date, if the execution was not carried out and the person has not escaped prison; in case, death can be commuted to life imprisonment.

The probationary death sentence— which according to some was inspired by China's 'suspended death sentence'—¹²² is considered the most original and potentially transformative amendment. At the same time, the reform is met with criticism. Among others, local civil society expresses criticism and uncertainty concerning its implementation, as the abovementioned provisions leave significant room for interpretation. For example, while some believe that judges will be bound to impose sentences with probation if the conditions set by the law are met,¹²³ according to others the conditions are necessary but not sufficient, meaning judges retain ultimate discretion.¹²⁴ The definition of 'good behaviour' required for resentencing is also unclear, and observers are concerned by how much power this will give prison officials in their already unequal interactions with people on death row.¹²⁵ Experts also doubt that the reclassification of the death penalty as an alternative rather than primary judgment will have significant practical impact; as the death penalty has always been discretionary under Indonesian law, and yet courts have made extensive use of it.¹²⁶

With regards to the reform process, the probationary death sentence was first introduced in the draft Criminal Code in 1993¹²⁷ and while debated, it had not been significantly amended since.¹²⁸ Among the most commonly cited reasons for the changes are efforts by Indonesian policymakers to strike a balance between those in favour and those against abolition of the death penalty;¹²⁹ in a context where capital punishment remains an important component of the

120 Girelli, Jofré, and Larasati, 'The Death Penalty for Drug Offences: Global Overview 2022'.

121 Daniel Pascoe, 'Indonesia's Revised Criminal Code and the Death Penalty – Progress Amid the Gloom?', *Australian Journal of Asian Law* 24, no. 1 (2023), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4568882.

122 Ibid.

123 Ibid.

124 Interview with LBH Masyarakat, 22 February 2024.

125 Ibid.

126 Pascoe, 'Indonesia's Revised Criminal Code and the Death Penalty – Progress Amid the Gloom?'.

127 Ibid.

128 Interview with LBH Masyarakat, 22 February 2024.

129 Interview with LBH Masyarakat, 22 February 2024; Pascoe, 'Indonesia's Revised Criminal Code and the Death Penalty – Progress Amid the Gloom?'; 'Govt Seeks "Win-Win Solution" on Death Penalty - National - The Jakarta Post', accessed 24 June 2024, <https://www.thejakartapost.com/news/2017/10/10/govt-seeks-win-win-solution-on-death-penalty.html>.

domestic criminal justice system (and drug control policy) but faces increased scrutiny.

As such, the reform is understood mostly as the result of a homegrown process, with members of government (such as the Minister of Law and Human Rights) and selected members of parliament playing an important role. Local civil society also played a constructive role by sharing evidence and information on the fallacies of death penalty implementation and sharing suggestions for reform, though it is unclear to what extent these were taken into consideration. International actors, including UN agencies, diplomatic missions, and NGOs were also active in promoting a shift away from the use of capital punishment; but their impact is not assessed as decisive.¹³⁰

130 Interview with LBH Masyarakat, 22 February 2024.

According to non-governmental organisation LBH Masyarakat, the key arguments in favour of a more limited resort to capital punishment were: systemic issues with application of the death penalty, particularly violations of fair trial standards; the hypocrisy of a government which strongly advocates to shield its own nationals abroad from executions but then applies the same policy in-country, thus also impinging on its diplomatic efforts; and, some catalysing cases – such as that of Merri Utami¹³¹ - which made apparent all the limitations of the death penalty, including its disproportionate imposition against vulnerable and marginalised groups (such as low-level drug couriers). Other actors also point to a seemingly ‘softer’ stance of Indonesia on the death penalty in recent years, as also evidenced by the lack of executions, and - at the international level - by the country’s abstention at the UN General Assembly vote on resolutions on a moratorium on the use of the death penalty starting from 2018, shifting from voting against in previous years.¹³²

131 Among others see: ‘Activists Applaud Clemency for Death-Row Drug Convict Merri Utami - Society - The Jakarta Post’, accessed 24 June 2024, <https://www.thejakartapost.com/indonesia/2023/04/17/activists-applaud-clemency-for-death-row-drug-convict-merri-utami.html>.

132 OHCHR South East Asia Regional Office, ‘Drug-Related Offences, Criminal Justice Responses and the Use of the Death Penalty in South-East Asia’ (OHCHR, 2018), <https://bangkok.ohchr.org/wp-content/uploads/2020/01/Drug-Related-Offences-2018.pdf>.

3.4.3 MALAYSIA (2017 – 2023)

The process of review of the death penalty for drug offences in Malaysia is complex and characterised by many small but consequential steps which are hard to summarise effectively. For the purposes of this report, two moments are particularly relevant.

The first is an amendment to the Dangerous Drugs Act (DDA) of 1952 adopted in 2017. The death penalty was introduced in the DDA in 1975 as a discretionary punishment for drug trafficking and made mandatory in 1980.¹³³ As reconstructed by Amnesty International, in the following years Malaysia made extensive use of the death penalty as a central tool in what was regarded as one of the harshest ‘wars on drugs’ in the world. A shift in pattern was observed from the mid-1990s, when the number of executions dropped significantly, thanks to a rethinking of Malaysia’s drug control policy, together with increased recognition of the lack of deterrent effect of capital punishment. Meanwhile, courts continued to impose dozens of death sentences, primarily for drug offences.¹³⁴

133 ‘A Brief History of the Death Penalty in Malaysia’, Amnesty Malaysia, accessed 24 June 2024, <https://www.amnesty.my/abolish-death-penalty/a-brief-history-of-the-death-penalty-in-malaysia/>.

134 Michelle Chew, ‘Malaysia and the Politics Behind the Death Penalty: A Tumultuous Relationship’, WCADP, 24 October 2022, <https://worldcoalition.org/2022/10/24/malaysia-and-the-politics-behind-the-death-penalty-a-tumultuous-relationship/>; ‘A Brief History of the Death Penalty in Malaysia’.

The movement against the death penalty gained traction in 2010, thanks to renewed civil society activism. A key push was the case of Yong Vui Kong, a Malaysian arrested at 19 years old in Singapore for drug trafficking and sentenced to the mandatory death penalty. Yong Vui Kong came from an

economically disadvantaged background and was a low-level drug courier engaging in the trade hoping to earn some money, but Singaporean courts did not have any discretion to impose any punishment other than death.¹³⁵ Due to the egregious lack of proportionality and fairness and the vulnerability of the defendant, this case garnered immense attention not only in Singapore and internationally, but also in Malaysia,¹³⁶ where it led many to question the country's own drug control policy and resort to the death penalty. Members of successive Governments showed some openness to review death penalty legislation. The last known drug-related execution in the country was carried out in 2013,¹³⁷ when an unofficial moratorium on drug-related executions was put in place.¹³⁸ Meanwhile, dozens of death sentences continued being imposed for drugs, and almost 700 people were on death row for drug offences as of 2017.¹³⁹

After negotiations, in November 2017 Parliament adopted an amendment to the DDA, set to enter into force in March 2018. The government justified the move as the result of a broad consultation process involving experts, civil society, and the public; and as a way to add an “element of mercy” to the system.¹⁴⁰ The amendment would also enhance judicial discretion and make the criminal justice system more progressive and fair, while giving defendants an opportunity to collaborate with drug law enforcement, making it more effective.¹⁴¹ The amendment followed the model of a recent reform in Singapore (discussed in Section 3.4.4). Despite being framed as removing the mandatory nature of the death penalty for drug offences, the amendment actually introduced limited discretion to sentence drug trafficking with life imprisonment and caning rather than death, but only in a limited set of circumstances. Newly introduced Section 39(B)(2a) only allows discretion to be exercised if:

- “(a) there was no evidence of buying and selling of a dangerous drug at the time when the person convicted was arrested;
- (b) there was no involvement of agent provocateur; or
- (c) the involvement of the person convicted is restricted to transporting, carrying, sending or delivering a dangerous drug; and
- (d) that the person convicted has assisted an enforcement agency in disrupting drug trafficking activities within or outside Malaysia.”¹⁴²

Perhaps most notably, the wording of the amendment implies that discretion can only be exercised if the defendant is both found to be a mere drug courier, as per requirement at (c), *and* assisted drug law enforcement. In all other cases, death remained the only available punishment upon conviction.

Further, the ‘assistance’ requirement per point (d) risks excluding precisely those the amendment was thought to benefit, meaning those at the lower level in the drug trade (and innocent defendants), which are the least likely to have any information to share with drug law enforcement; while being disproportionately at risk of being sentenced to death.¹⁴⁴ The reform had other limitations, including failing to address systemic issues linked to the use of the death penalty for drug offences, such as problematic presumptions envisaged by the DDA, and discrimination faced by foreign nationals in the criminal justice system.

135 ‘ADPAN | SINGAPORE CASE STUDY: YONG VUI KONG’, accessed 24 June 2024, <https://adpan.org/singapore-case-study-yong-vui-kong/>.

136 *Ibid.*

137 HRI internal database, on file with author and available upon request.

138 Interview with Dobby Chew, 20 February 2024.

139 Gen Sander, ‘The Death Penalty for Drug Offences: Global Overview 2017’ (United Kingdom: London: Harm Reduction International [HRI], 9 March 2018), <https://www.hri.global/files/2018/11/13/HRI-Death-Penalty-Report-2018-v2.pdf>.

140 N. S. T. Team, ‘No More Mandatory Death Sentence Soon as Amendments to Dangerous Drugs Act Passed in Parliament’, NST Online, 30 November 2017, <https://www.nst.com.my/news/government-public-policy/2017/11/309354/no-more-mandatory-death-sentence-soon-amendments>.

141 ‘Pernyataan Rasmi Parlimen Dewan Rakyat - Parlimen Ketiga Belas Penggal Kelima Mesyuarat Ketiga’, 30 November 2017.

142 Kingdom of Malaysia (1952) Dangerous Drugs Act, as amended 2017, article 39(b)(2)(a).

143 Amnesty International, ‘Fatally Flawed: Why Malaysia Must Abolish the Death Penalty’ (London: Amnesty International, 2019), <https://www.amnesty.org/en/documents/act50/1078/2019/en/>.

This resulted in limited practical impact. No official figures exist on death sentences, however statistics on people on death row show a small but steady increase in people on death row for drugs between 2019 and 2022; and many available judgments show a limited number of cases in which court found the criteria envisaged by Section 39(B)(2a) were met.

Nevertheless, the amendment, and even its flawed implementation, contributed to ongoing problematisation of the death penalty for drug offences. Meanwhile, in July 2018 the government announced an official moratorium on all executions. A further element of criticism was put into light by the Federal Court in 2019. In the *Atenza* judgment, the court declared the double presumption (of possession and control of the substances and therefore of intent to traffic) contained in Section 37A DDA unconstitutional, because of the “real risk that an accused might be convicted of drug trafficking in circumstances where a significant reasonable doubt remains.”¹⁴⁴ The *Atenza* decision illuminated one more fallacy of Malaysian drug law, but its impact was, again, reportedly limited.¹⁴⁵

In September 2019, the Law Minister instituted a Special Committee to Review Alternatives to the Mandatory Death Penalty, which held stakeholders’ consultations and returned a study in 2020, recommending reforming the mandatory death penalty. In June 2022, the then-Law Minister announced the government would follow through with the reform.¹⁴⁶

Advocacy against the death penalty in the country reached a peak around 2022, also thanks to renewed energy and coordination by local abolitionist organisations and lawyers, with support by international actors. This eventually led, in 2023, to the adoption of two bills: The ‘Abolition Of Mandatory Death Penalty Act 2023’, and the ‘Revision of Sentence of Death and Imprisonment for Natural Life (Temporary Jurisdiction of the Federal Court) Act 2023’. The bills abolish the death penalty for seven offences, and remove death as a *mandatory* punishment for all offences which retained it in Malaysian law, including drug trafficking. The bills also introduce a resentencing process to allow the over 1000 people on death row pursuant to the previous legislation (the majority of which detained for drug offences) to have their sentenced reviewed and possibly commuted.

Government representatives described the reform as the result of a participatory process of engagement with a diverse range of stakeholders, and identified as key reasons the principle of proportionality, restorative justice, fairness, human rights, and the inherent value of life.¹⁴⁷ It was also acknowledged that the “mandatory death penalty had disproportionately harmed the most marginalized and disenfranchised members of society and had not served to deter crime.”¹⁴⁸ Civil society experts, however, point to ongoing issues of inconsistency in death sentencing and miscarriages of justice as more relevant concerns.¹⁴⁹

The resentencing process is ongoing as of July 2024 and expected to last for more months. The impact on new sentences is also hard to foresee. In the first six months of implementation of the new regime, Amnesty International recorded a significant decrease in death sentences, but also found eight cases where the death penalty was imposed for drug trafficking.¹⁵⁰

144 Alma Nudo Atenza v. PP & Another Appeal, 5 Current Law Journal (Federal Court of Putrajaya 2019).

145 Interview with Dobby Chew, 20 February 2024.

146 F. M. T. Reporters, ‘Mandatory Death Penalty to Be Abolished’, Free Malaysia Today, 10 June 2022, <https://www.freemalaysiatoday.com/category/nation/2022/06/10/death-penalty-to-be-abolished/>.

147 ‘Malaysian Parliament Moves to End Mandatory Death Penalty’, Al Jazeera, accessed 24 June 2024, <https://www.aljazeera.com/news/2023/4/3/malaysias-parliament-votes-to-abolish-the-death-penalty>; ‘Statement for the Biannual Panel Discussion on Death Penalty 52nd Session of UN Human Rights Council -Theme: Human Rights Violations Relating to the Use of the Death Penalty. By the Honourable Ms. Azalina Othman Said, Minister in Prime Minister’s Department (Law and Institutional Reform) of Malaysia’ (28 February 2023).

148 ‘Statement for the Biannual Panel Discussion on Death Penalty 52nd Session of UN Human Rights Council -Theme: Human Rights Violations Relating to the Use of the Death Penalty. By the Honourable Ms. Azalina Othman Said, Minister in Prime Minister’s Department (Law and Institutional Reform) of Malaysia’.

149 Interview with Dobby Chew, 20 February 2024.

150 Amnesty International, ‘Malaysia: First Six Months of Sentencing Discretion Underscore Urgent Need for Indefinite Extension of Moratorium Executions’, 26 February 2024.

3.4.4 SINGAPORE (2012)

Singapore is among the most resolute supporters and enforcers of the death penalty for drug crimes, as evidenced both by practice and official statements. The Misuse of Drugs Act (MDA) was adopted in Singapore in 1973, but the death penalty for drug crimes was only introduced in 1975, as a mandatory punishment for certain drug offences.¹⁵¹ Its mandatory nature left judges no room to consider the circumstances of defendants charged with capital drug crimes. The first drug-related execution was carried out in 1978,¹⁵² and since then Singapore has regularly sentenced to death and executed people for drug offences. Official statistics are only available from 2009, and only for executions. Still, figures compiled by civil society show 370 people executed for drug crimes between 1991 and 2024 (72% of total executions).¹⁵³ Limited transparency also meant limited scrutiny of the death penalty and its imposition, though some criticism was first raised in 2004, when Amnesty International published ‘Singapore: A Hidden Toll of Executions’.¹⁵⁴ According to Hor, the report “catapulted Singapore to global attention as the jurisdiction with ‘possibly the highest’ per capita execution rate in the world, unexpectedly outdoing more usual suspects”, and attracted a swift government response.¹⁵⁵

Unexpectedly, in 2012 the government tabled a proposed reform to the mandatory nature of the death penalty for drug trafficking and murder; and announced a temporary pause on executions while the reform was considered.¹⁵⁶ The amendment was adopted in November 2012 and entered into force on 1 January 2013. With regards to the MDA, it introduced a new Section 33(B) which gave judges limited discretion to impose life imprisonment and caning rather than death if:

- A. The defendant proves that their role in the drug crime was limited to that of a mere ‘courier’, meaning “his or her involvement in the offence [...] was restricted —
 - I. to transporting, sending or delivering a controlled drug;
 - II. to offering to transport, send or deliver a controlled drug;
 - III. to doing or offering to do any act preparatory to or for the purpose of his transporting, sending or delivering a controlled drug; or
 - IV. to any combination of activities in sub-paragraphs; AND

- B. The Public Prosecutor certifies to any court that, in his or her determination, the person has substantively assisted the Central Narcotics Bureau in disrupting drug trafficking activities within or outside Singapore.

Notably, both conditions must be met for discretion to be exercised.

The newly introduced section also compelled judges to impose life imprisonment for death-eligible drug crimes if the defendant proves they were only a courier (pursuant to the same conditions as above) *and* that they were “suffering from such abnormality of mind (whether arising from a condition of arrested or retarded development of mind or any inherent causes or induced by disease or injury) as substantially impaired his or her mental responsibility for his or her acts and omissions in relation to the offence.”¹⁵⁷

151 CNB, ‘The Bureau’s Fight for a Drug Free Singapore’ (Singapore: Central Narcotics Bureau, n.d.), https://www.cnb.gov.sg/docs/default-source/pdfs/a_mha_cnb_commemorativebook_r6_fa_r1_lowres.pdf?sfvrsn=a5e36739_4; ‘Hearing on: Misuse of Drugs (Amendment) Bill’ (Parliament of Singapore, 20 November 1975), https://sprs.parl.gov.sg/search/#/topic?reportid=014_19751120_S0002_T0008.

152 ‘First Drug Case Man Goes to Gallows’, *The Straits Times*, 29 April 1978, <https://eresources.nlb.gov.sg/newspapers/Digitised/Article/straitstimes19780429-1.2.22>.

153 Jeannette Chong-Aruldoss, ‘How Many Has Singapore Hanged from the Gallows?’, Medium (blog), 22 February 2021, <https://jeannettechongaruldoss.medium.com/how-many-has-singapore-hanged-from-the-gallows-baffe3111b3>; HRI internal database, on file with the author and available upon request.

154 Amnesty International, ‘Singapore: The Death Penalty – A Hidden Toll of Executions’ (London: Amnesty International, 2004), <https://www.amnesty.org/en/documents/asa36/001/2004/en/#:~:text=More%20than%20400%20prisoners%20have,just%20over%20four%20million%20people>.

155 Roger Hood and Surya Deva, *Confronting Capital Punishment in Asia* (Oxford: Oxford University Press, 2013), 140.

156 Amnesty International, ‘Cooperate or Die: Singapore’s Flawed Reforms to the Mandatory Death Penalty’ (United Kingdom: London, 11 October 2017), <https://www.amnesty.org/download/Documents/ACT5071582017ENGLISH.PDF>.

157 Misuse of Drugs Act 1973, as amended 2012, Art. 33B(3)(b).

The government stressed that the key reason for the amendment was to make drug control more effective, at a time when drug trafficking is becoming more complex and “the fight worldwide against drugs is being lost”.¹⁵⁸ Reportedly, a lot of effort was put in clarifying the amendment was *not* a signal that Singapore was getting ‘soft on drugs’; rather, it was aimed at making drug law enforcement more targeted and effective.¹⁵⁹ In a 2012 statement, the Law Minister highlighted that “the proposed changes will sharpen our tools and introduce more calibration into the legal framework against drug trafficking, and put our system on a stronger footing for the future.”¹⁶⁰ This rationale was reiterated in several public statements, including in the Ministry of Home Affairs press release on the Amendment, which – it was stated – will “enhance overall deterrence, support enforcement efforts and improve upstream intervention for young abusers. The amendments will also sharpen our regulatory tools and calibrate our legal framework to enable the Government to tackle drug trafficking more effectively.”¹⁶¹

Advocates and observers point to other factors which may have affected the government’s decision. One, mentioned above, is an increase in both domestic and international scrutiny. Another catalyser of attention was the imposition of a mandatory death sentence in the case of Yong Vui Kong (also examined in section 3.4.3 on Malaysia). Yong Vui Kong was a Malaysian national arrested at 19 in Singapore, charged with drug trafficking, and sentenced to death. Though Kong was clearly a mere drug courier, motivated by poverty, the MDA prevented the court from taking any mitigating circumstance into consideration. The case garnered a huge amount of attention by public opinion both in Singapore and Malaysia (where a dedicated campaign was set up)¹⁶² and internationally, and it led to critically assessing use of the death penalty for drug crimes in Singapore; while revealing structural fallacies in the country’s drug law and criminal justice system. Among others, the mandatory nature of the death penalty for drug crimes, and presumptions of knowledge and intent to traffic when a person is found in possession of certain quantities of drugs, which essentially make the defendant guilty until proven otherwise.¹⁶³

Kong was first sentenced in 2008. He submitted and then withdrew an appeal in 2009, and the same year he petitioned for but was denied clemency by the President. In late 2009, M Ravi – a leading human rights lawyer – took over the case and filed a criminal motion seeking leave to pursue an appeal against Kong’s sentence, which essentially challenged the constitutionality of the mandatory death penalty for capital drug crimes. The challenge was eventually dismissed in April 2011, but that did not stop criticism of Singapore’s handling of the case. In March 2012 M Ravi submitted a new appeal against Kong’s conviction, which was again dismissed a month later. In November 2012 the MDA Amendment was approved, and Kong – who fit the new MDA definition of ‘courier’ perfectly – was the first person to benefit from it and have his sentence commuted.¹⁶⁴ The government never admitted nor hinted that Kong’s case may have had any influence on the decision to introduce the reform, but its timing had led some to think otherwise. Activist Kirsten Han, for example, concluded:

“I feel like the campaign for Yong Vui Kong actually drew a lot of attention to the death penalty in Singapore, and it was fairly sustained and high profile [...]. The attention that was paid to it and the amount of activism

158 ‘Response by Minister for Law, Mr K Shanmugam, during the Second Reading of the Misuse of Drugs (Amendment) Bill’, accessed 24 June 2024, <https://www.mlaw.gov.sg/news/parliamentary-speeches/response-by-minister-for-law--mr-k-shanmugam--during-the-second-/>.

159 Ibid., and interview with Kirsten Han, 14 February 2024. Also: ‘Death Penalty Changes Spark Impassioned Debate - TODAY’, accessed 1 July 2024, <https://www.todayonline.com/singapore/death-penalty-changes-spark-impassioned-debate>.

160 ‘Ministerial Statement by the Minister for Law Mr K Shanmugam on the Changes to the Applications of the Mandatory Death Penalty to Homicide Offences’, accessed 24 June 2024, <https://www.mlaw.gov.sg/news/parliamentary-speeches/ministerial-statement-by-the-minister-for-law-mr-k-shanmugam-on-the-changes-to-the-applications-of->.

161 ‘Amendments to the Misuse of Drugs Act’, Central Narcotics Bureau of Singapore News (15 October 2012), accessed 24 June 2024, <https://www.cnb.gov.sg/NewsAndEvents/News/Index/amendments-to-the-misuse-of-drugs-act>. Also communication with Prof. Chan Wing Cheong, 13 February 2024.

162 Rashvinjeet S.Bedi, ‘Happy Birthday, Yong Vui Kong’, The Star Online (23 January 2011), accessed 24 June 2024, <https://web.archive.org/web/20110125232835/http://www.thestar.com.my/news/story.asp?file=%2F2011%2F1%2F23%2Fna-tion%2F7852813&sec=nation>.

163 Amnesty International, ‘Urgent Action: Young Malaysian at Imminent Risk of Execution’, 5 April 2011, <https://www.amnesty.org/fr/wp-content/uploads/2021/07/asa360022011en.pdf>.

164 Interview with Kirsten Han, 14 February 2024.

and actions that were attached to it got a lot more people looking. So I've always felt that the Yong Vui Kong campaign did have an effect."¹⁶⁵

165 Ibid.

Similar impact was attributed to the abovementioned constitutional challenge, as perhaps the most striking example of increased legal activism on the death penalty in Singapore. Although unsuccessful, this case and the attention it attracted (also because of the involvement of high-profile lawyers from the UK)¹⁶⁶ served as a catalyst, "bringing the issue of the mandatory death penalty to the fore, leading to proposed legal reforms in Singapore."¹⁶⁷

166 Interview with Kirsten Han, 14 February 2024.

167 Hood and Deva, *Confronting Capital Punishment in Asia*, 42.

Experts also identified some institutional 'backdrops' which may have influenced the government decision. Hor, among others, points to trends in prosecutorial practices and court judgments aimed at enhancing the fairness of drug-related proceedings and spare some offenders from potential imposition of capital punishment. In turn, these may have been driven by increased scrutiny of capital punishment in mainstream debates, and by the reputational damage some institutional actors may have perceived as attached to use of capital punishment.¹⁶⁸

168 Hood and Deva, *Confronting Capital Punishment in Asia*, 162-4; Hood and Hoyle, *The Death Penalty: A Worldwide Perspective*, 115.

169 Amnesty International, 'Cooperate or Die: Singapore's Flawed Reforms to the Mandatory Death Penalty'; Wing-Cheong Chan, 'Escape from the Hangman's Noose? Singapore's Discretionary Death Penalty for Drug Traffickers', *Australian Journal of Asian Law* 24, no. 1 (2023), <https://ssrn.com/abstract=4541966>.

Over a decade after its introduction, the impact of the reform seems to have been limited. Amnesty International found a reduction in the number of death sentenced for drug offences, and cases were reported where judges decided to exercise discretion.¹⁶⁹ At the same time, in several cases the conditions set in Section 33(B) are found not to be met, meaning death remains the only possible sentence;¹⁷⁰ the number of people on death row for drug crimes keeps growing; and as of July 2024 44 people have been executed for drug offences since the adoption of the amendment.¹⁷¹

170 'Written Reply to Parliamentary Question on the Issuance of Certificates of Substantial Assistance under the Misuse of Drugs Act since 1 January 2013', Ministry of Home Affairs, accessed 1 July 2024, <http://www.mha.gov.sg/mediaroom/parliamentary/written-reply-to-pq-on-the-issuance-of-certificates-of-substantial-assistance-under-the-misuse-of-drugs-act-since-1-january-2013/>.

171 HRI internal database, on file with the author and available upon request.

The reasons for such limited impact are many and a full review exceeds the space and scope of this report. Perhaps most notably, its potential was constrained by both its design, and the failure to address systemic issues of the MDA and the criminal justice system it operates within. For example, the requirement that both conditions be met for discretion to be exercised leaves significant power with prosecutors, whose decision not to grant a certificate of assistance does not need to be justified and cannot be appealed. Presumptions also remain in place in the MDA which essentially make suspected drug traffickers 'guilty until proven otherwise'.¹⁷² These and other elements led to perceived arbitrariness in its application and in significant confusion by the part of judges, observers, as well as people facing capital punishment and their families; which reported uncertainty and frustration over a lack of fairness and predictability.¹⁷³

172 Girelli, 'The Death Penalty for Drug Offences: Global Overview 2018'.

173 Interview with Kirsten Han, 14 February 2024.

At the same time, experts point to some unintended, side effects of the amendment. Among others, its adoption and ongoing scrutiny have reportedly "generated renewed activism against executions"¹⁷⁴ both in Singapore and beyond: its adoption "signaled that that some things can change with the death penalty, and some things can move with enough light pressure and work."¹⁷⁵ Further, it is not unusual for lawyers to highlight vulnerabilities in the background of the defendant and the reasons that led him to engaging in the drug market to argue they fit the definition of 'courier'. This leads to increased awareness, and consequently scrutiny, of the disproportionate use of capital punishment for drug crimes against marginalised individuals. Also, activists point to the fact

174 Amnesty International, 'Cooperate or Die: Singapore's Flawed Reforms to the Mandatory Death Penalty'.

175 Interview with Kirsten Han, 14 February 2024.

that people now remain on death row for longer (because of the amendments and the re-sentencing hearings) as a catalyst for activism by civil society and families. In the words of Han,

“Because of the amendment there is a little bit more time to campaign on certain cases”; and, “because they have been on death row longer, the prisoners know each other much better. Families know each other much better. I noticed in 2010 most of the families I met only talked about themselves, they would say things like - I take no position on the death penalty, but I feel that my son, or my brother ...it’s not a bad person, and he should not be hanged. [...] When Transformative Justice Collective started in 2020, we started noticing a lot more that family members were asking about each other’s cases and they were much more likely to say - the death penalty as a whole needed to go...because my brother is all these other men. They are all my brothers...and I feel like that is also a function of having had to suffer on death row for a long time together.”

3.4.5 TAIWAN (1992)

According to Amnesty International, the death penalty was first prescribed in Taiwan in 1955 by the Regulations for the Suppression of Opium and other Narcotic Drugs during the Period of National Emergency; building upon Chinese regulations promulgated in 1948 and amended in 1950.¹⁷⁶ Therein it was prescribed as a mandatory punishment for “selling, transporting or manufacturing opium, morphine, heroin or cocaine and as an optional punishment for selling, transporting or manufacturing cannabis.”¹⁷⁷

In July 1992, Taiwan’s legislative council amended the law, renaming it the ‘Drug Control Act’ and amending Article 5 to make the death penalty a discretionary rather than a mandatory punishment for relevant drug offences.¹⁷⁸

The reasons for such amendment are hard to identify. Some experts point to the “issue of the death penalty being too harsh and the punishment for crimes being unbalanced” as underlying factors,¹⁷⁹ though no official explanation reflecting these arguments could be found. Others place the amendment as part of a broader process of death penalty review which made the punishment discretionary in many cases in which it was envisaged as mandatory. As reconstructed by Prof. Liao, “between 1987 through 2006, Taiwan successfully annulled and amended many laws that prescribed the death penalty on a compulsory or optional basis.”¹⁸⁰ This included total abolition for banditry-related crimes in 2002; and the abolition of the *mandatory* death penalty not only for drug crimes in 1992, but also for rape with homicide in 1999, robbery and kidnapping for ransom in 2002, and sexual assault and homicide of minors in 2005. As a key driver of this process, Prof. Liao points to the democratisation process after repeal of the Martial Law in 1987.

Figures are also hard to interpret, as it is unclear how much imposition of capital punishment was impacted by this amendment, vis-à-vis unrelated developments. Death sentences for drug crimes were imposed before 1992, with Amnesty International reporting one in 1989, five in 1990, and eight in

176 Amnesty International, ‘The Death Penalty: No Solution to Illicit Drugs’.

177 Ibid.

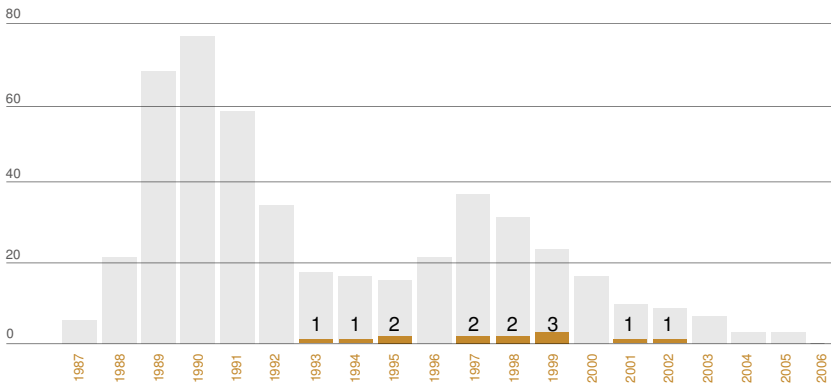
178 Fort Fu-Te Liao, ‘From Seventy-Eight to Zero: Why Executions Declined after Taiwan’s Democratization’, *Punishment & Society* 10, no. 2 (2006), <https://doi.org/10.1177/1462474507087197>.

179 Communications with Taiwan Alliance to End the Death Penalty (TAEDP), 5 March 2024.

180 Liao, ‘From Seventy-Eight to Zero: Why Executions Declined after Taiwan’s Democratization’.

1992. Sentences continued to be recorded after the amendment, including “seven in 1993, three in 1994 and one in the first half of 1995.”¹⁸¹ Drug-related executions also continued, and in fact increased, after the amendment and until 2002. Prof Liao reports the following official figures of drug vs total executions:

Executions in Taiwan for drug offences vs total



181 Amnesty International, ‘The Death Penalty: No Solution to Illicit Drugs’.

● Total executions
 ● Executions for drug

Reportedly, the Taiwan Ministry of Justice identified the 1992 amendment as a major contributing factor in reducing executions.¹⁸² However, these figures do not per se support this conclusion. While the amendment may have had some impact, the trend may be better explained with a more general process to restrict resort to capital punishment. This was partly due to the abovementioned democratisation process, followed by a new policy of ‘state-building on human rights’ inaugurated in 2000. Dynamics between prosecutors and judges are also believed to have played a role: reportedly, from the early 1990s the rate at which courts confirmed prosecutors’ requests for capital punishment decreased “dramatically”, in turn moving prosecutors to limit the cases in which the death penalty was sought.¹⁸³ Judicial attitudes were also identified as playing a defining role. For example, the Taiwan Alliance to End the Death Penalty (TAEDP) explained why no drug-related death sentence have been imposed after 2002 with the following:

182 Liao, ‘From Seventy-Eight to Zero: Why Executions Declined after Taiwan’s Democratization’.

183 Ibid.

“Since 2002, there have been no cases in which the death penalty has been confirmed in Taiwan’s courts for drug crimes. Even later, the Supreme Court made it clear in its judgments that drug crimes are not the most serious crimes because of compliance with the spirit of the International Covenant on Civil and Political Rights. Therefore, Taiwan’s Supreme Court made it clear in its judgment that the use of the death penalty for drug crimes should be “frozen”. [...] It should be emphasized that these changes or developments do not seem to be directly related to the 1992 law amendment or the Taiwan government’s ratification of the International Covenant on Civil and Political Rights in 2009. We can only see the positive development of judicial self-restriction in imposing severe punishments.”¹⁸⁴

Judges may play a defining role again in 2024, with a ruling on the constitutionality of the death penalty expected by the end of the year.¹⁸⁵

184 Communications with Taiwan Alliance to End the Death Penalty (TAEDP), 5 March 2024.
 185 ‘Taiwan’s Death Penalty and Debate over Constitutional Rights – DW – 04/24/2024’, dw.com, accessed 25 June 2024, <https://www.dw.com/en/taiwans-death-penalty-and-debate-over-constitutional-rights/a-68909105>.

3.4.6 THAILAND (2016)

Thailand's Narcotics Act envisages death as a punishment for a range of drug crimes since at least 1979.¹⁸⁶ In November 2016, the National Assembly of Thailand adopted an amendment to the Act that entered into force in January 2017. Among others, the amendment abolished the *mandatory* death penalty for the offence of selling drugs (Article 65.2), adding life imprisonment and a fine as a possible alternative. The amendment also revises – though it does not fully remove – a problematic presumption (Article 15): before the amendment, any person caught in possession of drugs above certain thresholds was automatically regarded as possessing for trafficking purposes; now, the intention to sell drugs is presumed but rebuttable by the defendant. This potentially expands opportunities for legal defence and gives judges and prosecutors more flexibility to consider the circumstances of the offence and the offender when determining intent.

The amendment had a partially retroactive effect in that it could be applied to defendants who had received a sentence by a court of first instance but had not started to serve such sentence.

Among the purposes of the amendment could have been an intent to enhance the fairness of proceedings, by providing defendants with more opportunities to make their case and allowing courts a more individualised assessment.¹⁸⁷ International processes also had an impact. During its constructive dialogue with the Human Rights Committee in March 2017 a government representative explained that “*In accordance with the outcome document of the 2016 special session of the United Nations General Assembly on the world drug problem, Thailand had amended its legislation: the death penalty was no longer the only option and offenders could be sentenced according to the seriousness of their specific crime.*”¹⁸⁸ Sources also points to the UPR as another influential international process, noting that in 2016 Thailand accepted recommendations “to move towards abolition, review the imposition of the death penalty for drug-trafficking, and commute death sentences.”¹⁸⁹ More broadly, the reform appears in line with Thailand's commitment to move towards abolition of the death penalty, as indicated by the 2014-2018 National Human Rights Plan.¹⁹⁰

People were regularly executed for drug crimes in the past, particularly between the late 1990s and the early 2000s, as part of a brutal ‘war on drugs’ which also translated in an exceptional number of death sentences for drug crimes.¹⁹¹ One person was executed in 1999,¹⁹² seven people in 2001,¹⁹³ and two persons in 2002.¹⁹⁴ Two more drug-related executions took place in 2009, the last to ever be carried out as of July 2024. Courts regularly sentence people to death for drug offences, though lack of transparency prevents from reporting accurate figures. Official figures on the death row, meanwhile, seem to suggest a gradual reduction in drug-related sentences, though with some ups and downs, but do not indicate the reform had a significant impact on judicial decisions. In fact, though absolute numbers have decreased, drug-related death sentences appear to be responsible for a growing portion of people on death row.¹⁹⁵

186 Antoine Bernard (ed.), ‘International Fact-Finding Mission: The Death Penalty in Thailand’ (Paris: FIDH, 2005), <https://www.refworld.org/reference/countryrep/iftfr/2005/en/49328>.

187 ‘The First Step towards Restoring Justice for Drug Offenders: Regarding Corrections Narcotics Act, B.E. 2522 (1979) - ThaiPublica’, 30 November 2016, <https://thaipublica.org/2016/11/natmaytee-010/>.

188 Human Rights Committee, ‘Consideration of reports submitted by States parties under Article 40 of the Covenant (continued) – Second periodic report of Thailand’, UN Doc. CCPR/C/SR.3349 (22 March 2017), emphasis added; also preamble of: Office of the Narcotics Control Board, Ministry of Justice, ‘Act Promulgating the Narcotics Code, B.E. 2564 (2021) - NARCOTICS CODE And Act on Procedure of Narcotics Case B.E. 2550 (2007) (2021), <https://en.fda.moph.go.th/media.php?id=517578787425230848&name=NARCOTICS-CODE-ONCB120666.pdf>.

189 OHCHR South East Asia Regional Office, ‘Drug-Related Offences, Criminal Justice Responses and the Use of the Death Penalty in South-East Asia’.

190 See Rights and Liberties Protection Department, Ministry of Justice, ‘The Summary of Thailand's 3rd National Human Rights Plan (2014 - 2018)’ (2014), <https://humanrights.mfa.go.th/upload/pdf/the-summary-of-thailands-national-human-rights-plan-2014-2018.pdf>.

191 Bernard (ed.), ‘International Fact-Finding Mission: The Death Penalty in Thailand’; Amnesty International, ‘Thailand: Fear of Imminent Execution’ (London: Amnesty International, 25 April 2002), <https://www.amnesty.org/en/documents/asa39/002/2002/en/>.

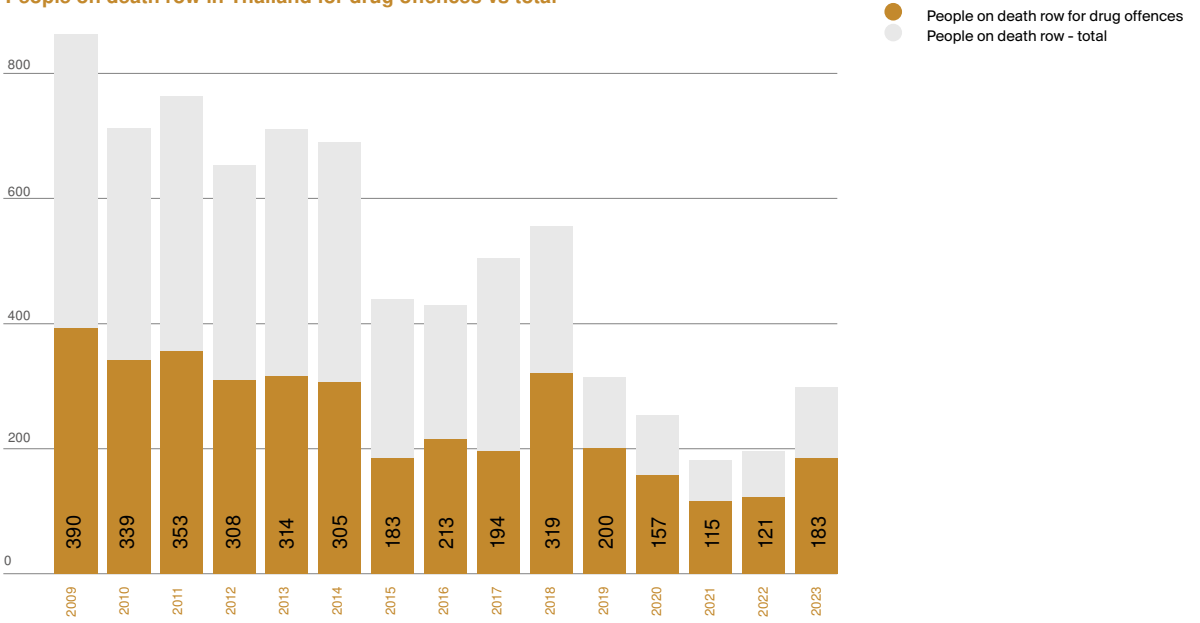
192 Amnesty International, ‘Amnesty International Annual Report 2000’ (London: Amnesty International, 2000), <https://www.amnesty.org/en/documents/pol10/0001/2000/en/>.

193 Amnesty International, ‘Amnesty International Annual Report 2001’ (London: Amnesty International, 2001), <https://www.amnesty.org/en/documents/pol10/0001/2001/en/>.

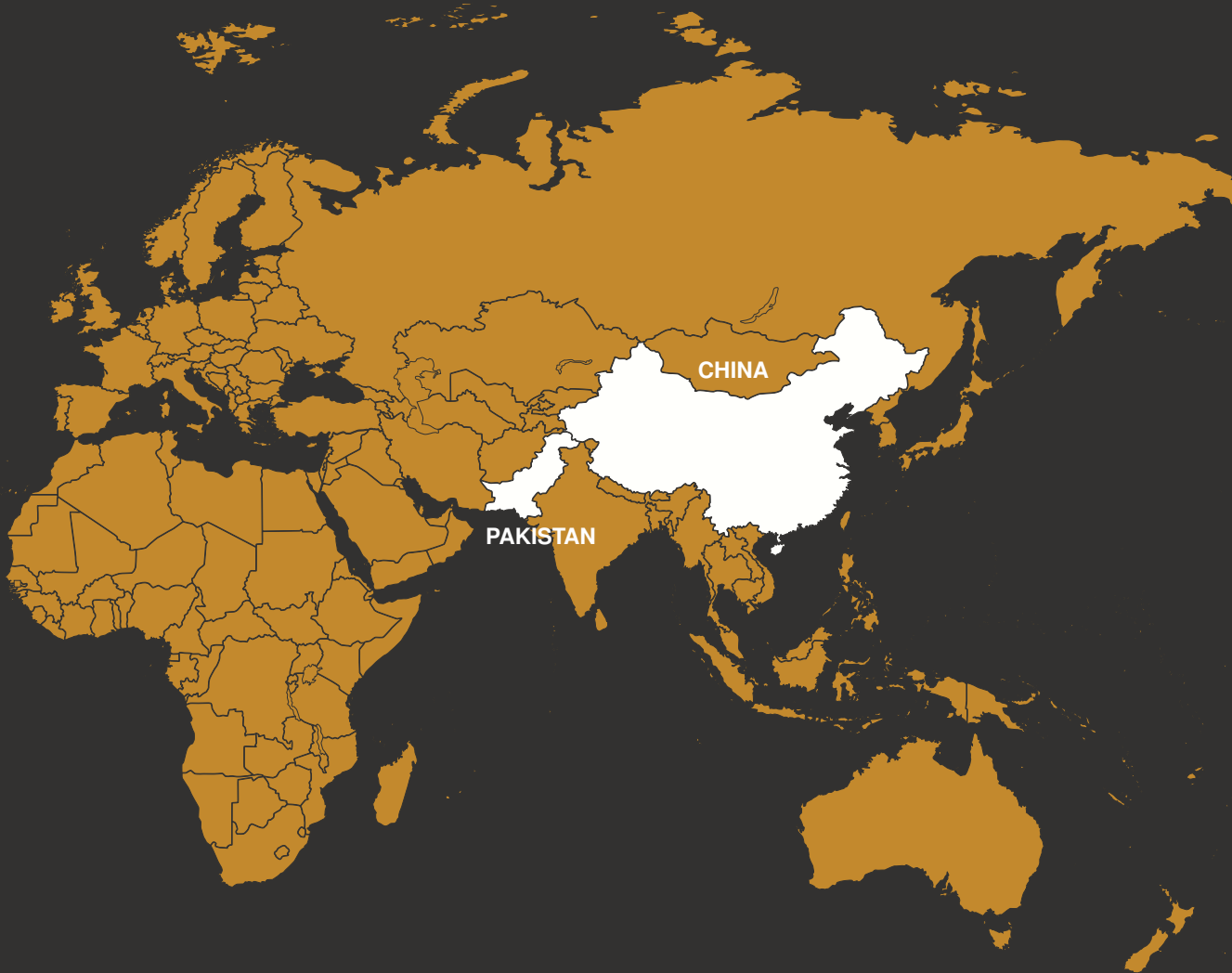
194 Amnesty International, ‘Thailand: Fear of Imminent Execution’.

195 HRI internal database, on file with the author and available upon request.

People on death row in Thailand for drug offences vs total



(5) INTRODUCTION OF SENTENCING GUIDELINES APPLICABLE IN DEATH-ELIGIBLE DRUG CASES



3.5.1 CHINA (2023)

Section authored by the Great Britain-China Centre

The death penalty for drug crimes is stipulated in Article 347 of the Chinese Criminal Law (1997):

“...Whoever smuggles, traffics in, transports or manufactures narcotic drugs and falls under any of the following categories, shall be sentenced to fixed-term imprisonment of 15 years, life imprisonment or death and also to confiscation of property:

- (1) persons who smuggle, traffic in, transport or manufacture opium of not less than 1,000 grams, heroin or methylaniline of not less than 50 grams or other narcotic drugs of large quantities;
- (2) ringleaders of gangs engaged in smuggling, trafficking in, transporting or manufacturing narcotic drugs;
- (3) persons who shield with arms the smuggling, trafficking in, transporting or manufacturing of narcotic drugs;
- (4) persons who violently resist inspection, detention or arrest to a serious extent; or
- (5) persons involved in organized international drug trafficking...”

There is no mandatory death penalty in China, so judges have a certain level of discretion. In practice, when it comes to drug-related crimes, the quantity of drugs in question appears to be the primary, if not the sole, determining factor. When the quantity of drugs exceeds specific thresholds, judges may impose a death sentence based only on the quantity of the drug in question, without considering the role of the defendant and mitigating or aggravating factors such as methods, circumstances, and intent of the defendant.

The Supreme People’s Court of China (SPC) has sought to move away from this reliance on the quantity of drugs as the determining factor by issuing several judicial documents in the form of Meeting Minutes over the past twenty years, which function as sentencing guidelines for judges. The latest such document by the SPC was issued in February 2023, when the SPC convened a national conference on the adjudication of drug-related cases in Kunming City, Yunnan Province. The outcome of this conference was the publication of the *Minutes of the National Court Conference on the Trial of Drug Cases* (“Kunming Meeting Minutes”). It replaced previous Meeting Minutes and provided the most up to date guidance for judges when deciding on drug crime cases. Section 5 of the Kunming Meeting Minutes on the application of the death penalty sets out the following principles for sentencing:

“Drug quantity is an important factor in sentencing, but it is not the only one. When deciding on the application of the death penalty, the criteria of ‘drug quantity + other factors’ should be adhered to; the death penalty should not be imposed on a number of defendants in a single case indiscriminately, simply because the quantity of drugs involved in the case far exceeds the applicable death penalty quantity standard, and full consideration should be given to the different circumstances of the crimes committed by different defendants.”

This appears to be an explicit shift from the quantity-oriented judicial practice. The Kunming Meeting Minutes further specify some circumstances where the

death penalty should not or may not be imposed. For example, with regard to drug transportation crimes, "...For defendants who are indeed instructed or hired to transport drugs, and it cannot be ruled out that they are transporting drugs for the first time; that they are under the close command of others, and that they are clearly subordinate or auxiliary; that they are in a non-dominant position in transporting drugs; or that they transported the drugs because of desperate livelihood difficulties, the death penalty may not be imposed, even if the quantity of the drugs exceeds the applicable death penalty quantity standards actually in place..."

However, it is still too early to assess the effect of the Kunming Meeting Minutes in terms of reducing the number of death penalty cases for drug crimes, both because it is a new guidance from 2023, and since data related to the death penalty is a state secret and thus not available. Although it seems unlikely that the government is considering abolishing the death penalty for drug crimes, the increasingly stringent restrictions, cautious application and a consideration of mitigating circumstances is likely to result in fewer death penalties. An expert interviewed made the following comments about the death penalty reform in China:

"Regarding legal restrictions of the death penalty, the international community may pay more attention to reducing the number of crimes punishable by the death penalty. However, from the judicial practice, we can see that the death penalty is not used and thus abolished de facto in some crimes, while some other crimes have been sentenced to the death penalty more frequently. When it comes to China, although the Chinese Criminal Law retains the death penalty for 46 crimes, most of them were seldom sentenced to death in practice. On the other hand, among the 13 drug crimes stipulated in the Criminal Law, although the death penalty was only prescribed in Article 347, drug crimes under Article 347 take up a large portion of all death penalty cases in practice. Therefore, procedural control of the death penalty may have a more significant practical effect than reducing the number of crimes punishable by the death penalty. As proved by the judicial practice in China, strengthening the legal due process can not only improve legal representation and ensure effective defence for the defendants, but also avoid and reduce the death penalty that are unnecessarily imposed."

3.5.2 PAKISTAN (2009)

The policy and practice on the imposition of the death penalty for drug offences in Pakistan were reviewed in section 3.2.2. As mentioned therein, a key step towards removing death as a possible punishment for drug offences was the adoption, in 2009, of the Lahore Supreme Court judgment in the case of *Ghulam Murtaza and another v The State* ('*Ghulam Murtaza*'). In the judgment, Justice Khosa criticised extreme inconsistencies in drug-related judgments, with sentences "hideously variable as they oscillated and fluctuated between unduly lenient and grossly oppressive."¹⁹⁶ This resulted in a lack of certainty and predictability, cornerstones of fair criminal justice processes, and court shopping. *Ghulam Murtaza* also notes that judgments were mostly made pursuant to quantities of illicit substances, without due consideration to the nature

196 Ghulam Murtaza and another v The State, No. Criminal Appeal No. 284-J of 2008 (PLD Lahore 2009 27 March 2009).

and circumstances of the crimes, and concludes that a "sentencing approach based only upon quantity of the recovered substance may lead to unjust and oppressive results and to punishments which may be unduly cruel and harsh." To address these issues and promote uniformity and predictability of judicial responses to drugs, the judgment introduced comprehensive sentencing guidelines for drug cases based on substance, quantity, as well as on the defendant's gender, age, and prior convictions. With regard to the death penalty, the judgment recommended it only for crimes involving over ten kilos of hashish or heroin, and advised against imposing it on women and minors.

The judgment, then confirmed by the Supreme Court, is not binding per se, meaning judges can divert from the guidelines based on the circumstances of the case; but it was extremely authoritative, and it is credited with strongly limiting imposition of drug-related death sentences by higher courts. According to expert interviewees, "Ghulam Murtaza did set a very solid standard, especially with the superior judiciary, on what constitutes a reasonable death sentence for drug offenses, and since then [...] the Supreme Court has dropped down every single death sentence for drug offenses that has reached the highest stage." This is confirmed by research, according to which low-level courts, including specialised CNSA courts, continued sentencing people to death mostly with a focus on quantities, and with little consistency. Nevertheless, most of these cases were struck down on appeal; insomuch that as of 2024 there appeared to be no one on death row in Pakistan pursuant to a *final* death sentence for a drug crime.

RECURRING FEATURES

While the processes briefly described in the previous section differ in many of their defining elements, an in-depth analysis reveals many commonalities and recurring threads. These allow to draw more general conclusions on influential actors, factors and narratives in processes aimed at reducing use of the death penalty for drug offences; and on the role of broader social, political and institutional contexts. The following sub-sections delve into key patterns identified.

4.1 AGENTS OF CHANGE

4.1.1 REFORM AS A LOCALLY DRIVEN, BOTTOM-UP PROCESS

While the processes analysed in the previous sections differ, sometimes significantly, for context, driving factors, outcomes, and impact, one element recurs in virtually all of them: the predominant role of domestic actors. While in many cases international entities are portrayed as providing important – even critical – support, and in some instances successful developments are attributed to the mutually reinforcing collaboration of local and international actors, the local level emerges as the central one.

In the Philippines, abolition was the result of intense pressure by a coordinated group of civil society organisations in alliance with the local human rights commission and pro-abolition policymakers, and, most of all, of the determination of then-President Gloria Macapagal Arroyo. Political will at domestic level was *the* defining factor.¹⁹⁷ The international community exercised pressure mostly through human rights mechanisms, but experts stressed how even these international processes are ultimately kickstarted by local actors through submissions and calls for engagement. As clarified by Gomez Dumpit: “Yes, it was domestic. There was international pressure, but that pressure wasn’t as strong as the groundswell domestically, and even the human rights communications came from the Philippines.” Consequently, abolition “would have happened anyway.”¹⁹⁸

¹⁹⁷ Interview with Karen Gomez Dumpit, 13 February 2024.

¹⁹⁸ Ibid.

Abolition of the death penalty for drug offences in Mauritius and Nigeria is also understood as the result of purely domestic processes, in both cases strictly connected to broader political developments (cross-party alliances in the former, upheaval and regime change in the latter). Similarly in India, the reform to the mandatory death penalty was the outcome of a domestic judicial process, driven by local advocates.

In Indonesia, amendments to the death penalty legislation came as part of a broader reform process, mostly driven by members of Parliament and the

Executive, with local civil society playing an important role through advocacy, lobbying, submissions of evidence and constructive proposals. While civil society interviewees were sceptical about the impact of this work – as many recommendations were not incorporated and the negotiation process was not transparent – it was also noted that many of the arguments made by local civil society (for example on fair trial violations or the disproportionate impact of the death penalty on low-level drug couriers) shaped political debates.¹⁹⁹

This **role of local civil society as experts** also emerges in Pakistan; where NGO research revealed systemic shortcomings in the sentencing of drug cases, and helped government identify potential avenues for reducing use of capital punishment.²⁰⁰ Strategic engagement and awareness raising with political actors was then key, together with sharing this information with diplomats, the EU (in the context of GSP+ reviews) and human rights mechanisms; in turn nudging international support for reform.

The primary role of local actors was also highlighted in Malaysia, in relation to both the 2017 and the 2023 reforms; though with slightly different dynamics. The 2017 DDA amendment was credited primarily to political will, with members of parliament and government ministers driving the process. In the lead to the 2023 reform, while policymakers remained central, a more active role was reportedly played by local civil society, which had grown more coordinated and focused.²⁰¹ Dato Sri Azalina Othman, Law Minister at the time, also emphasised the importance of civil society and public engagement by claiming that “[t]he government had taken into consideration the views and suggestions of 30 million Malaysians in drafting the amendment.”²⁰²

Observers in Malaysia and the Philippines have also paused on **the importance of a diverse coalition** of civil society of actors, comprising of NGOs, lawyers, academics,²⁰³ as well as affected persons such as families of people on death row (as further described below); and of finding a good balance of working on different levels and with different strategies, but always with a bottom-up approach. As concluded by Chew:

*“Abolition cannot be top down, it needs to be grassroots. To me, the top-down approach is reaching an end in Asia. What works? What worked for democratization in Asia? It’s always been a mass movement, or a smaller movement that instigates a broader response.”*²⁰⁴

199 Interview with LBH Masyarakat, 22 February 2024.

200 Among others, see: Justice Project Pakistan, ‘Reducing the Scope of the Death Penalty’ [unpublished]; FFR, ‘Optimising Pakistan’s Drug Law. Making the Control of Narcotic Substances Act Stronger, Fairer and More Effective’ (Foundation for Fundamental Rights, n.d.), <https://courtingthelaw.com/wp-content/uploads/Optimising-Pakistans-Drug-Law-A-Report-by-FFR.pdf>.

201 Interview with Dobby Chew, 20 February 2024.

202 N.S.T Team, ‘No More Mandatory Death Sentence Soon as Amendments to Dangerous Drugs Act Passed in Parliament’.

203 Natalia Antolak-Saper et al., ‘Drug Offences and the Death Penalty in Malaysia: Fair Trial Rights and Ramifications’ (Kuala Lumpur: Monash University and ADPAN, March 2020), https://www.hri.global/files/2020/05/29/Malaysia_Death_Penalty_-_Fair_Trial_-_Monash_ADPAN.pdf.

204 Interview with Dobby Chew, 20 February 2024.

THE UNIQUE ROLE OF FAMILIES OF PEOPLE ON DEATH ROW

Throughout the analysed case studies, families of people on death row or executed emerge as an important actor advocating for reform from a unique standpoint, with women often taking center stage.

While in some countries reports of growing awareness and coordination among families appear to be quite recent, the phenomenon is not a new one. Among the experiences reviewed, one of the oldest examples is that of Mothers Against the Death Penalty, which led to abolition movement in Uzbekistan. This group, comprising of mothers of people executed, sentenced to death and facing the death penalty, self-organised campaigns and taught themselves law to be able to better assist in the cases.

Families of people on death row were also a driving force in the Philippines, both as CADP members and through SDPR, the independent organisation created by mothers and wives of people on death row. The group first focused on enhancing their legal awareness, to then move to campaigning and lobbying. As summarised in *Not in Our Name*, the book which reconstructs the abolition process in the Philippines, “the women in this group, though knowing nothing but poverty all their lives, tapped into wellsprings of inner strength reinforced by their collective singularity of purpose. Hound dogs and stalkers of legislators they would become as one by one, they saw their men killed.”

More recently, families of people on death row emerged as driving actors in Malaysia and in Singapore. In Malaysia, Chew underlined the importance of their involvement, particularly around the 2023 reform, to make the issue more ‘tangible’ and ‘real’, showing the fallacies of mandatory punishments. In doing so, families were uniquely effective in countering simplistic public narratives on the death penalty:

“Public opinion in Asia has been very much pro death penalty, but having a strong grassroots movements counters that... because the public opinion is a weak, ethereal substance, right? [...] Well, when you have a group of people that says - *Yeah, my family has done something bad. They deserve punishment. But how is death penalty fair when you consider his mental health condition? When you consider that he was not given a chance in life?* And so on - That push back becomes a lot more tempered.”

In Singapore, coordination among families is also in part credited to the fact that – also as a result of the 2012 reform - people tend to stay on death row for longer, meaning their families have more time to learn about and interact with the criminal justice system, as well as to coordinate and exchange information.

More recently, families of people on death row or executed for drug offences became more vocal in Iran. While traditionally met with limited protests, in recent years family members are increasingly seen protesting drug-related executions in front of prison gates, and condemning the practice including through the language of human rights and international law. According to Iran Human Rights, more coordinated protests by families of people on death row for drug offences have been witnessed since 2022, in line with the broader increase in protests connected to the ‘Woman, Life, Freedom’ movement, and continue as of 2024 despite arrests and repression.

4.1.2 DECISIONMAKERS: THE IMPORTANCE OF CHAMPIONS, AND OF INDIVIDUALISED ADVOCACY

Clearly emerging from many of the described processes is the importance, at the domestic level, of ‘champions’, or institutional actors that – though for different reasons – prioritise this issue and take reform forward. This appears particularly important when dealing with highly polarising and polarised issues such as the death penalty *and* drug control.

Among the starkest examples is that of the Philippines. Persistent civil society action was essential, but several sources concluded that abolition was ultimately due to President Macapagal Arroyo’s resolve on the matter.²⁰⁵ Arroyo, a devout catholic, seemed to take a moral stance against the death penalty (though some commentators also point to political convenience as an influencing factor)²⁰⁶ and remained steadfast on her decision up to 2006, as well as after abolition by leading the Philippines accession to the 2nd Optional Protocol to the ICCPR; and more recently by strongly resisting President Duterte’s attempts to reintroduce capital punishment.²⁰⁷

In Pakistan, Justice Khosa emerges as an influential force throughout the process which led first to the sentencing guidelines in *Ghulam Murtaza*, and then to repealing the death penalty for drugs. Justice Khosa we described as “inarguably the most important stakeholder in this development. Generally, his tenure has been monumental in bringing Pakistan’s use of the death penalty closer to the international human rights standard of ‘most serious crimes.’” The underlying reason was, reportedly, a “particular interest in bringing Pakistan’s death sentencing in line with international standards”, as well as a “genuine interest in fairness and justice, and in a human rights-based approach to the death penalty and capital punishment in Pakistan.”²⁰⁸

In Malaysia, observers identified members of parliament and of government which saw the death penalty as a priority issue and pushed for reform. While some were motivated by personal values, others seemed to be primarily guided by legal and political arguments, but all converged in pushing for change.²⁰⁹ Similarly in Indonesia, some MPs were identified as being particularly proactive in pushing the issue forward, including Arsul Sani, the head of the Third Committee of Parliament, and LBH Masyarakat co-founder Taufik Basari, a Committee member. While representing different political parties, they all seemingly shared a commitment to move Indonesia away from having the death penalty as a core punishment.²¹⁰ In a public hearing held by the Parliament to debate the reform to the Criminal Code, Sani said that “it is time to dismiss, or stop using, the death penalty.”²¹¹

This speaks to a broader emerging theme, meaning **the importance of appealing to different stakeholders with an individualised approach** that goes beyond institutional positions and is sensitive to personal values and priorities. Again, this is particularly important when addressing sensitive and politicised issues. When reflecting on the process in the Philippines, Gomez Dumpit noted: “We cannot just appeal to institutions. We have to appeal to individuals. We have to appeal to their sense of justice and their thought process [...] You have to catch their hearts or their minds.. we can’t antagonise individuals.”

205 Interview with Karry Sison, 19 February 2024; Interview with Karen Gomez Dumpit, 13 February 2024.

206 William Graham Allen, ‘Can We End the Death Penalty? The Role of NGOs in the World-Wide Campaign’ (Vancouver, The University of British Columbia, 2011), <https://commons.allard.ubc.ca/theses/47/>.

207 ‘Philippine Lawmakers Lose Key Posts after Opposing Death Penalty’, *Reuters*, 15 March 2017, sec. World, <https://www.reuters.com/article/world/philippine-lawmakers-lose-key-posts-after-opposing-death-penalty-idUSKBN16M1YQ/>.

208 Interview with Justice Project Pakistan, 15 February 2024.

209 Interview with Dobby Chew, 20 February 2024.

210 Interview with LBH Masyarakat, 22 February 2024.

211 Komisi III (25 May 2022), ‘Pidana Mati Tidak Boleh Dijatuhkan Sembarangan’ Dewan Perwakilan Rakyat Republik Indonesia, <https://www.dpr.go.id/berita/detail/id/38992/t/Pidana+Mati+Tidak+Boleh+Dijatuhkan+Sembarangan>.

For this very reason, activists recalled the strategic importance of engaging with different sides of the political spectrum,²¹² going beyond ideological stances and finding effective arguments for each person; and to strategically connect to the actors closer to the issue. In many contexts, technical, operational actors may be unexpected allies, as they have seen first-hand the ineffectiveness of policies, and should thus not be ignored. As concluded by Boroumand,

“I think the most important thing is in the levels of officials dealing with [drug control], those that are closer to the field are more reasonable and more pragmatic in what works and what doesn't, and those who are more remote from the field, they have other purposes [...] : They're more ideological. They're more pragmatic in terms of the needs for political persecution. They also may have vested interest.”²¹³

212 Interview with Dobby Chew, 20 February 2024.

213 Interview with Roya Boroumand, 20 February 2024.

4.1.3 THE CATALYTIC ROLE OF COURTS

In some countries, judicial processes (vis a vis political ones) emerged as important fora for reviewing imposition of the death penalty to drug offences.

A clear example is that of Pakistan, where – as illustrated in section 3.5.2 – the introduction of sentencing guidelines in drug cases by the *Ghulam Murtaza* judgment contributed to reducing imposition of the death penalty for this group of offences by higher courts, and to the Supreme Court striking down virtually all drug-related death sentences that reached it. In turn, this paved the way for bump-free repeal of death as a possible punishment for drug crimes. This judicial approach was due both to a personal interest of specific judges (as abovementioned) but also to a more general reluctance by higher courts – particularly the Supreme Court – to impose death sentences, particularly for crimes which are not perceived as the most serious. In the case of drugs, courts noted how most death sentences were imposed for possession-based offences, which clearly did not fit the definition.²¹⁴

214 Interview with Justice Project Pakistan, 15 February 2024., FFR.

A 'self-restraining' approach by judges was also noted in Taiwan. According to TAEDP, this careful attitude to capital punishment is the main reason for a lack of drug-related death sentences in the country since 2006; and a more determinant one than ICCPR ratification or even the 1992 amendment.²¹⁵ Prof. Liao also attributed primary importance to judges, and to a self-perception as an educated elite detached from political debates and public pressure, and as independent experts tasked with ensuring Taiwan respects the Rule of Law and legal obligations, including international law ones.²¹⁶

215 Communications with Taiwan Alliance to End the Death Penalty (TAEDP), 5 March 2024.

216 Interview with Prof Fort Fu-Te Liao, 16 February 2024.

Judgments often pave the way for legal reform, even in cases where they are unsuccessful or have limited direct impact. In India, the 2011 judgment (reviewed in section 3.4.1) was eventually codified in law through the 2014 amendment to the NDPS. The Indian example also shows the repercussions of legal challenges beyond judgments. Petitioners found the challenge only partially successful, because it failed in its ultimate objective of leading to full abolition of the death penalty for drug offences. Still, it clearly affected judicial attitudes towards defendants in capital drug cases, as shown by the fact that since 2012 virtually no drug-related death sentence in India has become final. It was also an important opportunity to introduce new arguments in the

Indian system, mainstreaming the issue, and laying the foundations for further discussions. As explained by a lawyer involved in the case:

*“We were keen on advancing the argument about [drug offences] not being a most serious crime”. And, “a lot of our arguments were actually rejected. But we’re still happy that we had a chance to make those arguments. In a society where this was not an issue - it was a non issue even within human rights groups - it was a chance to say what you feel before the court and the court has recorded all of our submissions.”*²¹⁷

217 Interview with Expert 2, 6 February 2024.

In 2019, the Malaysia Federal Court with the *Atenza* judgment declared the double presumption contained in Section 37(A) of the DDA (presumption of possession and control of the substance, and presumption of intent to traffic in case of possession) unconstitutional. The judgment noted the “real risk” that they could lead to a defendant being sentenced to death in cases where there remains “a significant reasonable doubt”; in violation of the right to life read combined with the principle of proportionality protected by the Malaysian constitution.²¹⁸ The Court thus ‘prohibits’ prosecutors and judges to rely on both presumptions, directing them to only ‘choose’ one in each case. While groundbreaking at the time, the judgment was deemed of limited impact, as prosecutors and courts have applied it inconsistently.²¹⁹ Still, it is often pointed at as one more step towards reform of the mandatory death penalty for drug offences in Malaysia, as it further highlighted systemic shortcomings with its application; and kept the issue on the agenda.

218 Alma Nudo *Atenza v. PP & Another Appeal*, 5 Current Law Journal.

219 Interview with Dobby Chew, 20 February 2024; Antolak-Saper et al., ‘Drug Offences and the Death Penalty in Malaysia: Fair Trial Rights and Ramifications’.

In Singapore, the 2010 constitutional challenge to the mandatory death penalty was quickly dismissed by courts. Still, several actors believe it was a key moment in the process that led to the 2012 reform, because of the systemic issues that it put in the spotlight, and the attention it garnered both domestically and internationally.²²⁰ The fact that high-profile UK lawyers were involved in the case reportedly raised its profile.²²¹ Meanwhile, the fact that it revolved around the case of Yong Vui Kong meant the Malaysian government and international actors also followed it closely. All of this led to a level of attention and scrutiny that the Singapore government simply could not ignore, likely leading to a further re-evaluation of this policy.

220 Hood and Deva, *Confronting Capital Punishment in Asia*, 42; Interview with Kirsten Han, 14 February 2024.

221 Interview with Kirsten Han, 14 February 2024.

4.1.4 THE ROLE OF THE INTERNATIONAL COMMUNITY

While domestic actors are the driving force behind reforms, these experiences indicate that there are different, important roles that members of the international community can play.

First, **diplomatic pressure** by both fellow states and multilateral institutions – and the advocacy work behind it – has emerged as an important driver in several contexts; often framed in human rights language.

In Pakistan for example, the EU is credited with playing a “massive role” through GSP+, and thanks to its strong position against the death penalty. The EU regularly raised the issue with authorities and kept an open channel of communication for civil society to provide information. Not by chance, a

dense set of reforms – including amendments to the CNSA – was announced by the government shortly after the 2020 monitoring mission on GSP+ by the EU.²²² A similar dynamic was noted in Uzbekistan, where experts pointed to the influence of a Partnership and Co-operation agreement with the EU in 1999 under which the two sides obliged themselves to “endeavour to cooperate on matters pertaining to the ... protection and promotion of human rights.”²²³

OSCE was identified as an important influence in former Soviet countries. In Turkmenistan, the intention to abolish capital punishment was firstly announced at an OSCE meeting, and the “principles and objectives” of OSCE are explicitly mentioned in the Presidential decrees establishing first a moratorium and then abolition.²²⁴ This integrated guidance by the UN which in General Assembly Resolution No. 50/80, recognising the status of permanent neutrality of Turkmenistan, recommended the government align its legislation with “generally accepted standards.”²²⁵ In the context of Tajikistan, reforms to strengthen human rights protections were reportedly influenced by increased engagement with the UN and OSCE, particularly through roundtables on the death penalty attended by OSCE experts, state officials, and NGOs.²²⁶

Diplomatic pressure, both direct and on involved UN agencies, was essential in the case of Iran. Here, as reconstructed in section 3.3.1, engagement by countries funding drug law enforcement proved crucial both in relation to the Iranian regime, and vis-a-vis UNODC; insomuch that “at the end of the day what led to a reform was the international pressure and particularly funding flows interruption.”²²⁷

Second, human rights mechanisms and processes such as UN Treaty Bodies, Special Procedures, and the OHCHR influence domestic reforms through **regular monitoring and reporting, but also by reacting against problematic developments** and responding to requests for urgent action by civil society. In Vietnam, the “application of the death penalty in general and the death penalty for drug-related crimes in Vietnam has narrowed thanks to international human rights agencies’ recommendations.”²²⁸ These found fertile ground in the country due to its resolve to better integrate in the international community and the world economy, so that “Vietnam is required to play by international rules, including human rights standards.”²²⁹ While the Singaporean government ostensibly resists any engagement with international actors on this issue, in practice the attention catalysed by the case of Yong Vui Kong, and the broader criticism it attracted by international institutional and non-institutional actors alike is believed to have at least raised the reputational risk connected to ongoing use of capital punishment, triggering reform.²³⁰ The UPR was a relevant process in the case of Vietnam and Thailand. However, it is worth noting that in other countries, such as in Indonesia, such process was deemed less impactful, as governments do not feel they will suffer any consequences by ignoring its outcomes.²³¹

Third, international actors including UN mechanisms, academics and non-governmental organisations contribute by **sharing expertise, raising awareness of issues, providing evidence, and creating spaces for discussion**. For example in Indonesia, international NGOs hosted meetings with members of parliament, local civil society, the national human rights

222 Interview with Justice Project Pakistan, 15 February 2024.

223 Amnesty International, “Justice Only in Heaven”: The Death Penalty in Uzbekistan’.

224 Decree of the President of Turkmenistan on the abolition of the death penalty in Turkmenistan; Decree of the President of Turkmenistan on the introduction of a moratorium on the use of the death penalty as a criminal penalty.

225 General Assembly, ‘Resolution 50/80. Maintenance of international security’ (12 December 1995), <https://documents.un.org/doc/resolution/gen/n96/761/23/img/n9676123.pdf?token=U5zKcFJoahUThph2GJ&fe=true>; communication with Farid Tukhbatullin, 27 February 2024.

226 Amnesty International, ‘Tajikistan: Deadly Secrets - The Death Penalty in Law and Practice’.

227 Interview with Roya Boroumand, 20 February 2024.

228 E-mail communication with Expert 1, 19 February 2024.

229 Tran and Nguyen, ‘Not There Yet, but Getting There – Death Penalty for Drug Offenses in International and Viet Nam’s Laws’.

230 Interview with Kirsten Han, 14 February 2024; Hood and Hoyle, *The Death Penalty: A Worldwide Perspective*.

231 Interview with LBH Masyarakat, 22 February 2024.

commission and other stakeholders to discuss issues related to the death penalty,²³² including through a comparative and international law perspective. In the Philippines, local civil society made ongoing and strategic use of international voices, successfully integrating them into a broader strategy.²³³ This included submissions and advocacy to the Human Rights Committee and other UN bodies (resulting in targeted recommendations and high-level engagement with institutional actors) but also involvement of international experts.²³⁴ Particularly telling is FLAG's decision to invite Prof Roger Hood, the leading global authority on the death penalty, to testify in front of congressional committees in charge of considering bills to abolish the death penalty; followed by side meetings and press engagement. Prof Hood's contribution was described as "immeasurable" and jumpstarting abolition in Congress, as evidenced by a sudden shift in position by some of the members of congress who attended the hearings.²³⁵

232 Interview with LBH Masyarakat, 22 February 2024.

233 For a full reconstruction see Orendain, *Not in Our Name: The Story of the Abolition of the Death Penalty in the Philippines*, 94 - 100.

234 Orendain, 100; Interview with Karen Gomez Dumpit, 13 February 2024.

235 Orendain, 94.

Lawyers in India also regularly engaged with UN experts and international NGOs to exchange information and discuss strategies. In this context, another important role of international experts emerged, of 'putting an issue in focus' thus kickstarting interest and eventually action domestically. In talking about the factors influencing the constitutional challenge to the death penalty, an Indian expert described Harm Reduction International's global overviews on the death penalty for drug offences as an "eye opener" that put the issue on the agenda for local organisations, which had never paused on it specifically before.²³⁶ Similarly in Iran, international organisations were credited with first identifying connections between executions and narcotics control funding, thus providing an effective argument in the advocacy towards reform.²³⁷

236 Interview with Expert 2, 6 February 2024.

237 Interview with Mahmood Amiry-Moghaddam, 1 March 2024.

The strategic interplay between domestic and international actors appeared more determinant in contexts with closed civic space or where political will at the highest levels of decision-making was absent, or very limited. Perhaps the most striking example is that of Iran, where the Amendment to the Anti-Narcotics Law is seen as the result of collaboration between national and international NGOs using information from the ground to pressure the international community into action; in turn catalysing discussions and eventual change at the domestic level. As reconstructed in section 3.3.1, things started moving when more information on drug-related executions began filtering out of Iran through local organisations, which played a key role by (a) compiling stories and evidence, and (b) sharing them with the international community. This put the issue of executions and drug law enforcement in focus, making it a priority, also thanks to advocacy with diplomatic missions and UN agencies, as well as with the EU. Eventually, this created pressure at the domestic level, where sceptical voices of drug law enforcement felt empowered to raise the issue more strongly. This made political debate inevitable and raised the political (and financial) cost of executions both domestically and internationally, leading to the adoption of the 2017 Amendment.

As summarised by Roya Boroumand when addressing the collaboration between local and international organisations:

"Our primary strength is our research, data, and analysis, our understanding of developments and ability to raise awareness inside my country. And international organisations have expertise on the developments of human rights laws and practices, international

institutions, and the political landscape, which enables them to ensure that our findings gets to the right people and decide of countries to target. It is the combination of our strengths that makes advocacy most effective. We can't do it alone and they can't do it alone."²³⁸

238 Interview with Roya Boroumand, 20 February 2024.

The government of Uzbekistan also pointed to an interesting mix of local and international forces as drivers, explicitly framing abolition as “a result of the implementation of international legal provisions through domestic law and the vigorous rights campaigns of extra-judicial protection bodies such as the National Centre for Human Rights, the Ombudsman and other NGOs.”²³⁹

239 Human Rights Committee, 'Initial reports of States parties due in 1996 – Uzbekistan', UN Doc. CCPC/C/UZB/99/1 (15 February 2000).

Last but not least, the international community helped advance reform processes **by funding civil society organisations, thus empowering them** to work on the ground. A 2023 study by HRI and the World Coalition Against Death Penalty shows that funding to abolitionist organisations was key to developing an effective movement which achieved significant progress towards death penalty abolition both at international and country level. Domestically, funding by international institutional and private donors empowered local organisations to conduct research, campaigning, and advocacy towards law and policy reform, achieving significant progress and often leading the movement towards abolition.²⁴⁰

240 Arielle McHenry and et al., 'Achieving Abolition: Understanding the Future of Funding of the Death Penalty Abolition Movement' (Harm Reduction International and World Coalition Against the Death Penalty, 2023), https://hri.global/wp-content/uploads/2023/05/HRI_DP-abolition-funding-1.pdf.

The potential impact of different international processes and actors, as well as their willingness to engage, is highly dependent on context. On one hand, fellow states are more likely to engage if they already have a strong position on the death penalty (such as EU countries), or – as in the case of Indonesia – if they have citizens on death row in the concerned country.²⁴¹ On the other hand, different retentionist countries will show varying levels of receptiveness to pro-reform arguments based on political, economic, and cultural circumstances, as shown by the case of Vietnam further analysed in section 4.2.2. A different scenario was described in Malaysia, where according to a local activist the government “never cared for international pressure”. In fact, excessive engagement by international actors or excessive reference to international standards was deemed potentially harmful, as it would risk being perceived as a form of “western imperialism” that would trigger backlash.²⁴²

241 Interview with LBH Masyarakat, 22 February 2024.

242 Interview with Dobby Chew, 20 February 2024.

Finally, in some instances interviewees paused on a **negative role of international actors**. For example, ongoing use of capital punishment or of extremely punitive responses to drugs by one country sometimes serves as example to other countries, preventing reform. In the case of Iran, Boroumand noted how

*“The US war on drugs affected Iran as well. Leaders in our community are comforted when a strong democracy does something... it cannot be wrong if democracies do it too. The fact that there are no drug related executions in the US or that there is more due process become irrelevant details. All they see is - Americans kill, and we kill. It would be much easier for us to fight the death penalty for drug offenses if there were no executions in the US.”*²⁴³

243 Interview with Roya Boroumand, 20 February 2024.

The failure of UNODC to take a strong, proactive stance on the death penalty has also been identified as an obstacle to broader reform, and a missed opportunity. Talking about resisting attempts to reintroduce the death penalty for drug offences in the Philippines during the Duterte's Presidency, Gomez Dumpit concluded, "my frustration is the UN Office on Drugs and Crime and the processes in Vienna. That's where you will see the polarization of anti-death penalty and anti-crime [...] we need to move beyond the dichotomy and it's not happening fast enough in that international sphere."²⁴⁴

244 Interview with Karen Gomez Dumpit, 13 February 2024.

DEATH PENALTY REFORM AS A MESSAGE TO THE INTERNATIONAL COMMUNITY

In some cases, experts hinted at how the death penalty for drug offences gets reformed or abandoned also to 'send a message' to the international community about the health of a country's institutions. In Nigeria, the military leader who abolished the death penalty for drug offences - Ibrahim Badamasi Babangida – was reportedly more sensitive to international pressure than his predecessor; thus according to Uwandu, the reform may have been a way to show the international community his legitimacy, and distance himself from his predecessor, signalling his commitment to start transitioning towards a more democratic system. Similarly in Pakistan, removing death as a punishment for drug and other offences was partly aimed at enhancing the country's standing with the international community. As explained by JPP,

"The death penalty is an issue which Pakistan has seen positive development on, and resultantly, received positive feedback on from the international community. Pakistan is performing quite abysmally in other areas [...] The death penalty is an area that they can show positive progress on."

Finally in Turkmenistan, when addressing the Human Rights Committee, the government framed abolition and accession to the second optional protocol to the ICCPR as "further confirmation that the country strictly abides by the principles of humanism, democracy and protection of human rights and fundamental freedoms." This was intended to send a clear message regarding the foundational values of the new country, and to distance itself from the Soviet experience.

4.2 REFORMS AS INCREMENTAL PROCESSES

4.2.1 STEP BY STEP: REFORMS AS BUILDING BLOCKS TOWARDS ABOLITION

Another recurring feature of these processes is the incremental nature of progress, which often consists of many, small steps rather than of sudden and isolated, comprehensive changes. One among many examples is that of Malaysia, where restricting use of the death penalty for drug offences implied first introducing limited discretion in drug trafficking cases; then, excluding recourse to the double presumption of possession and intent to traffic; then, in 2023, fully removing the mandatory nature of the death penalty for all crimes this was prescribed for. And even this last development can be seen as one more step in a longer process which may eventually result in abolition. Similarly in Turkey and Uzbekistan, repeal of the death penalty for drug offences was not an end in itself, but one part of an incremental process which concluded with full abolition. In Vietnam, applicability of the death penalty was progressively restricted through successive amendments to the Criminal Code spanning over 15 years.

While a common pattern, and to a certain extent an inevitable one due to the complexity of the death penalty, some of these experiences also show a potential negative side of this incremental approach; meaning the **risk of hardening a country's position in an intermediate step**, preventing full abolition and more structural reforms. This was perhaps best explained by Kirsten Han in assessing the 2012 reform in Singapore:

“At the time we hoped that it would be a sign in the right direction. But now that so much time has passed.. The one thing that comes to mind is this analogy that a criminologist brought up before when he was lecturing. He said - one of the problems of the death penalty sometimes is that when you make these incremental changes It is like when you keep a bonsai plant and you trim it. But the plant is stronger. Now, when I look back on it, I think about it a bit more like that: they seem to have trimmed it, but it's still very much entrenched in Singapore.”

In other words, tinkering with some of the most problematic aspects of a measure by focusing on technical amendments may give the impression that the issue has been addressed just enough, and that no further scrutiny is needed; while in practice its impact is limited.²⁴⁵ A similar dynamic emerged in India, where an expert concluded that to a degree fact that the death penalty was made discretionary actually decreased the likelihood of further reform, as it created the appearance that capital punishment was reserved to the most serious drug offenders and was thus acceptable.²⁴⁶

²⁴⁵ Interview with Kirsten Han, 14 February 2024.

²⁴⁶ Interview with Expert 2, 6 February 2024.

Proceeding through small tweaks may also result in limited impact, either because they are too minor to affect the practice, and/or because they fail to also address the underlying, systemic issues that shape imposition of capital punishment in the first place. These are many and too complex and diverse to be discussed here, but the limitations are well exemplified by the case of Vietnam. Here, despite repeated and formally significant restrictions to the list of drug crimes punishable by death, some observers claim the number of drug-related death sentences has not dropped and may in fact have increased. A

key reason is a failure to address broader issues connected to its application – such as state secrecy preventing an evidence-based assessment, systemic due process issues in capital trials, as well as judicial and political perceptions about drug offences as exceptionally serious.²⁴⁷

4.2.2 A BROADER PICTURE: REFORMS AS PART OF POLITICAL OR INSTITUTIONAL PROCESSES

This brief review has shown how reforms to the death penalty for drug offences often do not happen in a vacuum but are part of or can be linked to broader political or social processes.

This is a typical feature of death penalty abolition, which has been closely linked to processes of democratisation or institutional reform.²⁴⁸ But it is also related to the inherently political nature of drug control, and to the instrumental use that many governments do of punitive drug policies, or of harmful narratives on drugs, as a tool of social control or for political expediency. Resort to the death penalty for drug offences is thus often expanded or restricted as part of, or in connection to, broader political or institutional developments, as it emerged again and again in discussions with experts.

In many cases the death penalty for drug offences was **removed during a broader process of democratisation**. This was the case in the Philippines in 1987; in Taiwan in 1992 (where the amendment was one of several reforms aimed at sanctioning the end of the Martial Law period and the start of democratic rule);²⁴⁹ and in Central Asian countries. In Tajikistan, the Ministry of Justice explained the gradual reduction in the list of crimes punishable by death as integral to a process of developing as an independent state with its own set of values and laws, having renounced the “old beliefs” of the Soviet Union.²⁵⁰ Parallel narratives recur in Turkmenistan and Uzbekistan, where the death penalty was abolished among post-independence reforms with democracy and human rights objectives. Interestingly, these same processes were also marked by the gradual ratification of international human rights treaties.²⁵¹

In Nigeria, repeal of the death penalty for drug offences was directly connected to a change in regime. The peculiarity in this case is that the regime change was itself – at least in part – triggered by drug-related executions and the upheaval they provoked. According to Lawyer Angela Uwandu, Buhari introduced the death penalty for drug offences as part of a broader ‘war against indiscipline’ to instil fear in the population and “send a message (...) that drug peddling would not be tolerated”. The military leader who succeeded him – Ibrahim Badamasi Babangida – repealed the death penalty for drug offences not only to appease protesters, but also because he was more sensitive to international pressure. Thus, the reform may have been a way to show the international community his legitimacy, and distance himself from his predecessor, signalling his commitment to start transitioning towards a more democratic system.²⁵²

The **instrumentalisation of the death penalty for drug offences for political purposes** is particularly apparent in Iran, where (as already outlined in section 3.3.1.) executions, particularly for drug offences, are used by the regime as an instrument of control. Not by chance the number of executions increases in periods of instability or societal upheaval:

247 Tran and Vu, ‘The Changing Nature of Death Penalty in Vietnam: A Historical and Legal Inquiry’; also e-mail communication with Expert 1, 19 February 2024.

248 ICOMDP, ‘How States Abolish the Death Penalty’.

249 Liao, ‘From Seventy-Eight to Zero: Why Executions Declined after Taiwan’s Democratization’.

250 ‘The Death Penalty in the OSCE Area 2006’.

251 Ibid.; Georges, ‘The Process of Abolishing the Death Penalty in Member States of the Organisation of Islamic Cooperation’.

252 Interview with Angela Uwandu, 23 February 2024.

“Part of why the drug executions are going up the way they are is to make a point. Because, as we hear from political prisoners and ordinary prisoners, executions freeze the prisons. So [they] send the message, and at the same time, [they] don’t pay the same political cost as if you kill political activists.”²⁵³

253 Interview with Roya Boroumand, 20 February 2024.

People convicted of drug offences are indeed seen as “the perfect victims”²⁵⁴ of this instrumental use of the death penalty. Because of the unique stigma attached to drugs and the fact that most of these defendants are from poor and marginalised background, drug-related executions attract much less condemnation, particularly by international actors. For the same reason, articulating and exposing this policy, and having different actors contrast the ongoing narratives on drugs was a key step towards the 2017 amendment. Experts also noted a slightly different dynamic linking political developments and reforms to capital punishment in Iran, with seemingly unrelated events having a domino effect on capital punishment policy and practice. For example, around 2009 the Iranian government responded to widespread protests with mass arrests of hundreds of thousands of activists. Because of severe overcrowding these politically active prisoners found themselves detained with people imprisoned, and sometimes sentenced to death, for drug offences; and started paying attention to their profile and the pace of drug-related executions. Thanks to these prisoners, who were better connected to activists on the outside, more and more information on the death penalty began filtering out of the country; eventually informing advocacy that will culminate with the 2017 amendment.²⁵⁵ Boroumand also shed light on another peculiar link between protests and drug-related executions: marginalisation. As explained:

254 Interview with Mahmood Amiry-Moghaddam, 1 March 2024.

“People have been more restless generally in the past few years. The 2017 protest was the protest of the poor and the downthrown.. and all the factions of the regime, including the reformers, dismissed them completely. And that’s when you started to have anti regime protests. So the categories of people who were not politically active, [...] who were the constituency of the state.. those people have now turned against the state. Those people are the same people who also get executed for drugs.”²⁵⁷

255 Interview with Roya Boroumand, 20 February 2024.

Because of this connection, protesters became more aware and more sensitive to the issue of executions, integrating it in their agendas.

256 Ibid.

In Vietnam, authorities often justify death penalty reform with efforts towards “modernisation” and “humanisation” of society, the state, and its criminal justice system. Similarly to the Central Asian experiences, this goes hand in hand with the progressive ratification of international human rights treaties and indigenisation of human rights standards; also leading to a more restrictive interpretation of “most serious crimes”.²⁵⁸ Reducing the number of drug crimes to which the death penalty can be imposed is then one part of a broader effort to reduce applicability of the death penalty in general. As explained by government representatives,

257 Tran and Nguyen, ‘Not There Yet, but Getting There – Death Penalty for Drug Offenses in International and Viet Nam’s Laws’.

“Reducing the death penalty is a major policy of the Party expressed in resolutions on judicial reform and in our country’s criminal legislative practice. This policy is completely consistent with the spirit of protecting human rights and citizens’ rights of the 2013 Constitution and the international integration trend of our country.”²⁵⁸

258 Government of the Socialist Republic of Vietnam, ‘Report about the Penal Code project (amended), No.186/TT-CP (27 April 2015, <https://www.bqlang.gov.vn/142-du-thao-bo-luat-hinh-su-sua-doi/4093-to-trinh-ve-du-an-bo-luat-hinh-su-sua-doi.html> [translated].

A similar modernisation narrative emerged in Malaysia, where policymakers justified the 2023 repeal of the mandatory death penalty as part of a broader commitment to make the Malaysian criminal justice system more modern and progressive, moving away from the country's colonial heritage.²⁵⁹ In the same way in Indonesia, the introduction of the probationary death penalty was achieved through a decades-long process of reviewing the Criminal Code imposed by colonial powers.

4.3 COMMON NARRATIVES

A closer look at debates surrounding reforms reveals recurring arguments, some of which reviewed in the following paragraphs. While most of them are common justifications in favour of restricting or abandoning use of the death penalty as a tool of drug control, some reappear as arguments *against* reform; and others even play a dual role. Notably, while they are presented separately, normally multiple arguments are raised concerning the same reform, in a mutually reinforcing way.

4.3.1 DETERRENCE

Perhaps the most ubiquitous issue raised in the context of processes aimed at restricting use of the death penalty for drug offences is that of deterrence. The vital need to deter drug crimes on one side, and the 'self-evident' lack of deterrence on the other, return in virtually every debate on both the death penalty *and* drug control.

Just to cite some, the need to deter drug trafficking is cited as a key reason against more profound reforms in contexts as different as India and Vietnam. In the former, calls to fully abolish the death penalty were resisted because of its perceived symbolic role: although it is rarely applied, the fact that it remains in the books shows that the government is not 'soft on drugs'.²⁶⁰ In the latter, institutional actors regularly refer to the increased complexity and scale of drug crimes as reason not to fully remove the death penalty; justifying its regular imposition.²⁶¹ In the Philippines, the persistent narrative of drugs as 'root of all evils' implied that extreme punishment for drug offences was necessary not only to deter drug use and drug crimes, but to deter *all* serious crimes.²⁶² This was also evidenced by official justifications for reintroduction of the death penalty in 1994 after full abolition, which included the need to respond "the rash of violent drug-related crimes."²⁶³

The ineffectiveness of the death penalty to deter drug crimes was cited as a key reason for reform by many policymakers, in different context. This was a central point of discussion during parliamentary debates in Malaysia for the adoption of the 2023 reform; and the Minister of Law and Institutional Reform conceded this argument when presenting the new bills at the UN Human Rights Council.²⁶⁴ Similarly in the Philippines, members of Congress in favour of abolition stressed that "the 10-year death penalty law had failed to curb the crime rate in the country and, thus, was not a deterrent to crime [...] Rather, the death penalty is an act that has a brutalizing effect and which incites the violent tendencies of persons."²⁶⁵ In Iran, a defining moment was the acknowledgment by several

259 'Penyata Rasmi Parlimen Dewan Negara - Parlimen Kelima Belas Penggal Kedua Mesyuarat Pertama' (Kuala Lumpur, 11 April 2023), 18 and 22.

260 Interview with Expert 2, 6 February 2024.

261 E-mail communication with Expert 1, 19 February 2024; 'Study on the Possibility of Viet Nam Ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights Aiming at the Abolition of the Death Penalty'.

262 Interview with Karen Gomez Dumpit, 13 February 2024.

263 Human Rights Committee, 'Consideration of reports submitted by State Parties under Article 40 of the Covenant: Second periodic report – The Philippines', UN Doc. CCPR/C/PHIL/2002/2 (18 September 2002); Orendain, *Not in Our Name: The Story of the Abolition of the Death Penalty in the Philippines*, 19.

264 'Statement for the Biannual Panel Discussion on Death Penalty 52nd Session of UN Human Rights Council -Theme: Human Rights Violations Relating to the Use of the Death Penalty. By the Honourable Ms. Azalina Othman Said, Minister in Prime Minister's Department (Law and Institutional Reform) of Malaysia'.

265 Allen, 'Can We End the Death Penalty? The Role of NGOs in the World-Wide Campaign', 94 and 97; ICOMDP, 'How States Abolish the Death Penalty', 4.

institutional actors, at different levels, that punitive drug control, and the death penalty as its most extreme manifestation, does not deter drug use nor crime.²⁶⁶ Among many others, in 2016 Mohammad Baqer Olfat, the deputy head of the judiciary, stated: “The truth is, the execution of drug smugglers has had no deterrent effect.”²⁶⁷

In Indonesia, deterrence was a central argument on both sides of the debate. During the same parliament committee session in September 2015, a civil society representative paused on research by UN agencies and experts proving the death penalty does not have a unique deterrent effect on drug crime; while MP Ria Latifa commented: “I am a supporter of the death penalty. Including drugs. You can imagine that in Indonesia there could be an international factory to distribute drugs to global networks. Of course we need to be very tough with dealers.”²⁶⁸

Interestingly, deterrence of drug trafficking and effectiveness of drug law enforcement were in some contexts cited as key reasons for adopting reforms. This narrative emerges in Malaysia, where Azalina Otham, then-Minister for Legal Affairs, clarified when presenting the 2017 amendment to Parliament:

*“This proposed amendment was drafted carefully with the main intention in mind government, to protect the public interest, by giving serious prevention messages and improve operational effectiveness for agencies law enforcement including PDRM, National Anti-Drug Agency, Royal Customs Department Malaysia and the Malaysian Maritime Enforcement Agency in combating the problem drug trafficking in Malaysia. This proposed amendment gives the opportunity to convicted persons to cooperate with the authorities to provide information [...] The information can help law enforcement agencies, in their efforts.”*²⁶⁹

But the context in which this narrative recurs with most strength is that of Singapore, where the government’s central messaging around the 2012 reform was precisely its potential to enhance the effectiveness of drug law enforcement. This features in official press releases (“...the amendments will also sharpen our regulatory tools and calibrate our legal framework to enable the Government to tackle drug trafficking more effectively”);²⁷⁰ in the reconstruction of experts (“...they were working very hard to assure MPs that it did not mean that they were getting soft on drugs. [The government was saying] that it was actually going to be more effective, that they were going to disrupt drug trafficking”);²⁷¹ and in Parliamentary debates.²⁷² The then-Deputy Prime Minister presented the amendment in Parliament as aimed at the “refinement of our approach towards sentencing offenders. Our cardinal objectives remain the same. Crime must be deterred, and society must be protected against criminals. But justice can be tempered with mercy.”²⁷³

Some of the experts interviewed paused on the lack of evidence that the death penalty was in fact deterring drug crime. In Turkey, IHD reviewed official figures on convictions for drug offences between 1959 and 1981, when capital punishment was in place for drugs, and found no notable impact on convictions.²⁷⁴ In Nigeria, Uwandu concluded: “I would not say that abolition of the death penalty had any impact in either increasing or decreasing the rate of

266 Interview with Roya Boroumand, 20 February 2024; Girelli, ‘The Death Penalty for Drug Offences: Global Overview 2018’; Iran Human Rights and ECPM, ‘Annual Report on the Death Penalty in Iran 2015’ (Paris: Ensemble Contre la Peine de Mort, 2016), https://iranhr.net/media/files/Rapport_iran_2014-GB-120314-BD.pdf.

267 ‘Death Penalty Failing to Deter Drug Trafficking in Iran: Official | Reuters’, accessed 27 June 2024, <https://www.reuters.com/article/world/death-penalty-failing-to-deter-drug-trafficking-in-iran-official-idUSKCN1120A6/>.

268 ‘RDPU R KUHP Pada 8 September 2015’, Reformasi KUHP, 8 September 2015, <https://reformasikuhp.org/rdpu-r-kuhp-pada-8-september-2015/> [translated].

269 ‘Penyata Rasmi Parlimen Dewan Rakyat - Parlimen Ketiga Belas Penggal Kelima Mesyuarat Ketiga’ [translated].

270 ‘Amendments to the Misuse of Drugs Act’, Central Narcotics Bureau of Singapore News (15 October 2012), accessed 24 June 2024, <https://www.cnb.gov.sg/NewsAndEvents/News/Index/amendments-to-the-misuse-of-drugs-act>; Chan, ‘Escape from the Hangman’s Noose? Singapore’s Discretionary Death Penalty for Drug Traffickers’, 86.

271 Interview with Kirsten Han, 14 February 2024.

272 Among others, ‘Response by Minister for Law, Mr K Shanmugam, during the Second Reading of the Misuse of Drugs (Amendment) Bill’.

273 ‘Ministerial Statement by the Minister for Law Mr K Shanmugam on the Changes to the Applications of the Mandatory Death Penalty to Homicide Offences’.

274 Communication with Human Rights Association (IHD), 14 February 2024.

trading in illicit drugs or use...And I wouldn't say it had any particular impact because this is the trend, is the same, everywhere."²⁷⁵

275 Interview with Angela Uwandu, 23 February 2024.

4.3.2 THE CIRCUMSTANCES OF THE CRIME AND THE DEFENDANT: PROMOTING PROPORTIONALITY AND INDIVIDUALISED JUDGMENT

Many reforms were justified with the need to enhance proportionality and promote more individualised approaches to sentencing, sensitive to the diverse circumstances of the crime and the defendant. This was a key argument particularly in those processes aimed at removing or reforming the mandatory nature of the death penalty or influencing judicial attitudes.

The *Indian Harm Reduction Network v Union of India* judgment which declared the mandatory nature of the death penalty for drug crimes unconstitutional found that "the standardised mandatory death penalty specified [...] completely takes away the judicial discretion, nay, abridges the entire procedure of administration of criminal justice of weighing the aggravating and mitigating circumstances in which the offence was committed as well as that of the offender."²⁷⁶

276 *Indian Harm Reduction Network v. Union of India*.

In Taiwan, experts identified as key reasons for the 1992 amendment the issue of proportionality of the death penalty as a 'harsh' punishment, and the need to allow judges to better review individual circumstances.²⁷⁷

277 Interview with Prof Fort Fu-Te Liao, 16 February 2024; Communications with Taiwan Alliance to End the Death Penalty (TAEDP), 5 March 2024.

In Pakistan, proportionality recurs both in the *Ghulam Murtaza* judgment and in the 2023 abolition bill. The former justified the introduction of sentencing guidelines by noting that in many situations a sentencing approach based only upon quantity of the recovered substance may lead to unjust and oppressive results and to punishments which may be "unduly cruel and harsh."²⁷⁸ The latter stressed that "the death penalty is used in a disproportionate manner under the CNSA [Control of Narcotic Substances Act, 1997] that violates the fundamental right to life which happens to be the most basic of all human rights."²⁷⁹

278 *Ghulam Murtaza and another v The State*.

279 Full text available at: https://na.gov.pk/uploads/documents/62f3d2dce5d9b_762.pdf.

Malaysian reforms all share this underlying justification. In presenting the 2017 amendment, the government stressed that "this law will give discretion to the court as well maintain the principles of consistency and fairness in sentencing based on to the category and severity of the offense committed [...] and drugs mule [cases] in which the actual offender is more appropriate only to be sentenced to prison."²⁸⁰ Similarly the 2023 reform was framed as guided by (among others) the principle of proportionality as a tenet of "the national legal philosophy."²⁸¹

280 'Penyata Rasmi Parlimen Dewan Rakyat - Parlimen Ketiga Belas Penggal Kelima Mesyuarat Ketiga', 32.

281 'Penyata Rasmi Parlimen Dewan Negara - Parlimen Kelima Belas Penggal Kedua Mesyuarat Pertama'; 'Statement for the Biannual Panel Discussion on Death Penalty 52nd Session of UN Human Rights Council -Theme: Human Rights Violations Relating to the Use of the Death Penalty. By the Honourable Ms. Azalina Othman Said, Minister in Prime Minister's Department (Law and Institutional Reform) of Malaysia'.

Finally in Singapore, the reform of the mandatory death penalty was an attempt to "draw a very careful, calibrated distinction between the different levels of accountability of persons working for drug syndicates and to temper and mitigate the harsh drug laws with compassion."²⁸²

282 Chan, 'Escape from the Hangman's Noose? Singapore's Discretionary Death Penalty for Drug Traffickers'.

A key reason why proportionality and individualised assessment feature so strongly as driving justifications for reforms is a growing awareness that **the death penalty for drug offences disproportionately and uniquely affects the poorest and most marginalised in society, and in the drug market.**

Indeed, the profile of capital drug defendants shapes many of the analysed debates.

In the Philippines, a key argument made by the pro-abolition movement was that the death penalty was 'anti-poor'.²⁸³ In announcing the 2000 moratorium, President Estrada noted that "most of those sentenced to death were poor and underprivileged."²⁸⁴ When promoting full abolition in 2006, President Macapagal Arroyo stressed how this will "remedy the findings that death penalty is anti-poor as the underprivileged who cannot afford the services of competent counsels are oftentimes the ones convicted of death penalty."²⁸⁵

Again in Malaysia, policymakers paused on the overrepresentation of drug couriers on death row, acknowledging death sentences are mainly imposed against individuals from marginalised and vulnerable backgrounds,²⁸⁶ some of which were tricked or coerced into carrying drugs.²⁸⁷ In presenting the reform to the UN Human Rights Council in 2023, Minister Othman admitted that "the mandatory death penalty has disproportionately harmed the most marginalised and disenfranchised members of society."²⁸⁸ This narrative was already present in debates around the 2017 reform, when policymakers conceded that "there are also many cases [...] where the victims or drug mules are forced or become victims of circumstances where they had to do what they did. In that case we need to consider their interests by giving discretion to the court to impose an appropriate punishment."²⁸⁹ However, a key contributor to placing this issue front and centre ahead of the 2023 Bills was the involvement of families of people on death row: sharing their lived experiences and those of their family members added depth and relatability to the debate, overcoming prejudices and stereotypes.²⁹⁰

Finally in Iran, already in the late 2000s some officials had begun noting that most people sentenced to death were poor and from marginalised areas, and that the death penalty strengthened intergenerational cycles of poverty and criminality.²⁹¹ The then- Deputy Chairman of the Legal and Judicial Committee of the Iranian parliament was quoted as saying:

*"I have been a judge and chief justice for 20 years and I am well aware of the conditions of prisons and their families.90% of those executed related to narcotics were couriers who were forced to carry narcotics for reasons such as their daughter's dowry or mother's work. [...] Those who were executed in such circumstances would face problems in their families, such as the fact that the society looked at them differently and their children would face problems in the future for employment and even marriage. There was practically no way for their family to return to life, and unfortunately, a series of crimes was repeated."*²⁹²

283 As evidenced by the findings of: FLAG, 'Socio-Economic Profile of Capital Offenders in the Philippines'.

284 As cited in Allen, 'Can We End the Death Penalty? The Role of NGOs in the World-Wide Campaign'.

285 ICOMDP, 'How States Abolish the Death Penalty', 41.

286 'Penyata Rasmi Parlimen Dewan Negara - Parlimen Kelima Belas Penggal Kedua Mesyuarat Pertama', 22.

287 Ibid., 26.

288 'Statement for the Biannual Panel Discussion on Death Penalty 52nd Session of UN Human Rights Council -Theme: Human Rights Violations Relating to the Use of the Death Penalty. By the Honourable Ms. Azalina Othman Said, Minister in Prime Minister's Department (Law and Institutional Reform) of Malaysia'.

289 'Penyata Rasmi Parlimen Dewan Rakyat - Parlimen Ketiga Belas Penggal Kelima Mesyuarat Ketiga', 39 [translated].

290 Interview with Dobby Chew, 20 February 2024.

291 Interview with Roya Boroumand, 20 February 2024; Interview with Mahmood Amiry-Moghaddam, 1 March 2024.

292 *مادعا زار دهم داوم نوناق جالصا اب ورفن رازه ۴: روپ یلام ک' | دلها جوفص | انسوی یزاد کربج* (ISNA), ISNA 'دندگیم ادیب تاجن روپ-رازه ۴: روپ یلام ک' | <https://www.isna.ir/news/96080804641> [translated].

4.3.3 IMPERFECT JUSTICE FOR AN IRREVERSIBLE PUNISHMENT

The decision to limit or remove the use of the death penalty in drug cases often also descended from a growing awareness of the many, inevitable fallacies of the criminal justice system in which context this is implemented, rooted in both human errors and structural issues.

In Turkmenistan, where most death sentences were imposed for drug crimes, abolition had been preceded by an admission, by the country's President, of widespread errors in sentencing for serious crimes.²⁹³

Similarly in Indonesia, one of the key arguments to advance reform was evidence of "unfair trials and human rights violations surrounding the implementations of the death penalty" and more broadly in the criminal justice system; particularly with reference to drug crimes, which are the main category for which people are sentenced to death in the country.²⁹⁴

A turning point in the process towards abolition in the Philippines was a Supreme Court review of death sentences imposed between 1993 and 2004, which found a staggering judicial error rate:

*"The cases where the judgment of death has either been modified or vacated consist of an astounding 71.77% of the total of death penalty cases directly elevated before the Court on automatic review that translates to a total of six hundred fifty-one (651) out of nine hundred seven (907) appellants saved from lethal injection."*²⁹⁵

While in Nigeria, the upheaval following the public executions of drug convicts was reportedly due to the blatant miscarriage of justice that had taken place, particularly the retroactive imposition of the death penalty and its arbitrary implementation.²⁹⁶

Among the most addressed indicators of the fallibility of the criminal justice system is a perceived **inconsistency in the imposition of capital punishment**; pointing to arbitrariness and lack of objectivity, and/or to a failure (or impossibility, in the case of mandatory sentences) to fully appreciate the circumstances of the crime and the defendant. The need for uniformity, standardisation and predictability in drug cases was central to the introduction of sentencing guidelines in Pakistan, through the *Ghulam Murtaza* judgment. As abovementioned, the judgment noted extreme fluctuation in judicial practices generating confusion and uncertainty against key standards of justice and equity.²⁹⁷ In Malaysia, inconsistent imposition of capital punishment and risk of miscarriage of justice were identified as *the* actual justification for the reforms.²⁹⁸

4.3.4 HUMAN RIGHTS AND MORAL VALUES

Promotion and protection of human rights is another recurring justification for pursuing reform to the use of the death penalty for drug offences as already touched upon in subchapter 4.1. Notably, while in some contexts human rights seem to be understood mainly as descending from international obligations, in others human rights appear to have been indigenised, with primary reference made to domestic standards. However, it is worth noting that in at least some

293 Amnesty International, 'Turkmenistan: "Astonishing" Admission of Judicial Errors Reinforces Concerns for Possible Prisoners of Conscience, Death Row Prisoners' (London: Amnesty International, 7 April 1997), <https://www.amnesty.org/fr/wp-content/uploads/2021/06/eur610041997en.pdf>.

294 Interview with LBH Masyarakat, 22 February 2024. Also, 'Pemberitahuan Pertanyaan Lisan Dewan Rakyat Mesyuarat Ketiga, Penggal Ketiga, Parlimen Keempat Belas', 26 November 2020.

295 *The People of The Philippines vs. Efren Mateo Y Garcia*, No. G.R. Nos. 147678-87 (Supreme Court of the Philippines 7 July 2004).

296 Interview with Angela Uwandu, 23 February 2024.

297 *Ghulam Murtaza and another v The State*; Interview with Justice Project Pakistan, 15 February 2024.

298 Interview with Dobby Chew, 20 February 2024.

of these experiences the reference to international human rights obligations as justifications is problematised by experts, who question how much this reference is genuine, and how much it could be an instrumentalisation. That is particularly relevant in contexts where the death penalty was not abolished but simply reformed, so that the measure is still implemented in violation of those same international standards.

As abovementioned, the language of human rights values and obligations was perhaps most explicit in countries undergoing a process of democratisation and state-building, as part of which they also aimed at better integrating in the international community. Among others, this was the case of Tajikistan, where the Ministry of Justice justified partial abolition as a consequence of - among others - “undertaking of international law obligations, principles and standards”;²⁹⁹ Turkmenistan, for which abolition and accession to OPII served as proof that “the country strictly abides by the principles of humanism, democracy and protection of human rights and fundamental freedoms”;³⁰⁰ and Uzbekistan, where one key factor leading to abolition was “implementation of international legal provisions.”³⁰¹

Similarly in Taiwan, the shift in use of the death penalty since the mid-2000s, with the drastic decrease in executions, was partly linked to the ratification of ICCPR in 2009, coupled with the adoption of the *Act to Implement the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights*.³⁰² These had a notable impact on judicial ‘understanding’ of capital punishment and its applicability to specific crimes. In turn, scholars were credited with sensitising judges on how to interpret ICCPR in line with international standards.³⁰³

In the Philippines, ratification of OPII and the ensuing obligations were central to the debate on the possible reintroduction of the death penalty for drug offences during the Duterte’s presidency.

In Vietnam, human rights standards are cited repeatedly as guiding the decision to limit death-eligible crimes, together with the inspiration provided by the international trend towards abolition.³⁰⁴ For example, as reconstructed by Prof. Tran and Nguyen:

*“In its explanatory report for the amendment of the 1999 Criminal Code, the Government has expressed the willingness to renovate its perception of crime and justice policy with a view to strike a balance between crime deterrence and protection of citizen’s and human rights as guaranteed in the 2013 Constitution and international human rights treaties to which Viet Nam is a party.”*³⁰⁵

It is hard to evaluate effectively how much of an influence international human rights standards actually are in Vietnam, especially in light of the country’s ongoing and widespread use of capital punishment for drug offences and absent some basic, essential fair trial safeguards. Still, it is worth noting that experts note a progressive ‘indigenisation’ of human rights principles in Vietnamese society and among policymakers, meaning human rights discourse may be genuinely felt by both the public and in elite circles, though understood through context-sensitive lenses.³⁰⁶

299 ‘The Death Penalty in the OSCE Area 2006’.

300 Human Rights Committee, ‘Consideration of reports submitted by State parties under the Covenant. Initial periodic report – Turkmenistan’, UN Doc. CCPR/C/TKM/1 (19 February 2010). Also, statement as cited in Amnesty International, ‘Death Penalty News’ (London: Amnesty International, March 2000), <https://www.amnesty.org/en/documents/act53/001/2000/en/>.

301 Human Rights Committee, ‘Consideration of reports submitted by State parties under Article 40 of the Covenant. Initial reports of State Parties due in 1996 – Uzbekistan’, UN Doc. CCPR/C/UZB/99/1 (15 February 2000).

302 ‘Act to Implement the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights’ (2009), <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=I0020028>.

303 Interview with Prof Fort Fu-Te Liao, 16 February 2024.

304 Among others, see: Tran and Nguyen, ‘Not There Yet, but Getting There – Death Penalty for Drug Offenses in International and Viet Nam’s Laws’.

305 Ibid. Similarly, human rights language is used in: Government of the Socialist Republic of Vietnam, ‘Report about the Penal Code project (amended), No.186/TTr-CP (27 April 2015, <https://www.bqllang.gov.vn/142-du-thao-bo-luat-hinh-su-sua-doi/4093-to-trinh-ve-du-an-bo-luat-hinh-su-sua-doi.html> [translated].

306 Tran and Nguyen, ‘Not There Yet, but Getting There – Death Penalty for Drug Offenses in International and Viet Nam’s Laws’.

In Mauritius, one key reason identified for moving towards abolition was the country's increasing awareness and sensitivity towards human rights and their implications vis a vis the death penalty. Interestingly in this case, human rights were reportedly perceived not as international obligations, but more of a homegrown set of principles.³⁰⁷

Human rights also recurred as a justification in debates pre-abolition in the Philippines³⁰⁸ and in Malaysia, where policymakers discussing both the 2017 and the 2023 reforms also explicitly referred to the 'most serious crimes' standards, to the developing interpretation of international legal provisions, and to violations in the context of the imposition of the death penalty for drug offences in the region.³⁰⁹ This is another case in which observers question to what degree reference to international law could have been for political convenience, rather than a manifestation of actual commitment.³¹⁰ Similarly in Pakistan, reference to fundamental rights in the 2023 Bill is suspected by some to be masquerading the main driver of abolition; meaning a commitment to comply with GSP+ conditionalities and improve the country's standing at the international level.

Somewhat parallel to human rights-centred justifications are those rooted in morality and values, such as the inherent value of life or religious beliefs.

This was perhaps most notable in the Philippines, where Catholic leaders and organisations were a key component of CADP, and where religious beliefs were strongly held by most of the population. Here, the death penalty was presented as against "the ultimate right of a person to live; the death of a criminal in the hands of the State will diminish rather than uplift the human spirit". President Macapagal Arroyo was also presented as guided, in her pursuit of abolition, by her religious valued and her "moral compass."³¹¹

Some references to morality also emerge with reference to Tajikistan, where the Ministry of Justice justified abolition with (among others) the value of life;³¹² and in Malaysia, where some political leaders reportedly supported reform because they were morally opposed to the death penalty.³¹³

4.3.5 THE PUBLIC OPINION NARRATIVE

Public opinion support for capital punishment *and* for punitive drug control, its definition and its assessment are complex issues, a full analysis of which exceeds the scope of this report.³¹⁴ Nevertheless, what emerges from the analysed experiences is that public opinion recurs in narratives about reforms as a weighty factor in policymakers' considerations.

Public opinion is identified as relevant both in support and against reforms. In Nigeria, pressure and protests by the public on the death penalty and how it was imposed against people convicted of drug trafficking were key in leading to a regime change and in turn to abolition. On the contrary in Thailand, public opinion was identified as a key reason why the government would *not* consider abolishing the death penalty;³¹⁵ with support for the war on drugs being an influencing factor.³¹⁶

307 Interview with Jacques Achille, 23 February 2024.

308 Orendain, *Not in Our Name: The Story of the Abolition of the Death Penalty in the Philippines*, 86; Allen, 'Can We End the Death Penalty? The Role of NGOs in the World-Wide Campaign', 93.

309 'Penyata Rasmi Parlimen Dewan Negara - Parlimen Kelima Belas Penggal Kedua Mesyuarat Pertama', 27; 'Penyata Rasmi Parlimen Dewan Rakyat - Parlimen Ketiga Belas Penggal Kelima Mesyuarat Ketiga', 36.

310 Interview with Dobby Chew, 20 February 2024.

311 Allen, 'Can We End the Death Penalty? The Role of NGOs in the World-Wide Campaign', 96; interview with Karen Gomez Dumpit, 13 February 2024.

312 Minister Khalilabobo Khamidov, '*International Experience and Legal Regulation of the Application of the Death Penalty in Tajikistan*' in '*The Death Penalty in the OSCE Area 2006*'.

313 Interview with Dobby Chew, 20 February 2024; Lim Chee Han, Ngeow Chow Yin, and Harchanadevi Arivananthan, 'High Incidence of Judicial Errors in Capital Punishment Cases in Malaysia', *Analysing Penang, Malaysia and the Region* (Penang Institute, 30 October 2018), <https://penanginstitute.org/publications/issues/high-incidence-of-judicial-errors-in-capital-punishment-cases-in-malaysia/>.

314 For more information see, among others: Giada Girelli, "Alternative Facts": Public Opinion Surveys on the Death Penalty for Drug Offences in Selected Asian Countries', *International Journal of Drug Policy* 92 (June 2021), <https://doi.org/10.1016/j.drugpo.2021.103155>.

315 Communication with Supatra Nacapew (National Human Rights Commission of Thailand), 4 March 2024; Bernard (ed.), '*International Fact-Finding Mission: The Death Penalty in Thailand*'.

316 *Ibid.*, 11.

In Malaysia, public opinion recurred as a justification both for proceeding with reforms *and* for not moving all the way to abolition, but rather stopping at removing the mandatory death penalty.³¹⁷ As in other instances, whether public opinion was actually a relevant factor or more of a convenient justification for political considerations remains an open question. Some experts questioned how certain voices were singled out in the debate, and described this expressed reliance on public sentiment as a “façade” to appease non-institutional stakeholders while also resisting calls for full abolition.³¹⁸

317 Antolak-Saper et al., ‘Drug Offences and the Death Penalty in Malaysia: Fair Trial Rights and Ramifications’; ‘Statement for the Biannual Panel Discussion on Death Penalty 52nd Session of UN Human Rights Council -Theme: Human Rights Violations Relating to the Use of the Death Penalty. By the Honourable Ms. Azalina Othman Said, Minister in Prime Minister’s Department (Law and Institutional Reform) of Malaysia’.

318 Interview with Dobby Chew, 20 February 2024.

Both experts interviewed on the experience of the Philippines placed a lot of importance on public sentiment on the death penalty, drugs, and crime, and to the role played by public opinion surveys in shaping debates on both abolishing the death penalty and reintroducing it during the Duterte’s presidency.

Finally in Taiwan, Prof. Liao noted how public support for the death penalty, and for (what is perceived as) a strong response to crime is a key reason why death penalty reform is not likely to happen through a legislative process; while courts appear a more suitable avenue towards change. A key determinant in shaping public opinion on the issue is that capital punishment is reportedly perceived by the Taiwanese public not as a human rights matter with human rights implications, but more as a criminal justice one related to reparation for crime victims.³¹⁹

319 Interview with Prof Fort Fu-Te Liao, 16 February 2024.

4.4 THE IMPORTANCE OF TRANSPARENCY AND AWARENESS RAISING

As already hinted at throughout the previous paragraphs, an element which emerges as essential in any process towards death penalty reform is monitoring and collection of information, and its dissemination both to the public and to institutional stakeholders. In turn, this requires transparency on the use of capital punishment, which is too often absent in retentionist countries. Thus, access to previously unavailable information is often identified as a turning point in the analysed experiences; coupled with effective communication and education.

In Iran, the lack of information both inside and outside the country on death sentences and executions – a result of government policy – was identified as a stumbling block for activists, as “part of the problem of not having data was also that no one was interested”.³²⁰ This is precisely why the ability to access information from inside the country and the decision to gather and then disseminate that information, also showing patterns and connecting individual stories to systemic issues, was so central, catalysing action both at the domestic level and internationally; where it mainstreamed the issue of drug-related executions and allowed to identify pressure points, eventually pushing decision-makers to take action.³²¹

320 Interview with Roya Boroumand, 20 February 2024.

321 Ibid.

Interestingly, **availability of information is not only key in pathways towards reform; in some cases it is also enhanced by those very reforms.** In the case of Iran just addressed, Amiry-Moghaddam reflected that the amendment to the 2017 Anti-Narcotics law and all the debate that preceded it acted as a catalyst for information sharing on capital punishment and on drug control, in

itself leading to more information, but also to more awareness among affected groups of international standards and human rights principles.³²²

322 Interview with Mahmood Amiry-Moghaddam, 1 March 2024.

Similarly in Singapore, there was little information on the use of the death penalty before the amendment, which also made it more difficult to make reform a priority. In time, civil society and people on death row started gathering and releasing more information, which – together with the illustrative case of Yong Vui Kong – gradually led to more sustained criticism of systemic failures. Once passed, the 2012 amendment itself was credited with leading to more information being available, particularly on the background of people facing death sentences and on due process concerns; in turn spearheading more activism. Among the unintended consequences of the amendment are attempts by defence lawyers to more fully describe the context in which defendants were driven to engage in the drug market – often pointing to poverty, financial hardship, or a history of drug use). In addition, since the amendment people tend to stay on death row longer as their cases undergo several stages of appeal, thus both people on death row and their families have more time to exchange information and coordinate.

A parallel process is described in Malaysia, where the 2017 reform opened space for further defences and raising the circumstances of defendants at trial. These are then picked up by civil society, which can now point to judicial documents (rather than only to empirical information) to raise awareness on issues related to capital punishment: “It doesn’t just start conversation, but it allows civil society a lot more room to say - Hey, all these factors are documented, I’m not making it up, it’s not a story telling on my part. It is what the court story tells and the court has determined that they [the death penalty even with these circumstances].”³²³ Increased awareness of the background of people facing death sentences for drugs, and of drug-related issues more generally, is also credited with affecting public support for capital punishment. Particularly, it led to more appetite to consider alternatives to the death penalty, and to strong calls for discretion in sentencing.

323 Interview with Dobby Chew, 20 February 2024.

Many of the contexts analysed share a fundamental catalyst of attention and information-sharing: **individual cases**. Some cases, in their gravity, seem to incarnate many of the shortcomings of both capital punishment and punitive drug control, and to be able to convey that information both to the public and to stakeholders in a uniquely effective way.

As already reconstructed in section 3.2.1., what really moved the needle in Nigeria was the execution – with the barbaric method of public shooting - of three individuals sentenced for drug trafficking in blatant violation of due process standards, together with the mysterious death of Gloria Okon.

The case of Yong Vui Kong, illustrated in sections 3.4.3. and 3.4.4., catalysed activism and change both in Malaysia and in Singapore, though indirectly. In the young man’s home country of Malaysia it became a recurring topic of public debate, also thanks to regular coverage by local civil society, pushing both the Executive and Parliament to react; starting a snowball which eventually resulted in the 2013 moratorium. Yong Vui Kong’s background, his motivations for engaging in the drug trade, and his experience in the Singapore justice

system illustrated many of the fallacies of the death penalty for drug offences. According to Chew,

*“In Yong Vui Kong’s case the drug lord who recruited him was not charged for drug trafficking. He was arrested [...], but Yong Vui Kong was on death row, and of course there was intimidation, which was why he refused to testify in the first place, and took the fall for it. Essentially. It was only later on where he got the more support that he decided “No, I should come clean” but because the other guy was never prosecuted, he never had a chance to stand as witness, as a person who was also victimized .. Media picked it up strongly because of this element: [...] the drug lord got away, but drug mule is on death row.”*³²⁴

324 Ibid.

Meanwhile in Singapore, the case was key in “raising the issue and also creating a little bit more pressure ...creating more people asking questions. And then the international community weighed in. [...] It was so cruel and .. I think created some pressure that [the government] were trying to show that they are not targeting drug mules.”³²⁵

325 Interview with Kirsten Han, 14 February 2024.

In Indonesia and in the Philippines, cases of women facing the death penalty for drug offences were particularly illustrative. In Indonesia, the case of Merri Utami reportedly came up repeatedly in the debates surrounding the proposed reform to the Criminal Code to exemplify how many people are tricked or coerced into trafficking drugs.³²⁶ In the Philippines, those resisting attempts to reintroduce the death penalty under the Duterte’s Presidency often referred to the case of Mary Jane Veloso – a Filipino overseas worker sentenced to death for drug trafficking in Indonesia – as perfect illustration of the complex drivers for engagement in the drug market, and the sometimes blurred lines between drug and human trafficking.³²⁷

326 Interview with LBH Masyarakat, 22 February 2024.

327 Interview with Karen Gomez Dumpit, 13 February 2024.

The power of these catalysing cases and of individualised narratives is perfectly summarised by Roya Boroumand, whose organisation compiles a detail-rich memorial of individuals executed by the Iranian regime:³²⁸

*“There needs to be a human aspect to your statistics to move people [...]. You can say ‘Iran summarily executes’ and it may have some impact, but if you take the time - and it takes hours and days and weeks to get one story right, your argument is much more effective. Because the [person] says ‘Well, I never saw that lawyer. I just saw the lawyer when I was going into court and he told me you should just accept the charges’; or ‘I went, and I tried to tell the judge that I was tortured to accept the charge, and the judge says, Shut up! I don’t have time’ ...Nothing, no sophisticated legal analysis is going to replace this one single statement of a [person] who is now dead. [...] And then you need more than one case to show the pattern. But to be effective in showing the patterns these stories are essential.”*³²⁹

328 ‘Omid, a Memorial in Defense of Human Rights in Iran’, Abdorrahman Boroumand Center, accessed 1 July 2024, <https://www.iranrights.org/memorial>.

329 Interview with Roya Boroumand, 20 February 2024.

RECOMMENDATIONS

The death penalty is an extreme manifestation of punitive and repressive policies, and of faulty understandings of justice. As such, its abolition cannot be achieved in isolation. It is best pursued by inclusive and diverse coalitions, and in connection with broader movements working towards structural change, rights-centred policies, and strong and open democracies.

While international actors and norms play an instrumental role, calls for reform are most effective when they are localised, context-sensitive and context-responsive; and when they are rooted in a deep understanding of relevant stakeholders, recurring narratives, and influencing social, economic and political factors. Transparency and access to information are thus fundamental enablers, that must be promoted and advocated for – one cannot change what is not known.

The reviewed experiences and their outcomes allow to draw some recommendations for civil society, experts, activists, governments and other stakeholders promoting reforms to the death penalty for drug offences:

- Support and fund domestic civil society and civic space, to empower local actors to lead abolitionist efforts, and ensure people with lived experiences are meaningfully and safely engaged.
- Advocate for full transparency by retentionist countries on their use of the death penalty. Governments should collect and regularly publish accurate figures on death sentences, death row population, executions, clemency and commutations; disaggregated among others by category of offence, gender, age, nationality, race, and socio-economic status.
- Ensure that no funding of or other support by States or UN agencies to anti-narcotic operations in retentionist countries (including through the provision of technical assistance, capacity building, and equipment) holds the risk of contributing to the imposition of the death penalty; and that any such support is immediately suspended when the risk arises. To this end:
 - Abolition of the death penalty or at least a moratorium on the imposition of death sentences should be a precondition for provision of aid or other support to drug control programmes;
 - Civil society should be meaningfully involved in the design, monitoring and evaluation of cooperation and funding agreements on anti-narcotics operations.
- Promote the meaningful participation of civil society, experts and affected groups in the design and monitoring of laws and policies concerning drugs as well as the imposition of capital punishment.

Reform processes should be duly monitored and documented, to share best practices, limitations, and lessons learned.

- Undertake a comprehensive mapping and review of all actors that may be involved in or influence policymaking, including institutional actors but also civil society, academia, international and multilateral institutions, religious leaders, businesses and other private actors. When feasible and safe, focus on sensitization and constructive engagement with all relevant stakeholders, based on individualised assessments.
- Identify and analyse recurring narratives supporting use of the death penalty and punitive drug control both for institutional actors and for public opinion, and craft effective, evidence-based counterarguments.
- Promote structural change, including by collaborating with organisations and activists working on adjacent issues. This will help avoiding the limitations of technical, piecemeal reforms and address underlying issues. Among others, broader attention is needed on:
 - Strengthening democracies and civic space, which is also key to enhancing transparency and due process safeguards;
 - Drug policy reform: any debate or initiative aimed at reducing resort to the death penalty must incorporate a critical assessment and reform of drug control away from punitive approaches and towards policies that promote dignity, health and rights;
- Develop effective and inclusive strategies and networks for cross-country coordination, collaboration, and experience-sharing. This will help cross-pollination and exchange of best practices, and provide a solid support basis for joint advocacy both on individual cases and on reform opportunities.

GAINING GROUND
HOW STATES ABOLISH OR
RESTRICT APPLICATION OF
THE DEATH PENALTY FOR
DRUG OFFENCES

