

# DRUGS AND THE DEATH PENALTY



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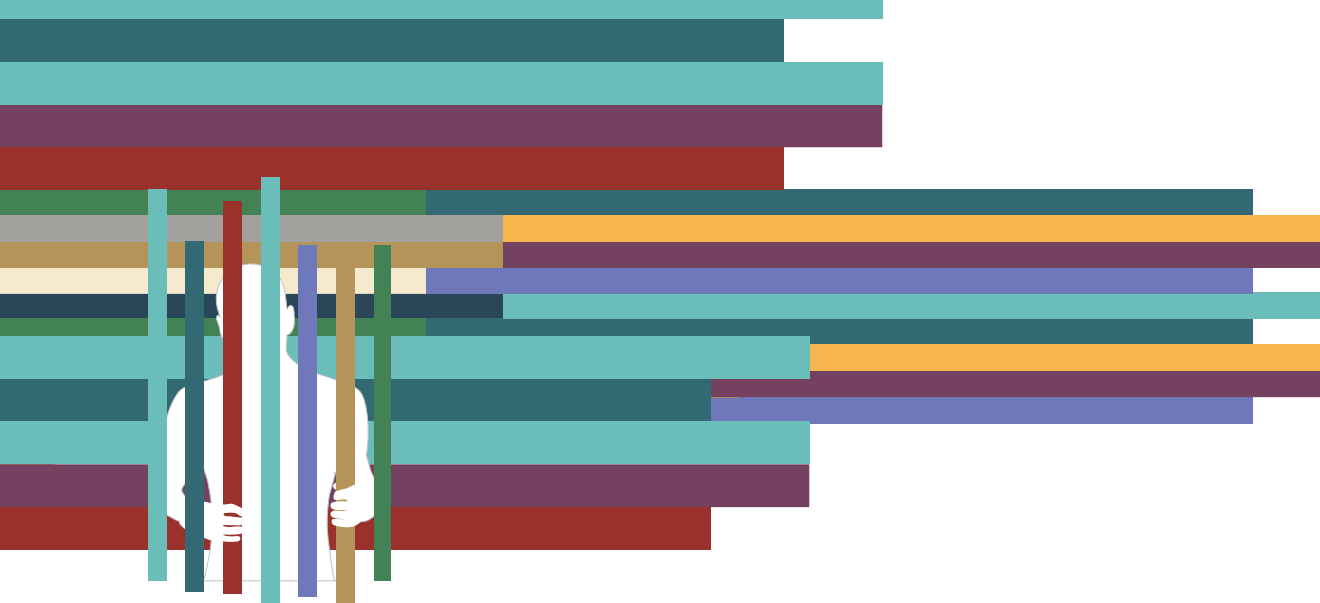
*As member states of the United Nations take stock of the drug control system, a number of debates have emerged among governments about how to balance international drug laws with human rights, public health, alternatives to incarceration, and experimentation with regulation.*

*This series intends to provide a primer on why governments must not turn a blind eye to pressing human rights and public health impacts of current drug policies.*



## THE CRIMINALIZATION OF DRUGS AND THE DEATH PENALTY

Laws that subject drug offenders to hanging, the firing squad, lethal injection and beheading are inextricably linked to the international war on drugs.



As the international community pushed for draconian penalties for drug offenses in the latter half of the 20th century, and particularly in the wake of the adoption of the 1988 UN drug convention, many governments introduced laws prescribing ‘the ultimate sanction’ for non-violent, drug-related crimes. There are now thousands of people on death row for drug-related offenses in Asia, the Middle East, and parts of Africa.

The international drug control system must share the blame. Treaties that promote strict and severe punishments for drug offenses have opened the door to such responses. UN human rights and drug control bodies now recognize that the death penalty for drugs violates international law. However, a number of states parties to the drug control treaties argue that capital drug laws are a permissible sanction. The 2016 UN drugs debate offers an opportunity to harmonize international policies and practices.

#### UN Documents Related to the Death Penalty for Drugs

Article 6(2), (16 December 1966), International Covenant on Civil and Political Rights.

United Nations Economic and Social Council, (25 May 1984) Implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty, Resolution 1984/50.

UN General Assembly (14 December 1984) Human rights in the administration of justice. Resolution, A/RES/39/118

UNODC (2010) Drug control, crime prevention and criminal justice: a human rights perspective. Note by the Executive Director, E/CN.7/2010/CRP.6\*-E/CN.15/2010/CRP.1\*.

UN Secretary-General, (2 July 2012), Report on the question of the death penalty, A/HRC/21/29

## THE DEATH PENALTY FOR DRUG-RELATED OFFENSES AROUND THE WORLD

From the 1970s through the 1990s, there was an unparalleled surge in laws criminalizing drugs. The international treaties that place certain drugs under control and proscribe activities related to cultivation, manufacturing, sale, and possession influenced many of these laws. As these conventions were adopted, and some national governments chose to interpret them in the strictest possible terms, major disparities in the severity of punishments emerged. The death penalty reflects the furthest extreme.

The criminalization of drugs is now driving the imposition of capital punishment in many parts of the world. During the drafting of the 1961 Single Convention on Narcotic Drugs—sometimes described as the ‘bedrock of the global drug control regime’<sup>1</sup>—there were only a handful of countries that applied the death penalty for drug-related offenses. But as more countries adopted the treaty and implemented its terms into law, this number increased. For example, in 1979, it is estimated that ten countries prescribed the death penalty for drugs. By 1985, that number had risen to 22.<sup>2</sup> By 2000, the number

of states that imposed the death penalty for drugs had risen to 36.<sup>3</sup> All of this occurred while governments in most of the world were abolishing the death penalty for all crimes at a historically unprecedented rate.

Evolving human rights norms have clarified that the death penalty for drugs is a disproportionate punishment. Article 6, paragraph 2, of the International Covenant on Civil and Political Rights—which protects the right to

“By 2000, the number of states that imposed the death penalty for drugs had risen to 36.”

- 1 Bewley-Taylor IJDP, *Ibid.* 12, pp. 171-179
- 2 R. Hood and C. Hoyle (2008) *The Death Penalty: A Worldwide Perspective* (Oxford University Press) p. 137.
- 3 The numbers vary between sources. However, this rise was reported by UN Commission on Crime Prevention and Criminal Justice (29 March 2001) *Capital Punishment and Implementation of the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty*, E/CN.15/2001/10; R. Lines (2007) *The Death Penalty for Drug Offences: A Violation of International Human Rights Law (Harm Reduction International)*; R. Hood and C. Hoyle (2008) *The Death Penalty: A Worldwide Perspective* (Oxford University Press) p. 137.

life—specifically requires that capital punishment be reserved for what the treaty terms, ‘most serious crimes.’ Citing this provision, United Nations human rights bodies have repeatedly urged governments to abolish capital drug laws.<sup>4</sup>

For example, the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, wrote, ‘drug offences do not meet the threshold of most serious crimes . . . Therefore, the imposition of the death penalty on drug offenders amounts to a violation of the right to life.’<sup>5</sup> In 2012, UN Secretary General Ban Ki-moon wrote, ‘[I]mposing the death penalty for drug-related offences is in violation of article 6, paragraph 2, and the safeguards guaranteeing protection of the rights of those facing the death penalty.’<sup>6</sup>

These authorities have been supported by UN drug control agencies that also request that governments reform laws imposing death for drugs.<sup>7</sup> For example, in 2010, the Executive Director of the United Nations Office on Drugs and Crime (UNODC) presented a paper at both the Commission on Narcotics Drugs and the Commission on Crime Prevention and Criminal Justice that read, ‘As an entity of the United Nations system, UNODC advocates the abolition of the death penalty and calls upon Member States to follow international standards concerning prohibition of the death penalty for offences of a drug-related or purely economic nature.’<sup>8</sup> In addition, in 2014 the International Narcotics Control Board urged states to abolish the death penalty for drugs<sup>9</sup> after years of refusal to engage on the issue.<sup>10</sup>

However, in practice, individual governments are using the drug control treaties as cover from human rights standards. For example, in one high-profile constitutional challenge to capital punishment, the Indonesian Constitutional Court argued that the international drug control treaties empowered the state to execute people for drug offenses, despite human rights guidance against doing so.<sup>11</sup>

- 4 HRC (8 July 2005) Concluding observations: Thailand, CCPR/CO/84/THA, para. 14; HRC (29 August 2007) Concluding observations: Sudan, CCPR/C/SDN/CO/3, para. 19. UN Commission on Human Rights (24 December 1996) Extrajudicial, summary or arbitrary executions: report by the Special Rapporteur, submitted pursuant to Commission on Human Rights Resolution 1996/74, E/CN.4/1997/60; UN Human Rights Council (29 January 2007) Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, A/HRC/4/20, paras. 51–52; HRC (18 June 2010) Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Addendum : Communications to and from governments, A/HRC/14/24/Add.1, pp. 45–46; UN Human Rights Council (14 January 2009) Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/10/44, para. 66; UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (6 August 2010) A/65/255, para. 17.
- 5 UN Human Rights Council (14 January 2009) Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/10/44, para. 66.
- 6 A/HRC/21/29, para. 24.
- 7 UNODC (2010) Drug control, crime prevention and criminal justice: a human rights perspective. Note by the Executive Director (Commission on Narcotics Drugs, Fifty-third session, Vienna, 8–12 March) E/CN.7/2010/CRP.6\*–E/CN.15/2010/CRP.1\*.
- 8 UNODC (2010) Drug control, crime prevention and criminal justice: A human rights perspective. Note by the Executive Director (Commission on Narcotics Drugs, Fifty-third session, Vienna, 8–12 March), UN Doc. E/CN.7/2010/CRP.6\*–E/CN.15/2010/CRP.1\*.
- 9 United Nations Information Service, ‘INCB encourages States to consider the abolition of the death penalty for drug-related offences,’ UNIS/NAR/1199, 5 March 2014.
- 10 See, Human Rights Watch, ‘Letter to the International Narcotics Control Board on Capital Punishment for Drug Offences,’ March 12, 2012.
- 11 Constitutional Court of the Republic of Indonesia 2/PUU-V/2007/16 (30 October 2007), p. 97. Safeguards include: ECOSOC (25 May 1984) Implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty, Resolution 1984/50; UN General Assembly (14 December 1984) Human rights in the administration of justice, Resolution A/RES/39/118.

Year	Estimated Number of Countries Applying the Death Penalty for Drugs	Countries that Signed, Ratified or Acceded to the 1961 Single Convention on Narcotic Drugs	Countries that Signed, Ratified or Acceded to the 1971 Convention on Psychotropic Substances	Countries that Signed, Ratified or Acceded to the 1988 Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances
1979	10	108	53	N/A
1985 <sup>12</sup>	22	113	77	N/A
2000 <sup>13</sup>	36	145	167	157
2012 <sup>14</sup>	33	186	183	187

12 R. Hood and C. Hoyle (2008) *The Death Penalty: A Worldwide Perspective* (Oxford University Press) p.137.

13 The numbers vary between sources. However, this rise was reported by UN Commission on Crime Prevention and Criminal Justice (29 March 2001) *Capital Punishment and Implementation of the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty*, E/CN.15/2001/10; R. Lines (2007) *The Death Penalty for Drug Offences: A Violation of International Human Rights Law* (Harm Reduction International); R. Hood and C. Hoyle (2008) *The Death Penalty: A Worldwide Perspective* (Oxford University Press) p.137.

14 Harm Reduction International, *Death Penalty for Drug Offences – Global Overview 2012: Tipping the Scales for Abolition*, 2012

## EXECUTIONS

**Estimates vary, but according to Harm Reduction International, as many as 1,000 people have been executed for a drug offense in certain years.**

Despite this high number, it is notable how few countries actually sentence people to death and execute. The Special Rapporteur on extrajudicial, summary or arbitrary executions wrote, 'As measured by State practice, however, there is no consensus among States to support the death penalty for crimes that do not involve lethal intent and that do not result in death, such as drug-related offences or economic crimes. In reality, many of these death-eligible crimes are not prosecuted by retentionist States as capital offences and/or death sentences are not handed down for them. Even fewer States actually carry out executions for these offences.'<sup>15</sup>

Most of the world's executions for drugs are limited to a small number of countries. Estimates suggest that a single country, Iran, was responsible for more than 1,000 executions for drugs in the two-year period 2010-2011.

Country	Period	Executions for Drugs
China		Unknown
Indonesia	2010–2015	16 <sup>16</sup>
Iran	1979–Present	More than 10,000 <sup>17</sup>
Singapore	1991–Present	At least 326 <sup>18</sup>
Saudi Arabia	2007–2012	Approx. 85
Thailand	2001–Present	14 <sup>19</sup>

<sup>15</sup> A/67/275, para. 47

<sup>16</sup> 2010 – 0 executions, 2011 – 0 executions, 2012 – 0 executions, 2013 – 5 executions (2 for drugs), 2014 – 0 executions, 2015 – 14 executions (all for drugs).

<sup>17</sup> US Department of State (1 March 2010) 2010 International Narcotics Control Strategy Report. Volume I (2010 INCSR). The bureau attributes these figures to Iranian government sources.

<sup>18</sup> Run on the web site of the Straits Times: Trending Down: The number of people hanged in Singapore (29 February 2012), figures attributed to Ministry of Home Affairs, available at: [http://www.straitstimes.com/STI/STIMEDIA/pdf/20120229/ST\\_IMAGES\\_VANWEDEATH.pdf](http://www.straitstimes.com/STI/STIMEDIA/pdf/20120229/ST_IMAGES_VANWEDEATH.pdf)

<sup>19</sup> Amnesty International (28 May 2002) Amnesty International Report 2002 – Thailand, available at: [[www.unhcr.org/refworld/docid/3cf4bc0f10.html](http://www.unhcr.org/refworld/docid/3cf4bc0f10.html)]; Amnesty International (28 May 2003) Amnesty International Report 2003 – Thailand, [available at: [www.unhcr.org/refworld/docid/3ed47e14.html](http://www.unhcr.org/refworld/docid/3ed47e14.html)]; Agence France-Presse (12 December 2003) Thailand moves to death by injection.



## INEFFECTIVE AND INHUMANE PRACTICES

It is impossible to generalize about the kind of offender who receives the death penalty for drugs. They include kingpins, small-time dealers, low-level couriers, and vulnerable people who've been duped or forced to carry drugs. There are men, women, young people and even reportedly children who have been sentenced to die for drug-related offenses. Some of these people may be driven by greed. Others, however, appear to have acted out of desperation. There are numerous anecdotal cases of smugglers who received paltry

sums of cash to carry substances they claimed not to have known were drugs. Others admitted they knew they were breaking the law but that they naively believed assurances that they would be protected from prosecution, or they were unaware that carrying the drugs in question was punishable by death.

“Iran leads the world in both heroin seizures and drug-related executions.”

Finally, the death penalty has not been effective at curbing the flow of drugs across territories. The factors that determine why certain countries are vulnerable to becoming transit routes are numerous. These may include weak governance, susceptibility to corruption, and instability or conflict in or near a country. What does appear to be clear, however, is that death penalty sanctions do not make a difference.

Iran is a vivid illustration. Bordering Afghanistan, the world's largest opium producer,<sup>20</sup> Iran leads the world in both heroin seizures and drug-related executions. In 2007, Amnesty International reported at least 317<sup>21</sup> executions. The following year, it estimated about 346<sup>22</sup> and by 2009, it reported the government had executed at least 388.<sup>23</sup> After a series of 2010 street demonstrations in Iran that challenged the government,

20 World Drug Report 2012, (n 3), p. 6

21 Amnesty International (15 April 2008) Death Sentences and Executions in 2007. ACT 50/001/2008.

22 Amnesty International (24 March 2009) Death Sentences and Executions in 2008. ACT 50/003/2009

23 Amnesty International (29 March 2010) Death Sentences and Executions in 2009. ACT 50/001/2010

“More than 74 percent of executions in Iran are stemming from drug trafficking related crimes.”

human rights monitors documented a marked increase in the number of people killed by the state, including more than 650 that year.<sup>24</sup> There were credible reports of at least 676 executions in 2011.<sup>25</sup> Roughly 75 to 90 percent of those executed were drug offenders.<sup>26</sup>

Reportedly, some of those executed were in fact political activists charged with drug crimes.<sup>27</sup>

However, these executions had little or no effect on the quantity of drugs seized. In 2009 Iran seized 25 tons of heroin.<sup>28</sup> In 2010, that number

increased to 27 tons of heroin, accounting for 33 per cent of global heroin seizures.<sup>29</sup> There was a modest decrease in heroin seized in Iran in 2011, but that same year saw a considerable increase in amphetamine seizures.

Iran’s experience is only one example, and seizures, a measure affected by many factors, are an imperfect indicator of the quantity of drugs that transits a territory. Iran is also a unique case in that it neighbors Afghanistan, the world’s largest supplier of heroin, which is also experiencing considerable security challenges.

Nevertheless it does appear that, at least in the case of Iran, imposing the harshest penalties possible for drugs has been ineffective. The Secretary General of the Iranian High Council for Human Rights admitted as much when he said: “More than 74 percent of executions in Iran are stemming from drug trafficking related crimes. Whether it is correct or not, there is a big question: ‘Did this harsh punishment bring the crimes down or not?’ In fact, [it] did not bring it down.”<sup>30</sup>

24 UK Foreign and Commonwealth Office (March 2011) Human Rights and Democracy: The 2010 Foreign & Commonwealth Office Report, p. 204. There are varying estimates on this. For additional data with individual reports, see Iran Human Rights, Annual Report of the Death Penalty in Iran in 2010, available at: <http://iranhr.net/spip.php?article1984> (last accessed 28 February 2011). Official versus unofficial executions must be distinguished. See: Amnesty International (28 March 2011) Death Sentences and Executions in 2010, ACT 50/001/2011, p. 5. The report identifies more than 252 executions but adds (p. 26), ‘Amnesty International received credible reports of more than 300 other executions which were not officially acknowledged, mostly in Vakilabad Prison, Mashhad. Most were of people convicted of alleged drugs offences.’ Amnesty International detailed credible reports of many of the same instances as outlined by Iran Human Rights.

25 Iran Human Rights, Annual Report 2012 (1 March 2012)

26 Harm Reduction International learned through an unidentified source that Iranian authorities claim that approximately 90 per cent of executions in 2010 were for drug-related offenses. This claim contrasts with other credible sources. Iran Human Rights estimates that 66 per cent of executions in 2010 were for drug-related offences [Iran Human Rights (23 February 2011) Annual report of the death penalty in Iran in 2010, available at: <http://iranhr.net/spip.php?article1984>].

27 US Bureau of Democracy (11 March 2010) Human Rights, and Labor, 2009 Human Rights Report: Iran; UK Home Office Country of Origin Information Report – Iran, p. 79.

28 There was a slight dip in heroin seizures in 2011, which rose again in 2012. In comparison, morphine seizures decreased significantly in 2012 – mirroring a global trend. World Drug Report (n 3).

29 *ibid.*, p. 29

30 United Nations Radio, Number of executions in Iran can be reduced, says official, 16 November 2011

## DRUG POLICY AND THE DEATH PENALTY: INTERNATIONAL INCOHERENCE

States are increasingly exploring less draconian sanctions with respect to drugs, reflecting an evolution in state practice. The Special Rapporteur on extrajudicial, summary or arbitrary executions wrote, 'Inasmuch as an international standard is meant to reflect international consensus, it is noteworthy that several States are questioning the appropriateness of using the criminal law model for drug control.'<sup>31</sup>

A number of countries have dropped criminal penalties for minor possession offenses. Other jurisdictions are experimenting with legal regulation of certain substances. For example, several U.S. states are amending their marijuana laws to introduce non-punitive measures for possession and small-scale cultivation. Others are exploring licensing and other regulatory approaches to cannabis.

However, in at least 12 countries certain types of offenses related to marijuana and hashish are punishable by death. For example, in Malaysia as of 2010, the majority of those sentenced to death for drug-related crimes were convicted of offenses related to marijuana or hashish.

“...in Malaysia as of 2010, the majority of those sentenced to death for drug-related crimes were convicted of offenses related to marijuana or hashish.”

In these cases, condemned people have generally been convicted of trafficking or smuggling relatively large amounts. While these types of activities certainly warrant punishment, the extreme variations in how marijuana and hashish are treated are eye-opening. They are legal in some jurisdictions and punishable by death in others.

<sup>31</sup> A/67/275, para. 38

Even in situations where death sentences are imposed for hard drugs, the capital threshold in many countries is so low that it is impossible to be sure that those sentenced to death are anything other than very low-level targets in the value chain or even possibly only people who use drugs.

## MEMBER STATES ARE NOT KEEPING PACE WITH AN EVOLVING DRUG CONTROL SYSTEM

**In the past, governments submitted regular reports to the United Nations to describe how they were complying with the drug control conventions.<sup>32</sup> These reports included accounts of laws that prescribed capital punishment for drugs, even as a mandatory sanction, as well as rules that inflicted corporal punishments such as whipping, caning and flogging.**

Malaysia, for example, submitted texts of its laws under the title *Laws and Regulations Promulgated to Give Effect to the Provisions of the International Treaties on Narcotic Drugs and Psychotropic Substances*. Those laws included mandatory death penalty for smuggling in excess of 15 grams of certain drugs as well as caning for some possession offenses. This suggests that governments are under the impression that they are enforcing the death penalty in order to meet their obligations under the drug control treaties.<sup>33</sup>

This impression, however, is clearly mistaken. UNODC has explicitly recognized that the death penalty for drugs violates international law. The agency has even threatened to freeze or withdraw assistance if its financial or technical assistance contributes to the imposition of capital punishment. In addition, the president of the International Narcotics

<sup>32</sup> Available at: [http://www.unodc.org/en/browse\\_countries.jsp](http://www.unodc.org/en/browse_countries.jsp) [Date of last access: 22 April 2014]

<sup>33</sup> See for example, UN doc. E/NL.1980/26-27 [at <http://www.unodc.org/doc/en/1980-26-E.pdf>]

“The 2016 Special Session is an opportunity to recognize that the death penalty for drugs is a violation of human rights law as well as to encourage member states to refrain from imposing this sanction.”

Control Board also said, “Member states are encouraged to consider abolishing the death penalty for drug-related offences.”<sup>34</sup>

The United Nations General Assembly Special Session in 2016 is an opportunity to recognize that the death penalty for drugs is a violation of human rights law as well as to encourage member states to refrain from imposing this sanction.

Criminalization of drugs has had a number of consequences including infectious disease epidemics, mass incarceration and the creation of a multi-billion-dollar illicit

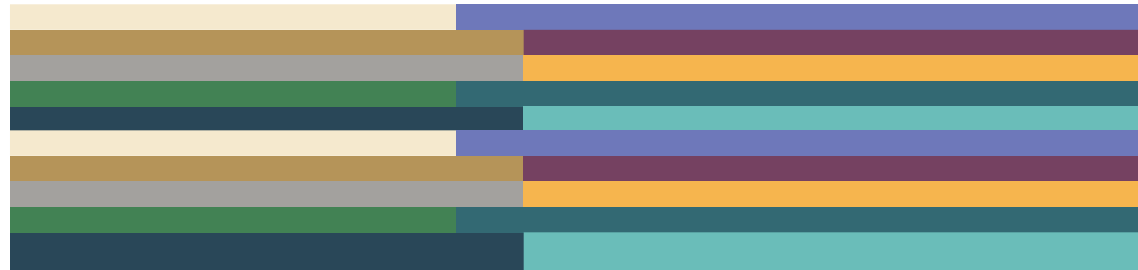
market.<sup>35</sup> Increasingly governments are charting a new course. These include regulatory alternatives, decriminalization of small amounts of drugs and other health-based approaches. Such policies, where done well, have had a number of positive impacts.<sup>36</sup> The worst excesses of criminalization are clearly unacceptable and must be reformed.

Member states and UN bodies must provide leadership.

<sup>34</sup> UNIS/NAR/1199

<sup>35</sup> See: “Making drug control ‘fit for purpose’: Building on the UNGASS decade”, E/CN.7/2008/CRP.17, 7 March 2008, pp. 10-11

<sup>36</sup> Release, A Quiet Revolution: Drug Decriminalisation Policies in Practice Across the Globe, July 2012; See also: Open Society Foundations, Coffee Shops and Compromise: Separated Illicit Drug Markets in the Netherlands, July 2013; Open Society Foundations, A Balancing Act: Policymaking on Illicit Drugs in the Czech Republic, July 2012; Open Society Foundations, Drug Policy in Portugal: The Benefits of Decriminalizing Drug Use, August 2011; Open Society Foundations, From the Mountaintops: What the World Can Learn from Drug Policy Change in Switzerland, October 2010

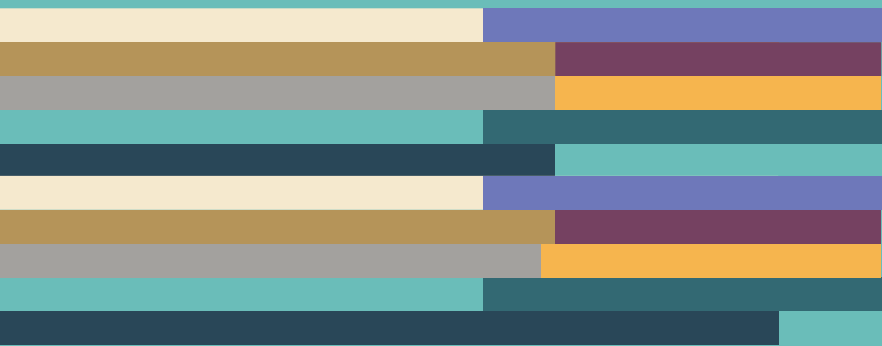




## RECOMMENDATIONS

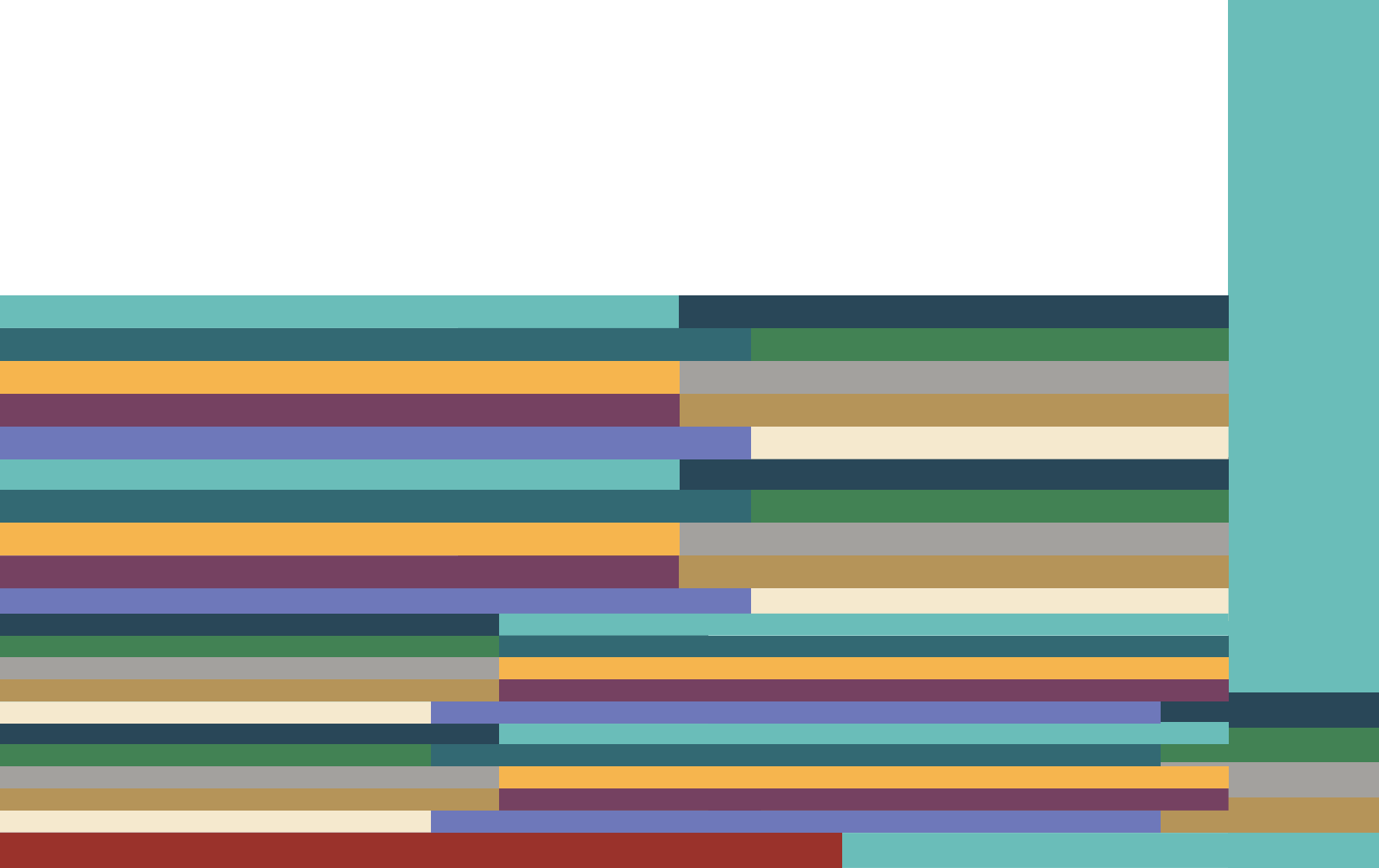
for the forthcoming United Nations General Assembly  
Special Session on Drugs in 2016:

- Governments must commit to abolishing the death penalty for drugs. Unanimous acceptance of this commitment should be the goal.
- Governments should recognize the death penalty for drugs as a violation of human rights.
- Governments should introduce alternatives to incarceration for drug use and minor drug offenses and the outcome of the summit should reflect a commitment to such alternatives. Many people enter the drug trade due to poverty, desperation or vulnerability. Governments must look at diversion options for the so-called “little fish” who are not major figures in drug trafficking organizations. Any outcome documents from the Special Session should underscore this distinction.



## FURTHER READING:

- Harm Reduction International** *'Death Penalty for Drug Offences Global Overview 2012: Tipping the Scales for Abolition', 2012*
- Harm Reduction International** *'The Death Penalty for Drug Offences: Global Overview 2011 – Shared Responsibility & Shared Consequences', 2011*
- Harm Reduction International** *'The Death Penalty for Drug Offences: Global Overview 2010', 2010*
- Amnesty International** *'Addicted to Death: Executions for drugs offences in Iran', 2011*
- Human Rights Watch** *'The Death Penalty for Drug Offences and International Support for Drug Enforcement: Briefing to Donor Countries of Counter-Narcotics Projects', 2010*
- Human Rights Watch** *'Iran: Donors Should Reassess Anti-Drug Funding Prosecutions of Drug Offenders Violate Rights, Result in Frequent Executions', 2012*



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