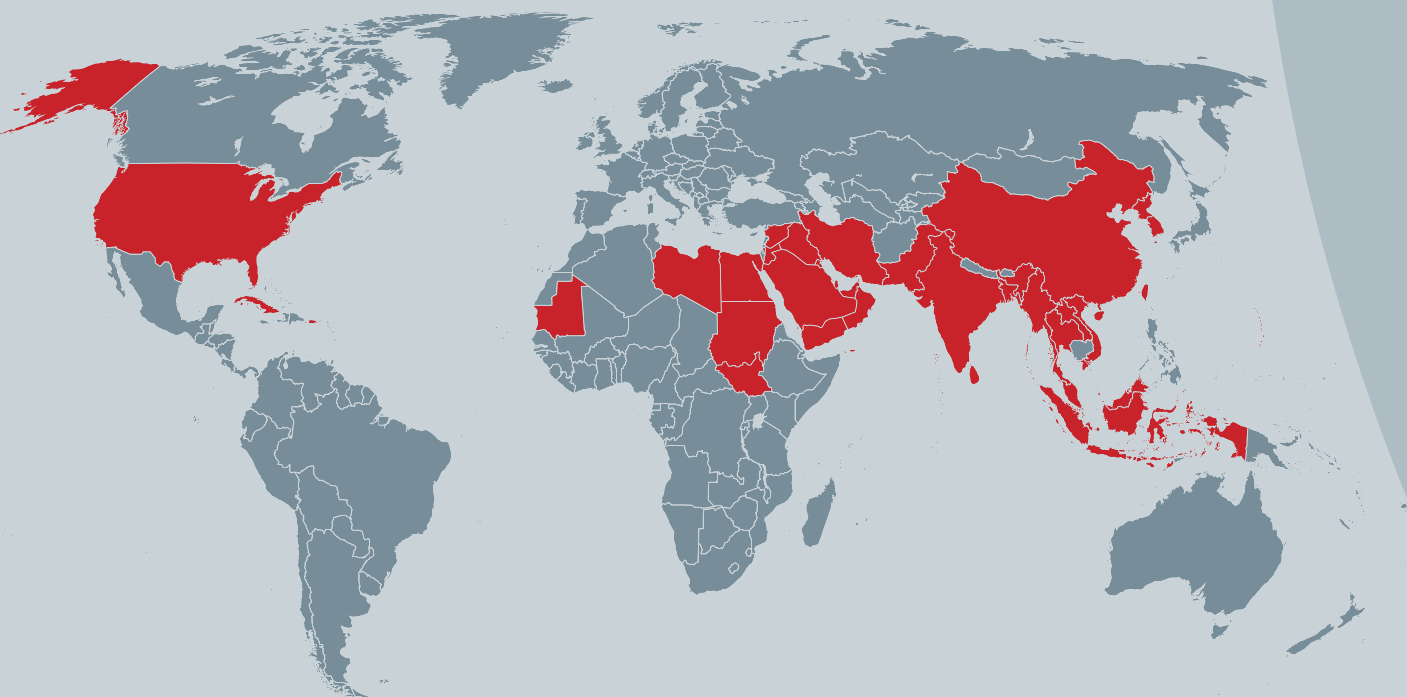


# The Death Penalty for Drug Offences: Global Overview 2018

FEBRUARY 2019

**Giada Girelli**



**HARM REDUCTION  
INTERNATIONAL**

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# The Death Penalty for Drug Offences: Global Overview 2018

Giada Girelli  
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61 Mansell Street, Aldgate, London E1 8AN  
Telephone: +44 (0)20 7324 3535  
E-mail: [office@hri.global](mailto:office@hri.global)  
Website: [www.hri.global](http://www.hri.global)



**Harm Reduction International** is a leading non-governmental organisation dedicated to reducing the negative health, social and legal impacts of drug use and drug policy. We promote the rights of people who use drugs and their communities through research and advocacy to help achieve a world where drug policies and laws contribute to healthier, safer societies.



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Any errors are the responsibility of Harm Reduction International.

# THE DEATH PENALTY FOR DRUG OFFENCES: Global Overview 2018

## INTRODUCTION

Harm Reduction International (HRI) has monitored use of the death penalty for drug offences worldwide since our first ground-breaking publication on this issue in 2007. This report, our eighth on the subject, continues our work of providing regular updates on legislative and practical developments related to the use of capital punishment for drug offences, a practice which is a clear violation of international human rights law.

The 2018 Global Overview outlines key trends across the at least 35 countries that retain the death penalty for drug offences in law, and analyses data on death sentences and executions from the last decade. Extensive examination is provided on the divergent trends witnessed in 2018 of falling execution numbers globally, and rising appeal for reimplementing of the death penalty in some countries, while considering the role public opinion plays in all of this.

Harm Reduction International opposes the death penalty in all cases without exceptions, regardless of the person accused and their conviction, the nature of the crime, and the method of execution.

## METHODOLOGY

Drug offences (also referred to as drug-related offences or drug-related crimes) are drug-related activities categorised as crimes under national laws; for the purposes of this report, this definition excludes activities which are not related to trafficking, possession or use of controlled substances and related inchoate offences (inciting, assisting or abetting a crime).

In retentionist states, capital punishment is typically applied for the following drug offences: cultivating and manufacturing, smuggling, trafficking and importing/exporting controlled substances. However, the definition of capital drug offences can also include (among others): possession, storing and hiding controlled substances; financing drug offences; and inducing or coercing others into using drugs.

Harm Reduction International's research on the death penalty for drug offences excludes countries where drug offences are punishable with death *only* if they involve, or result in, intentional killing. For example, in Saint Lucia (not included in this report), the only drug-related offence punishable by death is murder committed in connection with drug trafficking or other drug offences.<sup>1</sup>

The death penalty is reported as 'mandatory' when it is the only punishment that can be imposed for at least certain categories of drug offences, or in the presence/absence of certain circumstances.

The numbers that have been included in this report are drawn from, and cross-checked against: official government reports (where available) and state-run news agencies; judgments; NGO reports and databases; United Nations (UN) documents; media reports; scholarly articles; and communication with local human rights advocates, organisations and groups. Every effort has been taken to minimise inaccuracies, but there is always the potential for error. HRI welcomes information or additional data not included here.

Identifying current drug laws and controlled drugs schedules can be challenging, due to limited reporting and recording at national level, together with language barriers. Some governments make their laws available on official websites; where it was not possible to independently verify a specific law, the report relies on credible secondary sources.

With respect to data on death row populations, death sentences and executions, the margin for error is even greater. In most countries, information around the use of the death penalty is shrouded in secrecy, or opaque at best. For this reason, many of the figures cited in this report cannot be considered comprehensive, and have to be considered minimum numbers of confirmed sentences and executions, illustrative of how capital punishment is carried out for drug offences. It is likely that real numbers are higher, in some cases significantly. Where information is incomplete, there has been an attempt to identify the gaps. In some cases, information among sources is discordant, due to this lack of transparency. In these cases, HRI has made a judgement based on available evidence.

When the symbol '+' is found next to a number, it means that the reported figure refers to the minimum confirmed number, but according to credible reports real figures are likely to be higher. Global and yearly figures are calculated by using the minimum confirmed figures.

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Iran	25	Lao PDR	31	Brunei Darussalam	37	Syria	38
Malaysia	26	Pakistan	31	Cuba	37	Yemen	38
Saudi Arabia	26	State of Palestine (Gaza)	32	India	34		
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Vietnam	27	Thailand	32	Kuwait	37		
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## FOREWORD BY Professor Adeeba Kamarulzaman *Dean of Medicine, University of Malaya, Malaysia*

We have reached a tipping point in the history of the death penalty for drug offences. This abhorrent practice is now being implemented with less frequency, thanks to the realisation among countries that were once prolific executioners that the death penalty is a futile practice.

Capital punishment does not deter people from using or trafficking drugs. There is an enormous amount of evidence in support of this. In countries that have aggressively pursued the death penalty in recent decades, the drug market continues to flourish.

While failing in its primary goal of impacting the drug trade, the death penalty has enacted misery on the lives of some of society's poorest and most vulnerable. Those sentenced to face execution for drug offences are often people at the lowest level of the trade, a number of whom may have entered it out of coercion or simply having no economic choice. In these scenarios, the legal system will only exploit their indigence, as stories of no access to legal aid and sham trials are all too common.

It has been heartening to see my home country of Malaysia – spurred by the case of a man convicted for a low-level drug offence – begin to explore full abolition of the death penalty, with government ministers admitting its ineffectiveness as a deterrent. The country's executions for drug offences have dropped markedly in recent years, though the death row population continues to grow – roughly three-quarters of the more than 1,200 people there were convicted for drug offences. Until the death penalty is done away with, the risk remains of more people having to languish in horrific conditions awaiting implementation of a death sentence.

While there is optimism in Malaysia's moves toward abolition and the downward trend globally in executions, now is not the time to celebrate. Progress is fragile, and Malaysia's review of abolition is causing unrest in some quarters that want to see continuation of the death penalty. Furthermore, a bill is yet to be laid before parliament to decide the issue. Meanwhile in Iran, which has seen the starkest fall in executions for drug offences, death sentences continue to be handed down with regularity.

Worryingly, we are seeing the re-emergence of pro-death penalty rhetoric from country leaders playing to populist anti-drug sentiment. Bangladesh expanded use of the death penalty for drug offences in 2018, citing the scourge of drugs

on the country's youth and families. At the time of writing, Sri Lanka's president was threatening to end a 43-year moratorium on executions and begin signing death warrants for convicted drug traffickers.

Drugs will forever be a lightning rod in political discourse, but leaders cannot continue to be guided by ill-informed prejudice against drug use. For too long, the evidence has been ignored that punitive drug policies, including the death penalty, do more harm than good to our societies.

To capitalise on this tipping point for the death penalty for drug offences, total abolition has to be enacted. It is not good enough that executions cease and people are still left at the mercy of unjust legal processes and ultimately appalling death row conditions. As Bangladesh and Sri Lanka underscore, until there is abolition, the spectre of the death penalty's reimplementation will remain.

With regards to drug offences more broadly, this conversation needs to go further than the death penalty. Punitive drug policies are ineffective and causing myriad harms to society. If leaders truly want to protect their citizens and mitigate harm, they must ground drug laws in dignity, human rights and evidence. More and more countries are beginning to understand this. Now is the time for them to accelerate change and ensure past failures are not repeated in the future.

## EXECUTIVE SUMMARY

The death penalty for drug offences is a clear violation of international human rights law. Numerous international authorities and legal scholars have reaffirmed this point, including the UN Human Rights Committee as recently as 2018.

Since Harm Reduction International began monitoring the use of this abhorrent practice in 2007, annual implementation of the death penalty for drug offences has fluctuated markedly. Over 4,000 people were executed globally for these offences between 2008 and 2018, with executions hitting a peak above 750 in 2015 (excluding China and Vietnam, where these figures are a state secret). Notably, 2018 figures show a significant downward trend, with known executions falling below 100 globally.

Iran, among the most prolific executioners for drug offences, passed reforms in 2017 which resulted in a drastic reduction in the implementation of the death penalty. After a bloody stretch from 2015-2016, there were no executions (for any offence) carried out in Indonesia for a second consecutive year, and Malaysia – once among the most resolute supporters of the death penalty, including for drug offences – committed to total abolition of the death penalty in 2018.

Yet, while executions are falling, thousands of people remain on death row for drug offences. A number of these people are at the lowest levels of the drug trade, socio-economically vulnerable, are tried without due process and/or have inadequate legal representation. In short, it appears that the death penalty for drug offences is primarily reserved for the most marginalised in society.

Other events in 2018 show that for every progressive step, there is a regressive counter-narrative. In Bangladesh and Sri Lanka, populist rhetoric against the ‘threat’ of the ‘drugs menace’ has seen leaders push for expansion or re-implementation of the death penalty, while governments in the Philippines and United States (among others) pointed to capital punishment as an essential tool to confront drug trafficking or public health emergencies.

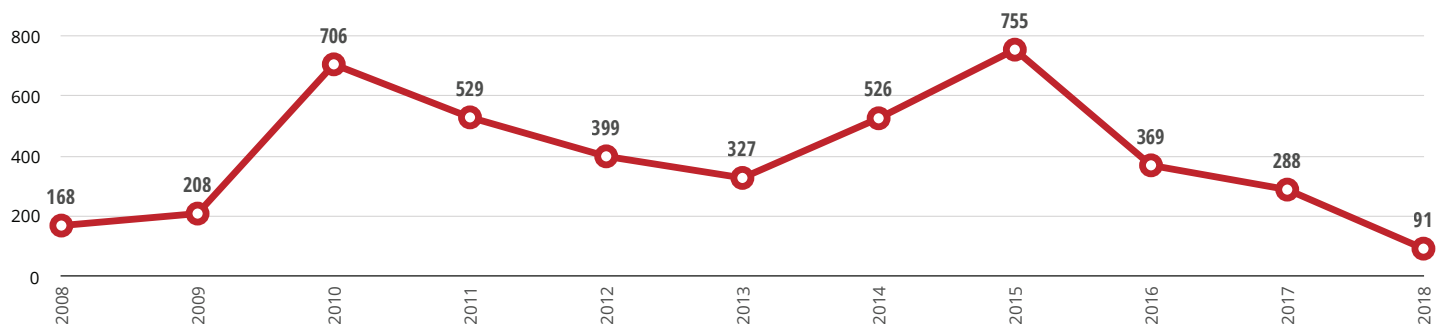
There is no evidence that the death penalty is an effective deterrent to the drug trade – in fact, according to available estimates, drug markets continue to thrive around the world, despite drug laws in almost every country being grounded in a punitive approach. The response to drug use and the drug trade remains heavily politicised, frequently resulting in a rejection of evidence, even when brutal crackdowns are shown to inflict countless harms and rights violations on society.

In December 2018, a record 120 countries voted in favour of the Resolution on a moratorium on the use of the death penalty at the 73rd Session of the UN General Assembly,<sup>2</sup> and since 2008 the number of abolitionist countries crept up from 92 to 106 in 2017.<sup>3</sup> This is a positive trend, but when countered by inflammatory political rhetoric, progress is fragile at best. Governments must ground their drug laws in rights, dignity and evidence, and do away with the death penalty once and for all.

## THE DEATH PENALTY FOR DRUG OFFENCES IN 2018: A SNAPSHOT

- Drug offences are punishable by death in at least **35 countries** and territories worldwide.<sup>4</sup>
- The total number of confirmed executions for drug offences (excluding China, including very limited data from Vietnam) between 2008 and 2018 is **4,366** (of which **3,975** were in Iran alone).
- Only four of these countries executed individuals for drug offences in 2018 (China, Iran, Singapore and Saudi Arabia). It is likely that Vietnam carried out drug-related executions, but because of state secrecy it is not possible to confirm this.
- At least **91** people were executed for drug offences in 2018 (excluding China and Vietnam).
- This represents a **68.5%** decrease from 2017, a fall primarily driven by developments in Iran, where executions for drug offences fell 90% (from 221 in 2017 to 23 in 2018).
  - Saudi Arabia was responsible for the most confirmed drug-related executions in 2018 (at least 59).
  - Singapore executed nine people in 2018 (one more than 2017), all of them for drug offences.
- Over **7,000** people are currently on death row for drug offences globally.<sup>5</sup>
- At least **13** countries sentenced a minimum of **149** people to death for non-violent drug offences in 2018. A significant proportion of those sentenced are foreign nationals.
  - Civil society reports and UN investigations shed light on the grave human rights abuses endured by many individuals awaiting or risking execution: fair trial violations; physical and psychological abuse; isolation; and denial of food and water, among many others.

Chart 1: Global Executions for Drugs  
(minimum confirmed figures, excluding China)





## AT A CROSSROADS: AN ANALYSIS OF DIVERGENT TRENDS

In contrast with a global trend towards abolition, in the past 30 years the death penalty has been increasingly employed by some states as a key element of repressive strategies aimed at curbing drug use and/or drug trafficking. Often, such strategies are rooted in prejudice, fear, intimidation and violence, rather than empirical and scientific evidence.

After decades of policies that rely on harsh punishment, and the threat and spectacle of executions, there is no evidence that the death penalty has any unique deterrent effect on either the supply or the use of controlled substances. In fact, the opposite appears to be true: the 2018 *World Drug Report*, published by the UN Office on Drugs and Crime (UNODC), admits that in spite of punitive approaches to drug control, the drug market is booming, and a “potential supply-driven expansion of drug markets, with production of opium and manufacture of cocaine at the highest levels ever recorded” is expected.<sup>6</sup> The UNODC Regional Office for Southeast Asia – where most retentionist countries for drug offences are located – recently acknowledged that the production and trafficking of methamphetamine in the region has been increasing steadily, and is now reaching “alarming levels”.<sup>7</sup>

Another common claim of retentionist governments is that the death penalty is necessary to protect the health of their citizens.<sup>8</sup> However, analysis by HRI suggests that no positive correlation has been found between the imposition of the death penalty and drug use or the protection of public health. In particular, the latest data from UNODC show that high application countries – such as Malaysia, Vietnam and Iran – have larger documented populations of people who inject drugs than countries that have abolished the death penalty for drug offences, in law or in practice.<sup>9</sup> Similarly, Thailand, Vietnam, Malaysia and China (all retentionist countries) record higher prevalence of Hepatitis C among people who inject drugs than their counterparts in the region which are abolitionist in law or in practice (such as Sri Lanka, Cambodia and Nepal).<sup>10</sup>

These findings mirror those of an earlier study conducted by Professor Jeffrey Fagan, which found no evidence that the death penalty deters drug trafficking and states that “comparisons of Indonesia, Malaysia and Singapore show that the rate of execution has no effect on the prices of drugs nor on the relative rates of drug prevalence”.<sup>11</sup>

An analysis of recent developments regarding the use of the death penalty for drug offences points to the existence of divergent while contemporaneous trends. This report will deconstruct and assess these trends, and consider an interesting third dynamic playing into both: public opinion on the death penalty.

The **first notable trend** is a shift away from the death penalty for drug offences, also manifested by a substantial drop in drug-related executions in 2018. The analysis below details key national reforms that have progressively restricted the application of the death penalty. It also highlights significant limitations of these reforms, in particular:

- A failure to envisage fair, proportionate and humane alternatives to the death penalty.
- Restrictions to judicial discretion.
- A limited impact on the imposition of death sentences in practice – insomuch that thousands of individuals remain on death row for non-violent drug offences around the world, in inhumane conditions of detention.

The **second and opposite trend** is the resurgence of discourses advocating for the death penalty as an essential instrument of drug control.

This can be witnessed in populist contexts and is driven by a rejection of evidence pointing to the lack of a unique deterrent effect of the death penalty, and of health- and evidence-based approaches to drug control. The rise of populism has revamped local and international crackdowns on drugs in many parts of the world, from the United States to the Philippines and from Sri Lanka to Bangladesh: self-pronounced anti-establishment leaders dismiss ‘politically correct’ discourses of human rights, dignity and the rule of law to launch anti-drug campaigns feeding off prejudice and misinformation.

Finally, this report will examine surveys on public attitudes on the death penalty in South East Asian countries, which reveal surprisingly diverse **public opinion** on the topic.

## PROGRESS TOWARDS ABOLITION

In the past decade, progressive reforms restricting the application of capital punishment for drug offences have been adopted in at least five out of the 35 countries that retain the death penalty for drug offences. Some were the result of domestic civil society activism,<sup>12</sup> or were preceded by mounting international pressure; some followed a more or less tacit acknowledgment on the part of national authorities of the ineffectiveness of capital punishment as a tool for drug control. This is best exemplified by the case of Iran, where a 2017 amendment to the Law for Combating Illicit Drugs was preceded by unexpectedly frank stances by prominent figures. Mohammad Baqer Olfat, the deputy head of the judiciary, stated: “The truth is, the execution of drug smugglers has had no deterrent effect”,<sup>13</sup> and called for a revision of the anti-narcotics law, joining the secretary of Iran’s Human Rights Council and over half of the country’s lawmakers.<sup>14</sup> Similarly throughout 2017, Jalil Rahimi Jahanabadi, MP and member of the Parliament Legal and Judicial Committee, repeatedly acknowledged the failure of executions to deter drug use and drug trafficking.<sup>15</sup>

Globally, progress to restrict the scope of the death penalty took three key forms:

- a) Abolition of the death penalty for certain drug offences.
- b) Abolition of the death penalty as a *mandatory* punishment for drug offences in the presence of specific circumstances, thus giving judges some degree of flexibility in sentencing.
- c) Amendments to the definition of drug offences punishable by death.

### *a) Abolition of the death penalty for certain drug offences*

Since 2015, Vietnam and Thailand reviewed their laws to remove certain drug offences from the list of crimes punishable by death. In 2015, **Vietnam** adopted an amended criminal code where the death penalty is abolished for eight offences, including drug possession.<sup>16</sup> Other drug offences, such as manufacturing, transporting and trafficking specific controlled substances, are still punishable by death.<sup>17</sup>

A similar approach was followed by **Thailand**, which in 2017 confronted severe prison overcrowding by amending the

Narcotics Act B.E. 2522, with the effect of abolishing the death penalty for selling drugs. The same reform also expanded opportunities for legal defence. Before the amendment, any person caught in possession of certain quantities of controlled drugs was automatically tried for drug trafficking; now, the intention to sell drugs is presumed, but rebuttable by presenting adequate evidence.<sup>18</sup>

### *b) Abolition of the death penalty as a mandatory punishment for drug offences in the presence of specific circumstances*

Singapore and Malaysia partially abolished the death penalty as a *mandatory* punishment for drug offences. In 2013, **Singapore** removed the death penalty from its Misuse of Drugs Act as a mandatory punishment for drug trafficking, importing and exporting.<sup>19</sup> Judges can now exercise a limited amount of discretion in sentencing in the presence of specific circumstances – namely, the limited involvement of the accused in the illicit activity, and her/his substantial contribution to disrupting drug trafficking (described more in detail below).

A similar reform was passed by **Malaysia** in late 2017. The amendment to the Dangerous Drugs Act 1952 (Revised 1980), which entered into force in March 2018,<sup>20</sup> repeals the mandatory death penalty for drug trafficking, thus removing a major obstacle to judicial discretion. Similarly to Singapore, this discretion can only be exercised if the defendant satisfies strictly defined requirements (described in more detail below).

### *c) Amendments to the definition of drug offences punishable by death*

In October 2017, the Guardian Council of **Iran** approved a parliamentary bill which amended the Law for Combating Illicit Drugs (2017 Iranian Bill),<sup>21</sup> most notably by raising the minimum amounts required for drug offences to be punishable by death. The threshold for capital punishment of production and trafficking<sup>22</sup> of natural substances (*bhang*, Indian hemp juice, grass, opium and opium juice, residue) has been raised from five to 50 kilogrammes; while the relevant amount of processed substances (heroin, morphine, cocaine and other chemical derivatives of morphine or cocaine), once 30 grammes, is now two kilogrammes.<sup>23</sup> Carrying, storing and hiding processed substances is now punishable by death in cases where the offence involves over three kilogrammes of such substances.<sup>24</sup>

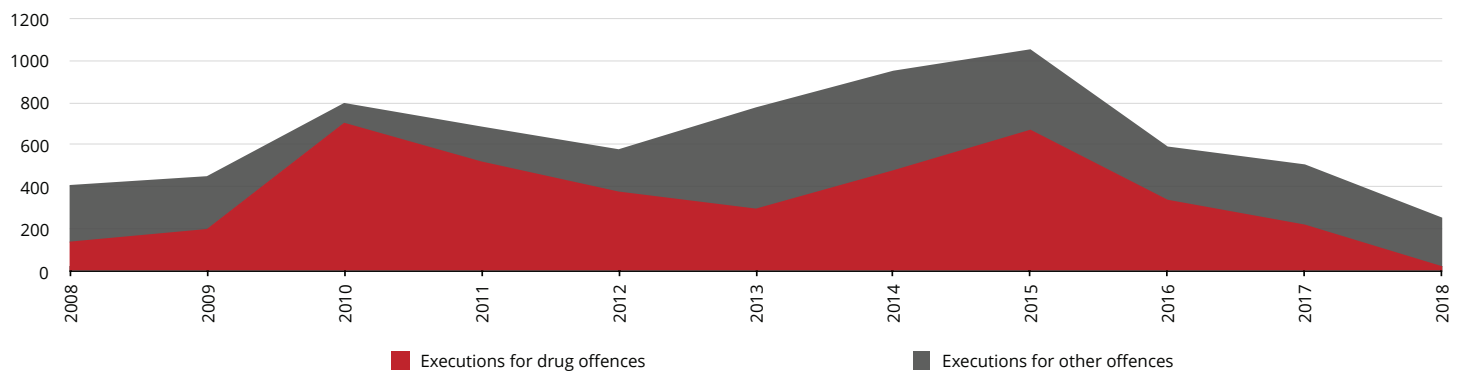
## THE IMPACT OF THE REFORMS

The aforementioned and other national reforms have had some positive impact on the ground. Most significantly, the steady decrease in (confirmed) global executions for drug offences:<sup>25</sup> from 755 in 2015 to 369 confirmed executions in 2016, to 288 confirmed executions in 2017, and 91 confirmed executions in 2018 (this represents a 68% drop from 2017 and a 88% drop from 2015).<sup>26</sup>

The latter is primarily due to a 90% decrease in drug-related executions in Iran (from 221 confirmed executions<sup>27</sup> in 2017 to 23 in 2018).<sup>28</sup> With some exceptions, executions for drug offences were put on hold in the country whilst thousands of eligible sentences were being reviewed. The 2017 Iranian Bill applies retroactively: in March 2018, the UN Special Rapporteur on the Situation of Human Rights in the Islamic Republic of Iran reported that over 5,000 individuals on death row or imprisoned for life for drug offences – 90% of which are young first-time offenders – may see their sentence commuted.<sup>29</sup>

Chart 2: Confirmed Executions in Iran

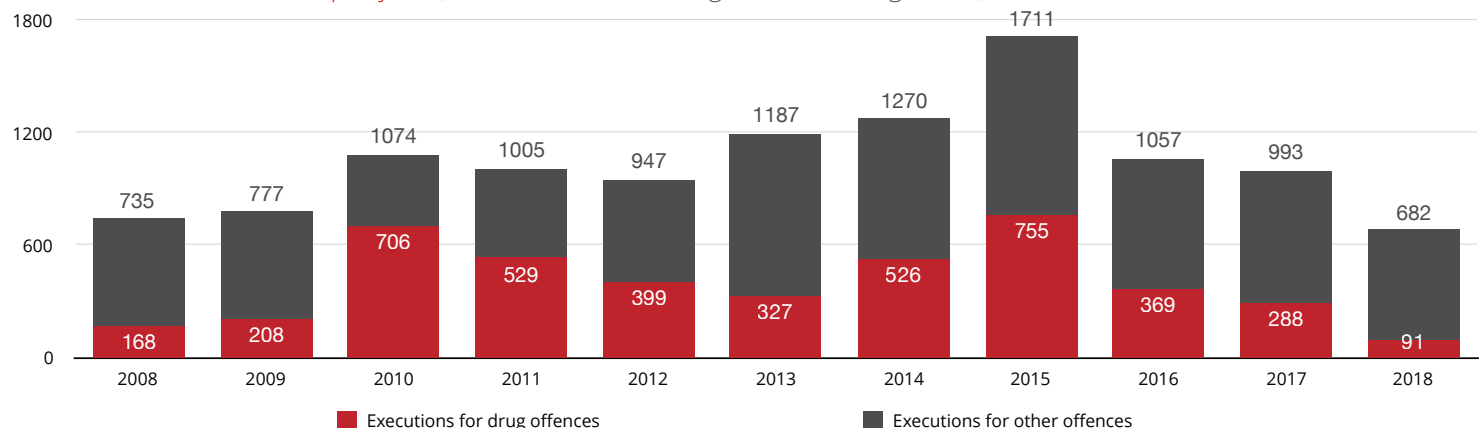
	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Drug Offences	140	200	705	521	378	297	479	672	339	221	23
Other Offences	269	251	94	166	201	481	473	382	253	286	231



In the past ten years, non-violent drug offences have accounted for 23% to 66% of all executions globally. In 2018, due to the impact of the Iranian reform (together with the absence of executions in high-application countries such as Indonesia and Malaysia) they only constituted 13% of total

global executions. In turn, global executions for all crimes saw a 31% decline.<sup>30</sup> This shows how significant domestic reforms to narcotic laws can be in substantially reducing the application of the death penalty overall.

Chart 3: Global executions per year (minimum confirmed figures, excluding China)



## LIMITATIONS OF THE REFORMS

Notwithstanding their significance in reducing the number of people executed, central aspects of the aforementioned reforms are problematic in their design and implementation. As such, they risk obstructing the very progress towards abolishing the death penalty they have contributed to.

### *a) Disproportionate alternatives and limited judicial discretion*

While substantial attention has been devoted to the review of quantities of controlled substances ‘activating’ the death penalty, other, less progressive provisions of the 2017 **Iranian Bill** have received less scrutiny. In fact, newly inserted clauses will likely expand capital punishment to new categories of offences and offenders. The Abdorrahman Boroumand Center for Human Rights in Iran (ABC) stressed the risk that individuals who have not personally committed a crime will be sentenced to death through collective liability, and expressed concern regarding the potential for abusive interpretations of broad and unclearly defined terms in the bill.<sup>31</sup>

The 2017 Iranian Bill also fails to address credible and systematic reports of torture and ill-treatment suffered by those arrested for drug offences with the aim of forcing confessions, and grave violations of fair trial rights, such as denial of legal representation in the early stages of investigations.<sup>32</sup> Finally, although official information on the review process is not available, civil society reports excessive and disproportionate punishments being imposed as an alternative to death sentences, in the form of excessive prison terms, corporal punishment and/or fines.

*“The mother of one drug defendant reports to ABC that her son’s death sentence for a crime involving 450 grams of methamphetamine was converted to 30 years’ imprisonment and a fine of 200 million tomans (around US\$64,000) – a punishment she calls tantamount to the death penalty”.*<sup>33</sup>

For reference, the average annual income of urban families in Iran has been reported at around 37 million tomans (US\$8,800), with an average living cost of nearly 33 million tomans. For rural families, the average annual income registered is just over 20 million tomans (US\$4,770).<sup>34</sup> Failure to pay can lead to expropriation of assets, as well as additional prison time. Such a provision is highly problematic, in that it

“intensifies negative consequences faced by those sentenced, many of whom are driven to drug activity out of poverty and unemployment, and their families”.<sup>35</sup>

Disproportionate alternative punishments are also prescribed in the **Malaysian** and **Singaporean** reforms. Both laws limit the discretion of judges to life imprisonment and caning as alternative to the death penalty.<sup>36</sup>

This limitation to judicial power is not exceptional. Rather, it is a common feature of many domestic narcotics laws, and a visible manifestation of the exceptionalism characterising repressive drug policies. For example:

- In Pakistan, when the relevant offence involves more than ten kilogrammes of a controlled substance, the only available punishments are the death penalty and life imprisonment.<sup>37</sup>
- In Saudi Arabia, a death sentence can only be commuted (irrespective of the crime, the controlled substance and individual circumstances) to imprisonment for a minimum of 15 years, flagellation and a fine of at least 100,000 riyals (around \$26,600).<sup>38</sup>
- In Taiwan, the only possible alternative to capital punishment for relevant drug offences is life imprisonment.<sup>39</sup>
- In Thailand, the death penalty for selling drugs has been replaced with life imprisonment *and* a fine.<sup>40</sup>

Judicial discretion in Malaysia and Singapore is further restricted via **prosecutorial powers**. In Singapore, this happens through ‘certificates of assistance’, whose use and impact was thoroughly scrutinised by Amnesty International in 2017.<sup>41</sup>

The recent amendments to the countries’ respective narcotic laws allowed judges to exercise a degree of discretion, but only *if* and *after* a prosecutor certifies that the convicted person has provided substantial assistance in disrupting trafficking activities (details in the text box below).<sup>42</sup> This further manifests the exceptionalism characterising drug control policies: “in no other common law jurisdiction does the prosecution have the power to tie the judge’s hands in this way and prevent the exercise of discretion in capital cases”.<sup>43</sup>

In parallel, several presumptions were kept in place. Firstly, alleged offenders are presumed guilty of drug trafficking any

time they are found in possession of a certain amount of controlled substances (in Singapore as little as three grammes of cocaine, roughly the equivalent of a cube of sugar; while trafficking over 30 grammes of cocaine is punishable with death).<sup>44</sup> And secondly, possession, control and knowledge of the nature of the substances are presumed in a broad range of circumstances, thus placing the onus on the accused to prove their innocence.<sup>45</sup> In Singapore, for example, a person is presumed to be in possession of a drug anytime s/he has in possession or under her/his control anything containing a controlled substance, or keys to any place, premises or object where a controlled substance is found.<sup>46</sup>

In addition, a prosecutor's determination of whether a person 'deserves' a discretionary sentence is difficult to appeal: in Singapore, a judicial review is only allowed for cases in which the prosecutor has acted in bad faith, or with malice.

### Presumptions in drug cases: Singapore and Malaysia

The Singapore Misuse of Drugs Act allows imprisonment rather than the death penalty only if:

"(a) The convicted individual was involved in the drug crime as a mere 'courier', meaning his 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 (i),

(b) the public prosecutor certifies that the individual has substantively assisted the Central Narcotics Bureau in disrupting drug trafficking activities within or outside Singapore".

Similarly, judicial discretion in Malaysia can now be exercised only if:

- (a) There was no evidence of buying and selling of a

controlled substance 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 was limited to the role of courier (here defined as transporting, carrying, sending or delivering a controlled substance); AND
- (d) that the person convicted has assisted an enforcement agency in disrupting drug trafficking activities within or outside Malaysia.

The combined impact of the provisions expanding prosecutorial powers, together with the several presumptions, is a structurally prejudiced system of justice:<sup>48</sup>

- Because of the presumptions, and the strict standards for their rebuttal, defendants are essentially guilty until proven innocent, in violation of one of the most fundamental tenets of the right to fair trial.
- The substantial assistance test is inherently discriminatory: the lower the position of the courier in the drug trafficking chain, the less likely it is that s/he will be able to provide meaningful information, and thus be "certified" (even less if the person has been coerced or forced into trafficking.) By definition, couriers operate at the peripheries of drug markets, with little to no impact on decision-making processes. These provisions are therefore double-edged in allowing for clemency in favour of such a low-level, powerless figure, while at the same time conditioning such potential for clemency on their ability to provide information that is likely to be unavailable to them.
- Regardless of the amount and reliability of the information shared, a person will only meet the "substantial assistance test" if their cooperation had the effect of assisting in the disruption of trafficking activities.
- The Singaporean law stresses that the determination of the assistance is "at the sole discretion"<sup>49</sup> of prosecutors, who have exclusive and ultimate authority. This opens up substantial space for corruption and abuse, and violates the fundamental principles of fairness and separation of powers. A literal life or death decision is entrusted to prosecutors (parties to the process with incentives to convict, thus not neutral figures) and stripped from judges, who can only – eventually – exercise a limited amount of discretion in a later stage.

### *b) Failure to reform discriminatory systems*

The reforms failed to address systemic issues characterising the imposition of the death penalty for drug offences. Those convicted of capital drug offences are largely among the most marginalised and vulnerable both within the drug market and in society.

**“A prison guard once told me that the death penalty is a privilege reserved for the poor” – recounted a death row lawyer in 2011.<sup>50</sup>**

It has now been six years since **Singapore** amended its Misuse of Drugs Act. According to Amnesty International, fewer death sentences were imposed in the country in the period between 2013 and 2017 in comparison to the five years preceding the reform, and the amendment halved the number of people who would have been sentenced to death.<sup>51</sup> However, steady annual increases in death sentences from 2013 onwards suggest that the reform had a limited impact in practice.<sup>52</sup>

Most notably, sentences and executions for drug trafficking now constitute a higher proportion of overall death sentences and executions in Singapore: while around 50% of all executions between 2008 and 2013 were for drug offences, this figure rose to 89% between 2014 and 2018.<sup>53</sup> Amnesty International also reports that out of 41 sentences pronounced for drug offences in Singapore between 2013 and 2017, 34 were for non-violent crimes involving extremely low quantities of drugs (less than 90 grammes of pure substance).<sup>54</sup>

All executions carried out in Singapore in 2018 were for non-violent drug offences. The stories of the defendants are telling: Prabu Pathmanathan, a 31-year-old Malaysian, was sentenced to death for drug trafficking in 2014 after heroin was found in a car he owned, but was not driving at the time of the discovery. His family was informed of the execution a mere week before it was scheduled, and none of the many requests for review submitted to Singapore – including by the Malaysian government – succeeded in halting the execution.<sup>55</sup>

The 2017 **Malaysian** reform does not apply retroactively, and continues to allow the imposition of capital punishment for drug trafficking, which is the most common crime for which death sentences are meted out in the country.<sup>56</sup> As a result, death sentences continue to be handed down, often as a result of flawed trials.

A 2018 study by the Penang Institute in Malaysia looked at 121 cases of death sentences pronounced by Malaysian High Courts for drug trafficking between 2012 and June 2018, and found that 25.6% of them were overruled at appeal.<sup>57</sup> Taking the overruling as an indication that the earlier judgment was “either factually or lawfully incorrect, then this would imply that a judicial error had occurred in the lower court”.<sup>58</sup> Such a finding is somewhat positive, in that it suggests that higher courts are effective in reviewing the judgments of lower courts, and correcting potential mistakes. However, it also emphasises the importance of access to strong legal defence – which is often unavailable to the most vulnerable in society due to resource constraints in the justice system and fair trial violations. When this is absent, or the case is not properly reviewed, then the risk of wrongful convictions (and thus potentially executions) remains high.

The study further points to discrimination in death penalty cases, finding that foreign nationals are half as likely to have their Court of Appeal judgment revised, and that women convicted for trafficking drugs have considerably less chance than their male counterparts of seeing their cases revised and overruled.<sup>59</sup>

As a consequence, hundreds remain on death row in Malaysia. According to the latest data, 932 out of 1,279 people on death row are awaiting execution for drug offences.<sup>60</sup> Moreover, convictions for drug offences continue to drive the expansion of death row in the country: while the overall death row population grew 13.8% between 2017 and 2018, death row prisoners for drug offences specifically increased by 38% during the same period.<sup>61</sup>

This is far from an exceptional situation. In Vietnam, many of the more than 650 people on death row are awaiting execution for drug offences.<sup>62</sup> Meanwhile in Thailand, almost 60% of the 539 people on death row as of December 2018 had been convicted of drug offences. Notably, the overwhelming majority of women awaiting execution in Thailand (76 out of 83) have been convicted for drug offences.<sup>63</sup> These data confirm how exceptionally repressive drug control strategies adopted by many states are, as well as their defining impact on death row and incarceration figures.

The Foundation for Fundamental Rights recently found that out of 133 capital cases prosecuted under the Pakistani Control of Narcotic Substances Act, every single death sentence was



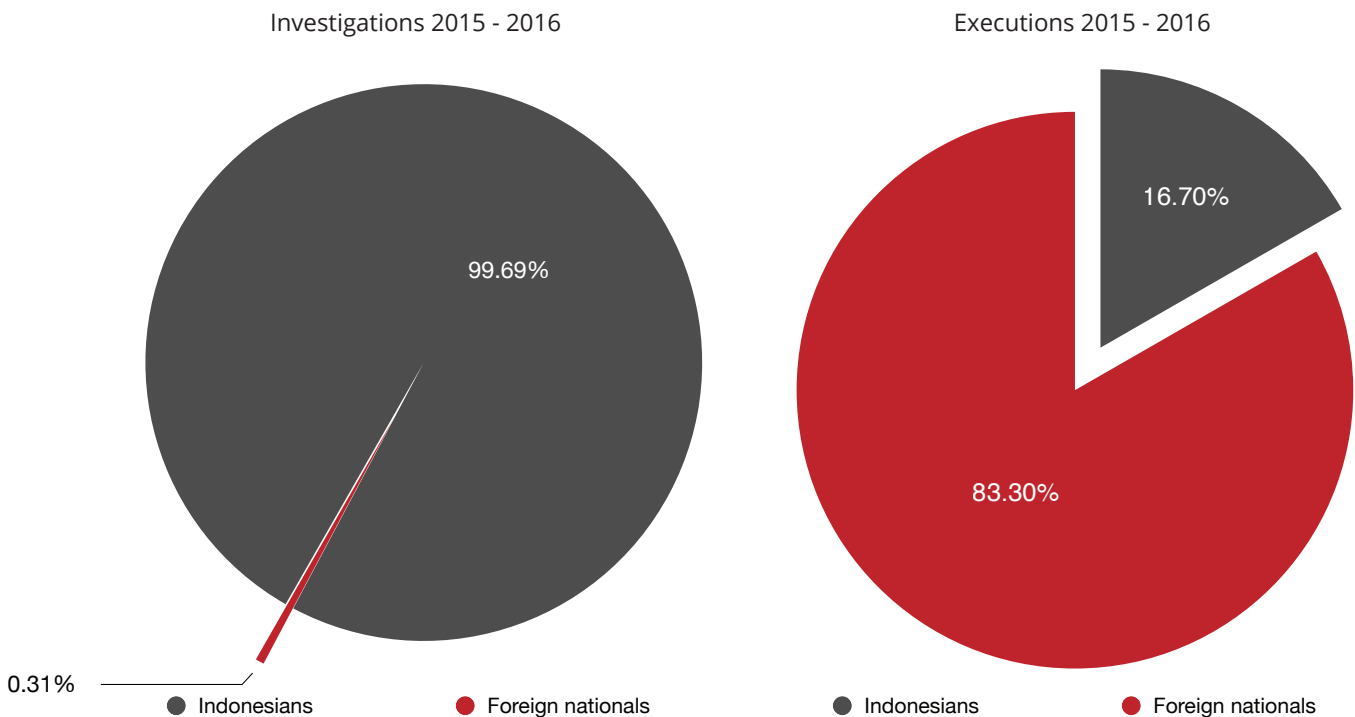
pronounced primarily for possession-based offences, rather than trafficking or management of drug syndicates. In fact, in 30% of these cases at least one senior trafficker was identified, but only in 1% of cases were they subsequently charged or arrested.<sup>64</sup> The Foundation for Fundamental Rights also analysed the prisoners' **socio-economic backgrounds**, and noted that many of these people were mere 'drug mules', who were either coerced or driven into drug trafficking by their socio-economic circumstances. Their median income was significantly lower than the minimum wage for unskilled workers in the country, and over 40% of them were found to be illiterate.

"There is little chance these individuals could be acting independently or have acquired the narcotics they were seized with via their own means. The average value of the narcotics seized from each prisoner was roughly 1,600 times the prisoners' median income".<sup>65</sup>

**Foreign nationals**, who often endure unique violations of their fair trial rights, also constitute a substantial proportion of the global death row population. In 2018, 569 foreign nationals were awaiting execution in Malaysia (44% of all death row prisoners), many for drug offences.<sup>66</sup> At least 29 of the 59 people executed for drug offences in Saudi Arabia in 2018 were foreign nationals, mostly from Pakistan and Nigeria.

Similarly, 60 out of 236 death row prisoners in Indonesia are foreign nationals.<sup>67</sup> The charts below are illustrative of the discrimination suffered by foreign nationals in the country: while less than 1% of police investigations into drug offences were against foreigners in 2015 and 2016, they accounted for almost 85% of those executed for drug offences in the same period.

Chart 4: Police investigations (left) and executions (right) carried out for drug offences in Indonesia in 2015 and 2016, against Indonesians and foreign nationals.<sup>68</sup>



## RESURGENCE OR EXPANSION OF THE DEATH PENALTY FOR DRUG OFFENCES

In 2014-2015 – just as executions began to decrease globally – a number of populist governments pledged to confront drug emergencies through punitive drug control strategies centred around judicial and extrajudicial killings.

Populism relies on a constant state of crisis and emergency.<sup>69</sup> As such, nothing fits a populist rhetoric better than the concept of a *war* on drugs – of a domestic battlefield that requires swift, direct and severe responses. Typically, populist leaders identify an emergency or menace, and point to themselves (not the international community, judges nor lawyers) as the only authorities able and willing to confront the situation and restore order. In a populist scenario, violence is performative: it shows strength and control. Extrajudicial killings and the death penalty are thus neither extreme nor unintended consequences of populist policies, but rather essential manifestations of power.

One of the first indications of this trend was **Indonesian** President Joko Widodo's renewal of the 'war on drugs' in the country in 2014. Widodo relied on a populist rhetoric in support of this strategy: he denounced drugs as the number one problem in the country,<sup>70</sup> and claimed Indonesia was in a state of emergency because of drug use and trafficking, and that it could only be confronted with capital punishment.<sup>71</sup> In support of this claim, the Indonesian president cited inflated data on drug dependence and drug-related deaths in the country, the collection of which has since received criticism.<sup>72</sup> In January 2015, six people were executed for drug offences; in April of the same year, eight more individuals were executed for drug trafficking.<sup>73</sup> This was a significant shift for Indonesia, which had only carried out four executions for drug offences between 2008 and 2014, with a hiatus between 2009 and 2012. The last execution was carried out in Indonesia in July 2016;<sup>74</sup> however, authorities are adamant that no moratorium is in place.<sup>75</sup>

The resumption of capital punishment in 2015 was part of an aggressive anti-drug campaign which continues to this day, and features extrajudicial killings,<sup>76</sup> arbitrary detention,<sup>77</sup> compulsory treatment of people who use drugs<sup>78</sup> and refusal by the president to consider clemency applications submitted by death row prisoners convicted of drug offences.<sup>79</sup>

In the neighbouring **Philippines**, President Duterte's crackdown on drugs – a centrepiece of his presidential campaign<sup>80</sup> – has led to over 20,000 suspected extrajudicial executions since June 2016<sup>81</sup> and is driving the reintroduction of the death penalty for drug offences (a dedicated bill passed the lower house of parliament in 2017, and is now sitting in the senate).<sup>82</sup>

**“Duterte's rise to power utilized penal populism by presenting a clear narrative built on the anxieties felt by the public. His aggressive rhetoric translated to a promise of justice and sense of control via a strong leader”.**<sup>83</sup>

The Philippines fully abolished the death penalty in 2006,<sup>84</sup> and is one of few countries in Asia to have ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.<sup>85</sup> The protocol bars signatory countries from carrying out executions and reintroducing capital punishment.<sup>86</sup> However, with a pro-death penalty leader, arbitrary drug arrests and detention in overcrowded cells<sup>87</sup> and a preliminary investigation for crimes against humanity opened by the International Criminal Court,<sup>88</sup> the country is on the extreme fringe of the international community.

The brutal strategy implemented in the Philippines met the praise of **USA** President Donald Trump, who commended Duterte's “unbelievable job on the drug problem”.<sup>89</sup> In March 2018, President Trump laid out a plan to confront the opioid crisis in the US, which included the imposition of the death penalty against drug traffickers.<sup>90</sup> This declaration was followed by a memorandum released by then-attorney general Jeff Sessions, strongly encouraging United States Attorneys to pursue capital punishment for drug trafficking.<sup>91</sup>

In July 2018, the government of the Indian state of **Punjab** called for expanding the death penalty to first-time drug offenders, also citing “with approval, the examples of the regimes in Saudi Arabia and Thailand chopping off the heads of drug traffickers as effective measures”.<sup>92</sup> India formally retains the death penalty for drug offences, but only for a subsequent offence involving possession, production or transportation of specified drugs and quantities. As a consequence, only six of the 915 death sentences confirmed to have been pronounced in the country from 2011 onwards are for drug offences.



This proposal represented an escalation in the local government's fight against the "drug menace",<sup>93</sup> a term used to refer to growing opioid use in the area. The chief minister of Punjab, Amarinder Singh, incited violence and introduced increasingly repressive measures, from compulsory drug testing of government employees to prohibiting the sale of syringes without a prescription.<sup>94</sup> This move was eventually rejected by the central government.<sup>95</sup>

In July 2018, **Sri Lanka's** President Maithripala Sirisena quashed hopes for abolition by threatening to execute 19 convicted drug traffickers, which would thereby end the country's 42-year-long de facto moratorium on the use of the death penalty.<sup>96</sup> The president cited alleged drug trafficking being directed by prisoners as a driver of an alleged "growing tide of drugs" in the country, and praised the successes of President Duterte.<sup>97</sup> According to official figures, Sri Lanka hands down dozens of death sentences each year.<sup>98</sup> If such a decision is implemented, it could have tragic consequences for death row prisoners in a country where possessing two grammes of cocaine is enough to be sentenced to death.<sup>99</sup>

Finally, on 27 October 2018, **Bangladesh** approved a new Narcotics Control Act which expands the application of capital punishment to the manufacture and distribution of methamphetamine, known as yaba.<sup>100</sup> No execution has ever been confirmed in Bangladesh for drug offences, and only one drug-related death sentence was reported between 2008 and 2017, although more could have been pronounced.<sup>101</sup> Early signs of a potential shift are the two death sentences handed down for drug trafficking in 2018.<sup>102</sup>

This possible resurgence of the death penalty in the country is not an isolated phenomenon, but rather part of a wider anti-drug campaign which has created hundreds of victims since it was launched in May 2018 by the country's prime minister, Sheikh Hasina. The prime minister affirmed in June of the same year: "Drugs destroy a country, a nation and a family. [...] We will continue the drive, no matter who says what".<sup>103</sup>

Local human rights organisations denounced 292 extra-judicial killings between May and December 2018 caused by the government-backed war on drugs,<sup>104</sup> while credible evidence emerged of mass arrests of over 25,000 individuals,<sup>105</sup> enforced disappearances and obstacles to accessing healthcare services for people who use drugs. This war on drugs is ultimately a war on the poor, and a political strategy to spread fear ahead

of the general elections which took place on 30 December 2018.<sup>107</sup> UN experts denounced that:

"'Slum' areas have been particularly subjected to raids and [...] the 'war on drugs' disproportionately targets poor and underprivileged people. There are also reports that lists of individuals to be subjected to operations have been prepared, that members of the RAB [Rapid Action Battalion] are accepting money not to target certain individuals, and that in some cases killings may have been politically motivated".<sup>108</sup>

## PUBLIC SUPPORT FOR CAPITAL PUNISHMENT AND PENAL POPULISM

Another key feature of populist governments is their symbiotic relationship with the public and thus their strong focus on public opinion.

On one side, populist policies are often designed with the aim of building or strengthening public support. Not by chance, they tend to become more visible, or more aggressive, in the vicinity of elections (as developments in Indonesia and Bangladesh show). A particular manifestation of this phenomenon is *penal populism*, or "the idea that public support for more severe criminal justice policies [...] has become a primary driver of policy making".<sup>109</sup> Penal populism is identified as a driver of the increase in the use of severe criminal punishment, irrespective of its potential as well as adequacy to reduce crime and confront issues, because of the public support it garners. On the other side, populist discourses often reject evidence, expert opinions and international standards, pointing to popular support to justify and legitimise their policies.

These dynamics are apparent both in the field of drug control and in relation to the use of capital punishment. Evidence clearly shows that the death penalty, and violently repressive policies in general, have no unique deterrent effect on drug trafficking (as illustrated above).<sup>110</sup> On the contrary, they cause significant health and social harm. However, this body of evidence, together with basic human rights standards, are rejected by populist leaders as biased or foreign, or simply ignored; while drugs are reduced to a mere criminal issue, to be confronted with harsh criminal measures. Accordingly, the death penalty is paraded as an easy solution to complex and

deep-rooted phenomena – which are often exacerbated by misguided choices of those same governments.

**Public opinion surveys** play a critical role in perpetuating this vicious cycle. They are often cited in support of, and as final justification for, repressive drug policies.<sup>111</sup> At a closer look, however, the reality appears to be one of flawed data collection, cherry-picked results and conflated rhetoric, with public opinion being more complex and diverse than is often reported.

In 2013, the Death Penalty Project published the results from one of the most detailed public opinion surveys on the death penalty conducted in an Asian country, focused on popular perceptions in **Malaysia**.<sup>112</sup> This study highlighted the elasticity of people's attitudes towards capital punishment.

When asked about their support for the death penalty for drug trafficking generally, a staggering 74% to 80% of the participants declared to be in favour (depending on the drug involved).<sup>113</sup> However, once presented with specific cases, responses changed considerably: none of the scenarios involving a drug offence garnered more than 29% support, and in one specific case (a woman drug courier with no criminal record), the support plummeted to 9%.<sup>114</sup>

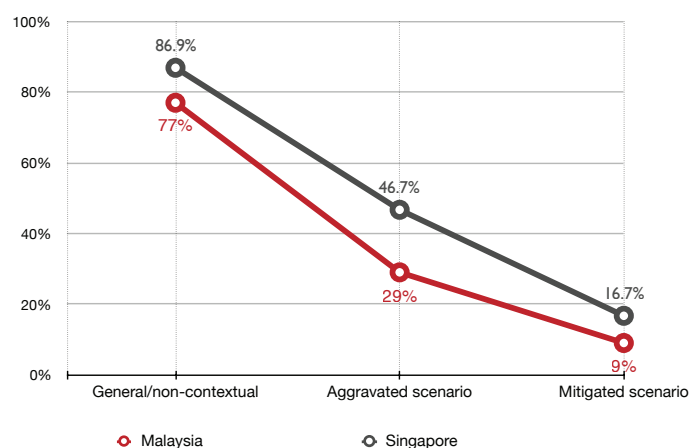
Another key factor found to be influencing popular attitudes is the belief in perfect justice. When expressing their support for the death penalty for drug trafficking, if it was proven that innocent people had been executed, approval fell almost 50 points, from 75% to 26%.<sup>115</sup>

More recently, this same methodology was employed to assess public attitudes in **Singapore**. Although the country is one of the most resolute supporters of capital punishment as an instrument of drug control, in part because of the perceived support enjoyed from the population, the results largely mirror those of Malaysia:

- 86.9% of participants claimed to support the death penalty for drug trafficking “in general”.<sup>117</sup>
- Once presented with real-life scenarios, attitudes changed significantly. For the case of a female drug courier, support for the death penalty fell to 16.7%.<sup>118</sup>
- The main reason for supporting capital punishment is belief in its deterrent effect, and in perfect justice: “[I]f it was proved that innocent persons have sometimes been

executed [...] between 61.5% and 67.6% of those who supported the death penalty for at least one of the three crimes [murder, drug trafficking, firearm offences] would change their minds”.<sup>119</sup>

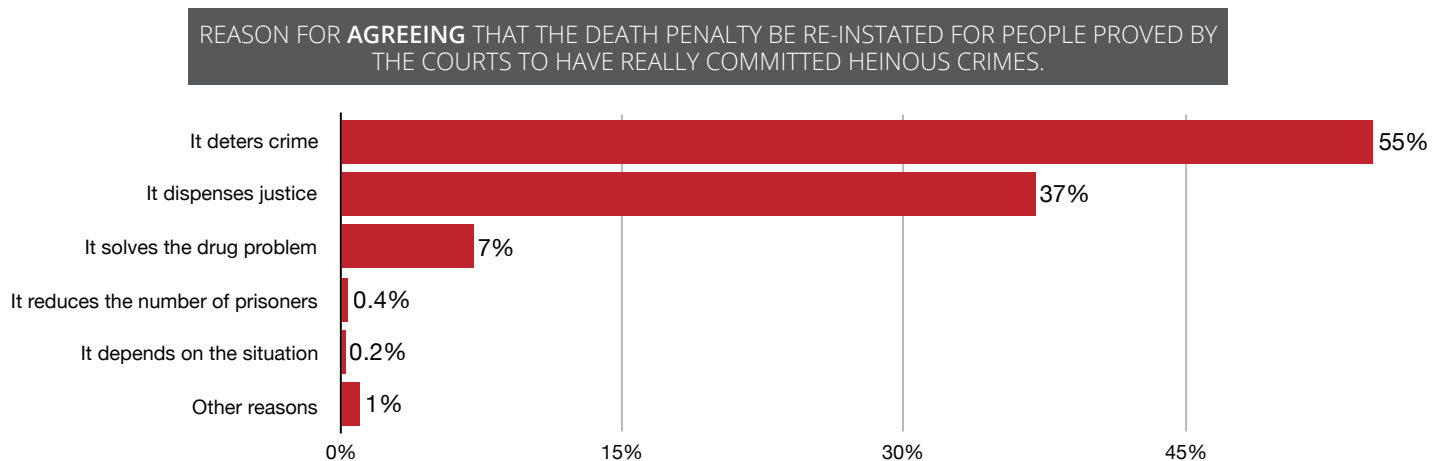
Chart 5: Public support for the death penalty for drug offences



On 10 October 2018, the Human Rights Commission of the Philippines released the results of a public opinion survey on the death penalty for drug offences<sup>120</sup> which disproves the ongoing narrative claiming the people are calling for capital punishment to be reintroduced.<sup>121</sup>

Respondents were given different scenarios, and tasked with choosing among four different forms of punishment, including the death penalty. The results suggest that the majority of Filipinos do not support the death penalty for drug offences. For the crimes of working in and maintenance of areas where people use drugs, manufacture, sale or importation of illicit drugs and murder under the influence of drugs, only 22% to 33% of respondents (depending on the specific offence) believe that capital punishment is the most appropriate response.<sup>122</sup> Consistent with the findings of other surveys, the main reason for supporting the death penalty is the belief in its deterrent effect.<sup>123</sup>

Chart 6: Findings from the March 2018 National Survey on Public Perceptions on the Death Penalty published by the Human Rights Commission of the Philippines<sup>124</sup>



(WS and Commission on Human Rights (2018) *Special Report: March 2018 National Survey on Public Perceptions on the Death Penalty*)

Innocence and perfect justice again proved to be key determinants of opinion, with three in five respondents convinced that “the death penalty can only be imposed if the courts are certain that they will not wrongfully execute an innocent person”.<sup>125</sup> At the same time, Filipinos do not seem to believe this perfect justice exists: almost half of the survey respondents are convinced that most people in prison are innocent, and three in five are concerned that wrongful sentencing is “very possible”.<sup>126</sup>

These three surveys consistently recorded a general lack of knowledge by the public around basic death penalty facts: the overwhelming majority of respondents both in Malaysia<sup>127</sup> and in Singapore<sup>128</sup> were unable to correctly estimate the number of people executed for drug offences in the countries in the previous ten years. Over half of Malaysian interviewees was also not aware that (at the time of the survey) judges were mandated to impose the death penalty for drug trafficking.<sup>129</sup>

Public opinion is often mentioned as a key justification for retaining the death penalty for drug offences. This argument is a fallacious one. On the one hand, public policies should be centred around the respect for and protection of human rights, not purely determined by public preferences. On the other hand, the abovementioned surveys unequivocally show that support for the death penalty – especially for non-violent crimes – is elastic and contextual. Calls for capital punishment are often rooted, and dependent on, the belief in (1) its ability to deter crime and (2) the infallibility of the justice system, both of which have been disproved.

## CONCLUSIONS

Recent political, legal and practical developments with regards to the death penalty for drug offences suggest we are in a defining and critical moment.

On the one hand, several countries are progressively shifting away from capital punishment as a tool of drug control, often after acknowledging the failure of the death penalty to deter drug use and drug trafficking. The most visible consequence of such shifts is a stark decrease in executions for drug offences, and consequently overall (as the examples of Iran and Malaysia show).

On the other hand, thousands of people continue to be sentenced to death for non-violent drug offences around the world, and endure harsh conditions of detention, sometimes for decades, in crippling uncertainty about their future. Governments inflate perceived drug emergencies and push for the imposition or expansion of the death penalty, often on the basis of apparent popular support coupled with populist discourses:

“The ‘war on drugs’ approach allows people to simplify the complex nature of drug dealing and drug use. This misleads people into thinking that tough laws alone are a magic bullet that can deal with all drug-related problems once and forever”.<sup>130</sup>

Throughout this report, three recurring themes emerge, which situate the death penalty as one of the most visible manifestations of repressive approaches to drug use and trafficking, rather than an isolated measure.

First, the **exceptionalism** characterising punitive drug policies, manifested by the sidelining of fundamental standards of dignity and legality in favour of grossly disproportionate and dehumanising responses. This is embodied (among others) by the many presumptions, the mandatory character of the death penalty or the disproportionate alternatives prescribed, and the subjugation of judicial discretion to prosecutorial powers. By preventing judges from considering the circumstances of the crime and the accused, these features make it virtually impossible to respect the fundamental principles of fairness and proportionality that must characterise due process. Notably, such a departure from fundamental standards of law is not exclusive to the death penalty, but rather characterises many punitive responses to drugs, as they are ultimately rooted in misperception and prejudice: a person who engages with drugs is by definition ‘guilty’, and as such not deserving of the legal guarantees and fundamental protections afforded to others.

The lack of proportionality, with capital punishment employed to punish non-violent behaviours because of sometimes minimal involvement of drugs, is also not limited to the death penalty. Rather, it infuses repressive drug policies around the world, as manifested by global rates of over-sentencing and over-incarceration of people engaging – or suspected to be engaging – with drugs.<sup>131</sup> “[H]arsh criminal justice responses to drugs are a major contributor to prison overcrowding”, and in certain countries the majority of the prison population has been incarcerated for drug offences.<sup>132</sup>

Second, the fundamentally **discriminatory** nature of the death penalty, which reflects the inherently inequitable character of punitive drug policies.

Repressive responses to drugs around the world disproportionately impact upon the most vulnerable, both in society and within the drug market. In the same way, because of the combination of lack of adequate legal aid, the imposition of capital punishment for minor offences and structural features of the drug market, death row prisoners in countries retaining the death penalty for drug offences are largely individuals with histories of poverty, discrimination and fragility,

convicted for often marginal involvement with drug trafficking. Due to the way drug control laws are designed and enforced, the primary targets of law enforcement are individuals occupying positions within the drug market characterised by high risk and low reward (such as couriers).<sup>133</sup>

Third, a **rejection of evidence and evidence-based interventions and approaches**. This report has retraced recurring discourses around the purported deterrent effect of the death penalty on drug use and drug trafficking – in contrast with an increasing body of evidence denying it. The same rhetoric, and the same dynamic, can be witnessed for punitive drug policies more generally. While governments around the world call for crackdowns on drug use and drug markets, studies consistently find that punishment and criminalisation do not reduce either drug use or drug markets; in fact, drug markets continue to expand.<sup>134</sup> The repressive climate in which these measures are implemented fuels impunity and violence, while negatively weighing on both individual and public health.

More generally, punitive drug policies around the world fail to produce positive results because they ignore mounting evidence about defining aspects of drug use and drug markets. In the same way, the death penalty simply cannot work as a tool of drug control and supply reduction, because in making it the cornerstone of their drug policies, governments choose to ignore the reasons that determine many to engage in the drug market (such as coercion, ignorance of the consequences or lack of economic opportunities) and the power dynamics shaping it.<sup>135</sup> Finally, any measure that aims to work as a deterrent must be predictable and certain. Domestic narcotics laws, however, are extremely diverse and varied (as the table at page 28 shows), each punishing different crimes, types and quantities of drugs, insomuch that they are simply unfit to successfully deter any behaviour; even less those which are by nature transnational, such as many drug offences.

In light of this, it becomes apparent that the limitations of the reforms analysed throughout this report are not due to the specificities of the context, nor to the laws. Rather, they are to be attributed to the fundamental unfairness of capital punishment, and of those repressive drug control policies of which the death penalty is a manifestation. In other words, a comparative analysis of these reforms and their implementation shows that **a death penalty reform which falls short of total abolition will never be fair**, because both capital punishment and repressive drug control policies

are inherently abusive, discriminatory, and contrary to basic principles of humanity and dignity.

Domestic developments show that change is possible, and that tackling the death penalty for drug offences is a strategic step towards the achievement of total abolition of this barbaric punishment. At the same time, recent reforms also demonstrate how complex the struggle towards abolition is. Examples such as Sri Lanka and Bangladesh demonstrate how any change in policy or political will can undo decades of advancements, if not resisted and counteracted with evidence, education, compassion and human rights-based strategies.

## COUNTRY-BY-COUNTRY ANALYSIS

This part of the *Global Overview* provides a state-by-state mapping of those countries that have capital drug laws, and an analysis of how these laws are enforced, applied or changing in practice. The information presented here updates and builds upon the data presented in previous editions of the *Global Overview*.

### CATEGORIES

HRI has identified 35 countries and territories that retain the death penalty for drug offences in law.

Only a small number of these countries carry out executions for drug offences on a regular basis. In fact, five of these states are classified by Amnesty International as abolitionist in practice.<sup>136</sup> This means that they have not carried out executions for any crime in the past ten years (although in some cases death sentences are still pronounced), and are believed to have a policy or established practice of not carrying out executions.<sup>137</sup> Others have never executed anyone for a drug offence, despite having dedicated laws in place.

In order to demonstrate the differences between law and practice among states with the death penalty for drug offences, HRI categorises countries into high application, low application or symbolic application states.

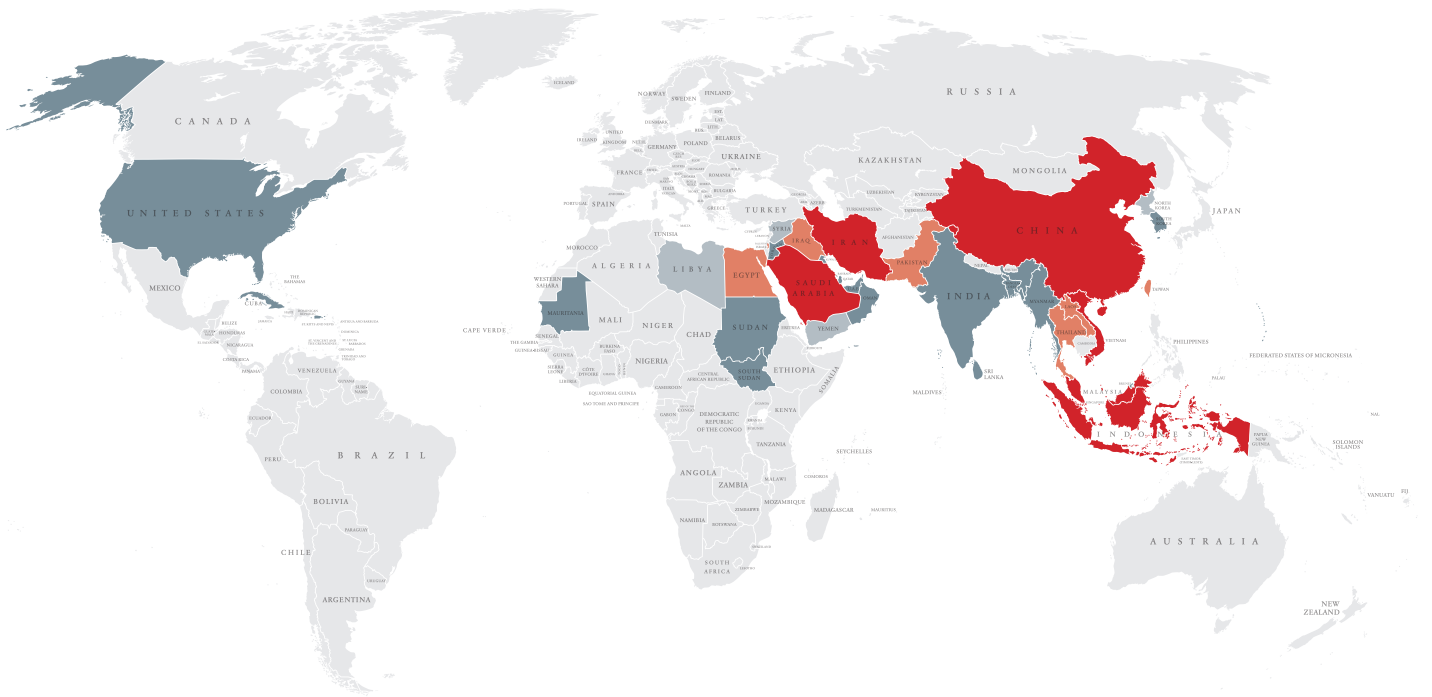
**High Application States** are those in which the sentencing of those convicted of drug offences to death and/or carrying out executions is a regular and mainstream part of the criminal justice system.

**Low Application States** are those where executions for drug offences are an exceptional occurrence, although executions for drug offences may have been carried out within the last five years, while death sentences for drug offences are relatively common.

**Symbolic Application States** are those that have the death penalty for drug offences within their legislation but do not carry out executions, or at least there has not been any record of executions for drug offences. Most of these countries are retentionist, which, according to Amnesty International, means that they retain the death penalty for 'ordinary crimes'.<sup>138</sup> However, a few are what Amnesty International defines as 'abolitionist in practice'. Some of these countries may occasionally pass death sentences, but there is little or no chance that such a sentence will be carried out.

South Sudan and the USA are the only two symbolic application countries confirmed to have carried out executions in 2018, and not for drug offences. The dedicated section therefore only provides figures on death sentences and death row populations.

A fourth category, **insufficient data**, is used to denote instances where there is simply not enough information to classify the country accurately.



High Application	Low Application	Symbolic Application	Insufficient Data
China	Egypt	Bahrain	Libya
Indonesia	Iraq	Bangladesh	North Korea
Iran	Lao PDR	Brunei Darussalam	Syria
Malaysia	Pakistan	Cuba	Yemen
Saudi Arabia	State of Palestine (Gaza)	India	
Singapore	Taiwan	Jordan	
Vietnam	Thailand	Kuwait	
		Mauritania	
		Myanmar	
		Oman	
		Qatar	
		South Korea	
		South Sudan	
		Sri Lanka	
		Sudan	
		United Arab Emirates	
		United States of America	



## HIGH APPLICATION STATES

Country	Death row for drugs		Death row total		Executions for drugs		Executions total	
	2017	2018	2017	2018	2017	2018	2017	2018
China	Unknown	Unknown	Unknown	Unknown	Unknown	Unknown	Unknown	Unknown
Indonesia	75 <sup>139</sup>	130 <sup>140</sup>	165 <sup>141</sup>	236 <sup>142</sup>	0	0	0	0
Iran	Unknown	5,300+ <sup>143</sup>	Unknown	Unknown	221	23	507	254 <sup>144</sup>
Malaysia	675 <sup>145</sup>	932 <sup>146</sup>	1,124+ <sup>147</sup>	1,279 <sup>148</sup>	0	0	4+ <sup>149</sup>	0
Saudi Arabia	Unknown	Unknown	45+ <sup>150</sup>	58+ <sup>151</sup>	59 <sup>152</sup>	59 <sup>153</sup>	146 <sup>154</sup>	149+ <sup>155</sup>
Singapore	Unknown	16+ <sup>156</sup>	40+ <sup>157</sup>	46+ <sup>158</sup>	8 <sup>159</sup>	9 <sup>160</sup>	8 <sup>161</sup>	9 <sup>162</sup>
Vietnam	Unknown	Unknown	600+ <sup>163</sup>	650+ <sup>164</sup>	Unknown	Unknown	Unknown	85+ <sup>165</sup>

### CHINA

The cornerstone of China's death penalty policy (according to its own government) is: "To retain the death penalty, control it strictly and apply it prudently".<sup>166</sup> The reality, however, appears to be one of widespread use of capital punishment,<sup>167</sup> inasmuch that Amnesty International consistently rates China as the "world's lead executioner, implementing more death sentences than the rest of the world combined".<sup>168</sup> Drug trafficking and murder are the main offences for which executions are carried out, and the Dui Hua Foundation reports a rising trend in capital drug cases.<sup>169</sup>

Figures on the death penalty in China are classified as a state secret. This, combined with media censorship, makes it virtually impossible to provide credible estimates of executions. Nevertheless, reports of executions emerged throughout 2018, particularly in the lead-up to 26 June, the International Day Against Drug Abuse and Illicit Trafficking, when Chinese authorities often step up their imposition of death sentences and executions as a warning against drug use and trafficking.<sup>170</sup> In 2018, at least 33 executions were reported between 20-26 June,<sup>171</sup> some carried out in the immediate aftermath of the sentence being imposed.<sup>172</sup> Several of these mass trials were conducted in front of hundreds of people.<sup>173</sup>

Civil society denounced systemic violations of fundamental rights in criminal and capital cases, ranging from denial of legal assistance to arbitrary detention, and from forced confessions to inhuman treatment and torture.<sup>174</sup> In September 2018, a new law was enacted stipulating that all death penalty cases

(among others of a certain gravity) be adjudicated in front of a panel of three judges and four jurors. This has the potential to contribute to fairer trials and a more cautious imposition of the death penalty.<sup>175</sup>

In China, the death penalty is disproportionately meted out against the poorest in society. In a recent report, The Rights Practice identified several factors which make the death penalty inherently discriminatory in the country, including: poor quality of legal aid; the practice of paying compensation to the victim's family in order to avoid execution (which leaves those unable to pay in a more vulnerable position); the tendency for drug traffickers to recruit couriers in the most marginalised areas of the country; and, police targets for drug offences, which incentivise the arrest of low-level couriers rather than high-level figures within the drug market.<sup>176</sup>

In November 2018, China underwent its third round of Universal Periodic Review. It received recommendations on the death penalty from 19 countries, among others suggesting the adoption of a moratorium on execution and highlighting the need for greater transparency on the use of capital punishment.<sup>177</sup>



## INDONESIA

The last executions for drug offences took place in Indonesia in 2016.

In March 2018, the head of the Public Information Bureau (the Public Relation Division of the National Police), Cahyo Budi Siswanto, acknowledged that the death penalty failed to deter drug offences.<sup>178</sup> Notwithstanding, the country's attorney general forcefully denied a moratorium is in place<sup>179</sup> and death sentences continue to be imposed. The head of the national Anti-Narcotics Agency (BNN) also stated in September 2018 that he had coordinated with the attorney general to immediately execute those convicted of narcotics cases on death row.<sup>180</sup>

Thirty-four death sentences for drug offences were pronounced in 2018 (64% of the total),<sup>181</sup> and 130 individuals are currently awaiting execution for drug offences (four of whom are women.)<sup>182</sup> The country's death row population increased by 43% between October 2017 and December 2018.<sup>183</sup> This was largely driven by drug-related sentences: the number of death row prisoners convicted for drug offences increased by 73% in 2018. Concurrently, President Widodo has refused to review clemency applications for drug offences.

Local civil society has denounced systemic fair trial violations in capital cases, such as arbitrary detention and forced confessions, denial of adequate translation to foreign nationals, summary trials and the absence of legal counsel at all stages of the trial.<sup>184</sup>

In April 2018, the UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health published his reports on his 2017 mission to Indonesia. Amongst other issues, he denounced the detrimental impact of the criminalisation of drugs – of which the death penalty is the most egregious manifestation – on both individual and public health, and recommended that the country abolish the death penalty for drug-use offences.<sup>185</sup>

In March 2018, 178 Indonesian citizens were reported to be on death row in other countries, chiefly Saudi Arabia and Malaysia, and mainly for drug offences.<sup>186</sup>

## IRAN<sup>187</sup>

At least 3,950 individuals were executed in Iran for drug offences alone between 2008 and 2017,<sup>188</sup> and Iran consistently featured among the world's top executioners, both overall and for drug offences specifically. Developments in 2018 may suggest a change in trend.

The 2017 amendment to the Law for Combating Illicit Drugs, with its retroactive validity, activated a process of judicial review of thousands of eligible death sentences. Meanwhile, executions for drug offences in the country were put on hold, with a few exceptions. As a result, 23 executions took place in the country for drug trafficking in 2018, against the 221 confirmed for 2017.<sup>189</sup> This 90% decrease in drug-related executions translated to a 50% drop in total executions in the country.

Nevertheless, the effect of the Iranian reform on the number of executions carried out in the country may be temporary. Indeed, while a moratorium on drug-related executions was in place in the first months of 2018, executions restarted in late April. They were carried out every month following, apart from May and November, with a spike in December 2018 (when at least 13 drug-related executions were recorded.)<sup>190</sup> Also, the secrecy surrounding the imposition of the death penalty prevents any thorough assessment of whether and how the reform has modified sentencing patterns in the country.

Reports on the implementation of the amendment also shed light on the death row population in the country. The UN Special Rapporteur on the situation of human rights in the Islamic Republic of Iran reported in March 2018 that at least 5,300 people, many of whom are from vulnerable economic backgrounds, are awaiting execution in Iran,<sup>191</sup> while other sources report significantly higher numbers.<sup>192</sup> As a former death row prisoner recounts, conditions are inhumane:

*“A prisoner who is taken to his final visit hasn't cleaned himself and eaten in days and has had to wash his hands in the toilet bowl of his solitary confinement cell. As the windows are sealed shut, the solitary confinement cell is steaming hot in the summer. [...] In these conditions, the prisoner, whose hands and feet are cuffed, is brought to the last visit and given ten minutes to say goodbye to his family. [...] The blankets which are given to prisoners in the solitary confinement cell reek of vomit. When they moved me to solitary*

confinement, there was a blanket under the dustbin and slime was dripping on it from the waste in the bin. The officer told me to pick it up".<sup>193</sup>

Finally, Iranian civil society warned against several problematic aspects of the reform, such as the expansion of capital punishment to new categories of offences and offenders, and the inclusion of vague terms and provisions which enable misinterpretation and abuse (a detailed analysis of these issues is provided in the previous section of this report, at page 12).

## MALAYSIA

A year after reforming its narcotics legislation and removing the death penalty as a mandatory punishment for drug trafficking (in the presence of certain circumstances), the newly-elected government pledged on 10 October 2018 to abolish the death penalty for all offences.<sup>194</sup> A key driver was the wave of protest sparked by the death sentence of 29-year-old Muhammad Lukman, charged with possession of cannabis and cannabis derivatives which he was offering as a pain relief solution to cancer patients.<sup>195</sup>

Since first announcing the decision, the Malaysian law minister Datuk Liew Vui Keong repeatedly acknowledged that capital punishment is "ineffective as a deterrent",<sup>196</sup> and the country reversed its former vote on the UN General Assembly Resolution on a moratorium on the use of the death penalty from *against* to *in favour*.<sup>197</sup>

This important political commitment, at the heart of a predominantly retentionist region of the world, is a welcome development. At the time of writing, however, no draft law had been presented, parliament is not likely to discuss the issue until March 2019 and significant resistance is expected in the senate.<sup>198</sup>

In the meantime, while no executions were carried out in 2018, death sentences were routinely imposed. Thirty-one death sentences for drug trafficking were reported in 2018 (while more could have been pronounced), including at least two after the government committed to abolition. In November 2018, around 1,279 people remained on death row, of which 143 were women and 569 foreign nationals. The overwhelming majority of death row prisoners have been convicted for drug offences.<sup>199</sup>

In November, 2018 Malaysia underwent the third round of Universal Periodic Review, receiving recommendations on the death penalty by 20 countries.<sup>200</sup>

## SAUDI ARABIA

With the possible exception of China, Saudi Arabia was the world's top executioner for drug offences in 2018.

At least 59 individuals were executed for non-violent drug offences, mainly smuggling, although actual numbers are likely to be higher. A significant proportion were foreign nationals: 17 Pakistanis<sup>201</sup> and at least seven individuals from Nigeria.<sup>202</sup>

Death sentences are not consistently communicated or reported, and the use of the death penalty is shrouded in secrecy. The State News Agency only reports executions after they take place, and provides only basic information on the case.<sup>203</sup> Notwithstanding, dozens of people are believed to be held on death row for drug offences. A substantial proportion of these are foreign nationals, including Pakistanis, Nigerians, Filipinos and Indonesians. In its 2018 Concluding Observations on Saudi Arabia, the Committee on the Elimination of Racial Discrimination noted disproportionately high representation of the migrant population among those sentenced to death, and recommended that the country abolish the death penalty.<sup>204</sup>

Civil society consistently reports mass trials, summary trials and systematic abuses of due process rights (including denial of interpretation and consular assistance to foreign nationals), as well as ill-treatment and torture of individuals on – or facing – death row.<sup>205</sup> In addition, several executions are carried out as public beheadings,<sup>206</sup> which are widely condemned as cruel and inhuman.<sup>207</sup>

In November, Saudi Arabia underwent the third round of Universal Periodic Review. The country received 25 recommendations on the death penalty (slightly more than in 2013),<sup>208</sup> including addressing crimes which do not qualify as "the most serious".<sup>209</sup>

## SINGAPORE

Singapore continues to be one of the most vocal supporters of the death penalty for drug offences, which is strongly defended in international fora as a cornerstone of domestic drug policy and aggressively implemented on the ground.<sup>210</sup>

The 2013 reform to the Misuse of Drugs Act coincided with record low numbers of death sentences and executions. However, in the past five years an increase in capital punishment has been recorded, both of death sentences and executions for drug trafficking – often for crimes involving minimal quantities of substances. Convictions for drug offences are now responsible for the majority of executions carried out in the country, as confirmed in 2018: 100% of executions that year were for drug offences.<sup>211</sup>

Out of 16 death sentences pronounced in Singapore in 2018, 15 were for drug trafficking. Around one third of these concerned foreign nationals. In three of these cases the accused was identified as a mere courier; however, a mandatory death sentence was imposed because no certificate of substantial assistance was provided by the prosecutor (an analysis of sentencing standards in the country is provided in the previous section of this report, at page 12).

Domestic developments surrounding the death penalty mirror the broader drug control strategy in the country, characterised by over-incarceration and disproportionate punishment. The latest available official data show that 69.6% of the 8,885 convicted prisoners in Singapore are serving their sentences for drug offences,<sup>212</sup> several as a result of grossly unfair proceedings.<sup>213</sup> Of these, 1,690 have been incarcerated in 2017 alone – an average of almost five a day.<sup>214</sup>

## VIETNAM

The amended Criminal Code entered into force on 1 January 2018. Its review restricted the application of the death penalty by removing drug possession from the list of capital offences.<sup>215</sup> Manufacturing, transporting and trafficking of controlled substances are still punishable by death, as these activities are considered by the government to be “extremely serious crimes”,<sup>216</sup> in contrast with the prevailing interpretation of Article 6(2) of the International Covenant on Civil and Political Rights.

Statistics on the death penalty continue to be classified as state secrets. However, on 13 November 2018 the Vietnamese government reported to the National Assembly that 85 individuals had been executed throughout the year, and 122 more death sentences than in 2017 were pronounced<sup>217</sup> (unfortunately, the figure for 2017 has not been revealed). No disaggregated information was provided. Thirty-one death sentences were reported in 2018 for drug offences, either by the Supreme People’s Court or by news outlets, and more could have been pronounced.

The centrality of the death penalty also transpires from the fact that “to cope with the large number of executions, five new execution compounds have been built at unspecified locations to supplement those currently operational [...] and Security officials were being rapidly trained to administer lethal injections”.<sup>218</sup> Accordingly, Vietnam is considered one of the world’s leading executioners.<sup>219</sup>

Fair trial standards are routinely violated in death penalty cases,<sup>220</sup> and conditions of detention on death row are worrying. In its 2018 Concluding Observations, the UN Committee against Torture expressed concerns:

**“About reports of the physical and psychological suffering that persons sentenced to the death penalty have experienced as a result of their particularly harsh conditions of detention, which may amount to torture or ill-treatment, including solitary confinement in unventilated cells, inadequate food and drink, being shackled 24 hours a day and being subjected to physical abuse, and that such prisoners often commit suicide and develop psychological disorders as a result”.**<sup>221</sup>

Thirty-six death row prisoners died between 2011 and 2016,<sup>222</sup> and the Vietnam Committee on Human Rights reports “media concerns about the growing suicide rate on Vietnam’s death row” (although figures are hard to verify).<sup>223</sup>

## LEGISLATION TABLE – HIGH APPLICATION STATES

The following table provides a snapshot of the different drug laws in place in high application countries, prescribing the imposition of capital punishment for drug offences. Although a degree of simplification is inevitable, this comparison shows how diverse – and inconsistent – these laws are.

The symbol **T** means an offence is punishable by death only if committed “for the purpose of trafficking”.

A full table including legislation for the 35 countries covered by this report is available at: <https://www.hri.global/death-penalty-drugs-2018>

<p><b>CHINA<sup>vi</sup></b></p> <p><b>Is it mandatory?<sup>i</sup></b> <b>NO</b></p> <p><b>Production<sup>ii</sup>:</b> <input checked="" type="checkbox"/></p> <p><b>Possession<sup>iii</sup>:</b> <input type="checkbox"/></p> <p><b>Trafficking<sup>iv</sup>:</b> <input checked="" type="checkbox"/></p> <p><b>Storing:</b> <input type="checkbox"/></p> <p><b>Aiding/Abetting<sup>v</sup>:</b> <input checked="" type="checkbox"/> (armed)</p>	<p><b>Other drug offences:</b></p> <ul style="list-style-type: none"> <li>▪ Divert legally possessed substances with purpose of profit</li> <li>▪ Lead drug trafficking ring</li> <li>▪ Use arms to cover up smuggling, trafficking, transporting or manufacturing drugs</li> <li>▪ Use violence to resist inspection, detention or arrest in a serious situation</li> <li>▪ Take part in organised international drug trafficking activities</li> </ul>	<p><b>Minimum quantities activating the death penalty</b></p> <p><b>Trafficking and production:</b></p> <ul style="list-style-type: none"> <li>▪ Opium: 1,000g</li> <li>▪ Heroin: 50g</li> </ul> <p>Other narcotics: “large quantity” Other offences: no minimum quantity</p>
<p><b>INDONESIA<sup>vii</sup></b></p> <p><b>Is it mandatory?<sup>i</sup></b> <b>NO</b></p> <p><b>Production<sup>ii</sup>:</b> <input checked="" type="checkbox"/></p> <p><b>Possession<sup>iii</sup>:</b> <input checked="" type="checkbox"/> <b>T</b></p> <p><b>Trafficking<sup>iv</sup>:</b> <input checked="" type="checkbox"/></p> <p><b>Storing:</b> <input checked="" type="checkbox"/> (as organised crime)</p> <p><b>Aiding/Abetting<sup>v</sup>:</b> <input type="checkbox"/></p>	<p><b>Other drug offences:</b></p> <ul style="list-style-type: none"> <li>▪ Conspiracy to commit a drug offence</li> <li>▪ “Use [substances] against others” resulting in death or permanent disability</li> <li>▪ Involving minors in drug crimes</li> </ul>	<p><b>Minimum quantities activating the death penalty</b></p> <p><b>All crimes:</b></p> <ul style="list-style-type: none"> <li>▪ Opium (raw or refined), cocaine, cannabis, heroin &amp; 21 other substances: 5g</li> <li>▪ Plants: 1kg or 5 “trees”</li> <li>▪ Fentanyl, methadone &amp; 85 other substances: 5g</li> </ul>
<p><b>IRAN<sup>viii</sup></b></p> <p><b>Is it mandatory?<sup>i</sup></b> <b>YES</b></p> <p><b>Production<sup>ii</sup>:</b> <input checked="" type="checkbox"/></p> <p><b>Possession<sup>iii</sup>:</b> <input checked="" type="checkbox"/></p> <p><b>Trafficking<sup>iv</sup>:</b> <input checked="" type="checkbox"/></p> <p><b>Storing:</b> <input checked="" type="checkbox"/></p> <p><b>Aiding/Abetting<sup>v</sup>:</b> <input type="checkbox"/></p>	<p><b>Other drug offences:</b></p> <ul style="list-style-type: none"> <li>▪ Armed smuggling</li> <li>▪ Provide financial support to/invest in drug offences</li> <li>▪ Act as a ringleader</li> <li>▪ Repeat drug offence (with previous conviction for death, life imprisonment or imprisonment exceeding 15 years)</li> </ul>	<p><b>Minimum quantities activating the death penalty</b></p> <p><b>Production and trafficking (first offence):</b></p> <ul style="list-style-type: none"> <li>▪ “Natural substances” (cannabis, hashish, grass, opium, etc): 50kg</li> <li>▪ “Synthetic substances” (heroin, morphine, cocaine &amp; other chemical by-products): 2kg</li> </ul> <p><b>Possession and storing (first offence):</b></p> <ul style="list-style-type: none"> <li>▪ “Natural substances”: only if recidivist and over 20kg</li> <li>▪ “Synthetic substances”: 3kg</li> </ul>

## MALAYSIA<sup>ix</sup>

Is it mandatory? <sup>i</sup>	YES
Production <sup>ii</sup> :	<input checked="" type="checkbox"/> T
Possession <sup>iii</sup> :	<input checked="" type="checkbox"/> T
Trafficking <sup>iv</sup> :	<input checked="" type="checkbox"/> T
Storing:	<input checked="" type="checkbox"/> T
Aiding/Abetting <sup>v</sup> :	<input checked="" type="checkbox"/> T

### Other drug offences:



### Minimum quantities activating the death penalty

#### Possession presumed for trafficking:

- Heroin: 15g
  - Opium: 1,000g
  - Cannabis: 200g
  - Cocaine: 40g
  - Amphetamines: 50g
- Part of a list of over 160 substances

## SAUDI ARABIA<sup>x</sup>

Is it mandatory? <sup>i</sup>	NO
Production <sup>ii</sup> :	<input checked="" type="checkbox"/> T
Possession <sup>iii</sup> :	<input type="checkbox"/>
Trafficking <sup>iv</sup> :	<input checked="" type="checkbox"/> T
Storing:	<input type="checkbox"/>
Aiding/Abetting <sup>v</sup> :	<input checked="" type="checkbox"/>

### Other drug offences:



### Minimum quantities activating the death penalty

List of 114 substances including: heroin, opium, cannabis, cocaine & methadone

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No minimum quantities specified

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## SINGAPORE<sup>xi</sup>

Is it mandatory? <sup>i</sup>	YES
Production <sup>ii</sup> :	<input checked="" type="checkbox"/> T
Possession <sup>iii</sup> :	<input checked="" type="checkbox"/> T
Trafficking <sup>iv</sup> :	<input checked="" type="checkbox"/> T
Storing:	<input type="checkbox"/>
Aiding/Abetting <sup>v</sup> :	<input type="checkbox"/>

### Other drug offences:



### Minimum quantities activating the death penalty

#### Production:

Morphine, heroin, cocaine & methamphetamine: no minimum quantity

#### Trafficking:

- Opium: 1,200g
- Morphine: 30g
- Heroin: 15g
- Cannabis: 500g
- Cannabis resin: 200g
- Cocaine: 30g
- Methamphetamine: 250g

## VIETNAM<sup>xii</sup>

Is it mandatory? <sup>i</sup>	NO
Production <sup>ii</sup> :	<input checked="" type="checkbox"/> T
Possession <sup>iii</sup> :	<input checked="" type="checkbox"/> T
Trafficking <sup>iv</sup> :	<input checked="" type="checkbox"/> T
Storing:	<input type="checkbox"/>
Aiding/Abetting <sup>v</sup> :	<input type="checkbox"/>

### Other drug offences:



### Minimum quantities activating the death penalty

#### Production, Trafficking, Storing:

- Poppy resin, cannabis resin: 5kg
- Cannabis leaves: 75kg
- Heroin, cocaine, amphetamine: 100g
- Other narcotic substances: 300g (in solid form), 750 ml (in liquid form)

i The death penalty is reported as mandatory if it is the only punishment available for at least certain drug offences or those presenting certain circumstances. This prevents judges from exercising discretion and tailoring the punishment to the circumstances of the case and the individual.

ii **Production:** any act of manufacturing, producing or cultivating a drug. This includes any reference to: manufacture, cultivate, prepare, transform a plant or substance, extract a substance, separate, refine or process.

iii **Possession:** the mere possession or owning of a substance.

iv **Trafficking:** any act of smuggling, trading, exchanging or selling a drug. This includes any reference to the following acts: smuggle, receive from a smuggler, purchase, buy, sell, transport, trans-ship, cause the transit of, administer, distribute, import, export, deal in, carry, offer to be sold, broker, give, receive, send, procure, supply, offer or advertise for sale, exchange, accept, be an intermediary in sale and purchase, acquire or deliver.

v **Aiding and abetting:** any act of support or complicity to a criminally-relevant behaviour involving drugs, for which the death penalty is envisaged. This includes reference to: carry a firearm or a hunting weapon with the intention of opposing [law enforcement] officials, assisting in the trade or acting as an intermediary.

vi Articles 347 and 355, Criminal Law of the People's Republic of China (1979), as amended 1997.

vii Article 59, Law of the Republic of Indonesia No 5 of 1997 on Psychotropic Substances; articles 74, 113, 114, 116, 118, 119, 121, 132, 133 and 144, Law No 35 of 2009 on Narcotics.

viii Law for Combating Illicit Drugs (1988), as amended 2017.

ix Articles 37 and 39(b)(2)(a), Act 234, Dangerous Drugs Act 1952, as amended 2017.

x Article 37, Law of Combating Narcotic Drugs and Psychotropic Substances, Royal Decree No M/39, dated 8/7/1426 (2005).

xi Articles 15-33 and Second Schedule (offences punishable on conviction), Misuse of Drugs Act 1973, as amended 2012.

xii Articles 194(4), 248(4), 250(4) and 251(4), Criminal Code (2015).

## LOW APPLICATION STATES

Country (all figures 2018)	Death row for drugs	Death row total	Executions for drugs	Executions Total	Death sentences for drugs	Death sentences total
Egypt	23 <sup>+224</sup>	2,000 <sup>+225</sup>	0	63 <sup>226</sup>	23 <sup>+227</sup>	595 <sup>228</sup>
Iraq	4 <sup>+229</sup>	2,000 <sup>+230</sup>	None known	43 <sup>+231</sup>	None known	415 <sup>+232</sup>
Lao PDR	311 <sup>233</sup>	315 <sup>234</sup>	0	0	Unknown	Unknown
Pakistan	Unknown	4,688 <sup>235</sup>	0	14 <sup>236</sup>	4	150
State of Palestine (Gaza)	5 <sup>237</sup>	46 <sup>+238</sup>	0	0	0	13 <sup>239</sup>
Taiwan	None known	42 <sup>240</sup>	0	1 <sup>241</sup>	0	3 <sup>242</sup>
Thailand	309 <sup>243</sup>	539 <sup>244</sup>	0	1 <sup>245</sup>	1 <sup>+246</sup>	13 <sup>+247</sup>

### EGYPT

The government of Egypt does not provide official figures on capital punishment in the country. However, consistent reports indicate a prolific use of the death penalty. At least 63 individuals were executed and hundreds were sentenced in 2018, mostly for murder and terrorism,<sup>248</sup> sometimes as a result of mass trials.<sup>249</sup> Both sentences and executions dramatically increased since 2014, when President al-Sisi rose to power.

No executions have been reported for drug offences, but the Egyptian Initiative for Personal Rights has been able to confirm at least 23 death sentences pronounced for drug offences in 2018,<sup>250</sup> 3.9% of total sentences, including at least one against a foreign national.<sup>251</sup>

Human rights violations have been denounced in the course of investigations and trials leading to death sentences, including: civilians being judged in military courts;<sup>252</sup> enforced disappearances and incommunicado detention;<sup>253</sup> denial of legal representation during the investigation phase; and various forms of torture including beatings and electrocution, also used with the aim of extorting confessions.<sup>254</sup>

Conditions of detention on death row are abysmal. Prisoners are kept in solitary confinement for over 23 hours a day, and endure beatings and other forms of physical and psychological violence.<sup>255</sup> Death row prisoners are frequently unaware of the date of execution, which is communicated to families either at the last minute or after the execution has taken place.<sup>256</sup>

The protracted use of the death penalty in the country was denounced in 2018 by several international mechanisms, including Special Procedures of the UN Human Rights Council,<sup>257</sup> the UN High Commissioner for Human Rights, Michelle Bachelet, who denounced the ongoing mass trials as “a gross and irreversible miscarriage of justice”,<sup>258</sup> and the European Parliament.<sup>259</sup> The latter adopted a resolution on 8 February 2018 calling for an immediate moratorium on executions, which was strongly rejected by the Egyptian Parliament in the name of national sovereignty.<sup>260</sup>

### IRAQ

Information on Iraq is scarce. Any disaggregated information on the imposition of capital punishment in the country is nearly impossible to gather, although Amnesty International was able to report four death sentences imposed for drug offences in 2017. The same report also mentions executions carried out for drug offences;<sup>261</sup> no additional information on this could be gathered.

Lack of transparency on the part of the government was denounced in June 2018 by the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions in her mission report on Iraq. The rapporteur stated that:

“Since 2015, no information has been made public on the number, charges and trials of detainees sentenced to death, remaining on death row and executed. The



latest numbers released by the authorities in August 2014 indicated 1,724 prisoners were on death row, excluding the Kurdistan region. However, this number has likely increased exponentially due to the defeat of ISIL with large numbers of fighters being captured and undergoing trial".<sup>262</sup>

In support of this conclusion, over 3,000 sentences have been reported by news outlets in the past few years, mostly for terrorism.<sup>263</sup> The majority of death sentences and executions in 2018 were also imposed for terrorism,<sup>264</sup> and concerns were expressed at reports of mass executions, violations of fundamental standards of fair trial and torture.<sup>265</sup>

## LAO PDR

The last execution took place in Lao in 1989,<sup>266</sup> and the country has a moratorium in place "in practice".<sup>267</sup>

Information on the imposition of capital punishment in the country is extremely limited. In July 2018, Lao's compliance with the International Covenant on Civil and Political Rights was reviewed by the UN Human Rights Committee. In this forum, the government acknowledged that 311 out of the 315 people on death row at the time had been convicted for drug offences.<sup>268</sup> This revelation provided a glimpse into the otherwise secretive practice of capital sentencing in the country, proving that publicly available figures only account for a fraction of the sentences pronounced each year. It also confirmed that drug offences are the main category for which the death penalty is imposed. Accordingly, the country has been re-classified from 'symbolic' to 'low application'.

The government also revealed that during the process of debating a revised penal code, the abolition of the death penalty was discussed; however, the majority of the national assembly voted in favour of retaining this form of punishment.<sup>269</sup>

In its Concluding Observations, the UN Human Rights Committee expressed concern at the protracted imposition of death sentences in the country, and recommended that Lao review its legislation in order to align itself with the "most serious crimes" standard and consider abolishing capital punishment.<sup>270</sup>

## PAKISTAN

Although Pakistan remains one of the most prolific executioners in the world, some positive developments were witnessed in the past few years. Since a record 340 executions were carried out in 2015, mostly for murder, figures rapidly decreased to 14 in 2018.<sup>271</sup> A similar pattern emerged regarding death sentences – whose numbers have been gradually diminishing since 2016 – and death row population. Once the largest in the world, this shrank from over 6,000 in 2015 to 4,688 individuals at the end of 2018, thanks mainly to judicial reviews and commutation of sentences.<sup>272</sup>

This is a significant achievement in a country where people face a heightened risk of wrongful convictions. According to Justice Project Pakistan, in the past five years the Supreme Court of Pakistan overturned 85% of appealed death sentences, mostly on the basis of faulty investigations.<sup>273</sup> This is in line with the findings of the Foundation for Fundamental Rights (FFR). In its 2018 report on the application of the Control of Narcotics and Substances Act, the human rights group found significant flaws in capital drug cases, insomuch that no single case was identified "where the Supreme Court upheld a death sentence handed down by the CNSA's special courts".<sup>274</sup>

With regards to drug offences, no one has been executed for possessing, manufacturing or trafficking controlled substances in the past ten years. Nevertheless, death sentences continue to be imposed. The aforementioned FFR study:

**"[...] does not reveal a single case where a defendant [...] had faced the harshest penalties under the act — death or life imprisonment — for the organization, management or financing of drug cartels. All death penalties handed out under the CNSA are for possession-based offences".<sup>275</sup>**

Such a finding speaks volumes about the flawed and discriminatory nature of both drug control laws and capital punishment.

A significant number of Pakistani citizens are on death row – or were executed – in other countries for drug offences, particularly Saudi Arabia<sup>276</sup> and Iran.<sup>277</sup>

## STATE OF PALESTINE (GAZA)<sup>278</sup>

In the State of Palestine, the death penalty can be imposed for drug offences only in the Gaza Strip. None of the 13 death sentences pronounced in 2018 were for drug offences. However, official information on capital punishment in the country is non-existent, so this should not be considered definitive.

Research has not revealed further information on the five individuals sentenced to death for drug trafficking in 2017, so it is assumed that those convicted remain on death row.

In June 2018, the Palestinian President Mahmoud Abbas committed to accede the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.<sup>279</sup>

## TAIWAN

After a year without executions in 2017, Taiwan executed a man for murder in September 2018.<sup>280</sup> This first execution under the new administration quashed hopes that the country could soon move closer to abolition.<sup>281</sup>

The last confirmed death sentence for drug offences dates back to 2010.<sup>282</sup> Secrecy on the part of the government prevents the provision of updated and complete information on the use of the death penalty. Meanwhile, the drug control strategy in the country remains strictly punitive: almost a third of people in prison in Taiwan have been convicted for violations of the Narcotics Hazard Prevention Act.<sup>283</sup>

In 2015, the International Federation for Human Rights (FIDH) reported that “[s]ince [2002], even though the District Court and High Court have sentenced people to death for drug offences, these have been overturned after appeals to the Supreme Court and there have been no drug offenders under a final sentence of death after appeals”.<sup>284</sup> It is thus possible that none of the 42 people on death row in the country are awaiting execution for drug offences.

At least 11 Taiwanese nationals were sentenced to death for drug trafficking in Indonesia in 2018.<sup>285</sup>

## THAILAND

Thailand last carried out an execution – for a drug offence – in 2009,<sup>286</sup> meaning the country would have been declared abolitionist in practice in 2019. Regrettably, on 18 June 2018 Thailand resumed executions (for murder).<sup>287</sup>

In recent years, Thailand had taken positive steps towards the abolition of the death penalty by restricting its application and committing to considering the establishment of a moratorium.<sup>288</sup> If the June 2018 execution represents a shift in the government’s attitude towards the death penalty, there could be dramatic consequences for the more than 500 individuals currently on death row in the country (among which are 83 women), the majority of whom have been convicted for drug offences.<sup>289</sup>



## SYMBOLIC APPLICATION STATES

Country (all figures 2018)	Death row for drugs	Death row total	Death sentences for drugs	Death sentences total
Bahrain	2 <sup>+290</sup>	23 <sup>+291</sup>	2 <sup>292</sup>	17 <sup>+293</sup>
Bangladesh	Unknown	1,708 <sup>+294</sup>	2 <sup>295</sup>	244 <sup>296</sup>
Brunei Dar	1 <sup>297</sup>	1 <sup>+298</sup>	0	0
Cuba	0	0	0	0
India	0	426 <sup>300</sup>	0	162
Jordan	Unknown	132 <sup>301</sup>	0	13 <sup>302</sup>
Kuwait	Unknown <sup>303</sup>	36 <sup>+304</sup>	0	9 <sup>+305</sup>
Mauritania	None known	90 <sup>306</sup>	0	0
Myanmar	5 <sup>+307</sup>	9 <sup>+308</sup>	Unknown	9 <sup>+310</sup>
Oman	None known	2 <sup>+311</sup>	None known	2 <sup>+312</sup>
Qatar	Unknown	10 <sup>+313</sup>	0	1 <sup>+314</sup>
South Korea	0 <sup>315</sup>	61 <sup>316</sup>	0	1 <sup>317</sup>
South Sudan	Unknown	345 <sup>+318</sup>	0	8 <sup>+319</sup>
Sri Lanka	48 <sup>+320</sup>	1,299 <sup>321</sup>	6 <sup>+322</sup>	28 <sup>+323</sup>
Sudan	None known	300 <sup>+324</sup>	None known	3 <sup>+325</sup>
United Arab Emirates	Unknown	37 <sup>+326</sup>	Unknown	19 <sup>+327</sup>
United States of America	0	2,738 <sup>328</sup>	0	42 <sup>329</sup>

### BAHRAIN

Bahrain lifted its de facto moratorium on the death penalty in 2017, executing three men.<sup>330</sup> Since then, no more executions have taken place. Death sentences continue to be handed down, and civil society reports grossly unfair trials (often held in military courts), forced confessions and arbitrary detention.<sup>331</sup>

On 31 December 2018, two individuals, one of whom was a foreign national, were sentenced to death for drug trafficking and smuggling. These are the first two drug-related death sentences confirmed to have been pronounced in the country in the past ten years.

In July 2018, Bahrain was reviewed by the UN Human Rights Committee, which expressed concern at the increase in reported death sentences in the country and the refusal on the part of the state to provide information on the death row

population.<sup>332</sup> Notwithstanding this lack of information, around 23 individuals are believed to be awaiting execution in the country, most convicted in military courts for terrorism-related offences.<sup>333</sup>

### BANGLADESH

In 2019, it will be ten years since the last drug-related execution took place in the country. However, this de facto moratorium for drug offences is threatened by the government's push to expand capital punishment as a tool to combat a perceived drug emergency.

On 27 October 2018, parliament adopted the Narcotics Control Act 2018, which expands the applicability of the death penalty by including yaba (methamphetamine pills) among the controlled substances whose production, possession or trafficking can be punished by death.<sup>334</sup> This move forms

part of a wider crackdown on drugs launched in May 2018 by the prime minister, Sheikh Hasina, which also provided an opportunity to quash political activists and human rights defenders, ahead of the country's general election on 30 December 2018.<sup>335</sup>

In spite of this problematic record, Bangladesh was elected as a member of the UN Human Rights Council in October 2018.<sup>336</sup>

In May 2018, Bangladesh underwent the third cycle of Universal Periodic Review, receiving recommendations by 18 states to establish a moratorium and work towards the total abolition of the death penalty. These were all noted but not accepted.<sup>337</sup>

## INDIA

In 2018, it was three years since the last execution took place in India. Courts around the country, however, continue to sentence individuals to death, mostly for murder and rape. In April 2018, the cabinet passed a bill expanding capital punishment to child rape<sup>338</sup> and death sentences for this new category of crime quickly followed.<sup>339</sup> A similar proposal was put forward by the government of Punjab to punish first-time drug offenders, but was eventually rejected by the central government. Among others, the Ministry of Finance justified its decision by stressing that the “death penalty is not supported by the international drug control conventions”, and that the UN Office on Drugs and Crime opposes the imposition of the death penalty for drug offences.<sup>340</sup>

Official figures on executions, death sentences and death row population are not available.<sup>341</sup> The last two confirmed death sentences for drug offences date back to 2017, and were reported by Project 39A at the National Law University.<sup>342</sup> It now appears that these sentences were commuted and no death sentences for drug offences were reported in 2018.<sup>343</sup> In 2016, Project 39A found that “none of the prisoners sentenced to death for drug offences by trial courts over the past 15 years had their sentences confirmed in first appeal”.<sup>344</sup> All these sentences were either commuted or the alleged perpetrator was acquitted on appeal. As a result, it is unclear whether anyone is currently on death row for a violation of the domestic Narcotics Act.

In August 2018, Shashi Tharoor MP introduced a private members bill to parliament seeking total abolition of the death

penalty.<sup>345</sup> The bill defines capital punishment as “an aberration in a healthy democracy” which has failed to deter crime and highlights that “a significant percentage of individuals who have been given this sentence hail from socio-economically vulnerable groups”.<sup>346</sup> The bill was pending as of February 2019.<sup>347</sup>

## JORDAN

Secrecy and uncertainty surround the death penalty for drug offences in Jordan.

Law No 11 of 1988 on Narcotic Drugs and Psychotropic Substances prescribed the death penalty for a range of drug offences. In 2006, Law No 54 was approved, which replaced the death penalty with life imprisonment for certain drug offences. Accordingly, HRI's *The Death Penalty for Drug Offences: Global overview 2010* reported that Jordan had repealed the death penalty for drug offences.<sup>348</sup>

Our most recent research reveals the death penalty can still be imposed (although it does not appear to be) for drug trafficking when committed as part of an international drug trafficking operation, or in conjunction with international money laundering or arms smuggling. This was reported, amongst others, by the Co-operation Group to Combat Drug Abuse and Illicit Trafficking in Drugs of the Council of Europe (Pompidou Group),<sup>349</sup> the Cornell Center on the Death Penalty Worldwide,<sup>350</sup> and more recently by the *Journal of Law and Criminal Justice*<sup>351</sup> and the Amman Centre for Human Rights Studies.<sup>352</sup> The chair of the UN Human Rights Committee also referred to the applicability of the death penalty to drug trafficking in the interactive dialogue during the latest review of the country's human rights performance.<sup>353</sup>

As a consequence, HRI took the decision to re-include Jordan among the countries prescribing the death penalty for drug offences in law.

After an eight-year hiatus, Jordan resumed executions in 2014, mostly for murder and terrorism. Death sentences are recorded every year – but no sentence or execution has been confirmed in the past ten years for drug trafficking.

At least two Jordanian nationals were executed for drug offences in Saudi Arabia in 2018.<sup>354</sup>

Civil society denounced human rights violations including arbitrary detention, coerced confessions, torture in detention, and lack of healthcare and sanitation on death row.<sup>355</sup>

During the latest round of Universal Periodic Review in November 2018, 24 countries recommended that Jordan takes immediate steps towards the abolition of the death penalty.<sup>356</sup>

## MAURITANIA

The last execution took place in Mauritania in 1987, and the country is listed as abolitionist in practice.

The death penalty can be imposed in Mauritania for a broad range of offences, and most death sentences are handed down for murder, terrorism and apostasy.<sup>357</sup> Recent research also revealed that Mauritania retains the death penalty for drug offences.<sup>358</sup> Law 37 of 1993 “on repression of production, traffic and illicit use of drugs and psychoactive substances” prescribes the death penalty as a possible punishment for production and manufacturing,<sup>359</sup> international trafficking,<sup>360</sup> offering, importing/exporting, possession, distribution and transport of “high risk drugs”.<sup>361</sup> The death penalty can be imposed in cases of recidivism or if aggravating circumstances are present, namely:<sup>362</sup>

- The offence is committed within a framework of organised crime.
- Where violence or weapons have been used by whoever committed the crime.
- Where the drugs have caused death.

Accordingly, HRI decided to include Mauritania among the countries prescribing the death penalty for drug offences.

The last confirmed death sentences were imposed in Mauritania in 2015;<sup>363</sup> however, news sources report that four death sentences were handed down in May 2016 against drug traffickers who had an armed confrontation with army soldiers.<sup>364</sup>

In its 2018 Concluding Observations on Mauritania, the UN Committee Against Torture noted with concern the persistence of the death penalty in domestic law, and recommended that the state abolish capital punishment and commute death sentences to prison sentences.<sup>365</sup>

## MYANMAR

Myanmar is de facto abolitionist: the last execution was carried out in the 1980s, and it is unclear whether anyone has ever been executed for drug offences. Capital punishment remains an option for judges, and a few sentences are reported every year, mostly by media outlets.

Myanmar’s drug control strategy appears to be at a crossroads. On one side, a new National Drug Control Policy was released in February 2018, explicitly aligning with international best practices and the seven pillars approach endorsed in the Outcome Document of the UN General Assembly Special Session on Drugs of 2016.<sup>366</sup> The National Drug Control Policy mainstreams a human rights approach and, among other suggestions, recommends considering the repeal of the death penalty for drug offences.<sup>367</sup>

On the other hand, the *Myanmar Times* reported that ten people were charged with death for drug offences in August 2018 as part of a revamped ‘war on drugs’ in the country. If these are sentenced, that would mark a significant shift in Myanmar’s drug control strategy, where the death penalty was envisaged but very rarely (if ever) imposed.

## QATAR

The last execution was carried out in Qatar in 2003, thus the country is de facto abolitionist.<sup>369</sup>

Few people are believed to be on death row, but lack of clarity prevents confirmation for which crime they were convicted.

The UN Committee against Torture reviewed Qatar in May 2018, and concluded that:

**“The State party should consider establishing an immediate moratorium on executions, with a view to abolishing the death penalty, and commute death sentences to prison sentences. It should also ensure that if the death penalty is imposed it is only for the most serious crimes and in compliance with international norms”.**<sup>370</sup>

In 2018, the country confirmed its vote against the UN General Assembly Resolution on a moratorium on the use of the death penalty.<sup>371</sup> However, in a promising development in May 2018, Qatar ratified the International Covenant on Civil and Political Rights, the key instrument regulating the application of the death penalty at the international level.<sup>372</sup>

## SOUTH KOREA (REPUBLIC OF KOREA)

The last execution in South Korea took place in 1997.

Recent developments point to the possibility that South Korea could soon abolish the death penalty for all crimes: the National Human Rights Commission repeatedly recommended that the government abolish capital punishment and enshrine the right to life in the constitution,<sup>373</sup> and the Presidential Office agreed to consider establishing a formal moratorium on executions.<sup>374</sup> Such a move would be supported by 70% of South Koreans, according to recent research conducted by the National Human Rights Commission.<sup>375</sup>

Abolition would send a strong message in a region that is home to the greatest number of retentionist countries, and would give hope to the 61 persons currently on death row, none of whom are sentenced for drug offences.<sup>376</sup>

In December 2018, South Korea again abstained from voting on the UN Moratorium on the use of the death penalty.<sup>377</sup>

## SRI LANKA

Sri Lanka is one of the longest-standing de facto abolitionist countries in the world, with the last recorded execution dating back to 1976.<sup>378</sup> This has been mostly thanks to political will, as past presidents consistently refused to issue death warrants.<sup>379</sup> This may change if the pledge by President Sirisena to execute 19 drug traffickers currently on death row is acted upon. Such a call is part of a wider anti-drug campaign, citing a perceived increase in drug trade as justification (more information on recent developments in the country is provided in a previous section of this report at page 17).<sup>380</sup> The announcement was met with international condemnation, and the European Union warned Sri Lanka that if executions resume, the country will lose its GSP (Generalised Scheme of Preference) plus status,<sup>381</sup> which grants preferential access to the European market on account of positive human rights achievements.<sup>382</sup>

More promising signals come from Sri Lanka's engagement at the international level: the latest cycle of Universal Periodic Review was held in 2017, and by December 2017 the country accepted two recommendations to consider abolishing the death penalty (although other, more specific recommendations on this issue were merely noted).<sup>383</sup> In line with this, in December 2018 the country confirmed its vote in favour of a UN Moratorium on the use of the death penalty.<sup>384</sup>

Death sentences for possession and trafficking of controlled substances are reported every year. Since 2008, at least 60 individuals (of which six were women) were sent to death row for drug offences.<sup>385</sup> At least six new death sentences for drug offences were handed down in 2018; of these, four were for possession and/or trading of 2.8 to 18.2 grammes of heroin.<sup>386</sup>

## SUDAN

Information on the death penalty in Sudan is minimal. In 2018, as in the previous ten years, there was no sign of capital punishment being imposed for drug offences, and the government recently stated that since 1991, executions have only been carried out for premeditated murder and rape.<sup>387</sup>

The UN Human Rights Committee reported that around 300 individuals were under sentence of death in Sudan in May 2018;<sup>388</sup> however, numbers could be significantly higher.<sup>389</sup> Government figures also indicate that dozens of sentences are reviewed every year.<sup>390</sup> At least three death sentences were imposed in Sudan in 2018, of which one was overturned.<sup>391</sup>

In November 2018, the UN Human Rights Committee expressed concern at the applicability of the death penalty for crimes which do not qualify as 'most serious', and on the mandatory nature of capital punishment for several of them, including drug trafficking. Besides recommending Sudan to consider a moratorium on the death penalty, the UN body also condemned the inhumane methods of execution allowed, among which are stoning and crucifixion.<sup>392</sup>

## UNITED ARAB EMIRATES

Although trafficking of any quantity of controlled substances is punishable by death, no executions for drug offences have been confirmed in the country since Federal Law 14 of 1995 was introduced. In fact, all recorded executions in the past 23 years have been for homicide.

Although news of drug-related arrests and trials potentially leading to death sentences emerged throughout 2018,<sup>393</sup> no conclusive information was available at the time of publication on the number of death sentences actually imposed for drug offences.

In its submission ahead of the Universal Periodic Review (UPR), Reprieve reported that "at least 86 capital trials for non-lethal drug offences have gone through the local criminal courts"

since 2014, and denounced excessively lengthy pre-trial detention, physical abuses and lack of legal representation.<sup>394</sup>

During the latest cycle of Universal Periodic Review in January 2018, the United Arab Emirates received 16 recommendations on the issue of the death penalty,<sup>395</sup> including two specifically advising commutation of sentences for drug and other non-violent offences.<sup>396</sup> Regrettably, the country did not accept any of them.<sup>397</sup>

## UNITED STATES OF AMERICA

The USA is one of a handful of retentionist countries in the Americas, and the only one to execute.<sup>398</sup>

Federal law allows the imposition of the death penalty for trafficking of substantial quantities of controlled substances (amongst others, 60kg of heroin or 60,000kg of cannabis),<sup>399</sup> but there is no record of a person being sentenced to death for drug offences in the country – inasmuch that the provision was broadly understood as a symbolic relic.

In 2018, however, President Donald Trump called for the imposition of the death penalty against drug traffickers, as part of a plan to confront the opioid crisis in the country.<sup>400</sup> In support, President Trump cited the self-proclaimed successes of zero-tolerance strategies pursued by countries such as Singapore.<sup>401</sup>

This declaration was promptly followed by a memorandum released by then-attorney general Jeff Sessions, strongly encouraging United States Attorneys to pursue capital punishment for drug trafficking.<sup>402</sup>

Despite President Trump's rhetoric, as of February 2019 no death sentences have been pronounced for drug offences not involving intentional killing in the United States. This is partly due to a perceived incompatibility of the measure with the Eighth Amendment of the United States Constitution.<sup>403</sup> Nevertheless, this 'war on drugs' rhetoric had very real consequences around the world, emboldening authoritarian leaders to implement abusive drug control measures, and legitimising populist narratives around the potential of the death penalty to respond to public health emergencies.

Notably, federal US legislation prescribes the death penalty as a possible punishment for homicides committed in connection with drug offences<sup>404</sup> and as of December 2018, 14 people

were on federal death row for drug-related killings.<sup>405</sup> Experts found that this legislation "yielded few kingpins or major dealers – and mostly ensnared poor, African-American, mid-to low-level persons involved in the drug trade [and] there is no reason to believe this new call for capital punishment in homicide cases for drug dealers will be any more successful".<sup>406</sup>

## OTHER COUNTRIES

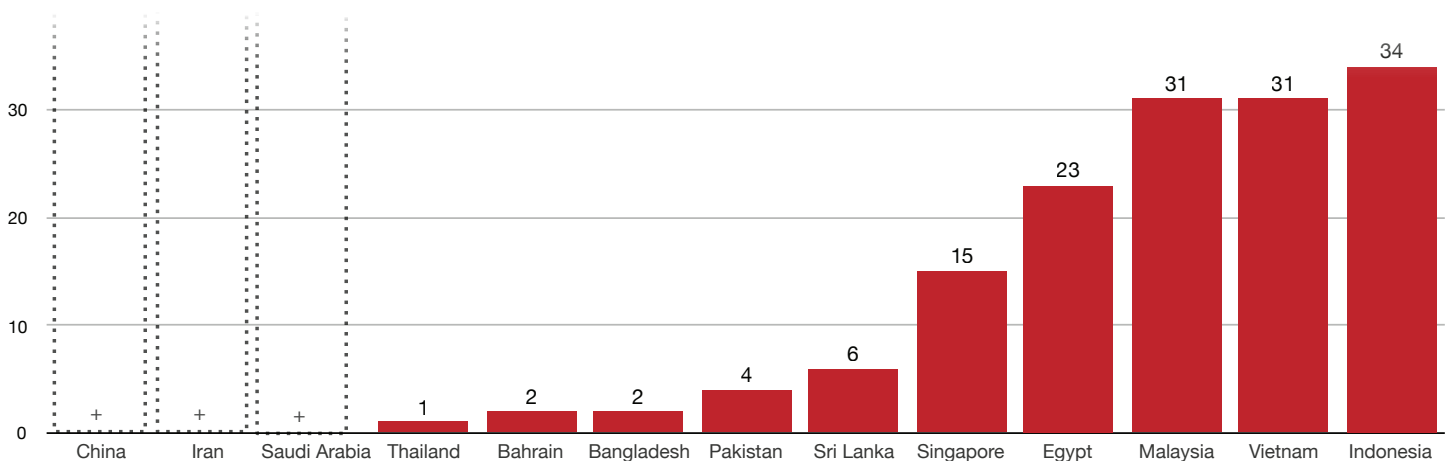
Other countries which HRI categories as 'symbolic application countries' are Brunei Darussalam, Cuba, Kuwait, Oman and South Sudan.

No executions have been reported in **Brunei** since 1957.<sup>407</sup> Death sentences, however, continue to be imposed. In spite of the lack of transparency, which obstructs data collection on the death penalty, at least one person – a Malaysian man convicted in late 2017 for smuggling cannabis – appeared to be on death row for drug offences in 2018.<sup>408</sup> **Cuba** has not executed in the past 15 years, and during its Universal Periodic Review in January 2018, the government confirmed that no one has been either sentenced to death since the previous review (in 2013) nor is sitting on death row.<sup>409</sup>

The other three countries are classified as retentionists. **Kuwait** has carried out 12 executions since 2013, and courts in the country hand down a few death sentences every year. No execution has been reported for drug offences in the past ten years, although at least 19 individuals have been convicted for drug offences since 2010. Due to a lack of transparency, it is unclear whether these individuals are currently on death row. The last executions in **Oman** were reported in 2015, and very few subjects are believed to be on death row in the country – none of them for drug offences, although official data on the imposition of the death penalty are not available. A news article from July 2018 reported that "the death penalty is rarely exercised in Oman, but such sentences are usually handed out in drug-related crimes and premeditated murder".<sup>410</sup>

Secrecy also characterises **South Sudan's** use of the death penalty, meaning it is impossible to either confirm or exclude that any of the 345 individuals on death row in 2018 were convicted for drug offences. In December 2018, Amnesty International denounced seven executions in the country, and revealed the presence of children and a breastfeeding mother on death row.<sup>411</sup>

Chart 7: Death sentences for drug offences in 2018 (minimum confirmed figures)



## INSUFFICIENT DATA

According to the latest available analysis, narcotics laws were in place in Libya, North Korea, Syria and Yemen allowing the imposition of the death penalty for certain drug offences. The dictatorship in **North Korea** and conflicts in **Libya**, **Syria** and **Yemen** prevent not only updated information on the use of the death penalty, but also confirmation that such laws are still in place and implemented by courts throughout these countries.

No information is available on the imposition of the death penalty in **Libya** since Colonel Muammar Gaddafi was deposed in 2011.<sup>412</sup> Since then, the crumbling of national institutions and struggles for power and legitimacy have gravely impacted upon the rule of law in the country, and on the application of existing legislation, including – potentially – the 1990 Law No 7 on Narcotics and Psychotropic Substances. The last confirmed execution took place in the country in 2010, but dozens of death sentences have been imposed since.<sup>413</sup>

**North Korea** is one of the most secretive dictatorships in the world. Notwithstanding, credible and systematic reports point to an extensive use of the death penalty for a broad range of offences, including drug offences.<sup>414</sup>

Since 2011, **Syria** has gradually become the epicentre of hegemonic struggles for regional control, at an unbearable cost to the local population. The impact on the rule of law in the country has been dire, and it is impossible to provide any accurate information on how criminal justice provisions are implemented in the country. A similar scenario is unfolding in **Yemen**. Three public executions (it is not clear whether judicial or extrajudicial) have been reported by the media for rape and murder in 2018,<sup>415</sup> but more could have taken place. A prisoner of conscience was sentenced to death in January 2018 by a Special Criminal Court in the country's capital,<sup>416</sup> and 24 more Yemeni of Bahá'í faith are currently being processed.<sup>417</sup> Drug trafficking is reportedly still punishable by death, but no further information is available.



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Harm Reduction International is a leading NGO dedicated to reducing the negative health, social and legal impacts of drug use and drug policy. We promote the rights of people who use drugs and their communities through research and advocacy to help achieve a world where drug policies and laws contribute to healthier, safer societies.

If you would like to find out more about Harm Reduction International, please contact us at:

**Harm Reduction International**

61 Mansell Street,  
London, E1 8AN,  
United Kingdom

**Phone:** +44 (0) 20 7324 3535

**Email:** [office@hri.global](mailto:office@hri.global)

**Web:** [www.hri.global](http://www.hri.global)

