

# Statement and Position Paper



## Statement and Position Paper on Capital Punishment for Drug Offences

**The International Network of People who Use Drugs (INPUD), in representing the rights and needs of people who use drugs, emphatically opposes the unjust and ineffective policy of drug prohibition, including excessive punishments for those who produce, use or supply drugs.**

INPUD's opposition to the death penalty is based on both moral and practical grounds. Capital punishment is a violation of the Declaration for Human Rights, especially its fundamental tenets on the right to life and that no one be subject to cruel, inhuman, or degrading punishment. There is no proof that the death penalty operates as a deterrent, or that it reduces crime at all. Judicial systems are subject to human error: and reports of mistaken identity, false or misleading evidence and forced confessions are not uncommon from retentionist countries. But the death penalty, once carried out, cannot be reversed. Drug crimes are generally economic, non-violent and victimless offences; as such, they should never result in capital punishment. Even the International Narcotics Control Board (INCB) has, in highlighting "proportionality", acknowledged that some countries are getting "carried away" with drug crime punishments, the most unconscionable of which is execution. Excessive punishments have also been shown to restrict development of and access to more effective responses to drug related harm, including drug treatment programs.

- INPUD joins Human Rights Watch and the International Harm Reduction Association's (now Harm Reduction International) call upon governments to urgently establish a moratorium on executions with a view to the abolition of the death penalty and to commute all death sentences, particularly for drug offenses
- INPUD also call on UNODC and INCB to harmonise their policies (and those of member states) with UN human rights principles without delay.

More than two thirds of the governments of the world have demonstrated respect for human rights by abolishing capital punishment. While abolition has become the norm (with, for example, only Belarus in Europe still allowing for it), and some countries that retain the death penalty for murder and other violent crimes do not execute offenders for drug-related crimes, there has been an escalation in application of the death penalty for drug trafficking in some countries.<sup>1</sup> Countries which have carried out executions for drug offences in recent years include China, Egypt, Kuwait, Saudi Arabia, Iran, Iraq, Indonesia, Malaysia, Vietnam, Thailand and Singapore.

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**In China and Indonesia, June 26 (International Day against Drug Abuse and Illicit Trafficking) has been used to carry out drug executions.**

**Message on the International Day against Drug Abuse and Illicit Trafficking, 26 June 2008 from UN Secretary General Ban Ki-Moon who reminded all UN member states of their responsibility to:**

**”respect the rights of prisoners who are drug dependant or are in custody for drug-related crimes, especially their rights to life and a fair trial”.**

This paper sets out the rationale for ending capital punishment, particularly as applied to drug related offenses.

**Drug offences are not classifiable as “most serious crimes”.** Countries applying the death sentence to drug offences often revert to moralising language about drugs causing “misery among the youth” and such like, however, it is prohibition and the resulting unregulated market, rather than the drugs themselves that cause the majority of drug related harm. In response to prohibition, the illicit drug market operates very much according to laws of demand-supply. Drug supply is a consensual process with the purchaser wanting a successful transaction at least as much as the seller<sup>ii</sup>. Those who supply are not murdering or harming anyone. As a global network of people who use drugs, INPUD is aware that any drug may carry some potential for some harm, but today most harm results from the illegal context of drug use. For example, where people die from unintentional overdose, much responsibility lies with the fact that the market (and therefore the dose size and purity) is not regulated, so the user is unaware of the potency of the dose. INPUD membership can also attest that most drug users do not die or suffer misery when they take a dose of their preferred drug. It is simply dishonest drug war propaganda to suggest that the supply of drugs is intended to have a deadly result.

UN human rights mechanisms have concluded that drug offences cannot be categorized as “a most serious crime” and should not be dealt with by capital punishment. Drug related crimes are generally economic, non-violent and victimless offences.

Although capital punishment is not explicitly overruled under international law, its application is restricted. Article 6(2) of the International Covenant on Civil and Political Rights states: “*In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes ... This penalty can only be carried out pursuant to a final judgment rendered by a competent court*”.<sup>iii</sup> The UN Human Rights Committee agrees that the death penalty should only be considered in cases where the crime is intentional and results in lethal or extremely grave consequences.<sup>iv</sup> “*The imposition of the death penalty on drug offenders amounts to a violation of the right to life, discriminatory treatment and ... also their right to human dignity*”.<sup>v</sup> The clear majority of States Members of the United

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Nations today consider that the death penalty violates the right to not be subjected to cruel, inhuman or degrading punishment,<sup>vi</sup> and that; “States should refrain from using capital punishment in relation to drug-related offences.”<sup>vii</sup>

## **Brutalisation/torture.**

*“One of the factors that makes life bearable is the uncertainty of the hour of our deaths”<sup>viii</sup>*

The death penalty means scheduled killing of a prisoner by the state. Condemned to death, the defenseless prisoner must suffer uniquely cruel and degrading psychological and physical distress. The cruelty is not confined to the condemned prisoner alone; terrible hardship, anguish and grief are also borne by the families and loved ones of those on death row.

**Deterrent effect?** There is no proof that the death penalty has any special capacity to reduce crime. However, evidence does indicate that increasing severity of punishment reaches a point beyond which the punishment becomes excessive with no evident impact on the crime rate. Research conducted to determine correlations between the death penalty and crime rates for the United Nations concluded: “. . .it is not prudent to accept the hypothesis that capital punishment deters murder to a marginally greater extent than does the threat and application of the supposedly lesser punishment of life imprisonment.”<sup>ix</sup>

An offender does not commit a crime unless they think they will succeed. Deterrent effect corresponds closely with perceived likelihood of being caught rather than with the degree of severity of the punishment.

Singapore, frequently applying capital punishment for drug offences, has the highest per capita death penalty rate in the world<sup>x</sup>, which highlights the failure of the death penalty as a deterrent to drug crime. Persons caught with half an ounce of heroin, 1 ounce of morphine or cocaine, or 17 ounces of marijuana face a mandatory death penalty. 400 people were executed for drug trafficking in Singapore between 1991 and 2004.<sup>xi</sup> Yet the Singapore Central Narcotics Bureau (CNB) arrested 1,079 heroin users in 2009 – a 22 per cent jump from 2008, and heroin use in Singapore continues to rise for the fourth year running.<sup>xii</sup>

**Does the state have the right?** It is difficult to see how any government can justify use of capital punishment. The death penalty violates the right to life as set out in the Universal Declaration of Human Rights.

The death penalty is planned killing of a human being by the state. The Universal Declaration for Human Rights states: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment".<sup>xiii</sup> The Declaration sets boundaries around what a state

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may do to its people. The rights described are not privileges to be bestowed or withdrawn and are designed to protect all people.

**Irrevocable** All judicial systems are subject to error, but only the death sentence, once carried out, cannot be repealed. There have been cases where, after a person has been executed, new evidence has emerged proving the innocence or reduced culpability of the executed person. Persistence with use of capital punishment cheapens the value of human life and can be seen as an extreme abuse of the power of the state.

**Unevenly applied** The types of drug offences which carry a sentence of death are wide ranging with peculiar variations between countries. For example, the threshold for a capital drug offence among retentionist countries ranged from the possession of 2g to the possession of 25kg of heroin.<sup>xiv</sup> Penalties for similar offences are severe in some places, but lenient in others. Some States target major drug traffickers and dismantle their networks, while others deal only with small cases. People who divert internationally controlled substances to illicit markets may avoid sanctions in one place but go to prison and lose their business in another.<sup>xv</sup>

Many retentionist countries applying capital punishment to drug trafficking offences do not have fair trials, with legal systems characterised by a lack of transparency.<sup>xvi</sup> Mandatory death sentences violate international standards on fair trials. For example, Singapore, Malaysia, Vietnam and China continue to hand down death sentences to individuals alleged to be drug traffickers after trials that presume guilt, and in which death sentences are mandatory.<sup>xvii xviii</sup> It is also important to note that, wherever it is applied, the death penalty is used disproportionately against the poor, the powerless, and the marginalised.<sup>xix</sup>

**Even the INCB urges member states to apply proportionality.** The INCB made “the principle of proportionality and drug-related offences” the central theme for their 2007 Annual Report. It states that the international drug control conventions set minimum standards only, and that “*If those standards are met and not undermined, each State has discretion to transpose the provisions of the conventions into domestic law and practice in line with its own legal system and principles*”.<sup>xx</sup>

The document stresses that transposing the international drug control conventions into domestic law is subject to the internationally recognized principle of proportionality. The principle “... *permits punishment as an acceptable response to crime, provided that it is not disproportionate to the seriousness of the crime. International and regional human rights instruments and crime prevention and criminal justice instruments often develop or set the standards*”.<sup>xxi</sup>

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The INCB even provide a check list for governments to use in deciding whether their penalties for drug offences abide with the principle of proportionality:

“Whether or not a State’s response to drug-related offences is proportionate depends in turn on how its legislative, judicial and executive arms of government respond in both law and practice. For example:

- (a) *Is the particular response necessary?*
- (b) *To what extent can the response result in the achievement of the desired objectives?*
- (c) *Does the response legitimately go beyond what is needed?*
- (d) *Does the response comply with internationally accepted norms concerning the rule of law?*

If the answer to the above questions is no, justice may not be done, making the response to the offending manifestly disproportionate”.<sup>xxii</sup> Clearly, governments applying capital punishment to drug offences would have to reply “no” to each of the checklist questions and are therefore not meeting the principle of proportionality, not meeting the conventions standards and are undermining the rule of law.

Without prescribing appropriate penalties for drug offenses, the INCB do list an example range of punishments for serious drug offences, which does not include capital punishment: “... *imprisonment, other forms of deprivation of liberty, pecuniary sanctions and confiscation*”.<sup>xxiii</sup>

INPUD find this strangely indirect approach by the INCB towards discouraging excessive punishment for drug offenses (by which they must be referring especially to executions) inadequate. Retentionist countries count on the ambiguous wording of the UN drug conventions, the overly-zealous supply reduction activities by the UNODC (and other internationally active drug war agencies such as the DEA), and the legitimacy offered by the company of other retentionist governments in continuing to execute drug offenders. The onus is squarely on the INCB and UNODC to urgently harmonise their policies (and those of member states) with UN human rights principles.

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INPUD, June 2012

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<sup>i</sup> To name them, the countries currently holding statutory provisions for the death penalty for drug-related offences are: Afghanistan, Bangladesh, Brunei, Peoples Republic of China, Egypt, India, Indonesia, Iran, Iraq, Kuwait, Laos, Malaysia, Oman, Pakistan, Saudi Arabia, Singapore, Thailand, United States, Vietnam and Zimbabwe. However, among these, certain countries have not carried out the death penalty for capital punishment for some years, or have a formal moratorium in place. These include Laos, India and Brunei. In terms of sheer numbers (of recorded executions) China applies the death penalty more than any other country.

<sup>ii</sup> Maher L, Dixon D. *The cost of crackdowns: Policing Cabramatta's heroin market*. Current Issues in Criminal Justice, 13(1). 2001.

<sup>iii</sup> *International Covenant on Civil and Political Rights*. Entry into force 23 March 1976, in accordance with Article 49. <http://www2.ohchr.org/english/law/ccpr.htm>

<sup>iv</sup> Lines R. *The Death Penalty for Drug Offences: A Violation of International Human Rights Law*. International Harm Reduction Association. 2007

<sup>v</sup> Nowak M. *Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights Including the Right to Development*. Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. Human Rights Council. Seventh session Agenda item 3. 2008

<sup>vi</sup> Nowak M. *Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights Including the Right to Development*. Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. Human Rights Council. Seventh session Agenda item 3. 2008

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<sup>viii</sup> Jones B. *A Thinking Reed*. Allen and Urwin. Australia. 2006

<sup>ix</sup> Hood R, *The Death Penalty: A World-wide Perspective*, Oxford, Clarendon Press, third edition, 2002,

<sup>x</sup> Lines R. *The Death Penalty for Drug Offences: A Violation of International Human Rights Law*. International Harm Reduction Association. 2007

<sup>xi</sup> *Asia: it's time to end executions*. World Coalition Against the Death Penalty.

[http://asiapacific.amnesty.org/apro/aproweb.nsf/pages/adpan\\_WCADP\\_press](http://asiapacific.amnesty.org/apro/aproweb.nsf/pages/adpan_WCADP_press).

<sup>xii</sup> Lim J. *Heroin abuse on the rise*.

[http://www.straitstimes.com/BreakingNews/Singapore/Story/STISStory\\_485895.html](http://www.straitstimes.com/BreakingNews/Singapore/Story/STISStory_485895.html). Feb 3, 2010.

<sup>xiii</sup> The Universal declaration of Human Rights, article 5. <http://www.un.org/en/documents/udhr/>

<sup>xiv</sup> Lines R. *The Death Penalty for Drug Offences: A Violation of International Human Rights Law*. International Harm Reduction Association. 2007

<sup>xv</sup> *The principle of proportionality and drug-related offences*. Annual Report. INCB/2007 (see:

<http://www.incb.org/pdf/annual-report/2007/en/chapter-01.pdf>)

<sup>xvi</sup> *Asia: it's time to end executions*. World Coalition Against the Death Penalty.

[http://asiapacific.amnesty.org/apro/aproweb.nsf/pages/adpan\\_WCADP\\_press](http://asiapacific.amnesty.org/apro/aproweb.nsf/pages/adpan_WCADP_press).

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<sup>xvii</sup> *The Death Penalty V. Human Rights: Why Abolish the Death Penalty?* Amnesty International, September 2007

<sup>xviii</sup> Lines R. *The Death Penalty for Drug Offences: A Violation of International Human Rights Law.* International Harm Reduction Association. 2007

<sup>xix</sup> *The Death Penalty V. Human Rights: Why Abolish the Death Penalty?* Amnesty International, September 2007

<sup>xx</sup> *The principle of proportionality and drug-related offences.* Annual Report. INCB/2007 (see: <http://www.incb.org/pdf/annual-report/2007/en/chapter-01.pdf>) (added emphasis)

<sup>xxi</sup> *The principle of proportionality and drug-related offences.* Annual Report. INCB/2007 (see: <http://www.incb.org/pdf/annual-report/2007/en/chapter-01.pdf>) (added emphasis)

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<sup>xxiii</sup> *The principle of proportionality and drug-related offences.* Annual Report. INCB/2007 (see: <http://www.incb.org/pdf/annual-report/2007/en/chapter-01.pdf>)