**Submission to the Office of the High Commissioner for HUMAN RIGHTS FOR ITS REPORT ON The IMPLEMENTATION OF THE SPECIAL SESSION OF THE UN GENERAL ASSEMBLY JOINT COMMITTMENT TO EFFECTIVELY ADDRESSING AND COUNTERING THE WORLD DRUG PROBLEM WITH REGARD TO HUMAN RIGHTS**

18 May 2018 IOR 40/8445/2018

In its resolution 37/42 of 23 March 2018, the Human Rights Council requested the Office of the High Commissioner for Human Rights (OHCHR) to prepare a report on the implementation, with regard to human rights, of the joint commitment to effectively addressing and countering the world drug problem (herein after, Joint Commitment), adopted by the UN General Assembly through resolution S-30/1 of 19 April 2016.

In this submission, Amnesty International highlights its concerns in relation to the continued use of the death penalty for drug-related offences. The death penalty has long been recognized as a human rights issue and several UN bodies and mechanisms have identified circumstances where its imposition violates human rights, calling for a reduction in its use with the ultimate goal of its abolition.[[1]](#footnote-1) Additionally, drug-related offences do not meet the threshold of the “most serious crimes” to which the use of this punishment must be restricted under international law and standards.[[2]](#footnote-2)

The Joint Commitment reiterates the commitment of UN Member States to respect, protect and promote all human rights and recommends the promotion and implementation of “***effective*** criminal justice responses to drug-related crimes to bring perpetrators to justice that ensure ***legal guarantees and due process safeguards pertaining to criminal justice proceedings***, including practical measures to uphold the ***prohibition of arbitrary arrest and detention and of torture and other cruel, inhuman or degrading treatment or punishment*** and to eliminate impunity, [..] and ensure ***timely access to legal aid and the right to a fair trial***” (emphasis added).[[3]](#footnote-3)

The effectiveness of the death penalty as criminal justice response has long been challenged. Over the years, Amnesty International has highlighted the lack of evidence to support the perception that the death penalty has a unique deterrent effect,[[4]](#footnote-4) and has documented continued violations of the right to a fair trial in cases where defendants have faced the death penalty for drug-related offences, including the right to access legal counsel and interpretation from the time of arrest.[[5]](#footnote-5)

Although the Joint Commitment does not make an explicit reference to the abolition of the death penalty, its continued use for drug-related offences by some States in contravention of international law and standards makes it imperative for the OHCHR to continue to highlight this human rights violation in the context of the implementation of the Joint Commitment.

**1. Current state of the use of the death penalty for drug-related offences**

Drug-related offences, which can include different charges ranging from drug trafficking to drug possession above certain amounts, are punished or punishable by death in more than 30 UN Member States.[[6]](#footnote-6) However, only half of these, 15, were known to have imposed death sentences for drug-related offences in 2017. Amnesty International confirmed executions relating to drug-related offences in only four countries in 2017: China, Iran, Saudi Arabia and Singapore.[[7]](#footnote-7) The organization believes that it was highly possible that Malaysia and Viet Nam also carried out executions for these offences but was unable to verify this.

Overall, drug-related executions accounted for approximately 30% of all executions recorded by Amnesty International in 2017.[[8]](#footnote-8)

In recent years, four countries took significant steps that have reduced, or could reduce, the use of the death penalty in the near future:

* In January 2013, legislative amendments to the mandatory death penalty came into effect in **Singapore**, resulting – in Amnesty International’s assessment – in a significant decrease in the amount of death sentences imposed for drug trafficking;[[9]](#footnote-9)
* In November 2016, the National Assembly of **Thailand** adopted the Narcotic Act (Vol.6) 2016, which abolished the mandatory death penalty for the offence of selling prohibited drugs. The amendment came into force in January 2017 and its impact on the imposition of the death penalty is yet to be assessed;[[10]](#footnote-10)
* In November 2017, the Parliament of **Iran** amended the country’s Anti-Narcotics Law, increasing the threshold of drugs for the imposition of a mandatory death sentence, with potential retroactive effect. The measure came into effect on 10 January 2018. Government officials indicated that up to 15,000 people on death row would have their death sentences for drug-related offences reviewed with a view to commutation under the amended law.[[11]](#footnote-11)
* In December 2017, the Parliament of **Malaysia** adopted Bill D.R.45/2017, amending the Dangerous Drugs Act, 1952. The amended law introduces some sentencing discretion in specific circumstances of drug trafficking.[[12]](#footnote-12) Contrary to international law and standards, the revised law applies only to individuals who had not yet been convicted when the amendment came into force.[[13]](#footnote-13)

While Amnesty International recognizes that these measures can have a positive impact, it is important to note that all the reforms highlighted above fell short of abolishing the death penalty as well as the mandatory death penalty, in violation of international law and standards.[[14]](#footnote-14)

**2. Violation of the right to a fair trial**

Amnesty International has denounced violations of the right to a fair trial relating to the use of the death penalty for drug-related offences on numerous occasions. Of particular concern remains the retention of legal “presumptions” in at least three countries – Brunei Darussalam, Malaysia and Singapore – whereby defendants found with specified amounts of certain drugs, or even simply in possession of keys to a building or vehicle in which drugs are found, are presumed guilty of drug trafficking.[[15]](#footnote-15) In those circumstances, the burden of proof is shifted onto the defendant, in violation of the right to be presumed innocent and other fair trial rights.[[16]](#footnote-16)

Amnesty International has also highlighted the reliance in Malaysia and Singapore on statements – taken from defendants during police interrogation without a lawyer present – as evidence to convict, even when defendants have raised that these were made under coercion.[[17]](#footnote-17) This is contrary to international human rights law and standards.[[18]](#footnote-18)

The organization has also expressed concern at a particular aspect of the 2013 legislative amendments to the mandatory death penalty in Singapore. The amended law introduced the requirement for the prosecutor to issue a certificate of assistance before a judge can exercise discretion in drug trafficking cases, meaning that the ultimate discretion lies not in the hands of the court but with the prosecutor; and without consideration of the individual circumstances of the defendant or of the criminal conduct.[[19]](#footnote-19)

The new law that came into effect in Malaysia in March 2018 retained the mandatory death penalty for all but those convicted of transporting, sending or delivering a prohibited substance who are also found by the judge to have co-operated with law enforcement in disrupting drug trafficking activities.

**3. Violation of the right to be free from torture and other cruel, inhuman or degrading treatment or punishment**

Reforms to death penalty laws adopted in Singapore in 2013 introduced the penalty of life imprisonment and 15 strokes of the cane as the only alternative punishment judges can impose in the selected circumstances of drug trafficking for which they can exercise sentencing discretion. Similarly, reforms enacted in 2018 in Malaysia allow for the penalty of life imprisonment and no less than 15 strokes of the whip as the only alternative punishment.[[20]](#footnote-20) Caning and other forms of corporal punishment constitute cruel, inhuman or degrading punishment, and often torture, which are prohibited under international law.[[21]](#footnote-21)

**4. Conclusions and recommendations**

Two years after the Joint Commitment was adopted during the UN General Assembly Special Session on drugs, some States continue to resort to the use of the death penalty for drug-related offences and to violate human rights in the name of drug control. States must take decisive steps to ensure that all drug control policies comply with international human rights law and standards. This includes putting an end to the use of the death penalty for drug-related offences, as these do not meet the threshold of the “most serious crimes” and the use of this punishment is therefore in violation of international law.

**Pending full abolition of the death penalty, Amnesty International calls on countries that still retain it to:**

* Immediately establish an official moratorium on executions with a view to abolishing the death penalty;
* Commute without delay all death sentences;
* Immediately remove all provisions in national law that breach international human rights law, in particular by abolishing all provisions which provide for mandatory death sentences and by restricting the imposition of the death penalty to intentional killing;
* In all death penalty cases, ensure rigorous compliance with international standards for fair trials;
* Make publicly available information on the use of the death penalty;
* Ratify, without reservations, the International Covenant on Civil and Political Rights and its Optional Protocols.

**Amnesty International calls on all states still practising corporal punishment**, including Malaysia and Singapore, to immediately stop using this vicious measure and repeal all laws allowing its use.

**Amnesty International also urges the UN Office on Drugs and Crime and other UN entities, as well as UN Member States**, **to ensure that:**

* All drug policies and related programmes are carried out in full compliance with international human rights law and standards and do not result in or contribute to the use of the death penalty;
* The implementation of the Joint Commitment document is monitored against clear indicators, to ensure the respect and protection of human rights as an integral part of drug policies.
1. Among other examples, UN General Assembly resolution 2857(XXVI) of 20 December 1971, which affirms that “in order to fully guarantee the right to life, provided in article 3 of the Universal Declaration of Human Rights, the main objective to be pursued is that of progressively restricting the number of offences for which capital punishment may be imposed, with a view to the desirability of abolishing this punishment in all countries”; Economic and Social Council, “Safeguards guaranteeing protection of the rights of those facing the death penalty”, resolution 1984/50 of 25 May 1984; Convention on the Rights of the Child, Article 37(a); International Covenant on Civil and Political Rights, Article 6; Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty; and UN General Assembly resolution 71/187 of 19 December 2016. [↑](#footnote-ref-1)
2. Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, 9 August 2012, UN doc. A/67/275, para.66. [↑](#footnote-ref-2)
3. UN General Assembly through resolution S-30/1 of 19 April 2016, para. 4(o). [↑](#footnote-ref-3)
4. See, for example, Amnesty International, *Cooperate or Die – Singapore’s flawed reforms to the mandatory death penalty* (ACT 50/7158/2017), October 2017, pp. 13-14, 22-23, [www.amnesty.org/en/documents/act50/7158/2017/en/](http://www.amnesty.org/en/documents/act50/7158/2017/en/) [↑](#footnote-ref-4)
5. Amnesty International, *The UNGASS on drugs outcome document must urge the respect and protection of human rights as an integral part of drug policies – Written statement to the 31st session of the UN Human Rights Council (29 February – 24 March 2016)* (IOR40/3460/2016), February 2016, <http://fileserver.idpc.net/library/IOR4034602016ENGLISH.pdf>; *Flawed justice: Unfair trials and the death penalty in Indonesia* (ASA 21/2434/2015), October 2015; *Killing in the name of justice: The death penalty in Saudi Arabia* (MDE 23/2092/2015), August 2015; *Growing up on death row: The death penalty and juvenile offenders in Iran* (MDE 13/3112/2016), January 2016; *Addicted to Death: Executions for drug offences in Iran* (MDE 13/090/2011), December 2011. [↑](#footnote-ref-5)
6. Amnesty International, *2015 World Day Against the Death Penalty – Not the solution to drug-related crime* (ACT 50/2634/2015), October 2015, p.11, [www.amnesty.org/en/documents/act50/2634/2015/en/](http://www.amnesty.org/en/documents/act50/2634/2015/en/) [↑](#footnote-ref-6)
7. Amnesty International, *Death sentences and executions in 2017* (ACT 50/7955/2018), April 2018, p.9, [www.amnesty.org/en/documents/act50/7955/2018/en/](http://www.amnesty.org/en/documents/act50/7955/2018/en/) [↑](#footnote-ref-7)
8. Amnesty International reported 274 drug-related executions, 28% of all recorded executions (993+); in 2016, that figure stood at 360 or 35% of all recorded executions (1,032+). [↑](#footnote-ref-8)
9. Amnesty International, *Cooperate or Die – Singapore’s flawed reforms to the mandatory death penalty.* [↑](#footnote-ref-9)
10. Amnesty International, *Death sentences and executions in 2017*, p.26. [↑](#footnote-ref-10)
11. Amnesty International, *Death sentences and executions in 2017*, p.32. [↑](#footnote-ref-11)
12. Amnesty International, *Death sentences and executions in 2017,* p.23. [↑](#footnote-ref-12)
13. This is contrary to, among other examples, Safeguard no. 2 of the UN Safeguards guaranteeing protection of the rights of those facing the death penalty (ECOSOC resolution 1984/50); Article 15(1) of the International Covenant on Civil and Political Rights; Article 24(2), Rome Statute of the International Criminal Court; European Court of Human Rights, *Case of Scoppola v. Italy* No. 2 (Application no. 10249/03), Grand Chamber judgment of 17 September 2009, para.108. [↑](#footnote-ref-13)
14. Human Rights Committee, *Pagdayawon Rolando v Philippines*, Views of the Human Rights Committee, Communication No. 1110/2002, UN doc.CCPR/C/82/D/1110/2002, 8 December 2004, para. 5.2. [↑](#footnote-ref-14)
15. Brunei Misuse of Drugs, Arts. 3A, 15-16; Malaysia’s Dangerous Drugs Act, Art.37; Singapore’s Misuse of Drugs Act, Art.18. [↑](#footnote-ref-15)
16. For more information, see *Cooperate or Die – Singapore’s flawed reforms to the mandatory death penalty*, p. 13. [↑](#footnote-ref-16)
17. See, for example, in relation to Malaysia the case of Hoo Yew Wah, highlighted in Amnesty International, *Death sentences and executions in 2017*, p.23; and with regard to Singapore, *Public Prosecutor v Lim Boon Hiong and another* [2010] SGHC 205; and *Public Prosecutor v Mohamad Fadzly bin Din* [2010] SGHC 117. [↑](#footnote-ref-17)
18. For more information see Amnesty International, Fair Trial Standards (POL 30/002/2014), Second edition, 9 April 2014. [↑](#footnote-ref-18)
19. For more information on this particular aspect, see Amnesty International, *Cooperate or Die – Singapore’s flawed reforms to the mandatory death penalty,* pp.24-27. [↑](#footnote-ref-19)
20. See Amnesty International, *Cooperate or Die – Singapore’s flawed reforms to the mandatory death penalty*; and *Death sentences and executions in 2017*. [↑](#footnote-ref-20)
21. See Amnesty International, *Combating torture and other ill-treatment: A manual for action*, 2016, pp. 84-8, available at [www.amnesty.org/en/latest/campaigns/2016/08/combating-torture-manual/](http://www.amnesty.org/en/latest/campaigns/2016/08/combating-torture-manual/) [↑](#footnote-ref-21)