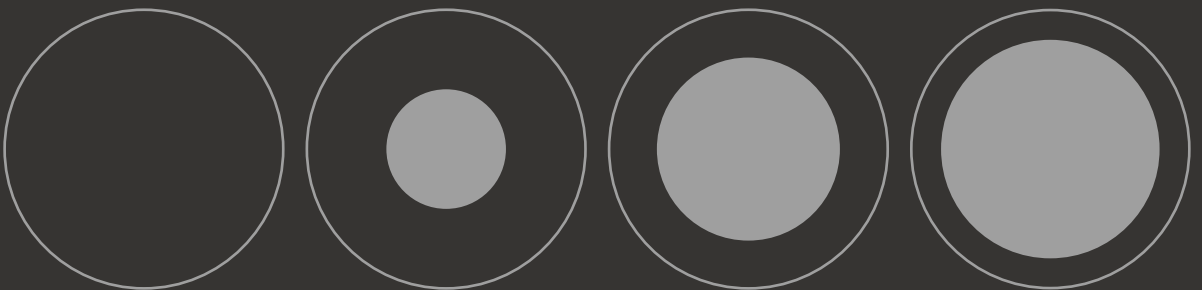




HARM REDUCTION
INTERNATIONAL

THE DEATH PENALTY FOR DRUG OFFENCES: GLOBAL OVERVIEW 2020





**The Death Penalty for Drug Offences:
Global Overview 2020**

Ajeng Larasati and Giada Girelli
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61 Mansell Street, Aldgate
London E1 8AN
Telephone: +44 (0)20 7324 3535
E-mail: office@hri.global
Website: www.hri.global

Harm Reduction International (HRI) 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.

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

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Any errors are the sole responsibility of Harm Reduction International.

Introduction

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

The Global Overview 2020 provides an analysis of key developments related to the death penalty for drug offences in 2020, their potential medium-term and long-term consequences, and the influence of COVID-19 on these changes. It will also examine the impact of measures introduced in response to COVID-19 on the right to a fair trial. A special section at the end of the report provides a review of best practices identified by lawyers for advocating against the death penalty at the national level.

Harm Reduction International opposes the death penalty in all cases without exception, regardless of the person accused and their guilt, 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 the trafficking, manufacturing, possession or use of controlled substances and related inchoate offences (inciting, assisting or abetting a crime).

In the 35 states that retain the death penalty for drug offences, capital punishment is typically applied for the following offences: cultivation and manufacturing, and the smuggling, trafficking or importing/exporting of controlled substances. However, in some of these states, the following drug offences may also be punishable by the death penalty (among others): drug possession, storing and hiding drugs, financing drug offences, inducing or coercing others into using drugs. For more information on the drug offences punishable by death by jurisdiction, see HRI's legislation table at www.hri.global/death-penalty-2020.

HRI'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.¹

The death penalty is reported as 'mandatory' when it is the only punishment that can be imposed following a conviction for at least certain categories of drug offences (without regard to the particular circumstances of the offence or the offender). Mandatory sentences hamper judicial sentencing discretion, and thus, according to international human rights standards, are inherently arbitrary.²

1 Art. 86(1)(d)(vi), Criminal Code of Saint Lucia (Act 9 of 2004 in force from 1 January 2005).
2 UN Human Rights Committee (3 Sept 2019) General Comment 36 on the Right to Life, UN Doc. CCPR/C/GC/36, para 37; UN Commission on Human Rights, Civil and Political Rights (22 Dec 2004) Including the Questions of Disappearances and Summary Executions: Report of the Special Rapporteur, Philip Alston, UN Doc. E/CN.4/2007/5, para. 63-4 and 80.

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, court judgments, non-governmental organisations (NGOs) reports and databases, United Nations (UN) documents, media reports, scholarly articles, and communications with local activists and 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 in this report.

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

With respect to data on death row population, death sentences and executions, the margin for error is even greater. In many countries, information about 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 instead should be read as minimum numbers of confirmed sentences, executions and death row populations, illustrative of how capital punishment is carried out for drug offences. Real numbers are higher, in some cases significantly. Where information is incomplete, attempts were made to identify additional sources. In some cases, information differs across sources due to this lack of transparency. In these cases, HRI has made a judgment 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 the actual figure is likely to be higher. Global and yearly figures are calculated by using the minimum confirmed figures.

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Special section:
Voices from the courtroom:
lawyers' strategies to reduce the
imposition of the death penalty

Foreword

2020 was unquestionably a historic year, during which the world was shut down by a pandemic. It was also an unprecedented year for the use of the death penalty for drug offences. **Globally, we saw the lowest number of confirmed executions for drug offences in more than a decade, and significant decreases in overall executions, even in staunchly retentionist countries.** My own country, Singapore, did not carry out any executions this past year for the first time since 2013.

COVID-19 has undeniably played a role in this ‘execution respite’. The significant disruptions to court processes and judicial proceedings, coupled with a shift in governmental priorities during the pandemic and political developments in some countries may have played some roles. Strategic legal challenges and creative advocacy by lawyers have also contributed to this result.

The pandemic however has not stopped governments and courts from imposing death sentences. This is despite the fact the court proceedings came to a total halt in many countries. In Singapore, two cases emerged where the death sentence was passed not in a physical hearing but via Zoom. I found that deplorable, and in fact, I am representing one of them. Hence despite COVID-19, the number of people confirmed to have been sentenced to death for drug offences in 2020 was higher than in 2019. This contributes to the growing population of people on death row, many of whom are detained in overcrowded prisons with a severe lack of access to health, welfare, and even proper legal services.

As a human rights lawyer, I am cautious of using the reduction in executions alone as a measure of success. True progress must also prevent more death sentences from being imposed in the first place. One way of doing this is through building public support on issues around the death penalty and drug policy. We must remind governments and citizens that miscarriages of justice do occur, and executions are irreversible. But perhaps the most compelling of all is the argument that there still exists no data whatsoever that the death penalty deters drug use, misuse, sale or trafficking. The narrative produced by the governments, including Singapore, that the amount of drugs in the country is low and that the public is “safer” with the death penalty is fundamentally flawed as various studies have shown.

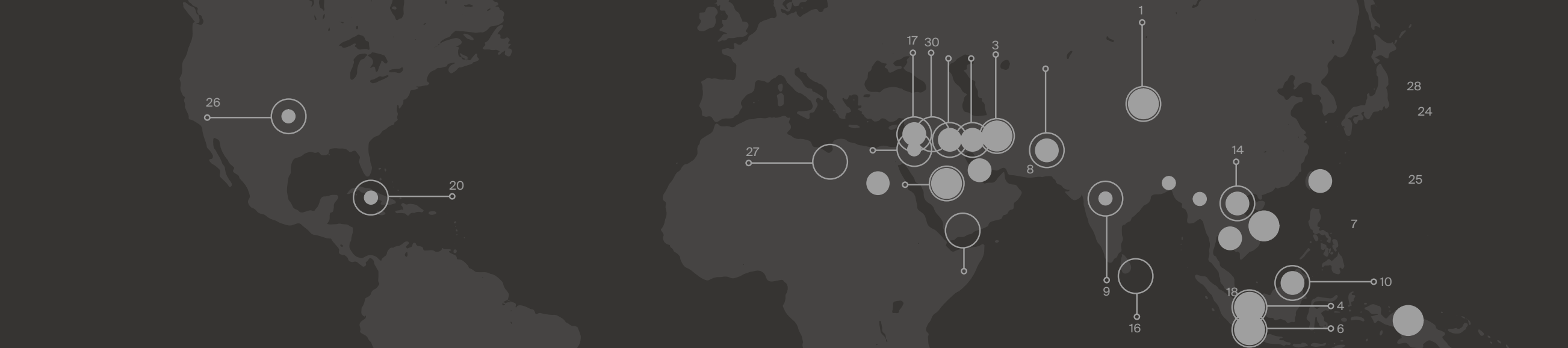
In Singapore, when people on death row faced an imminent threat of execution, we worked hard to stop the planned executions, especially when there was a miscarriage of justice or when fundamental human rights were violated. In a landmark drug trafficking case involving a Malaysian national, I managed to persuade the Court of Appeal to set aside its own previous decision on wilful blindness which the court finally declared its own decision to be demonstrably wrong. This is the first death penalty case on the miscarriage of justice to succeed in Singapore after a clemency petition was turned down by the President and when all avenues were closed. This has now led to a review of other cases which turned on the issue of wilful blindness.

A key takeaway from 2020's death penalty cases, in my view, has been the conversation in court decisions about the prosecution's duty to disclose evidence to the defence. This 'conversation' has far-reaching implications for all other pending death penalty cases in Singapore.

Despite the challenges we faced last year, **the pandemic has given us a once-in-a-generation opportunity to re-assess our advocacy to abolish the death penalty for drug offences.** Last year, we adapted to challenging circumstances; we continued representing our clients on death row or at risk of being sentenced to death; we engaged with the public in new and creative ways to support our advocacy. In many instances, cases were taken on either on a pro bono basis or on a "low bono" basis. We took the support of external organisations and universities and were reassured by supportive statements and declarations by UN agencies. We joined the voices of the international anti-death penalty movement and civil society organisations in calling for the abolition of the death penalty in Singapore. These are just some of the tools we used to further advocate for the abolition of the death penalty and drug policy reforms. We must continue to refine them and use them fearlessly. **Our battles and campaigns must carry on as there is still much work to be done to abolish this heinous state-sanctioned practice worldwide.**

M. Ravi
*International Human Rights Lawyer,
Singapore-based Advocate & Solicitor*

Country by country



High Application

1. China
2. Indonesia
3. Iran
4. Malaysia
5. Saudi Arabia
6. Singapore
7. Vietnam



Low Application

8. Bahrain
9. Bangladesh
10. Brunei Darussalam
11. Egypt
12. Iraq
13. Kuwait
14. Lao PDR
15. Pakistan
16. Sri Lanka
17. State of Palestine
18. Thailand
19. United Arab Emirates



Symbolic Application

20. Cuba
21. Jordan
22. Myanmar
23. Qatar
24. South Korea
25. Taiwan
26. United States of America



Insufficient Data

27. Libya
28. North Korea
29. Syria
30. Yemen

Executive Summary

2020 was an unprecedented year for the death penalty for drug offences, with a record low number of confirmed executions and some of the most resolute executioners either refraining from implementing death sentences or declaring a moratorium. As such, and in light of the exceptional challenges that governments may face in the near future – ranging from strained healthcare systems to economic and employment crises following the COVID-19 pandemic – there may be a unique opportunity to make progress towards the abolition of the death penalty for drug offences.

Thirty executions for drug offences were confirmed in 2020 – a 75% decrease from 2019. The picture remains incomplete, due to paucity of information on executions in China and Vietnam; nevertheless, the reduction is significant. It is too early to definitively conclude if this is the beginning of a long-term trend, or the outcome of an exceptional year. What is clear is that COVID-19 was not the only cause for this drop in executions, and that political developments played an important role.

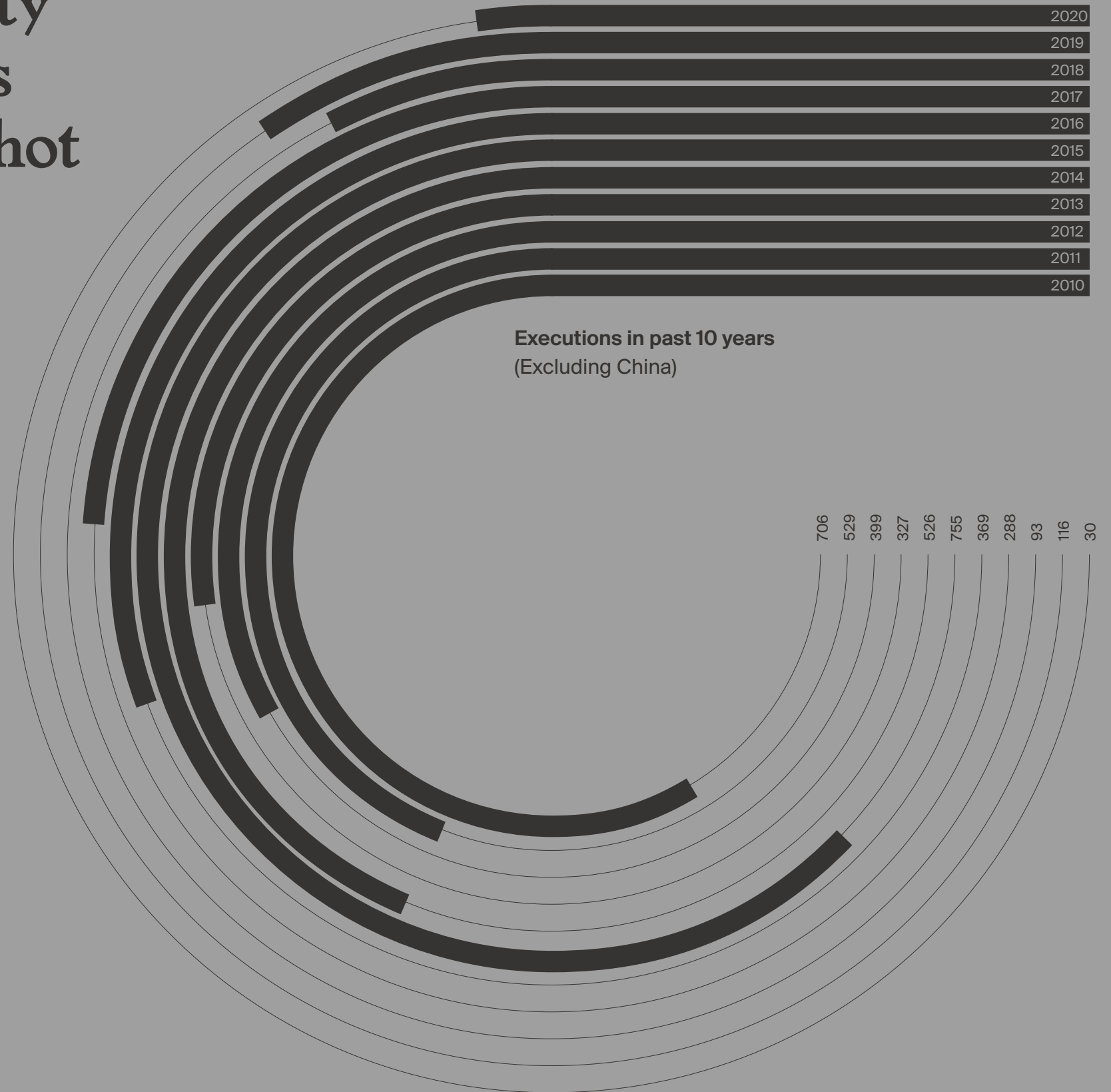
Although this historically low figure is certainly welcome, a decrease in the number of executions is not in itself a solution to the problem, neither should it be treated as a primary goal in advocating against the death penalty for drug offences. Executions are only the tip of the iceberg. By nature, executions are the most visible part of a much more broadly problematic system, characterised by a plethora of fair trial violations, inhumane treatment and grossly disproportionate and punitive approaches to drugs that are responsible for numerous convictions and death sentences, regardless of whether executions are carried out. This is clearly visible when looking at countries such as Thailand, Lao PDR or Sri Lanka, where individuals have not been recently executed for drug offences, yet death sentences continue to be pronounced, resulting in hundreds of people on death row. Regrettably, such countries tend to attract little scrutiny.

That many countries remain reluctant to move away from capital punishment is demonstrated by the fact that death sentences continued to be imposed amid a global pandemic, insomuch that a 16.3% increase in known drug-related death sentences has been recorded. This is despite the challenges that COVID-19 presented for courts and governments, which further exposed defendants to the risk of fair trial violations. Worryingly, some countries are advocating for harsher policy and punishment. One example is the Philippines, where, at the time of writing, a bill was adopted by the House of Representatives (the lower house of the Congress) reintroducing the death penalty for drug offences.

Noteworthy developments witnessed in 2020 – from Saudi Arabia to the United States – are a reminder that the death penalty is inherently political; it can be abandoned with the stroke of a pen, and with no significant impact on crime, drug use and drug trafficking. For this very reason, it is vital that advocacy against the death penalty, together with drug policy reform, remains on the agenda of both human rights and drug reform advocates. Alignment between these two worlds – too often working in parallel – is essential to avoid replacing the death penalty with equally disproportionate and inhuman punishments, or missing important opportunities for progress. Without abolition of the death penalty and drug policy reform, hundreds of people will continue to face disproportionate sentences and risk spending years, if not decades, on death row – an invisible population living in limbo, forgotten and mistreated.

The death penalty for drug offences in 2020: a snapshot

- 35 countries retain the death penalty for a range of drug offences worldwide. In 2020, only **three countries** (China, Iran, and Saudi Arabia) were confirmed to have carried out executions for drug offences. It is likely that drug-related executions took place in Vietnam, but state secrecy prevents confirmation of this.
- At least **30 people** were confirmed to have been executed for drug offences in 2020 - a 75% drop from 2019 and a 96% drop from 2015. This is by far the lowest recorded number since HRI started reporting on this issue in 2007.
- **Saudi Arabia** executed five people for drugs (compared with 84 in 2019). In early 2020, a moratorium on drug-related executions was imposed, which significantly impacted on the global decline in executions in 2020.
- No one was executed in **Singapore**, for the first time since 2013.
- At least **10 countries sentenced a minimum of 213 people** to death for drug offences in 2020 - more than in 2019.³ This increase was particularly significant in some countries, such as Indonesia, where at least 77 drug-related death sentences were imposed in 2020 (a 79% increase from 2019).
- At least **3,000 people** are on death row for drug offences worldwide. High numbers of death sentences contribute to the growing number of people on death row.



The death penalty for drug offences in the COVID-19 pandemic era

COVID-19 has impacted all aspects of human life. Since the World Health Organization (WHO) declared COVID-19 as a public health emergency of international concern in January 2020,⁴ governments have introduced policies to restrict movement within and from/to their territories to reduce the risk of transmission.⁵ Partial or full ‘lockdown’ policies were put in place, with people asked to practice physical distancing, schools and shops closed and public gatherings banned. Courts and judicial processes, including those imposing or implementing death sentences, also faced disruptions, and were either paused or had to adapt their operations.

This section will start with an overview of key developments related to the death penalty for drug offences in 2020, including confirmed death sentences and executions, policy changes, their significance, and the influence of COVID-19 on such changes. An analysis will follow of the impact of COVID-19 on the right to a fair trial in capital drug cases.

To better understand the current situation and the immediate impact of COVID-19 on the application of the death penalty for drug offences, Harm Reduction International (HRI) reached out to lawyers and practitioners in China, India, Indonesia, Malaysia, Pakistan, Saudi Arabia, Sri Lanka and Singapore.

4 World Health Organization, “Listings of WHO’s Response to COVID-19,” accessed Feb 15, 2021, <https://www.who.int/news/item/29-06-2020-covidtimeline>.

5 See detailed timeline of COVID-19 at: Caroline Kantis, Samantha Kiernan, and Jason Socrates Bardis, “UPDATED: Timeline of the Coronavirus,” Think Global Health, Jan 15, 2021, <https://www.thinkglobalhealth.org/article/updated-timeline-coronavirus>.

01. THE DEATH PENALTY FOR DRUG OFFENCES IN 2020: A WATERSHED MOMENT

Although the number of countries retaining the death penalty for drugs did not change in 2020, the implementation of this measure has changed significantly, insomuch as – if capitalised upon – 2020 could represent a watershed moment for the death penalty for drugs.

Most significantly, the number of minimum confirmed executions has dropped to 30. For comparison, at least 116 people were executed for drug offences in 2019. This is only a partial figure, due to a widespread lack of transparency on executions and the complete unavailability of figures on China and Vietnam; nevertheless, this is, by far, the lowest recorded number since HRI started reporting on this issue in 2007. **This downward trend was driven mainly by developments in Saudi Arabia, where a moratorium on the death penalty for drug offences is in place** as part of Crown Prince Mohammad bin Salman’s criminal justice reforms. As an attempt to improve the country’s abysmal human rights reputation on the international stage, the Crown Prince imposed a moratorium on drug-related executions⁶ while abolition is discussed with the Shura Council (an advisory body to the Saudi King with no legislative authority).⁷

Equally significant was a slight decrease in confirmed executions in Iran following legislative amendments to the Law for Combating Illicit Drugs in 2017, and the absence of executions in Singapore for the first time since 2013. The latter development might be the result of both COVID-19-related policies and civil society activism to stop planned executions.

6 “Saudi Arabia Drastically Decreases Application of Death Penalty in 2020,” Saudi Gazette, Jan 18, 2021, <https://saudigazette.com.sa/article/602621/SAUDI-ARABIA/Saudi-Arabia-drastically-decreases-application-of-death-penalty-in-2020>.

7 “Annual Report 2020 - Saudi Arabia: Pandemic of Repression Without a Cure” (European Saudi Organisation for Human Rights (ESOHR), Jan 14, 2021), <https://www.esohr.org/en/wp-content/uploads/2021/01/Saudi-Arabia-Pandemic-of-Repression-without-a-Cure.pdf>

While interruptions to the operation of judicial systems and shifts in priorities due to COVID-19 have undoubtedly played a role, the fact that two of the strongest supporters of capital punishment as a tool of drug control – Singapore and Saudi Arabia – have limited executions is an encouraging sign that capital punishment is not an essential feature of any justice system. As noted above, particularly in Saudi Arabia the drastic reduction in executions for drug-related offences is to be attributed not to COVID-19, but rather to purely political developments.

More broadly, developments at the international level may have added to the pressure to restrict the use of capital drug laws. **In December 2020, the United Nations (UN) General Assembly adopted its eighth resolution calling for a moratorium of the death penalty, with record-breaking support** from 123 countries (compared with 120 in 2018) and only 38 votes against.⁸ At the UN Commission on Narcotic Drugs, 13 countries declared their opposition to the death penalty for drug offences, joined by the International Narcotics Control Board.⁹ On the 2020 World Day Against the Death Penalty, Pope Francis reiterated that the death penalty is against Christian catechism and referred to the death penalty as “the worst sin a human being can commit”.¹⁰

8 “Report of the Third Committee - Promotion and Protection of Human Rights: Human Rights Questions, Including Alternative Approaches for Improving the Effective Enjoyment of Human Rights and Fundamental Freedoms” (General Assembly, Dec 1, 2020), <https://www.undocs.org/en/A/75/478/Add.2>.

9 Monitoring of statements at the opening and the general debate of the 63rd session of the Commission on Narcotic Drugs, https://www.unodc.org/unodc/en/commissions/CND/session/63_Session_2020/63-statements.html.

10 “Holy See: ‘Death Penalty the Most Shocking Thing in the World,’” Vatican News, Oct 10, 2020, <https://www.vaticannews.va/en/vatican-city/news/2020-10/world-day-against-death-penalty-holy-see-un-jurkovic.html>.

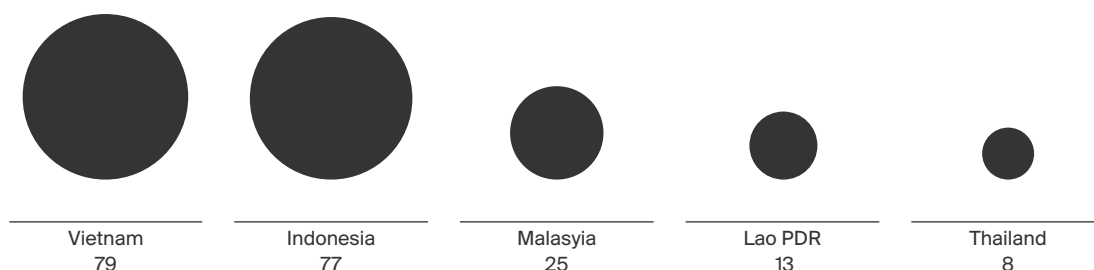
Sixth, seventh, and eighth UNGA resolution calling for a moratorium of the death penalty: voting record of countries that retain the death penalty for drug offences (+ = in favour; - = against; abs = abstention)

| | 2016 | 2018 | 2020 |
|-----------------------------|------|------|------|
| Bahrain | abs | - | - |
| Bangladesh | - | - | - |
| Brunei Darussalam | - | - | - |
| China | - | - | - |
| Cuba | abs | abs | abs |
| Egypt | - | - | - |
| India | - | - | - |
| Indonesia | abs | abs | abs |
| Iran | - | - | - |
| Iraq | - | - | - |
| Jordan | abs | abs | + |
| Kuwait | - | - | - |
| Lao PDR | abs | abs | abs |
| Libya | - | + | - |
| Malaysia | - | + | + |
| Myanmar | abs | abs | abs |
| North Korea | - | - | - |
| Oman | - | - | - |
| Pakistan | - | + | - |
| Qatar | - | - | - |
| Saudi Arabia | - | - | - |
| Singapore | - | - | - |
| South Korea | abs | abs | + |
| South Sudan | + | abs | abs |
| Sri Lanka | + | + | + |
| State of Palestine | n/a | n/a | n/a |
| Sudan | - | - | - |
| Syria | - | - | - |
| Taiwan | n/a | n/a | n/a |
| Thailand | abs | abs | abs |
| United Arab Emirates | abs | abs | abs |
| USA | - | - | - |
| Vietnam | abs | abs | abs |
| Yemen | - | - | abs |

2020 also saw significant civil society activism against the death penalty. With restrictions to in-person gatherings, efforts were concentrated online. One example is a petition launched by LBH Masyarakat on the case of Merri Utami, an Indonesian migrant worker who has spent over a decade on death row for being tricked into trafficking drugs. The petition, which asks Indonesian President Joko Widodo to grant Merri clemency, has garnered over 19,000 signatures at the time of writing.¹¹ Notably, advocates repeatedly identified online public engagement as one key strategy for advocating against the death penalty, as explored in the special section at the end of the report.

The significant reduction in drug-related executions is undoubtedly a positive development - an opportunity for countries to rethink the necessity and effectiveness of this policy, and for advocates to further intensify their calls for abolition. Nevertheless, there is more to the death penalty than executions themselves. In times of COVID-19, the operation of a justice system may make it difficult or near impossible to carry out executions, but it does not necessarily stop the imposition of the death penalty. Notably, **at least ten countries sentenced a minimum of 213 people to death for drug offences in 2020 - a 16.3% increase from the 183 confirmed in 2019.**¹² This upward trend was particularly significant in some countries, such as Indonesia, where 77 people were sentenced to death for drug trafficking in 2020 (a 79% increase from 2019). Conversely, substantial numbers of death sentences contribute to the growing number of people on death row, where many have spent more than a decade. This unwavering reliance on the death penalty - even in times of exceptional challenges - is as troubling as the executions themselves.

Minimum confirmed death sentences for drug offences, 2020

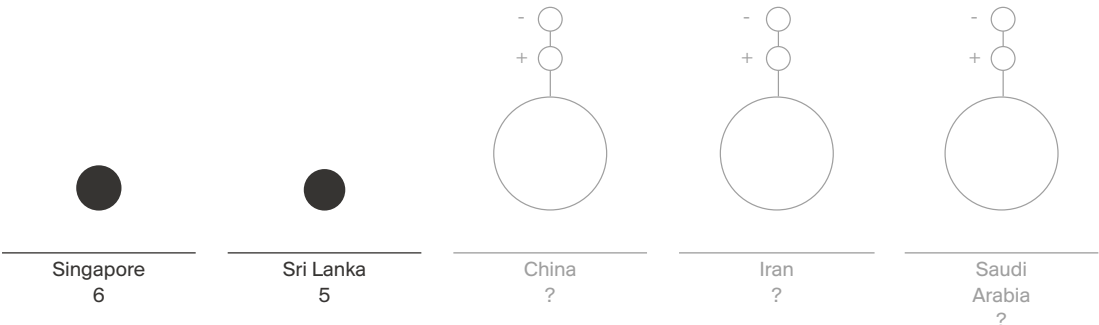


¹¹ "Clemency for Merry Utami: Save Merry from Injustice," Change.Org (blog), accessed Feb 15, 2021, <https://www.change.org/p/joko-widodo-grasi-untuk-merry-utami-selamatkan-merry-dari-ketidakadilan>.

¹² Based on a HRI dataset on death sentences and executions for drug offences. On file with the authors and available upon request.

It is essential to note that **there remains a pervasive and systemic lack of transparency around the death penalty**, which is in violation of clear international standards.¹³ The issue of transparency was exacerbated in 2020, when collecting information about the use of the death penalty for drug offences was even more challenging than in previous years. This is likely due to COVID-19 dominating the news, restrictions imposed upon movement, and the shrinking of civil society space; all of which negatively impacted independent monitoring of the death penalty. At the same time, several UN human rights processes, such as country reviews by Treaty Bodies and country visits by Special Procedures, came to a halt or were delayed, resulting in an even lower number of available resources to track the application of the death penalty. This signals a pressing need for monitoring processes to resume, to ensure that violations and trends are documented and addressed. Well-integrated human rights monitoring and documentation should become an essential component to prevent further and future violations of human rights.

Finally, 2020 also witnessed the regression of some countries, with plans to apply harsher punishment to drug offences. For example, the Philippines President Rodrigo Duterte has continued pushing to reintroduce the death penalty as part of his ‘war on drugs’. At the time of writing, a bill that would re-impose the death penalty has been adopted in the lower house of Congress, and is due to be discussed in the Senate.



13 Among others: Human Rights Commission, “Extrajudicial, Summary or Arbitrary Executions. Report of the Special Rapporteur, Philip Alston: Transparency and the Imposition of the Death Penalty,” Mar 24, 2006, UN Doc. E/CN.4/2006/53/Add.3.

02. IMPACT OF COVID-19 ON THE RIGHT TO A FAIR TRIAL

The COVID-19 pandemic and related emergency measures disrupted judicial processes in countries around the world, including those related to capital cases, in ways that risk exposing defendants to additional vulnerabilities and violations of their fair trial rights.

The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights (ICCPR) (Siracusa Principles) state that “public health may be invoked as a ground for limiting certain rights”¹⁴ to allow countries to take necessary measures to respond to public health emergencies. However, the Siracusa Principles also specify that any limitations to human rights recognised by the Covenant must meet certain requirements of necessity, where no less intrusive and restrictive means are available to reach the same objective.¹⁵

Article 10 of The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights:

(10) Whenever a limitation is required in the terms of the Covenant to be “necessary,” this term implies that the limitation:

-
- a. is based on one of the grounds justifying limitations recognized by the relevant article of the Covenant;
 - b. responds to a pressing public or social need;
 - c. pursues a legitimate aim; and
 - d. is proportionate to that aim.

Any assessment as to the necessity of a limitation shall be made on objective considerations.

In a legitimate state of emergency, certain fair trial rights “may be subject to legitimate limitations.”¹⁶ However, there are particular provisions under the right to a fair trial that are fundamental to human dignity and which are non-derogable even under a state of emergency, including but not limited to¹⁷:

- The right to have adequate time and facilities to prepare the defence, including the right to communicate confidentially with a lawyer;
- The right of the defendant to be present at trial;
- The right to obtain the attendance and examination of defence witnesses; and
- The right to a fair and public hearing by a competent, independent and impartial tribunal.

National responses to the COVID-19 emergency have led to worrying changes in the criminal justice system. Lawyers in **Pakistan** and **Saudi Arabia** reported that their access to detained clients has been restricted, which has prevented them from discussing and developing effective defence strategies.¹⁸ In **India**, at first, only lawyers were able to be present in-person during court proceedings, but all hearings are now held virtually.¹⁹ As denounced by local lawyers, in drug-related cases virtual hearings have further compromised the court’s ability to show the link between the drug seized, the sample of drug sent for testing, and the accused persons.²⁰ In **Indonesia**, the Supreme Court announced in March 2020 that hearings for criminal matters could be carried out through teleconference.²¹ Similarly in China, trials have also moved online as a result of the COVID-19 pandemic.²² These changes exacerbate the already weak protection of the right to a fair trial in capital drug cases, explored in-depth in HRI’s *Global Overview 2019*.

16 Ibid., Para. 70.

17 Ibid., Para. 70(g)

18 Personal Communication with Justice Project Pakistan, 2020.

19 Dhananjay Mahapatra, “Virtual Courts to Hear Urgent Cases during Lockdown,” *The Times of India*, Apr 5, 2020, http://timesofindia.indiatimes.com/articleshow/74988557.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst

20 Tandon, T., Personal Communication, 2021.

21 “Taking Lives During Pandemic - 2020 Indonesian Death Penalty Report” (Jakarta: Institute for Criminal Justice Reform (ICJR), Oct 2020), <https://icjr.or.id/wp-content/uploads/2020/12/Death-Penalty-Report-ICJR-2020.pdf>. Pag. 16.

22 Anonymous, Personal Communication, 2021; “China Focus: China Moves Courts Online amid Coronavirus Epidemic,” *Xinhua*, Feb 18, 2020, http://www.xinhuanet.com/english/2020-02/18/c_138795315.htm.

RIGHT TO ADEQUATE TIME AND FACILITIES TO PREPARE A DEFENCE

The right to adequate time and facilities to prepare a defence is “an important element of the guarantee of a fair trial and an application of the principle of equality of arms.”²³ There is no fixed determination of what constitutes ‘adequate time’, as it depends on the circumstances of the case, but such time should allow the defendant to sufficiently prepare a defence. In one case in Indonesia, Bengkalis District Court sentenced two men to death for trafficking 25 kilograms of amphetamine from prison.²⁴ The prosecutor read his demand on 31 August 2020, followed by a verdict from the judges on the same day.²⁵ The significantly short period between the prosecutor’s demand and the verdict points to a lack of adequate time to prepare a defence, which contravenes procedure.

Access to legal assistance and communication with one’s lawyer are essential to preparing a defence. The Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty state that, in countries which have not abolished the death penalty, such punishment can only be “rendered by a competent court after a legal process which gives all possible safeguards to ensure a fair trial, ... including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings.”²⁶ A lawyer’s presence is essential to help the defendant navigate the criminal justice system, understand the nature of the crime, and present an effective defence in court. At a later stage of criminal justice proceedings, a lawyer’s presence is also important to ensure one’s right to appeal and/or to apply for pardon or commutation of death sentences.

Lawyers must be able to give advice and to represent the defendant professionally without restrictions, pressure or undue interference from other parties, from the earliest stage of the proceedings.²⁷ To provide effective assistance, lawyers must be able to meet with the defendant in private and in conditions that fully respect the confidentiality of their communications.²⁸

23 “General Comment No. 32 - Article 14: Right to Equality before Courts and Tribunals and to a Fair Trial” (Human Rights Committee, Aug 23, 2007), CCPR/C/GC/32, para. 32.

24 “Tok! Duo Bandar Sabu Dari Bengkalis Kembali Dihukum Mati,” DetikNews, Sept 2, 2020, <https://news.detik.com/berita/d-5156871/tok-duo-bandar-sabu-dari-bengkalis-kembali-dihukum-mati>.

25 “Taking Lives During Pandemic - 2020 Indonesian Death Penalty Report.” pag. 20 . See also: “Gunung Sugih State Court Case Search Information System,” accessed Feb 16, 2021, http://sipp.pn-gunungsugih.go.id/list_perkara.

26 United Nations Economic and Social Council, “Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty,” May 25, 1984, para. 5.

27 “General Comment No. 32 - Article 14: Right to Equality before Courts and Tribunals and to a Fair Trial.” Para. 34.

28 Ibid.

Therefore, even in the pandemic era, lawyers should be able to meet and confidentially communicate with their clients. Lawyers in **China** are still able to meet their clients in prisons or other detention facilities, but they now need to present additional health documents. While this is necessary to avoid the risk of COVID-19 transmission, this additional requirement may be burdensome for lawyers. A Beijing-based lawyer reported that:

[In the past], lawyers only needed to present a letter of introduction, a letter of authorization and practicing license to see their clients. Now, in addition to these three documents, they must present a proof of health, a health declaration, travel records of 14 days or two months, a QR code on health status, a nucleic acid test report.²⁹

In a death penalty case, when a lawyer's visits to their clients are restricted - combined with excessive reliance on telephones or other, less effective forms of communication (such as low quality online connections) and inadequate time to prepare a defence - the likelihood of mounting a weak or poorly prepared defence inevitably increases the risk of receiving a death sentence. The risk increases further where the defendant is a foreign national who does not speak the language used in the hearing, and would consequently need more time for interpretation to communicate meaningfully with their lawyers and participate in a trial.

With detention facilities limiting visits to prevent the spread of COVID-19, lawyers have faced many barriers to meeting with their clients. Lawyers at Justice Project Pakistan indicated that during COVID-19:

One of the main challenges presented was through the initial suspension of interviews of prisoners with their family members and legal counsel and lack of alternative means of audio-visual communications, which meant a lack of access for prisoners to their legal representatives.³⁰

Lawyers in **Saudi Arabia** and **Sri Lanka** faced similar obstacles.³¹

29 Anonymous, Personal Communication, 2021.

30 Personal Communication with Justice Project Pakistan, 2020

31 Anonymous, Personal Communication, 2021. Hewamanna, P., Personal Communication, 2020.

In the early stages of the pandemic, many countries limited or suspended prison visits to prevent the spread of COVID-19, often replacing them with phone calls or other forms of communication. Where phone calls or telecommunication are time-bound, or not free of charge, lawyer-defendant communication has been negatively impacted.³² In addition, some detention centres simply do not have the appropriate services, software or hardware, such as reliable computers and good internet connections. Consequently, in some cases communications were carried out via phone in the detention centre, or even by prison officers' mobile phones - which compromised the confidentiality of the lawyer-defendant communications - as they could not speak freely or discuss the defence strategy due to fears that the prison officer might share it with other parties. These circumstances may seriously impact the preparation of defence as well as the quality of the defence in any given case. Lawyers at LBH Masyarakat, Indonesia, Muhammad Afif and Yosua Octavian, reported:

Some prison officers are kind enough to facilitate a meeting with our client through a video call. But it usually involves using the prison officer's phone, so they also stay in the room, and we can't have a confidential discussion with our clients. We also could not clarify the facts and explore potential mitigating factors.³³

Furthermore, the practice of using prison officers' mobile phones essentially relies on the good faith and discretion of individual officers, rather than on instituted policies and practices. As such, it has a significant potential of resulting in discrimination.

32 "Safeguarding the Right to a Fair Trial During the Coronavirus Pandemic: Remote Criminal Justice Proceedings" (London: Fair Trials, 2020), <https://www.fairtrials.org/sites/default/files/Safeguarding%20the%20right%20to%20a%20fair%20trial%20during%20the%20coronavirus%20pandemic%20remote%20criminal%20justice%20proceedings.pdf>.

33 Afif, M. and Octavian, Y., Personal Communication with LBHM, 2021.

RIGHT TO FAIR AND PUBLIC HEARING BY A COMPETENT, INDEPENDENT AND IMPARTIAL TRIBUNAL

Article 14 of the ICCPR recognizes the right to a fair and public hearing by a competent, independent and impartial tribunal established by law.³⁴ This right entails, among other things, public access to a hearing unless for legitimate reasons where “courts have the power to exclude all or part of the public for reasons of moral, public order (*ordre public*) or national security”;³⁵ while fairness entails, among other things, the right to be tried without undue delay.

To deal with COVID-19-related risks, courts have suspended or limited in-person hearings, sometimes replacing them with virtual hearings held through online platforms. According to local lawyers, courts in **India** and **Sri Lanka** only conducted in-person hearings for urgent cases throughout (or for part of) 2020, as part of lockdown policy.³⁶ Cases classified as non-urgent were heard virtually or had to wait for the courts to resume in-person hearings. In **Malaysia**, courts adjourned criminal trials, while the defendants remained in prison on remand.³⁷ Postponement of a hearing can be a serious problem, especially for offences punishable by death, as Fahri Azzat, a Malaysian lawyer working on death penalty cases, explains:

“The longer they [the defendants] remain in remand (because courts rarely grant bail for a death penalty offence), the longer they are pre-judiced, i.e. their memory becomes less accurate.”³⁸

This can have a detrimental impact on their testimony, and on their credibility in front of the judges.

In **Indonesia** and **Singapore**, courts have carried out dozens of criminal proceedings, and even sentenced people to death for drug offences, through virtual platforms.³⁹ With courts limiting in-person hearings, virtual hearings became the only option to avoid undue delays. However, remote hearings should be held in such a way to ensure that the defendant is able to effectively exercise their right to a fair trial. The use of virtual platforms to conduct criminal proceedings, especially those which result in a death sentence, can expose the defendant to significant violations of their fair trial rights and impinge on the quality of the defence.⁴⁰

34 “General Comment No. 34 - Article 19: Freedoms of Opinion and Expression” (Human Rights Committee, Sept 12, 2011), UN Doc. CCPR/C/GC/34, para. 15.

35 “General Comment No. 32 - Article 14: Right to Equality before Courts and Tribunals and to a Fair Trial.” Para. 29.

36 Tandon, T., Personal Communication with Lawyers Collective, 2020. Hewamanna, P., Personal Communication, 2020.

37 Azzat, F., Personal Communication, 2020.

38 Ibid.

39 Afif, M. and Octavian, Y., Personal Communication with LBHM, 2021., Ravi, M., Personal Communication, 2020.

40 “Safeguarding the Right to a Fair Trial During the Coronavirus Pandemic: Remote Criminal Justice Proceedings”.

Firstly, defendants have the right to be present at trial,⁴¹ as absence from the courtroom may compromise their effective participation in the hearing.⁴² Hence, **the decision to conduct hearings virtually should be based on (a) consent from all parties,⁴³ and (b) an individualised assessment of the circumstances (including the length and impact of any delays on the defendants' rights, the complexity of the case, and the presence of witnesses and experts).**⁴⁴ According to the International Commission of Jurists, any decision to impose a videoconference without consent may be “permissible if it is based in law, non-discriminatory, time-limited and demonstrably necessary and proportionate in the local circumstances of the COVID-19 pandemic and the specific characteristics of the individual case.”⁴⁵

Instead of respecting the defendant's right to be present at trial, and encouraging thorough individual assessments on the specific characteristics of each case, in March 2020 the Indonesian Supreme Court made the blanket decision to conduct all criminal hearings virtually,⁴⁶ while further technical arrangements on the implementation of such decision were made jointly by the Supreme Court, the Attorney General's Office, and the Correctional Facilities Directorate-General.⁴⁷ Indonesian sources indicate that in practice, the Court does not ask for the defendant's consent to conduct the trial virtually.⁴⁸

Secondly, Article 14 of the ICCPR guarantees one's right to be tried in a public manner, unless for legitimate reasons where “courts have the power to exclude all or part of the public for reasons of moral, public order (ordre public) or national security.”⁴⁹ **The International Commission of Jurists' interpretation is that public health cannot be used to exclude the public from a hearing.**⁵⁰ Practically, in **Indonesia**, the court administrator only shares the link to the virtual hearing platform with the judges, the prosecutors, the lawyers, and the officers of the prison where the defendant is detained; the court rarely publishes the link on their website, so the general public, including the defendant's family, the victim's family, and other relevant parties, cannot gain access to the hearing.⁵¹

41 "International Covenant on Civil and Political Rights," Pub. L. No. Treaty Series, vol. 999, p. 171 (1966), art. 14.3(d).
42 "Safeguarding the Right to a Fair Trial During the Coronavirus Pandemic: Remote Criminal Justice Proceedings," pag. 4
43 "Videoconferencing, Courts and COVID-19. Recommendations Based on International Standards" (Geneva: International Commission of Jurists, Nov 2020), <https://www.icj.org/wp-content/uploads/2020/11/Universal-videoconferencing-courts-and-covid-Advocacy-2020-ENG.pdf>.
44 "Safeguarding the Right to a Fair Trial During the Coronavirus Pandemic: Remote Criminal Justice Proceedings."
45 "Videoconferencing, Courts and COVID-19. Recommendations Based on International Standards," pag. 5.
46 "Taking Lives During Pandemic - 2020 Indonesian Death Penalty Report," pag. 16.
47 Perjanjian Kerja Sama (MoU) Nomor: 402/DJU/HM.01.1/4/2020; Nomor: KEP-17/E/Ejp/04/2020; Nomor: PAS-08.HH.05.05 Tahun 2020 tentang Pelaksanaan Persidangan Melalui Teleconference.
48 Afif, M. and Octavian, Y., Personal Communication with LBHM, 2021.
49 "General Comment No. 32 - Article 14: Right to Equality before Courts and Tribunals and to a Fair Trial," para. 29.
50 "Videoconferencing, Courts and COVID-19. Recommendations Based on International Standards," pag. 7.
51 Afif, M. and Octavian, Y., Personal Communication with LBHM, 2021.

Furthermore, in some sensitive cases, such as death penalty and/or drug cases, neither lawyers nor any other parties can record the process without approval from the judges.⁵² Lawyers Muhammad Afif and Yosua Octavian reported: *“We cannot record the process, nor take screenshots or photos unless we get the judges’ permission. Virtual hearings mean the whole process is not open for the public because the link is distributed limitedly.”*

In **Indonesia**, three Malaysian nationals - Kumar Atchababoo, Rajandran Ramasamy, and Sanggat Ramasamy - were sentenced to death during a virtual hearing by Batam District Court. They were charged with trafficking 28.6 kilograms of amphetamines. Despite them being foreign nationals, the court judgment does not make any reference to the presence of interpreters during the hearing, and, following the judgment, their counsel complained that he could not communicate with the defendants to discuss whether to appeal the sentence.

In **Singapore**, Punithan Genasan was sentenced to death by hanging via a sentencing hearing held on the Zoom platform. Genasan attended from jail, with his lawyer in a different location. According to the court documents, Genasan, who was convicted for ‘masterminding’ the trafficking of 28.5 grams of diamorphine (the medical name of heroin), consistently denied any involvement in the drug transaction.

Conversely, online platforms are often not secure and confidential. Singaporean human rights lawyer, M. Ravi, expressed his concern about the lack of security and confidentiality when using Zoom for a virtual hearing, saying: “I believe the better way was to have (the hearing) in open court. There is also a Zoom administrator which also puts confidential data at risk”.⁵³ Similarly, lawyers from the Indonesian organisation LBH Masyarakat shared concerns that their clients could not confer confidentially with them in a virtual courtroom setting.⁵⁴

Finally, from a practical perspective, virtual hearings rely heavily on the internet connection available in the city or the country. Countries like **India, Indonesia, Myanmar, Pakistan** and **Sri Lanka** are among the countries with lower-ranked internet speeds.⁵⁵ Consequently, there are moments where poor internet connection disrupts the proceedings, raising questions of the ability of courts to examine witnesses and the defendant effectively.⁵⁶

52 Ibid.

53 Ravi, M., Personal Communication, 2020.

54 Afif, M. and Octavian, Y., Personal Communication with LBHM, 2021.

55 “Internet Speeds by Country 2021,” World Population Review, accessed Feb 15, 2021, <https://worldpopulationreview.com/country-rankings/internet-speeds-by-country>.

56 Afif, M. and Octavian, Y., Personal Communication with LBHM, 2021. Also: Yash Agarwal, “Challenges in Setting up Virtual and Online Courts in India,” The Leaflet, Oct 23, 2020, <https://www.theleaflet.in/challenges-in-setting-up-virtual-and-online-courts-in-india/#>.

Despite presenting a unique opportunity – due to the alignment of a global pandemic, forceful civil society activism, and political developments – 2020 saw ongoing violations related to the application of the death penalty for drug offences. At least 30 people were executed for drug offences in three countries (while dozens more are feared to have lost their lives in China and Vietnam), and an estimated 3,000 people are currently on death row for drug offences worldwide.

A significant number of death sentences were handed down for drug crimes in 2020, despite the unique challenges to safeguarding the right to a fair trial of people facing the death penalty; this suggests that, while countries are competing to protect their citizens' lives from a deadly virus, they are less ready to move away from state-sanctioned killing as a punishment. Administering the death penalty requires a complicated, complex and (to a degree) expensive machinery, whose already problematic functioning was further challenged by the pandemic. The ongoing reliance on capital punishment, despite such challenges, indicates that retentionist countries may be missing an important opportunity to limit the use of this instrument, or at least to critically assess its necessity in these new circumstances.

Furthermore, a decrease in the number of executions is not in itself a solution to the problem; neither should it be treated as a primary goal in advocating against the death penalty for drug offences. Moving forward, it is vital that advocacy against the death penalty, together with drug policy reform, remains on the agenda. Each execution is an egregious human rights violation, preceded by a series of flagrant violations that seem to be a normalcy in many retentionist countries. **The fight against the death penalty, therefore, is not just about the abolition of an archaic and ineffective punishment from any criminal justice system; rather, it is also fundamentally about strengthening that very justice system** and ensuring that – inter alia – there are mechanisms in place to prevent arbitrary arrest and detention, eliminate police brutality, ensure that testimonies or information derived from unlawful practices are deemed inadmissible, and safeguard the right to a fair trial. Abolitionists and drug policy reformers must continue to align their work to address these mounting challenges.

The death penalty for drug offences: global overview 2020

COUNTRY-BY-COUNTRY ANALYSIS

This section 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 changed 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 regularly. In fact, six of these states are classified by Amnesty International as abolitionist in practice.⁵⁷ 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”.⁵⁸ Other countries have neither sentenced to death nor executed anyone for a drug offence, despite having dedicated laws in place. 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.

57. Brunei Darussalam, Lao PDR, Mauritania, Myanmar, South Korea and Sri Lanka. See “Death Sentences and Executions in 2019” (London: Amnesty International, 2020), <https://www.amnesty.org/en/documents/act50/1847/2020/en/>.

58. *Ibid.*, pag. 55.

With an eye to further clarifying the classification criteria, in the Global Overview 2020, we have reviewed the definitions of these categories. The aim is to better reflect our belief that a well-rounded analysis of the death penalty for drug offences, and of states' reliance on this measure, should consider not only executions but also death sentences. We added a note in the dedicated paragraphs of the countries that have been reclassified accordingly.

It is also worth noting that, due to the significant decrease in confirmed executions in 2020, the term 'application' may sound less fitting than previously. As it remains unclear whether these figures indicate the beginning of a longer trend, or are the reflection of an exceptional year, the decision was taken not to change the categories, at least for this Global Overview.

- **High Application States** are those in which executions of individuals convicted of drug offences were carried out, and/or at least ten drug-related death sentences per year were imposed in the past five years.
- **Low Application States** are those where, although no executions for drug offences were carried out in the past five years, death sentences for drug offences were imposed on nine or fewer individuals in the same period.
- **Symbolic Application States** are those that have the death penalty for drug offences within their legislation but have not carried out executions or sentenced individuals to death for drug crimes in the past five years. Qatar, Taiwan and the USA are symbolic application countries confirmed to have carried out executions in 2020, but not for drug offences.
- A fourth category, **insufficient data**, denotes instances where there is simply not enough information to classify the country accurately.



HIGH APPLICATION STATES

| Country | People executed for drug offences (%age of total) | | People on death row for drug offences (%age of total) | |
|--------------|--|-------------------------|--|--------------------------------|
| | 2019 | 2020 | 2019 | 2020 |
| China | Unknown (-) | Unknown (-) | Unknown (-) | Unknown (-) |
| Indonesia | 0 (-) | 0 (-) | 166 (61%) ⁵⁹ | 214 (60%) ⁶⁰ |
| Iran | 30+ (12%) ⁶¹ | 25+ (10%) ⁶² | 2,000+ (unknown) | 2,000+ (unknown) ⁶³ |
| Malaysia | 0 (-) | 0 (-) | 899 (70.2%) ⁶⁴ | 912 (68.9%) ⁶⁵ |
| Saudi Arabia | 84+ (45%) ⁶⁶ | 5 (18.5%) ⁶⁷ | Unknown (-) | Unknown (-) |
| Singapore | 2 (50%) ⁶⁸ | 0 (-) | 27+ (50%) | 27+ (50%) ⁶⁹ |
| Vietnam | Unknown (-) | Unknown (-) | Unknown (-) | Unknown (-) |

59 "A Game of Fate: Report on Indonesia Death Penalty Policy in 2019" (Jakarta: Institute for Criminal Justice Reform (ICJR), Oct 2019), <https://icjr.or.id/wp-content/uploads/2019/12/A-Game-of-Fate.pdf>.

60 "Taking Lives During Pandemic - 2020 Indonesian Death Penalty Report".

61 Figures provided by the Abdorrahman Boroumand Centre for Human Rights in Iran.

62 "Annual Report on the Death Penalty in Iran 2020" (Iran Human Rights and ECPM, Mar 2021), https://iranhr.net/media/files/Rapport_Iran_2021-gb-290321-BD.pdf, Pag. 11.

63 Ibid.

64 Sinar Project (3 Dec 2019) 'Parliamentary question and answer on the death penalty,' <https://pardocs.sinarproject.org/documents/2019-oct-dec-parliamentary-session/oral-questions-soalan-lisan/2019-12-03-parliamentary-replies/par14p2m3-soalan-lisan-9.pdf>. Translation provided by ADPAN

65 "Pemberitahuan Pertanyaan Lisan Dewan Rakyat Masyuarat Ketiga, Penggal Ketiga, Parlimen Keempat Belas," Nov 26, 2020.

66 European Saudi organisation for Human Rights [ESOHR], "2018 Death Penalty Report: Saudi Arabia's False Promise," Jan 16, 2019, <http://www.esohr.org/en/?p=2090>.

67 "Annual Report 2020 - Saudi Arabia: Pandemic of Repression Wihout a Cure".

68 Singapore Prison Service (7 Feb 2020), News Release: Calibrated Rehabilitation Approach to Minimise Reoffending, available at: https://www.sps.gov.sg/docs/default-source/stats-release/sps-annual-stats-release-for-2019_713kb.pdf

69 Based on a HRI dataset on death sentences and executions for drug offences. On file with the authors and available upon request.

CHINA

People executed for drug offences (%age of total)
2019: Unknown
2020: Unknown

People on death row for drug offences (%age of total)
2019: Unknown
2020: Unknown

State secrecy and lack of transparency on the death penalty in China prevent assessment of whether and how the COVID-19 pandemic has impacted the use of capital punishment in the country, which remains the world's top executioner. Nevertheless, news reports indicate that courts continued to hand down death sentences and carry out executions.⁷⁰

Most notably, dozens of death sentences and executions for drug offences were reported around 26 June 2020, to mark the 'International day against drug abuse and illicit trafficking'. This is consistent with recent practice; The Rights Practice reports that between 160 and 200 executions were carried out around this day in 2018 and 2019.⁷¹ Some of these sentences were imposed or announced at the end of public trials specifically organised for the occasion, with the aim of "enhancing the educational effect",⁷² and were immediately followed by executions of those condemned – without any opportunity for the sentence to be appealed. Among others, three death sentences were imposed in Hebei,⁷³ six in Nanjing,⁷⁴ and seven in Guangdong.⁷⁵ Thirteen people were sentenced to death for drug drug offences in Yunnan, and four of them were immediately executed.⁷⁶ Six individuals were sentenced in Haikou, two of whom were immediately executed.⁷⁷ Finally, one person was sentenced to death for trafficking methamphetamine in Wuhan, and was "executed immediately".⁷⁸

The death sentences which attracted the most international scrutiny were those imposed on foreign nationals. On 10 June 2020, Australian Cam (or Karm) Gillespie was sentenced to death for drug trafficking by the Guangzhou Intermediate People's Court.⁷⁹ The sentence was handed down amid broader diplomatic tensions between China and Australia related to the handling of COVID-19 by China.⁸⁰

70 Amnesty International, "Death Sentences and Executions in 2019" (2020).

71 "Respect for Minimum Standards? Report on the Death Penalty in China" (London: The Rights Practice, October 2020), pag. 18.

72 "Six People Were Sentenced to Death! Death Haikou Intermediate People's Court Held a Concentrated Sentence on Drug Crimes [Translated]", Hainan News, Jun 24, 2020, news.hainan.net/hainan/yaowen/yaowenliebiao/2020/06/24/4406672.shtml.

73 Lisheng Nan, "Hebei Legal News: The Latest! Provincial Court Announced Four Typical Drug Crime Cases," Hebei Court (blog), Jun 25, 2020, www.hebeicourt.gov.cn/public/detail.php?id=33090.

74 "A Man in Nanjing Was Sentenced to Death with A Suspended Death Sentence for Purchasing Drugs," Jiangsu Public News Channel "News 360," Jun 25, 2020, m.cnwest.com/tianxia/a/2020/06/25/18874450.html

75 "China | 2 Drug Dealers Are Executed as 4 Other Traffickers Are Put on Death Row during an Open Trial in China," Death Penalty News (blog), Jun 27, 2020, https://deathpenaltynews.blogspot.com/2020/06/china-2-drug-dealers-are-executed-as-4.html?utm_source=feedburner&utm_medium=email&utm_campaign=E2%80%A6.

76 Wang Wanchun, "Yunnan Notified 8 Typical Drug Death Penalty Cases, and 4 of the 9 Death Row Prisoners Have Been Executed," The Paper, Jun 24, 2020, https://www.thepaper.cn/newsDetail_forward_7984054.

77 "Six People Were Sentenced to Death! Death Haikou Intermediate People's Court Held a Concentrated Sentence on Drug Crimes".

78 Zhang Li Jing, "Wuhan Court Concentrated on Drug-Related Crimes and Sentenced One Person to Death Sentence and Executed Immediately [Translated]," HB China, Jun 24, 2020, hb.china.com.cn/2020-06/24/content_41198392.htm.

79 "Australian Sentenced to Death in China for Drug Smuggling," BBC News, Jun 13, 2020, <https://www.bbc.com/news/world-asia-china-53032665>.

80 "China Sentences Australian Cam Gillespie to Death for Drug Trafficking," FR24 News, Jun 13, 2020, <https://www.fr24news.com/a/2020/06/china-sentences-australian-cam-gillespie-to-death-for-drug-trafficking.html>.

Political motives were suspected to have influenced the death sentences⁸¹ for Canadian nationals Xu Weihong and Ye Jianhui,⁸² handed down on 6 and 7 August 2020 respectively. These death sentences have been interpreted as retaliation by China against the arrest in Vancouver of top Huawei executive Meng Wanzhou, in late 2018. There have now been four Canadian citizens sentenced to death for a drug offence in China since 2018.⁸³

Finally, in July 2020, two Singaporeans were sentenced to death for drug trafficking. Mohd Yusri Mohd Yussof, now 44, and Siti Aslinda Junaidi, now 35, were arrested in October 2015 for smuggling methamphetamine.⁸⁴ At trial, Aslinda denied having any knowledge of the drugs allegedly found in her partner's suitcase.⁸⁵ When details emerged about the cases and a lack of quality legal and consular assistance, Singaporean civil society and lawyer M. Ravi launched the '#SaveAslindaCampaign'⁸⁶ to garner public support and mobilise the Singaporean Ministry of Foreign Affairs. In late December 2020, it was announced that a Chinese lawyer had agreed to represent Aslinda on a pro bono basis, as she had struggled to afford legal representation in China.⁸⁷

A report by The Rights Practice, published in October 2020, confirms that **drug offences are understood to represent “a large percentage of executions”, and that the death penalty remains central to Chinese drug policy, insofar as up to 50% of all drug cases are estimated to conclude with the imposition of a death sentence**, including a suspended death sentence.⁸⁸ The report also details fair trial concerns surrounding the use of capital punishment in China, including inadequate evidentiary standards in drug-related cases.⁸⁹

INDONESIA

| People executed for drug offences (%age of total) | People on death row for drug offences (%age of total) |
|---|---|
| 2019: 0 (-) | 2019: 166 (61%) |
| 2020: 0 (-) | 2020: 214 (60%) |

2020 is the fourth consecutive year in which Indonesia did not carry out any executions; notwithstanding, the imposition of death sentences has skyrocketed. Research by the Institute for Criminal Justice Reform (ICJR) indicates that **115 people were sentenced to death between October 2019 and October 2020,⁹⁰ a 62% increase from the same period in 2019.⁹¹** Media monitoring by Reprieve shows that 77 death sentences were pronounced for drug offences in Indonesia between January and December 2020.⁹²

Worryingly, several of these sentences were imposed at the end of hearings held via teleconference, a measure introduced to prevent the spread of COVID-19. Such hearings reportedly did not meet all of the minimum requirements of a fair trial. For example, according to ICJR, Supreme Court Regulation no. 4 of 2020 on Administration and Trial of Criminal Cases in Court Electronically does not require that evidence submitted by the prosecutor to the court be made accessible to the defendant's lawyer. Furthermore, the Regulation only allows the examination of experts or witnesses in the prosecutor's office, in a court, or in an embassy or consulate general if the person is abroad, while no mention is made of the defendant's lawyers' office.⁹³ Such oversights imperil the defendant's right to adequate time to prepare a defence and to examine defence witnesses. Considering that **a record 78 capital drug cases were heard by Indonesian courts between March and October 2020 alone (when most hearings were virtual), this raises significant concerns of arbitrariness.**

Among those sentenced to death for drug offences in 2020 are at least five foreign nationals, all Malaysians,⁹⁴ and two women. One of the women, Ayi Sumiati, had her death sentence commuted to life imprisonment at the appeal stage.⁹⁵

Pursuant to information provided by government officials to ICJR, as of October 2020, there were 355 people on death row in Indonesia, of which 214 were convicted for drug offences⁹⁶ – a 29% increase from 2019. Indonesian prisons are critically overcrowded,⁹⁷ under-resourced, understaffed,⁹⁸ and many lack adequate ventilation and sanitation.⁹⁹ In light of the poor conditions of detention, which make prisons high-risk environments for the spread of COVID-19, **the Indonesian government approved the early release of thousands of prisoners. Regrettably, prisoners charged with drug offences and sentenced to over five years' imprisonment, including those on death row, were ineligible, regardless of their age, pre-existing health conditions and other vulnerabilities to the virus.**¹⁰⁰

There are five women currently on death row for drug offences in Indonesia. Among them is Merri Utami, an Indonesian migrant worker who has spent sixteen years on death row for a drug trafficking offence she was tricked into committing.¹⁰¹ An online petition initiated by her lawyers at LBH Masyarakat calling on President Widodo to grant Merri clemency has garnered more than 19,000 signatures.¹⁰²

According to figures provided to ICJR by the Ministry of Foreign Affairs, **115 Indonesian citizens are currently facing the death penalty for drug crimes abroad.**¹⁰³ At least one Indonesian national was sentenced to death in Vietnam in 2020: a 54-year-old woman who reportedly agreed to transport six kilos of methamphetamine from Cambodia to the Philippines for USD 500.¹⁰⁴

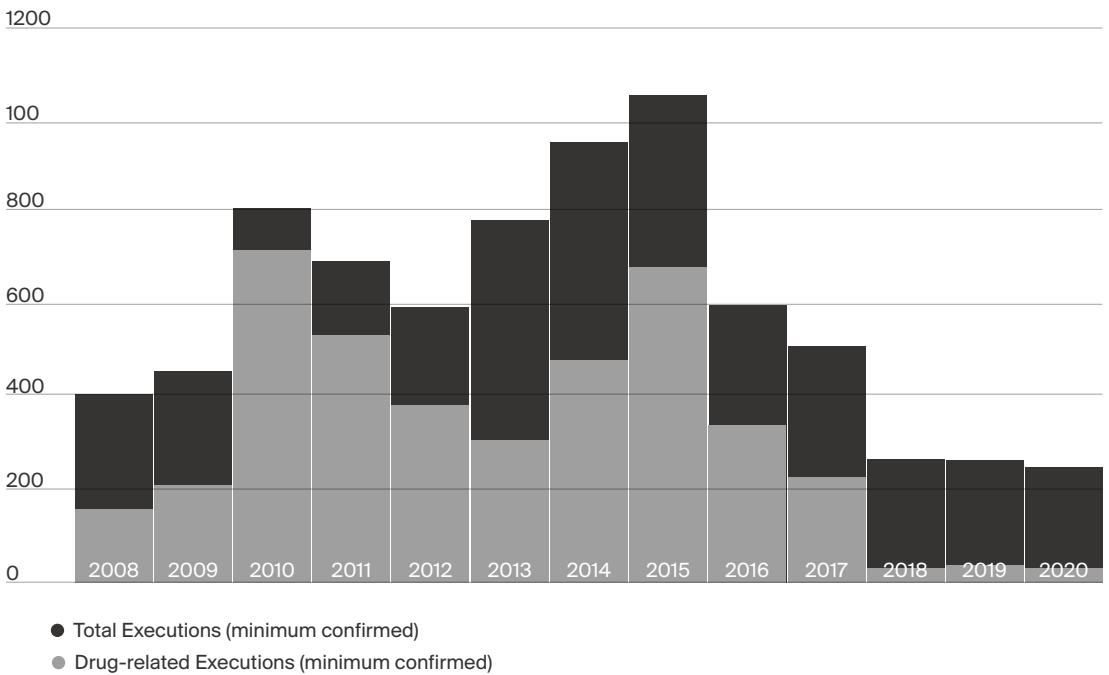
IRAN

People executed for drug offences (%age of total)
 2019: 30+ (12%)
 2020: 25+ (10%)

People on death row for drug offences (%age of total)
 2019: 2,000+(unknown)
 2020: 2,000+(unknown)

The outbreak of COVID-19 in Iran did not have a significant impact on executions, with Iran Human Rights and ECPM (Together Against the Death Penalty) recording at least 267 throughout the year,¹⁰⁵ a 5% decrease from 2019. The drop in drug-related executions was more marked, with at least 25 hangings reported in 2020¹⁰⁶ against the 30 confirmed in 2019.¹⁰⁷ As the government consistently fails to announce the majority of executions, these figures are most likely an undercount. Nevertheless, three years after the adoption of the amendment to the Iran Law for Combating Illicit Drugs, which reduced the number of drug crimes punishable by death,¹⁰⁸ its long-term impacts on executions are visible.

Minimum confirmed death sentences for drug offences, 2020



While executions in Iran may be decreasing, **thousands of people are believed to be on death row in the country, held in inhuman and life-threatening conditions.**¹⁰⁹ Non-governmental organisations, such as the Abdorrahman Boroumand Centre, continue to report grave violations of fundamental rights in capital drug cases, including arrests – sometimes en masse – without warrants, denial of access to lawyers (particularly pre-trial), and torture and ill-treatment at the investigation phase.¹¹⁰

2020 saw an unprecedented reaction against capital punishment in Iran, both inside and outside the country. The upholding of three death sentences against young protesters in July 2020 sparked online protests: the Persian hashtag ‘#do_not_execute’ was used 11 million times in a week, and seen eight billion times globally.¹¹¹ Online campaigns against announced executions continued throughout 2020 and in early 2021¹¹² with the hashtags regularly trending in Iran, where anti-death penalty activists are often sentenced to hefty prison terms since the Islamic Republic introduced Shariah-based criminal law.¹¹³ A survey commissioned by Iran Human Rights and the World Coalition Against the Death Penalty also suggests public opposition to the death penalty. The study, conducted online in September 2020, found that 44% of respondents “resolutely oppose the death penalty”, while support for the measure plunges to 17% for drug trafficking.¹¹⁴

Iran’s use of capital punishment for offences that do not meet the threshold of ‘most serious crimes’, such as drug-related ones, was harshly criticised by the UN throughout 2020, including by the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran,¹¹⁵ the Secretary-General,¹¹⁶ and a General Assembly Resolution.¹¹⁷

MALAYSIA

| People executed for drug offences (%age of total) | People on death row for drug offences (%age of total) |
|---|---|
| 2019: 0 (-) | 2019: 899 (70.2%) |
| 2020: 0 (-) | 2020: 912 (68.9%) |

2020 was a politically tumultuous year for Malaysia, which saw the government, led by Prime Minister Mahathir Mohamad, collapsing less than two years after the elections.¹¹⁸ Despite fears, the moratorium on executions announced by Mahathir in 2018 appears to remain in place, as no executions were carried out in 2020. Further, in December 2020, Malaysia confirmed its 2018 vote in favour of the UN General Assembly Resolution on a moratorium on the use of the death penalty.¹¹⁹

In the absence of more substantial reforms towards abolition, however, courts continued to sentence individuals to death. **At least 25 new death sentences were imposed for drug trafficking between January and October 2020 (representing 60% of all death sentences reported), although the actual figure is likely to be higher.** Of those sentenced to death for a drug offence was one woman and eight foreign nationals (two Nigerian, one Chinese and five Indian nationals). Notably, at least three death sentences were imposed by the Court of Appeal, reversing sentences to life imprisonment. At the same time, at least 11 people who had been sentenced to death for drug trafficking saw their sentence quashed or commuted on appeal, including one case where the court ordered a re-trial because of the ‘flagrant incompetency’ of counsel.¹²⁰

A joint report by ADPAN and Monash University with the support of Harm Reduction International, published in March 2020, identified multiple fair trial concerns in capital drug cases, including inadequate access to interpreters by foreign nationals and insufficient legal aid funding. This is particularly worrying considering the fragile socio-economic status of many drug defendants.¹²¹

During a November 2020 parliamentary session, the government communicated that **912 people were on death row for drug offences in Malaysia** as of 26 October 2020 (68.9% of the total number of people on death row). **Of these, 440 are foreign nationals, mostly from Nigeria, Iran and Indonesia.**¹²² A report published in early 2020 by ADPAN and ECPM shed light on the conditions in which these individuals are detained, including isolation amounting to solitary confinement, significant limitations to visits and communication, poor lighting and ventilation, and lack of adequate healthcare services.¹²³ Malaysian prisons reported COVID-19 outbreaks; it remains unclear whether death row prisoners were affected.¹²⁴

In August 2020 the Federal Court in Malaysia adjudicated upon a constitutional challenge to the mandatory character of the death penalty for drug trafficking and murder, based on claims of lack of proportionality, violation of the right to a fair trial, and inconsistency with the principle of separation of powers; arguing that by prescribing death as mandatory punishment, the legislative effectively prevents the judiciary from any consideration of the circumstances of the case. The court dismissed the appeals, concluding that it is within the legislative power to prescribe the sentences deemed most appropriate. As such, the denial of a plea of mitigation does not in itself constitute a violation of the right to a fair trial, in the eyes of the court.¹²⁵ In her dissenting opinion, Judge Pathmanathan held Section 39B of the Dangerous Drugs Act 1952 to be “arbitrary and oppressive for the reason that the section prescribed only one punishment, namely the mandatory death penalty for ‘trafficking’, which was accorded with an extremely broad definition encompassing a wide variety of activities, which were classified together as justifying one single punishment.”

At least eight Malaysian nationals were sentenced to death for drug trafficking in other Southeast Asian countries: five in Indonesia, two in Singapore and one in Vietnam.

The Case of Qui Jieru: Gender bias at work in the Courtroom

Qui Jieru is a Chinese woman arrested at Kuala Lumpur International Airport in 2013, after custom officers found methamphetamine concealed in her luggage. At trial, she consistently denied knowledge of the drugs. She explained that she had been invited to Malaysia by her boyfriend, Daymen, and that just before departure a friend of Daymen had swapped her bag without her consent. According to court transcripts, the only witness for the defence was Qui's mother, who testified that "although she personally dislikes Daymen, the Appellant was very much in love with him". The High Court sentenced Qui to life imprisonment instead of death, as it was determined that she was merely a courier, and that she had meaningfully assisted law enforcement, providing significant evidence to help to identify and apprehend Daymen.

However, in June 2020 the Court of Appeal reversed the judgment and sentenced Qui to death, finding her explanation of the facts "unbelievable" (particularly in light of her education and work experience) and summarily dismissing the assistance she provided to law enforcement on the basis that "she had no option". Perhaps most notable is the court reasoning for dismissing Qui's claim that she had been deceived to into carrying drugs, which revolves around assumptions about Qui's personal circumstances and mental status. In the Court of Appeal's own words:

"She [Qui] acted and portrayed herself like a damsel in her maiden love but, with respect, her background would indicate this most probably is a concoction of her real self. We noted she herself gave evidence that she was in the process of divorcing her husband and, on top of that, they have a child. Thus, it would not be too remote in finding that she fully knew the effect, danger and pitfall of anyone madly and blindly in love."

SAUDI ARABIA

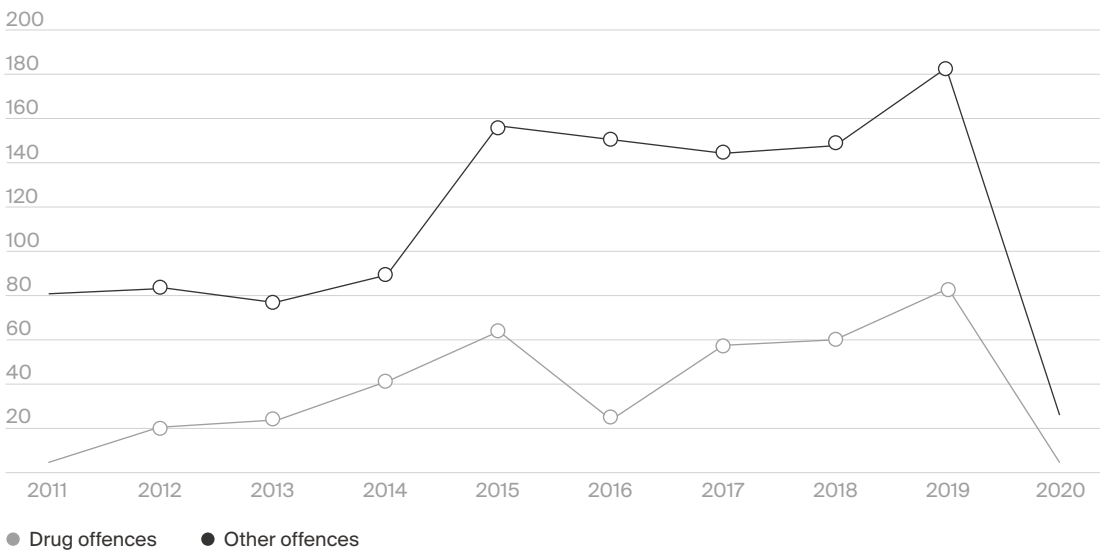
People executed for drug offences (%age of total)
 2019: 84+ (45%)
 2020: 5 (18.5%)

People on death row for drug offences (%age of total)
 2019: Unknown (-)
 2020: Unknown (-)

Unprecedented developments throughout 2020 may signal that Saudi Arabia, once among the world’s leading executioners for drug offences, is edging towards implementing important reforms that could significantly reduce recourse to this form of punishment.

Saudi Arabia has historically been a resolute supporter of the death penalty for drug offences, and one of the few countries to execute people for drug offences on a regular basis. In 2019, a record 84 people were executed for drug offences in the country – a figure surpassed only by China.¹²⁶ Drug offences have long been responsible for a significant proportion of confirmed executions in the country, up to 45% in 2019.¹²⁷

Monitoring by the European Saudi Organisation for Human Rights (ESO-HR) indicates that five people were executed for drugs in 2020 – all in January and all foreign nationals (two from Jordan, two from Syria, and one Egyptian).¹²⁸ Among them was Muammar Al-Qaddafi Muhammad Omar Al-Qenawi, an Egyptian national convicted for smuggling drugs who was subject to such torture by law enforcement that he was unable to attend court hearings and was denied legal representation. His family was not informed of his arrest, conviction and execution – which they found out about from fellow prisoners and the press.¹²⁹



This 94% decrease in drug-related executions between 2019 and 2020 is believed to be the direct consequence of a political shift on capital punishment, with Crown Prince Mohammad bin Salman having expressed his commitment to reducing executions in the country (likely in an attempt to deflect international criticism on the country’s abysmal human rights record).¹³⁰ After reforming the use of the death penalty for crimes committed by minors¹³¹ and abolishing flogging as a punishment,¹³² in early 2020 the Prince imposed a moratorium on drug-related executions,¹³³ while more substantial reforms are discussed with the Shura Council (an advisory body to the Saudi King, with no legislative authority).¹³⁴ In August 2020, an official source indicated that “the kingdom was in the process of revising penalties for drug-related crimes and that a decision to abolish capital punishment for such offences was expected “very soon”.¹³⁵

The significance of these developments at the national, regional and also global level cannot be overstated, as their impact on annual global figures clearly shows. Notably, the abolition of the death penalty for drug offences is also likely to contribute to reducing the number of executions of migrant workers in the country. As ESOHR reported, up to 75% of people executed for drug offences in the Kingdom were migrants, and “a foreign worker is at least three times more likely to be executed for drug crimes than a Saudi is.”¹³⁶

Meanwhile, significant issues remain. Notably, the pause on executions is the result of a political – almost personal, considering how power is concentrated in Saudi Arabia – decision motivated by political aims. Absent its ratification in formal instruments, there remains a risk it could be rapidly reversed. Equally problematic, it can be presumed that death sentences continue to be imposed for drug offences, overwhelmingly against vulnerable defendants and at the end of gravely flawed trials.¹³⁷ **If executions are paused but not abolished, the risk is an ever-expanding death row, about which virtually nothing is known.** As such, any reform that fails to remove the death penalty from the books completely will in itself be unsatisfactory, a ‘rights-washing’ exercise ill-equipped to prevent future violations.

SINGAPORE

| People executed for drug offences (%age of total) | People on death row for drug offences (%age of total) |
|---|---|
| 2019: 2 (50%) | 2019: 27+ (50%) |
| 2020: 0 (-) | 2020: 27+ (50%) |

2020 was also a momentous year for the death penalty for drug offences in Singapore, marked by sustained activism by local lawyers and civil society, as well as practical and judicial developments.

Singapore, which predominantly implements the death penalty for drug offences, recorded no executions in 2020, the first time this has happened since 2013. Legal actions and civil society advocacy aimed at challenging the legality of execution methods¹³⁸ and halting executions of individuals at imminent risk played a crucial role. For example, in late September 2020, Moad Fadzir Bin Mustaffa, a 42 year-old Singaporean, was scheduled for execution. Fadzir had been sentenced to the mandatory death penalty for possession with intent to traffic 36.9 grams of diamorphine.¹³⁹ The announcement drew widespread condemnation, including by the European Union.¹⁴⁰ The President of Singapore granted Fadzir a Respite Order just one day before the execution was to take place.¹⁴¹

Similarly, Syed Suhail bin Syed Zin was notified that his execution had been scheduled for 18 September 2020, despite the fact that COVID-19 travel restrictions would prevent his family, who lives in Malaysia, from visiting him.¹⁴² Suhail had consistently maintained that the 38.8 grams of diamorphine he was found with were for personal use. Nevertheless, the court found the presumption of intent to traffic satisfied and sentenced him to the mandatory death penalty. Local and international civil society urged authorities to halt the execution¹⁴³ and a petition to grant Suhail clemency quickly reached 30,000 signatures¹⁴⁴ - an unprecedented result in Singapore. Roughly 24 hours before the execution, the High Court granted an interim stay, pending appeal, which was then further extended. On 23 October 2020, the Court of Appeal granted Suhail permission to commence judicial review proceedings, which are ongoing at the time of writing.¹⁴⁵

Singaporean courts adopted other landmark judgments throughout 2020.¹⁴⁶ Perhaps most notable is the commutation of the death sentence against Gobi Avedian.¹⁴⁷ This was a historic decision, being the first time a “death sentence [was] overturned on a review by the Singapore Court of Appeal after exhausting all the usual avenues of appeal.”¹⁴⁸ This authoritative judgment on the concept of ‘wilful blindness’ (central to many drug trafficking cases in Singapore) constitutes a significant precedent which could restrict the imposition of the death penalty for drug trafficking in the country.¹⁴⁹

The government does not provide official figures on death sentences and death row. Monitoring of court cases and media reports indicate that at least six people were sentenced to death for drug trafficking in 2020, of which two are Malaysian nationals. The imposition of death sentences following hearings held remotely drew widespread criticism and was seen as ‘inhumane’.¹⁵⁰

Regardless of practical developments, the Government of Singapore remains among the fiercest advocates of the death penalty as a tool of drug control, with the Ministry of Home Affairs reiterating in 2020 – against mounting evidence¹⁵¹ – that capital punishment has a deterrent effect on drug trafficking, and has made Singapore a safer country.¹⁵²

VIETNAM

| People executed for drug offences (%age of total) | People on death row for drug offences (%age of total) |
|---|---|
| 2019: Unknown (-) | 2019: Unknown (-) |
| 2020: Unknown (-) | 2020: Unknown (-) |

Vietnam continues to regularly impose and implement the death penalty for drug offences, although state secrecy¹⁵³ prevents an accurate assessment of the full scale of application. Media and court reports indicate that at least 79 death sentences were imposed in 2020 for drug transportation and trafficking (mainly of heroin and methamphetamine), of which eight were against women and 11 against foreign nationals (four from Lao PDR, two from Cambodia and one each from Singapore, Malaysia, Taiwan, Philippines and Indonesia). Among the people sentenced to death were several drug couriers from fragile economic backgrounds, with some reportedly agreeing to transport illicit substances for as little as USD 250.¹⁵⁴

The actual number of death sentences is likely to be much higher, especially in light of reports that 440 death sentences were imposed between October 2019 and October 2020 alone, and that courts are increasingly meting out this punishment.¹⁵⁵ The number of death row prisoners is reportedly so significant that it is ‘overloading’ Vietnamese detention facilities, and the construction of a new execution site is being planned.¹⁵⁶



LOW APPLICATION STATES

| Country | People on death row for drug offences 2019 (%age of total) | People on death row for drug offences 2020 (%age of total) | Death sentences for drugs 2019 (%age of total) | Death sentences for drugs 2020 (%age of total) |
|------------------------|--|--|--|--|
| Bahrain | 6 (25%) ¹⁵⁷ | 6 (23%) ¹⁵⁸ | 4+ (100%) | 0 (-) |
| Bangladesh ↑ | Unknown (-) | Unknown (-) | 2 (0.6%) | 0 (-) |
| Brunei Darussalam ↑ | 1 (50%) | 1 (50%) | 0 (-) | 0 (-) |
| Egypt | 30+ (1.3%) | Unknown (-) | 7+ (1.8%) ¹⁵⁹ | Unknown (-) |
| India ↑ | 1 (-) | 1 (-) ¹⁶⁰ | 0 (-) | 0 (-) |
| Iraq | 4+ (0.05%) | 4+ (0.1%) ¹⁶¹ | Unknown (-) | Unknown (-) |
| Kuwait | 2+ (4.7%) | 2+ (4.6%) | 1 (12.5%) ¹⁶² | 0 (-) |
| Lao PDR | 311+ (98%) | 320+ (98%) | Unknown (-) | 13+ (unknown) |
| Pakistan | Unknown (-) | Unknown (-) | Unknown (-) | Unknown (-) |
| Sri Lanka | 60+ (4.5%) | 63+ (5.1%) | 15 (10.4%) ¹⁶³ | 5+ (22.7%) |
| State of Palestine ↑ | 5 (10.2%) | 5 (8%) | 0 (-) | 0 (-) |
| Thailand ↓ | 200 (64%) | 157 (62.3%) | 1+ (6.2%) | 8+ (57%) |
| United Arab Emirates ↑ | 2+ (3.8%) | Unknown (-) | 0 (-) | 0 (-) |

157 Figures provided by Bahrain Institute for Rights and Democracy (BIRD). See also Sander, Girelli, and Cots Fernandez, "The Death Penalty for Drug Offences: Global Overview 2019"

158 "UK-Funded Oversight Bodies Challenged in Parliament Over Death Penalty Torture Cover-Up," Bahrain Institute for Rights and Democracy (BIRD), Jul 9, 2020, <http://birdbh.org/2020/07/uk-funded-oversight-bodies-challenged-in-parliament-over-death-penalty-torture-cover-up/>.

159 Ibid.

160 Figures provided by Project39A (National Law University Delhi).

161 "Iraq: Wave of Mass Executions Must Stop, Trials Are Unfair - UN Experts" (OHCHR, Nov 20, 2020), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26526&LangID=E>.

162 India Today (23 SeptemberSept 2019) "Youth from Punjab sentenced to death in Kuwait over drug smuggling charges." India Today. Available from: <https://www.indiatoday.in/india/story/youth-from-punjab-sentenced-to-death-in-kuwait-over-drug-smuggling-charges-1602375-2019-09-23>.

163 "Prison Statistics of Sri Lanka 2019" (Colombo: Statistics Division, Prisons Headquarters, 2020), http://prisons.gov.lk/old_web/Statistics/Statistics-2019.pdf.

BAHRAIN

| People on death row for drug offences 2019 (% age of total) | People on death row for drug offences 2020 (%age of total) | Death sentences for drugs 2019 (%age of total) | Death sentences for drugs 2020 (%age of total) |
|---|--|--|--|
| 6 (25%) | 6 (23%) | 4+ (100%) | 0 (-) |

No drug-related death sentences or executions were reported in Bahrain in 2020, although **at least six people remain on death row on drug charges.**¹⁶⁴ **Of these, at least three are at imminent risk of execution.** On 28 January 2020, Bahrain’s highest court, the Court of Cassation, upheld death sentences against two defendants (whose identity has not been disclosed) convicted of smuggling drugs from Iran, who have now exhausted all legal remedies.¹⁶⁵ In reaction to the judgment, and in light of ongoing reports of widespread ill-treatment and fair trial violations endured by criminal defendants in the country,¹⁶⁶ 139 NGOs – including Harm Reduction International, the Bahrain Institute for Rights and Democracy, the International Network of People who Use Drugs and the International Drug Policy Consortium – urged the UN to call on Bahrain to commute the sentences and reintroduce a moratorium on the death penalty.¹⁶⁷

In July 2020, the Bahraini Foreign Ministry defended the country’s use of capital punishment, claiming it is imposed ‘very rarely’ and in conformity with international human rights law.¹⁶⁸

Unsafe and unhygienic conditions of detention (including overcrowding, and lack of ventilation and regular sterilisation) prompted the King of Bahrain to pardon 901 prisoners in March 2020 “for humanitarian reasons in light of the current circumstances” (likely referring to the global spread of COVID-19).¹⁶⁹ A further 154 were pardoned in June 2020, including some on death row and some convicted of drug peddling.¹⁷⁰ It remains unclear whether anyone sentenced to death for drug offences benefitted from this measure.

BANGLADESH

| People on death row for drug offences 2019 (%age of total) | People on death row for drug offences 2020 (%age of total) | Death sentences for drugs 2019 (%age of total) | Death sentences for drugs 2020 (%age of total) |
|--|--|--|--|
| Unknown (-) | Unknown (-) | 2 (0.6%) | 0 (-) |

After expanding the applicability of the death penalty to new drug offences in 2018,¹⁷¹ in 2020 Prime Minister Sheikh Hasina's government further broadened the list of crimes punishable with death, this time to include rape.¹⁷² At least 218 people were sentenced to death in 2020, but the absence of official and disaggregated information prevents confirmation of whether any of these were convicted for drug offences. As four drug-related death sentences were confirmed in the past five years, Bangladesh was reclassified from 'symbolic' to 'low' application.

According to Odhikar, the 33% decrease in the overall number of death sentences between 2019 and 2020 is attributable to COVID-19. All courts in the country were closed between 29 March 2020 and 16 May 2020, when Ordinance No. 1 of 2020 was promulgated, allowing for hearings to be conducted virtually.¹⁷³ During this hiatus many proceedings were brought to a halt, insomuch that no death sentences were imposed between April and June 2020.¹⁷⁴

Nevertheless, **the pandemic did not stop the ongoing 'war on drugs' in the country, as extrajudicial killings in the context of anti-drug operations continued** to be reported throughout the year.¹⁷⁵

BRUNEI DARUSSALAM

| People on death row for drug offences 2019 (%age of total) | People on death row for drug offences 2020 (%age of total) | Death sentences for drugs 2019 (%age of total) | Death sentences for drugs 2020 (%age of total) |
|--|--|--|--|
| 1 (50%) | 1 (50%) | 0 (-) | 0 (-) |

No new death sentences or executions were reported in Brunei Darussalam in 2020. The fate of the one person sentenced to death for drugs in 2017 remains uncertain, absent official information on the country's death row population. As one death sentence for drug possession with intent of trafficking was recorded in the country in the past five years, Brunei has been reclassified as a 'low application' state.

EGYPT

| People on death row for drug offences 2019 (% age of total) | People on death row for drug offences 2020 (%age of total) | Death sentences for drugs 2019 (%age of total) | Death sentences for drugs 2020 (%age of total) |
|---|--|--|--|
| 30+ (1.3%) | Unknown (-) | 7+ (1.8%) | Unknown (-) |

The use of the death penalty in Egypt continued to increase throughout 2020, to the extent that Egypt has now become one of the world's top executioners. For the first time since HRI started reporting on capital punishment in 2007, the total number of executions recorded in the country has surpassed 100. A high proportion of these executions, which are predominantly reported by the press rather than official sources, appear to be connected to episodes of political violence, while no executions were announced for drug offences. Amid a lack of official and disaggregated figures, it remains unclear whether any of the over 30 individuals on death row for drug offences in 2019 were impacted by this rush of executions. It is equally not possible to determine whether any of the at least 221 death sentences imposed in 2020 were for drug crimes.

Mass executions were condemned by local and international civil society,¹⁷⁶ the UN,¹⁷⁷ and the European Union, which called on Egypt to “declare a moratorium on the death penalty with a view to abolishing it and to take all steps to ensure strict adherence to due process guarantees and all possible safeguards to ensure a fair trial.”¹⁷⁸

Overcrowding, unhygienic conditions and dilapidated structures¹⁷⁹ make Egyptian prisons high-risk settings for the spread of COVID-19, further endangering the lives of the over 2,000 individuals on death row. COVID-19 outbreaks were reported in several prisons where executions are carried out, including Cairo Tora Prison,¹⁸⁰ Wadi El-Natrun, and Burj Al Arab.¹⁸¹

INDIA

| People on death row for drug offences 2019 (% age of total) | People on death row for drug offences 2020 (%age of total) | Death sentences for drugs 2019 (%age of total) | Death sentences for drugs 2020 (%age of total) |
|---|--|--|--|
| 1 (-) | 1 (-) | 0 (-) | 0 (-) |

After a four-year hiatus, four individuals convicted for the 2012 ‘Nirbhaya’ rape and murder case were executed in March 2020.¹⁸² Project39A (at the University of Delhi) reported 77 death sentences in 2020 - none of which were for drug offences. The drop in death sentences against 2019 is attributed to the suspension of courts’ activities in response to COVID-19, rather than to judicial caution, as between January and March 2020 a significantly higher number of death sentences were imposed, vis-à-vis the same period in 2019.¹⁸³

As of 31 December 2020, there were 405 people on death row in India. One of them was sentenced to death for drug crimes in 2008, and his case is currently pending.¹⁸⁴ At least five Indian nationals were sentenced to death for drug trafficking in Malaysia between June and November 2020.¹⁸⁵

Taking into account that one death sentence was imposed for a drug offence in the past five years, India has been moved to the ‘low application’ category.

IRAQ

| People on death row for drug offences 2019 (% age of total) | People on death row for drug offences 2020 (%age of total) | Death sentences for drugs 2019 (%age of total) | Death sentences for drugs 2020 (%age of total) |
|---|--|--|--|
| 4+ (0.05%) | 4+ (0.1%) | Unknown (-) | Unknown (-) |

Although Iraq retains the death penalty for drug trafficking, no death sentences or executions for non-violent offences (including drug offences) were reported in 2020. **Amid a lack of transparency around capital punishment, it cannot be confirmed whether any of the over 4,000 people on death row are awaiting executions for a drug offence.** In November 2020, the European Union called on Iraq to “refrain from any future executions, to declare and maintain a de facto moratorium on the use of capital punishment, and to pursue a consistent policy towards the abolition of the death penalty in the country.”¹⁸⁶

Drug-related death sentences were confirmed to have been imposed in Iraq in 2017 and 2018. In light of this, the country has been reclassified from ‘symbolic’ to ‘low’ application.

KUWAIT

| People on death row for drug offences 2019 (% age of total) | People on death row for drug offences 2020 (%age of total) | Death sentences for drugs 2019 (%age of total) | Death sentences for drugs 2020 (%age of total) |
|---|--|--|--|
| 2+ (4.7%) | 2+ (4.6%) | 1 (12.5%) | 0 (-) |

No executions were carried out in Kuwait in 2020, and **no one appears to have been sentenced to death for a drug offence, for the first time since 2016**. However, it is worth noting that the government does not release official figures on the death penalty. The main sources of information on death sentences are the media and non-governmental organisations. At least two people are on death row for drug trafficking in Kuwait, both foreign nationals: one Indian migrant worker sentenced in 2019, and a US contractor whose death sentence was upheld in 2020.¹⁸⁷

In March 2020, Kuwait underwent its third Universal Periodic Review at the UN, during which its human rights record was examined. Kuwait received 21 recommendations to ratify the Second Optional Protocol of the ICCPR, establish a moratorium on the death penalty, and take steps towards death penalty abolition. All of the recommendations were rejected by Kuwait, apart from one: to “strengthen efforts to ensure that the best interests of children are a primary consideration in all judicial proceedings where parents are involved, and especially when sentencing parents to death”. The Government took note of this recommendation and further clarified that guarantees are already in place to avoid the execution of pregnant women and new mothers.¹⁸⁸

LAO PDR

| People on death row for drug offences 2019 (% age of total) | People on death row for drug offences 2020 (%age of total) | Death sentences for drugs 2019 (%age of total) | Death sentences for drugs 2020 (%age of total) |
|---|--|--|--|
| 311+ (98%) | 320+ (98%) | Unknown (-) | 13+ (unknown) |

Although the government has yet to announce an official moratorium on the use of the death penalty, **nobody has been executed in Lao PDR in the past 31 years. However, death sentences continue to be imposed, overwhelmingly for drug trafficking and manufacturing**. Official and disaggregated figures on death sentences and death row are non-existent, but death sentences are sporadically reported by the press. In 2020, at least 13 Laotian nationals - ten men and three women - were sentenced to death, the youngest of whom is only 19 years old.¹⁸⁹

Most of the more than 300 people on death row in Lao are awaiting execution for drug offences,¹⁹⁰ although the exact number is unknown. Meanwhile, death sentences for drug trafficking against Laotians continue to be reported in Vietnam, with at least four confirmed in 2020.¹⁹¹

During its Universal Periodic Review in March 2020, Lao received 16 recommendations to ratify the Second Optional Protocol to the ICCPR, establish an official moratorium, and abolish capital punishment¹⁹² - all of which were rejected.

PAKISTAN

| People on death row for drug offences 2019 (% age of total) | People on death row for drug offences 2020 (%age of total) | Death sentences for drugs 2019 (%age of total) | Death sentences for drugs 2020 (%age of total) |
|---|--|--|--|
| Unknown (-) | Unknown (-) | Unknown (-) | Unknown (-) |

2020 was a potential turning point for capital punishment in Pakistan, as no executions took place in the country for the first time since 2013. The number of death sentences confirmed to have been imposed is also significantly lower than in previous years, with 159 death sentences reported as of 30 November 2020¹⁹³ against the 632 recorded in 2019 (a 74% decrease). The suspension of certain cases in response to the spread of COVID-19 in the country may have contributed to this drop.¹⁹⁴ **Although official figures do not disaggregate death sentences by crime, no media reports were found indicating that death sentences were handed down for drug offences.**

Over 4,000 people are on death row in Pakistan – of which 28 are women¹⁹⁵ – and at least some are detained for drug offences, although the actual figure remains unknown. The lives of these people were further endangered by the spread of COVID-19 in Pakistani prisons, which are characterised by overcrowded, unsanitary conditions.¹⁹⁶

In July 2020, the Supreme Court of Pakistan commuted the death sentences of two prisoners in light of their ‘right of expectancy of life’, according to which the time spent on death row by prisoners who have been incarcerated for a period equal to or more than that prescribed for life imprisonment (15 years), pending legal challenges, should be considered as a mitigating factor.¹⁹⁷ Given the high number of death sentences imposed every year in Pakistan, and the consistent rejection of mercy petitions by the President,¹⁹⁸ this judgment is another small but significant step towards reducing the death row population in the country.

A significant number of Pakistani nationals are believed to be on death row for drug offences in other countries, including Saudi Arabia and Malaysia, while a February 2020 briefing by Justice Project Pakistan has revealed that **90% of Pakistanis executed in Iran and Saudi Arabia between 2016 and 2019 had been convicted of a drug offence.**¹⁹⁹ Notably, for the first time in at least seven years, no Pakistanis were executed for drug offences in Saudi Arabia in 2020.²⁰⁰

SRI LANKA

| People on death row for drug offences 2019 (% age of total) | People on death row for drug offences 2020 (%age of total) | Death sentences for drugs 2019 (%age of total) | Death sentences for drugs 2020 (%age of total) |
|---|--|--|--|
| 60+ (4.5%) | 63+ (5.1%) | 15 (10.4%) | 5+ (22.7%) |

Despite renewed support for the death penalty as a tool of drug control by the Sri Lankan government,²⁰¹ the country remains abolitionist in practice, as no executions took place in 2020. At least five people were sentenced to death for possession and trafficking of drugs in 2020; due to the lack of official statistics for 2020, the actual figure is likely to be higher. Of the five people sentenced, one is a Nigerian national and two were sentenced for possessing and trafficking less than 30 grams of heroin.²⁰² Notably, the Human Rights Commission of Sri Lanka identified systemic fair trial concerns in capital cases, including “prolonged delays in the trial process, lack of access to legal representation and legal aid and the disproportionate conviction of persons from lower socio-economic classes.”²⁰³

There are over 1200 people on death row in Sri Lanka, mainly for murder and drug trafficking.²⁰⁴ As death sentences are regularly imposed but executions are not carried out, prisoners tend to spend decades on death row. The number of people on death row has thus increased dramatically in the past 40 years, with a detrimental impact on conditions of detention. A 2018 study by the Human Rights Commission of Sri Lanka, whose findings were released in late 2020, sheds light on the situation people face on death row, including (but not limited to): severe overcrowding in cells with lack of adequate ventilation, water, sanitation and lighting – to the extent that many prisoners have partially lost eyesight; limited provision of clothing; and experiences of severe mental health issues.²⁰⁵

In December 2020, the State Minister of Prison Management and Prisoners Rehabilitation announced plans to commute all death sentences to 20-years' imprisonment to reduce prison overcrowding. Regrettably, people on death row for 'large scale drug-trafficking' are set to be arbitrarily excluded.²⁰⁶ As of the time of writing, no formal measures have been adopted, and it remains unclear whether any steps have been taken towards commutation.

Several constitutional challenges to the death penalty are currently before the Supreme Court, which in 2020 extended its 2019 stay order mandating the government to temporarily halt executions, pending judicial review.²⁰⁷

In her February 2020 report on Sri Lanka, the UN High Commissioner for Human Rights urged the government to continue to uphold the moratorium on the death penalty and work towards abolition.²⁰⁸ Shortly thereafter, the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association recommended that Sri Lanka ratify and implement the Second Optional Protocol to the ICCPR.²⁰⁹ Similarly, a report by the European Commission on GSP+ compliance concluded that “statements on the possible implementation [of] the death penalty for drug trafficking are worrying and are not supported by [the] UN Office on Drugs and Crime (UNODC), and [are] almost universally deemed to be unsuitable as a solution to drug trafficking issues”, and that “[r]esuming the death penalty would send a wrong signal to the international community, investors, and partners of the country.”²¹⁰

STATE OF PALESTINE

| People on death row for drug offences 2019 (% age of total) | People on death row for drug offences 2020 (%age of total) | Death sentences for drugs 2019 (%age of total) | Death sentences for drugs 2020 (%age of total) |
|---|--|--|--|
| 5 (10.2%) | 5 (8%) | 0 (-) | 0 (-) |

Based on civil society monitoring, the last confirmed execution in the State of Palestine took place in 2017, the same year the last death sentences for drug offences were imposed. In light of this, Palestine has been moved to the 'low application' category.

Despite accession to the Second Optional Protocol of the ICCPR in 2019, the number of death sentences reported by the SHAMS Centre in Palestine in 2020 (none of which is for a drug offence) is over three times those confirmed for 2019²¹¹, raising concerns about the country's readiness to abolish capital punishment.

THAILAND

| People on death row for drug offences 2019 (% age of total) | People on death row for drug offences 2020 (%age of total) | Death sentences for drugs 2019 (%age of total) | Death sentences for drugs 2020 (%age of total) |
|---|--|--|--|
| 200 (64%) | 157 (62.3%) | 1+ (6.2%) | 8+ (57%) |

Although the last execution for a drug offence was carried out in 2009, **Thailand continues to sentence people to death for drug trafficking at high rates, insomuch that the majority of prisoners on death row have been convicted for this crime.** Figures on death sentences in the country are difficult to identify and verify, but news outlets reported eight death sentences for drug trafficking in August 2020.²¹² Earlier, in June 2020, a death sentence was commuted to life imprisonment following the defendant's cooperation with the court.²¹³

In the absence of more comprehensive information on death sentences imposed in the country, Thailand has been moved from the 'high' to the 'low' application category, as no drug-related executions took place in the past five years, and fewer than ten death sentences per year could be confirmed.

As of December 2020, there were 157 people on death row for drug offences (62% of the total death row population), including all of the 28 women currently awaiting execution.²¹⁴ Official figures on the drug-related death row population fluctuated significantly throughout 2020: where 206 people were reportedly detained in January, with a peak of 229 people in May, by Octo-

211 Based on a HRI dataset on death sentences and executions for drug offences. On file with the authors and available upon request.

212 Ibid.

213 "Thailand | Death Sentence of Laotian Drug Lord 'Mr X' Commuted to Life," Death Penalty News (blog), Jun 29, 2020, https://deathpenaltynews.blogspot.com/2020/06/thailand-death-sentence-of-laotian-drug.html?utm_source=feedburner&utm_medium=email&utm_campaign=E2%80%A6.

214 Department of Corrections of Thailand (2019) Statistical Report on Death Penalty Prisoners – 20 December 2020. Available from: <http://www.correct.go.th/executed/index.php>.

ber the figure had dropped to 148. Absent official information, it may be assumed that such a reduction is linked to a royal pardon announced by the King in August 2020, pursuant to which 40,000 people were released from prison, and other 200,000 saw their sentences reduced.²¹⁵

| UNITED ARAB EMIRATES | People on death row for drug offences 2019 (% age of total) | People on death row for drug offences 2020 (%age of total) | Death sentences for drugs 2019 (%age of total) | Death sentences for drugs 2020 (%age of total) |
|----------------------|---|--|--|--|
| | 2+ (3.8%) | Unknown (-) | 0 (-) | 0 (-) |

2020 marked the third consecutive year without confirmed executions in the United Arab Emirates, and the second year without new death sentences for drug offences (although some may have been imposed that were not reported). In November 2020, the Supreme Court quashed the death sentences of two defendants (one British and one Pakistani national) previously convicted for possessing and selling drugs, and ordered a re-trial.²¹⁶ As news emerged of these two death sentences for drug offences imposed in 2018, the Emirates have been moved up from the ‘symbolic’ application to the ‘low’ application category.

215 “About 40,000 Inmates in Thailand to Be Freed under Royal Pardon,” Xinhua, Aug 14, 2020, http://www.xinhuanet.com/english/2020-08/14/c_139291274.htm.

216 Ismail Sebugwaawo, “Death Penalty for 2 Drug Dealers Quashed in UAE,” Khaleej Times, Nov 7, 2020, <https://www.khaleejtimes.com/news/crime-and-courts/death-penalty-for-2-drug-dealers-quashed-in-uae>.



SYMBOLIC APPLICATION COUNTRIES

CUBA

The last death sentence was imposed in Cuba 18 years ago, and there is currently no one on death row. In its 2020 report on the situation of human rights in Cuba, the Inter-American Commission on Human Rights expressed concern at the country's failure to abolish capital punishment, which thus remains a 'latent threat', and recommended that steps be taken to at least impose a moratorium on its application.²¹⁷ Once more, Cuba abstained from voting on the UN General Assembly Resolution on a moratorium on the use of the death penalty.²¹⁸

JORDAN

No executions were carried out in Jordan in 2020, for the third consecutive year; only three death sentences were reported by the media, none of which was for drug offences. A 2020 report indicates that as many as 400 people may be awaiting execution in Jordan, over three times more than reported in previous years.²¹⁹ As disaggregated information is not available, it is unclear whether anyone is currently on death row for drug offences in the Kingdom. Two Jordanian nationals were executed on 2 January 2020 for drug smuggling in Saudi Arabia²²⁰ and at least one more person remains on death row, also for drug smuggling.²²¹

In December 2020, for the first time, Jordan voted in favour of the UN General Assembly Resolution on a moratorium on the use of the death penalty.²²²

MYANMAR

Information on the death penalty in Myanmar is very limited. The Deputy Director of the Prisons Department himself admitted to not knowing precisely how many people are currently on death row in the country, as the Department allegedly does not “maintain a separate list for death row prisoners.”²²³ Nevertheless, he indicated that around 100 people are awaiting execution in the country,²²⁴ a higher figure than previously reported. It is therefore impossible to conclude definitively whether anyone is currently on death row for drug trafficking in Myanmar. Notably, in April 2020, then-President Win Myint announced a far-reaching amnesty in favour of almost 25,000 prisoners, adding that those sentenced to death would see their punishment commuted to life imprisonment.²²⁵

None of the death sentences reported by the media in 2020 is for drug offences.

QATAR

The persistence of the death penalty for drug offences in Qatar appears to be mostly symbolic as, consistent with previous years, nobody was reported as having been sentenced to death for drug production or trafficking in 2020. Conversely, it remains unknown whether anyone is on death row in the country for this category of crime, due to lack of official and disaggregated information. It is nonetheless worrying that one person (a Nepalese migrant worker convicted of murder) was executed in May 2020, for the first time in 20 years.²²⁶

SOUTH KOREA

The use of the death penalty in South Korea is minimal, and neither executions nor death sentences were recorded in the country in 2020 (although official figures are not provided).

In December 2020, the Catholic Bishops' Conference of Korea renewed its appeal to abolish the death penalty²²⁷ while at the UN General Assembly South Korea voted, for the first time, in favour of a Resolution on a moratorium on the use of the death penalty.²²⁸ South Korea's Justice Ministry reportedly explained that this "change in stance on the issue reflected growing international perception that South Korea has in effect abolished capital punishment and a growing number of the countries supporting the resolution".²²⁹ This may be an important sign that the country is in the process of moving closer towards an official moratorium on capital punishment.

TAIWAN

The execution for homicide of a 53-year-old man in April 2020,²³⁰ after a hiatus in 2019, attracted widespread criticism at the local and international level,²³¹ and confirmed that it is unlikely that a moratorium will be introduced in Taiwan in the near future. Consistent with previous years, no death sentences have been imposed for drug offences in 2020, and no one appears to be on death row for this category of crimes.

A review of the execution procedures, determining that the prisoner be hooded before being shot, was harshly criticised by civil society as an attempt to "whitewash a barbaric practice",²³² while the newly-established National Human Rights Commission urged the government to review procedural issues related to the implementation of capital punishment.²³³

In July 2020, one Taiwanese national was sentenced to death for drug trafficking in Vietnam.²³⁴

UNITED STATES OF AMERICA

President Donald Trump's last year in office was marked by a callous and unprecedented revival of the federal death penalty. This happened precisely at a time when death sentences are steadily decreasing across the country and more and more US States are abolishing capital punishment.²³⁵ Simultaneously, COVID-19 and the Black Lives Matter movement highlighted the structural fallacies within the American criminal justice system.

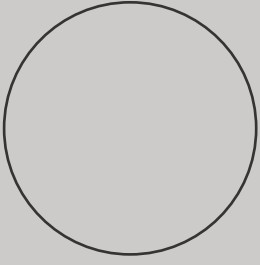
Seventeen individuals were executed throughout 2020, ten of whom were executed by the Federal Government.²³⁶ Although none of them had been sentenced for drug offences (the USA's retention of capital punishment for drug trafficking is currently purely symbolic), these executions may further embolden fellow populist leaders, such as President Rodrigo Duterte in the Philippines, to make the death penalty a priority. At the same time, the callousness of these executions taking place amid an unprecedented public health emergency and the absurdity of the executions²³⁷ being scheduled by an outgoing President, on top of longstanding issues of racial discrimination and fair trial concerns, revived the national debate around the death penalty. In February 2020, President Donald Trump seized another opportunity to praise countries imposing the death penalty for drug dealing, and claim – against the evidence – that “States with a very powerful death penalty on drug dealers don't have a drug problem.”²³⁸

President Joe Biden pledged to “eliminate the death penalty” at the federal level.²³⁹ The commitment may consign the death penalty for drugs in the US to the history books. Also worth noting is Biden's promise to “use the President's clemency power to secure the release of individuals facing unduly long sentences for certain non-violent and drug-related crimes.”²⁴⁰

OTHER COUNTRIES

Other countries which HRI categorizes as ‘symbolic application’ states are Mauritania, Oman, South Sudan and Sudan.

According to publicly available information, no one was executed in **Mauritania** (where a de facto moratorium has been in place since 1987) and no one was sentenced to death for a drug offence in 2020. Although **Oman** retains the death penalty, including for drug production and trafficking, no death sentences nor executions were reported in 2020 and no one is known to be on death row for drug offences. Similarly, no executions were recorded in **South Sudan** in 2020, for the first time since 2014. Due to a lack of official information and limited reporting by non-governmental sources, it cannot be categorically excluded that executions were carried out. No drug-related death sentences were reported. Although information on the death penalty in **Sudan** is minimal, it does not appear that anyone was executed nor sentenced to death for drug offences in 2020. While in July 2020, the country reduced the number of crimes punishable with execution by abolishing the death penalty for apostasy,²⁴¹ capital punishment remains on the book for other non-violent offences, such as drug-related offences.



INSUFFICIENT DATA

According to the latest available research, drug laws prescribing the death penalty for certain drug offences were in place in Libya, North Korea, Syria and Yemen. Pervasive censorship in North Korea prevents from providing up-to-date and realistic figures on the use of capital punishment, while internal conflicts in Libya, Syria and Yemen make it impossible to confirm whether such laws are still in place.

In **Libya**, no executions were reported in 2020, although a significant number of people are believed to be on death row, and a wide range of activities are punishable by death.²⁴² The death penalty remains a central tool of government control in **North Korea**, with executions – often carried out in public – reported for a variety of ‘crimes’,²⁴³ including breaking COVID-19 restrictions.²⁴⁴ A white paper on human rights in North Korea, published in September 2020, revealed a surge in drug-related executions in the past few years, reportedly in reaction to increasing manufacturing, cultivation, and trafficking of illicit substances.²⁴⁵ In March 2020, **Syrian** President Assad issued a decree granting amnesty to those convicted of certain crimes – notably excluding drug-related offences – and replacing death sentences with hard labour;²⁴⁶ it is contested whether and how the measures were implemented.²⁴⁷ **Yemen** has been moved from the ‘symbolic application’ to the ‘insufficient data’ category, as it is unclear whether drug production, possession and trafficking are still punishable by death following the fall of the government and the ongoing civil war.²⁴⁸ Dozens of death sentences were reported throughout 2020, mostly imposed by pro-Houthi courts and on politically-motivated charges – not for drug offences.²⁴⁹ Notably, in 2020, Yemen changed its vote on the UN General Assembly Resolution on a moratorium on the use of the death penalty from ‘negative’ to ‘abstention.’²⁵⁰

SPECIAL SECTION:

**Voices from the
courtroom: lawyers'
strategies to reduce
the imposition of the
death penalty**

This special section in Harm Reduction International's (HRI) *The Death Penalty for Drug Offences: Global Overview 2020* provides a review of best practices for advocating against the death penalty, drawing on the first-hand experience of lawyers who have worked on the death penalty for drug offences. To better understand the current situation, lawyers' strategies, new challenges and opportunities, HRI reached out to lawyers and practitioners in China, India, Indonesia, Malaysia, Pakistan, Saudi Arabia, Singapore and Sri Lanka. This particular section is an exposition of lawyers' and activists' voices and concerns, and is particularly timely in light of the new challenges, but also opportunities, for death penalty abolition emerging from 2020.

Some of the lawyers interviewed for this briefing have assisted people on death row for over a decade; thus, this reflection on the interaction of legal defence and activism will hopefully contribute to revitalising conversations on abolition.

Despite supportive international and, in some cases, national legal frameworks, advocating against the use of the death penalty for drug offences presents huge challenges for lawyers and activists on the ground. One of the many challenges is confronting the stigma associated with drugs, driven by the global 'war on drugs' which promotes a punitive, zero-tolerance approach to drugs. The lack of legal representatives, due to lawyers being unable or unwilling to provide legal representation, will continue to propagate the drug war that disproportionately targets the poor and vulnerable.

There is no such thing as a one-size-fits-all approach for advocating against the use of the death penalty for drug offences. This special section delves into different strategies adopted by lawyers who tirelessly defend their clients (often under-resourced), inside and outside of the courtroom, to push for restriction of the use of the death penalty at a broader level.

INSIDE THE COURTROOM: LEGAL STRATEGIES

One of the most important elements of defence work is to gain access to and assist the defendant from the earliest possible stage of the criminal proceeding. Early access to legal counsel significantly contributes to a fair, humane and efficient criminal justice system.²⁵¹ Indonesian lawyers Muhammad Afif and Yosua Octavian of LBH Masyarakat, a legal aid organisation working on drug policy and the death penalty (among other issues), shared their experience on this, explaining: “when we assist a case from the investigation stage, we have a better chance at avoiding a death sentence.”²⁵² In the past few years, LBH Masyarakat has managed to overturn death sentences for more than 20 of their clients.²⁵³ In almost all of these cases, LBH Masyarakat assisted the client shortly after the point of arrest.

Once the case is heard before a court, it is essential that lawyers gather the necessary information to present mitigating factors. Mitigating factors are “any aspects of a defendant’s character, background, record, offence, or any other circumstances proffered by the defendant that, although not constituting excuse or justification for the crime, might serve as a basis for a sentence less than death.”²⁵⁴ To present mitigating factors does not necessarily mean to deny the defendant’s guilt; rather, the aim is to present the court with a full picture regarding (among others) the defendant’s life history, age, mental state, and drivers for engaging in the drug market, thus allowing the judges to make a more informed decision.²⁵⁵

People who are working as drug couriers, the lowest rank in the drug trade structure, are the most likely to be arrested and face legal charges. Many defendants come from low social or economic backgrounds, and their engagement in the drug trade is often driven by the need to provide for their family. Many others have experienced trauma or have serious mental impairments. Other defendants are tricked or coerced into carrying drugs.²⁵⁶ The vulnerabilities that result in a person's involvement in the drug trade are important mitigating circumstances that should affect how the court determines the sentence. Therefore, the presence of competent lawyers is essential for defendants to be able to have mitigating factors presented and assessed by the court.

Unfortunately, the stigma surrounding drugs often results in judges perceiving drug crimes as extremely grave and serious, and a threat to society, insomuch as the defendant is seen as deserving of the most extreme punishment regardless of their circumstances. Therefore, by presenting mitigating factors, lawyers contribute to raising judges' awareness about the circumstances and vulnerabilities of drug defendants, about how drug markets work, and about drugs in general.

LBH Masyarakat's lawyers, Muhammad Afif and Yosua Octavian, stated:

Presenting our client's mitigating factors for us is like showing the judges and the public the client's real identity. When they are in court, people see them as criminals. So, we show people that this person is also a father, a grandfather, a mother, a breadwinner of the family, a person with long-term trauma, [a person that has] experienced violence their whole life, so on and so forth.²⁵⁷

For example, in India, Ansar Rahman was sentenced “to be hanged by neck till death” by a Basarat District Court in 2016 for possession and trafficking of 50 kilograms of heroin, while his co-defendant was sentenced to 30 years of imprisonment for the same charge.²⁵⁸ Mr Rahman appealed to the High Court. In November 2019, the Calcutta High Court commuted his death sentence to 30 years of imprisonment. Among other mitigating factors, the Court considered Mr Rahman’s old age (he was 75 years old).²⁵⁹ Tripti Tandon of Lawyers Collective welcomed the Calcutta High Court decision: “[*This*] is one of best practices. The mitigating factors were taken into consideration by the High Court.”

In addition to defending individuals, lawyers also contribute to creating better legal protection through strategic litigation. In many countries, lawyers work both on individual cases and on strategic litigation as these two strategies complement each other. However, it is important to mention that strategic litigation has the potential of promoting positive change only in countries with an independent, impartial and competent judicial system. In other contexts, lawyers and their teams usually deploy alternative strategies and focus on activities outside of the court, for example on building public support.

OUTSIDE THE COURTROOM: BUILDING PUBLIC SUPPORT

To support their advocacy work in the court, many lawyers engage with the public to garner support for their cases. There are many ways to do this but the most common, especially during the COVID-19 pandemic, is through online engagement.²⁶⁰

In the era of digital journalism, one way of building public support is by engaging with journalists and online media (while being aware of the sometimes problematic coverage of drug policy and the death penalty some media outlets engage in). Lawyers can collaborate with journalists, raise their concerns about a specific case or issue, and amplify voices of individuals facing the death penalty and their families. Singaporean lawyer M. Ravi suggested that *“one of the best practices [for a campaign] is to engage the families of the inmates. In the recent case of a Singaporean woman who faces execution in China and which we are currently handling, her 17-year-old daughter has given an interview to CNN, and she has become a powerful advocate against death penalty.”*²⁶¹

LBH Masyarakat in Indonesia adopts a similar approach. **The legal aid organisation has worked with journalists to present the whole story of the defendant, who is too often summarily judged as nothing more than a criminal, with little attention paid to their life history, circumstances and vulnerabilities. By doing so, lawyers are putting a human face to the case.** Lawyers Muhammad Afif and Yosua Octavian are of the view that *“journalists/media are our friends. They are key in shaping public opinion on our cases, which usually affects how the judges see the case. We often involve our friendly journalists and media and feed them with stories and perspectives that we want them to use – although it is not always successful.”*²⁶²

Another way to engage the public is through creative or artistic collaboration. **Collaboration with artists is a powerful and increasingly popular tool among social justice advocates, as it allows them to talk about a complex and sensitive topic in an accessible way,** making it more likely to attract the interest of the public. Justice Project Pakistan often uses a combination of artistic and creative media to campaign for the human rights of people deprived of liberty, including death row prisoners.²⁶³ Lawyers at Justice Project Pakistan said:

[We have] been collaborating with artists for the past six years, especially since the curbs and censorship on the traditional media have made it harder to advocate for rights of the prisoners. Such projects include a countrywide bus tour with a theatre troupe named 'Bus Kardo' (2017), a 24-hour live stream 'No Time to Sleep' (2018), an exhibition of performance art titled 'We have been waiting for you' (2019) and digital performance for the pandemic combining music, literature and puppetry called 'Before the sun comes up' (2020). These art events, along with continuous media campaigns on conventional and new media, have helped us reduce the executions from 325 [in 2015] into none in five years.²⁶⁴

Civil society organisations and advocates also use social media to express their views and engage directly with the public. Social media remains an important tool of engagement as 80% of current global internet users are on some social media platform; often, what is trending in social media triggers actions in 'mainstream' media.

Social media activism by lawyers is a delicate issue. Some lawyers argue that the lawyer's duty is to fight for a case in court, and that public opinion should never influence judges' decisions; engagement with social media, especially to campaign for a case, is best left to other actors. For other lawyers, engaging with social media presents an opportunity to raise public attention, especially when it involves violations of human rights.

Lawyer M. Ravi reported that “*in two legal challenges which I handled last year, I had frequently posted updates on Facebook and garnered approximately 3700 likes and 2,000 shares in total.*” M. Ravi also added that using a hashtag has helped to contribute to raising public attention.²⁶⁵ LBH Masyarakat’s longstanding social media campaign on the case of Merri Utami has resulted in more than 19,000 signatories to a petition asking Indonesian President Joko Widodo to grant clemency; this campaign uses the hashtag ‘#abolishthedeathpenalty’, among others.²⁶⁶

In Iran, the upholding of three death sentences against young activists also sparked online protests, with the Persian hashtag ‘#do_not_execute’ being used over eleven million times in a week.²⁶⁷ Similarly, in Singapore, a petition to grant clemency to Syed Suhail, launched a few days before his scheduled execution for drug trafficking, quickly reached 30,000 signatures²⁶⁸ - an unprecedented response in the country. In both cases, online engagement brought positive results, and contributed to those executions being suspended.

THE DEATH PENALTY FOR DRUG OFFENCES:
GLOBAL OVERVIEW 2020