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# THE DEATH PENALTY

## No solution to illicit drugs

### 1. INTRODUCTION<sup>1</sup>

Drug abuse and trafficking pose major problems for the world community. As the then United Nations (UN) Secretary-General Javier Pérez de Cuéllar stated in 1985, "Illicit drugs wherever they are produced or used contaminate and corrupt, weakening the very fabric of society. Increasing worldwide abuse is destroying uncounted useful lives... The suffering of individuals is not the only cost. Illicit drugs and crime go hand in hand. The allure of tremendous profits constitutes a potent attraction to criminals, and drug trafficking frequently entails other criminal acts, including bribery, larceny, the corruption of public officials and even murder... It must also be stressed that trafficking in illegal drugs represents a heavy toll on many national economies. The cost must be counted in literally billions of dollars traceable to the time lost in the work place, to the substantial burden imposed on judicial and penal systems, and to the treatment and rehabilitation of drug addicts."<sup>2</sup>

Responding to the drug menace, some 26 countries have adopted laws making drug-related offences punishable by death.<sup>3</sup> Seven of them have done so since 1986,<sup>4</sup> contrary to the UN goal of reducing the scope of capital punishment and ignoring the growing worldwide trend of abolishing the death penalty. Thousands of prisoners convicted of drug offences have been executed, most of them after unfair trials.

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<sup>1</sup> The first edition of this paper was prepared with the assistance of John V. Owens ("The Death Penalty: No Solution to Illicit Drugs", AI Index: ACT 05/39/86, December 1986). The present edition was prepared with the assistance of Tanya Hector. Also of great assistance was research on the subject carried out by the Theme Group on the Death Penalty of Amnesty International's Dutch Section in 1993.

<sup>2</sup> Statement of the UN Secretary-General to the Economic and Social Council, 24 May 1985.

<sup>3</sup> As detailed in the annex to this paper, the 26 countries are Bahrain, Bangladesh, Brunei Darussalam, China, Egypt, Guyana, Indonesia, Iran, Iraq, Jordan, the Republic of Korea (South Korea), Kuwait, Malaysia, Myanmar, the Philippines, Qatar, Saudi Arabia, Singapore, Sri Lanka, Sudan, Syria, Taiwan, Thailand, the United Arab Emirates, the United States of America and Viet Nam.

<sup>4</sup> Qatar and Saudi Arabia introduced the death penalty for drug offences in 1987, Bangladesh in 1988, Guyana and Sudan in 1989 and Viet Nam in 1992. The Philippines abolished the death penalty for all crimes in 1987 but reintroduced it for drug offences and other common crimes in 1994.

The rationale for using the death penalty is that it will deter traffickers more effectively than other punishments. But despite the thousands of executions carried out there is no clear evidence that the death penalty has had any identifiable effect in alleviating drug trafficking and abuse. In the countries which have introduced the death penalty for drug offences and in those which have carried out executions, Amnesty International is aware of no evidence of a decline in trafficking which could be clearly attributed to the threat or use of the death penalty.

The death penalty appears to have been introduced with little consideration of the risks it could entail. These include: the risk that traffickers faced with a possible death penalty would more readily kill to avoid capture, increasing the danger to law enforcement officials;<sup>5</sup> the risk that minor traffickers or even drug abusers would suffer the death penalty while those behind the crimes escaped capture and punishment; the risk that increasing the severity of penalties would drive up drug prices, playing into the hands of organized crime and attracting hardened criminals prepared to face the attendant dangers.

In the haste to introduce the death penalty in the fight against drug trafficking, some countries have enacted laws which undermine internationally accepted standards for a fair trial - increasing the inherent risk of executing the innocent.

Even as the death penalty is introduced in certain countries, its use is being rejected elsewhere. Nigeria abolished the death penalty for drug offences in 1986 after several executions provoked widespread protests.<sup>6</sup> Turkey abolished the death penalty for drug trafficking in 1990 as part of a general reduction in the number of crimes punishable by death.<sup>7</sup> In Mauritius, the section of

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<sup>5</sup> On 14 November 1985 Tehran radio reported that 16 combat personnel of the regional gendarmerie had been killed in a gun battle with drug smugglers near the Pakistan border. The alleged smugglers would have faced possible death penalties if caught. By 1994, 200 Iranian law enforcement officials had lost their lives in the fight against trafficking, according to an official statement.

<sup>6</sup> In Nigeria a 1984 decree, later amended, set up special military tribunals empowered to impose death sentences on drug offenders with retroactive effect and no right of appeal. On 10 April 1985 three men were publicly executed by firing squad; two of them had been convicted of offences committed before the decree was passed. The executions provoked widespread protests from religious leaders, intellectuals, newspapers and others. Among the objections made were that death was too harsh a punishment for the offences involved; that killing would brutalize rather than reform; that the death penalty was unfair and not a deterrent. A number of other prisoners were sentenced to death, but there were no further executions in drug cases. In 1986 the decree was amended removing provision for the death penalty for drug offences. Outstanding death sentences for drug offences were commuted to terms of imprisonment.

<sup>7</sup> The death penalty had been provided as a mandatory punishment for certain crimes of trafficking in heroin, morphine, cocaine or hashish under Articles 403, 406 and 407 of the criminal code. Several prisoners were sentenced to death, but there were no executions. In 1991 all death sentences imposed for crimes committed before 8 April 1991 were commuted under

the law under which the death penalty had been introduced for drug trafficking in 1986 was declared unconstitutional in 1992.<sup>8</sup>

Amnesty International opposes the death penalty in all cases on the grounds that it is the ultimate cruel, inhuman and degrading punishment and violates the right to life. Amnesty International appeals for clemency in death penalty cases everywhere and works for the worldwide abolition of the death penalty in law.

Amnesty International hopes that the facts and views presented in this paper will convince governments of the futility and injustice of using the death penalty to tackle the drug problem. It urges that no further executions be carried out and that laws providing for the death penalty be repealed. The information in this paper strongly suggests that absence of the death penalty will not harm efforts to combat drug trafficking and abuse - it may even strengthen them.

## 2. THE NATIONAL EXPERIENCE

### Introduction of the Death Penalty: The Lack of Debate

By the end of the 1970s, an international consensus to abolish the death penalty seemed to be emerging. In 1971 the UN General Assembly, invoking the right to life as proclaimed in international human rights standards, called for the progressive restriction of the number of crimes punishable by death with a view to the desirability of abolishing this punishment. The General Assembly reaffirmed this position in 1977.<sup>9</sup>

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the Anti-Terror Law.

<sup>8</sup> The judgment was delivered on 18 February 1992 in the cases of *Ali v. R.* and *Rassool v. R.* by the Judicial Committee of the Privy Council (JCPC) in England, which serves as the highest court of appeal for Mauritius. The JCPC ruled that Section 38(4) of the Dangerous Drugs Act 1986 was invalid since it effectively authorized the Director of Public Prosecutions, an executive official, to select the penalty to be imposed by deciding whether a defendant charged with drug trafficking would be tried in an Intermediate or District Court, where there was no provision for the death penalty, or in the Supreme Court, where the Act provided for a mandatory death penalty. The ruling cited the principle of the separation of the powers of the legislature, the executive and the judicial branches of government as embodied in the Constitution of Mauritius. The JCPC ordered that the death sentences imposed on the two appellants, who had been convicted in 1987 of importing heroin into the country while being traffickers, be set aside and the cases be remitted to the Supreme Court of Mauritius for resentencing.

<sup>9</sup> UN General Assembly resolution 32/61 of 8 December 1977 reaffirmed that "the main objective to be pursued in the field of capital punishment is that of progressively restricting the

Since the 1970s there has been increasing international support for abolition. The Human Rights Committee established under the International Covenant on Civil and Political Rights stated in 1982 that Article 6 of the Covenant "refers generally to abolition [of the death penalty] in terms which strongly suggest...that abolition is desirable."<sup>10</sup> The UN Special Rapporteur on extrajudicial, summary or arbitrary executions has stated that "the scope of the death penalty should never be extended"<sup>11</sup> and has called on all governments to make every effort to abolish the death penalty.<sup>12</sup>

The support for abolition is matched by the decisions of individual countries. Since 1976 more than two countries a year on average have abolished the death penalty in law or, having abolished it for ordinary crimes, have gone on to abolish it for all crimes. More than half of all countries have now abolished the death penalty in law or practice.<sup>13</sup> As was noted in the UN Secretary-General's latest quinquennial report on capital punishment, submitted to the UN Economic and Social Council in 1995, "an unprecedented number of countries have abolished or suspended the use of the death penalty."<sup>14</sup>

The introduction of the death penalty for drug offences runs counter to this strong trend towards abolition. Yet the reason behind the trend - the recognition that the death penalty violates fundamental human rights - seems to have been largely overlooked in national discussions of the new penal measures. The death penalty has been introduced for drug offences without serious

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number of offences for which the death penalty may be imposed with a view to the desirability of abolishing this punishment..."

<sup>10</sup> General comment on Article 6 of the International Covenant on Civil and Political Rights, adopted at its 378th meeting (16th session) on 27 July 1982 by the Human Rights Committee.

<sup>11</sup> *Extrajudicial, summary or arbitrary executions; report by the Special Rapporteur...*, UN document No. E/CN.4/1995/61, 14 December 1994, paragraph 375.

<sup>12</sup> In his report to the 1995 session of the UN Commission on Human Rights, the Special Rapporteur stated: "...although the death penalty is not prohibited under international law, there is no such thing as a right to capital punishment, restricted only by some limitations contained in the pertinent international instruments. In view of the irreparability of loss of life, the impossibility of remedying judicial errors and, indeed, the well-founded doubts expressed by a wide range of experts in criminology, sociology, psychology, etc. as to the deterrent effect of capital punishment, the Special Rapporteur once again calls on the Governments of all countries where the death penalty still exists to review this situation and make every effort towards its abolition." *Ibid.*, paragraph 384.

<sup>13</sup> Amnesty International, "List of Abolitionist and Retentionist Countries", issued periodically.

<sup>14</sup> *Capital punishment and implementation of the safeguards guaranteeing the protection of the rights of those facing the death penalty; report of the Secretary-General*, UN document No. E/1995/78, 8 June 1995, paragraph 87.

discussion of the view that it violates the human rights standards enshrined in many national constitutions and proclaimed by governments internationally.

A second point that does not seem to have been thoroughly discussed is the question of deterrence.<sup>15</sup> The case for adding the death penalty to the weapons already available in the fight against drugs rests on the claim that it will deter traffickers more effectively than other punishments, thereby alleviating the drug problem. There is no doubt that many officials as well as members of the public genuinely believe that it will do so; but the lack of proof of a unique deterrent effect against other crimes should be cause for scepticism.<sup>16</sup> Little or no solid criminological evidence seems to have been adduced in the national debates to justify the deterrence claim.<sup>17</sup>

### **The Death Penalty for the "Most Serious Crimes": National Variations in Scope**

Among the measures enacted in different countries there are great variations. Some statutes restrict the death penalty to trafficking in poppy-based drugs such as opium, morphine and

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<sup>15</sup> In a working paper prepared for the Sixth UN Congress on the Prevention of Crime and the Treatment of Offenders, the UN Secretariat concluded that "Despite much more advanced research efforts mounted to determine the deterrent value of the death penalty, no conclusive evidence has been obtained on its efficacy... It...seems to be an important task of governments, the academic community, the mass media, and other publicly minded organisations....to educate the public as to the uncertainty of the deterrent effect of capital punishment..." Sixth UN Congress on the Prevention of Crime and the Treatment of Offenders, *Capital punishment; working paper prepared by the Secretariat*, UN document No. A/CONF.87/9, 23 June 1980, paragraph 68.

<sup>16</sup> The most recent survey of worldwide research findings on the relation between the death penalty and homicide rates, conducted for the UN in 1988, concluded that "This research has failed to provide scientific proof that executions have a greater effect than life imprisonment. *Such proof is unlikely to be forthcoming.* The evidence as a whole still gives no positive support to the deterrent hypothesis." Roger Hood, *The Death Penalty; A World-wide Perspective*, Oxford, Clarendon Press, 1989, p. 167; emphasis added.

<sup>17</sup> One UN expert has listed six points which would need to be addressed in any thorough study of the deterrent effect of the death penalty on drug offences. He concluded that "only after thorough observance of very elaborate rules of criminological enquiry one may arrive to substantiated conclusions on the deterrent effect of capital punishment on the rate of illegal drug trafficking. But even without such an enquiry and only accepting indisputable evidence that on balance the death penalty does not have a perceptible influence on homicide rate one may be sceptical whether such an influence will be visible in [the] case of illegal drug trafficking." Slawomir M. Redo, "United Nations Position on Drug Crimes", *United Nations Asia and Far East Institute, Resource Material Series*, No. 27 (April 1985), pp. 90-91.

heroin. Others include marijuana, cocaine and synthetic drugs. Prisoners have been executed for trafficking in cannabis, a drug whose use in some countries is treated as a minor offence or is not even criminalized.<sup>18</sup> In one country, Saudi Arabia, the law simply states that people who smuggle drugs into the country will be punished by death without specifying the drugs in relation to which the death penalty is envisioned.

International human rights norms stress that where the death penalty has not been abolished, its scope should be limited to the most serious crimes.<sup>19</sup> Some statutes limit the application of the death penalty to the most serious cases of drug trafficking by such devices as specifying large minimum amounts of drugs, but in other statutes the scope is extremely broad. Several statutes make possession of drugs punishable by death, entailing the risk of executing not only traffickers but addicts as well. In at least one country, Sri Lanka, a person can by law be executed for possessing two grams of heroin - an amount which a heavy addict might consume in a day.

The differences in scope of the death penalty from one country to another are matched by extremely wide differences in the actual use of the death penalty. Some countries after introducing the death penalty have not executed anyone, but at least 11 of the countries whose laws currently provide for the death penalty for drug offences have done so. The vast majority

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<sup>18</sup> At least 12 countries are believed to have laws which explicitly provide for the death penalty for trafficking in cannabis or hashish. The countries are Bahrain, Brunei Darussalam, Iran, the Republic of Korea, Malaysia, Myanmar, the Philippines, Qatar, Singapore, Sudan, Taiwan and the USA. At least two countries, Malaysia and Saudi Arabia, have executed prisoners for trafficking in cannabis or hashish.

<sup>19</sup> Under the International Covenant on Civil and Political Rights (ICCPR) (Article 6(2)), "[i]n countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes..." According to the Safeguards guaranteeing protection of the rights of those facing the death penalty (the "1984 ECOSOC Safeguards"), adopted by the UN Economic and Social Council in resolution 1984/50 of 25 May 1984 and endorsed by the UN General Assembly in resolution 39/118, adopted without a vote on 14 December 1984, "In countries which have not abolished the death penalty, capital punishment may be imposed only for the most serious crimes, it being understood that their scope should not go beyond intentional crimes, with lethal or other extremely grave consequences." (Safeguard 1) It may be questioned whether drug offences are to be included in the concept of the "most serious crimes". In its consideration in July 1995 of the third periodic report of Sri Lanka under the ICCPR, the Human Rights Committee established under the ICCPR stated that it was "concerned that under Sri Lankan law, the death penalty may be imposed for crimes such as abetting suicide, drug-related offences, and certain offences against property. Some of these offences do not appear to be the most serious offences under article 6 of the Covenant." Human Rights Committee, "Comments of the Human Rights Committee; Sri Lanka", UN document No. CCPR/C/79/Add.56, 27 July 1995.

of executions have been in just two countries, Iran and China.<sup>20</sup> Both countries have executed over one thousand prisoners for drug offences; in both countries the use of the death penalty is characterized by a disregard for international norms for a fair trial. Executions have been carried out in waves, often in connection with highly publicized anti-drug campaigns. In Iran, more than 1,000 people were executed in 1989 alone after a new law came into force making the death penalty mandatory for a wide range of drug offences. China has used the UN-declared International Day against Drug Abuse and Illicit Trafficking, 26 June, as an occasion for executions each year since 1991.

### **Lack of Fair Trials and the Risk of Executing the Innocent**

International norms stress the need for the most careful legal procedures to be followed in death penalty cases.<sup>21</sup> But in the haste to introduce the death penalty for drug offences, some countries have enacted laws which undermine internationally accepted standards for a fair trial. The presumption of innocence is weakened by the provision in certain statutes that the possession of drugs shall be taken as evidence of trafficking unless the contrary is proved.<sup>22</sup>

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<sup>20</sup> Amnesty International has recorded more than 2,900 executions for drug offences in Iran since the establishment of the Islamic Republic in 1979; hundreds of prisoners had been executed earlier under the government of the Shah of Iran. The organization has recorded over 1,100 executions for drug offences in China, but the true total is certainly higher. Malaysia has executed over 200 prisoners for drug offences since 1975, Singapore is believed to have executed at least 100 since 1975, and Saudi Arabia has executed over 100 since the penalty was introduced in 1987. Other countries which have carried out executions are Egypt, Indonesia, Sudan, Taiwan, Viet Nam, and Syria in a case which also involved murder.

<sup>21</sup> International norms for a fair trial are set forth in Articles 9, 14 and 15 of the ICCPR. In resolution 35/172, adopted without a vote on 15 December 1980, the UN General Assembly urged UN member states "[t]o respect as a minimum standard the content of the provisions of Articles 6, 14 and 15 of the International Covenant on Civil and Political Rights and, where necessary, to review their legal rules and practices so as to guarantee the most careful legal procedures and the greatest possible safeguards for the accused in capital cases". The legal safeguards to be observed in death penalty cases were further spelled out in the 1984 ECOSOC Safeguards, referred to above. (The texts of the 1980 resolution and of the ECOSOC Safeguards may be found in Amnesty International, *When the State Kills... The Death Penalty v. Human Rights*, London, Amnesty International Publications, 1989, Appendices 4 and 9, pp. 245-246, 252-253.) The adoption without a vote of the 1980 General Assembly resolution and the endorsement without a vote of the 1984 ECOSOC Safeguards were indications of strong agreement, in that no UN member state wanted to go on record as opposing these measures.

<sup>22</sup> The Singapore statute states that any person proved or presumed to have had in his or her possession more than a specified minimum amount of morphine or heroin "*shall, until the contrary is proved, be presumed to have had such controlled drug in his possession for*

In some countries suspected drug offenders are tried in special courts or under special procedures where safeguards for a fair trial are curtailed or non-existent. In China, measures introduced in 1983 to speed up trial procedures in some criminal cases allowed the courts to bring defendants to trial without giving them a copy of the indictment in advance, and without giving advance notice of the trial or serving summonses in advance to all parties involved; the time limit for appeals against a judgment was reduced from 10 to three days. In Iran, prisoners charged with criminal offences have been executed after summary trials without defence counsel or the right of appeal. In Saudi Arabia, many convictions in death penalty cases are based solely on a confession, a practice which in the absence of basic safeguards against torture creates an incentive for interrogating officials to coerce defendants, including by torture or ill-treatment, in order to force them to "confess".

In any judicial system, no matter how careful the procedures, there is always a chance of wrongful conviction. But the death penalty is irrevocable: there can be no redress for an innocent person once executed, nor for his or her family. If judicial procedures are curtailed, the risk of executing the innocent will increase. Prisoners have been executed for drug offences despite strong doubts about their guilt.

In June 1985 a Malaysian, Maniam Manusami, was arrested in Indonesia carrying heroin; he admitted having smuggled it into the country but said he had been paid by another Malaysian, a businessman, Chan Ting Chong, with whom he was sharing a hotel room. Chan Ting Chong denied involvement but was sentenced to death; Maniam Manusami was sentenced to life imprisonment. Chan Ting Chong's appeal against the death sentence was rejected by the High Court in April 1986. In August 1986 it was reported that Maniam Manusami had written to the Supreme Court saying he had falsely implicated Chan Ting Chong, whom he had only met by chance on arrival at the airport a few days before their arrest and who knew nothing about the drugs. Amnesty International wrote to President Suharto of Indonesia asking that Mr Chan's case be reviewed in view of the new evidence and that his sentence be commuted. No reply to the letter was ever received. Chan Ting Chong's appeal was rejected by the Supreme Court in 1990 and his petition for clemency was rejected by President Suharto in 1991. On 13 January 1995, Chan Ting Chong was executed by firing squad.

Ten foreign nationals were executed for drug smuggling in Egypt on 24 April 1994. They had been arrested in 1988 on their arrival on a ship carrying opium, heroin and hashish. Before the executions the Sudanese captain of the ship told reporters he was innocent and accused the owner of the ship of giving him a shipment of whose contents he was unaware. A Sudanese sailor said he too knew nothing about the contents of the shipment.

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*the purpose of trafficking therein.*" Under the statute, trafficking is punishable by death. The same statute also provides that "If any controlled drug is found in any vehicle *it shall, until the contrary is proved, be presumed to be in the possession of the owner of the vehicle and of the person in charge of the vehicle for the time being.*" (Emphases added) The Malaysian statute also has a presumption of trafficking for possession of specified quantities of drugs.

Hassim Escandar, a Filipino immigrant worker, was executed in Malaysia on 30 April 1993. He was convicted on the basis of police evidence that he had had keys in his possession which fitted a padlock to a bag containing cannabis on a bus on which he was travelling. He claimed that the keys had actually been found on another passenger. The other passenger was initially charged with him but was later freed. None of the other passengers was called to give evidence at the trial, and his defence counsel was not given a chance to examine them.

On at least four occasions in 1986 the Supreme Court of Malaysia overruled mandatory death sentences imposed on alleged drug traffickers by the High Courts. Three prisoners were set free by the Court on the grounds that there had been "serious breaks in the chain of evidence" and because of "inadmissible evidence" presented to the High Courts by the prosecution. In one case, a death sentence imposed by the High Court was reduced to five years' imprisonment by the Supreme Court after it was found that incorrect weighing methods had been used and the amount of drugs held by an alleged trafficker actually fell short of the requirement for a mandatory death sentence.<sup>23</sup>

Although the death penalty is optional for most drug offences in various countries, at least 12 countries have laws under which it is mandatory for at least some drug offences.<sup>24</sup> Mandatory death penalties have been assailed on judicial grounds: it has been claimed that they violate due process of law by removing the discretion of judges to vary the severity of punishment according to the circumstances of the case.<sup>25</sup> In at least two countries mandatory death penalties for murder have been rejected on constitutional grounds.<sup>26</sup>

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<sup>23</sup> See Sidney L. Harring, "Death, Drugs and Development: Malaysia's Mandatory Death Penalty for Traffickers and the International War on Drugs", *Columbia Journal of Transnational Law*, Vol. 29, pp. 365-405, 1991, for additional information on "chain of evidence" rulings and other considerations used by the Malaysian Supreme Court in its rulings on death penalty cases.

<sup>24</sup> Countries with mandatory death penalties for some or all of the drug offences punishable by death include Brunei Darussalam, Egypt, Guyana, Iran, Jordan, Malaysia, the Philippines, Qatar, Saudi Arabia, Singapore, Thailand and the United Arab Emirates. Of the 12 countries, all but Malaysia and Thailand have introduced or expanded the scope of mandatory death penalties since 1986. In contrast, Taiwan changed its law in 1992 to make the death penalty optional rather than mandatory for drug trafficking offences.

<sup>25</sup> David Pannick, *Judicial Review of the Death Penalty*, London, Duckworth, 1982, Chapter 6, pp. 108-138. Lee Min Choon, "Legality of the Mandatory Death Sentence", paper presented at a seminar organized by the Bar Council of Malaysia, 19 July 1986.

<sup>26</sup> The United States Supreme Court, in *Woodson v. North Carolina* (1976), held unconstitutional a mandatory death penalty for first-degree murder. The Indian Supreme Court, in *Mithu v. State of Punjab* (1983), struck down the mandatory death penalty for murder under section 303 of the Indian penal code. In this decision the Indian Supreme Court ruled that "The gravity of the offence furnishes the guidelines for punishment and one cannot determine how

### **Lack of Evidence of a Unique Deterrent Effect**

The reason usually given for introducing the death penalty for drug offences is that it will help in the fight against drugs by deterring potential traffickers. Yet the evidence that it will do so has never been produced. In the countries which have introduced the death penalty for drug offences and in those which have carried out executions, Amnesty International is aware of no evidence of a decline in drug trafficking which could be clearly attributed to the threat or use of the death penalty.

In Saudi Arabia, officials responsible for combating drug trafficking have claimed that drug-related crimes have dropped by as much as 50 per cent since the death penalty was introduced in 1987. But since the number of executions for drug offences began rising in 1993, officials have attributed the rise to an increase in trafficking, implicitly contradicting other officials' claims of the efficacy of the punishment.

More than 2,900 people have been executed for drug offences in Iran since the 1979 revolution, yet the trafficking route through Iran remains the main route used to transport heroin from Afghanistan and Pakistan to European markets, according to the report of the International Narcotics Control Board for 1994. China has carried out many hundreds of well-publicized executions of alleged traffickers, especially in provinces near the drug-producing "Golden Triangle", but the same report notes that traffickers have developed a major land route in China for transporting heroin from the "Golden Triangle" and that the development of air and rail routes has led to "an increase in drug-related criminality". In Malaysia, where more than 200 people have been executed for drug offences since 1975, the report notes that "The increasing availability of heroin has contributed to the growing demand for that drug in Malaysia."<sup>27</sup>

In an article arguing against the use of the death penalty for drug offences, Ezzat A. Fattah, Professor of Criminology at Simon Fraser University in Burnaby, British Columbia, Canada, has cited his experience as a young prosecutor assigned to drug cases in Alexandria, Egypt, when a mandatory penalty of life imprisonment with hard labour was introduced in 1952 in an effort to stamp out trafficking in opium and hashish:

"The results of the new drug law were exactly the opposite of what its makers had intended. Drug traffickers came up with many ingenious methods to ply their trade

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grave the offence is without having regard to the circumstances in which it was committed, its motivation and its repercussions. The legislature cannot make relevant circumstances irrelevant, deprive the Courts of their legitimate jurisdiction to exercise their discretion not to impose the death sentence in appropriate cases, compel them to shut their eyes to mitigating circumstances and inflict upon them the dubious and unconscionable duty of imposing a preordained sentence of death."

<sup>27</sup> *Report of the International Narcotics Control Board for 1994*, United Nations, New York, 1995, UN Sales No. E.95.XI.4, paragraphs 218, 219, 249.

without being detected. The task of drug enforcement officers was rendered not only more difficult but extremely dangerous as well. Smugglers and traffickers were willing to employ violence, even in its ultimate form, to evade detection and to avoid arrest. Instead of reducing the volume of the drug traffic, the new law led to increasing dismissal of marginal cases by the police. Judges became quite reluctant to convict and acquitted accused persons in a very large number of cases either for supposed lack of evidence or despite the evidence on grounds of technicalities. Furthermore, with the increased theoretical risk of drug trafficking the price of drugs went up sharply and the prospect of high profits attracted new elements to the illicit drug market. To make a long story short, the new law did not improve the drug situation in Egypt and in many respects made it much worse. Its application provided an irrefutable proof, if any proof was needed, that harsh punishments are no solution to the drug problem as they have never been the answer to the crime problem."<sup>28</sup>

The lack of effectiveness of the death penalty as a unique deterrent to drug trafficking has been noted by various officials. The acting Inspector General of Police of Malaysia was reported as saying in January 1985 that the death penalty "did not seem to deter traffickers". The Deputy Minister of Home Affairs of Malaysia was reported as saying in February 1986 that the number of drug traffickers was increasing, despite the mandatory death penalty.

The apparent lack of a unique deterrent effect was cited at the December 1985 meeting of the UN Expert Group on Countermeasures to Drug Smuggling by Air and Sea. According to the report of the meeting,

"...in the experience of several experts, the fact that capital punishment appeared on the statute books as the maximum penalty did not necessarily deter trafficking; indeed in some cases it might make prosecution more difficult because courts of law were naturally inclined to require a much higher standard of proof when capital punishment was possible or even mandatory... The most effective deterrent was assuredly the certainty of detection and arrest."<sup>29</sup>

### **Executions of Foreigners**

The international character of drug trafficking causes an additional complication when foreign nationals are convicted and sentenced to death. Foreign nationals may not be familiar with the

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<sup>28</sup> Ezzat A. Fattah, "The Use of the Death Penalty for Drug Offences and for Economic Crimes; A Discussion and a Critique", in *La Peine de Mort; Travaux de la Conférence Internationale...*, *Revue Internationale de Droit Pénal*, Vol. 58 (1987), Nos. 3-4, 1988, pp. 723-735, at p. 726.

<sup>29</sup> *Report of the Expert Group on Countermeasures to Drug Smuggling by Air and Sea, Vienna, 9-13 December 1985*, document prepared for the ninth special session of the Commission on Narcotic Drugs, UN document No. E/CN.7/1986/11/Add.3.

laws of the country where they are tried, and they will have difficulty understanding the charges against them or participating in the proceedings if facilities for interpretation are inadequate.<sup>30</sup> The government of their home country will want to protect its citizens abroad, but its appeals for clemency, although motivated by humanitarian considerations, may lead to accusations of interference in the workings of justice under the laws of the country concerned. The government of a country which sentences a foreigner to death is also placed in a dilemma. If it carries out the execution, it risks damaging its relations with the government of the prisoner's country of origin. If it does not, people may claim that a double standard is being applied.

Since 1975, people from at least 25 countries and territories have been executed outside their country for drug offences.<sup>31</sup> Some executions have provoked an uproar, disturbing relations between countries.

Another international complication is that the provision of the death penalty in a country may make governments in abolitionist countries unwilling to extradite suspects to the country in question. Abolitionist countries often have a policy of not extraditing suspected offenders to a country where they may be executed.<sup>32</sup>

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<sup>30</sup> In a Mauritian case, the defendant, an uneducated peasant from southern India, was given air tickets to Mauritius and promised a small reward if he would deliver a bag to a person whose identity was to be disclosed to him on his arrival. When he arrived in Mauritius, customs officers found heroin in a false bottom of the bag. The trial was conducted in English; an interpreter, who was under the impression that he could only interpret on the instruction of the presiding judge, translated the charge and the defendant's statement but none of the evidence. In his statement to the court the defendant, whose native language was Malayalam, said he had not understood what the witnesses had said. He was convicted and sentenced to death by the Supreme Court in 1989. The Court of Criminal Appeal dismissed his appeal on the ground that if an accused or his counsel did not claim the right to the assistance of an interpreter at the trial, the lack of an interpreter could not be a ground of appeal. The Judicial Committee of the Privy Council (JCPC) in England, which serves as the final court of appeal for Mauritius, upheld his appeal in 1993 and quashed the conviction. The JCPC held that an accused who had not understood the conduct of proceedings against him could not, in the absence of express consent, be said to have had a fair trial and that the judge by virtue of his duty to ensure that the accused had a fair trial was bound to ensure that effective use was made of an interpreter. Judgment of the JCPC in *Kunnath v. The State*, 1993.

<sup>31</sup> The 25 countries and territories whose nationals have been executed for drug offences in other countries are Afghanistan, Australia, Bangladesh, Chad, Hong Kong, India, Indonesia, Iraq, Jordan, Kenya, Malaysia, Myanmar, Nigeria, Pakistan, the Philippines, Singapore, Somalia, Sudan, Syria, Taiwan, Tanzania, Thailand, Turkey, the United Kingdom and Yemen. In addition to these countries, nationals of Canada, France, Israel, the Netherlands, Spain and Sri Lanka have been sentenced to death in other countries. For details see the appendix to this paper.

<sup>32</sup> The authors of a UN study on extradition for drug offences have pointed out that the death penalty may have a bearing on decisions in some cases. "In cases where the death penalty might

### 3. THE FIGHT AGAINST DRUGS

Governments are using a wide range of measures in the fight against drugs. These include the eradication of cultivation of narcotics sources and provision of alternative sources of income for farmers; improved facilities for the detection of smuggling; seizure of shipments and destruction of clandestine laboratories; forfeiture of illegally acquired proceeds; education to prevent drug abuse; treatment and rehabilitation of drug addicts.

There is a strong international commitment to the "global undertaking" to reduce the plague of illicit drugs which the UN Secretary-General called for in 1985. At the same time, there seems to be a growing recognition that a variety of measures is needed and that there are no simple solutions. The problem is made more complex by the fact that drug trafficking not only stimulates but also satisfies a widespread demand for illicit drugs. Far from being universally condemned by society, drug abuse is willingly practised by millions of people.<sup>33</sup>

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be imposed in the requesting State, States that have already abolished the death penalty are in most instances not willing to contribute to the imposition of a penalty already rejected by the State's own ideology, by extraditing a person to a retentionist country. The rationale for such a refusal is that the abolition of the death penalty by a given State is predicated on humanitarian considerations and public policy, and it would therefore be abhorrent to that State to grant extradition, because this would mean using its processes to reach an outcome in violation of its law and public policy." The study pointed out that although under the Single Convention on Narcotic Drugs, a refusal to grant extradition would establish a jurisdiction of the state refusing extradition to try the suspected offender, "it might be difficult in some cases to prove the offender's guilt without extradition if most of the evidence is in the requesting State." UN Division of Narcotic Drugs, *Extradition for Drug-Related Offences. A Study of Existing Extradition Practices and Suggested Guidelines for Use in Concluding Extradition Treaties*, United Nations, New York, 1985, UN Sales No. E.85.XI.6. For a general study of policy on extradition in potential death penalty cases, see Antonio Marchesi, "The Death Penalty as a Barrier to Extradition", Amnesty International, AI Index: ACT 51/14/89, February 1989.

<sup>33</sup> As one expert, Arnold S. Trebach, observed in a 1983 article, "It is....very difficult to save people from themselves and their own habits." Citing the experience of countries which have used the death penalty for drug offences, Trebach considered that the fact that drug abuse has continued in spite of the threat of execution proves "that no law can be enforced if a sufficient number of citizens are determined to violate it." Between the death penalty, which Trebach regarded as a symbol of "rigid adherence" to the doctrine of control through criminal sanctions, and the opposite extreme of doing away with criminal sanctions for drug users, is a middle ground where the solutions must be sought. "It is necessary....to work out the painful details of a new world order for the control of dangerous drugs, which must begin on the middle ground between the extremes, where few matters are black and white, where most are grey, and where a patient sense of humane balance is crucial. In other words, ingenious compromise, cautious experimentation, and readjustments in the face of new

In the view of Professor Frits Rüter of the University of Amsterdam, as stated in an article published in 1986, using the criminal law to eradicate the drug problem is simply attempting "to attain the unattainable". Law enforcement drives up the costs for dealers, but "the trade simply passes them on to the consumer", and the consumer passes them on to the public through theft, burglary and other drug-related crimes. "The arrest of traffickers has little effect because the top of the organization remains out of reach and the small dealers and couriers are quickly replaced. The enormous earnings ensure that there is never any shortage of recruits... Law enforcement does not, therefore, deter the trade. Instead it encourages drug trafficking and is indeed crucial to its survival."<sup>34</sup>

#### **4. THE INTERNATIONAL VIEW**

There is a great deal of cooperation among countries in the fight against drugs, both bilaterally and through the United Nations. The measures to be taken in that fight have been discussed repeatedly at the UN General Assembly and other UN meetings. But the UN has never given any endorsement to the notion of using the death penalty to suppress drug trafficking and abuse.

In 1987 a world conference at ministerial level was organized by the UN. The International Conference on Drug Abuse and Illicit Trafficking, held in Vienna from 17 to 26 June 1987, adopted by consensus a *Comprehensive Multidisciplinary Outline of Future Activities in Drug Abuse Control*. Under the headings of 35 targets, the outline included such measures as the prevention and reduction of demand through education and control in the workplace; improved programs for the treatment of addicts; control of supply through crop elimination and redevelopment of areas formerly used to cultivate illicit drug crops; disruption of major trafficking networks through controls over ships and aircraft and surveillance of borders; facilitation of the extradition of alleged traffickers; and forfeiture of the proceeds of trafficking. Although several speakers referred to the use of the death penalty in their countries, there was

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experience must become the tools of creating that new order." Arnold S. Trebach, "The Lesson of Ayatollah Khalkhali", *Journal of Drug Issues*, Vol. 13, No. 4, autumn 1983, pp. 380, 392-394.

For a study of the possible effects of providing a legal supply of controlled drugs in reducing the black market without causing an increase in drug consumption, see Eric W. van Luijk, *A Lesson from History on the Issue of Drug Legalisation: The Case of the Opiumregie in the Dutch East Indies (1890-1940)*, Netherlands Institute for Advanced Study, June 1991.

<sup>34</sup> Frits Rüter, "Drugs and the Criminal Law in the Netherlands", in *Criminal Law in Action: An Overview of Current Issues in Western Societies*, Arnhem, Gouda Quint, 1986, pp. 147-165.

no recommendation of the death penalty either in the Comprehensive Multidisciplinary Outline or in the Declaration adopted by the conference.<sup>35</sup>

Three international conventions govern international relations in the fight against drugs. They are the Single Convention on Narcotic Drugs (1961), the Convention on Psychotropic Substances (1971) and the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988). None of these conventions makes any reference to the death penalty. In the provisions on penalties for trafficking in the Single Convention on Narcotic Drugs, the only specific reference is to imprisonment: under Article 36(1), the states parties to the Convention commit themselves to ensure that serious offences of trafficking in narcotics "shall be liable to adequate punishment particularly by imprisonment or other penalties of deprivation of liberty".<sup>36</sup> The other two conventions contain similar language.<sup>37</sup>

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<sup>35</sup> *Report of the International Conference on Drug Abuse and Illicit Trafficking; Vienna, 17-26 June 1987*, United Nations, New York, 1987, UN document No. A/CONF.133/12, UN Sales No. E.87.I.18. The Comprehensive Multidisciplinary Outline is reproduced in the report and also in *Declaration of the International Conference on Drug Abuse and Illicit Trafficking and Comprehensive Multidisciplinary Outline of Future Activities in Drug Abuse Control*, United Nations, New York, 1988, UN Sales No. E.88.XI.1. In resolution 44/142 of 15 December 1989 the UN General Assembly stated that the Declaration and the Comprehensive Multidisciplinary Outline "represent the proper framework for international cooperation in drug control".

<sup>36</sup> A proposal to require "severe" (rather than "adequate") punishment in Article 36 of the Single Convention on Narcotic Drugs failed to obtain the necessary two-thirds majority at the 1961 UN conference for the adoption of the convention. "The opponents of the word 'severe' invoked the considerations that the degree of severity of a penal sanction required in different countries to achieve its social purpose might differ widely; that what could be an adequate penalty in one State might not be considered to be severe in another State; and that the word 'severe' carried overtones of 'retribution', which was one of the purposes of penal law which should not be emphasized." *Commentary on the Single Convention on Narcotic Drugs, 1961*, prepared by the Secretary-General, United Nations, 1973, UN Sales No. E.73.XI.1, p. 429.

<sup>37</sup> Article 22(1)(a) of the Convention on Psychotropic Substances states that states parties shall ensure that serious breaches of laws or regulations adopted in pursuance of their obligations under the Convention "shall be liable to adequate punishment, particularly by imprisonment or other penalty of deprivation of liberty". Article 3 of the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances states that states parties shall establish a specified series of trafficking activities as criminal offences under their domestic laws and that they shall make the commission of these offences "liable to sanctions which take into account the grave nature of these offences, such as imprisonment or other forms of deprivation of liberty, pecuniary sanctions and confiscation."

## **5. CONCLUSIONS**

As shown in this paper, the provision of the death penalty for drug offences has many negative features which seem not to have been adequately considered when the relevant laws were introduced. Despite the thousands of executions carried out there is no clear evidence that the death penalty has had any identifiable effect in alleviating drug trafficking and abuse. Even as the scope of the death penalty has been expanded in certain countries, its use has been rejected elsewhere.

Amnesty International hopes that the findings presented in this paper will contribute to the discussion of the issue in countries which provide for the death penalty for drug offences and in countries considering doing so. In keeping with its unconditional opposition to the death penalty, Amnesty International urges all countries to cease carrying out executions and to abolish the death penalty.

## APPENDIX

### THE DEATH PENALTY FOR DRUG OFFENCES IN LAW AND PRACTICE: COUNTRY-BY-COUNTRY SURVEY

Drug-related offences are currently punishable by death in at least 26 countries, according to information available to Amnesty International as of August 1995. The country descriptions below contain summaries of the relevant laws;<sup>1</sup> reports of death sentences and executions; and other information on the national experience with the death penalty for drug offences.<sup>2</sup>

#### BAHRAIN

The death penalty was introduced for drug trafficking under *Decretal Law No. 10 of 1984*, which came into force on 12 July 1984. This law amended Decretal Law No. 4 of 1973 on Controlling the Use and Circulation of Narcotic Substances and Preparations by providing for the death penalty as an optional punishment for the unauthorized import, export, possession, buying, selling or delivering of narcotic substances or preparations as well as the cultivation or manufacture of such substances or preparations. Under the 1973 law, narcotic substances and preparations include heroin, cocaine and cannabis. No minimum quantity is specified for the imposition of the death penalty under the 1984 amendment.

A Pakistani national convicted of drug trafficking was sentenced to death by the High Criminal Court in July 1990. It is not known whether the sentence was carried out. As far as Amnesty International knows, no one has been executed for drug offences. The last known execution in Bahrain was in 1977.

#### BANGLADESH

The death penalty for drug offences was introduced in 1988 under the Dangerous Drugs (Amendment) Act, which was passed on 7 July 1988. The Act provides for the death penalty

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<sup>1</sup> The summaries are not exhaustive descriptions, but are meant to give a sense of the range of offences punishable by death and the range of drugs involved.

<sup>2</sup> National statutes often contain such phrases as "dangerous drugs", "controlled drugs", "narcotics", and "psychotropic substances". Many national statutes contain schedules listing the drugs which are to be included under such headings. Under the relevant international conventions (the Single Convention on Narcotic Drugs and the Convention on Psychotropic Substances), "narcotic drugs" include drugs such as cannabis (marijuana), opium, heroin and cocaine, while "psychotropic substances" include chemical drugs such as amphetamines, barbiturates, and hallucinogenic drugs such as LSD.

as an optional punishment for cultivating, manufacturing, importing, exporting or trafficking in dangerous drugs.

Amnesty International has received no reports of death sentences imposed or of executions carried out under the Act.

## **BRUNEI DARUSSALAM**

The death penalty for drug offences was introduced in December 1982 and is embodied in the Second Schedule to the *Misuse of Drugs Enactment, 1978*, as amended by the *Emergency (Misuse of Drugs) Amendments Order 1984*. This order provides for the death penalty as a mandatory punishment for the unauthorized trafficking, import or export of over 15 grams of morphine or heroin; possession of over 30 grams of morphine or heroin for the purpose of unauthorized trafficking; and unauthorized manufacture of morphine or heroin.

In July 1992 the death penalty was extended to cover possession of more than 200 grams of cannabis or opium, according to Reuters news agency.

Amnesty International has received no reports of death sentences imposed or of executions carried out for drug offences. No executions are known to have been carried out in the country since 1957.

## **CHINA (People's Republic of)**

Death was introduced as a penalty for drug trafficking under amendments to the Criminal Law which were adopted by the National People's Congress Standing Committee on 8 March 1982 and came into force on 1 April 1982. The amendments apply to Article 171 of the Criminal Law, which proscribes the manufacture, sale and shipment of opium, heroin, morphine or other narcotic drugs. When the amendments were adopted, it was specified that the cases which might be punished by death were "particularly grave cases".

In December 1990 a revision to the legislation controlling narcotics lowered the minimum criteria for imposing the death penalty and increased the number of drug-related offences punishable by death.

The use of the death penalty in China is characterized by a disregard for international norms for a fair trial. Those who suffer most as a result are the poor and the less educated, who are often unaware of their rights and of the legislation which leads to their execution. The police often detain suspects for months to interrogate them and obtain confessions. Once a court decides to adjudicate a case, detainees can seek the assistance of a lawyer, but they often have no time to prepare an effective defence. There is no presumption of innocence in Chinese legal practice. In most cases, prisoners have no recourse beyond a single appeal. They are reportedly not told of the rejection of their appeal until a few hours before execution. Executed

prisoners are a source of organs for transplants, even though they are not always asked for their consent.

During the 1980s Amnesty International received reports of executions for drug trafficking, including multiple executions. On 20 January 1984, for example, a court in the capital, Beijing, announced that 41 men had been executed during the previous nine days for a variety of crimes including drug offences. In March 1985 wall posters in Menghai and Jinghong districts, near the Burmese border, reportedly announced the execution of 20 people for involvement in cross-border drug trafficking. Further executions for drug offences were recorded in 1987. Sixty-four executions for drug offences were recorded in 1990.

Following an international conference on drug control held in Beijing in June 1991 to mark the fourth International Day against Drug Abuse and Illicit Trafficking,<sup>3</sup> a nationwide anti-drug campaign was launched aimed at eliminating drug trafficking and abuse within two to three years. The government declared a "people's war" on drugs and ordered all public security bureau personnel to "take tough action against traffickers".

During 1991 Amnesty International recorded 367 death sentences for drug offences, but the true figure was probably several times higher - official figures are unavailable and are regarded as a state secret.<sup>4</sup> The organization was unable to determine how many of the sentences recorded were carried out. Of the total number of drug-related death sentences recorded, 252 were imposed in Yunnan province and 66 in Guangdong province; these two southern provinces are situated near the "Golden Triangle", the opium-producing region where the borders of China, Thailand, Myanmar and Laos converge. Mai Chongkai, president of Guangdong Higher Court, stated in March 1991 that the number of drug traffickers executed in the province had increased by more than 100 per cent over the previous year.<sup>5</sup>

Some executions were carried out in waves. On 26 June, at least 70 people were reportedly executed for alleged drug-related offences after mass sentencing rallies held in Kunming, the capital of Yunnan province, and elsewhere in Yunnan. According to another report, 35 men and women accused of drug-related offences were executed on 26 October in Kunming. He Zhiqiang, the Governor of Yunnan province, was quoted as saying that the mass execution in October would be a strong deterrent to drug dealers inside and outside the country.

In March 1991 Yang Ming, director of the Education, Science, Culture and Public Health Committee of the Yunnan Provincial Congress and a member of the Standing Committee of the

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<sup>3</sup> The International Day against Drug Abuse and Illicit Trafficking, 26 June, was established by the United Nations General Assembly in resolution 42/112, adopted on 7 December 1987.

<sup>4</sup> Comprehensive statistics are compiled by the Supreme People's Court, which by law must either review or be informed of all death sentences, but they are classified as a state secret.

<sup>5</sup> Amnesty International, "People's Republic of China: Drugs and the Death Penalty in 1991", AI Index: ASA 17/07/92, February 1992.

National People's Congress, was quoted as saying that a major help in the fight against drugs was a ruling that death sentences no longer had to be reported to China's Supreme People's Court before execution. This statement referred to a 1983 decision of the National People's Congress Standing Committee allowing the Supreme People's Court to delegate the approval of certain death sentences to the High Courts as a means of accelerating the procedures for appeal, review of sentence and execution. Amnesty International expressed concern that the official emphasis on the speedy disposal of death penalty cases might restrict defendants' rights to appeal.

Death sentences and executions for drug-related offences have continued in great numbers since 1991. Amnesty International recorded more than 920 sentences nationwide in 1992 but was unable to determine how many of them had been carried out. The organization recorded 73 executions for drug offences in 1992, more than 224 in 1993 and more than 579 in 1994; the true totals were certainly higher.<sup>6</sup> Further executions have been reported in 1995. Most of those executed were nationals of the People's Republic of China, but there have also been executions of nationals of Taiwan, Hong Kong, Myanmar and Thailand, and death sentences for drug offences have been imposed on Filipinos. A number of death sentences have been imposed with a two-year reprieve.<sup>7</sup>

Some news reports give details of the offences and the amounts of drugs said to have been involved. For example, two people who had been arrested after bringing 1,050 grams of heroin into the city of Guangzhou from another province were executed in Guangzhou on 18 March 1994, according to the *People's Daily* newspaper. Three members of a Hong Kong triad gang were executed in Guangdong province in October 1994 for trying to smuggle 10 kilograms of amphetamines out of China, according to the *China News Service* agency. Twelve people caught selling 35.9 kilograms of heroin which they had smuggled in from Myanmar were executed on 24 January 1995 in Guizhou province, according to a provincial newspaper; six other traders who sold 13.46 kilograms of heroin smuggled in from Myanmar and from Yunnan province were also executed, the newspaper reported.

The International Day against Drug Abuse and Illicit Trafficking has continued to be used by the Chinese authorities as an occasion for mass executions. On 26 June 1992, 21 death sentences for drug offences were announced at a mass rally in Yunnan province and 20 of the prisoners were executed immediately after (one prisoner was given a two-year reprieve). Including these 20, Amnesty International recorded a total of 76 executions for drug offences carried out in seven provinces between 23 and 30 June. On 25 and 26 June 1993 at least 72

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<sup>6</sup> Some reports referred to multiple executions of prisoners convicted of drug offences and of other crimes; they did not specify how many prisoners were executed for each type of crime.

<sup>7</sup> The system of death sentences imposed with a two-year reprieve has existed since 1949 and is now maintained in the Criminal Law. During the two-year period of reprieve, offenders carry out compulsory labour. If they show evidence of "repentance" during this time, their sentence is commuted to a term of imprisonment. The proportion of suspended death sentences commuted compared to those carried out is not known.

people were executed for drug offences throughout the country; 28 of the executions were in Yunnan province, where the sentences were announced at a mass rally in Kunming presided over by the Governor of Yunnan. On 24 June 1994 23 prisoners were executed for drug trafficking after their sentences were announced at an anti-drug rally held in a sports stadium in Kunming and attended by 4,200 spectators; Amnesty International recorded 136 executions for drug offences throughout the country between 24 and 27 June 1994. On 23 June 1995 34 prisoners convicted of drug offences were executed in Guangxi province after their sentences were announced at public rallies throughout the province.

As in 1991, a great many of the recorded death sentences and executions have been in provinces near the "Golden Triangle". In Yunnan province, 277 people were officially reported to have been sentenced to death for drug trafficking in the first half of 1992. On 22 March 1994 Si Jiuyi, head of the People's Armed Police in Yunnan province, said that 240 drug traffickers were executed in 1991 and 473 drug traffickers were sentenced to death in 1993. In 1995 the *China Daily* reported that 466 people had been executed for drug trafficking in Yunnan province in 1994.

Despite the many executions, there is no reliable evidence that the massive use of the death penalty has helped to eliminate drug trafficking and abuse, as seems to have been the authorities' intention in launching their campaign in 1991. In its report for 1994, the International Narcotics Control Board stated that

"In China, drug traffickers have developed a major alternative land route for transporting heroin from the Golden Triangle. In 1993, about 4.5 tonnes of heroin were seized in the country, a great increase compared with previous figures. The expanding transport and communication systems in China facilitate the movement of illicit drugs within the country. Although drug shipments continue to be transported on land routes from Myanmar through southern China to Hong Kong for overseas distribution, air and rail routes are increasingly being used, extending such activity into the inner provinces of China. Those developments have led to an increase in drug-related criminality."<sup>8</sup>

On 25 June 1995 the National Anti-Drugs Committee, meeting in Beijing, was reportedly informed that the harm which drugs had done to China's social order and economic development had continued to intensify in recent years.<sup>9</sup>

## **EGYPT**

The death penalty was provided as an optional punishment for exporting, smuggling, producing or processing narcotic substances with the intent of dealing in them under Article 33 of Law No.

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<sup>8</sup> *Report of the International Narcotics Control Board for 1994*, United Nations, New York, 1995, UN Sales No. E.95.XI.4, paragraph 218.

<sup>9</sup> "Beijing Vows to Crack Down Harder on Drugs, Dealers", Reuters, 26 June 1995.

40 of 1966. Until 1985 this provision was not applied. Following reports of alarming increases in the use of heroin and cocaine during the first half of the 1980s, however, the former Public Prosecutor, Mohammed al-Gindi, reportedly recommended in October 1985 that convicted traffickers should be sentenced to death, and on 29 October 1985 in a speech in Cairo the then Minister of the Interior, Ahmed Rushdi, reportedly urged the courts to impose death sentences on drug traffickers under the existing legislation.

These statements provoked an extensive discussion among legal scholars, officials, and leaders of political parties. It was argued that if the death penalty were made mandatory, as proposed by the Minister of the Interior, judges would be put in a difficult position: a judge who thought a defendant did not deserve the death penalty might acquit him or her, resulting in a miscarriage of justice which would have the opposite of the desired deterrent effect. It was submitted that preventive and rehabilitative measures should be taken through social work in the family. Ahmed Hilmi, who was the General Counsellor for the Narcotics Department, arguing against a mandatory death sentence, reportedly said that the reasons the death penalty had not been used in drug cases were that the prosecution cases were weak; methods of arrest were faulty; investigations were inadequate; and judges had doubts about the criminal intent of the accused.<sup>10</sup>

Egypt's first death sentence for drug trafficking was imposed in November 1985, *in absentia*, on a Lebanese national. Between then and mid-1988 Amnesty International recorded a further 20 death sentences for drug trafficking. Those sentenced to death included Egyptians and nationals of Pakistan, Sri Lanka, Somalia, an Egyptian-born Israeli, and a French national of Moroccan origin.

Under a 1989 amendment (Law No. 122 of 1989) to *Decree Law No. 182 of 1960 Concerning the Control of Narcotic Drugs and the Regulation of their Utilization and Trade in Them*, the death penalty was made mandatory for the unlicensed import or export of narcotic substances, the manufacture of narcotic substances or cultivation of narcotics for the purpose of trading, or the formation or management of a gang for the purpose of trading in narcotic substances. The same amendment provides for the death penalty as an optional punishment for trading in narcotics; the death penalty is mandatory if the narcotics involved are heroin or cocaine, if the offender provides narcotics to a person under aged 21 or uses a person under 21 in the commission of the offence, if the offender is a public official charged with combating narcotic drugs, if the offence is committed in a place of worship, an educational or correctional institution, a military camp, a prison or a public park, or if the offence is repeated.

The first execution for drug offences was carried out in Egypt on 6 July 1989 when Anwar Hussein Kassar Hussein, a 27-year-old Pakistan national, was hanged in a Cairo prison. Customs officials had found over 2 kilograms of heroin in his luggage when he entered Egypt in 1987. In a statement shortly before his execution, he said that he had been trapped; someone had given the drugs to him and he did not know he was carrying them, he said.

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<sup>10</sup> *Al Ahram*, 13 November 1985 and 4 December 1985; *Al Wafd*, 14 November 1985 and 28 November 1985.

Since 1989 Amnesty International has continued to record death sentences and occasional executions for drug offences in Egypt. In 1989, for example, more than 40 people were sentenced to death for drug trafficking. In 1992 at least 19 people, 15 of whom were foreign nationals, were sentenced to death for drug smuggling, and at least one person was sentenced to death for selling drugs. In 1994 at least two people were sentenced to death for drug trafficking.

On 24 April 1994 10 foreign nationals - four Sudanese, a Somali, a Tanzanian, a Kenyan, two Bangladeshis and an Indian - were executed for drug smuggling, according to press reports. The 10 men were said to have been hanged one after the other in a prison in Zagazig. They had been arrested in July 1988 on arrival at the port of Suez on a ship carrying large amounts of opium, hashish and heroin. They were tried in 1989 and sentenced to death but appealed against the sentence during the same year. They were retried in 1992 and the court returned the death verdicts in May 1992. Before the executions the Sudanese captain of the ship told reporters he was innocent: the owner of the ship had met him in Port Sudan and asked him to bring a shipment about which he knew nothing, he said. A Sudanese sailor said he too knew nothing about the contents of the shipment.

## **GUYANA**

The death penalty was introduced for offences related to drug trafficking under the *Narcotic Drugs and Psychotropic Substances (Control) Amendment Act 1989*. This act amended the *Narcotic Drugs and Psychotropic Substances (Control) Act 1988* by providing for the death penalty as a mandatory punishment for supplying or administering narcotics to a person under the age of 18 when that person dies as a result. These offences had previously been punishable by life imprisonment. The bill was approved by the National Assembly in July 1989 and signed on 31 December 1989.

Amnesty International has received no reports of death sentences or executions under the amended law.

## **INDONESIA**

Article 36 of the *1976 Narcotics Law* provides for the death penalty as an optional punishment for certain offences of trafficking in poppies and poppy-based narcotics, as well as any substitutes designated by the Minister of Health as narcotics. These offences are listed in Article 23, paragraphs 4 and 5, which state that it is prohibited "to illegally carry, send, transport or transit narcotics" (paragraph 4) or "to illegally import, export, offer for sale, distribute, sell, buy, deliver, receive, act as an intermediary in the purchase or sale of, or exchange narcotics" (paragraph 5).

To date, one person has been executed for drug offences since the Narcotics Law was introduced in 1976. Chan Ting Chong, a Malaysian, had been sentenced to death in 1986 for

smuggling 420 grams of heroin. Amnesty International had written to the President of Indonesia in 1986 drawing attention to new evidence casting serious doubt on his guilt but received no reply. Chan Ting Chong was executed by firing squad on 13 January 1995. His was the first execution in the country since December 1992.<sup>11</sup>

Amnesty International has drawn attention to a series of concerns surrounding another case, that of Kamjai Khong Thavorn, a Thai seaman who was sentenced to death for drug smuggling by an Indonesian court in 1988. He had been arrested in August 1987 in Samarinda, East Kalimantan, after Indonesian customs officials conducting a routine inspection of his ship discovered 17.76 kilograms of heroin in his cabin.

Evidence which emerged after his trial suggested strongly that Kamjai Khong Thavorn was either innocent or else a very minor actor in a large drug smuggling operation. According to defence lawyers, two men questioned by Thai police in June 1991 admitted that they had placed a bag containing 20 packages of "horse medicine" (heroin) in Kamjai Khong Thavorn's cabin on instructions from a Japanese national.

Serious doubts have been raised about the fairness of the trial. The original trial, as well as all subsequent appeals and legal procedures, were conducted in Indonesian, which Kamjai Khong Thavorn could not speak or understand at the time. There have been suggestions that some of the prosecution evidence may have been falsified.

Some stages of the appeals process appear to have been carried out without the knowledge or agreement of either the defendant or his lawyers. Kamjai Khong Thavorn's lawyers were not informed of his appeal to the Supreme Court or of his application for presidential clemency, both of which were rejected. The lawyers have argued that the clemency petition was legally invalid because it was submitted by prison officials without Kamjai's full agreement or understanding. The appeal included an admission of guilt and was later used by government and judicial authorities as evidence against him and as a reason for upholding the death sentence.

Kamjai Khong Thavorn was the sole breadwinner for his wife and two children and an extended family which still lives in a poor neighbourhood in Bangkok. His family only learned of his imminent execution in 1991 through media reports in Thailand.

Citing irregularities in the trial process, evidence of his innocence and humanitarian concern for his family, Kamjai Khong Thavorn's lawyers in May 1991 requested the Supreme Court to review the case. The Supreme Court refused the request in September 1992 on the grounds that there was no new evidence to be heard, and that clemency had already been denied. In early January 1993 lawyers submitted a second request for presidential clemency. The President's decision was not known to have been announced by mid-1995.

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<sup>11</sup> For further information on the case of Chan Ting Chong see the main part of this paper.

Since 1994 Amnesty International has received reports of four further death sentences imposed for drug offences. In September 1994 two Thai nationals, Saelaw Prasert and Namsong Sirilale and an Indian national, Chaubey Ayodhya Prasad, were sentenced to death on drug charges. The three were tried in Indonesian, a language which they do not speak or understand. On 17 January 1995 Tham Tuck Yin was sentenced to death for trafficking in heroin.

## **IRAN**

A mandatory death penalty was provided for recidivist production or import of narcotic drugs under a 1959 law, and for illicit trafficking in specified quantities of narcotics under an amendment of the law approved in 1969.<sup>12</sup> Many convicted drug offenders were executed under the government of the Shah of Iran. On 14 July 1974, for example, the government announced that during the past two and a half years 239 drug smugglers and pedlars had been put to death.<sup>13</sup>

After the creation of the Islamic Republic of Iran in 1979, heroin abuse and trafficking reportedly increased. The magnitude of the problem was indicated by an official figure of three million heroin addicts in mid-1980.

The use of the death penalty was one part of the authorities' response, and since 1979 there have been massive executions for drug offences, especially during periods when the government has conducted intensive anti-drug campaigns.

On 10 June 1980 Ayatollah Sadegh Khalkhali was appointed head of the Revolutionary Anti-Narcotics Court. Between the date of his appointment and 3 November 1981, a total of 459 convicted drug offenders were executed, according to an official announcement quoted in the Iranian newspaper *Ettela'at*.

Between September and December 1983 more than 200 executions were reported of people said to have been convicted of drug trafficking. During the Iranian year ending in March 1985, 140 people were executed for drug-related offences, according to a statement by the Prosecutor of the Revolutionary Anti-Narcotics Court. One hundred and ninety-seven people were said to have been similarly executed in the four weeks from 21 March 1985.

On 25 October 1988 the Council to Determine the Expediency of the Islamic Order approved the new *Anti-Narcotic Drug Law*. This law provides for a mandatory death penalty for a long

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<sup>12</sup> See "The Death Penalty: No Solution to Illicit Drugs", AI Index: ACT 05/39/86, December 1986 for details.

<sup>13</sup> *The Death Penalty: Amnesty International Report*, London, Amnesty International Publications, 1979, p. 172. For an account of the use of the death penalty for drug offences under the Shah of Iran, see Annette Destrée, "Opium et peine de mort en Iran", *Revue de Droit Pénal et de Criminologie*, Vol. 52, No. 5, February 1972, pp. 568-589.

series of drug offences including the cultivation of poppies or cannabis aimed at the production of narcotic drugs, if committed four times; smuggling, producing, distributing, or dealing in over 5 kilograms of opium or over 30 grams of heroin, hashish, morphine or cocaine, including if those amounts are reached cumulatively on up to four occasions; keeping, storing, concealing or carrying the above amounts of heroin, hashish, morphine or cocaine; recidivist offences of keeping, concealing or carrying the above amounts of opium; recidivist offences of intentionally addicting another person to heroin, hashish, morphine or cocaine; and trafficking while armed. For prisoners sentenced to death for armed trafficking or repeated trafficking in the above quantities of narcotics, the law states that "the death sentence, if deemed appropriate, shall be carried out on the premises of [the perpetrator's] residence and in public".

On 5 April 1989 the Prosecutor General was reported by Tehran Radio to have said that 313 smugglers had been executed so far, that 65 more were due to be hanged the following day, and that he hoped executions would continue until the last smuggler in the country was eliminated. By the end of the year over 1,000 people had been executed for drug-related offences.

Multiple executions were carried out on many occasions in different towns. Some executions, particularly of women, were held inside prisons, but hundreds of people were hanged in public, often in groups. In some cases, several nooses were attached to a horizontal bar which was then raised, so that the victims were hauled up by the neck in a row to die of slow strangulation. Bodies were frequently left on display for hours.

Reporting on the anti-drug campaign, an article in the *New York Times* commented that the executions and other drastic measures such as mass round-ups of addicts "signal the failure of previous efforts to stamp out rising addiction in Iran". It noted that heroin had become the prime drug among addicts during the past decade, replacing opium which used to dominate the drug scene under the government of the Shah of Iran.<sup>14</sup>

Since 1989 Amnesty International has continued to receive reports of large numbers of executions for drug offences in Iran. In 1990, more than 400 executions for drug trafficking were believed to have been carried out; over 100 of these were in a two-week period in September when an intensification of the long-running anti-drug campaign, including proposals to speed up the punishment of offenders, was announced. In 1991 Amnesty International recorded at least 775 executions of political prisoners and prisoners convicted of various crimes; according to the Iranian authorities, the majority of those executed were drug smugglers. In 1992 the Iranian press reported over 120 executions for drug offences. Since 1993 far fewer executions for drug offences and other crimes have been reported in the Iranian media, but Amnesty International believes that the true number of executions has been considerably higher than publicly reported.

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<sup>14</sup> Youssef M. Ibrahim, "Iran Puts Addicts in its Labor Camps", *New York Times*, 22 July 1989.

Executions in Iran have frequently been carried out following summary trials with no defence counsel and no right of appeal. Over the years, Amnesty International has repeatedly called on the authorities to cease using the death penalty and to conform to international human rights standards, including norms for a fair trial which Iran is formally bound to respect as a party to the International Covenant on Civil and Political Rights. Most of these appeals have gone unheeded. In a rare series of replies, an official in the headquarters of the Campaign against Narcotics in the Prime Minister's office wrote letters to Amnesty International members in 1989 denying that prisoners were executed after summary trials and claiming that Amnesty International's information was incorrect. He called attention to the duty of a government of "maintaining the state security and sanity of a country" and disputed Amnesty International's view that the death penalty violates human rights.

Despite the more than 2,900 executions for drug offences in Iran carried out in Iran since 1979, the trafficking route through Iran remains the main route used to transport heroin from Afghanistan and Pakistan to European markets, according to the report of the International Narcotics Control Board for 1994. The report also states that "Preventing the smuggling of opium and morphine into the Islamic Republic of Iran and preventing the processing of those drugs into heroin constitute great problems for that country."<sup>15</sup>

## IRAQ

According to information provided by the Iraqi Government to the United Nations in 1985,<sup>16</sup> illegal drug trafficking is punishable by death.

In March 1994 Amnesty International reported that 'Ali 'Issa, Sirwan Hassan, Ghazi 'Abd al-Majid and Qais Latif were believed to have been sentenced to death in December 1993 for drug trafficking. Amnesty International had raised their cases with the Iraqi authorities but had received no response, the organisation said. Amnesty International also learned that Kated Sabri Sa'id Shahada had been sentenced to death on drug-related charges; his sentence was upheld by the Court of Cassation on 5 February 1994. Kated Sabri Sa'id Shahada had been detained in Abu Graib Prison since 1990, Amnesty International said.

## JORDAN

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<sup>15</sup> *Report of the International Narcotics Control Board for 1994, op. cit.*, paragraphs 249, 262. According to the Iranian Government, however, law enforcement efforts have led to the elimination of clandestine heroin and morphine laboratories and the eradication of opium poppy cultivation in the country (*ibid.*, paragraphs 259, 262).

<sup>16</sup> *Capital punishment; report of the Secretary-General to the Economic and Social Council*, Addendum dated 8 January 1986, UN document No. E/1985/43/Add.1, p.10.

Under the *Law on Narcotic Drugs and Psychotropic Substances* (Law No. 11 of 1988), the death penalty is provided as a mandatory punishment for the unauthorized production, manufacture, import, export, transport, purchase or sale of narcotic drugs or psychotropic substances or the cultivation of or dealing in plants which produce such drugs or substances, if such offences are repeated, are committed in association with a minor or with the use of a minor, are committed by an official, employee or worker charged with the control of drug offences, or are committed in association with an international drug-trafficking criminal group or in conjunction with another international crime. The same law provides for an optional death penalty for dealing in narcotic drugs or psychotropic substances if such offences are repeated, are committed in association with a minor or with the use of a minor, or are committed by an official, employee or worker charged with the control of drug offences; if such offences punishable by death are committed in association with an international drug-trafficking criminal group or in conjunction with another international crime, the death penalty is mandatory.

The death penalty had previously been provided under the 1955 drugs law for a deadly assault on an official in charge of the enforcement of that law.

Amnesty International has no reports of death sentences or executions for drug offences in Jordan.

#### **REPUBLIC OF KOREA** (South Korea)

The death penalty was introduced under the *Extraordinary Regulation on Special Criminal Punishment* (1961) for certain drug offences. At present, under the *Narcotics Act* and the *Act Concerning Additional Punishment for Specified Crimes*, death is provided for as an optional punishment for the unauthorized import, export, manufacture, preparation, sale or subdivision of narcotics; for possession of narcotics for purposes of import, export, manufacturing, preparation, subdivision or trade; for attempting, plotting or preparing to commit the above offences, as listed in Article 60 of the *Narcotics Act*; and for offences under Articles 61 and 62 of the *Narcotics Act* involving such activities as the unauthorized manufacture, export, import or sale of narcotics where their price is not less than five million won. Under Article 2 of the *Narcotics Act*, "narcotics" are poppy, opium, coca leaves, their alkaloids and synthetic substitutes as specified by presidential decree, and materials containing the above unless excluded by the Minister of Health.

The *Marijuana Control Law*, which went into effect on 1 January 1977, also provides for the death penalty. Under Article 18 of the law, death is an optional punishment for the unauthorized import, export, or possession for the purpose of import or export, of cannabis products, when these offences are committed for the purpose of profit-making or habitual use.

In May 1995 the government announced its intention to submit for approval by the National Assembly a bill providing for the death penalty for the manufacture or import of psychotropic substances.

Choi Chae-do was sentenced to death for drug offences in December 1989. His sentence was commuted on appeal in April 1990.

Amnesty International has no record of any executions carried out for drug offences in the Republic of Korea.

## **KUWAIT**

Under a law introduced in 1983, the death penalty is provided for drug dealers who murder or attempt to murder a member of the security forces. Amnesty International has received no reports of death sentences or executions of convicted drug offenders under this law.

Colonel Abdullah Al Farse, then Director of the General Administration for Crime Investigation, reportedly said in a 1985 interview that although he agreed with the 1983 law, he did not support a broader use of the death penalty against drug dealers; that would make the task of the security forces very difficult, he said, as dealers would resist them to the point of death. He maintained that Kuwait already had a high rate of catching drug dealers.<sup>17</sup>

## **MALAYSIA**

The death penalty was introduced as an optional punishment for drug trafficking under a 1975 amendment to the dangerous drugs ordinance of 1952. In 1983 it became mandatory under a further amendment to the law. At present, under Section 39B of the *Dangerous Drugs Act, 1952* as amended, the death penalty is mandatory for trafficking in, offering to traffic in, or doing or offering to do any act preparatory to or for the purpose of trafficking in a dangerous drug. "Dangerous drugs" are listed in the First Schedule of the Act: they include poppy straw, opium, coca leaves, cannabis and drugs and substances derived from them.

Under Section 2 of the Act, "trafficking" includes "manufacturing, importing, exporting, keeping, concealing, buying, selling, giving, receiving, storing, administering, transporting, carrying, sending, delivering, procuring, supplying or distributing any dangerous drug". Under section 37(da), any person found, without authorization, in possession of 15 grams or more of heroin or morphine, 1,000 grams or more of opium or 200 grams or more of cannabis "shall be presumed, until the contrary is proved, to be trafficking in the said drug".

On 8 February 1984 Wong Ah Kaw, a painter, became the first person to receive a mandatory death sentence under the amended Act. He had been found guilty of possessing 79.93 grams of heroin. He was executed at Pudu Prison in the capital, Kuala Lumpur, on 3 July 1985.

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<sup>17</sup> *Al Qabas*, 15 September 1985.

The first non-Asians to be executed for drug offences in Malaysia were Brian Chambers, an Australian builder and Kevin Barlow, a welder holding dual Australian and British citizenship. They were hanged at Pudu Prison on 7 July 1986 despite appeals for clemency from the Australian and British Prime Ministers. They had been convicted of trafficking in heroin. Also in 1986, Ramli Kechik, an Indonesian fisherman, was hanged in Taiping Prison on 22 August despite strenuous efforts by the Indonesian consul in Penang to save him. He had been convicted of trafficking in 15.6 kilograms of raw opium.

In 1987 Amnesty International recorded 14 executions for drug offences in Malaysia. A further 12 executions for drug offences were recorded in 1988, 13 in 1989, and 11 in 1990.

The Malaysian statute has been criticized for providing for a mandatory death penalty for a wide range of acts defined as drug trafficking, with a presumption of trafficking for anyone found in possession of more than a specified minimum quantity of drugs and further presumptions as to what is to be taken as evidence of trafficking. In 1993 Amnesty International called attention to the case of Hassim Escandar, a Filipino immigrant worker who protested his innocence but was executed on 30 April 1993. Arrested on 23 November 1985, Hassim Escandar was convicted on the basis of two keys allegedly found on him which fitted a padlock to a bag containing about five kilograms of cannabis. The bag was found under the seat of the conductor of the bus in which Escandar was travelling with seven other passengers. The conductor and the driver of the bus were let off immediately by the anti-drug squad of the police. One other passenger was jointly charged with Escandar but was freed by the High Court judge without being called to defend himself; according to Escandar, the keys were actually found on that passenger. None of the other passengers was called to give evidence during the trial, and Escandar's defence counsel was not given the opportunity of examining them.

Commenting on the case, Amnesty International criticized the Dangerous Drugs Act because it places the onus on the accused to prove their innocence rather than on the state to prove their guilt. This contravenes a basic principle of Malaysian jurisprudence as well as international legal safeguards which state that the accused has the right to be presumed innocent until proved guilty.<sup>18</sup>

Since 1991 the rate of executions appears to have declined, while at the same time the threat of execution has been removed in numerous cases through decisions taken in the courts.<sup>19</sup> Amnesty International recorded 7 executions for drug offences in 1991, 5 in 1992 and 6 in 1993. In 1994 the organization recorded 6 executions: three Malaysian men sentenced to death in 1990 and 1991 were executed on 10 May, and on 29 July, a Singaporean, a Malaysian man and

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<sup>18</sup> Amnesty International, "Malaysia: Death of an Innocent? Death Penalty Accused Presumed Guilty", AI Index: ASA 28/01/93, June 1993.

<sup>19</sup> See Sidney L. Harring, "Death, Drugs and Development: Malaysia's Mandatory Death Penalty for Traffickers and the International War on Drugs", *Columbia Journal of Transnational Law*, Vol. 29, pp. 365-405, 1991, for a discussion of how the Malaysian judiciary has interpreted the Dangerous Drugs Act in death penalty cases.

a Malaysian woman, all convicted of trafficking in marijuana, were executed. These brought the number of reported executions for drug offences since 1975 to over 200.

Five young Filipinos have been sentenced to death under the Dangerous Drugs Act for crimes committed under the age of 18, contrary to international human rights standards which state that no one under 18 at the time of the crime may be sentenced to death. They were Basar Jikirie and Assidin Itting, both of whom were aged 17 at the time of their arrest in 1984; Kullah Lawari, under 16 at the time of his arrest in 1984; Roger Anang, aged 16 at the time of his arrest in 1986; and Rudy Jamjali, aged 17 at the time of his arrest in 1987. The five prisoners were convicted by the High Court in 1991, 1990, 1991, 1992 and 1991 respectively. Roger Anang's death sentence was commuted to life imprisonment and six strokes of the cane in October 1993, and the death sentence imposed on Basar Jikirie was commuted in April 1994. Amnesty International does not know whether the other sentences have been carried out.

During the first half of 1995 Amnesty International recorded at least 18 commutations of death sentences to prison terms as charges were amended on appeal to possession instead of trafficking. In nine reported cases, prisoners under sentence of death for drug trafficking were released on appeal, some after spending up to 10 years in prison.

According to statistics from the Home Ministry, the number of drug addicts in the country rose from 711 in 1970 to 145,685 in December 1989. Since then it has continued to increase. In August 1994 Prime Minister Mahatir reportedly stated: "Although we have tough anti-narcotics laws, the number of addicts in this country continues to grow. There are about 180,000 drug addicts in this country."

According to the report of the International Narcotics Control Board for 1994, "The increasing availability of heroin has contributed to the growing demand for that drug in Malaysia."<sup>20</sup>

## **MYANMAR**

The *Narcotics and Dangerous Drugs Law 1974* provides for the death penalty as an optional punishment for manufacturing, importing, exporting or selling narcotics and dangerous drugs, and for abetting or attempting or conspiring to commit any of the above offences. "Narcotic and dangerous drug" is defined as "any product of poppy plant, coca leaf and cannabis plants and any substance manufactured therefrom" as well as "manufactured drugs and other substances which the Government may, from time to time, by notification declare to be narcotics and dangerous drugs".

Amnesty International has no reports of death sentences imposed or of executions carried out under the law.

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<sup>20</sup> *Report of the International Narcotics Control Board for 1994, op. cit.*, paragraph 219.

## PHILIPPINES

The death penalty was provided as an optional punishment for various drug offences under the *Dangerous Drugs Act of 1972* (Republic Act No. 6425); presidential decrees in 1980 extended the offences punishable by death and made the punishment mandatory for certain offences. These provisions were invalidated by the 1987 Constitution, adopted after the fall of President Ferdinand Marcos in 1986. The Constitution states that the death penalty shall not be imposed "unless, for compelling reasons involving heinous crimes, the Congress hereafter provides for it." Following repeated calls from General (later President) Fidel Ramos and certain members of the Philippines Congress for the death penalty to be brought back, the punishment was reinstated by the *Act to Impose the Death Penalty on Certain Heinous Crimes* (Republic Act No. 7659). The Act was adopted by the Congress on 13 December 1993 and went into effect on 1 January 1994.

The new Act amends the Dangerous Drugs Act of 1972 by providing for the death penalty as an optional punishment for the unauthorized importation, sale, administration, transportation, manufacture, possession or use of drugs or maintenance of a drugs den, where the quantity of drugs involved is 40 grams or more of opium, morphine, heroin or cocaine, 50 grams or more of marijuana resin or 750 grams or more of marijuana. The death penalty is mandatory regardless of the quantity of drugs if the victim of the offence is a minor or if the drug involved in the offence is the proximate cause of the death of the victim. It is also mandatory for the above offences if the offender is a government official or employee, a police officer or a member of the armed forces, and optional for an arresting officer who misappropriates seized drugs or proceeds of the crime.

Between 1979 and the abolition of the death penalty in 1987, Amnesty International received reports of two death sentences for drug offences, imposed on two Hong Kong Chinese in 1983.

After the entry into force of the new Act in 1994, George Mina, a Canadian, was sentenced to death for drug offences on 23 September 1994. Since then Amnesty International has recorded death sentences imposed for drug trafficking on a Japanese computer salesman, Hideshi Suzuki, on 7 December 1994; on three Filipinos, Antonio Correa, Rito Gunida and Leonardo Dulay, on 13 March 1995; on a Philippine woman, Josefina Esparaz, who escaped on her way to a court hearing and was sentenced *in absentia* on 27 April 1995; on a Filipino, Edgar Lagmay, sentenced in April 1995; and on another Filipino, Ruben Montilla. Five of the prisoners sentenced to death had been convicted of transportation or possession of varying amounts of marijuana and one was convicted of smuggling amphetamines into the country.

No one has been executed in the Philippines since 1976.

## QATAR

The death penalty was introduced for drug offences under *Law No. 9 of April 1987 to Control Narcotic Drugs and Dangerous Psychotropic Substances and to Regulate their Use and*

*Trade therein.* Article 34 of the law provides for the death penalty as an optional punishment for recidivist offences of importing, exporting, producing or manufacturing narcotic drugs or dangerous psychotropic substances for commercial purposes, and for growing cannabis, poppies or coca for commercial purposes. Under the law, narcotic drugs include cannabis, opium, morphine, heroin and cocaine, while dangerous psychotropic substances include amphetamines. The death penalty is mandatory for drug-related offences if they result in physical attacks leading to death (Article 51), and for the murder of a public officer engaged in the enforcement of the Law or an attack on such an officer causing death (Article 52).

Amnesty International does not know of any death sentences imposed or executions carried out under the law.

## SAUDI ARABIA

The death penalty was introduced for drug offences in 1987. Since then at least 170 prisoners have been executed in drug-related cases after trials in which the most basic international standards for a fair trial were completely ignored.

On 18 February 1987 the Council of Senior '*Ulama* (Religious Scholars), the highest religious body in Saudi Arabia entrusted with interpreting Islamic law, issued *fatwa* (religious edict) No. 138. The edict was approved by King Fahd bin 'Abdul-'Aziz in March. The edict provides for a mandatory death penalty for smuggling or receiving drugs from abroad and an optional death penalty for recidivist distribution of drugs. The language of the edict refers simply to "drugs" and does not specify the amounts or types of drugs with respect to which a person may be sentenced to death. It states that the death penalty is provided for smugglers because of their "evil work" in "bringing much corruption and deterioration to the country".

The first execution under the new law recorded by Amnesty International was carried out in the capital, Riyadh, on 29 July 1987 when Muhaisin bin Falih bin Kami al-Muqati' was beheaded after conviction for smuggling and using drugs, as well as shooting and wounding a member of the patrol which arrested him. By the end of the year at least nine prisoners had been executed for drug offences, including two Jordanians and three Filipinos.

Cases involving the death penalty in Saudi Arabia are first heard before *al-Mahakim al-Kubra* (the General Courts) and death sentences passed by such courts are automatically referred to the Court of Appeal, whose decision is referred to the permanent body of the Supreme Judicial Council for review and approval. Final ratification is by Royal Decree. Executions of males are usually by beheading with a sharp sword, carried out in public in major towns and cities, often in a square in front of the provincial governor's palace. Executions of females are believed to be carried out by beheading or by firing squad.

Trials in death penalty cases fail to meet international norms for a fair trial. Defendants do not have the right to have a lawyer formally present during the trial. During hearings of the General Court the presiding judge questions and cross-examines witnesses and the defendants before

passing sentence. Defendants who do not speak Arabic are reportedly not always provided with adequate interpretation facilities. Many convictions may be based solely on a "confession", which in Amnesty International's view creates an incentive for interrogating officials to coerce defendants, including by torture or ill-treatment, in order to force them to "confess". Defendants are denied the most basic rights during pre-trial detention which could serve as safeguards against torture, including the right of access to lawyers and independent medical attention, prompt access to a judge, and the ability to challenge their detention before a judge, and are not given adequate time and facilities to prepare their defence. Courts in Saudi Arabia have repeatedly failed to investigate claims of torture.<sup>21</sup> These features contravene international human rights norms and exacerbate the risk of executing the innocent.

Where details of the offence are given in news reports, the prisoners executed are usually said to have smuggled drugs into the country, but there have also been occasional executions for distributing drugs. The reports sometimes mention the type of drugs involved, but the amount is seldom specified. Where the type of drug is named, it is usually heroin or hashish. In April 1989, for example, two Pakistani nationals were executed in Riyadh for attempting to smuggle hashish into the country. At least two people were executed in 1992 for smuggling hashish and at least 14 for the same offence in 1993. In an unusual case, the official news agency SPA (Saudi Press Agency) reported on 7 August 1995 that a Syrian, Mohammad al-Jabawi, had been beheaded for smuggling hallucinogenic pills into the country. Later in August, four Turks were executed for smuggling amphetamines.

The Saudi authorities have executed nationals of Afghanistan, Pakistan, India, the Philippines, Iraq, Jordan, Syria, Yemen, Chad, Nigeria and Turkey for drug offences as well as Saudi Arabians. Sometimes international relations have been disturbed when foreigners have been executed. On 14 August 1995 the Turkish foreign ministry issued a statement saying that the Saudi ambassador to Turkey had been summoned to give an explanation of the execution of four Turks despite high-level attempts by Turkey to have their lives spared. The four men had been convicted of smuggling amphetamines into the country; two of them were beheaded on 11 August and the other two on 14 August. The President of Turkey, Suleyman Demirel, had appealed for clemency to the King of Saudi Arabia. Turkish newspapers published photographs of angry friends and relatives of the four beheaded prisoners burning Saudi flags and shouting offensive slogans.

Saudi officials have repeatedly stated that executions have reduced the incidence of trafficking, but to Amnesty International's knowledge they have never released figures to support their claims. In 1988 Minister of the Interior Prince Nayef Ibn Abdelaziz was quoted by Reuters news agency as saying: "No doubt the death penalty has achieved its goal and that is evident in the drop in drug-related cases." Saudi Arabian officials said that drug smuggling into the country

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<sup>21</sup> Amnesty International, "Saudi Arabia: An Upsurge in Public Executions", AI Index: MDE 23/04/93, May 1993.

had dropped by 40 per cent after beheadings began and that smugglers were thinking twice before trying to bring in drugs, according to Reuters.<sup>22</sup>

In January 1990 Major General Ibrahim Al-Maiman, acting director general for the drug combating department, told SPA that cases of drug abuse and trafficking in the country had dropped by 50 per cent since the introduction of the death penalty. "The decision to execute drug smugglers and traffickers has had a major impact", he said. Other methods being used to combat trafficking included intercepting drug rings inside and outside the country, searching out known groups of smugglers, surveillance of land, sea and air routes to the country and cooperation with anti-drug efforts in other countries, he said.<sup>23</sup>

In January 1994 General Ahmed Mohammed Bilal, director of the public security department in the Ministry of Interior, told a Saudi-French symposium on narcotics control in Riyadh that the use of the death penalty for drug trafficking had sharply reduced the incidence of drug-related crimes. He said that the country had established a successful record of tackling addiction and peddling as well as halting the flow of narcotic and psychotropic substances largely due to the use of the death penalty, according to a report in the newspaper *Arab News*.<sup>24</sup>

These claims are belied by the increase in the use of the death penalty, especially since 1993. In 1990 Amnesty International recorded 9 executions for drug offences in Saudi Arabia. In 1991 the number of recorded executions for drug offences dropped to 3, but it rose to 13 in 1992 and 53 in 1993. The organization recorded 19 executions for drug offences in 1994 and at least 62 between 1 January and 18 August 1995.<sup>25</sup> In one eight-day period in April 1995, 25 foreigners were executed for drug smuggling, more than the total number of reported executions for drug offences the year before.

In an April 1995 statement which implicitly contradicted earlier claims of the efficacy of the death penalty against drug trafficking, the Saudi Arabian Embassy in London said that the increase in executions since the beginning of the year reflected a rise in drug trafficking. "The increase in the number of executions of drug traffickers simply indicates how this evil international drug mafia continues to spread its evil activities," Ambassador Ghazi Alogasaibi

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<sup>22</sup> Ashraf Fouad, "Gulf States Get Tough with Drug Smugglers", Reuters, 14 March 1988.

<sup>23</sup> "Drug Cases Drop by 50 Percent", *Arab News*, 13 January 1990.

<sup>24</sup> Javid Hassan, "'Death Penalty Reducing Drug-Related Crimes'", *Arab News*, 23 January 1994.

<sup>25</sup> The figures for 1995 do not include cases of prisoners convicted for a combination of alcohol and drug offences or murder and drug offences.

said. The statement was issued in response to an appeal from Amnesty International calling for a halt to executions.<sup>26</sup>

In August 1995, Crown Prince Abdullah bin Abdul-Aziz made a statement which reverted to earlier claims of the efficacy of the death penalty. As quoted by SPA, he told a weekly cabinet meeting that crime rates in Saudi Arabia were "at their lowest, especially drug [crimes] thanks to the application of capital punishment to smugglers and traffickers". The country would "continue, with God's help, to apply capital punishment to drug smugglers and traffickers", he said. He also stated that the Saudi Arabian judiciary was "independent", "fair" and "efficient".<sup>27</sup>

## SINGAPORE

A 1975 amendment to the *Misuse of Drugs Act, 1973* introduced the death penalty as a mandatory punishment for certain drug trafficking offences. Under Section 29 of the 1973 Act as amended, the death penalty is mandatory for the unauthorized traffic in, or import or export of, controlled drugs containing over 30 grams of morphine or over 15 grams of diamorphine (heroin), and for the unauthorized manufacture of morphine, diamorphine, and salts and esters thereof. Under Section 2 of the Act, to "traffic" means, without authorization, "to sell, give, administer, transport, send, deliver or distribute" or to offer to do any of these things.

Under Section 15 of the Act, "Any person who is proved or presumed to have had in his possession" more than 3 grams of morphine or more than 2 grams of diamorphine contained in any controlled drug "shall, until the contrary is proved, be presumed to have had such controlled drug in his possession for the purpose of trafficking therein". Under Section 16, any person proved to have in his or her possession, custody, or under his or her control anything containing a controlled drug, or the keys of anything containing a controlled drug, or the keys of a place or premises where a controlled drug is found "shall, until the contrary is proved, be presumed to have had such drug in his possession". Under Section 19, "If any controlled drug is found in any vehicle it shall, until the contrary is proved, be presumed to be in the possession of the owner of the vehicle and of the person in charge of the vehicle for the time being."

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<sup>26</sup> "Amnesty Concerned at Rise in Saudi Executions", Reuters, 21 April 1995.

This was not the first time that a Saudi official had referred to a rise in drug trafficking. In 1994 the US Department of State noted that Saudi government officials explained that the rise in executions in the country in 1993 was "due to the rise in drug trafficking" (*Country Reports on Human Rights Practices for 1993; Report Submitted to the Committee on Foreign Affairs, US House of Representatives and the Committee on Foreign Relations, US Senate by the Department of State...*, 103d Congress, 2d Session, Joint Committee Print, Washington, US Government Printing Office, 1994, p. 1275).

<sup>27</sup> "Saudi Says Will Continue Beheading Drug Smugglers", Reuters, 21 August 1995.

Under Section 10 of the Act, a person who abets, attempts to commit or "does any act preparatory to or in furtherance of the commission of any offence under this Act shall be guilty of such offence and shall be liable on conviction to the punishment provided for such offence".

In 1989 the Act was again amended to widen the definition of trafficking, and the mandatory death penalty was extended to new classes of drugs. Since 1990 anyone over 18 years of age found in possession of more than 30 grams of cocaine, 200 grams of hashish, 500 grams of cannabis or 1,200 grams of opium faces a mandatory death sentence.

The number of executions is believed to have risen dramatically since the beginning of 1994, although exact figures are not available as the government does not publish statistics. Amnesty International recorded 5 executions for drug offences in 1989, 3 in 1990, 3 in 1991, 3 in 1992, 7 in 1993 and 29 in 1994. In the first half of 1995 at least 26 executions for drug offences were carried out. The true figures are certainly much higher. At least 100 people are believed to have been executed for drug offences since 1975.

Despite the use of the death penalty, drug addiction has increased in Singapore. In October 1994 the Minister of Home Affairs reportedly stated that between December 1990 and December 1993 the total addict population in Singapore's five drug rehabilitation centres rose by 30 per cent to 7,400. By August 1994 the number had risen to 7,700.

## **SRI LANKA**

The death penalty was introduced as an optional punishment for drug offences under the *Poisons, Opium, and Dangerous Drugs (Amendment) Act, No. 13 of 1984*. This Act amended Section 54 and the Third Schedule of the *Poisons, Opium, and Dangerous Drugs Ordinance* so as to provide for the death penalty for the manufacture of opium, morphine, heroin or cocaine; for, without authorization, importing, exporting, possessing or trafficking in 500 or more grams of opium, 3 or more grams of morphine, or 2 or more grams of heroin or cocaine; and for abetting, attempting, preparing, or furthering the commission of any of the above offences. Under the same amendment, "traffic" means "to sell, give, procure, store, administer, transport, send, deliver or distribute" or to offer to do any of the foregoing.

In April 1987, as reported by Reuters news agency, the then President of Sri Lanka, Junius Jayewardene, addressing a regional conference on alcohol and drug abuse in the capital, Colombo, said: "I hope our legislation for serious drug offences would set an example to other countries to follow". He added: "We introduced the death sentence as a deterrent but smuggling and consumption still goes on".

Cornelius Stephanus Vanderhulst, a Dutch national, was sentenced to death for attempting to smuggle heroin in October 1986. The sentence was commuted to 15 years' imprisonment by the Court of Appeal in June 1988. Reginald Spiers, an Australian, was sentenced to death in June 1987 for heroin smuggling; he was later acquitted by the Court of Appeal.

Amnesty International recorded further death sentences for drug offences imposed on a Sri Lankan, Thenuwara Upasena, in July 1987; on a Sri Lankan, Ahamed Jaladeen Kaleel Rahuman, in September 1988; on a Pakistani, Mohamed Rasheed, in November 1994; and on three Sri Lankans in December 1994. These prisoners had been convicted of smuggling heroin in quantities ranging from 226 grams to 11 kilograms.

Sri Lanka has a long-standing practice of not carrying out executions and is classified by Amnesty International and the United Nations as a country which has abolished the death penalty in practice; the last known judicial execution was on 23 June 1976. On 20 June 1995, however, the Minister of Justice and Constitutional Affairs announced that the government was considering carrying out death sentences again for violent crimes and drug-related offences. Two days later, at a press conference on 22 June, the same minister stated that the government had not reached a firm decision regarding the resumption of executions. He added that both he and the President were personally opposed to the death penalty.

## **SUDAN**

A new narcotics act was introduced in July 1989 by the National Salvation Revolution Command Council which replaced the elected civilian government of Sudan, overthrown in a military coup in June. The act provides for the death penalty for offences involving the illegal production of and trading in hashish and opium.

Sayed Ahmed Ali Gaballa, of Egyptian origin, was convicted of dealing in heroin by a special court in the capital, Khartoum, on 23 October 1989. He was executed on 17 December 1989. Two other people were sentenced to death by special courts after being convicted of drug trafficking: Jalal Ahmed Bane was sentenced in Blue Nile region on 7 September 1989, and Hani Mohamed Hamed was convicted in Omdurman on 18 February 1990 of dealing in hashish.

On 7 June 1995 Sudanese officials announced that nine women had been sentenced to death for trafficking in hashish, according to Reuters news agency. The news agency also reported that four Nigerians found in possession of heroin had been sentenced to death in July 1994. Amnesty International does not know whether the sentences have been carried out.

## **SYRIA**

According to information supplied by the Syrian Government to the United Nations in 1979, recidivist trafficking in drugs is punishable by death.<sup>28</sup> In April 1993 the Syrian People's Council (the country's parliament) approved a new law which extended the scope of the death penalty for drug trafficking to first-time offenders. The new law provides for the death penalty for drugs cultivation, manufacture, or trading. The law came into effect in July 1993.

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<sup>28</sup> *Capital punishment; report of the Secretary-General to the Economic and Social Council*, UN document No. E/1980/9, 8 February 1980, p. 10.

One man, 'Abdallah Mahmud Hbalti, aged 21, was hanged on 3 April 1986 after being convicted of premeditated murder and drug trafficking. Since then Amnesty International has received no reports of death sentences or executions for drug trafficking.

#### **TAIWAN** (the Republic of China)

The death penalty was provided as a mandatory punishment for selling, transporting or manufacturing opium, morphine, heroin or cocaine and as an optional punishment for selling, transporting or manufacturing cannabis under the *Regulations for the Suppression of Opium and other Narcotic Drugs during the Period of National Emergency*, promulgated on 3 June 1955. It had previously been provided for drug offences in the Republic of China under regulations promulgated in 1948 and amended in 1950. In July 1992 the Legislative Yuan (Council) amended the law making the death penalty an optional rather than a mandatory punishment for drug trafficking offences. Under the current law, drug users may be sentenced to seven years' imprisonment for the first offence and may be sentenced to death upon conviction for a third offence.

Amnesty International recorded one death sentence for drug trafficking offences in 1989, five in 1990, eight in 1992, seven in 1993, three in 1994 and one in the first half of 1995. In some cases the person had also been convicted of trafficking in firearms. Two death sentences for drug smuggling were commuted to life imprisonment by the Supreme Court in 1994.

Amnesty International has recorded one execution for drug offences, carried out in 1993.

#### **THAILAND**

The death penalty was introduced for heroin trafficking under a 1961 amendment to the *Royal Act on Harmful Habit-Forming Drugs* (1979). Under Section 65 of the 1979 Act, the death penalty is mandatory for producing, importing, or exporting heroin for the purpose of distribution. Section 66 of the same act provides for the death penalty as an optional punishment for distributing or possessing for the purpose of distribution, heroin containing pure substance in excess of 100 grams.

Amnesty International has recorded 23 death sentences imposed for drug offences in Thailand since 1988. Besides Thai citizens, those sentenced have included people from Australia, Canada, Nigeria and Spain. At least seven of the sentences were later commuted.

Death sentences in Thailand are frequently commuted by the King. No one has been executed in the country since 1988.

#### **UNITED ARAB EMIRATES**

The death penalty was introduced for drug offences under *Federal Law 6/1986 Concerning the Fight against Narcotics*, which came into effect in April 1986, one month after being published in the official gazette. Under Article 50 of the law, the death penalty is provided as an

optional punishment for the leader of a gang involved in drug trafficking; it is mandatory if the offence is repeated. Article 53 provides for the death penalty for the murder of a drug enforcement officer in the course of his or her duty.

The scope of the death penalty was expanded on 24 April 1995 when the Council of Ministers approved a law providing for the death penalty for drug-related crimes previously punishable by imprisonment. The Council of Ministers was reported to have acted in accordance with a recommendation by the President, al-Shaikh Zayed bin Sultan Al Nahayan.

Amnesty International wrote to the President in May reiterating its opposition to the death penalty and asking that the law be repealed. In a reply dated 15 July 1995, an official of the Ministry of Foreign Affairs stated that the scope of the death penalty for drug trafficking had been widened "in the light of the appalling conditions and to combat the tremendous adverse impact of these crimes jeopardizing the safety, security and continuous prosperity of the society". "The widening of the scope of penalties for trafficking in drugs was justified and substantiated by the proliferation of these crimes" despite the other measures of protection which the government had taken, he said. He disputed Amnesty International's information from other countries casting doubt on the deterrent argument advanced as a justification for the death penalty for drug offences and added that "these sentences need time to have [a deterrent] effect."

Three Pakistan nationals were sentenced to death on 27 October 1992 by a court in Sharjah after being convicted of smuggling drugs into the United Arab Emirates. In February 1994 Amnesty International sent urgent appeals to the authorities on behalf of another Pakistan national who had reportedly been sentenced to death on charges of drug trafficking and had had his sentence confirmed by the Court of Appeal in Sharjah. Amnesty International does not know whether these sentences have been carried out.

## **UNITED STATES OF AMERICA**

The death penalty was introduced in 1988 in federal (national) law for drug-related murders under the *Anti-Drug Abuse Act of 1988*. This bill amended the Controlled Substances Act (21 US Code 848) by providing for the death penalty as an optional punishment for a person engaging in or working in furtherance of a "continuing criminal enterprise"<sup>29</sup> of drug trafficking who intentionally kills or orders a killing, and for a person who intentionally kills or orders the killing of a law enforcement officer in connection with a felonious drug offence. As in other recent death penalty statutes drafted to conform to US Supreme Court decisions in *Furman v.*

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<sup>29</sup> Under the Act, a person is deemed to be engaged in a continuing criminal enterprise if he or she commits a felonious drug offence which is part of a continuing series of such offences from which he or she obtains substantial income or resources and "which are undertaken by such person in concert with five or more other persons with respect to whom such person occupies a position of organizer, a supervisory position, or any other position of management" (21 US Code 848(c)).

*Georgia* (1972) and *Gregg v. Georgia* (1976), a judge or jury deciding whether to impose a death sentence must weigh mitigating and aggravating factors which are set down in the law. Mitigating factors for drug-related killings include a defendant's youthfulness, whether the crime was committed under duress, and whether another defendant equally culpable in the crime will not be punished by death. Aggravating factors include previous serious convictions and whether the killing was committed in an especially heinous, cruel or depraved manner.

The enactment of the 1988 bill was the first successful attempt to expand the death penalty into what had hitherto been the realm of the US states. In the USA, the punishment of common crimes has traditionally been a matter for state law, while federal criminal law has focussed on matters which are clearly national in scope, such as treason and military crimes. Most US states have laws which provide for the death penalty for murder, but a number of them do not. Under the 1988 law it is now possible for a person to be sentenced to death for a drug-related murder committed in a state whose legislature has hitherto rejected this punishment.

The 1988 law has been criticized as being wider than its framers intended. According to Sandra D. Jordan, "Both the legislative history and the law entitled 'Death Penalty in Case of Drug Related Killings' demonstrate clearly that this amendment was designed to reach murder committed by drug 'kingpins'. However, reading the language used in the statute reveals that the law paints with a broad brush and reaches killings that have no relationship to drug 'kingpins' or even to drugs."<sup>30</sup>

The first sentence under the 1988 law was imposed on 14 November 1991 in Birmingham, Alabama. The defendant, David Chandler, had been charged with operating a substantial marijuana enterprise with a network involving the importation, cultivation and distribution of marijuana in at least four states. He was convicted of soliciting the murders of a police informant and two other people who he believed had stolen marijuana from his fields. The man who actually killed the informant could have been sentenced to death under the 1988 law but was not: under a plea agreement with the government, he testified against David Chandler in exchange for a guarantee that he would not be subject to a death sentence.<sup>31</sup>

In 1994 the scope of the death penalty was expanded to include drug offences where no murder is committed. The *Federal Death Penalty Act of 1994*<sup>32</sup> provides for the death penalty for felonious drug offences committed as part of a "continuing criminal enterprise" and involving specified large gross receipts or specified large quantities of heroin, cocaine, marijuana, LSD, amphetamines or certain other synthetic drugs. The Act also provides for the death penalty for

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<sup>30</sup> Sandra D. Jordan, "Death for Drug Related Killings: Revival of the Federal Death Penalty", *Chicago-Kent Law Review*, Vol. 67, pp. 79-125, at p. 92.

<sup>31</sup> Jordan, *op. cit.*, pp. 120-121.

<sup>32</sup> The Federal Death Penalty Act of 1994 consists of Title VI of the Violent Crime Control Act of 1994. The death penalty is introduced under a new chapter 228 of title 18 of the US Code. The relevant sections are 18 US Code 3591-3598.

attempted killings committed or ordered by a leader of a "continuing criminal enterprise" in order to obstruct an investigation or prosecution. Mitigating factors to be considered in deciding whether to impose a death sentence include whether the crime was committed under duress, whether the defendant played only a minor part in the offence and whether another defendant equally culpable in the crime will not be punished by death. Aggravating factors include previous convictions for serious drug offences, distribution to people under aged 21, distribution near schools, using minors in trafficking, and using a firearm to threaten, intimidate, assault or injure a person.

As of 30 April 1995, six death sentences had been imposed under the 1988 law; all six prisoners remained under sentence of death. No executions have been carried out. No one has as yet been sentenced to death under the 1994 law.

## **VIET NAM**

The death penalty was introduced in December 1992 under Article 96a of the Criminal Code as an optional punishment for the offence of illegally manufacturing, concealing, trafficking in or transporting narcotic substances in a manner contrary to state regulations when the offence is committed in particularly serious circumstances.

On 28 May 1993 Wong Chi Shing, a Hong Kong resident with British nationality, was sentenced to death for allegedly smuggling five kilograms of heroin. Wong Chi Shing was executed by firing squad on 20 June 1995.

Two Vietnamese were sentenced to death in July 1993 for drug trafficking offences. Amnesty International recorded a further death sentence on 21 August 1994 for trafficking in heroin.

In March 1995 Nguyen Van Quang was sentenced to death for trafficking in 227 kilograms of opium. Later that month, Duang Van Than and Nguyen Si Tuan were executed. They had been convicted of trafficking in 35 kilograms of opium and 2.1 kilograms of heroin respectively.