The ultimate price

Despite a global trend away from capital punishment, more and more countries are expanding the death penalty to include drug offences such as dealing. **Rick Lines** on the state-sponsored drug executions which stretch the boundaries of international law

According to Amnesty International, the death penalty has been abolished in law or practice in 129 countries. Of the 68 'retentionist' countries that continue to use capital punishment, nearly half have legislation applying the death penalty for drug-related offences.

Over the past 20 years, there has been a remarkable trend towards the abolition of capital punishment worldwide, with more and more countries ending the death penalty either in law or in practice. Yet during this same period the number of countries expanding the application of the death penalty to include drug offences has increased from 22 in 1985 to at least 34 by the end of 2000. The majority of these are in the Middle East, North Africa and the Asia Pacific regions. In some countries, drug offences can carry a mandatory sentence of death.

The number of states actually carrying out executions, and the number of people put to death annually for drug convictions, is more difficult to calculate. While it is clear that not all of these countries are actually implementing the death sentences provided for in legislation, it is equally clear that a significant number of executions for drug offences take place each year. Indeed, Amnesty International has reported that 94 per cent of all known executions in 2005 took place in just four countries: China, Iran, Saudi Arabia and the USA. Each of these has legislation that allows the death penalty to be applied in drug cases.

A review of various reports from UN agencies, non-governmental organisations and media outlets shows that in recent years executions for drug offences have been carried out in countries including China, Egypt, Indonesia, Kuwait, Malaysia, Saudi Arabia, Singapore, Thailand and Vietnam. Even in states not actively executing drug offenders, death sentences for drug-related crimes continue to be pronounced.

While in some of these countries the number of executions is small, in others drug offenders constitute a significant proportion of total executions. For example, in Malaysia, between July 2004 and July 2005, 36 of the 52 executions were for drug trafficking. In 2004, Amnesty International reported that 26 of the 50 executions carried out in Saudi Arabia the previous year were for drug-related offences. The following year, Amnesty reported that "at least" 33 executions were carried out for drugs. The Government of Vietnam admitted in a 2003 submission to the UN Human Rights Committee that, "over the last years, the death penalty has been mostly given to persons engaged in drug trafficking". According to a report in the *Thanh Nien News* last November, "around 100 people are executed by firing squad in Vietnam each year, mostly for drug-related offences".

Since 1991, more than 400 people have been executed in Singapore, the majority for drug offences. The Minister for Home Affairs admitted that between 1994 and 1999, 76 per cent of all executions were drug-related. According to Reuters reports, Singapore executed 17 people for drug crimes in 2000, and 22 in 2001. Amnesty International notes that Singapore has perhaps the highest per capita execution rate in the world.

ABOVE Drug dealers, some with Aids, are paraded in China before being executed to mark International Anti-Drugs Day 2005

LEFT A women attends a vigil for Ngyuen Tuong Van just hours before his execution in Singapore

In recent years, China has used the occasion of UN's International Day Against Drug Abuse and Illicit Drug Trafficking to stage public executions of drug offenders. In 2001, over fifty people were convicted and publicly executed for drug crimes at a mass rallies, at least one which was broadcast on state television. The following year, the event was marked by 64 public executions in rallies across the country. The largest public execution took place in the south-western city of Chongqing, where 24 people were shot. In 2003, Hunan province held several mass sentencing rallies in which 16 people were sentenced to death for drugs offences and four of the most serious cases were executed immediately.

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While the typical application of capital punishment is for drug trafficking, cultivation, manufacturing and importing or exporting, the definition of capital narcotics crimes is not limited to these offences. In fact, the types of drug crimes which carry a sentence of death are broad and diverse, and, in some countries, includes possession of illicit drugs. States such as Jordan, Egypt and Syria impose a mandatory death sentence if the offender is a public official or government employee. Egypt retains a mandatory death sentence for "anyone who, by whatever means of force or deceit, induces any other person to take any narcotic substance". This is similar to a provision in Iranian narcotics control legislation prescribing the death penalty upon a repeat conviction for "intentionally causing another person to be addicted to the drugs".

While capital punishment is not prohibited under customary international law, its application

A report published in 2001 by the United Nations Commission on Crime Prevention and Criminal Justice identified the following countries with capital punishment for drug crimes: Bahrain, Bangladesh, Brunei Darussalam, China, Cuba, Democratic Republic of Congo, Egypt, Guyana, India, Indonesia, Iran, Iraq, Jordan, Kuwait, Libya, Malaysia, Myanmar, Oman, Pakistan, Philippines, Qatar, South Korea, Saudi Arabia, Singapore, Sri Lanka, Sudan, Syrian Arab Republic, Taiwan, Tajikistan, Thailand, United Arab Emirates, the United States (federal law) Uzbekistan and Vietnam.

is limited in significant ways. Under Article 6(2) of the *International Covenant on Civil and Political Rights* (ICCPR), the penalty of death may only be applied for the "most serious crimes". Over the past 25 years, human rights bodies have interpreted Article 6(2) in a manner to limit the number and types of offences for which a penalty of death is allowable under international human rights law.

In reviews by the UN Human Rights Committee, the UN Secretary General and various UN Special Rapporteurs on human rights into the interpretation of "most serious crimes", several areas of consensus have emerged as to the threshold necessary to satisfy the requirements of Article 6(2) of the ICCPR. These were: 'most serious crimes' should be interpreted in the most restrictive and exceptional manner possible; the death penalty should only be considered in cases where the crime is intentional, and results in lethal or extremely grave consequences; and that countries should repeal legislation prescribing capital punishment for economic, non-violent or victimless offences.

Do drug-related offences, then, meet the threshold of 'most serious crimes'? While many retentionist states argue that drug crimes fall under this umbrella, it is clear that this is not the perspective of international human rights monitors and treaty bodies.

For example, the UN Human Rights Committee, which monitors state compliance with the obligations under the ICCPR, has questioned the application of capital punishment to drugs. In its 1995 report on Sri Lanka, the Committee specifically lists drug-related offences among those that "do not appear to be the most serious offences under article 6 of the ICCPR." The Committee's 1994 report on Kuwait also expresses "serious concern over the large number of offences for which the death penalty can be imposed, including very vague categories of offences relating to internal and external security as well as drug-related crimes." Most recently, the Human Rights Committee's 2005 report on Thailand states definitively that drug related offences do not meet this threshold, and expresses its "concern that the death penalty is not restricted to the 'most serious crimes' within the meaning of article 6, paragraph 2, and is applicable to drug trafficking".

The conclusion that drug offences fall outside of the scope of 'most serious crimes' was found this year in the annual report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions. This conclusion builds upon previous work of the Special Rapporteur, which recommended in 1996 that "the death penalty should be eliminated for crimes such as economic crimes and drug-related offences. In this regard, the Special Rapporteur wishes to express his concern that certain countries, namely China, the Islamic Republic of Iran, Malaysia, Singapore, Thailand and the United States of America, maintain in their national legislation the option to impose the death penalty for economic and/or drug-related offences."

From the perspective of the UN human rights system there is little to support the suggestion that drug offences meet the threshold of 'most serious crimes'. In fact, the weight of opinion indicates clearly that drug offences are not 'most serious crimes' as the term has been interpreted, and that therefore the execution of people for drug-related offences violates international human rights law. By carrying out death sentences in such dubious legal circumstances, retentionist states who execute drug offenders do so in situations likened by a UN Special Rapporteur to summary or arbitrary executions.

Despite this fact, and the significant number of executions occurring annually on drugs charges, there has been little public outcry. Indeed, the dearth of international attention paid to human rights abuses against people who use drugs suggests that some of the same moral blinders that drive repressive policy and legislation have also impeded the development of progressive human rights discourse in this area. Addressing this situation though established international mechanisms is complicated by the inherent contradictions faced by the UN as the body tasked by the international community with both promoting human rights worldwide, and promoting the international narcotics control regime which either drives, or provides ideological justification for, these abuses.

It is often stated that the progress towards the abolition of capital punishment over the past 20 years is a dramatic example of the success of the human rights movement worldwide. If this is indeed that case, then the expansion of capital punishment for drugs during this same period illustrates an example of a dramatic failure. This situation demands attention not only among abolitionists, but indeed points to the need for the human rights movement to speak out on state abuses against people who use drugs.

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'BARBARIC': AUSTRALIA FAILS IN BID TO SAVE LIFE OF DRUG RUNNER

The most high profile state drug execution in recent times was that of Australian drug runner Nguyen Tuong Van, put to death in Singapore in December 2005.

Van, 25, of Vietnamese descent, was hanged at Changi prison despite international outrage and repeated pleas for clemency from the Australian government.

He was convicted in 2002 of carrying nearly 400g (14 ounces) of heroin at Singapore airport while travelling from Cambodia to Australia. Australian PM John Howard said the execution would harm links between the people of Australia and Singapore. Australian Attorney-General Philip Ruddock had earlier condemned the execution as "barbaric".

A vigil by anti-death penalty campaigners took place outside the prison while hundreds of supporters gathered in Nguyen's home city of Melbourne at a church to mark the moment of his execution. At the same time, dozens of people held a silent vigil outside the Singapore High Commission in the capital Canberra.

Singapore has some of the strictest drug trafficking laws in the world, and anyone found with 15g of heroin faces a mandatory death penalty.

Nguyen maintained he had smuggled the drugs to earn enough money to pay off legal bills of A$30,000 incurred by his twin brother, a former heroin addict.

One of Nguyen's lawyers, Lex Lasry, described the execution as a "mockery of justice", pointing out that his client had spent two years in a rehabilitation centre.

According to Amnesty International, about 420 people have been hanged in Singapore since 1991, mostly for drugs offences. Nguyen was the first Australian to be executed overseas in more than a decade.