

**Submission to the United Nations Special Rapporteur on
extrajudicial, summary, or arbitrary executions**

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Reporting organisation:



Harm Reduction International is a leading NGO dedicated to reducing the negative health, social and legal impacts of drug use and drug policy. We promote the rights of people who use drugs and their communities through research and advocacy to help achieve a world where drug policies and laws contribute to healthier, safer societies.

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Harm Reduction International welcomes the opportunity to provide the Special Rapporteur on extrajudicial, summary, or arbitrary executions with information on the imposition of the death penalty and its impact to help with the preparation of his forthcoming report. This submission will focus on the death penalty for drug offences and the treatment of individuals sentenced to death for drug offences in particular. Because of a widespread lack of transparency on the phenomenon, all figures are minimum confirmed figures, likely to represent only a fraction of actual death sentences, executions and death row populations.

Global picture

As of March 2022, 35 countries and territories prescribe the death penalty as a punishment for drug offences in their legislation, in violation of international human rights and drug control law.¹ In 12 countries, death is the mandatory punishment for at least certain drug offences.² There have been a minimum of 3,563 confirmed drug-related executions worldwide in the last decade, and at least 3,000 people are currently believed to be on death row for drug offences; actual figures are likely to be significantly higher. Many of these individuals have been there for a decade or more, and hundreds more continue to be sentenced to death every year, often following unfair judicial procedures. In the last four years alone, at least 779 people have been sentenced to death for drug offences. The global picture, however, remains very much incomplete due to a severe lack of transparency on, or outright censorship of, information related to sentencing and executions, particular in China, Vietnam and North Korea.

Many if not most individuals charged and sentenced to death for a drug offence are from poor and/or marginalised socio-economic backgrounds, and are from ethnic or racial minorities or are foreign nationals. A key reason for this is the nature of the drug market, combined with how drug offences are defined and the drug offences which are punishable by death. Punishment for drug offences is typically based on possession/vicinity to the drug, and on the class and weight of the substance. This is however inadequate and counterproductive, as normally those within the drug market who carry drugs – especially high quantities – are those in the lowest position in the drug hierarchy and may have been deceived or coerced into taking part in drug-related activities.

Treatment of individuals on death row for drug offences

a) Access to legal representatives

Due to their limited resources, capital drug defendants often cannot afford to hire a lawyer of their own choosing. Limited or inadequate legal services mean that they often do not have access to competent, suitably experienced and effective legal representation. In extreme cases, the right to legal counsel is denied by law, or as a consequence of capital drug cases being heard in special courts in proceedings in which the defendant's fair trial rights are even more limited. Poor access to adequate legal assistance not only exposes capital drug defendants to an increased risk of torture or other ill-treatment to extract confessions, but it also exposes them to a higher risk of being sentenced to death and executed following grossly unfair trials.

While the information provided below generally relates to systemic barriers to accessing legal representatives **before or during sentencing** in countries that sentence people to death for drug offences, it is included here because these play a central role in the imposition of death sentences for drug offences and are therefore relevant to the treatment of individuals on death row. In addition, these barriers often also relate to accessing legal representatives for appealing a death sentence.

In **Malaysia**, where at least 67% of the death row population in 2021 was convicted for drug offences,³ access to legal representatives is considerably obstructed, particularly for those who cannot afford to hire a lawyer independently. According to research published by Amnesty International in 2019, legal representatives are

¹ For a list of states see HRI's most recent report: https://www.hri.global/files/2022/03/09/HRI_Global_Overview_2021_Final.pdf. Under international human rights law and standards, the death penalty may only be applied - in states that retain this punishment - to the most serious crimes. It has been clarified that drug offences, as with all crimes not involving intentional killing, do not qualify as such. Thus, any law that permits the imposition of a death sentence for drug offences is inconsistent with a state's duty to respect the right to life.

² Brunei Darussalam, Iran, Jordan, Kuwait, Lao PDR, Malaysia, Myanmar, Oman, Singapore, Sudan, United Arab Emirates, Yemen.

³ HRI Global overview 2021

reportedly not assigned to a case until the trial is due to start, leaving defendants without legal assistance immediately following arrest, during questioning and for pre-trial periods that may extend from two to five years.⁴ This also limits/restricts defendants' ability to prepare a proper defence strategy.

People arrested for drug offences in **Indonesia** are often either not permitted nor provided access to legal representatives until weeks or months after their arrest.⁵ Out of 100 death penalty cases analysed by Institute of Criminal Justice Reform (ICJR) between 2017 and 2019, legal assistance at the investigation phase was only confirmed in 11.⁶ The ICJR report also revealed that, because defendants generally cannot afford to pay for a lawyer of their choosing, most lawyers in capital drug cases in Indonesia are state-appointed.⁷

In **Iran**, drug-related cases are dealt with in the Islamic Revolutionary Courts, which reportedly operate with considerably lower transparency and guarantee fewer human rights standards than ordinary courts in the country.⁸ As is the case in many other drug-related trials around the world, many defendants charged with drug offences in Iran reportedly rely on court-appointed lawyers as they lack the funds to pay for their own lawyer.⁹ According to The Foreign Policy Centre, most people accused of drug-related offences have reported not having access to legal representatives throughout their detention and trials, or only meeting their court-appointed lawyer during trial.¹⁰

In **China**, the role and independence of lawyers is so restricted by the state that effective legal counsel simply cannot be provided in death penalty cases.¹¹ Chinese lawyers report barriers to providing effective legal representation, including obstacles to meeting their clients and accessing information about the case, limited disclosure by the prosecution, restrictions on conducting their own defence investigations, restrictions on presenting potentially mitigating evidence and calling witnesses, and having their submissions discounted by judges.¹²

Access to legal representatives is also restricted in **Pakistan**. Public defence (legal aid provided by the state) is reportedly inadequate, with legal aid provided too late – when provided at all – to a significant number of defendants.¹³ It is reportedly common for defendants to be without access to legal counsel following arrest (and during questioning) until they make their first court appearance, when “judges appoint public defenders, who can be the first lawyer they see in the courtroom, regardless of their existing caseload of their qualifications to take on that particular case”.¹⁴

All barriers to accessing competent legal representatives also severely compromise the defendant's right to appeal. In China, for example, the participation of lawyers in the appeal process is reportedly limited, with the lack of comprehensive legal aid disproportionately impacting socio-economically marginalised defendants.¹⁵ In a survey of 255 death penalty cases reviewed by the Supreme People's Court between 2014 and 2016, only 9% had legal counsel.¹⁶ This is reported to be one of the factors behind the court's incredibly

⁴ Amnesty International (2019) *Fatally Flawed: Why Malaysia Must Abolish the Death Penalty*, 28. London: Amnesty International.

⁵ Amnesty International (2015) *Flawed Justice: Unfair Trials and the Death Penalty in Indonesia*, 25. London: Amnesty International.

⁶ ICJR (January 2019) *Menyelidik Keadilan Yang Rentan: Hukuman Mati dan Penerapan Fair Trial di Indonesia*, 161. Jakarta: Institute for Criminal Justice Reform. Available from: <http://icjr.or.id/data/wp-content/uploads/2019/01/Menyelik-Keadilan-Yang-Rentan.pdf>

⁷ Communication with Institute for Criminal Justice Reform staff member, September 2019.

⁸ Javid-Tehrani, B (February 2017) 'Fair trials for the accused in drug-related offences.' In: Danesh, T and Amiri-Moghaddam, M (eds) (2017) *Iran Human Rights Review: Due Process*, 45. London: The Foreign Policy Centre. Available from: <https://fpc.org.uk/wp-content/uploads/2017/02/IHRR-Due-Process.pdf>.

⁹ *Ibid*, 44.

¹⁰ *Ibid*, 44.

¹¹ The Rights Practice (February 2019) *Respect for Minimum Standards? Interim Review of the Death Penalty in China*, 7, 29,30. London: The Rights Practice.

¹² *Ibid*.

¹³ Rousselot, J (October 2019) *Punished for Being Vulnerable: How Pakistan Executes the Poorest and the Most Marginalized in Society*, 17.

Paris/Lahore: International Federation for Human Rights/Human Rights Commission of Pakistan Available from: http://hrcp-web.org/hrcpweb/wp-content/uploads/2019/10/Punished-for-being-vulnerable_FIDH-HRCP.pdf.

¹⁴ *Ibid*.

¹⁵ The Rights Practice (February 2019) *Respect for Minimum Standards? Interim Review of the Death Penalty in China*, 7. London: The Rights Practice.

¹⁶ *Ibid*, 36.

low reversal rate. In the same sample, death sentences with immediate execution (as opposed to suspended sentences)¹⁷ were approved in 250 (98%) of 255 cases.¹⁸

With detention facilities worldwide now imposing severe restrictions on prisoners and limiting visits to prevent the spread of **COVID-19**, legal representatives have faced even more barriers to meeting with their clients. Lawyers at Justice Project Pakistan indicated that during the COVID-19 pandemic “one of the main challenges presented was through the initial suspension of interviews of prisoners with their family members and legal counsel and lack of alternative means of audio-visual communications, which meant a lack of access for prisoners to their legal representatives.”¹⁹ Lawyers in Sri Lanka, Pakistan, and Saudi Arabia faced similar obstacles,²⁰ with the latter two reporting that restricted access to their detained clients has prevented them from discussing and developing effective defence strategies.²¹

b) Torture and coerced confessions

Despite clear international law as well as state laws prohibiting it, instances continue to emerge of torture and other ill-treatment on the part of police and state officials as a means of gathering information and evidence against suspects arrested on drug charges in countries where people are sentenced to death for drug offences, including Malaysia, Indonesia, Saudi Arabia, Iran, and China.

While the use of torture to extract confessions is prohibited by Iran’s constitution,²² the criminal justice system continues to rely on confessions to convict, and the use of torture and ill-treatment is reportedly widespread, particularly in capital drug cases. Rights groups report that almost all prisoners who are arrested for drug offences are kept in solitary confinement and are subjected to torture during the investigation phase that follows their detention, while being denied access to a lawyer.²³ According to testimonies received by Iran Human Rights, people facing the death penalty for drug offences are routinely “tortured in various ways and beaten with wooden sticks, hoses and cables, hung by their hands from the ceiling for hours while being beaten, [or have] spent weeks in solitary confinement with handcuffs and shackles”.²⁴ In many cases, the ‘confessions’ elicited during detention have been the only evidence submitted to judges.²⁵ An amendment to the Anti-Narcotics Law limiting the use of capital punishment was introduced in 2017, but it has been criticised for its failure to address credible and systematic reports of torture and ill-treatment suffered by those arrested for drug offences with the aim of forcing confessions.²⁶ Iran’s laws on investigating allegations of torture remain deeply flawed, and no procedures for the automatic investigation into allegations of torture and ill-treatment when they are brought to the attention of authorities are foreseen.²⁷

In **China**, the use of evidence obtained through torture has been explicitly prohibited since 2012.²⁸ Any confession obtained without audio or video recording is considered illegal, and new regulations were

¹⁷ The term ‘suspended sentence’ refers to the sentence of *sihuan*. At the time of sentencing, the judge can decide whether a death sentence should result in immediate execution or if it should be suspended. Although both sentences are seen as belonging to the same category of the death penalty, in the case of a suspended sentence, after the two-year suspension period has elapsed, the court will reduce the sentence to indeterminate detention or a 25-year sentence in cases of significant meritorious service. Once the sentence has been commuted, the prisoner will normally be eligible for periodic sentence reductions or parole. Thus the decision to give a *sihuan* sentence over immediate execution is generally equivalent to a life sentence. For more information on this, see The Rights Practice (February 2019) *Respect for Minimum Standards? Interim Review of the Death Penalty in China*, 13. London: The Rights Practice.

¹⁸ Ibid.

¹⁹ Personal Communication with Justice Project Pakistan, 2020

²⁰ Anonymous, Personal Communication, 2021. Hewamanna, P., Personal Communication, 2020.

²¹ Personal Communication with Justice Project Pakistan, 2020.

²² Article 38.

²³ ECPM and Iran Human Rights (2019) *Annual Report on the Death Penalty in Iran 2018*, 18. Paris: Ensemble Contre la Peine de Mort. Available from: <http://www.ecpm.org/wp-content/uploads/Rapport-iran-2019-GB-BD.pdf>.

²⁴ Javid-Tehrani, B (February 2017) ‘Fair trials for the accused in drug-related offences.’ In: Danesh, T and Amiri-Moghaddam, M (eds) (2017) *Iran Human Rights Review: Due Process*, 45. London: The Foreign Policy Centre.

²⁵ Danesh, T and Amiri-Moghaddam, M (February 2017) ‘Introduction: due process and rule of law,’ 10. In: Danesh, T and Amiri-Moghaddam, M (eds) (2017) *Iran Human Rights Review: Due Process*, 45. London: The Foreign Policy Centre.

²⁶ ECPM and Iran Human Rights (2018) *Annual Report on the Death Penalty in Iran 2017*, 20. Paris: Ensemble Contre la Peine de Mort. Available from: <http://ecpm.org/wp-content/uploads/Rapport-iran-2018-gb-090318-MD2.pdf>.

²⁷ Abdorrahman Boroumand Center and Harm Reduction International (28 March 2019) *Joint Stakeholder Submission to the Working Group for the Universal Periodic Review*, Third Cycle, 4.

²⁸ Criminal Procedure Law of the People’s Republic of China, as amended in 2012, Articles 54-58. Available from: <https://www.cecc.gov/resources/legal-provisions/criminal-procedure-law-of-the-peoples-republic-of-china>.

introduced to strengthen this prohibition in 2017.²⁹ As reported by The Rights Practice, while these steps were widely viewed as a sign of progress among Chinese lawyers and scholars,³⁰ torture and ill-treatment are still considered to be deeply entrenched in China's criminal justice system.³¹ At the same time, judges reportedly remain reluctant to discount evidence provided by the police, and the overreliance on confessions to bring about convictions persists.³² The result is a system that has been criticised for incentivising coerced confessions and producing wrongful convictions, including cases that result in executions.³³ The conviction rate of Chinese courts is estimated to be 99.9%.³⁴ The Dui Hua Foundation has reported on a number of cases in which suspects' silence in response to police questioning is taken as incriminating ('zero confessions') in capital drug cases in particular, again signalling that the role of confessions in China remains problematic.³⁵

c) Conditions of detention

Conditions of detention on death row vary considerably between states, regions, and prisons. However, individuals awaiting execution systematically endure abusive and dehumanising conditions. Below are some of the most commonly reported violations in countries where people are sentenced to death for drug offences.

i) Physical and psychological violence, and cruel and inhuman conditions of detention

In 2019, **Malaysia, Vietnam,**³⁶ **Iran,**³⁷ and **Egypt,**³⁸ combined, held at least 6,200 people on death row for drug offences. In these countries, death row prisoners are often in total isolation for up to 23 hours a day. In **China**, where death sentences can be imposed for producing or trafficking as little as 50 grams of heroin,³⁹ death row inmates live shackled by their hands and feet.⁴⁰

ii) Prison overcrowding, denial of food and water, and unsanitary conditions of detention

In **Pakistan**, home to one of the largest death row populations in the world, eight-by-ten foot cells are shared by up to ten prisoners for 22 hours a day, while the other two hours are spent walking, handcuffed, around the prison.⁴¹ Prisoners in **Egypt** report lengthy periods in unhygienic conditions (including lack of toilets) and denial of medical assistance, resulting in the spread of infectious diseases.⁴² In **Vietnam**, 87 drug-related death sentences were reported by media and courts in 2021, likely a fraction of those imposed. The pace of death sentencing is such that it is taking a toll on available infrastructure in the country: according to a government report, there are 700 cells dedicated to death row prisoners, but a sharp increase in death sentences - roughly 30% - is leading to overcrowding.⁴³

²⁹ The Rights Practice (February 2019) *Respect for Minimum Standards? Interim Review of the Death Penalty in China*, 22,23. London: The Rights Practice.

³⁰ *Ibid.*

³¹ UN Committee against Torture (15 June 2015) *List of Issues in Relation to the Fifth Periodic Report of China*, UN Doc. CAT/C/CHN/Q/5/add.1, para 3.

³² *Ibid.*; The Rights Practice (February 2019) *Respect for Minimum Standards? Interim Review of the Death Penalty in China*, 22. London: The Rights Practice.

³³ Dui Hua (6 June 2018) 'Mixed signals in report of "zero confession" executions.' *Dui Hua Human Rights Journal*. Available from: <https://www.duihuahrjournal.org/2018/06/mixed-signals-in-reports-of-zero.html>.

³⁴ The Rights Practice (February 2019) *Respect for Minimum Standards? Interim Review of the Death Penalty in China*, 21. London: The Rights Practice.

³⁵ Dui Hua, (6 June 2018) 'Mixed signals in report of "zero confession" executions.' *Dui Hua Human Rights Journal*.

³⁶ Jenny Vaughan and Tran Thi Minh Ha, "Death Row Art: A Rare Glimpse inside Vietnam's Secret Jails," *The Jakarta Post*, March 29, 2018, <https://www.thejakartapost.com/seasia/2018/05/29/death-row-art-a-rare-glimpse-inside-vietnams-secret-jails.html>

³⁷ Death Penalty News, "Iran: The Death Penalty Is an Inhumane Punishment for Death Row Prisoners, Their Families and Society as a Whole," *Striving for a World without Capital Punishment* (blog), October 11, 2018, <https://deathpenaltynews.blogspot.com/2018/10/world-day-2018-death-penalty-inhumane.html>

³⁸ Ensemble Contre la Peine de Mort [ECPM] and Iran Human Rights [IHR], "Annual Report on the Death Penalty in Iran 2017," March 21, 2018, <http://files.server.idpc.net/library/ECPM-IHR-%20Iran%20report%202017.pdf>. Page.35

³⁹ China, "Criminal Law," § Article. 347 (1979).

⁴⁰ The Cornell Centre on the Death Penalty World Wide, "Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty," A Report of the Alice Project, September 2018, <https://www.deathpenaltyworldwide.org/pdf/judged-for-more-than-her-crime.pdf>. Page 21

⁴¹ <https://www.aljazeera.com/indepth/features/2017/04/world-largest-death-row-170411075033482.html>

⁴² Ensemble Contre la Peine de Mort [ECPM] and Iran Human Rights [IHR], "Annual Report on the Death Penalty in Iran 2017." Page. 36

⁴³ Vietnam Net (10 September 2021), 'The Ministry of Public Security put into use 11 death penalty execution houses' [translated] *Vietnam Net*, <https://vietnamnet.vn/vn/thoi-su/bo-cong-an-dua-vao-su-dung-11-nha-thi-hanh-an-tu-hinh-tiem-thuoc-doc-773540.html>

iii) Uncertain waiting times for execution and undue restrictions on contact with the outside world

The process leading to execution can cause considerable anxiety and suffering, for both prisoners and their families. Prisoners frequently wait on death row for years, if not decades;⁴⁴ they may be informed of their execution date at the last minute, allowing little or no time to say goodbye to their families – a practice considered “inhuman and degrading”.⁴⁵ Some prisoners have their execution announced and then suspended multiple times.⁴⁶ In **Vietnam**, the panic and mental health challenges experienced by people awaiting execution has, in some cases, led to self-harm or even suicide, as well as physical health challenges including heart disease, tuberculosis, HIV/AIDS, strokes, and now COVID-19 (leading to at least one death).⁴⁷ Many spend a long time on death row in Vietnam, with a local expert qualifying this uncertain wait as “more torture than the death penalty.”⁴⁸

iv) Women on death row

A 2018 report by the Cornell Center on the Death Penalty Worldwide⁴⁹ highlighted the particularly harsh conditions that women endure on death row, and found that drug offences are the second most common crime for which women are on death row (after homicide). In **Indonesia**, women awaiting executions share overcrowded cells with up to 30 other women, and are often denied adequate basic healthcare, including sexual and reproductive health. Their experience exemplifies that of many women sentenced to death for drug offences: “Three of the six [women on death row for drug offences] were drug mules who were tricked or coerced into smuggling drugs and two more were arrested with their husbands and denied any involvement in their partners’ drug dealing.”

Overcrowding is a serious concern in prisons in **Thailand** where, at the end of 2018, 76 out of 83 women on death row were convicted of drug offences. Women on death row share their cells with the general female prison population, in such small spaces that they must take turns to lie down to sleep on the floor. In **Iran**, where at least 89 women were hanged for drug offences in the past 18 years,⁵⁰ conditions of detention are described as “inhuman”, “catastrophic”, and “medieval”.⁵¹ Local civil society reports a disturbing range of abuses, including stripping and beatings, flogging, hanging, isolation in total darkness for weeks, forced removal of nails, and denial of food.⁵²

Women on death row tend to endure worse conditions than men in the same position, especially concerning access to food, water, and sanitation. Death row prisoners in **Indonesia** often survive on a calorie deficit diet, while in **India** female prisoners receive less food of poorer quality than male prisoners. Women face additional obstacles in accessing healthcare, while gender-specific treatment is often simply non-existent. There are reports of women on death row being forced to give birth alone in both Myanmar and Thailand. Finally, due to unequal, gendered power dynamics between the prisoners and the prison personnel, women are vulnerable to mental, physical, and sexual violence.

⁴⁴ Among others, see: Project 39A, “Death Penalty India Report, Vol.1” (National Law University, Delhi, n.d.); Vietnam Committee on Human Rights [VCHR], “‘Shrinking Spaces’: Assessment of Human Rights in Vietnam During the 2nd Cycle of Its Universal Periodic Review” (France: Paris, February 2018), <http://queme.org/app/uploads/2018/02/Shrinking-spaces-VCHR-2018-EN.pdf>

⁴⁵ UN Commission on Human Rights, Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions: Transparency and the Imposition of the Death Penalty, 24 March 2006, E/CN.4/2006/53/Add.3, para 32.

⁴⁶ http://www.worldcoalition.org/media/resourcecenter/EN_FactSheet_WD2018, 6;

<https://www.amnesty.org/en/latest/campaigns/2018/10/death-penalty-cruelty-a-stain-on-governments/>

⁴⁷ Vietnam Committee for HIV/AIDS Prevention and Control, and Prevention and Control of Drugs and Prostitution (11 September 2021), ‘Many difficulties in executing the death penalty’ [translated], <https://tiengchuong.chinhphu.vn/nhieu-kho-khan-trong-thi-hanh-an-tu-hinh-11335972.htm>

⁴⁸ Ibid.

⁴⁹ All the information in this subsection, unless otherwise specified, builds upon the report: The Cornell Centre on the Death Penalty World Wide (2018), “Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty.”

⁵⁰ Ensemble Contre la Peine de Mort [ECPM] and Iran Human Rights [IHR], “Annual Report on the Death Penalty in Iran 2017.”

⁵¹ The Abdorrahman Boroumand Centre [ABC] for Human Rights in Iran, “Iran’s Drug Policy Reform Briefing Paper,”

⁵² Iran Human Rights Monitor [Iran HRM], “Cruel And Inhuman; Executions In Iran Annual Report on the Death Penalty in Iran, October 2018,” October 9, 2018, <https://iran-hrm.com/index.php/2018/10/08/cruel-and-inhuman-executions-in-iran/>