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THE DEATH PENALTY FOR DRUG OFFENCES: PULLING BACK THE CURTAIN TO EXPOSE A FLAWED REGIME

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ABSTRACT:

The intersection between drug control and the death penalty represents a key nexus for human rights and drug reform advocacy, and constitutes one of the most visible examples of the link between abusive law enforcement and drug control in the current period. The issue has emerged as a flashpoint of international debates on drugs and is one that raises important questions and challenges for both ‘abolitionist’ countries that oppose the death penalty and ‘retentionist’ States that continue to execute people. The death penalty for drug offences cannot be dismissed as simply an internal matter for States. Not only do executions for drug offences violate significant international human rights legal protections, domestic capital punishment laws in many cases cannot be separated from the influence of the international drug control treaty regime. This chapter will explore the question of the death penalty for drug offences, and the challenges it presents for the international drug control regime more broadly.

KEYWORDS:

1. Death penalty
2. Drug offences
3. Human rights
4. Drug enforcement
5. International drug control regime
6. Corporal punishment

Main Body:

The death penalty for drug offences is one of the most significant and politically charged issues within the current global drug reform debate. As described by one leading scholar, ‘the death penalty, today as in the past, symbolizes the ultimate power of the state, and of the government of society, over the individual citizen’ (Bedau, 1987). At the same time, drug control - as both a policy objective and body of law - serves to legitimise and centralise the authority of the State (Lines and Barrett, 2018). Indeed, the shared international mission to suppress drug use and drug markets provides not only an operational framework through which the State can exercise coercive social control - including capital punishment - but also an ideological and moral justification for those control measures. The intersection between drug control and capital punishment therefore represents a key nexus for human rights and drug reform advocacy, and constitutes one of the most visible examples of the link between abusive law enforcement and drug control in the current period. The issue has emerged as a flashpoint of international debates on drugs, such as the 2016 United Nations General Assembly on the world drug problem (UNGASS), and is one that raises important questions and challenges for both ‘abolitionist’ countries that oppose the death penalty and ‘retentionist’ States that continue to execute people.

While nearly invisible within the drug control discourse a decade ago, debates on the death penalty have in recent years dominated the United Nations drug regime. Both the United Nations Office on Drugs and Crime and International Narcotics Control Board have moved from silence to public opposition to the practice. Annual meetings of the United Nations Commission on Narcotic Drugs and the 2016 UNGASS have become fora for sometimes heated debates between abolitionist and retentionist governments. At the same time, the UN human rights mechanisms, experts and bodies has slowly begun to embrace considerations of drug enforcement within its mandate, with the Office of the UN High Commissioner on Human Rights playing a particularly vocal role on the death penalty and other abuses linked to drug control.

Despite the growing chorus calling for its abolition, a small and increasingly isolated group of countries continues to kill hundreds of people for drug offences every year (Sander, 2018). Indeed, at the same time that high level debates on the the death penalty for drugs have become more common, many of these retentionist States have stepped up their rates of executions, showing the disconnect that often exists between global policy discourse and the domestic behaviour of States. However, the death penalty for drug offences cannot be dismissed as simply an internal matter for States. Not only do executions for drug offences violate significant international human rights legal protections, as will be explored below, domestic capital punishment laws in many cases cannot be separated from the influence of the international drug control treaty regime. This chapter will explore the question of the death penalty for drug offences, and the challenges it presents for the international drug control regime more broadly.

The death penalty for drug offences in international law

The application of the death penalty for drug-related offences gives rise to a host of serious human rights concerns. While the use of capital punishment is not absolutely prohibited under international human rights law, its lawful application is subject to significant restrictions and safeguards (United Nations Economic and Social Council, 1984). The most substantive of these is found in Article 6(2) of the International Covenant on Civil and Political Rights (1966), which states that ‘[i]n countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes’. Since the Covenant entered into force in 1976, the interpretation of ‘most serious crimes’ has been refined and clarified by UN human rights bodies in an effort to limit the number of offences for which a death sentence can be lawfully applied (Lines, 2010). Today, it is widely accepted by human rights authorities that the term ‘most serious crimes’ must be understood to mean crimes involving lethal intent and resulting in death – in other words, intentional killing (Heyns, 2012; Human Rights Committee, 1993).

The Death Penalty for Drug Offences: Pulling Back the Curtain to Expose a Flawed Regime

The question then becomes, do drug offences (absent those that include violence) meet the threshold of 'most serious crimes' under international human rights law? The clear consensus among the leading human rights authorities is that they do not. The UN Human Rights Committee, the body mandated to interpret the Covenant and monitor its implementation at national level, has on several occasions concluded that drug offences cannot be characterised as 'most serious crimes' (Human Rights Committee, 2005; Human Rights Committee, 2007; Lines, 2010). This position has been supported by the UN Secretary General (2015), UN Special Rapporteurs on extrajudicial, summary or arbitrary executions (Ndiaye, 1997; Alston, 2007), the former UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak (2009), and the former UN Special Rapporteur on the right of everyone to the highest attainable standard of health (Grover, 2010), among others (Office of the High Commissioner for Human Rights, 2015; UN Working Group on Arbitrary Detention et al, 2016). This clear legal consensus affirms that the application of the death penalty to drug-related crimes constitutes a violation of the right to life. In recent years, this position is also being adopted by key international drug control bodies, including the UN Office on Drugs and Crime (2016) and International Narcotics Control Board (2016).

Another human rights safeguard restricting the lawful application of the death penalty relates to fair trials. Broadly speaking, the death penalty can only be lawfully carried out pursuant to a final judgment by a competent court (International Covenant on Civil and Political Rights, 1966). As former Special Rapporteurs on summary executions and torture, Juan E. Méndez and Christof Heyns (2015), recently reminded governments, 'in many States where the death penalty is used for drug-related offences, there is not a system of fair trial'. This is most blatant in countries that impose mandatory death penalties for drug offences, but even in countries where this is not required by law, sentencing practices tend to fall far short of international fair trial standards when it comes to drug-related offences. For example, concerns about fair trial norms in China have been raised with regard to confessions made under coercion or torture. Similar allegations have been documented in a number of contexts including, but by no means limited to, Iran, Saudi Arabia and Indonesia (Amnesty International, 2015 and 2016). Without this fair trial safeguard, it is impossible to protect against the arbitrary and thus unlawful deprivation of life, which is, with torture and other ill treatment and punishment, absolutely prohibited under customary international law. It also makes it impossible to protect against discrimination.

Indeed, there are deep disparities in how capital drug laws are applied. Very often, foreign-nationals comprise a majority or even totality of those sentenced to death and/or executed by the State. In these circumstances, there are major concerns of discriminatory law enforcement practices and sentencing, as well as failures to honour due process norms and provide access to consular assistance (Gallahue, 2011). In 2009, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Phillip Alston, observed that 'the fact that four out of five prisoners awaiting execution on drugs trafficking charges [in Indonesia] are foreigners raises certain questions in terms of possible discrimination in relation to both criminal enforcement and sentencing in drug-related cases'. Indeed, Indonesian national law stipulates that an application for a constitutional review of any provision in law can only be made by an Indonesian national, evidence that discrimination is actually enshrined in law. The result, of course, has been the rejection for constitutional reviews submitted by foreign nationals, mostly in relation to capital drug offences, in clear violation of the obligation to ensure equality before the law and equal protection of the law without discrimination, including on the basis of nationality (Amnesty International, 2015). In 2015, an application for a constitutional review of the legality of this law was submitted on behalf of six individuals on death row, including Myuran Sukumaran and Andrew Chan, two Australian nationals charged with drug trafficking. The first hearing was scheduled for 20 May 2015, but they were executed on 29 April 2015 (Amnesty International, 2015). The terrible hypocrisy is that several States that execute foreign nationals for drug offences, including Indonesia, routinely plead for clemency for their own nationals on death row for drug offences in other countries.

It is worth noting that an increasing number of States, human rights authorities and national, constitutional and regional courts have voiced their opinion that the death penalty is cruel, inhuman and degrading treatment not reconcilable with the inherent right to physical and mental integrity and

The Death Penalty for Drug Offences: Pulling Back the Curtain to Expose a Flawed Regime

human dignity (Mendez, 2012). The former Special Rapporteur on torture, Juan Méndez (2012a; 2012b), has very convincingly argued that the death penalty is increasingly seen in any context to be contrary to an emerging customary norm that the imposition and enforcement of the death penalty is a breach of the absolute prohibition of torture or cruel, inhuman or degrading treatment or punishment. Even if the emergence of this customary norm is still under way, most conditions under which the death penalty is actually applied render the punishment tantamount to torture (Mendez, 2012a).

The influence of international drug control law on the growth of the death penalty

The death penalty for drug offences is not simply a matter of national concern, evolving separately to and apart from the international drug control regime. For many of States actively executing drug offenders, the practice is a relatively modern legal development, having adopted these laws from the 1980s onwards. Rather than reflecting long-standing domestic legislation, these policies can instead be linked to the drafting and adoption of the 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, the third UN drug treaty. Significantly, the 1988 Convention establishes obligations on States to use criminal law and penal sanctions as the primary tool for drug suppression at domestic level. The treaty creates State obligations to criminalise the entire market chain, from production and cultivation, to shipment and sale, to (in some cases) possession for personal use. In political terms, these developments fall within the period of the global 'war on drugs', launched by the U.S. in the early 1970s, which formed the backdrop for the drafting of the treaty.

We can see evidence of change in State approaches to capital punishment for drugs in this time period. A 2001 report of the UN Secretary-General recorded a more than 50% increase in the number of countries prescribing the death penalty for drugs into domestic law between 1985 and 2000 (United Nations Economic Social Council, 2001). This dramatic increase in States applying capital punishment to drug offences ran exactly opposite to the overall international trend towards the abolition of capital punishment documented during that same period (Schabas, 2002; Hood and Hoyle, 2008). In other words, the number of countries using the death penalty for drugs dramatically increased during the same time when the number of countries using the death penalty for any crimes was dramatically decreasing. This dramatic shift in State practice in a relatively short span of fifteen years reflected developments in international drug control law, and the increasingly punitive nature of the regime throughout the 1970s, as codified in the 1988 drug convention. The irony here is obvious, as many death penalty States were all-too-happy to allow domestic laws to be influenced by the UN drug control treaties, while at the same time claiming that UN human rights treaties that prohibit executions for drug offences represent an inappropriate infringement on domestic affairs.

This relatively recent yet dramatic change in State practice also undermines the common argument that capital punishment for drug offences is a traditional or long-standing approach within the domestic legal systems of these countries. Indonesia, which drew widespread condemnation in 2015 when its new President oversaw several mass executions of drug offenders, is a case that neatly proves the fallacy of this argument. Far from being a longstanding or traditional part of the domestic criminal justice system, the death penalty for drug offences in national law was only established in 1976, and the first person ever executed for drug offences was not until in 1995 (Lines, Barrett and Gallahue, 2015). Indonesia executed five people in total for all offences between 2009 and 2014, all of those occurring in the year 2013 (Lines et al., 2015). In the other five years, the Government executed no one at all. Yet in the first few months of 2015, the Government executed fourteen people, all for drug offences. How do we explain this pattern? Did Indonesian 'traditions' change between 1995 and 2009, then change again in 2009, and again in 2015? Or did the Government, and Government policy, change?

The 1988 drug treaty also offers a significant, although less explored, window onto of the question of 'most serious crimes'. Most capital drug offences found in national legislation objectively fail to meet the threshold of 'most serious crimes' in international human rights law, as they do not even meet the threshold of most severe offences as defined under international drug control law (Lines, 2016). Article 3 of the 1988 drug treaty proscribes a wide range of activities related to the production, cultivation, trafficking, transportation, possession or purchase of illegal drugs, as well as other

The Death Penalty for Drug Offences: Pulling Back the Curtain to Expose a Flawed Regime

offences related to laundering of proceeds from the drug trade. It specifies that while all of these offences are 'grave' and 'serious' in nature, there are additional aggravating elements that may elevate these 'serious' offences to the level the treaty defines as 'particularly serious'. These aggravating factors include participation with domestic or international organised criminal groups, the use of violence or firearms, the involvement of minors and/or the collaboration of public officials. Absent these aggravating factors, none of the 'serious' offences in Article 3 satisfy the 'most serious crimes' threshold within international human rights law, for the simple reason that they do not even meet the highest threshold of criminality within the drug control regime itself (Lines, 2016).

The death penalty for drug offences in practice

States that have abolished the death penalty have outnumbered those that retain it since the mid-1990s, and this gap between abolitionist and retentionist countries continues to grow. Today, 72% of States – 141 out of 195 – have abolished the death penalty for all crimes in law or in practice (Amnesty International, 2017), and trends in State practice, the development of international norms and increasing support for a moratorium suggest that abolition could soon become an obligation under customary international law. Nevertheless, a significant number of people are still put to death each year, a large proportion of which are for drug-related offences. Of the fifty-five States that continue to apply capital punishment, thirty-three prescribe the death penalty for drug-related offences in law (Sander, 2018). Of these, at least nine countries still have the death penalty for drugs as a mandatory sanction (Sander, 2018).

The exact number of people executed by the State for drug-related crimes every year continues to be very difficult to track, and estimates cannot be considered comprehensive due to the difficulty of sourcing reliable data. The estimates that are available, however, are alarmingly high. For example, between January 2015 and December 2017, at least 1,320 people are known to have been executed for drug offences, with Iran being responsible for 1,176 – or nearly 90% - of these deaths (Sander, 2018). Indeed, Iran continues to execute more people per capita than any other country in the world, with 2015 marking the highest rate of executions in the country in twenty-five years. While executions appear to have decreased since then, the numbers remain shockingly high. In fact, January 2017 alone saw the execution of eighty-seven people, which is equivalent to one execution every nine hours (Iran Human Rights, 2017a). Drug offences continue to comprise the majority of executions in the country, even though senior Iranian judiciary officials have themselves admitted that the punishment has failed to reduce drug trafficking in the country (Iran Human Rights, 2016). Importantly, the global estimates above exclude China. While still considered to be the world's top executioner by Amnesty International, the death penalty remains a State secret and reliable figures continue to be impossible to source.

Worldwide, the vast majority of known executions continue to be carried out by just a small handful of countries. Indeed, in 2017, only four countries were known to have executed people for drug offences – China, Iran, Saudi Arabia and Singapore – although hundreds and possibly thousands continue to be sentenced to death in these and several other countries, including Malaysia, Indonesia, Thailand and Vietnam. The countries actively executing people for drug offences comprise what has been termed an 'extreme fringe' of the international community (Gallahue and Lines, 2015). However, important legal and policy developments at the national level suggest that even within this 'extreme fringe' the tide may be shifting.

For example, in Thailand, the National Assembly adopted important legislative amendments to the country's Narcotics Law which took effect in January 2017 (Akbar and Lai, 2017). The reforms introduced reductions in penalties for possession, import/export and production for the sale of drugs, including abolishing the mandatory death penalty for the offence of selling drugs, and include language which will help ensure more proportionate sentencing (Amnesty International, 2016; Pakbar and Lai, 2017). In Iran, a critical step towards reducing the use of the death penalty for drug offences was taken in October 2017 when the country's Guardian Council approved a long-debated amendment to the Anti-Narcotics Law that raises the minimum quantity of drugs required to incur

The Death Penalty for Drug Offences: Pulling Back the Curtain to Expose a Flawed Regime

capital punishment (Reuters, 2017). Applying to death row prisoners that were charged before the amendment, the new law could help commute the sentences of the estimated 4,000 people on death row for petty drug-related offences (Iran Human Rights, 2017b; Reuters, 2017). And on 30 November 2017, the Malaysian parliament voted to remove the mandatory death penalty for drug offences, giving judges full discretion in sentencing (Channel NewsAsia, 2017). Unfortunately, however, this important legal reform does not apply retroactively (Anand, 2017).

The death penalty for drugs in the context of broader human rights violations

While these recent national developments are encouraging, the death penalty for drug offences exists as one example of many serious human rights abuses occurring in the name of drug enforcement and suppression. Since coming to power in June 2016, Philippine President Rodrigo Duterte has carried out a bloody anti-drug campaign that has resulted in the extrajudicial executions of thousands of people suspected of using and dealing drugs across the country. It has been claimed that if the current rate of killing continues until Duterte's term ends in 2022, the death toll could reach 60,000 (Murdoch, 2017). Duterte has also taken steps to try to reintroduce the death penalty in the Philippines, making it a legislative priority in Congress. At the time of writing this had not yet gone through and while there has been push back from the Association of South East Asian Nations parliamentarians, the issue is far from being settled domestically. However, as confirmed in the Human Rights Committee's recent General Comment 36 on the right to life, States Parties like the Philippines that have abolished the death penalty through ratification of the Second Optional Protocol to the Covenant on Civil and Political Rights are barred from reintroducing it (United Nations Human Rights Committee, 2017). Like the Covenant itself, the Second Optional Protocol does not contain termination provisions and States parties cannot denounce it, making the abolition of the death penalty legally irrevocable.

While over fifty governments have condemned these disturbing developments (United Nations Human Rights Council, 2017a; 2017b), others have voiced explicit support for the country's brutal anti-drug campaign (United Nations Human Rights Council, 2017b). The most obvious of these has been Indonesia, where a series of public statements supporting the actions in the Philippines have been made by the Indonesian President, Joko Widodo, as well as other senior government officials. These statements, and Widodo's recent shoot-to-kill order following a series of high profile drug operations (Soeriaatmadja, 2017), have coincided with an increase in killings in the country (Kline, 2017). Between January and September 2017, eighty suspected drug dealers were killed by police, a sharp increase from the fourteen killings in all of 2016 (Sapiie, 2017). Amid this escalation in unlawful killings, Widodo issued a 'shoot-on-sight' policy for drug suspects in October 2017 (Weinberg, 2017). Cambodian Prime Minister Hun Sen, after a state visit by Duterte in January 2017, also launched a crackdown on drugs (Salva, 2017). Although not nearly as violent as Duterte's or Widodo's, it has led to the mass arrest of people who use drugs. As of June 2017, more than 8,000 people had been arrested as part of the sweep and thrown into already severely overcrowded prisons (Salva, 2017). American President Donald Trump also lent his support to Duterte's war on drugs during the ASEAN summit held in November 2017 (PhilStar Global, 2017).

Considering these recent and worrying developments in South East Asia, as well as the explicit support for Duterte's violent campaign voiced by other States, including during the Philippines' recent Universal Periodic Review (United Nations Human Rights Council, 2017), it is possible the Philippines' brutal approach to drugs and culture of impunity could be creating a more tolerant or permissive atmosphere for other States in the region and beyond to adopt similar approaches to drugs (Coca, 2017). At the same time, there could be a surge in retentionist States justifying or legitimising the application of the death penalty for drug offences as the 'judicial', more measured and moderate approach, undoing years of progress and setting a dangerous new precedent (Sander, 2018).

In the context of extreme punishments for drug offences, it is also important to include a brief discussion on the use of corporal punishment, which can be understood as institutionalised physical violence carried out as a disciplinary measure. It has been estimated that over forty countries worldwide maintain corporal punishment as a criminal sanction or as an official disciplinary punishment in different institutional settings (Iakobishvili, 2011). Similar to the opacity around the

The Death Penalty for Drug Offences: Pulling Back the Curtain to Expose a Flawed Regime

application of the death penalty for drug offences, it remains quite difficult to obtain reliable data on countries implementing corporal punishment for drug offences in law and in practice. Nevertheless, several States are known to apply the punishment in practice, including but certainly not limited to Malaysia, Iran, Saudi Arabia and Singapore and it is believed that thousands of people convicted of drug offences, including for use and personal possession, are subjected to judicially sanctioned caning, flogging, lashing, or whipping every year (Iakobishvili, 2011; Abdourrahman Boroumand Center, 2017; Amnesty International, 2017b).

As the former Special Rapporteur on torture has confirmed, the practice ‘can be compared to capital punishment in the sense that, even apart from the physical pain and suffering it might cause, over the last decades it has evolved to be considered a direct assault on the dignity of a person and therefore prohibited by international law’ (Nowak, 2009). Indeed, corporal punishment is considered a manifestation of cruel, inhuman and degrading punishment, and may even amount to torture depending on the context, both of which are absolutely prohibited under human rights law and recognised as norms of customary international law (Nowak, 2005; 2009). And while the international drug conventions are silent on corporal punishment, nothing can be read within them to permit the application of torture or cruel, inhuman and degrading punishment. In fact, the official commentary on the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances confirms that, while the drug conventions allow for ‘more strict or severe measures’ to be adopted than provided for within their texts, they must be ‘subject always to the requirement that such initiatives are consistent with applicable norms of public international law, in particular norms protecting human rights’ (Commentary, 1988).

Pulling back the curtain: Broader implications for the drug control regime and their implications for 2019

Very few governments actually apply the death penalty for drug offences in practice. They are a small and identifiable group, and they are becoming more and more isolated as explicit opposition to this extreme practice grows. In the last few years, there has been some movement towards removing cooperative assistance to States who continue to execute for drug offences. The UN Office on Drugs and Crimes, for example, stated in a position paper on human rights that if political interventions fail to limit the application of capital punishment, it may have no choice but to employ a temporary freeze or withdrawal of support (United Nations Office on Drugs and Crime, 2012). Similar statements have been made by the European Parliament (2010, para. 65), while the UK, Denmark and Ireland have all pulled funding from Iran’s drug control programme due to concerns about the death penalty (The Copenhagen Post, 2013; RTE News, 2013).

Similarly, political support for the abolition of the death penalty is on the rise. Ten years ago, the international drug control regime was largely unconcerned with the application of the death penalty for drug offences. But with the increasing engagement of human rights organisations and mechanisms in drug control issues and forums, the death penalty and other human rights issues have slowly become more visible - and thus increasingly difficult to ignore - within the international drug control regime. For example, never before has the issue received so much attention by Member States at a UN meeting on drug control as at the UN General Assembly Special Session (UNGASS) on the World Drug Problem convened in April 2016. Although the final UNGASS outcome document was completely silent on the issue, the death penalty for drug offences was nevertheless one of the most widely and intensely debated issues over the course of the three-day meeting. During the session, over seventy Member States explicitly expressed opposition to the death penalty for drug offences (Sander, 2018).

The tide appears to be shifting. Explicit political support for the abolition of the death penalty for drug offences is rising, and human rights are increasingly recognised as being integral to drug control. But it is not enough for States to simply speak out against capital punishment in the context of drugs and to point fingers at the tiny number of countries that continue to execute people, or apply other inhuman sanctions such as corporal punishment. Rather, governments that rightfully oppose such extreme sanctions must also look honestly at the degree to which their own domestic criminal drug

The Death Penalty for Drug Offences: Pulling Back the Curtain to Expose a Flawed Regime

laws reflect, and thereby reinforce, the logic of punitive drug control of which the death penalty is simply the most extreme example.

Corporal punishment and the death penalty for drugs represent the most extreme examples of 'punitive suppression', the logic that the harsher we punish people, the more effectively we will suppress drug use and drug markets (Lines, 2017). Punitive suppression is at the heart of the core UN treaties on drug control, particularly the 1988 drug treaty that creates State obligations to criminalise the entire market chain, from production and cultivation, to shipment and sale, to (in some cases) possession for personal use. The punishments individual States then choose to impose for these offences take different forms in different places. While capital and corporal punishment is the norm in a small number of countries, in many others punitive suppression is manifested in other ways, both criminal and administrative. Criminal convictions and incarceration for drugs, mandatory sentencing, felony disenfranchisement, warrantless stop and search policies, mandatory drug testing as a requirement of accessing social welfare or maintaining employment and the legal prohibition of harm reduction services are all far more common internationally than is the death penalty for drugs, yet all these approaches are driven by this same logic (Lines, 2017). This is why the issue of capital punishment for drugs represents a challenge to both retentionist and abolitionist States alike, and indeed to UN drug control agencies such as the UN Office on Drugs and Crime and the International Narcotics Control Board. It also offers a guide for us to understand why the issue has emerged as such a flashpoint in the international arena.

For retentionist governments, the call to end the death penalty for drug offences challenges State power on two plains - the power to control life and death and the power to define moral and social norms around drug use and intoxication. Yet for abolitionist States, the existence of the death penalty for drug offences also poses a challenge to their own domestic drug laws, most of which reflect the same logic of punitive suppression. The clearly extremist and abusive nature of executing people for drug offences pulls back the curtain on the drug control regime as a whole, offering a clear glimpse into the nature of punitive suppression as a policy framework. This, we would argue, explains in part why the issue has come to dominate international drug policy debates - because pulling back that curtain allows us to see clearly the punitive, and often abusive and ineffectual, nature of drug enforcement practices in abolitionist States as well. While we welcome and commend the growing role of States in speaking out against the death penalty, as well as similar statements from both the United Nations Office on Drugs and Crimes and International Narcotics Control Board, we must not lose sight of the degree to which opposition to the death penalty sits comfortably alongside a defence of the overall drug control regime. This is because, in short, the death penalty looks bad, and risks bringing the entire global experiment in punitive drug suppression of the past half century into disrepute.

While we absolutely welcome and commend all advocacy for the abolition of the death penalty, the relationship between capital punishment and drug control, and between abolition and drug reform, must be understood within a more complex dynamic. While abolitionist States speaking out against the death penalty are driven by sincerely held human rights principles, absent a similar critique of other forms of punitive suppression within their own domestic laws, these statements can also be viewed as a defence of the wider drug control regime (and the many other abuses, large and small, that take place as a consequence).

However important the cause, the abolition of the death penalty for drugs does not equal the end of human rights abuses driven by drug enforcement. For this reason, the crucial work of abolishing capital punishment must go hand in hand with broader efforts in all countries to end the use of criminal law and penalties as the policy norm in drug control. Until we acknowledge the flawed logic at the heart of the regime itself, and undo its corrosive effects on drug laws and policies everywhere, we will never end these most extreme practices.

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The Death Penalty for Drug Offences: Pulling Back the Curtain to Expose a Flawed Regime

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