

Inquiry into Australia's Advocacy for the Abolition of the Death Penalty

Submission by the Australian Drug Foundation and New Zealand Drug Foundation – October 2015

The Australian Drug Foundation and New Zealand Drug Foundation welcome the opportunity to submit to the Joint Standing Committee on Foreign Affairs, Defence and Trade on the inquiry into Australia's advocacy to abolish the death penalty. Our organisations are concerned with reducing drug-related harm, to which the death penalty significantly contributes when used to punish people involved with illegal drugs. We urge Australia to strengthen its international advocacy to end this inhumane practice, particularly for drug crimes, which also contravenes international human rights law.

In some countries drug offenders comprise a significant proportion, or even a majority, of those executed each year. Harm Reduction International estimates that at least hundreds, and possibly more than one thousand people are executed globally for drug offences each year.

The death penalty does not protect people from drug-related harm, reduce drug use, or deter drug trafficking. It creates more harm through pain and suffering to victims and their families. The United Nations Office on Drugs and Crime (UNODC), estimated there were 183,000 drug-related deaths worldwide in 2012, primarily from opioid overdose, and found that during 2003-2012 the estimated number of drug users remained fairly stable. Despite most deaths being due to opioids, cannabis traffickers make up a large number, and in some countries even a majority of drug-related offenders sentenced to die. Further, the World Coalition Against the Death Penalty stresses that in Singapore, one of the world's leaders in imposing the death penalty for drug crimes, drug seizures have increased in recent years with record seizures in 2012.

A global trend emerged in the 1980s and 1990s to abolish the death penalty, with many countries eliminating laws allowing capital punishment or stopping executions in practice. However, at the same time due to the 'war on drugs', more countries enacted laws permitting the death penalty for drug offences. Amnesty International notes that in 1979, about 10 countries prescribed the death penalty for drug crimes. Today, 33 countries and territories retain the death penalty for drug crimes, with 13 having carried out the death penalty for drug crimes in the past five years. Twelve retain a mandatory death penalty for certain categories of drug offences.

The death penalty is typically applied for drug trafficking, cultivation, manufacturing and/or importing/exporting. However, comparisons of domestic drug legislation indicate that the types of offences carrying a death sentence are broad and diverse and, in some countries, include illicit drug possession.

Capital punishment is not prohibited under international law but its application is significantly limited. Article 6(2) of the International Covenant on Civil and Political Rights states that the death penalty may only be applied to the 'most serious crimes'. The UN Human Rights Committee and UN Special Rapporteur on extrajudicial, summary or arbitrary executions have both stated that drug offences are not the 'most serious crimes', such as those involving lethal

intent and resulting in death, and that executions for such offences violate international human rights law.

Strengthening Australia's approach

We consider that there are four key ways to strengthen Australia's international advocacy to end the death penalty, particularly in relation to drug crimes:

1. Regional cooperation

Australia should form a regional coalition of abolitionist states involving New Zealand and Pacific Island nations. Australia and New Zealand both have growing connections to and influence in South East Asia, where several countries have high death penalty application rates for drug crimes. New Zealand is also part of the core group for the UN General Assembly moratorium resolution on death penalty use. This group co-authors the text and negotiates with other states to maximise support for the resolution.

The Pacific region (Australia, New Zealand, Pacific Island nations) was the only execution-free region in 2014. Further, in February 2015 Fiji became the 99th country to become death penalty-free. However, there have also been concerning developments in the region. Papua New Guinea expanded the scope of the death penalty in its criminal code in 2013 and undertook an implementation study in 2014.

While Papua New Guinea is reviewing its position in light of the international outcry resulting from recent Indonesian executions, this situation shows there is a need for vigilance in the Pacific. The Pacific Islands Forum, a political grouping of 16 states including Australia and New Zealand, may be a suitable forum to consider strengthening regional cooperation against the death penalty. The Forum also holds dialogues with international partners at ministerial level. Current Forum partners include China, Indonesia and Malaysia, which regularly apply the death penalty for drug crimes.

2. Preventing drug enforcement activity leading to executions

Australia should put measures in place to ensure its collaborative international drug law enforcement initiatives do not result in executions. It should also advocate strongly internationally on this. Options include implementing stringent guidelines to ensure human rights are a key consideration in joint or multilateral drug operations, or laws preventing information sharing where executions may result.

Harm Reduction International reports that the UNODC, the European Commission and individual European governments have all actively funded and/or delivered support to strengthen domestic drug enforcement in death penalty states. Reprieve UK reports that the UK alone has funded £20 million linked to drug executions. However, Protocol 6 to the European Convention on Human Rights commits all Council of Europe members to abolishing the death penalty.

Australia should advocate for UNODC and European states to use the influence of drug enforcement aid as a tool to promote abolishing the death penalty for drug offences. European donors and UNODC could influence other states by refusing to provide, or to act as a conduit for, funds for drug enforcement activities unless the death penalty will not result.

3. Promoting effective drug prevention

Drug prevention (proactive methods to prevent harm to society from drug use such as effective education and health promotion) is an under-utilised strategy, especially in countries that impose capital punishment for drugs offences. Australia should encourage the United Nations to disseminate effective drug prevention models and strategies. In addition, Australia should work with its neighbours in the Pacific region to promote effective primary (preventing drug problems arising generally) and secondary (preventing drug problems in particular groups) intervention measures in order to prevent the initiation of drug use, and to prevent the development of dependence on drugs. Reducing drug use and drug dependence will reduce the perceived need for capital punishment for drug offenders.

4. Providing broad capability support to reduce drug harm

Australia should also encourage death penalty states to implement broader drug harm reduction measures to reduce the perceived need for executions, address drug problems and build capacity. Support should be provided to journalists and media agencies to help them uncover human rights issues involving the death penalty, reduce stigma towards drug users and accurately report drug-related cases and statistics in an informed and balanced way. The drug treatment sectors in these states should be supported and expanded to implement international best practice, so their drug problems are more effectively addressed. Finally, their legal and correctional institutions should be supported to ensure fair trials, combat corruption and enable rehabilitation.