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## JOINT SUBMISSION

to the

Joint Standing Committee on Foreign Affairs, Defence and Trade

on the

**Inquiry into Australia's efforts to advocate for the worldwide abolition of the death penalty.**

Submitting Organisations: Harm Reduction International (HRI), International Drug Policy Consortium, Australian Injecting and Illicit Drug Users League, Women and Harm Reduction International Network, Harm Reduction Australia, Lembaga Bantuan Hukum Masyarakat, and the Australian Civil Society Committee on UN Drug Policy.

### Introduction and Background

This submission is made by civil society organisations whose work focus on drug policies and its alignment with human rights and other social justice issues, including abolition of the death penalty. While it touches on the issue of the death penalty in general, this submission will focus on its imposition for drug offences.<sup>1</sup>

The death penalty is a prohibited punishment for drug offences. UN human rights bodies including the Office of the High Commissioner for Human Rights (OHCHR), and the UN Secretary General, have been consistent in stating that drug offences do not meet the threshold of “most serious crimes” to which Article 6(2) of the International Covenant for Civil and Political Rights (ICCPR) requires the death penalty be restricted to, in retentionist countries.<sup>2</sup> This was reiterated by Human Rights Council resolutions 42/24 (2019) and 54/35 (2023) on the question of the death penalty. The same position is adopted by the UN Office on Drugs and Crime (UNODC)<sup>3</sup> and the International Narcotics Control Board (INCB)<sup>4</sup>, and by Australia’s own Strategy for Abolition of the Death Penalty (2018).<sup>5</sup>

Nevertheless, as of July 2024, 34 countries retain the death penalty for drug offences in their legislation; of which roughly half in Asia. In 11 countries death is the mandatory punishment for at least certain drug offences.<sup>6</sup>

<sup>1</sup> For an in-depth reconstruction of the phenomenon, including figures on executions, death sentences and death row populations by year, see Harm Reduction International ‘The Death Penalty for Drug Offences: Global Overview’ series, accessible at this link: <https://hri.global/flagship-research/death-penalty/>. For a review of trends in the past decade (2014-2023), see ‘A Decade-Long Review of the Death Penalty for Drug Offences’, available at this link: [https://hri.global/wp-content/uploads/2024/04/HRI\\_DeathPenalty\\_A-decade-review\\_AW.pdf](https://hri.global/wp-content/uploads/2024/04/HRI_DeathPenalty_A-decade-review_AW.pdf).

<sup>2</sup> Among many others, see Human Rights Committee, General Comment no. 36.

<sup>3</sup> Among others, see

<https://www.unodc.org/unodc/en/press/releases/2019/June/statement-attributable-to-the-unodc-spokesperson-on-the-use-of-the-death-penalty.html>

<sup>4</sup> [https://www.incb.org/documents/Publications/PressRelease/PR2014/press\\_release\\_050314.pdf](https://www.incb.org/documents/Publications/PressRelease/PR2014/press_release_050314.pdf)

<sup>5</sup> Reiterated in Australia's 2022 CND Intersessional statement -

[https://www.unodc.org/documents/commissions/CND/CND\\_Sessions/CND\\_65/Thematic%20Discussions/Australia\\_national\\_statement\\_CND\\_Intersessional\\_22\\_September\\_2022.pdf](https://www.unodc.org/documents/commissions/CND/CND_Sessions/CND_65/Thematic%20Discussions/Australia_national_statement_CND_Intersessional_22_September_2022.pdf)

<sup>6</sup> ‘Harm Reduction International, ‘The Death Penalty for Drug Offences: Global Overview 2023 (London: Harm Reduction International, 2024), <https://hri.global/wp-content/uploads/2024/03/HRI-GO2023-finalfinal-WEB.pdf>.

In August 2023, the UN High Commissioner for Human Rights released a report with the title “Human rights challenges in addressing and countering all aspects of the world drug problem,”<sup>7</sup> as a contribution to the 2024 mid-term review of the 2019 *Ministerial Declaration on strengthening our actions at the national, regional and international levels to accelerate the implementation of our joint commitments to address and counter the world drug problem*.<sup>8</sup> The Commissioner’s report noted the global increase in use of the death penalty for drug-related offences, which did not align with international human rights law norms and standards.<sup>9</sup>

According to Harm Reduction International, in 2023 at least 467 people were executed for drug offences in five countries. Drug offences accounted for 42% of all known executions globally – meaning almost 1 in 2 people executed around the world had been convicted of drug offences. At least 375 people were sentenced to death, and at least 3000 people remain on death row for drug crimes.<sup>10</sup> Between 2017 (the year of the last inquiry) and 2023, over 1400 people were executed for drug offences; often after trials lacking basic safeguards.<sup>11</sup>

All these figures are to be understood as partial: due to systemic lack of transparency and censorship (in itself a violation of international obligations), many if not most executions and death sentences remain unknown.<sup>12</sup>

Against this backdrop, ongoing and strengthened engagement on the death penalty in general, and on its use as a punishment for drug offences specifically, is critical to achieving the final objective of universal abolition of the death penalty.

This submission consists of inputs from the submitting organisations, that are structured according to the current inquiry’s [terms of reference](#). In addition, there are concluding recommendations in the final section.

## **1. Australia’s progress against the recommendations in the 2017 Joint Standing Committee on Foreign Affairs, Defence and Trade report: *A world without the death penalty: Australia’s Advocacy for the Abolition of the Death Penalty***

<sup>7</sup> Report at this link:

<https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/sessions-regular/session56/A-HRC-54-53-summary.pdf>

<sup>8</sup> Ministerial Declaration at this link:

[https://www.unodc.org/documents/commissions/CND/2019/Ministerial\\_Declaration.pdf](https://www.unodc.org/documents/commissions/CND/2019/Ministerial_Declaration.pdf)

<sup>9</sup> UN Office of the High Commissioner on Human Rights, Media Release, 20 September 2023,

<https://www.ohchr.org/en/press-releases/2023/09/end-overreliance-punitive-measures-address-drugs-problem-u-n-report>

<sup>10</sup> ‘Harm Reduction International, ‘The Death Penalty for Drug Offences: Global Overview 2023 (London: Harm Reduction International, 2024), <https://hri.global/wp-content/uploads/2024/03/HRI-GO2023-finalfinal-WEB.pdf>.

<sup>11</sup> Figures from Harm Reduction International internal database; available upon request.

<sup>12</sup> Among others on the issue of transparency and the death penalty, see A/HRC/48/29.

Of the 13 recommendations made by the Joint Standing Committee on Foreign Affairs, Defence and Trade in their report, only one recommendation was rejected by the [Australian Government in their response published in 2017](#) - Recommendation 3. The response to recommendation 3 is copied below:

**Recommendation 3** *In light of the United Nations' position that drug crimes, including drug trafficking, do not constitute 'most serious crimes' for which the death penalty may be applied under international law, the Committee recommends that the Australian Federal Police (AFP) obtain guarantees that prosecutors in partner countries will not seek to apply the death penalty before providing information in relation [to] these crimes. In situations where such guarantees cannot be obtained, the AFP should withhold provision of information that may be relevant to the cases concerned.*

**Response** *The Government does not accept this recommendation. The Government notes that foreign law enforcement partners cannot themselves provide binding assurances that the death penalty will not be applied if information is provided. An undertaking from a prosecutor not to seek to apply the death penalty may not be reliable where a Court can still impose the death penalty. Generally speaking, the Government does not consider it appropriate to seek, or rely on, an undertaking from a prosecutor. In the instances where assurances have been provided to Australia, they have usually occurred at Ministerial level.*

*Combatting serious drug crimes is a high priority for the Government and the Government's ability to detect, deter and prevent drug crimes would be impeded if Australia could not cooperate with states in the region that retain the death penalty. An inability to cooperate with foreign law enforcement partners poses risk of harm to the Australian community and significant impact to society. Although desirable, some states will not agree to a blanket assurance that the death penalty will not be applied where convictions result from cooperation with Australia. The National Guideline on International Police-to-Police Assistance in Death Penalty Situations is the most appropriate way to balance the need for effective cooperation on transnational crime and the commitment to protecting individuals from the death penalty. The Department of Foreign Affairs and Trade will continue diplomatic efforts to encourage states to abolish the death penalty.*

We argue that this position should be reconsidered, on legal, political and ethical grounds.

### Relevance of the issue

Australia's geographical position makes it particularly vulnerable to the risk of cooperation with or assistance in drug law enforcement with neighbouring retentionist countries making it complicit to the application of the death penalty.

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While egregious examples are those of the Bali Nine investigations, the issue remains relevant today. Transparency on this issue is limited, hindering monitoring by independent actors. Still, practice suggests that Australian authorities routinely share information in relation to cases whose prosecution may lead to a death sentence being imposed. One example, reconstructed by the Capital Punishment Justice Project based on publicly available sources, is that of provision of information by the AFP to the Myanmar Federal Police in relation to drug trafficking investigations. In Myanmar, certain drug offences are punishable by death, with death becoming a mandatory punishment if certain criteria are met.

The AFP National Guidelines on International Police-to-Police Assistance in Death Penalty Situations 2009 require law enforcement to consider several aspects before deciding whether to share information - including the degree of risk to the suspect - and to annually report on the cases for which information has been shared. However, both processes are characterised by limited transparency and seemingly no involvement of external experts on the death penalty.

Beyond information sharing on individual cases, vulnerabilities and risks emerge in cases of technical cooperation, assistance, and partnership between Australian law enforcement and drug law enforcement agencies in retentionist countries. In these cases, it is not unlikely that such cooperation, assistance, or partnership may support operations that result in arrests and - down the line - sentences of death. One example is that of joint drug law enforcement partnerships led by the AFP with Thailand (“Taskforce Storm”) and China (“Taskforce Blaze”). Thailand has currently some 180 people on death row for drug offences and provides no official information on death sentences. China is the world’s top executioner, with murder and drug offences the main crimes for which people are sentenced to death; information on the use of capital punishment is subject to state secret so it is virtually impossible to track capital cases (and hence ensure interagency cooperation does not facilitate the imposition of death sentences).<sup>13</sup> It is unclear whether and which processes are in place to evaluate and regularly monitor potential linkages between Australia’s technical assistance and cooperation, and the imposition of death sentences.

#### Arguments for reconsidering Australia’s position

As already raised in submissions and hearings related to the previous inquiry, international human rights standards and principles imply that governments should take all possible measures to avoid exposing individuals at risk of being sentenced to death or executed; including and particularly in the context of cooperation on drug law enforcement. Already in 2012, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions (hereinafter referred to as the “Special Rapporteur on extrajudicial executions”) had highlighted how “drug-related offences present one of the principal issues in terms of assistance concerns”, and how “the nature of drug-related offences is conceptually unique and makes this category

<sup>13</sup> <https://www.afp.gov.au/sites/default/files/PDF/IntnEngagementMethDisruptionStrategy.pdf>

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[people facing the death penalty for drug offences] particularly vulnerable to arbitrary practices.”<sup>14</sup>

Under the right to life, States have a positive duty to protect life; which entails specific obligations with regards to the death penalty for abolitionist countries. Particularly relevant here are an obligation not to “deport, extradite or otherwise transfer persons to a country in which they are facing criminal charges that carry the death penalty, unless credible and effective assurances against the imposition of the death penalty have been obtained”<sup>15</sup> and an obligation to provide consular assistance to nationals facing capital punishment. The underlying rationale of these obligations is to shield individuals from a violation of the right to life; as clarified by the Human Rights Committee, “for countries that have abolished the death penalty, there is an obligation not to expose a person to the real risk of its application.”<sup>16</sup>

A useful reference on this issue is Article 16 of the International Law Commission’s Articles on State Responsibility for Internationally Wrongful Acts, according to which “a State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if:

- (a) that State does so with knowledge of the circumstances of the internationally wrongful act; and
- (b) the act would be internationally wrongful if committed by that State.”

This is consistent with international and regional standards on due diligence, which have been further clarified since the last inquiry. In General Comment no. 36 adopted in 2018, the UN Human Rights Committee has clarified that “the obligation of States parties to respect and ensure the right to life extends to reasonably foreseeable threats and life-threatening situations that can result in loss of life. States parties may be in violation of article 6 even if such threats and situations do not result in loss of life.”<sup>17</sup>

In light of all the above, the obligation of abolitionist countries not to expose any individuals - regardless of nationality - to the real risk of application of the death penalty should extend to situations where such risk can arise following cooperation in drug law enforcement; insomuch that cooperation should be withheld where adequate safeguards are lacking.

<sup>14</sup> Note by the Secretary-General to the UN General Assembly, “Extrajudicial, summary or arbitrary executions,” A/67/275, 9 August 2012.

<sup>15</sup> General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life\*CCPR/C/GC/36, 30 October 2018.

<sup>16</sup> Roger Judge v. Canada, Communication No. 829/1998, U.N. Doc. CCPR/C/78/D/829/1998 (2003)

<sup>17</sup> Similarly, the European Court of Human Rights reportedly assesses due diligence in reference to the protection from unlawful deaths based on “(a) how much the State knew or should have known; (b) the risks or likelihood of foreseeable harm; and (c) the seriousness of the harm. European Court of Human Rights, *Osman v. the United Kingdom* (application No. 23452/94), judgement of 28 October 1998, paras. 115–116.; as reported by A/HRC/41/36.



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A similar conclusion had already been reached by the Special Rapporteur on extrajudicial executions in 2012, according to which “it is unquestionable that States have to cooperate with each other in various criminal matters. However, moral, political and legal dilemmas emerge when abolitionist States provide assistance to retentionist States, and that such assistance leads to the use of the death penalty. Even though the individual facing the death penalty in such cases may not be in the jurisdiction of the abolitionist State, such assistance may amount to complicity in the imposition of the death penalty, and will engage the responsibility of the abolitionist State under Article 16 of the International Law Commission’s Articles on State Responsibility.”

The UNODC - the chief international agency responsible for drug law enforcement - is itself aware of those dilemmas and the risk of complicity. In its 2012 Position Paper on the promotion and protection of human rights, the UNODC concluded: “ If [...] a country actively continues to apply the death penalty for drug offences, UNODC places itself in a very vulnerable position vis-à-vis its responsibility to respect human rights if it maintains support to law enforcement units, prosecutors or courts within the criminal justice system. Whether support technically amounts to aid or assistance to the human rights violation will depend upon the nature of technical assistance provided and the exact role of the counterpart in arrest, prosecutions and convictions that result in application of the death penalty. Even training of border guards who are responsible for the arrest of drug traffickers ultimately sentenced to death may be considered sufficiently proximate to the violation to engage international responsibility.”<sup>18</sup>

Notably, in cases of cooperation, Australia risks being complicit in violations not only of the right to life, but also of other fundamental rights, such as the right to fair trial and the prohibition of torture. It is worth noting that many retentionist countries in Asia (and beyond) still prescribe the death penalty as a mandatory sentence for at least certain drug crimes, where routine reports emerge of capital drug trials lacking basic guarantees of fairness (such as provision of interpreters, lack of qualified legal representation, and limitations to the right to appeal), and/or following investigations in which ill-treatment is feared.

Beyond legal arguments, we argue there are strategic and political considerations for re-evaluating this position taken by the Australian government.

Firstly, the response to Recommendation 3 concluded that “the Government's ability to detect, deter and prevent drug crimes would be impeded if Australia could not cooperate with states in the region that retain the death penalty”. There is no indication of evidence supporting this claim; and in fact the opposite may be true. On one hand, a growing body of evidence shows the death penalty has no unique deterrent effect on drug use or drug crime,<sup>19</sup> thus actors partnering in drug law enforcement may easily renounce it without significant impact on their

<sup>18</sup> [https://www.unodc.org/documents/justice-and-prison-reform/UNODC\\_Human\\_rights\\_position\\_paper\\_2012.pdf](https://www.unodc.org/documents/justice-and-prison-reform/UNODC_Human_rights_position_paper_2012.pdf)

<sup>19</sup> Among others, see

[https://deathpenaltyproject.org/wp-content/uploads/2022/08/The-Death-Penalty-Project\\_Policy-Deterrence.pdf](https://deathpenaltyproject.org/wp-content/uploads/2022/08/The-Death-Penalty-Project_Policy-Deterrence.pdf).

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operations. On the other hand, retention of the death penalty for drug offences could in fact hinder regional and international cooperation on drug law enforcement; because of due diligence obligations of UN agencies and other abolitionist countries. This is also recognised by UNODC<sup>20</sup> and by Australian agencies themselves, which noted how “the death penalty for drug offences, where implemented by other countries, may limit the breadth of law enforcement engagement and information exchange in some cases.”<sup>21</sup> As a consequence, clear safeguards on non-imposition of capital punishment may in fact remove obstacles to effective anti-drug operations. Prioritising cooperation on death penalty abolition, even at the expense of anti-drug enforcement cooperation in the short-term, would result in stronger and more cooperation with other governments and agencies in the long-term.

Secondly, and perhaps most notably, ongoing assistance in drug law enforcement operations which may result in the imposition of capital punishment signals an inconsistent position of Australia on this issue, it creates a significant reputational risk, and ultimately puts into question Australia’s credibility and legitimacy as a strong abolitionist advocate, and in turn its ability to pursue the overarching goal (set by the national death penalty strategy) of universal abolition of the death penalty. For advocacy against the death penalty to be effective, including in multilateral fora and in engagement with retentionist countries, it must be principled and fully consistent with domestic practice.

## 2. Australia's international engagement to promote abolition of the death penalty

Global support for aligning drug policy approaches with international human rights standards has grown in recent years; as have the explicit calls against the death penalty for drug offences. In addition to the increased engagement of UN human rights entities in UN drug policy processes, ie. as seen in the contribution of the UN High Commission for Human Rights in the 2024 mid-term review referenced in the introduction section of this submission, member states are also increasingly showing explicit support for revising drug policies in line with human rights standards. In 2022, member states including Australia overwhelmingly voted in favour of the UN General Assembly omnibus resolution “Addressing and countering the world drug problem through a comprehensive, integrated and balanced approach” which emphatically calls for the fulfilment of member states’ human rights obligations in their response to drugs.<sup>22</sup> In addition, there are two Human Rights Council resolutions on the human rights implications of drug policy; one in 2018 (A/HRC/RES/37/42) with Australia’s vote in favour, and one in 2023 (A/HRC/RES/52/24) adopted by consensus.

<sup>20</sup>

<https://www.unodc.org/unodc/en/press/releases/2019/June/statement-attributable-to-the-unodc-spokesperson-on-the-use-of-the-death-penalty.html>

<sup>21</sup> <https://www.afp.gov.au/sites/default/files/PDF/IntnEngagementMethDisruptionStrategy.pdf>

<sup>22</sup> For further details, see:

<https://idpc.net/publications/2022/12/addressing-and-countering-the-world-drug-problem-through-a-comprehensive-integrated-and-balanced>



Australia's advocacy for abolition of the death penalty, alongside efforts that support compliance with international human rights law, norms and standards in areas such as government responses to the use and supply of drugs, is critical and must be continued. In particular, advocacy that targets use of the death penalty for drug offences in Australia's neighbouring regions is needed, including in the Pacific where debates have continued in Tonga on whether to impose the death penalty to address drug issues.<sup>23</sup>

With specific reference to drug offences, Australia should consider continuing and strengthening its engagement in dedicated fora, such as the UN Commission on Narcotic Drugs (CND). Australia has historically co-sponsored side events on abolition of the death penalty and raised the issue in statements at CND sessions,<sup>24</sup> so it has a strong basis for continuing to engage internationally, and ideally to further prioritise this topic. The death penalty remains a highly contentious issue, one of the few unaddressed items in CND resolutions, and one that is not explicitly addressed in the UNODC's strategy.<sup>25</sup> For these reasons, it is critical that abolitionist countries, including Australia, develop a strong and coordinated strategy to ensure the issue remains high on the agenda of the CND.

At the UN Human Rights Council, Australia has traditionally been a co-sponsor and strong supporter of the periodic resolution on the question of the death penalty; and co-sponsored the 2015, 2018, and 2023 resolutions on drug policy.

### **3. Opportunities and risks for Australia to advocate for the abolition of the death penalty internationally, including:**

#### **a) Engagement with international institutions and likeminded countries**

*See section 2 on engagement in UN fora and recommendations below.*

#### **b) Advocacy for Australians subject to or potentially subject to the death penalty**

It is critical that Australia continues ensuring quality and timely consular assistance to its own nationals as required by international law, and that missions in retentionist countries are adequately trained to provide such assistance in a timely manner.

Australian embassies in retentionist countries should develop and maintain strong ties with qualified local lawyers; and support the development of a community of lawyers willing and able to defend capital drug defendants regardless of nationality.

<sup>23</sup> <https://www.cpjp.org.au/news/joint-statement-tonga>,  
<https://www.abc.net.au/pacific/programs/pacificbeat/tonga-death-penalty/103900504>

<sup>24</sup> Refer for example, Australia's statement at a CND intersessional meeting in September 2022:  
[https://www.unodc.org/documents/commissions/CND/CND\\_Sessions/CND\\_65/Thematic%20Discussions/Australia\\_national\\_statement\\_CND\\_Intersessional\\_22\\_September\\_2022.pdf](https://www.unodc.org/documents/commissions/CND/CND_Sessions/CND_65/Thematic%20Discussions/Australia_national_statement_CND_Intersessional_22_September_2022.pdf)

<sup>25</sup> <https://www.unodc.org/unodc/strategy/index.html>



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In cases where Australian nationals facing the death penalty have non-Australian co-defendants also facing the death penalty, Australian authorities should take meaningful steps to promote the effective representation of all co-defendants, and provide support regardless of nationality; particularly when the country of origin is unable or unwilling to provide effective assistance.

### **c) Addressing heightened risk of the death penalty based on sexual orientation and gender identity, ethnicity, religion and political beliefs**

While the majority of death row prisoners are male, the condition of female death row prisoners is often neglected which results in making them vulnerable to receive death sentences and executed. For instance, in Indonesia, there are approximately 540 people on death row and 12 of them are women, according to the latest data provided by the Directorate of Prison, Ministry of Law and Human Rights.<sup>26</sup> Half of these women are convicted of drug trafficking, yet, according to an unpublished report by the National Commission on Violence Against Women, the Indonesian criminal justice system did not consider the socioeconomic situation that led them to take minor roles in drug cases or prior violence experiences that put them in vulnerable situations.

Another demographic that could increase the vulnerability of someone obtaining a death sentence is nationality. An example of this point could be taken again from Indonesia. There are 83 foreigners who are on death row, amounting to around 15% of all death row inmates. Back in 2016, a Nigerian named Humphrey Ejike was executed. He received this sentence under a racist and xenophobic consideration by judges, who claimed that most people who come from Nigeria to Indonesia conduct illicit business, such as transacting drugs. The demographic of people who are executed in Indonesia could also show the vulnerability of foreigners. In 2015-2016, Indonesia executed 18 people, 15 of them were foreigners, including two Australians.

In Singapore, data shows that ethnic minorities are disproportionately overrepresented on death row.<sup>27</sup>

These heightened risks of the death penalty due to gender, nationality, disability, ethnicity, and other status should be considered when developing Australia's efforts to advocate for the worldwide abolition of the death penalty. To support the work of abolition of the death penalty in a country, there is a strong need of promoting data transparency on death row prisoners in a country, ensuring that the data is disaggregated into demographics on people on death row. Accessible and transparent data will allow more targeted engagement with retentionist counterparts, and help civil society organisations on the ground to create relevant advocacy strategies and mobilise resources to assist cases.

<sup>26</sup> <https://sdppublik.ditjenpas.go.id/dwh>

<sup>27</sup>

<https://transformativejusticecollective.org/2021/08/16/investigating-the-presence-of-structural-biases-in-the-criminal-punishment-system/>



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#### **d) Cooperation with civil society and non-government organisations**

Advocacy from civil society and non-government organisations has played a critical role in shifting government policies towards restricting and abolishing use of the death penalty. In a context of significant opacity, civil society is also a key source of information on capital punishment. External funding is important for sustaining their work, both internationally and at domestic level; particularly in a context of reduced funding.<sup>28</sup>

Australia should take a clear and strong position against the death penalty in all contexts, promote civic space and condemn restrictions or clampdowns that make it difficult for local civil society groups to engage in abolitionist advocacy. This includes promoting and supporting efforts in protecting abolitionist advocates from harassment and reprisals.

### **4. Concluding Recommendations**

In light of the high proportion of executions drug offences amongst the total number of known executions, and the obstacle that punitive drug policies pose to achieving universal abolition of the death penalty, it is important for Australia to strongly advocate for abolition of the death penalty as part of an overall human rights-compliant approach to responding to drugs, in global, regional and bilateral forums.

To ensure the effectiveness of such advocacy, the following recommendations are submitted for the consideration of the Joint Committee:

- a. Australia's approach to advocacy for abolition of the death penalty should comprise targeted advocacy to:
  - i. promote transparency in countries' use of the death penalty
  - ii. call for a reduction in the categories of capital crimes, with specific attention to drug offences, as a first step towards full abolition; and
  - iii. encourage intermediate steps, while advocating for closer alignment with international human rights standards on fair trials, such as but not limited to: making the death penalty fully discretionary, in countries which retain it as a mandatory punishment for certain offences; removing presumptions of drug possession, knowledge or intent which shift the burden of proof onto the defendants; ensuring provision of qualified interpreters at all stages of investigation and trial; ensuring the defendant has quality legal assistance throughout all stages of investigation, trial, and post-conviction appeals and requests for clemency.
- b. Continue meaningfully engaging around resolutions in relevant UN fora, including at the General Assembly, Commission on Narcotic Drugs and Human Rights Council, on the

<sup>28</sup> <https://hri.global/publications/achieving-abolition-funding-the-anti-death-penalty-movement/>

question of the death penalty, defend language on drug offences currently in the resolutions, and advocate for it to be strengthened;

- c. Continue engaging meaningfully on drug policy issues at the UN Human Rights Council, and ensure the death penalty for drug offences is raised as an issue whenever relevant, including during negotiations on future drug policy resolutions, in statements during Interactive Dialogues with relevant mandates, including the Special Rapporteur on extrajudicial, summary and arbitrary executions and the Special Rapporteur on human rights in the Islamic Republic of Iran. As a close neighbour to South East Asia, it is appropriate and necessary for Australia to take up every opportunity to raise concerns about use of the death penalty by high application countries such as China, Singapore, Malaysia, Thailand and Vietnam.
- d. Develop a dedicated strategy on the death penalty in relation to drug control and in relevant fora, such as the UN Commission on Narcotic Drugs. This could include: ensuring the issue is regularly condemned in statements; hosting a side event on the death penalty, with involvement of other Member States and civil society; convening like-minded countries and civil society organisations to develop a strategic plan to strengthen attention on the topic; and promote inclusion of language on the death penalty in a relevant CND resolution.
- e. Constructively engage with the UNODC to ensure (a) efforts to advocate against use of the death penalty are included in their next strategy, and (b) clarity on guarantees that technical cooperation or assistance, including through UNODC funding, does not risk contributing to application of the death penalty for drug offences.
- f. Bilaterally, especially with high application countries, leverage all opportunities for diplomatic engagement and exchange to advocate for abolition of the death penalty for drug offences as a strategic step towards total abolition; including in the context of cooperation agreements on human rights and trade. This includes:
  - i. highlighting concerns with application of the death penalty as priorities
  - ii. take advantage of reporting and exchange moments to ask about updated and disaggregated information on the death penalty; contributing to enhanced transparency, and
  - iii. ensure full transparency by Australian agencies involved in monitoring and reporting processes in relation to human rights and the death penalty; to allow for meaningful civil society involvement and promote the broader objective of increasing transparency in the use of the death penalty.
- g. Continue funding support for civil society and non-government organisations advocating for abolition of the death penalty and human rights-centred drug policy reforms that would specifically reduce the risks of the death penalty being imposed for a drug offence; particularly for organisations working in retentionist countries, and to support protections for human rights defenders against reprisals and harassment.
- h. Review Australia's existing death penalty strategy to include and address government-to-government assistance and police cooperation, such as information sharing on specific cases of joint partnerships and technical assistance or cooperation with drug law enforcement in retentionist states; removing the existing exception. The strategy should be amended to require safeguards of non-imposition of capital



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punishment as a precondition for cooperation. Australia's default position should shift to one of non-cooperation with drug law enforcement when there is a real risk of the death sentence being imposed, or of a person undergoing capital trials lacking basic guarantees of fairness, unless guarantees are provided. We strongly urge the Australian Government to bring a wider lens to the concept of 'public interest' and to ensure that principles of proportionality and the observation of fundamental human rights are prioritised in any guidelines that govern cooperation with countries in the region that retain the death penalty.