

Talking points  
Mr. Philipp Hadorn, MP (Switzerland),  
Panel: *Towards the abolition of the mandatory death penalty for drug-related offences*  
**Roundtable on the abolition of the mandatory death penalty**  
17 November 2015, Parliament of Malaysia, Kuala Lumpur

- Greeting remarks
- I am Philipp Hadorn, member of the National Council of the Federal Assembly of Switzerland.
- The discussion on abolishing the death penalty is not an ordinary one and can be controversial. The abolition process varies greatly from one country to another, with different challenges and issues stake, but I will focus on the use of the death penalty for drug related offences, a topic of particular concern in Malaysia.
- This topic is also of the utmost importance, as in the past months there has been a global resurgence in the use of the death penalty for drug offences. Some States have executed people for drug offences at an increased rate, while others have ended long-standing moratoria. Despite the global trend towards abolition, an increase of 23% of death sentences has been observed in 2014 in retentionist countries, compared to 2013.
- First and foremost, I would like to address the issue of the deterrent effect of the mandatory death penalty for drug-related crimes by stating that there is no conclusive evidence that the death penalty has any particular effect on drug crimes and no reliable data demonstrating any direct impact of the capital punishment on drug crimes. There is also no evidence that the death penalty has a stronger deterrent effect than life imprisonment. Moreover, some consider that mandatory death penalty for drug-related offences could encourage drug-trafficking, as such illegal markets are more financially attractive the higher the risks get: the higher the risk, the more money one will receive for his or her action.
- In addition, I might add that the persons convicted for drug-trafficking and sentenced to death are usually not the “kingpins” but rather low-level couriers. The masterminds thus are not put at risk and the sentencing and execution of the drug mules do not impair the broader drug network.
- It is important to note that those low-level couriers generally come from disadvantaged economic backgrounds and are in vulnerable situations. Indeed, drug traffickers generally target and recruit women to act as drug mules, perceived as less likely to attract suspicion, as well as migrant workers and refugees. For these people in vulnerable situation, the economic prospects outweigh the risk attached to drug-trafficking
- This is why death penalty is considered by many as discriminatory and is often used disproportionately against the poor, the mentally ill, those from racial and ethnic minorities. For example, in the United States, this had led President Obama to express serious concerns about the way the death penalty is used in the country, leading to a national review of the system with the view of reforming it.

- This is why it is very important to move away from mandatory death penalty for drug-related crimes so that judges can use the necessary discretion and take into account the facts of the offence or the individual characteristics of each offender, such as the lack of criminal record, the desperate circumstances that may have contributed to the decision to traffic in narcotics or evident remorse. Taking this into account, in 2007, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions declared that “*individualised sentencing by the judiciary is required in order to prevent cruel, inhuman or degrading punishment and the arbitrary deprivation of life*”.
- It is also important to highlight that the mandatory death penalty does not reduce drug abuse and drug-related deaths, nor does it protect the population from the “social ills of drugs”. Firstly because drug trafficking still flourishes despite the capital punishment, and secondly because people may be discouraged from seeking medical care and accessing health services. A harsh position on drug users such as in many countries which still retain the mandatory death penalty for drug related crimes can reinforce their status as social outcasts and they may avoid seeking medical attention for fear that the authorities will get involved. This is why one of the XX of this year’s World day against the death penalty focused on drugs was “give chance a second life”.
- Another important aspect that I would like to raise regards the type of substance and the amount of drugs. Indeed, even though one of the arguments may be to protect the population from the social ills of drugs, most of the risks, i.e. addiction, overdose, infections, are linked to the use of heroin, cocaine and amphetamine-type stimulants (ATS). Despite this fact, most of the drug offenders sentenced to death in Malaysia between 2008 and 2010 are not dealers for “hard” drugs but committed offences related to marijuana or hashish, a fact that cannot be taken into account by judges due to the mandatory character of the death penalty. Moreover, the laws vary from one country to another and there is no clear standard defining the amount of drugs that differentiates personal consumption from drug trafficking.
- For example, on the first hand the Malaysian laws provide that there is a presumption of trafficking – offence which is punishable with death – when the person has in his or her possession 50gr or more of methamphetamines, 200gr or more of cannabis or cannabis resin and 15gr or more of morphine. On the other hand, the quantity of drugs that trigger the mandatory death penalty in Singapore is generally higher, as the laws provide the death penalty for 250gr or more of methamphetamines, 500gr or more of cannabis and 30gr or more of morphine<sup>1</sup>. In addition, most countries that have the death penalty for drug-related offenses do not provide for the mandatory death penalty. In the region, this is the case for Indonesia and Vietnam. Indonesian laws provide that the judges have discretionary powers whatever the amount of drugs involved, and Vietnamese legislation provides for discretionary death penalty only for 5kg or more of poppy resin, cannabis resin or coca plasma, 100gr or more of cocaine or heroin, 300gr or more of other narcotics in solid form and 750ml or more of other narcotic substances in liquid form. The threshold is thus generally lower in Malaysia compared to other countries in the region.
- It should also be added that international human rights standards have all prohibited the mandatory death penalty for drug offences. Indeed, several Human Rights bodies and

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Special Rapporteurs have affirmed numerous times that drug offences do not reach the threshold of the “most serious crimes”, as provided in the International Covenant on Civil and Political Rights (ICCPR)<sup>2</sup>. Indeed, the most serious crimes are considered to be intentional killings or crimes with lethal or other extremely grave consequences. As such, drug offences do not meet the threshold of the “most serious crimes” and the attached capital punishment is not compatible with the values of respect for human dignity, equality, the rule of law and human rights. Furthermore, as stated previously, the mandatory death penalty has been considered as a violation of the prohibition of torture or cruel, inhuman or degrading treatment.

- Finally, I would like to point out that the mandatory death penalty for drug-related offences does not address the root of the drug issue. It is of my opinion that it should be envisioned as a health and human rights issue and that alternative drug policies could be determined. These alternatives could focus on the public health system as a prevention tool as well as harm reduction and rehabilitation programmes. It is important to keep in mind that the mandatory death penalty is not an efficient tool to deter drug offences, while strategies aiming at controlling illicit financial flows and fighting corruption could seriously impair the drug-trafficking networks.
- This is why I am glad to participate in this kind of gathering and exchange with you on this important issue, encouraging any legislative initiative that could move Malaysia away from the mandatory death penalty for drug related offenses.

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<sup>2</sup> ICCPR, Article 6(2), “*In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court*”.