

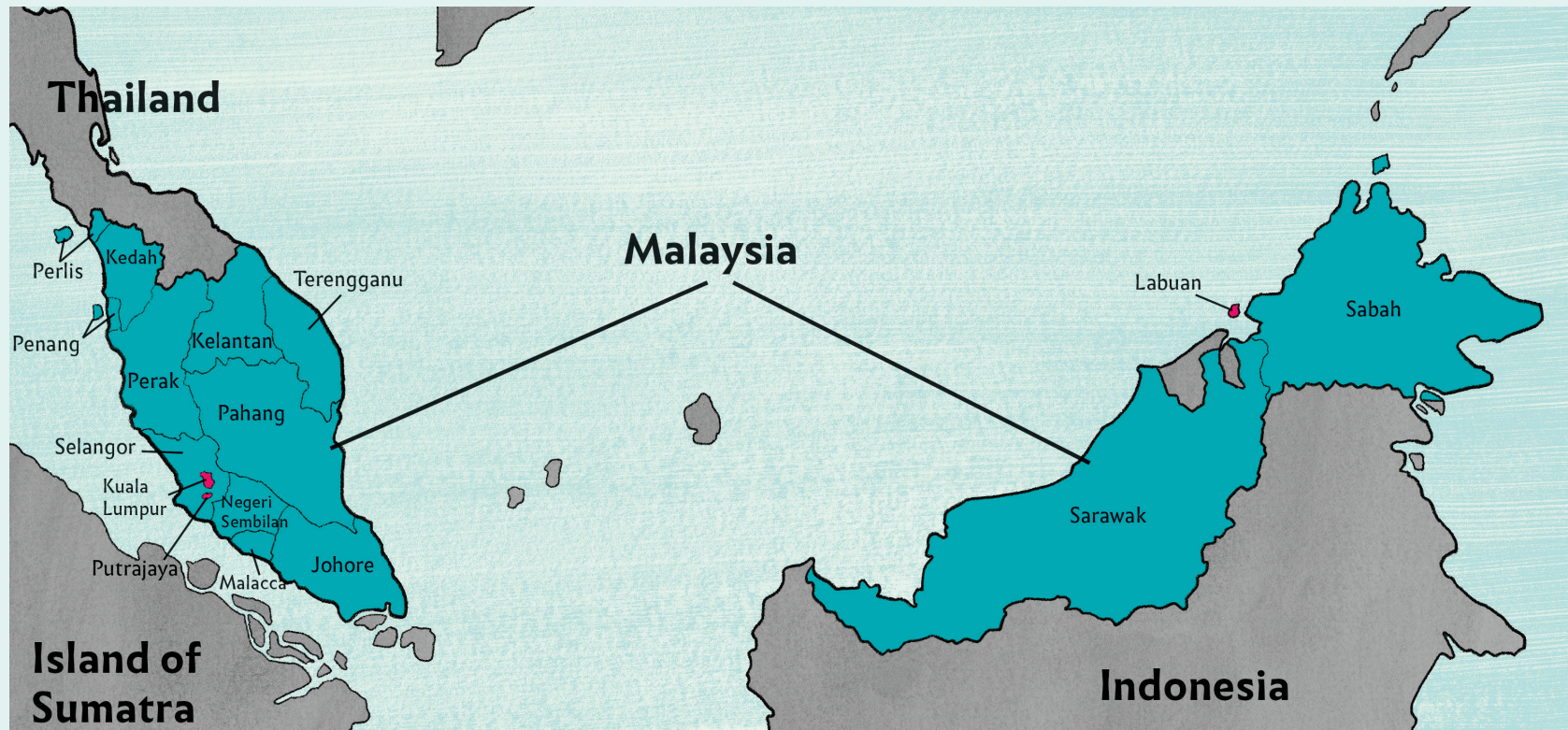
THE DEATH PENALTY IN LAW AND IN PRACTICE **MALAYSIA**



**ANTI
DEATH
PENALTY
ASIA
NETWORK**

**EC
PM** **TOGETHER
AGAINST
THE DEATH
PENALTY**

THE DEATH PENALTY IN LAW AND IN PRACTICE MALAYSIA



MALAYSIA

AREA

330,803 km²

CAPITAL

Kuala Lumpur

POPULATION

32,776,195 (2021, World bank)

OFFICIAL LANGUAGE

Malay

#2

HEAD OF STATE

Since 31 January 2019, **Sultan Abdullah of Pahang** is the *Yang di-Pertuan Agong* which is the constitutional monarch and Head of State of Malaysia.

HEAD OF GOVERNMENT

On 21 august 2021, **Yang Amat Berhormat Dato' Sri Ismail Sabri bin Yaakob** was appointed Prime Minister of Malaysia.

MINISTER OF FOREIGN AFFAIRS

Dato' Sri Saifuddin Abdullah

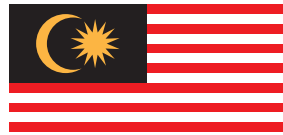
MINISTER IN THE PRIME MINISTER'S DEPARTMENT IN CHARGE OF PARLIAMENT AND LAW

M. Takiyuddin bin Haji Hassan

MINISTRY IN CHARGE OF THE PENITENTIARY ADMINISTRATION

Ministry of Home Affairs

#3



**STATUS
RETENTIONIST**

**DATE OF THE LAST EXECUTION
2017**

**NUMBER OF DEATH SENTENCES IN 2021
14+**

**NUMBER OF PRISONERS ON DEATH ROW (2021)
1355**

DEATH PENALTY APPLICATION AND CONDITIONS OF DETENTION OF DEATH ROW PRISONERS

THE CONDITIONS OF DETENTION OF DEATH ROW PRISONERS

Despite a moratorium on executions issued in July 2018, the courts are still issuing death sentences. The number of individuals on death row continued to grow between 2018 to 2021. During a parliamentary inquiry in June 2020, the Prison Department stated that Malaysian prisons were detaining 1 314 prisoners sentenced to death, an increase of 33 when compared to October 2018 (1281 individuals were reported to be on death row by the government at that time).

The Malaysian prison system was designed to host up to 52 000 prisoners. However, in September 2020, the Senate (*Dewan Negara*) informed by a written statement that Malaysian prisons were hosting 68 730 prisoners. Overcrowding has resulted in a lack of access to health care, a decrease in quality and quantity of food, and a shortage of hygienic products available free of charge (soap, sanitary towels, etc).

Prisoners sentenced to death are managed by the 'Radical Prisoners Detainee @ High Risk' unit within the Prison Department.

Malaysian law holds prisoners sentenced to death in a state of prolonged solitary confinement. Such detention conditions and treatment have been qualified as degrading and inhumane, if not tantamount to torture, by both the United Nations Human Rights Committee and the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. Furthermore, unlike other prisoners, those sentenced to death are not allowed to work which complicates the purchase of food, hygiene products, or telecommunication items such as phone cards without outside assistance. They are also not permitted to engage in the usual activities afforded to other prisoners such as pursuing further education and vocational trainings.

Prisoners sentenced to death are kept in separate single cells under the constant watch of the prison wardens. The facilities afforded are often limited with toilets located within sight and poorly lit cells which are damaging prisoners' visual acuity. Prisoners stay 23 hours a day in their cells. Relatives may either visit them 45 minutes once a week or address them a letter, they are not allowed to do both. In some facilities, prisoners spend their regulatory 45 minutes outdoor time in a hall, foregoing the fresh air they may receive from outdoor activities. There is no activity besides some interventions from religious organisations.

Language barrier worsens the isolation of foreign prisoners, who represent 41% of those sentenced to death: discussions with religious interveners are often exclusively in Malay, and books in a foreign language are not allowed.

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Conditions of detention cause some prisoners sentenced to death to suffer from “death row syndrome”. Some expressions of this syndrome are repressed by prison staff: a prisoner who makes noise or refuses to eat is at risk of being kept in a cell without daylight and with limited access to food for 21 days.

CLEMENCY

In 2018, the Malaysian Prison Department notified that between 2007 and 2017, Pardons Board mitigated the sentence of 165 prisoners sentenced to death.

Article 42 of the Constitution, and Sections 300 and 301 of the Criminal Procedure Code provide some information on the clemency process. Requests for a pardon are filed to a Pardons Board for advice. On this advice, the King *“has power to grant pardons, reprieves and respites in respect of all offences which have been tried by court-martial and all offences committed in the Federal Territories of Kuala Lumpur, Labuan and Putrajaya”*. The Ruler of a State has power to grant pardons in respect of all other offences committed in his State.

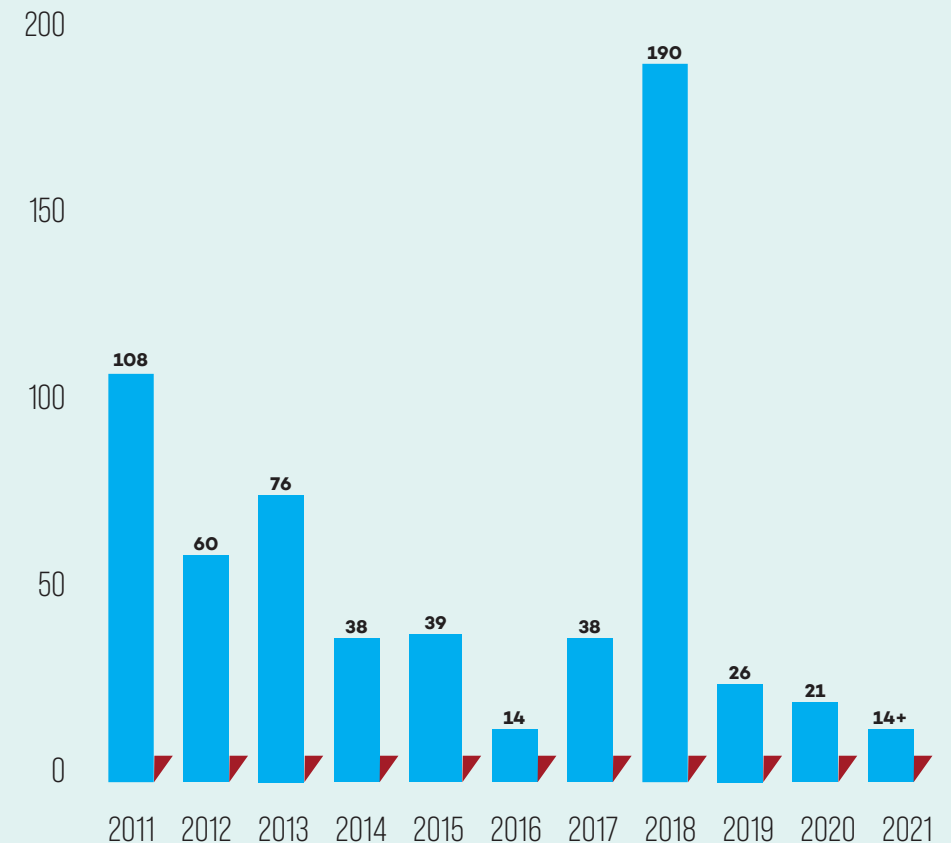
Besides these indications, there is no other law or regulation describing clemency application process. There is no legal deadline for hearing a request for pardon, and a Pardons Board may not convene for years.

Prisoners sentenced to death often wait for clemency decision for upwards of 10 to 12 years with cases where detainees were reported to have spent 27 years in detention prior to clemency. From the pre-trial custody, the entire criminal procedure may last up to a decade with the initial trial phase at the court of first instances taking up to 5 years or more.

Many prisoners sentenced to death are unaware of the existence of a procedure of pardon. This occurs despite Prison Regulations 2000 provides for automatic clemency application process for prisoners serving more than 7 years imprisonment. After application for clemency, some do not know the progress of their application and whether it was successful or denied.

For those who do not speak Malay natively, they do not necessarily have access to a translator or a lawyer (they are not mandatory after the trial phase), and may be forced to send their requests in a language that would not be understood by members of a Pardons Board.

NUMBER OF DEATH PENALTY SENTENCES OVER THE LAST 10 YEARS



THE NATIONAL LEGAL FRAMEWORK

Malaysian law identifies offences for which a death sentence is left at the discretion of the judge, and offences for which such a sentence is mandatory. In March 2019, the Malaysian government informed that it planned to abolish mandatory death penalty. A bill abolishing the mandatory death penalty was introduced in Parliament on 6 October 2022. Parliament was dissolved a few days later, on 10 October 2022.

THE FEDERAL CONSTITUTION

Article 5 of the 2007 Federal Constitution of Malaysia enshrines the right to life and the liberty of the person. However, article 5 provides for derogations through legislative means and allows death penalty without other restriction than the principle of legality.

THE PENAL CODE

The Penal Code provides for 10 offences for which there is a mandatory death sentence (terrorist offences, murder, some offences against the chief of State, some offences pertaining to attempted murder or hostage taking).

The Penal Code provides for 7 offences for which a death sentence is at the judge discretion (acts of war, mutiny, false testimony causing the death of an innocent person, assisted suicide, some acts of abduction or rape).

THE DANGEROUS DRUGS ACT, 1952

The Act provides for discretionary or mandatory death penalty, depending on the circumstances. The UN Rapporteur on torture and the UN Rapporteur on summary executions identified death penalties for drug related offences as clear violations of international law.

The Dangerous Drugs Act is particularly repressive. It establishes a presumption of guilt, in contradiction to article 11 of the Universal Declaration of Human Rights. Under this Act, trafficking, offers to traffic, preparatory acts or offer to traffic, are punishable by death. According to Amnesty International, 72% of all death sentences recorded in 2018 are related to drug offences.

In 2017, the Dangerous Drugs Act was amended. It now considers mitigating circumstances, and under certain conditions, abolishes mandatory death penalty. The amendment came into force in 2018 but has no retroactive effect. The non-retroactivity of a more lenient penal law is in contradiction with the UN Safeguards guaranteeing protection of the rights of those facing the death penalty.

OTHER NATIONAL LEGISLATIONS

Death penalty is a possible sentence under:

- The 1972 Armed Forces Act (discretionary death sentence)
- The 1960 Arms Act (discretionary death sentence)
- The 1971 Firearms Act (discretionary and mandatory death sentence)
- The 1961 Kidnapping Act (discretionary death sentence)
- The 2006 Water Services Industry Act (discretionary death sentence)
- The 2010 Strategic Trade Act (discretionary death sentence).

Overall, Malaysian law provides death penalty for 32 offences, 12 of these are mandatory. Many of these offences have no element of intentional killing, thus cannot be punished by death in accordance with international human rights law.

LIST OF LEGISLATIVE PROVISIONS RELATING TO THE DEATH PENALTY

PENAL CODE

| | |
|-------------------|--|
| Article 6 | The applicability of Article 5, first paragraph, 2nd-ly is limited such that the capital punishment cannot be imposed upon an act which the capital punishment is not provided for by the law of the country where the act has been committed. |
| Article 121 | Whoever wages war against the Yang di-Pertuan Agong or against any of the Rulers or Yang di-Pertua Negeri, or attempts to wage such war, or abets the waging of such war, shall be punished with death or imprisonment for life, and if not sentenced to death shall also be liable to fine. |
| Article 121-A | Whoever compasses, imagines, invents, devises or intends the death of or hurt to or imprisonment or restraint of the Yang di-Pertuan Agong or any of the Rulers or Yang di-Pertua Negeri, their heirs or successors, shall be punished with death and shall also be liable to fine. |
| Article 130-C (1) | Whoever, by any means, directly or indirectly, commits a terrorist act shall be punished— (a) if the act results in death, with death; and (b) in any other case, with imprisonment for a term of not less than seven years but not exceeding thirty years, and shall also be liable to fine. |
| Article 130-L | Whoever intentionally directs the activities of a terrorist group shall be punished— (a) if the act results in death, with death; and (b) in any other case, with imprisonment for a term of not less than seven years but not exceeding thirty years, and shall also be liable to fine. |
| Article 130-N | Whoever, by any means, directly or indirectly, provides or collects or makes available any property intending, knowing or having reasonable grounds to believe that the property will be used, in whole or in part, to commit a terrorist act shall be punished— (a) if the act results in death, with death; and (b) in any other case, with imprisonment for a term of not less than seven years but not exceeding thirty years, and shall also be liable to fine, and shall also be liable to forfeiture of any property so provided or collected or made available. |
| Article 130-O | (1) Whoever, directly or indirectly, provides or makes available financial services or facilities— (a) intending that the services or facilities be used, or knowing or having reasonable grounds to believe that the services or facilities will be used, in whole or in part, for the purpose of committing or facilitating the commission of a terrorist act, or for the purpose of benefiting any person who is committing or facilitating the commission of a terrorist act; or (b) knowing or having reasonable grounds to believe that, in whole or in part, the services or facilities will be used by or will benefit any terrorist, terrorist entity or terrorist group, |

| | |
|-----------------|---|
| | shall be punished— (aa) if the act results in death, with death; and (bb) in any other case, with imprisonment for a term of not less than seven years but not exceeding thirty years, and shall also be liable to fine. (2) For the purposes of subsection (1), “financial services or facilities” includes the services and facilities offered by lawyers and accountants acting as nominees or agents for their clients. |
| Article 130-QA | Whoever accepts gratification to facilitate or enable the commission of any terrorist act shall be punished— (a) if the act results in death, with death; and (b) in any other case, with imprisonment for a term of not less than seven years but not exceeding thirty years, and shall also be liable to fine. |
| Article 130-ZB | Whoever accepts gratification to facilitate or enable any organized criminal activity shall be punished— (a) if the act results in death, with death; and (b) in any other case, with imprisonment for a term of not less than seven years but not exceeding thirty years, and shall also be liable to fine. |
| Article 132 | Whoever abets the committing of mutiny by an officer, soldier, sailor or airman in the Malaysian Armed Forces, shall, if mutiny is committed in consequence of that abetment, be punished with death or with imprisonment for a term which may extend to twenty years, and shall also be liable to fine. |
| Article 194 | Whoever gives or fabricates false evidence, intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which is capital by the law for the time being in force in Malaysia, shall be punished with imprisonment for a term which may extend to twenty years, and shall also be liable to fine; and if an innocent person is convicted and executed in consequence of such false evidence, the person who gives such false evidence shall be punished either with death or the punishment hereinbefore described. |
| Article 302 | Whoever commits murder shall be punished with death. |
| Article 305 | If any person under eighteen years of age, any insane person, any delirious person, any idiot, or any person in a state of intoxication, commits suicide, whoever abets the commission of such suicide shall be punished with death or imprisonment for a term which may extend to twenty years, and shall also be liable to fine. |
| Article 307 (2) | When any person offending under this section is under sentence of imprisonment for life or for a term of twenty years, he may, if hurt is caused, be punished with death. |
| Article 364 | Whoever kidnaps or abducts any person in order that such person may be murdered, or may be so disposed of as to be put in danger of being |

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murdered, shall be punished with death or imprisonment for a term which may extend to thirty years and shall, if he is not sentenced to death, also be liable to whipping.

Article 374-A Whoever seizes or detains and threatens to kill, to injure or to continue to detain another person ("the hostage") to compel the Government of Malaysia or the Government of any State in Malaysia, any other government, or any international organization or any other person or group of persons to do or refrain from doing any act as an explicit or implicit condition for the release of the hostage shall be punished— (a) if the act results in death, with death; and (b) in any other case, with imprisonment for a term of not less than seven years but not exceeding thirty years, and shall also be liable to fine.

Article 376 (4) Whoever whilst committing or attempting to commit rape causes the death of the woman on whom the rape is committed or attempted shall be punished with death or imprisonment for a term of not less than fifteen years and not more than thirty years, and shall also be punished with whipping of not less than ten strokes.

Article 396 If any one of two or more persons, who are conjointly committing gang-robbery, commits murder in so committing gang-robbery, every one of those persons shall be punished with death or imprisonment for a term which may extend to thirty years, and, where the punishment is not death, shall also be liable to whipping.

THE ARMED FORCES ACT, 1972

Article 38 (1) Every person subject to service law under this Act who with intent to assist the enemy— (a) abandons or delivers up any place or post which it is his duty to defend, or induces any person to abandon or deliver up any place or post which it is that person's duty to defend; (b) surrenders any ship or aircraft to the enemy when it is capable of being successfully defended or destroyed; (c) surrenders any base, airfield or other defence establishment or installation to the enemy when it is capable of being successfully defended or when it is his duty to cause it to be destroyed; (d) does any act calculated to imperil the success of operations of His Majesty's armed forces, of any forces co-operating therewith or of any part of any of those forces; (e) having been made a prisoner of war, serves with or aids the enemy in the prosecution of hostilities or of measures calculated to influence morale, or in any other manner whatsoever not authorized by international usage; (f) furnishes the enemy with arms or ammunition or with supplies of any description or with any other thing likely to assist him; (g) harbours or protects an enemy not being a prisoner of war; (h) gives any false air signal or alters or interferes with any air signal or any apparatus for giving an air sig-

nal; (i) when ordered by his superior officer, or otherwise under orders, to carry out any warlike operations in the air fails to use his utmost exertion to carry such orders into effect; or (j) causes the capture or destruction by the enemy of any of His Majesty's ships or aircraft or the ships or aircraft of any force co-operating with His Majesty's armed forces, shall, on conviction by court-martial, be liable to suffer death or any other punishment provided by this Act.

Article 41 (1) Every person subject to service law under this Act who with intent to assist the enemy communicates with or gives intelligence to the enemy shall, on conviction by court-martial, be liable to suffer death or any other punishment provided by this Act.

Article 47 (1) Every person subject to service law under this Act who— (a) takes part in a mutiny involving the use of violence or the threat of the use of violence; (b) takes part in a mutiny having as its object or one of its objects the refusal or avoidance of any duty or service against, or in connection with operations against, the enemy, or the impeding of the performance of any such duty or service; or (c) incites any other person subject to service law under this Act to take part in such a mutiny, whether actual or intended, shall, on conviction by court-martial, be liable to suffer death or any less punishment provided by this Act.

Article 88 (1) Every person subject to service law under this Act who commits a civil offence whether in Malaysia or elsewhere shall be guilty of an offence against this section. (2) In this Act the expression "civil offence" means any act or omission punishable by the law of the Federation or which, if committed in Malaysia, would be punishable by that law; and in this Act the expression "the corresponding civil offence" means the civil offence the commission of which constitutes an offence against this section. (3) A person convicted by court-martial of an offence against this section shall—(a) if the corresponding civil offence is treason be liable to suffer death or any other punishment provided by this Act; (b) if the corresponding civil offence is murder be liable to suffer death or any other punishment provided by this Act; [...; chapeau du bas] Provided that where a civil court could not so award imprisonment, a person so convicted shall be liable to suffer such punishment, less than dismissal with disgrace from His Majesty's service in the case of an officer or detention in the case of a serviceman, as is so provided. (4) A person shall not be tried by court-martial for an offence of treason, murder, manslaughter or rape unless such person at the time he committed the offence was on active service or serving outside Malaysia.

THE DEATH PENALTY IN LAW AND IN PRACTICE

THE ARMS ACT, 1960

Article 14 (1) Any person who manufactures an arm or ammunition— (a) without a valid licence granted under section 12; or (b) in contravention of any condition imposed under paragraph 12(2)(a), shall, on conviction, be liable to punishment with— (i) death; or (ii) imprisonment for life and whipping with not less than six strokes, and, in the case of a company, firm, society or body of persons, with a fine not exceeding five hundred thousand ringgit.

THE DANGEROUS DRUG ACT, 1952

Article 39-B (1) No person shall, on his own behalf or on behalf of any other person, whether or not such other person is in Malaysia— (a) traffic in a dangerous drug; (b) offer to traffic in a dangerous drug; or (c) do or offer to do an act preparatory to or for the purpose of trafficking in a dangerous drug. (2) Any person who contravenes any of the provisions of subsection (1) shall be guilty of an offence against this Act and shall be punished on conviction with death or imprisonment for life and shall, if he is not sentenced to death, be punished with whipping of not less than fifteen strokes. [...]

THE FIREARMS (INCREASED PENALTIES) ACT, 1971

Article 3 Any person who at the time of his committing or attempting to commit or abetting the commission of a scheduled offence discharges a firearm with intent to cause death or hurt to any person, shall, notwithstanding that no hurt is caused thereby, be punished with death.

Article 3-A Where, with intent to cause death or hurt to any person, a firearm is discharged by any person at the time of his committing or attempting to commit or abetting the commission of a scheduled offence, each of his accomplices in respect of the offence present at the scene of the commission or attempted commission or abetment thereof who may reasonably be presumed to have known that such person was carrying or had in his possession or under his custody or control the firearm shall, notwithstanding that no hurt is caused by the discharge thereof, be punished with death, unless he proves that he had taken all reasonable steps to prevent the discharge.

Article 7 (1) Any person trafficking in firearms shall be punished with— (a) death; or (b) imprisonment for life and with whipping with not less than six strokes. (2) Any person proved to be in unlawful possession of more than two firearms shall be presumed to be trafficking in firearms.

MALAYSIA

THE KIDNAPPING ACT, 1961

Article 3 Whoever, with intent to hold any person for ransom, abducts or wrongfully confines or wrongfully restrains such person shall be guilty of an offence and shall be punished on conviction with death or imprisonment for life and shall, if he is not sentenced to death, also be liable to whipping.

THE WATER SERVICES INDUSTRY ACT, 2006

Article 121 (1) A person who contaminates or causes to be contaminated any watercourse or the water supply system or any part of the watercourse or water supply system with any substance— (a) with the intention to cause death; (b) with the knowledge that he is likely to cause death; or (c) which would likely endanger the life of any person, commits an offence. (2) A person found guilty of an offence under subsection (1), on conviction— (a) where death is the result of the act, shall be punished with death or imprisonment for a term which may extend to twenty years, and where the punishment is not death, he shall also be liable to whipping; [...]

THE STRATEGIC TRADE ACT, 2010

Article 9 (1) No person shall export, tranship or bring in transit strategic items unless he obtains a permit issued under this Act. (2) No person shall export, tranship or bring in transit strategic items or unlisted items to a restricted end-user specified in subsection 8(1) unless he obtains a special permit issued under this Act. (3) No person shall export, tranship or bring in transit strategic items or unlisted items to a prohibited end-user specified in subsection 8(2). (4) A person who contravenes subsection (1) commits an offence and shall, on conviction— (a) in relation to strategic items which are arms or related material— (i) where the act is done with the intent to unlawfully export, tranship or bring in transit such strategic items without a permit or with knowledge that the export, transshipment or bringing in transit of such strategic items without a permit is unlawful— (A) where death is the result of the act, be punished with death or imprisonment for natural life, and in the case of a body corporate, be punished with a minimum fine of thirty million ringgit; or [...] (5) A person who contravenes subsection (2) commits an offence and shall, on conviction— (a) in relation to strategic items or unlisted items which are arms or related material— (i) where the act is done with the intent to unlawfully export, tranship or bring in transit such items without a special permit or with knowledge that the export, transshipment or bringing in transit of such items without a special permit is unlawful— (A) where death is the result of the act, be punished

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with death or imprisonment for natural life, and in the case of a body corporate, be punished with a minimum fine of thirty million ringgit; [...]

(6) A person who contravenes subsection (3) commits an offence and shall, on conviction— (a) in relation to strategic items or unlisted items which are arms or related material— (i) where the act is done with the intent to unlawfully export, tranship or bring in transit such items or with knowledge that the export, transshipment or bringing in transit of such items is unlawful— (A) where death is the result of the act, be punished with death or imprisonment for natural life, and in the case of a body corporate, be punished with a minimum fine of thirty million ringgit; [...]

Article 10 (1) No person shall provide any technical assistance within or outside Malaysia if such technical assistance is intended for use in connection with a restricted activity. (2) A person who contravenes subsection (1) commits an offence and shall, on conviction— (a) where death is the result of the act, be punished with death or imprisonment for natural life, and in the case of a body corporate, be punished with a minimum fine of thirty million ringgit; [...]

Article 11 (1) No person shall carry out an act of brokering of any strategic items unless he is registered under section 19, and where required under the related laws, holds a valid permit for the brokering of such strategic items from the relevant Authority under the related laws where— (a) he has been notified by the relevant Authority or an authorized officer that such strategic items may be intended or are likely to be used, wholly or in part, for or in connection with a restricted activity; (b) he knows that such strategic items are intended to be used, wholly or in part, for or in connection with a restricted activity; or (c) he has reasonable grounds to suspect that such strategic items are intended or are likely to be used, wholly or in part, for or in connection with a restricted activity. (2) A person who contravenes subsection (1) commits an offence and shall, on conviction— (a) in relation to strategic items which are arms or related material— (i) where death is the result of the act, be punished with death or imprisonment for natural life, and in the case of a body corporate, be punished with a minimum fine of thirty million ringgit; [...]

Article 12 (1) If a person is informed by the relevant Authority or otherwise knows or has reason to believe that any unlisted item will or may be used for a restricted activity, then the person shall notify the relevant Authority of his intention to export, tranship or bring in transit that unlisted item at least thirty days before that export, transshipment or bringing in transit is to be carried out. [...] (4) A person who contravenes subsection (1) commits an offence and shall, on conviction— (a) in relation to unlisted items which are arms or related material— (i) where

the act is done with the intent to unlawfully export, tranship or bring in transit such unlisted items without a permit or with knowledge that the export, transshipment or bringing in transit of such unlisted items without a permit is unlawful— (A) where death is the result of the act, be punished with death or imprisonment for natural life, and in the case of a body corporate, be punished with a minimum fine of thirty million ringgit; [...]

THE INTERNATIONAL LEGAL FRAMEWORK

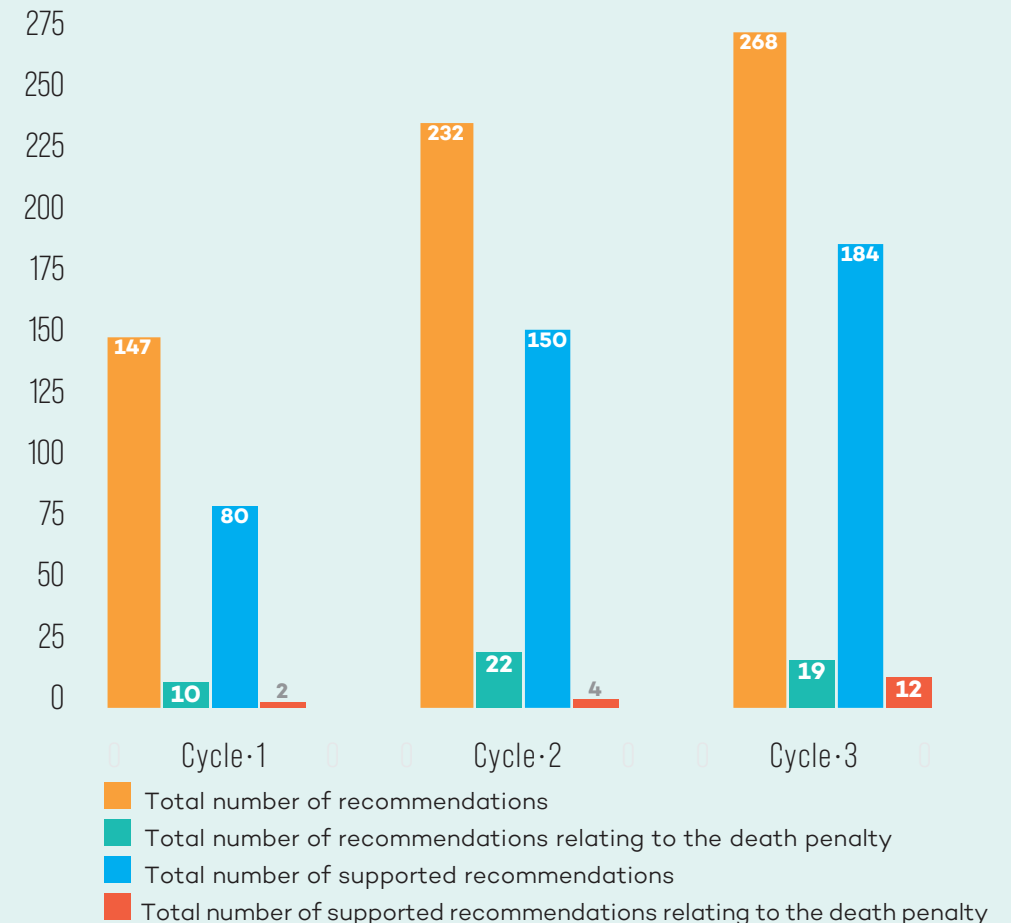
THE MAIN INTERNATIONAL INSTRUMENTS AIMING AT ABOLISHING THE DEATH PENALTY

| TREATY | RATIFICATION OR ACCESSION DATE |
|---|--------------------------------|
| International Covenant on Civil and Political Rights, 1966 | X |
| Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty, 1989 | X |
| Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984 | X |
| Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 2002 | X |
| Convention on the Rights of the Child, 1989 | 17 February 1995 (accession) |

VOTE ON THE UNITED NATIONS GENERAL ASSEMBLY RESOLUTION CALLING FOR A UNIVERSAL MORATORIUM ON THE USE OF THE DEATH PENALTY



UNIVERSAL PERIODIC REVIEWS



Among the 184 accepted recommendations in 2018 during cycle 3, 37 were partially accepted, including 5 recommendations related to the death penalty (cf. following page for more details). During cycle 2 in 2013, on a total of 150 accepted recommendations, only 15 were partially accepted, including 3 concerning the death penalty. These recommendations aimed to accelerate the abolition process (n°105 and 107 prescribed a public consultation to find an alternative to the death penalty) as well as restraining the scope of application of the death penalty (n°116 advocated for the abolition of the death penalty for minors and drug dealers). Malaysia explained it would adjudicate after the Office of the Prosecutor finishes its detailed study on the death penalty, by the end of 2014. Malaysia also recalled that the death penalty for drug dealers was legal.

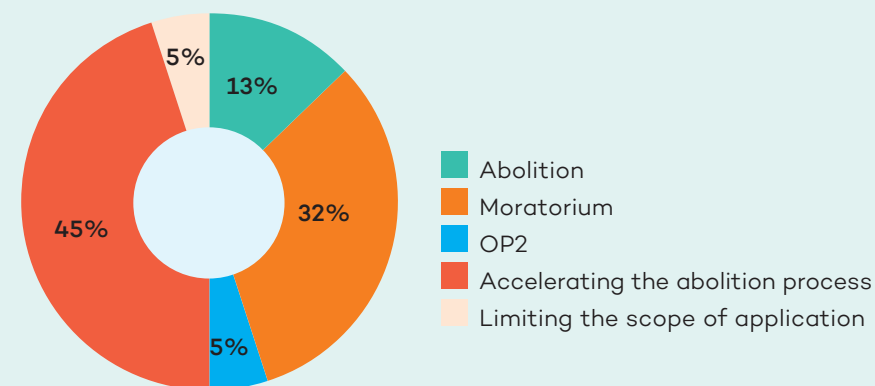
RECOMMENDATIONS RELATING TO THE DEATH PENALTY ISSUED TO MALAYSIA IN 2018

| N° | RECOMMENDATIONS | Supported | Noted |
|-------|--|-----------|-------|
| 37 | Ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (Montenegro) | | X |
| 91 | Establish a de facto moratorium on the death penalty with a view to its abolition (Portugal) | X | |
| 92 | Ensure the adoption of the necessary legislation to abolish the death penalty in a timely manner (Republic of Moldova) | X | |
| 93 | Continue to take steps for the abolishment of the death penalty and to revise the cases of persons on death row (Romania) | X | |
| 94 | Complete legislative efforts aimed at abolishing the death penalty (Ukraine) | X | X |
| 95 | Establish a moratorium on the death penalty pending an act of Parliament to abolish it (Albania) | X | |
| 96 | Ensure early submission to Parliament of legislation abolishing the death penalty and repealing the Sedition Act (Australia) | X | X |
| 97 | Continue with abolishing the death penalty and adopt a moratorium on the execution of the death penalty (Spain) | X | |
| 98 | Take further steps in limiting capital crimes with the aim of abolishing the death penalty (Cyprus) | X | |
| 99 | Intensify its efforts towards the abolition of the death penalty (Georgia) | X | |
| 100 | Immediately place a moratorium on the application of the death penalty with a view to its complete abolition (Fiji) | X | |
| 101 | Fully abolish the death penalty without delay (Finland) | | X |
| 102 | Maintain the recent moratorium on executions and completely abolish the death penalty (France) | X | X |
| 103 | Swiftly pass all necessary legislation to abolish the death penalty for all criminal offences (Germany) | X | X |
| 104 | Consider the adoption of a moratorium on executions (Italy) | X | |
| 105 | Improve and implement legislation for the complete abolishment of the death penalty (Sweden) | X | X |
| 106 | Concretize the commitment of abolishing the death penalty as soon as possible (Switzerland) | X | |
| 107 | Abolish the death penalty (Norway) | X | |
| 108 | Introduce a moratorium on executions with a view to abolishing the death penalty (Paraguay) | X | |
| TOTAL | | 17 | 7 |

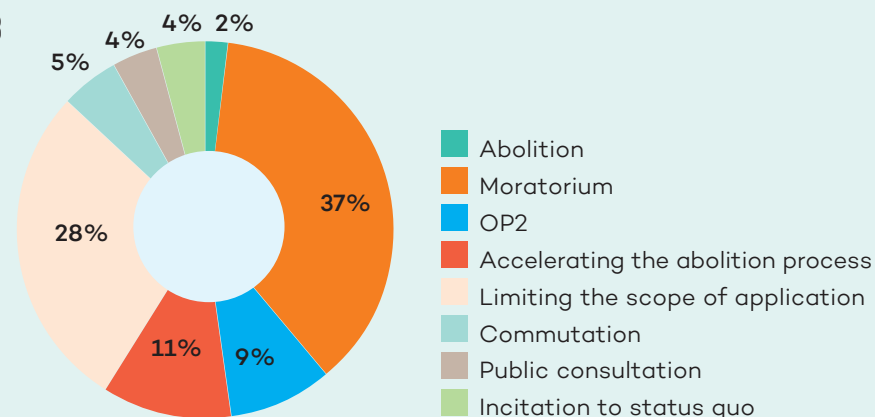
Recommendations n° 94, 96, 102, 103 and 105 were only partially accepted. Malaysia recalled that on October 10, 2018, its government announced death penalty will be abolished, but that legislative proceedings are still in process. Malaysia ensured that the recommendations listed above will be fully accepted when the Parliament votes the dispositions necessary to the abolition.

EVOLUTION OF TOPICS OF THE RECOMMENDATIONS RELATING TO THE DEATH PENALTY ISSUED TO MALAYSIA BETWEEN 2013 AND 2018

UPR 2018



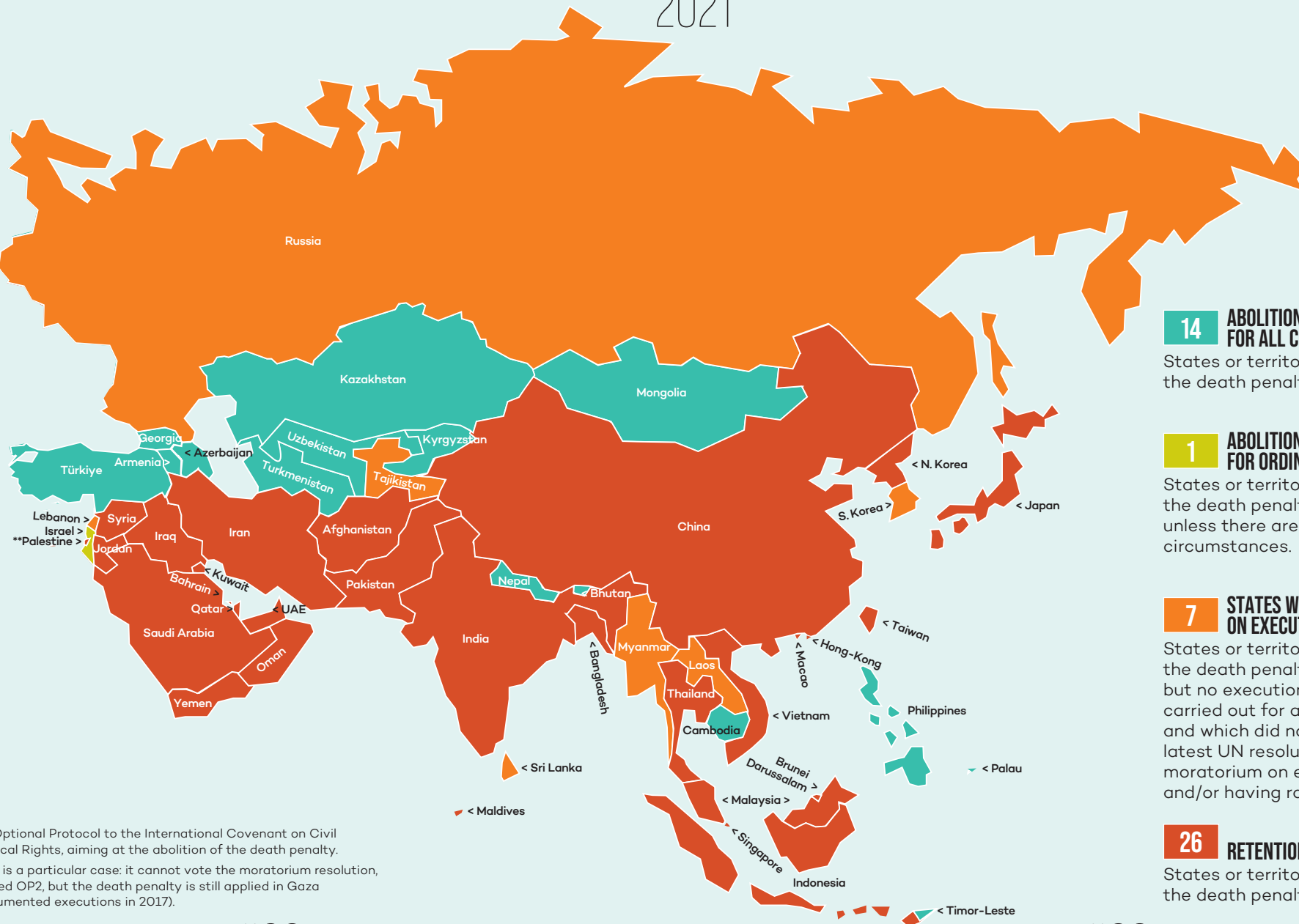
UPR 2013



In 2013, Malaysia received 22 recommendations relating to the death penalty. One of them was from Egypt and advocated for the retention of the death penalty, urging Malaysia to "Maintain its good example in observing the legal safeguards surrounding the application of death penalty". The number of recommendations slightly dropped in 2018. In 2018, when many 2013 recommendations urged to limit the scope of application of the death penalty, States were more willing to ask Malaysia to accelerate the abolition process, in accordance with the earlier statement made by the Malaysian government. During these two periodic reviews, States emphasized on the urgency to establish a moratorium on executions.

THE DEATH PENALTY IN ASIA

2021



14 ABOLITIONIST STATES FOR ALL CRIMES

States or territories where the death penalty is abolished.

1 ABOLITIONIST STATE FOR ORDINARY CRIMES

States or territories where the death penalty is abolished unless there are exceptional circumstances.

7 STATES WITH A MORATORIUM ON EXECUTIONS

States or territories where the death penalty is implemented but no executions have been carried out for at least 10 years and which did not oppose the latest UN resolution for a universal moratorium on executions and/or having ratified OP2*.

26 RETENTIONIST STATES

States or territories where the death penalty is implemented.

* Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.

** **Palestine** is a particular case: it cannot vote the moratorium resolution, has ratified OP2, but the death penalty is still applied in Gaza (last documented executions in 2017).

For more information,
see our fact-finding mission
on death row in Malaysia:



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