

SUMMARY REPORT FOR THE UNIVERSAL PERIODIC REVIEW OF MALAYSIA

This report provides updated information and data **on the use of the death penalty in Malaysia** for the country's upcoming review during the 45th Session of the Working Group on the Universal Periodic Review in January 2024 (4th cycle).

FACTS AND FIGURES

- Until April 2023, Malaysia counted 32 capital offenses, of which 11 were sentenced by mandatory death penalty. **April 2023: Bill adopted to abolish mandatory death penalty and remove death sentences for 7 crimes.**
- A moratorium on executions has been in place since 2018. The country voted in favor of the UN General Assembly Resolution on a global moratorium in 2018, 2020 and 2022.
- At least 112 persons were sentenced to death in 2021, 123 in 2022. Cases from these two years make up about 18% of the country's death row population.
- In March 2023, Malaysia had 1,318 persons on death row (+17.5% since the 3rd cycle in 2018). About 63% are Malaysians and 37% foreign nationals. Women represent about 9% of the population.
- Clemency procedures remain opaque as there are no clear rules and criteria regulating them.
- Malaysia has not ratified the International Covenant on Civil and Political Rights and its Second Optional Protocol aiming at the abolition of the death penalty nor the Convention against Torture and its Optional Protocol.

Recommendations:

- *Annually publish official detailed information on the use of the death penalty in Malaysia (including, but not limited to, the number of people sentenced to death and executed; information about the nature of offenses and why they were convicted; their socio-economic profile, the number of overturned death sentences on appeal; the number of pardoned convicts etc.).*
- *Take measures to ensure that the clemency process is known by all death row convicts and their families and establish precise and transparent rules governing the pardon process and the functioning of the Boards of Pardon.*
- *Establish policies to ensure any person charged with a capital offence, including foreign nationals, has access to qualified legal counsel with prior experience in capital cases.*
- *Implement systems for defendants to have access to trained interpreters and ensure that they are available at all stages of a criminal case.*
- *Ratify the International Covenant on Civil and Political Rights and the Second Optional Protocol of the Covenant.*
- *Ratify the Convention against Torture and its Optional Protocol.*

DETENTION CONDITIONS ON DEATH ROW IN MALAYSIA

- Individuals on death row often endure lengthy trials, with some waiting for more than 20 years for resolution. Solitary confinement is common, though conditions vary depending on prison age. Newer prisons allow some interaction among death row prisoners, but older ones primarily rely on isolation.
- Death row prisoners face challenges such as limited amenities and no work or rehabilitation programs, making them vulnerable upon release.

Recommendations:

- *Amend the Prisons Regulations to prohibit solitary confinement in all cases, including as disciplinary measures, and limit disciplinary sanctions to sanctions which comply with international standards on the treatment of detainees.*
- *Records of proceeding for disciplinary action to be communicated to next of kin at the earliest opportunity.*

DRUG TRAFFICKING AND THE DEATH PENALTY

- Drug trafficking represents 66% of the total death sentences, murder represents 32% and other offences 2%.
- Recent abolition of the mandatory death penalty has enabled judicial discretion in sentencing. Section 39(B) (2) of DDA52 now allows judges to choose between death and life imprisonment, with possible whipping. While judges have more discretion, past data suggests a preference for the death penalty in some cases.

Recommendations:

- **Abolish death penalty for all drug-related offences.**

ISSUES ON RIGHTS OF WOMEN ON DEATH ROW

- The proportion of women on death row in Malaysia is high, with nearly 9% as of 2020, which is almost double the global average. In 2019, 95% of women on death row were convicted for drug-related crimes.
- Women on death row lack access to gender-specific healthcare services, contrary to international standards such as the Bangkok Rules.
- The criminal justice system often fail to recognize women's specific socio-economic circumstances and enforces gender stereotypes on them.

Recommendations:

- **Establish prosecution and sentencing guidelines to recognise the vulnerability and culpability of a person who is a victim-survivor of domestic abuse and is charged with murder.**
- **Establish policies to protect the rights and interests of pregnant persons and their physical and mental health when facing prosecution for death-eligible offences.**

ISSUES ON RIGHTS OF CHILDREN CHARGED WITH DEATH-ELIGIBLE OFFENCES

- Malaysia ratified the Convention on the Rights of the Child (CRC) to protect children's welfare and rights.
- The Child Act 2001 prohibits imposing the death penalty on individuals under the age of 18. However, juveniles involved in death-eligible offenses can be detained indefinitely under "His Majesty's pleasure" (TLS), which is seen as a violation of Article 37 of the CRC.
- Juveniles detained under Section 97 are allowed to attend approved prison schools if they are still underage, but they may be moved to prison as «long-term» detainees once they complete their studies. An annual review process can recommend early release or continued detention.

Recommendations:

- **Establish formal enforcement for the annual review of sentences on persons under detention at His Majesty's pleasure, who, at the time of offending, were under the age of 18.**
- **Establish formal standards whereby judges are required to lower the criminal responsibility of persons, who at the time of offending were under the age of 18, in cases of death-eligible offences.**

ISSUES ON MENTAL HEALTH, DISABILITIES, AND PERSONS ON DEATH ROW

- Malaysia ratified the Convention on the Rights of Persons with Disabilities (CRPD) with reservations to certain articles.
- Malaysia's criminal justice system lacks proper safeguards and protection for individuals with intellectual, psychosocial, or physical disabilities.
- Section 84 of the Penal Code: it's not an offense if a person, due to unsoundness of mind, is incapable of knowing the nature of their actions. Still, there is no formal prohibition on imposing the death penalty on those with mental health conditions.

Recommendations:

- **Remove all reservations to the CRPD and sign the optional protocol to allow disabled persons who have exhausted their domestic legal remedies to submit their complaint to the CRPD Committee.**
- **Establish formal prohibition on the imposition of the death penalty on those with physical and mental health conditions.**
- **Provide reasonable procedural accommodations and access to equitable legal aid, access to disabled-inclusive detention facilities, in accordance with Article 10 (right to life) of the CRPD Human Rights indicators.**
- **Establish mechanisms to overturn sentences of detained persons who develop disabilities while being in detention.**

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