

Dear editors,

As tomorrow, 10 October 2019 is the World Day Against the Death Penalty, I would be grateful for this statement to be published tomorrow on the day itself.

Thank you very much,

Media statement by Member of Parliament for Batu Kawan, International Secretary for Wanita DAP and member of the Parliamentary Special Select Committee for Human Rights and Gender Equality Kasthuri Patto on Wednesday 9 October 2019 in Parliament Malaysia, Kuala Lumpur.

**Malaysia's move to abolish the mandatory death penalty is a valiant display of courage to uphold restorative justice and to return discretionary judiciary powers back to the courts as a breakthrough to fight crime and punish criminals instead of ending lives.**

10 October 2019 sees the 17<sup>th</sup> commemoration of the World Day Against the Death Penalty and to date, 106 countries have abolished the death penalty and 56 countries and territories are retentionist countries and still continue to execute, including Malaysia where the last execution was carried out in January 2018. A moratorium on all executions was signed by the Minister of Law in the Prime Minister's Department Datuk Liew Vui Keong last year after Pakatan Harapan became the new Government in Malaysia.

Malaysia has 33 crimes that warrant the death penalty from 8 different Acts. Only 11 crimes carry the mandatory death penalty from 2 separate Acts; 9 crimes from the Penal Code and the 2 from Firearms (Increased Penalties) Act, will be abolished and discretionary powers will be given to judges to make a decision to uphold justice, rule of law and the Federal Constitution.

To date, the number of death row inmates stands at 1293 and more than half of the inmates are Malaysians (55%) and the remainder are foreigners (45%). Ethnically death row inmates are estimated at 49% Malays constituting 340 inmates, 24% Indians making up 177 inmates, 168 inmates making up 23% of Chinese ethnicity, and about 4% making up Sikhs, Bajaus, Ibans, Bidayus, Bugis, Dusun and Kadazans. As for foreigners, the top 5 countries with the highest number of death row inmates are from Nigeria, Indonesia, Iran, Philippines, Thailand out of 44 countries in total.

Of that total Muslims make up the highest number of death row inmates at 50%, Christians and Catholics at 20%, Hindus and Buddhists at 14% each and the balance profess Sikhism, Bahai, Pagans and people of no religious belief.

The largest proportion of people on death row are those who come from a low socio-economic backgrounds with permanent jobs, those who don't have a permanent jobs and those who are jobless making up 86% of men and women on death row as '*banduan akhir*'. This is evident enough that better economic opportunities, education, adequate and fair wages, positioning in social strata is a definitive and a huge influencing factor that drives a person to commit a crime or not. Apart from that, access to drugs and alcohol is normally the last nail in the coffin that pushes a person to the edge to break the law and commit heinous crimes.

Article 5 enshrined in the Federal Constitution protects the right to life stating "No person shall be deprived of his life or personal liberty save in accordance with law." Having said that, while the right to life is protected and conserved in many religious beliefs, let me state clearly

and firmly that criminals MUST be punished, and there shall not be an inkling of doubt about that. However, executing a person is out of the question.

Countries that have abolished the death penalty have visibly proven lower crime rates including that of murder and countries that have the death penalty have numbers that inadvertently show an increase or a status quo of crimes committed there. The death penalty is NOT a deterrent to crime as the number of death row inmates in Malaysia is on an increase whereas crime remains the same. So, the onus should be on enforcement and fighting crime and not ending lives.

Apart from that, there are all the elements of a miscarriage of justice that may happen from the moment a crime is committed to the point of a verdict being delivered in court – worse when the hands of judges are tied with the mandatory death penalty. The use of torture to extract confessions, miscommunications with language being a barrier, corruption, inefficiency in collecting and filing evidences, the sentiments of the judiciary, perjury are all perfect miscarriages of justice. Again, make no mistake, criminals must be punished but never by execution.

No legal system is perfect in the world. However, the glaring elephant in the room is that the death penalty is a form of punishment of no return. If an innocent man or woman is executed, is it not a forcible violation of injustice of any Government and the people? Do we want to be part of the execution team in taking the life of a person when there is an option of imprisonment?

According to Penang Institute, “high revision rates of 55% and 59% respectively for S39B Dangerous Drugs Act cases occurred in years 2013 and 2016. The volatile nature and inconsistency of judgment for death penalty cases is indeed worrying. The conviction or sentencing of a person is ultimately decided by the Federal Court but of the 20 Federal Court judgement cases 10 cases (50%) had their decisions revised; three cases (15%) had their decisions reversed twice from the High Court; and six suspects (30%) were freed from the gallows. This concludes that judicial errors can occur at any level.

In Oct 2017, a Korean student who was charged under 39B for trafficking drugs had his decision reversed and freed by the Seremban High Court when the Raiding Officer who was also the main witness was found to have lied in court during cross examination. The Raiding officer is said to have conducted over 20 other raids in his lifetime. It is not spine chilling to think about the 20 other raids that he had conducted? Had the counsel not grilled him enough, he may have walked out of the court, a liar who could have sent an innocent person to be hanged. That person could be your son or daughter, your grandchildren or your husband or wife, father or mother.

Mainthan Arumugam from Kuala Lumpur is on death row, entering his 15<sup>th</sup> year now. His lawyers Sherrie and Amir Hamzah who are also human rights advocates query “Who is this victim that Mainthan had murdered? The identity of the victim was raised at the first review application made by Mainthan and it was dismissed. Subsequently, a person who claimed that he was the only victim turned up in late 2016, but the new evidence was also dismissed by the courts. A total of 19 different judges have heard Mainthan’s case since 2004.” The original charge sheet listed the victim as “Manivanan a/l Vellasamy” even though he held an Indian passport, as the term “a/l” should only apply to Malaysians. This is just one of the grave discrepancies in Mainthan’s case and he is still behind bars. And the shocking thing is, the supposed victim, at this very minute is alive, living and breathing the same air we all do.

In 2009, Sulkarnain bin Alias was charged with the murder of a UiTM lecturer in 2002 having been on death row for 17 years. His case is also one of discrepancies and loopholes. The main suspect was freed and became the main witness. A farce because he is the only one who knew the victim and was the alleged mastermind behind the crime. The sniffer dogs had

led the team to the main suspect but the courts had rejected it despite the fact that the prosecutors themselves had raised 'reasonable doubts' surrounding these evidences, the date, time and place in the charge varied from the date, time and place of the time of death.

From a religious point of argument, let us not forget that Jesus was a victim of a gross mistrial, a miscarriage of justice, a flawed public opinion, which led to him being a victim of the death penalty by crucifixion. In Buddhism the First Precept stresses on abstinence from killing or injuring any living creature and thus the death penalty is inconsistent with Buddhist teachings advocating compassion for all. Hinduism advocates ahimsa which is the principle of non-violence including opposing acts of killing, violence and revenge.

According to the Mufti of Federal Territories "the philosophy of Islamic jurisprudence is based on five universal basic requirements for the preservation of religion, life, aqal, posterity and property for humanity. Muslims believe these five rights if properly preserved and guaranteed will create a good life both in the world and in the hereafter. We believe that the mandatory death penalty for murder offenses should be reviewed with consideration of the deceased's family and the second chance for the killer. This is a very important step to be read at the national level. Whereas for other offenses provided for by mandatory sanctions by civil law but not in Islamic Shariah, we also recommend that the re-examination of the sentence be justified if the findings of research data made by the relevant authorities indicate the level of effectiveness weak in execution.

These and many other cases of miscarriages of justice are evident around us, but as a society, as a people, as a community and as Malaysians, we must ensure that justice is served for the family of the deceased and the family of the accused.

An eye for an eye will leave the whole world blind and the move by the Malaysian government to abolish the mandatory death penalty is a courageous step in the right direction that would advocate for restorative justice and to give discretionary powers back to courts for the judges to make a decision to mete out the death penalty or not.

There is no place in a new Malaysia for the death penalty.

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