



Malaysia - Abolition of The Mandatory Death Penalty: A Good Step Forward

27 March 2023

Kuala Lumpur, Malaysia

The Anti-Death Penalty Asia Network (ADPAN) welcomes the proposed bill by the Malaysian government to abolish the mandatory death penalty.

The mandatory death penalty deprives the court of the necessary discretion to hear and provide fair punishment based on aggravating and mitigating circumstances which has consigned countless persons who do not deserve the death penalty to death row. This is apparent when comparing the 1,324 death row inmates to other countries in the Asia Pacific, such as Indonesia (355+), India (539+), and Thailand (510+). Malaysia, for its size, has a significantly disproportionately high number of people on death row.

Under international law, the death penalty can only be applied to the 'most serious crime', which has been defined as the crime of intentionally killing. The abolition of the mandatory death penalty would bring Malaysia closer in line with international standards for those countries that retain the death penalty. Whilst Malaysia retains the death penalty, lawmakers must ensure that the principle of 'most serious crime' will be the foundational policy to be applied by the Attorney General Chambers and other actors in implementing the death penalty.

The effectiveness of the death penalty as a deterrent is questionable at best. Research and expert opinions have indicated that there are no effective nor functional means to evaluate the deterrent effect of the death penalty on crime at a macro level. Furthermore, the abolition of the death penalty in several countries was noted to have been followed by lower crime rates¹. In Malaysia, the government has maintained a moratorium on execution since May 2018, and the crime rate reports from the Department of Statistics Malaysia (DOSM) indicate that murder cases have consistently fallen over the past five years from 379 cases in 2017 to 243 cases in 2021.

It should also be noted that public support for the death penalty has been relatively consistent. The survey and research conducted by The Centre in 2019 and 2022 did not depart significantly from an earlier study by Professor Roger Hood in 2013. There is no majority public support for the mandatory death penalty for intentional murder. When presented with mitigating circumstances, the support for the mandatory death penalty falls significantly². For drug offences, less than 20% of respondents expressed support for the death penalty for the transport and sale of drugs, and this support fell based on mitigating factors and the type of drugs involved³.

Last but not least, there are significant indicators that demonstrate that the death penalty is counterproductive in that it supports or enables crime syndicates, especially for drug offences. The

¹ 'What Happens to Murder Rates when the Death Penalty is Scrapped? A Look at Eleven Countries Might Surprise You' (Abdorrahman Boroumand Center, 13 December 2018) <https://www.iranrights.org/library/document/3501>

² 'How do Malaysian really feel about the death penalty' (The Center, 2019) <https://app.centre.my/uploads/2020/06/Death-Penalty-Survey-Report-The-Centre-June-2020-compressed.pdf>

³ 'How do Malaysians really feel about drugs' (The Centre, July 2022) <https://app.centre.my/uploads/2020/06/Death-Penalty-Survey-Report-The-Centre-June-2020-compressed.pdf>

executions of drug mules in Singapore have resulted in the execution of key witnesses who have had significant information that could lead to the arrest of crime syndicates in Malaysia⁴. In the past, the Singapore Minister of Law stated that the death penalty had kept the prices of drugs high and lowered purity⁵. However, this has not changed the reality that the quantities of drugs supplied and consumed remained relatively consistent. This suggests that drug syndicates are financially benefiting from increased prices derived imposed by the perceived supply constraints imposed by the death penalty.

Abolishing the mandatory death penalty represents a progressive step towards significant reform of the criminal justice system. ADPAN calls on lawmakers to support this important move towards abolition.

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ADPAN is the peak regional body for organisations committed to the abolition of the death penalty across Asia-Pacific, with members from 20 countries within the region. As such, ADPAN maintains that the death penalty violates the right to life, that it is the ultimate form of cruel, inhuman and degrading punishment and that the death penalty should be entirely abolished internationally.

⁴ Case of Kalwant Singh who cooperated with authorities and contacted the drug syndicate while in custody in Singapore

⁵ 'Response by Minister for Law, Mr K Shanmugam, during the Second Reading of the Misuse of Drugs (Amendment) Bill' (Singapore Parliament, 14 November 2012) <https://www.mlaw.gov.sg/news/parliamentary-speeches/response-by-minister-for-law--mr-k-shanmugam--during-the-second->