ANTI DEATH PENALTY ASIA NETWORK

MONASH University



Rethinking **Capital Punishment for Drug Offences** in Malaysia

A POLICY BRIEF

2026

Rethinking Capital Punishment for Drug Offences in Malaysia

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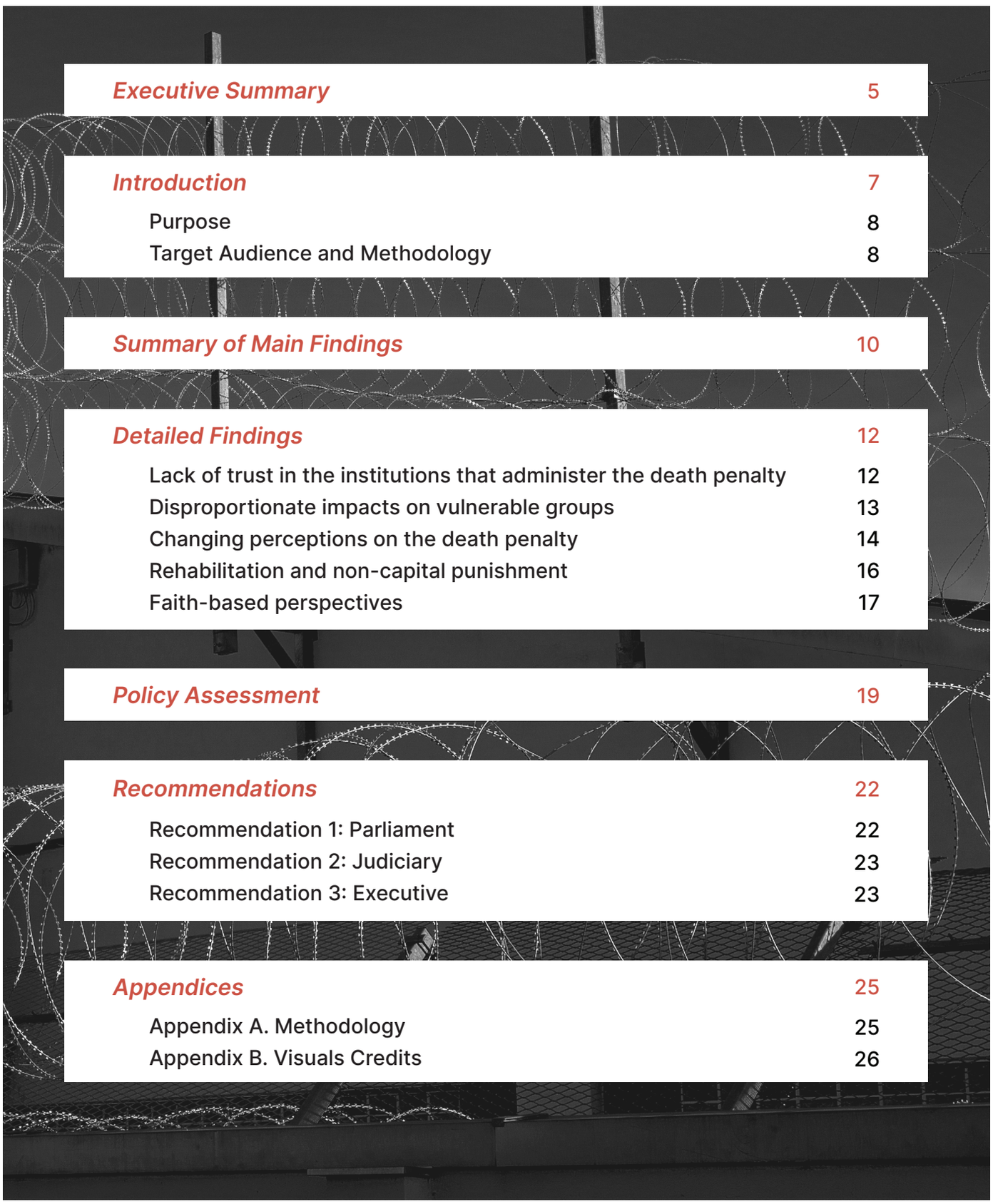
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Executive Summary

The abolition of the mandatory death penalty in 2023 marked a watershed moment in criminal justice reform in Malaysia. The reforms narrowed the range of offences that carry the death penalty and gave judges discretion over whether to impose it. A temporary jurisdiction granted to the Federal Court to review all existing death sentences has substantially reduced the number of people on death row. These changes opened the way for sentencing based on the circumstances of each case, and laid the groundwork for further reform. Malaysia now faces a clear policy question: does the law as it stands adequately address concerns about the death penalty, especially in relation to drug offences, or is further legislative reform needed, including removing the death penalty as a sentencing option altogether?

This brief answers that question using legal and policy research and five focus group discussions (FGDs) held between May and July 2026. The 31 participants came from the legal, health and other professions, religious and faith-based organisations, business, youth groups and community-based organisations. This brief focuses on the death penalty for drug trafficking. It does not address capital punishment for other offences.

Across all focus groups, the dominant view was that the death penalty should not apply to drug trafficking. This included participants who would keep it for other serious crimes. Participants raised concerns about perceived corruption in the criminal justice system, unequal access to justice, inconsistent sentencing, and discriminatory law enforcement, all of which can affect who is sentenced to death. They pointed to the law's impact on vulnerable couriers, low-income communities, women facing economic insecurity, and marginalised ethnic communities. Above all, they

questioned whether the death penalty ever reaches those who organise and profit from the drug trade.

This research finds that participants' attitudes towards the death penalty were also shifting. Some said they had been influenced by alternative sources of information, particularly news of Malaysians executed abroad. These cases also expose an inconsistency: Malaysia seeks clemency for its citizens facing execution overseas while retaining the death penalty for the same offences at home. This suggests there is room for wider public engagement on reform. Participants also placed strong emphasis on rehabilitation, and those from all five faith traditions agreed that drug couriers should not face the death penalty.

This policy brief recommends abolishing the death penalty for drug trafficking as a first step towards abolition for all offences. Stronger sentencing safeguards could make outcomes fairer and more consistent. However, they cannot remove the structural inequalities these findings reveal, nor can they resolve the human rights concerns that the death penalty raises. International human rights standards limit capital punishment to the 'most serious crimes', a threshold that drug offences do not meet.

On the other hand, abolition would eliminate the risk of irreversible executions for drug offences, bring Malaysia closer to international standards, and maintain criminal accountability through proportionate prison sentences. To support this change, this brief recommends measures across all three branches of government. Parliament should amend the law to remove the death penalty for drug trafficking, repeal the statutory presumptions, and provide resources to strengthen institutional integrity and accountability. The judiciary should give and publish written reasons for sentences in capital and serious drug cases, and give weight to the offender's prospects of rehabilitation. The executive should replace punitive anti-drug messaging with evidence-based health education, and ensure that people in custody have access to drug treatment and mental health care. Together, these measures would move Malaysia towards a public health approach to drugs while keeping offenders accountable.





Introduction

The Abolition of Mandatory Death Penalty Act 2023 brought Malaysia to a critical juncture in reforming its capital punishment law, criminal justice system, and sentencing framework. The Act ended the mandatory death penalty for all offences, leaving judges with discretion over whether to impose it. Together with the Federal Court's review of existing death sentences, the reforms have sharply reduced the death row population from 1,337 people in October 2022 to 140 in January 2025[1] and 97 by November 2025.[2]

However, the death penalty remains a sentencing option for 27 offences, including drug trafficking under section 39B of the Dangerous Drugs Act 1952. While discretion allows sentences to reflect the circumstances of each case, concerns about inconsistent sentencing, the disproportionate impact on vulnerable groups and compatibility with human rights standards persist.

Drug offences are a strategic focus for the next stage of reform. There are good reasons to think that change here is politically achievable. Abolition would also be in step with the global move towards public health approaches to drug policy. International human rights standards also place drug offences outside the crimes for which the death penalty may be imposed. Abolition in this area could build momentum, shift public and institutional attitudes, and set a precedent for ending the death penalty for all offences in Malaysia.

[1] Amnesty International, 'Malaysia: Two Years Since Mandatory Sentencing Repeal, Government Urged to Fully Abolish the Death Penalty' (Public Statement, ACT 50/9557/2025, 4 July 2025); Anti-Death Penalty Asia Network, 'ADPAN Statement on Malaysia's Progress in Death Penalty Reform and Indefinite Juvenile Detention' (13 March 2025).

[2] Amnesty International, *Death Sentences and Executions 2025* (ACT 50/0778/2026, May 2026) 22.

Purpose

This brief makes an evidence-based case for reform, drawing on empirical findings from focus group discussions and on legal and policy research.

Drug trafficking has long accounted for a large share of death sentences. In 2022, before the mandatory death penalty was abolished, 67% of people on death row had been convicted under the Dangerous Drugs Act 1952.[3] As of January 2025, 40 of the 140 people on death row (28.6%) had been convicted of drug offences.[4] Courts continue to impose new death sentences for drug trafficking. In 2025, they handed down seven, nearly half (47%) of all new death sentences that year.[5] These sentences are still subject to appeal, and it has been reported that the Federal Court has not upheld death sentences for drug offences since the 2023 reforms.[6]

The focus group discussions (FGDs) explored the values, experiences, and institutional concerns that shape participants' views on the death penalty. Considered alongside the legal and policy research, their findings inform the brief's assessment of the policy options and the measures needed to support the recommended approach.

Target Audience and Methodology

This policy brief is designed for key decision-makers and policy architects, including Members of Parliament, the Legal Affairs Division, Prime Minister's Department (Bahagian Hal Ehwal Undang-Undang, BHEUU), the Ministry of Home Affairs (Kementerian Dalam Negeri, KDN), the Ministry of Health (MOH), members of the Judiciary, and the Attorney General's Chambers (AGC).

This brief synthesises two primary research components:

i. desk-based legal and policy research examining Malaysian drug laws, selected court decisions, and relevant academic and grey literature on the death penalty for drug offences; and

ii. qualitative field research involving FGDs with key stakeholder groups, exploring their views on the death penalty for drug offences and the reasons behind them.

[3] Thaatchaayini Kananatu, 'From the Ghetto to the Gallows: Rights, Race, Class, and Drug Crimes in Malaysia' in Wing-Cheong Chan, Mai Sato and Michael Hor (eds), Capital Drug Laws in Asia (Cambridge University Press 2025) 123.

[4] Amnesty International, 'Malaysia: Two Years Since Mandatory Sentencing Repeal, Government Urged to Fully Abolish the Death Penalty' (n 1).

[5] Amnesty International, *Death Sentences and Executions 2025* (n 2) 12.

[6] Amnesty International, Changing Tides: Reform and Resistance on the Death Penalty in ASEAN (ACT 50/1511/2026, October 2026) 8.

Five FGDs were held at Monash University Malaysia between May and July 2026, with 31 participants in total. Each group represented one of five stakeholder categories: youth, community-based organisations (CBOs), professionals, business persons and entrepreneurs, and religious or faith-based organisations (representing Islam, Buddhism, Hinduism, Christianity, and Sikhism). The study received ethics approval from the Monash University Human Research Ethics Committee (MUHREC Project ID: 50887).

The FGDs centred on the death penalty for drug trafficking in Malaysia. They explored participants' views on the issue, the values and beliefs that shaped those views, and what participants saw as just and effective responses to drug offences.

A more detailed description of the methodology is provided in Appendix A.





Summary of Main Findings

> *"You have to have some sort of proof that this [the death penalty] is the only way you can, you can deter something. So from my opinion, it's not even like, even if that person is the worst person on this earth, I feel like we shouldn't be the one giving them that thing to end their life".*
>
> – FGD participant, professional group

The research and FGDs produced several key findings, which form the evidence base for this brief's recommendations. **Across all FGDs, the dominant view was that the death penalty should not be imposed for drug trafficking offences.**

The main reasons identified are:

- **First**, participants expressed deep distrust of the institutions that administer the death penalty. They pointed to four perceived structural failures that undermine the system's integrity: corruption within the justice system; unequal access to justice; inconsistent use of judicial discretion in death sentencing; and discriminatory enforcement of drug laws.



- **Second**, the death penalty falls hardest on vulnerable groups. Participants described how poverty, marginalisation and deception draw people into low-level courier roles.[7] Those affected include low-income households in the bottom 40% income group (B40),[8] women facing economic insecurity, and ethnic minorities. Meanwhile, they noted, syndicate leaders, or 'kingpins',[9] rarely face arrest, likely protected by corruption and wealth.





- **Third**, perceptions of the death penalty are shifting. Participants observed that public support for the death penalty for drug offences has long been shaped by government narratives and media coverage that present drugs as a threat serious enough to justify execution. Social media, lived experience, and cases in Singapore and neighbouring countries have since exposed people to other views. Within the discussions, some participants moved from retributive views to supporting abolition or non-capital alternatives.

- **Fourth**, participants believed in rehabilitation, and this belief underpinned their support for abolition. Many argued that society should try to reform people before giving up on them. They favoured responses that address the poverty, coercion, drug dependence and mental health problems that draw people into the drug trade. For them, the death penalty ends the possibility of reform and rehabilitation.



[7] 'Mules' or 'couriers' refer to low-level carriers who transport drugs, often recruited through financial desperation or deception. See Cornell Center on the Death Penalty Worldwide, *Judged for More than Her Crime* (2018) 12; Amnesty International, *Fatally Flawed: Why Malaysia Must Abolish the Death Penalty* (ACT 50/1078/2019, 2019) 23.

[8] B40 refers to households in the bottom 40% of the national income distribution, as classified by the Department of Statistics Malaysia (DOSM). This corresponds to a gross monthly household income of below RM5,860. Department of Statistics Malaysia, Household Income Survey Report 2024; Ministry of Economy 2024 (Kementerian Ekonomi 2024).

[9] 'Kingpins' refers to those who organise or direct drug trafficking operations and occupy 'higher positions in the hierarchy of criminal drug networks'. Amnesty International, *Fatally Flawed: Why Malaysia Must Abolish the Death Penalty* (n 7) 23.



Detailed Findings

Lack of trust in the institutions that administer the death penalty

> *"But I also would say that a lot of these high functioning people depend on drugs. That's how they get their five-figure salary, a six-figure salary... They are not the ones that get caught. They are the ones that drive the expensive car. The car won't be checked. You'll check the 1980[s] Proton Saga. You won't check the newest BMW".*
>
> – FGD participant, professional group

Participants' responses reflected a deep loss of trust in legal and governmental institutions. Some in the professional group observed that the core problem is not the death penalty itself but whether the justice system is able to guarantee that only the guilty are sentenced to death. One of the key concerns identified by the participants was perceived corruption within the justice system. Participants believed that syndicate leaders can 'buy' protection, and that some enforcement officers take cuts from the drug trade. They also noted wealth disparities that lead to unequal access to justice. For example, wealthy defendants can hire top-tier counsel to represent them in court, while those who cannot afford their own rely on assigned counsel, who often lack the time and resources to mount an effective defence. FGD participants with legal and medical backgrounds within the professional group shared that assigned counsel are frequently under-funded, overworked, and lack the resources to engage independent psychiatric experts or gather mitigating evidence. In drug trafficking cases where the accused must rebut the presumption of trafficking, this gap becomes critical. All these concerns suggest that outcomes may depend less on guilt or innocence than on wealth and influence. For many participants, a system that works this way cannot be trusted with the power to take a life. As a participant from the professional group remarked, *"I understand that some people believe that some people deserve it, but I don't know because now the ones prosecuted, I feel, are the ones that don't deserve it".*

The findings reveal concerns regarding discretionary death sentencing. Data show that, despite judges having discretion to impose a non-capital sentence, drug offences still accounted for 38% of new death sentences imposed in 2024 (9 out of 24 cases)[10] and, as noted above, 47% of new death sentences imposed in 2025 (7 out of 15 cases).[11] This continued imposition of death sentences for drug offences raises important questions about how sentencing decisions are made. There is limited insight available into judicial decision-making in Malaysia: currently, the legal framework does little to make judicial reasoning visible.[12] For example, the law does not expressly require judges who disagree with the majority to give reasons or to issue a written dissenting judgment.[13]

Participants also expressed concerns about discrimination in how drug laws are enforced. They described a clear divide in police attention: drivers of modest cars such as Proton Sagas may be routinely stopped and searched, while wealthy individuals in luxury BMWs are rarely subjected to similar scrutiny. Participants noted that enforcement also falls disproportionately on Malaysian Indians, who already face systemic marginalisation in educational and employment opportunities, as well as in access to legal defence.

Disproportionate impacts on vulnerable groups

> *"I think it's a cheap strategy, a cheap way of trying to combat with (sic) the high index of drug trafficking in Malaysia… They are trying to impose a very strict and very heavy punishment for everyone. But I think this kind of punishment is actually disproportionate for everyone".*
>
> – FGD participant, CBO group

Studies conducted before the 2023 reforms show that Malaysia's death row has been overwhelmingly populated by individuals from low socio-economic backgrounds, foreign nationals, women, and marginalised ethnic minorities – specifically Malaysian Indians, who comprised 25% of persons on death row despite being 7% of the population.[14]

[10] Amnesty International, *Death Sentences and Executions 2024* (ACT 50/8976/2025, April 2025) 12, 14, 25.

[11] Amnesty International, *Death Sentences and Executions 2025* (n 2) 12.

[12] Natalia Antolak-Saper and others, *Drug Offences and the Death Penalty in Malaysia: Fair Trial Rights and Ramifications* (Monash University 2020) 16.

[13] ibid.

[14] Amnesty International, *Fatally Flawed: Why Malaysia Must Abolish the Death Penalty* (n 7); Thaatchaayini Kananatu, 'Framing Death Penalty Politics in Malaysia' (2022) 11(3) International Journal for Crime, Justice and Social Democracy 56, 63; Kananatu, 'From the Ghetto to the Gallows: Rights, Race, Class, and Drug Crimes in Malaysia' (n 3) 123; Lucy Harry, 'Rethinking the Relationship Between Women, Crime and Economic Factors: The Case-Study of Women Sentenced to Death for Drug Trafficking in Malaysia' (2021) 10(1) Laws 9.

Since the abolition of the mandatory death penalty, court judgments show that judges are weighing a wider range of factors in sentencing. These include the amount of drugs involved, whether the defendant cooperated with the authorities, any prior convictions, and whether they were the sole income provider for their family.[15] That said, mitigation depends on evidence. People with limited financial means again face constraints in gathering and presenting mitigating evidence, or obtaining forensic and medical experts.[16] As a result, discretionary sentencing risks reproducing the same inequalities that the mandatory sentence may have produced.

CBOs and religious groups described overlapping vulnerabilities that both draw people into the drug trade and weaken their ability to effectively defend themselves in court. For example, some participants highlighted how generational poverty within B40 communities, plantation-era socio-economic marginalisation among Malaysian Indians, and financial coercion targeting single mothers push these vulnerable individuals into low-level courier roles. CBOs detailed how mules are recruited due to financial desperation or are deceived into carrying drugs, for example, by being asked by acquaintances to carry luggage through an airport.

Meanwhile, they said, syndicate leaders who operate from 'air-conditioned offices' rarely face arrest, and if and when they are charged, they can afford highly experienced and often expensive defence lawyers.

Changing perceptions on the death penalty

> *"Giving [the] death penalty for drug trafficking is kind of wrong... because, I mean, there is no proven deterrence. You know, you can search it online… [T]here is no proven deterrent (sic) that giving that to people because……. if we cannot cut the root, you know, then whatever the tree, you know, it grew back, right?"*
>
> – FGD participant, youth group

The FGDs point to notable shifts in how participants view the death penalty. Historically, public support for the death penalty for drug-related offences has been shaped by government narratives and media portrayals. Participants in the CBO group traced this back to the 1980s *'Dadah Musuh Negara'* (Drugs as National Enemy) campaign, which framed drug use as a national security threat rather than a public health issue. Most people learned about the death penalty through

[15] Harm Reduction International, *The Death Penalty for Drug Offences: Global Overview 2025* (Harm Reduction International 2026) 20.

[16] Amnesty International, *Fatally Flawed: Why Malaysia Must Abolish the Death Penalty* (n 7) 23.

official channels: newspapers (English, Malay, Chinese and Tamil print media), television and radio Public Service Announcements (PSAs), and school anti-drug programmes organised by the Royal Malaysia Police (Polis DiRaja Malaysia or PDRM) and the National Anti-Drugs Agency (Agensi Antidadah Kebangsaan or AADK). These sources have consistently promoted punitive narratives that reinforce public support for the death penalty. Popular media adds to this picture. The professional group noted that shows like the Netflix series *Narcos* feed an image of powerful, larger-than-life cartel bosses. This image hides the reality of drug enforcement in Malaysia: the people sentenced to death are almost all low-level couriers.

In contrast, informal channels have exposed people to a wider range of views on the death penalty. Participants mentioned viral social media coverage of executions in Singapore, their own or family members' lived experiences, and conversations within the community. All of these brought home the real consequences of punitive drug policies. Events in neighbouring countries reinforced the sense that the death penalty is harsh, unfair, and ineffective. Participants saw Singapore as having a rigid, punitive system that has still failed to curb the flow of low-level Malaysian couriers at the border. They described Myanmar as a regional centre of opium production, where military corruption protects drug lords while ordinary people bear the cost. Both examples echoed concerns raised about Malaysia.

Participants also raised examples from further afield showing that alternative approaches are possible. Some cited Portugal and Scandinavia as successful models where decriminalisation, strong social safety nets, and a public health approach have significantly reduced drug-related harm and recidivism.

> *"Portugal has been a good example. The Malaysian government wants to follow the Portuguese model… Initially, it was very good. The number has dropped. Very, very significant because they [Portuguese government] decriminalise the use, and then, they regulate. So if the government has the power to know who's using [drugs] and how they use it, so that that doesn't occur. And at the same time, people who are using, they [the government] actually help them".*
>
> – FGD participant, religious group

In the focus groups, early discussions sometimes reflected a simple retributive view. But as the conversations turned to systemic corruption and low-level courier exploitation, some participants moved towards supporting abolition or non-capital alternatives. Many felt that Malaysia's legal culture remains deeply punitive, driven by an 'eye for an eye' mindset. Others argued for a more rehabilitative approach. One youth participant said that capital punishment could only be justified if there were no mitigating circumstances at all, and the offender could not be rehabilitated,

a standard they believed was nearly impossible to satisfy in practice. Another youth participant questioned the assumption that victims of crime want the death penalty, suggesting that perhaps victims are more likely to seek safety, social support, and a sense of closure. Some participants pointed out that the death penalty does not deter the drug trade, which has continued despite five decades of capital punishment.

> *"Victims have experienced a lot of pain. And this is another act of violence. And in my experience interacting with victims, I think what they want is distance. What they want is justice. But I don't think what they want or what they would wish [is] on someone else's death… I don't know that victims are going to the criminal justice system asking for death. And if they are, I think they need to receive more support because I think what they need is support. It may not necessarily be that someone loses their life. And they may, yeah, they may need something else than this".*
>
> – FGD participant, youth group

Some participants' views were shaped by their professional experience. For example, a participant from the medical profession remarked: *"The health industry in particular, I think, respects the sanctity of life more than anything else. So if you were to ask me to represent that… they will probably be against the death penalty in that sense, because we, by our oath to first do no harm. We, by our oath, are meant to protect life".*

Rehabilitation and non-capital punishment

Some participants proposed non-capital punishments as alternatives. Depending on the case, these could include probation, electronic monitoring, and community service. One participant from the CBO group suggested combining imprisonment with community service. Under this model, prisoners deemed suitable would carry out supervised work outside prison while serving their sentence.

> *"Jail time? Yeah, jail time because maybe they're not users [or] drug users and just the traffickers, I think, so several things. But if they are fit enough, mentally fit enough for community service, you know, in our pavements, or whatever, you know… Of course, you need to check the whether (sic) they have enough to go out in society, but they'll be watched anyways (sic). So, I think it's a mix of jail and community service. Give back to your community."*
>
> – FGD participant, CBO group

Participants expressed this view in different ways. One argued that society should always try to reform people before giving up on them completely. Another stressed the need to see offenders as real human beings shaped by their circumstances, such as struggles to survive poverty, rather than judging their actions in isolation.

> *"So, if you're really trying to prevent this issue, I think it's easy enough to find the people within these networks who actually would want to, I think, change their way of life and are probably doing this because they don't really have any other means available to them. And then maybe, you know, we would potentially see a difference. I think it sounds, like more, like a rehabilitative rather than punitive [approach]".*
>
> – FGD participant, youth group

Taken together, participants favoured responses to drug offences that hold people accountable while giving them a real chance to reform. Rather than harsh punishment, they called for approaches that address the poverty, coercion, drug dependence and mental health problems that draw people into the drug trade. This belief in rehabilitation helps explain participants' support for abolition: the death penalty removes any possibility of reform, while a prison sentence keeps that possibility open.

> *"I really agree with the whole [idea of] rehabilitation, reformation with any kind of offence. That attempt always has to be made first before you really think that this person is not fit for society".*
>
> – FGD participant, CBO group

Faith-based perspectives

> *"From the religious perspective, we disagree with whatever [form of] capital punishment… because we believe that to be reborn as a human, to exist as a human, is something very precious... But if we end someone's life earlier… we are actually jeopardising their potential to cultivate spiritual development, and therefore, this brings about severe consequences. However, what we believe in is that the death penalty can be replaced with rehabilitative and restorative methods, such as maybe a certain counselling".*
>
> – FGD participant, religious group (Buddhist)

Participants from all five major faith traditions in Malaysia agreed that drug

couriers should not face the death penalty. Some indicated that their religion rejects capital punishment for all offences. Notably, all the religious group participants agreed that a movement towards rehabilitative approaches, rather than the death penalty, would be a positive step. They favoured a holistic, biopsychosocial and spiritual approach as that addresses the physical, psychological (mental well-being), social, and spiritual aspects of a person's identity.

Participants' perspectives, as summarised below, reflect their own personal understanding of their faith traditions, rather than official religious positions:



- **Islam**: Sunni Muslim participants clarified that Islamic jurisprudence on punishment makes a distinction between the 'kingpins' in a drug syndicate and low-level drug mules. A participant noted: *"For the drug mules, for example, a boy or a young (sic) [person] that transfers on their five kilogram drugs... we don't suggest punishment for them because they are not drug kingpins"*.



- **Christianity**: Participants from Christian groups (including Catholics and Protestants) cited teachings on the sacredness of human life, alongside Christ's message of second chances, redemption, and restorative mercy, as reasons for opposing the death penalty. A participant used the example of a woman caught in adultery, invoking the biblical verse, *'Let he who is without sin cast the first stone'*.



- **Buddhism**: A Buddhist participant explained that execution directly violates the First Precept (abstaining from taking life) and imposes a severe negative karmic burden on all state actors involved.



- **Hinduism**: A Hindu participant affirmed that the authority to grant or take life belongs exclusively to the Divine, viewing capital punishment as a violation of the sacred principles of Sanatana Dharma (universal and cosmic law) and Karma (actions and consequences).



- **Sikhism**: A Sikh participant linked divine justice to social equality, emphasising that legal systems must protect the marginalised.

Policy Assessment

This section examines two options for the next stage of reform on drug trafficking: keep the discretionary death penalty, with stronger safeguards, or abolish the death penalty for drug trafficking.

Participants raised concerns about trust in the institutions that administer the death penalty, and about its disproportionate impact on vulnerable groups. Their shifting views suggest that people may reconsider their position when exposed to a wider range of information. These findings, considered alongside relevant research and international human rights standards, provide a basis for considering policy options and determining the measures needed to support further reform.

The first option is to maintain the discretionary death penalty with stronger sentencing safeguards, better resourced legal representation, and tighter procedural protections. However, even with the best policy design, safeguards cannot address the underlying structural inequalities raised in the findings. The people most likely to face the death penalty – the poor, and members of marginalised communities – would remain disproportionately affected by these flaws. Safeguards could reduce the risk of wrongful conviction, but they can never eliminate it. As long as the death penalty remains available, the risk of an irreversible and unjust execution remains.



The second option, abolishing the death penalty for drug trafficking, would respond to several concerns identified in the FGDs:

- **First**, although abolition would not, by itself, address the weaknesses of the criminal justice system, it would ensure that those failures could no longer cost a person their life.

- **Second**, people who act as drug couriers and others facing economic hardship are the people most exposed to the death penalty, and the least able to defend themselves against it. Abolition would remove that risk entirely, so that a person's poverty or marginalisation could no longer determine whether they live or die.

- **Third**, criminal accountability would be preserved, as offenders would still be punished through prison sentences that reflect each person's role and culpability.

- **Fourth**, abolition keeps open the possibility of rehabilitation and reintegration, which participants considered important.

- **Lastly**, Malaysia would be better placed to seek clemency for its citizens facing execution overseas for similar offences, as its own laws would match what it asks of other countries.

Abolition is also consistent with international human rights standards. The UN Human Rights Committee has repeatedly stated that drug offences do not meet the 'most serious crimes' threshold for the death penalty under Article 6 of the International Covenant on Civil and Political Rights (ICCPR).[17] Malaysia is not a party to the ICCPR, but this interpretation is an important benchmark for reform. Several participants also questioned whether the death penalty – in place for decades – has effectively deterred drug trafficking. Their doubts echo the UN Secretary-General's conclusion that there is no persuasive evidence that the death penalty deters crime more effectively than other punishments.[18]

In addition, removing the death penalty for drug trafficking is compatible with Malaysia's obligations under the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. Article 3(4) recognises imprisonment and other non-capital sanctions, while permitting rehabilitation and social reintegration alongside punishment, and, in appropriate cases of a minor nature, as alternatives to conviction or punishment.

[17] UN Human Rights Committee, 'General Comment No. 36: Article 6 (Right to Life)' (30 October 2018) UN Doc CCPR/C/GC/36, para 35.

[18] UN Secretary-General, 'Question of the Death Penalty: Report of the Secretary-General' (30 June 2014) UN Doc A/HRC/27/23, para 29.

This brief therefore recommends amending section 39B of Dangerous Drugs Act 1952 to remove the death penalty for drug trafficking. This should go together with measures to strengthen legal and institutional safeguards and to expand rehabilitation grounded in public health, as outlined below. These recommendations are by no means exhaustive, but they identify priority areas for reform based on the research findings and relevant legal and policy considerations.

This brief focuses on drug offences, but many of the problems it identifies apply more widely. Under-resourced legal representation, a lack of transparency in sentencing and discriminatory enforcement affect the death penalty as a whole. Participants' views on other offences varied, but these systemic problems mean that the risk of wrongful or arbitrary execution is not limited to drug cases.

Removing the death penalty for drug offences should thus be understood as a first step towards its abolition for all offences.





The recommendations below set out how the reform proposed in this brief can be achieved. While not exhaustive, they reflect the priority measures identified in light of the research findings and policy assessment.

Recommendation 1: Parliament

- Abolish the death penalty, beginning with drug trafficking: As an immediate step, amend section 39B of the Dangerous Drugs Act 1952 to remove the death penalty for drug trafficking. This should be part of a clear pathway towards abolition for all offences.

- Repeal section 37A of the Dangerous Drugs Act 1952 statutory presumptions: Eliminate statutory double presumptions of possession and drug trafficking, ensuring that the burden of proof remains fully on the prosecution to prove guilt beyond reasonable doubt.

- Strengthen institutional integrity and fairness: Allocate adequate resources to strengthen transparency, accountability, and integrity in the institutions responsible for fair drug law enforcement and the administration of justice.



Recommendation 2: Judiciary

- Increase the transparency of sentencing reasons: Ensure access to written grounds in capital and serious drug cases, addressing the aggravating and mitigating factors considered, including the offender's role in the supply chain, any coercion or deception, financial circumstances, and mental health problems, drug dependence or other relevant vulnerabilities. Pending abolition, where a death sentence is imposed, the grounds should address why a sentence of imprisonment was not appropriate.

- Increase accessibility of sentencing reasons: Ensure the systematic publication of relevant judgments at all court levels to support consistency in sentencing, effective appellate review, and public understanding of how sentencing discretion is exercised. This would also promote transparency, judicial accountability and public confidence in the courts.

- Consider rehabilitation in sentencing: In sentencing for serious drug offences, give appropriate weight to the offender's prospects of rehabilitation, including whether their involvement was linked to drug dependence or mental health issues, and, where appropriate, recommend access to treatment and other public health measures during the sentence.



Recommendation 3: Executive

- Undertake public and media education campaigns: Re-examine punitive national messaging such as the long-standing *'Dadah Musuh Negara'* slogan, and replace it with evidence-based public health education. Campaigns should explain that drug dependence is a treatable health condition and inform people where to seek help. They should also raise awareness of how people are recruited and deceived, to help prevent people from being drawn into the drug trade. Campaigns should use traditional media, digital platforms and targeted Public Service Announcements (PSAs).

- Strengthen resourcing for health-based rehabilitation in custody: Ensure people serving sentences for drug offences have access to voluntary drug treatment, mental health care and psychiatric support, to support rehabilitation and reduce the risk of reoffending.



Appendix A. Methodology

Data gathering: Focus Group Discussions

Primary qualitative data were gathered across five focus group discussions (n=31), with each group comprising five to seven participants representing key stakeholder groups:

- Community-based organisations (CBOs): activists, harm reduction practitioners, and social workers.
- Youth: university students and young civil society advocates.
- Religious organisations: representatives spanning Malaysia's five main faith traditions (Islam, Buddhism, Hinduism, Christianity, and Sikhism).
- Business persons and entrepreneurs.
- Professionals: lawyers, medical doctors, psychologists, and academics.

The interactive nature of the focus groups enabled the interviewer to probe particular responses and yield the "best information" through dynamic group interactions that stimulated conversation.[19] Crucially, this brought out how participants' cultural and social backgrounds shaped their views on capital punishment.

All discussions took place in person and were guided by a moderator using open-ended semi-structured questions. While acquiescence bias (the tendency for participants to agree with others) was a potential limitation, the moderator mitigated this by emphasising to participants that there were no "right" or "wrong" answers, encouraging candid responses.[20]

Following the in-person sessions, the audio recordings were transcribed verbatim for analysis. The transcriptions were subsequently organised through thematic analysis using a coding process guided by a comprehensive set of parent and child codes. These codes covered abolitionist and retentionist stances, details regarding drug offences and the types of drugs, and broader categories such as justice, human rights, society, nation, religious beliefs, offender identity, perceptions of offender motivation, the criminal justice system, the role of lawyers, international perspectives and sources of information.

Ethics statement

The Monash University Human Research Ethics Committee (MUHREC) approved an ethics application (Project ID: 50887) on 14 April 2026. The ethics committee approved the conduct of the focus group discussions with the identified key stakeholders listed above. The project team followed all research procedures and processes, including issuing explanatory statements and obtaining written consent from participants before the FGDs were conducted. Participants were anonymised in the transcripts.

[19] John W Creswell and Timothy C Guetterman, *Educational Research: Planning, Conducting, and Evaluating Quantitative and Qualitative Research* (7th edn, Pearson Education 2024) 220.

[20] Alexander Betts, *Social Science: A Very Short Introduction* (OUP 2024) 70.

Appendix B. Visuals Credits

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2026

ANTI DEATH PENALTY ASIA NETWORK

MONASH University