

URGENT ACTION

CLEMENCY PETITION REJECTED, EXECUTION IMMINENT On 19 October the President of Singapore rejected the clemency petition of Malaysian national Kho Jabing. He is now at imminent risk of execution.

After exhausting all available legal avenues, **Kho Jabing**, a 31-year-old Malaysian national, had applied for clemency from Singapore's President on 27 April. This followed the Court of Appeal's decision to re-impose his death sentence in January 2015, with a close three-to-two majority decision. The High Court had previously re-sentenced him to life imprisonment and caning in 2013. On 19 October the President of Singapore rejected the clemency petition of Malaysian national Kho Jabing. He is now at imminent risk of execution.

Kho Jabing and a co-defendant were convicted of murder on 30 July 2010. At the time of his conviction, the death penalty was the mandatory punishment for murder, and both were sentenced to death. On 24 May 2011, the Court of Appeal substituted his co-defendant's conviction to "robbery with hurt" and confirmed Kho Jabing's conviction and death sentence for murder. In 2012 Singapore's mandatory death penalty laws were reviewed and some discretion in the sentencing of cases involving drug trafficking and murder was introduced.

On 30 April 2013 the Court of Appeal confirmed that Kho Jabing's case fell within the definition of murder under Section 300(c) of the Penal Code, for instances when there is no intention to cause death and judges can impose at their discretion either the death penalty or life imprisonment and caning. His case was remitted to the High Court for resentencing. Later in 2013, the High Court resented Kho Jabing to life imprisonment and 24 strokes of the cane, but this decision was appealed by the prosecution. On 14 January 2015, the Court of Appeal re-imposed the death sentence against Kho Jabing in a three-to-two decision.

The last execution in Singapore was carried out on 17 April 2015 for intentional murder, an offence which still carries the mandatory death penalty.

Please write immediately in English or your own language:

- Urging the President to immediately halt Kho Jabing's execution and reconsider the decision on Kho Jabing's clemency application;
- Noting that, while you are not seeking to downplay the seriousness of the crime or its consequences, Kho Jabing did not intend to cause death and the death sentence was re-imposed by the Court of Appeal in a close three-to-two decision with dissenting judgments, after it had previously been set aside;
- Calling on the authorities to immediately reimpose an official moratorium on executions with a view to abolishing the death penalty, and commute all existing death sentences.

PLEASE SEND APPEALS BEFORE 22 NOVEMBER 2015 TO:

President of Singapore

His Excellency Tony Tan Keng Yam
Office of the President of the Republic of
Singapore
Orchard Road, Singapore 238823
Fax: +65 6735 3135
Email: istana_feedback@istana.gov.sg

Salutation: Your Excellency

Prime Minister of Singapore

His Excellency Lee Hsien Loong Prime
Minister's Office
Istana Annexe, Orchard Road,
Singapore 238823
Fax: +65 6332 8983
Email: lee_hsien_loong@pmo.gov.sg

Salutation: Your Excellency

And copies to:

Minister of Foreign Affairs of Malaysia
His Excellency Dato' Sri Anifah Aman
Ministry of Foreign Affairs of Malaysia
No. 1, Jalan Wisma Putra Precinct 2,
Federal Government Administrative
Centre 62602 Putrajaya, Malaysia
Fax: +603 8889 1717
Email: anifah@kln.gov.my

Also send copies to diplomatic representatives accredited to your country. Please insert local diplomatic addresses below:

Name Address 1 Address 2 Address 3 Fax Fax number Email Email address Salutation Salutation

Please check with your section office if sending appeals after the above date. This is the first update of UA 103/15. Further information:

<https://www.amnesty.org/en/documents/asa36/1565/2015/en/>

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ADDITIONAL INFORMATION

On 18 July 2014, Singapore carried out its first two executions since 2012. Tang Hai Liang and Foong Chee Peng were hanged after they had been convicted of and mandatorily sentenced to death under the Misuse of Drugs Act for the trafficking of 89.55g and 40.23g, respectively, of diamorphine. Their executions ended a moratorium on the implementation of death sentences established in July 2012 to allow the Parliament to review the country's mandatory death penalty laws.

Following the adoption of the Misuse of Drugs (Amendment) Act 2012 and the Penal Code (Amendment) Act 2012 on 14 November 2014, the courts of Singapore are now given the discretion not to impose the death penalty in certain circumstances. In murder cases, defendants may now be spared the death penalty if they are charged with murder under sections 300(b) and 300(c) of the Penal Code and prove that they did not intend to cause death. In drug-related cases, this can happen if the defendant is only involved in transporting, sending or delivering an illicit substance, or only offered to commit these acts. Equally, defendants can be spared the death penalty if they prove that they are suffering from "such abnormality of mind ... [which] substantially impaired his mental responsibility for his acts and omissions...". While these restrictions to the imposition of the mandatory death penalty are a welcome step, the amended legislation still does not conform to human rights law and standards, including in relation to the use of caning as a form of alternative punishment. Furthermore, for defendants to be spared the death penalty in drug trafficking cases, the Public Prosecutor has to be satisfied that the defendants have substantively assisted the Central Narcotics Bureau in disrupting drug trafficking activities. The mandatory imposition of the death penalty is against international law. The UN Human Rights Committee has said that "the automatic imposition of the death penalty constitutes an arbitrary deprivation of life, in violation of article 6, paragraph 1, of the [International] Covenant [on Civil and Political Rights], in circumstances where the death penalty is imposed without any possibility of taking into account the defendant's personal circumstances or the circumstances of the particular offence".

Three new death sentences were imposed in 2014. In all cases, the death sentences were mandatorily imposed for drug trafficking. Amnesty International recorded five commutations of death sentences in 2014. Twenty-two people were believed to be on death row at the end of 2014.

For the first time, the Court of Appeal of Singapore had to consider how to determine what punishment to impose in cases of murder for which both the death penalty and life imprisonment with caning are sentencing options. For Kho Jabing's and future cases, the five judges' bench unanimously established that the death penalty should be imposed when the manner by which the offender carried out the murder "exhibits viciousness or a blatant disregard for human life". While the five judges agreed that the evidence available in Kho Jabing's case specifically did not allow for a precise reconstruction of the murder, they reached different conclusions as to whether it was possible to prove beyond reasonable doubt that he had inflicted more than two strikes on the victim's head, showing a "blatant disregard for the sanctity of human life". Three judges found that Kho Jabing's actions deserved to be punished by death, while two held that the evidence available did not prove that he had hit the victim more than twice. The death penalty was therefore reimposed with a close three-to-two majority – with no further avenue for legal appeal.

Amnesty International believes that the death penalty is the ultimate cruel, inhuman and degrading punishment, and a violation of the right to life as proclaimed in the Universal Declaration of Human Rights. Amnesty International supports calls, included in five resolutions adopted by the UN General Assembly since 2007, for the establishment of a moratorium on executions with a view to abolishing the death penalty. As of today, 140 countries have abolished the death penalty in law or practice; out of 41 countries in the Asia-Pacific region, 18 have abolished the death penalty for all crimes and a further 10 are abolitionist in practice.

Name: Kho Jabing

Gender m/f: m

Further information on UA: 103/15 Index: ASA 36/2722/2015 Issue Date: 22 October 2015

