

EXTRA 36/01

Imminent**MALAYSIACHu Tak Fai [m], aged 30, Hong Kong national**

Chu Tak Fai, who has been on death row since 1994, has exhausted all his appeals and is facing imminent execution. His only hope for commutation now lies with the Sultan of Kedah, the state where he was convicted, who has the power to grant clemency.

Chu Tak Fai came from a broken home in Hong Kong. His father was a drug dealer who was violent towards his wife and children. Chu Tak Fai's mother was forced to flee the family home with her children, moving frequently to avoid being traced by her husband. Chu Tak Fai left school without any qualifications and found it difficult to find work. He is reported to have agreed to carry drugs to Malaysia to help his family repay heavy debts.

He was convicted of trafficking in heroin and sentenced to death by the High Court in Alor Setar, in the state of Kedah, in 1994. Amnesty International issued its first Urgent Action on this case in May 1997 (UA 139/97, ASA 28/07/97, 12 May 1997).

BACKGROUND INFORMATION

Amnesty International opposes the death penalty in all cases as a violation of the right to life and the right not to be subjected to cruel, inhuman or degrading treatment, as proclaimed in the Universal Declaration of Human Rights. The death penalty is an inherently unjust and arbitrary punishment, however heinous the crime for which it is applied. Studies have shown that it is more likely to be imposed on those who are poorer, less educated and more vulnerable than average. The risk of error in applying the death penalty is inescapable, yet it is irrevocable.

While Amnesty International recognizes the need to combat drug trafficking, there is no convincing evidence that the death penalty deters would-be traffickers more effectively than other punishments. Furthermore, there is always a risk that drug abusers may be executed, while those who mastermind the crime of trafficking evade arrest and punishment.

According to official figures, 349 people were executed in Malaysia between 1970 and 1996. Amnesty International is aware of four further executions since then, all for drug trafficking. Execution is by hanging. It is not known how many prisoners are currently under sentence of death.

The death penalty is mandatory in Malaysia for murder, certain firearms offences and trafficking in certain drugs. According to the Dangerous Drugs Act, any person found in possession of at least 15 grams of heroin, 40 grams of cocaine, one kilo of opium or 200 grams of cannabis is presumed, unless the contrary can be proven, to be trafficking in the drug and faces a mandatory death sentence. The United Nations Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions has criticized the Dangerous Drugs Act because it places the onus on the accused to prove their innocence, rather than on the state to prove their guilt. This contravenes a basic principle of Malaysian jurisprudence, as well as international legal safeguards, which stipulate that the accused has the right to be presumed innocent until proven guilty.

RECOMMENDED ACTION: Please send telegrams/telexes/faxes/express/airmail letters in English or your own language:

- respectfully urging the Sultan to commute Chu Tak Fai's death sentence;
- expressing sympathy for the victims of crime, but pointing out that if the execution is carried out, it will only cause more suffering for the relatives of Chu Tak Fai;
- expressing your unconditional opposition to the death penalty as a violation of one of the most fundamental of human rights - the right to life;
- recognizing the need to combat drug trafficking, but emphasizing that there is no proof that the death penalty deters would-be traffickers more effectively than other punishments and appealing to the authorities to find a more humane way to tackle this crime.

APPEALS TO:

Sultan of Kedah

Tuanku Haji Abdul Halim Mu'Adzam Shah Ibni Al-Marhum Sultan Badlishah
c/o Office of the Private Secretary to the Sultan
Pejabat KDYMM Tuanku Sultan Kedah Darul Aman,
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Salutation:Your Majesty

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Chairman, Human Rights Commission (SUHAKAM)

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and to diplomatic representatives of Malaysia accredited to your country.

PLEASE SEND APPEALS IMMEDIATELY. Check with the International Secretariat, or your section office, if sending appeals after 11 July 2001.