

AMNESTY INTERNATIONAL SUBMISSION

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AMNESTY INTERNATIONAL SUBMISSION TO GOVERNMENT OF MALAYSIA ON POSSIBLE REFORMS TO ABOLISH THE DEATH PENALTY

Amnesty International commends the recent announcement that the Government of Malaysia is due to deliberate on, with a view to initiating legislative reforms, the findings of the special committee tasked in 2019 with studying alternatives to the death penalty.¹ The organization hereby submits information for the consideration of members of the Malaysian Cabinet, renewing its call to seize the opportunity and swiftly propose to fully repeal this punishment from national legislation.

This submission summarizes international law and standards regarding the abolition of this punishment; outlines Amnesty International's key concerns on the use of the death penalty in Malaysia; describes the global trend towards abolition; and briefly considers issues of alternative punishments, and misperceived unique deterrent effect of this punishment.

Amnesty International opposes the death penalty in all cases without exception, regardless of the nature or circumstances of the crime, the guilt, innocence or other characteristics of the offender or the method used by the state to carry out the execution. The organization opposes it as a violation of the rights to life and to be free from cruel, inhuman and degrading punishment.

1. ABOLITION OF DEATH PENALTY ENSHRINED AS GOAL UNDER INTERNATIONAL LAW

The abolition of the death penalty is enshrined as a goal under international human rights law. While Article 6 of the International Covenant on Civil and Political Rights (ICCPR) allows for the use of capital punishment under certain narrow circumstances, its paragraph 6 clearly states that the same Article should not be used to "prevent or delay the abolition of the death penalty". The UN Human Rights Committee stated that the "death penalty cannot be reconciled with full respect for the right to life, and abolition of the death penalty is both desirable and necessary for the enhancement of human dignity and progressive development of human rights."²

Four international and regional treaties provide for the abolition of the death penalty: the Second Optional Protocol to the ICCPR, aiming at the abolition of the death penalty, adopted by the UN General Assembly in 1989; Protocols No. 6 and No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, adopted by the Council of Europe in 1982 and 2002, respectively; and the Protocol to the American Convention on Human Rights to Abolish the Death Penalty, adopted by the General Assembly of the Organization of American States in 1990. In addition, the African Commission on Human and Peoples' Rights has drafted and adopted an Optional Protocol to the African Charter on Human and Peoples' Rights on the abolition of the death penalty, which is currently awaiting consideration by the African Union.

Amnesty International has recorded that the constitutions of 56 countries explicitly prohibit the death penalty and 108 countries have now abolished it for all crimes.³

Amnesty International urges the Government of Malaysia to swiftly propose and support legislation to fully abolish the death penalty. In addition to this, to:

- Ensure that the official moratorium on executions continues to be observed in all cases;
- Ensure that all existing death sentences are reviewed in fair judicial processes with a view to their commutations;
- Ratify without reservations the International Covenant on Civil and Political Rights and its two Optional Protocols.

2. THE DEATH PENALTY IN MALAYSIA: KEY CONCERNS

¹ The Star, "Cabinet to receive special panel findings on alternatives to death penalty next month", 27 January 2022, www.thestar.com.my/news/nation/2022/01/27/cabinet-to-receive-special-panel-findings-on-alternatives-to-death-penalty-next-month

² UN Human Rights Committee, General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life, CCPR/C/GC/36, 30 October 2018, para. 50.

³ Information on file with Amnesty International.

This section highlights key concerns that Amnesty International holds in relation to the use of the death penalty in Malaysia. For further information, see also Amnesty International, "Fatally flawed – Why Malaysia must abolish the death penalty", AI Index ACT 50/1078/2019, October 2019, <https://www.amnesty.org/en/documents/act50/1078/2019/en/>

2.1 MANDATORY IMPOSITION OF THE DEATH PENALTY

In Malaysia, the death penalty is the mandatory punishment for 12 offences, including murder, drug trafficking when certain circumstances are not met, terrorism-related offences when these result in death, and some firearms offences.

The imposition of the mandatory death penalty is prohibited under international law. The UN Human Rights Committee has stated that "[i]n all cases involving the application of the death penalty, the personal circumstances of the offender and the particular circumstances of the offence, including its specific attenuating elements must be considered by the sentencing court. Hence, mandatory death sentences that leave domestic courts with no discretion on whether or not to designate the offence as a crime entailing the death penalty, and on whether or not to issue the death sentence in the particular circumstances of the offender, are arbitrary in nature."⁴

2.2 DEATH PENALTY FOR OFFENCES THAT ARE NOT "MOST SERIOUS CRIMES" UNDER INTERNATIONAL LAW

International law states that in countries where it has not yet been abolished, the imposition of the death penalty must be restricted to "the most serious crimes".⁵ This restriction has been authoritatively interpreted as referring to intentional killing. The UN Human Rights Committee has stated that: "[T]he expression 'most serious crimes' must be read restrictively to mean that the death penalty should be a quite exceptional measure";⁶ and that: "Crimes not resulting directly and intentionally in death, such as [...] drug and sexual offences, although serious in nature, can never serve as the basis, within the framework of article 6, for the imposition of the death penalty."⁷ The UN Special Rapporteur on extrajudicial, summary or arbitrary executions has stated that "The death penalty may not be imposed for drug-related offences unless they meet this requirement."⁸

The death penalty in Malaysia is applicable for several offences that do not meet the threshold of the "most serious crimes" under international law. Malaysia is among 10 countries where the death penalty is known to have been imposed for drug-related offences in 2020.⁹

2.3 RETENTION OF LEGAL PRESUMPTIONS OF DRUG POSSESSION AND TRAFFICKING

An issue of further concern for Amnesty International is the retention of the presumptions, under Section 37 of the Dangerous Drugs Act, 1952, that defendants found with specified amounts of certain drugs, or even simply in possession or in control of objects or premises in which prohibited substances are found, are guilty of drug trafficking. In those circumstances, the burden of proof is shifted onto the defendant (Section 36), in violation of the presumption of innocence and fair trial rights. In a recent judgment, the Federal Court of Malaysia found Section 37(a) of the Act to be unconstitutional.¹⁰ Similar presumptions can also be invoked under the Firearms (Increased Penalties) Act, 1971.¹¹

Safeguard no.5 of the UN Safeguards guaranteeing protection of the rights of those facing the death penalty state that "Capital punishment may only be carried out pursuant to a final judgement rendered by a competent court after legal process which gives all possible safeguards to ensure a fair trial, *at least equal to those contained in article 14 of the International Covenant on Civil and Political Rights*" (emphasis added).¹² The imposition of the death penalty after a violation of the right to a fair trial constitutes a violation of the right to life.¹³

⁴ UN Human Rights Committee, General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life, CCPR/C/GC/36, 30 October 2018, para.37.

⁵ Article 6(2) of the International Covenant on Civil and Political Rights; UN Safeguards guaranteeing protection of the rights of those facing the death penalty, UN Economic and Social Council resolution 1984/50.

⁶ UN Human Rights Committee, General Comment No. 6: The Right to Life (1982), para. 6.

⁷ UN Human Rights Committee, General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life, UN Doc. CCPR/C/GC/36, para.35.

⁸ Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (2012), UN Doc. A/67/275, para.122.

⁹ Amnesty International, "Death sentences and executions in 2020", ACT 50/3760/2021, April 2021, p.15.

¹⁰ Federal Court of Malaysia, *Alma Nuda Atenza and Orathai Prommatat v. Public Prosecutor*, Criminal Appeal No_ 05-94-05-2017(B), 5 April 2019.

¹¹ Sections 3(a), 7(2) and 9 of the Firearms (Increased Penalties) Act, 1971.

¹² Adopted by Economic and Social Council resolution 1984/50 of 25 May 1984.

¹³ Human Rights Committee, General Comment No. 32- Article 14: Right to equality before courts and tribunals and to a fair trial (2007), UN Doc. CCPR/C/GC/32, para.59; and General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life, CCPR/C/GC/36, 30 October 2018, para.41 see also, Shukurova v. Tajikistan, Communications No. 1044/2002 (2006), UN Doc. CCPR/C/86/D/1044/2002, para. 8.5; Ruzmetov v. Uzbekistan, Communication No. 915/2000 (2006), UN Doc. CCPR/C/86/D/915/2000, paras.7.3-7.6; Chan v. Guyana, Communication No. 913/2000 (2005), UN Doc CCPR/C/85/D/913/2000, para. 5.4; Rayos v. Philippines, Communication No. 1167/2003 (2004), UN Doc. CCPR/C/81/D/1167/2003, para. 7.3.

In addition to undermining the right to a fair trial, the presumptions of guilt have also had the effect of lowering the threshold of evidence needed to secure a conviction in capital cases. As soon as a person is found in control of a bag or item in which controlled drugs are found, they can be considered to be in possession of the substances; their knowledge of the drugs can be inferred by the appearance of the defendant through signs such as nervousness or sweatiness. Once possession is established, the quantity of drugs seized can allow the prosecution to invoke the presumption that the person was involved in drug trafficking.

2.4 FURTHER VIOLATIONS OF THE RIGHT TO A FAIR TRIAL AND EFFECTIVE LEGAL COUNSEL

The right to a fair trial is a human right and is legally binding on states as part of customary international law.¹⁴ Violation of fair trial guarantees provided for in Article 14 of the ICCPR would render the death sentence arbitrary in nature;¹⁵ and the arbitrary deprivation of life, as well as the use of torture or other cruel, inhuman or degrading treatment or punishment, are absolutely prohibited under customary international law.¹⁶ Through its research published in October 2019, Amnesty International has found numerous violations of the guarantees under the right to a fair trial at different points of the criminal justice process, which left defendants vulnerable to the imposition of the death penalty in Malaysia.¹⁷

- **Restrictions on access to legal counsel** were a critical defect of Malaysia's criminal justice system. Despite several existing legal aid programmes, lawyers and other representatives of people on death row told Amnesty International that it was a common experience for those arrested for offences that could result in the death penalty, and who cannot hire a lawyer independently, not to receive legal assistance at the time of arrest or during their time under police remand, before charges are brought. A lawyer associated with the Bar Council Legal Aid Centre also estimated that, due to a lack of resources, coverage of the scheme at the time of arrest and remand hearing is just 60-70%, with coverage dropping outside Kuala Lumpur. Further, because of how legal aid is structured, no legal representatives were assigned to a case until the trial is due to start, leaving defendants without legal assistance during interrogation and for prolonged periods.
- Other complaints included **delays in notifying legal aid centres, family members and lawyers of a person's arrest**. Relatives told Amnesty International that their family member only saw a lawyer for the first time when they were charged at the magistrate court, days after their arrest. Similarly, representatives of foreign embassies indicated that they usually received a notification of the arrest of their nationals after more than 24 hours, even days, "usually after the statement is taken".
- Another issue put forward related to the **quality of the legal representation**, if and when available. Several family members and lawyers told Amnesty International that the defendants' trial counsel was incompetent, inexperienced or participated in misconduct in representing people of less advantaged backgrounds during trial. This is particularly problematic since in Malaysia it is extremely difficult to introduce new defences on appeal.
- An additional problem involved **insufficient access to interpreters** for foreign nationals. Malaysian law guarantees interpretation in court to those who do not understand the language in which evidence is given, but not outside of the courtroom. The support provided to foreign nationals to prepare their defence therefore varied greatly depending on the resources made available by the relevant embassy - and in some instances the ethnicity of the foreign defendant. Some legal representatives told Amnesty International that persons who do not understand Malay were asked by police to sign documents in Malay.
- Furthermore, in death penalty cases, a magistrate can authorize the police to hold people suspected of having committed a crime for more than 24 hours to enable completion of the investigation, up to a total of 14 days. Some interviewees raised with Amnesty International that it was common for defendants to "**get beaten up**" for information to advance the investigation, especially when a lawyer was not present. Torture and other ill-treatment and deaths in custody at police stations throughout Malaysia are a widespread concern and recurring issue, yet, 16 years after the recommendation by a Royal Commission of Inquiry to establish an Independent Police Complaint and Misconduct Commission (IPCMC), no such body has materialised.¹⁸ Malaysian law generally precludes the

¹⁴ Safeguard no.5 of the UN Safeguards guaranteeing protection of the rights of those facing the death penalty, UN Economic and Social Council Resolution 1984/50 of 25 May 1984; see Amnesty International, Fair Trial Manual, Second Edition (Index: POL 30/002/2014).

¹⁵ Human Rights Committee, General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life, UN Doc. CCPR/C/GC/36, para. 41.

¹⁶ Human Rights Committee, Issues Relating to Reservations Made upon Ratification or Accession to the Covenant or the Optional Protocols thereto, or in Relation to Declarations under Article 41 of the Covenant, UN Doc. CCPR/C/21/Rev.1/Add.6, para.8; Report of the Special Rapporteur on Extrajudicial Executions, UN Doc. A/67/275, 2012, para. 11; Committee Against Torture, General Comment No. 2: Implementation of Article 2 by States Parties, UN Doc. CAT/C/GC/2, para.1.

¹⁷ Amnesty International, "Fatally flawed – Why Malaysia must abolish the death penalty" (ACT 50/1078/2019), October 2019, [amnesty.org/en/documents/act50/1078/2019/en/](https://www.amnesty.org/en/documents/act50/1078/2019/en/)

¹⁸ Amnesty International Malaysia, "Address allegations of torture by police and custodial deaths; stop harassment of activists and artists" (media quote), 2 July 2021, [amnesty.my/2021/07/02/address-allegations-of-torture-by-police-and-custodial-deaths-stop-harassment-of-activists-artists/](https://www.amnesty.my/2021/07/02/address-allegations-of-torture-by-police-and-custodial-deaths-stop-harassment-of-activists-artists/); SUARAM, "SUARAM Human Rights Overview Report on Malaysia 2021", 2021, p.10-12, [suaram.net/_files/ugd/359d16_c454f2d0247340c3928bfc9d6c81af.pdf](https://www.suaram.net/_files/ugd/359d16_c454f2d0247340c3928bfc9d6c81af.pdf)

prosecution from using at trial **self-incriminating statements**, including those obtained under torture or other ill-treatment, but with regard to capital offences these can be admissible as evidence under the Dangerous Drugs Act, 1952. This is additionally concerning as any defence not put forward at the first available opportunity is regarded by judges as an “afterthought”, and lack of consistency in the statements by the defendant is considered to their disadvantage.

- These flaws are even more worrying when one considers that Malaysian law does not allow criminal cases to be reopened following a final judgment on the grounds of newly discovered facts – a procedure available in many other countries and before international criminal tribunals. This is a critical safeguard even more so in cases involving the death penalty, to ensure that convictions are based upon clear and convincing evidence leaving no room for an alternative explanation of the facts.

2.5 IMPACT OF DEATH PENALTY ON THOSE FROM DISADVANTAGED BACKGROUNDS

As noted by the UN Human Rights Committee, “Legal protections for the right to life must apply equally to all individuals and provide them with effective guarantees against all forms of discrimination, including multiple and intersectional forms of discrimination. Any deprivation of life based on discrimination in law or fact is ipso facto arbitrary in nature.”¹⁹

Official figures analysed by Amnesty International as part of its report, as well as those published in 2020, indicated that the impact of the death penalty in Malaysia has largely fallen on those convicted of drug trafficking, which has disproportionately included women and foreign nationals.²⁰ A significant part of those on death row involved people from less advantaged socio-economic backgrounds, while certain ethnic minorities were overrepresented on death row.

These findings gain an even greater significance when considered in the context of laws and policies that are in contravention of international law and standards – for example the lack of access to interpretation from the point of arrest for foreign nationals, or the impossibility of raising coercion or other mitigating circumstances at sentencing for offences punished by the mandatory death penalty, as highlighted in previous sections. These violations have added multiple layers of arbitrariness into the use of this punishment, particularly for those whose nationality, gender, socio-economic background or other characteristics can contribute, or leave them more vulnerable, to being sentenced to death.

The use of death penalty has further impacted women who are relatives and support those on death row, as existing structural socio-economic inequalities, stigmatization and discrimination have been deepened by the sentencing to death of their loved ones.²¹

2.5 SECRETIVE PARDONS SYSTEM

Amnesty International is concerned that the secrecy that surrounds the handling of pardon petitions in Malaysia – the last recourse available to prisoners under sentence of death before execution – has aggravated the mental trauma of the prisoners and their families, and exacerbated the systemic flaws that undermine their exercise of the right to this last review. These include the absence of a clearly regulated process, the lack of legal support to prepare the petitions, the prolonged delays in the communication of the decision on the pardon application and the lack of notification of execution.

Article 6(4) of the International Covenant on Civil and Political Rights (ICCPR) and Paragraph 7 of the UN Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty guarantee to anyone sentenced to death has the right to seek pardon, clemency or commutation (substitution of a lighter penalty). The competent officials must genuinely consider such requests. The International Court of Justice has taken the view that such clemency procedures, though carried out by the executive rather than the judiciary, are an integral part of the overall system for ensuring justice and fairness in the legal process.²²

The UN Human Rights Committee has stated that “No category of sentenced persons can be a priori excluded from such measures of relief, nor should the conditions for attainment of relief be ineffective, unnecessarily burdensome, discriminatory in nature or applied in an arbitrary manner.”²³ It further noted that pardon or commutation procedures should be specified in domestic legislation and “must offer certain essential guarantees, including certainty about the processes followed and the

¹⁹ Human Rights Committee, General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life, UN Doc. CCRP/C/GC/36, 30 October 2018, para.61.

²⁰ Parliament of Malaysia, Third Meeting, Third Term of the 14th Parliament, Written responses to question no. 1 to 544, 2 November to 17 December 2020, Response to question no. 441.

²¹ See testimony by Shamala T. Manickarajah in Amnesty International, “2021 World Day Against the Death Penalty - The additional burden of the death penalty on women”, AI Index ACT 50/4791/2021, October 2021, p.21, [amnesty.org/en/documents/act50/4791/2021/en/](https://www.amnesty.org/en/documents/act50/4791/2021/en/)

²² Avena Case (Mexico v United States), ICJ (2004) para. 142.

²³ Human rights Committee, General comment No. 36 on article 6 of the International Covenant on Civil and Political Rights, on the right to life, UN Doc. CCRP/C/GC/36, 30 October 2018, para. 47.

substantive criteria applied; a right for individuals sentenced to death to initiate pardon or commutation procedures and to make representations about their personal or other relevant circumstances; a right to be informed in advanced when the request will be considered; and a right to be informed promptly about the outcome of the procedure.”

In several of its resolutions, the UN General Assembly has called on all states to ensure that “clemency procedures are fair and transparent and that prompt information is provided at all stages of the process”.²⁴ The UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, adopted in 2012, recommend that states introduce measures to ensure that prisoners have access to legal aid including to prepare appeals and requests for pardon, in particular when facing capital punishment.

3. THE DEATH PENALTY IN THE WORLD: TREND TOWARDS ITS ABOLITION

Over seventy years after the adoption of the Universal Declaration of Human Rights (Declaration), the trend towards worldwide abolition of the death penalty is unmistakable. As of today, **144** countries – more than two-thirds of the world’s countries – have abolished the death penalty in law or practice.²⁵

When the Declaration was adopted in 1948, only eight countries had abolished the death penalty for all crimes: Colombia (1910), Costa Rica (1877), Ecuador (1906), Iceland (1928), Panama (1922), San Marino (1865), Uruguay (1907) and Venezuela (1863). In 1977, when Amnesty International began campaigning against the death penalty, only 16 countries were abolitionist for all crimes; today that number is 108. More than 30 of these became fully abolitionist in the 21st century. Additionally, ten US states have all abolished the death penalty since the beginning of the millennium, including most recently the southern state of Virginia.

Amnesty International’s report on the global use of the death penalty in 2020 shows that the practice of the death penalty is now limited to an ever more isolated group of countries.²⁶ Executions were reported in **18** countries worldwide, 9% of the world total. Of these executing countries, **10**, or 5%, were “persistent” executioners, meaning that they carried out executions every year in the previous five years. While China, where figures on the death penalty remained classified as a state secret, remained the lead executioner and was believed to have carried out thousands of executions, it is significant that 88% of all recorded executions were recorded in four countries: Iran, Egypt, Iraq, and Saudi Arabia. The death penalty continued to be used extensively also in North Korea and Viet Nam, but due to lack of access to information it is impossible to assess the determine a credible estimate. The global trends highlighted above were also reflected in the Asia-Pacific region, where Japan, Pakistan and Singapore did not report any executions for the first time in several years.

In July and December 2021, respectively, the legislative bodies of Sierra Leone and Kazakhstan voted to abolish the death penalty for all crimes. The Parliament of Papua New Guinea followed suit in January 2022.

4. THE QUESTION OF ALTERNATIVE PUNISHMENTS

When talking about abolition, the question of alternatives to the death penalty is a critical issue in reconciling the demands of victims of violent crime for justice with calls for the abolition of capital punishment. Penalties imposed following a conviction must take into account possible mitigating factors including **the circumstances of the convicted offender**; and **neither the punishment itself nor the way that a punishment is imposed may violate international standards**. Those entitled to the commutation of their death sentence under the recent amendments to the Dangerous Drugs Act, 1952, which came into force on 15 March 2018, were given life imprisonment and no less than 15 strokes of the whip – a cruel punishment prohibited under international law²⁷ – as the only available alternative sentence.

Amnesty International acknowledges that, as part of their obligation to respect and protect the human rights of victims of violent crime, governments seek to ensure that perpetrators of international recognizable offences are held accountable after a fair judicial process. Nevertheless, regardless of the crimes such individuals have been convicted for, Amnesty International opposes the imposition of the death penalty or any other cruel, inhuman or degrading punishment. Article 10 of the International Covenant on Civil and Political Rights states that the primary aim of penitentiary systems should be the **reformation and social rehabilitation of prisoners**.

Bearing this principle in mind, and when considering the approaches used in different jurisdictions with regard to long custodial sentences, it may be worth noting that the Rome Statute of the International Criminal Court – which has jurisdiction over the most serious crimes of concern to the international community, often involving crimes with multiple homicides –

²⁴ See, most recently, UN General Assembly resolution 75/183 of 16 December 2020, para.7(f).

²⁵ For more information see Amnesty International, *Abolitionist and retentionist countries (as of March 2018)*, (ACT 50/6665/2017), 5 March 2018, [amnesty.org/en/documents/act50/6665/2017/en/](https://www.amnesty.org/en/documents/act50/6665/2017/en/)

²⁶ Amnesty International, “Death sentences and executions in 2020”, ACT 50/3760/2021, April 2021.

²⁷ Human Rights Committee, Concluding Observations - Sudan, UN Doc. CCPR/C/79/Add.85, 19 November 1997, para. 9.

prescribes that all sentences imposed by the Court – which exclude the death penalty – must be subject to set review after a period.

When it comes to drug-related offences, Malaysia should develop new drug policies that put the protection of public health and human rights at the centre, including by expanding health and other social services to address the root causes that lead people to engage in the drug trade, such as ill-health, denial of education, unemployment, lack of housing, poverty and discrimination. The Government should also amend its criminal laws and consider implementing **alternatives to the criminalization** of other minor, non-violent drug-related offences that, in the absence of harm to others, has proven to be unnecessary and disproportionate to any legitimate aim. When determining whether to make or maintain a specific drug-related conduct as a criminal offence, it must be ensured that the crime is clearly defined in law and that the proscribed conduct is aimed at addressing a specific public health problem directly associated with the possible abuse of a particular drug and that the conduct puts others at risk of serious harm, for example by knowingly supplying adulterated drugs.

Furthermore, UN Safeguards guaranteeing the protection of the rights of those facing the death penalty state that a person sentenced to death must **benefit when a change of law imposes a lighter penalty** for the crime they had been convicted of.²⁸

5. THE DEATH PENALTY AND CRIME: NEVER THE SOLUTION

Regarding the penalties imposed by the criminal justice system, there is no convincing evidence to support the argument that the death penalty prevents crime more effectively than other punishments. Also, critically, the so-called deterrence argument fails to address the human rights of those sentenced to death.

The most comprehensive survey of research findings carried out by the UN on the relationship between the death penalty and homicide rates concluded: “[R]esearch has failed to provide scientific proof that executions have a greater deterrent effect than life imprisonment. Such proof is unlikely to be forthcoming. The evidence as a whole still gives no positive support to the deterrent hypothesis.”²⁹

Statistics from countries that have abolished the death penalty show that the absence of the death penalty has not resulted in an increase in the crimes previously subject to capital punishment. In Canada, for example, the homicide rate per 100,000 of the population fell from a peak of 3.09 in 1975, the year before the death penalty for murder was abolished, to 2.41 in 1980. The homicide rate in Canada remains significantly lower than it was prior to abolition, with last available official figures rating it at 1.95 in 2020.³⁰

- A study comparing the murder rates in Hong Kong and Singapore, both of which have a similar size of population, for a 35-year period beginning in 1973 found that the abolition of the death penalty in the former and the high execution rate in the latter in the mid-1990s had little impact on murder levels.³¹
- A study carried out in Trinidad and Tobago also found no correlation between executions, imprisonment and crime: “[O]ver a span of 50 years, during which these sanctions were being deployed in degrees that varied substantially, neither imprisonment nor death sentences nor executions had any significant relationship to homicides. In the years immediately following an appeals court’s determination limiting executions, the murder rate fell.”³² In particular, the study showed that between 1950 and 1980, while executions were carried out regularly every year, homicide rates remained fairly stable. In the years since 1980, although courts continued to impose death sentences, executions took place in just two of those years. This drop in executions had no large, immediate impact on murder rates, which only began to rise sharply from 2003.³³
- The Constitutional Court of South Africa, when it declared in 1995 that the death penalty was incompatible with the new Constitution, stated: “We would be deluding ourselves if we were to believe that the execution of [...] a comparatively few people each year [...] will provide the solution to the unacceptably high rate of crime. [...] The

²⁸ This is contrary to, among other examples, Safeguard no. 2 of the UN Safeguards guaranteeing protection of the rights of those facing the death penalty, adopted by the UN Economic and Social Council in resolution 1984/50 of 25 May 1984; Article 15(1) of the International Covenant on Civil and Political Rights; Rome Statute of the International Criminal Court, Article 24(2); European Court of Human Rights, *Case of Scoppola v. Italy* No. 2 (Application no. 10249/03), Grand Chamber judgment of 17 September 2009, para. 108.

²⁹ Roger Hood, “The question of the death penalty and the new contributions of the criminal sciences to the matter: a report to the United Nations Committee on Crime Prevention and Control”, UN document E/AC.57/1988/CRP.7, 1988. The survey was last reviewed and published commercially as Hood and Hoyle, *The Death Penalty*.

³⁰ Statistics Canada, Number, rate and percentage changes in rates of homicide victims, <https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=3510006801>

³¹ Franklin E. Zimring, Jeffrey Fagan, David T. Johnson, “Executions, deterrence and homicide: a tale of two cities”, 31 August 2009, Columbia Public Law Research Paper No. 09-206; CELS 2009 4th Annual Conference on Empirical Legal Studies Paper.

³² David F. Greenberg and Biko Agozino, “Executions, imprisonment and crime in Trinidad and Tobago”, *British Journal of Criminology*, 2011.

³³ David F. Greenberg and Biko Agozino, “Executions, imprisonment and crime in Trinidad and Tobago”, *British Journal of Criminology*, 2011.

greatest deterrent to crime is the likelihood that offenders will be apprehended, convicted and punished. It is that which is presently lacking in our criminal justice system; and it is at this level and through addressing the causes of crime that the State must seek to combat lawlessness.”³⁴

- In its April 2012 report, the National Research Council of the National Academies in the USA confirmed: “[R]esearch to date on the effect of capital punishment on homicide is not informative about whether capital punishment decreases, increases or has no effect on homicide rates. Therefore, the committee recommends that these studies not be used to inform deliberations ... about the effect of the death penalty on homicide.”³⁵

The deterrence hypothesis only distracts public attention from the much-needed, long-term solutions that could be more effective in tackling crime and its root causes. Crime trends and patterns in different countries and regions are related to a range of different factors, some of which are context-specific. Consequently, there is no one solution that could address public safety concerns in all countries. However, several studies conducted by the United Nations have identified poverty, inequality, and the capacity of States to enforce the rule of law as factors affecting the level of violence in most countries, in addition to individuals’ particular circumstances.³⁶ The UN Office on Drugs and Crime (UNODC) identified in its 2011 “Global study on Homicide”³⁷ a relationship between homicide and human and economic development. The study found that the largest proportion of murders occurred in countries with low levels of human development; and that countries with high levels of income inequality have homicide rates almost four times higher than more equal societies.³⁸

Factors associated with the nature of the homicides themselves, such as availability of firearms, alcohol or geographical proximity to drug-trafficking routes, can also have an impact on homicide rates.³⁹ An analysis, carried out by the Commission on Crime Prevention and Criminal Justice of the Economic and Social Council (ECOSOC), of the interrelation between homicide rates and rule of law index⁴⁰ found that countries with weak processes with regard to promulgating laws, enforcing them equally or adjudicating them independently, also had higher murder rates.⁴¹ The Commission, however, found that the relationship between these factors is not necessarily direct, as the capacity of States to enforce the rule of law can have an impact on ensuring social and economic development, which can, in turn, have an impact on crime rates.⁴²

9. CONCLUSION AND RECOMMENDATIONS

Malaysia is now in an optimal position to align itself with the global trend and join the majority of countries that have abandoned the death penalty. Human rights leadership is critical in driving the process of abolition, including through informed public debates on the human rights dimensions of the death penalty.

In view of the fact that international law and standards are clear about the desirability of the abolition of the death penalty, and Amnesty International’s own view that it violates the right to life and is the ultimate cruel, inhuman and degrading punishment, Amnesty International urges the Government of Malaysia to recommend and promote the full abolition of the death penalty through legislative amendments as a matter of urgency.

³⁴ Constitutional Court of South Africa, *The State v. Makwanyane and Mchunu*, Case No. CCT/3/94, para.121.

³⁵ Daniel S. Nagin and John V. Pepper, eds., *Deterrence and the Death Penalty*, Washington: National Research Council, The National Academies Press, 2012, p. 2.

³⁶ UN Office on Drugs and Crime, “Making them work –handbook on crime prevention guidelines”, August 2010.

³⁷ UN Office on Drugs and Crime, “Global Study on Homicide—Trends, Contexts, Data”, 2011.

³⁸ ECOSOC Commission on Crime Prevention and Criminal Justice, “World crime trends and emerging issues and responses in the field of crime prevention and criminal justice”, UN Document E/CN.15/2012/19, 17 February 2012.

³⁹ Office on Drugs and Crime, “Global Study on Homicide—Trends, Contexts, Data”, 2011, p.10. Office on Drugs and Crime, “Global Study on Homicide—Trends, Contexts, Data”, 2013, pp.65-75.

⁴⁰ The rule of law index is a system based on the measurement of a number of indicators which analyses how “individuals, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated...It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.” See also United Nations, “Report of the Secretary-General on the rule of law and transitional justice in conflict and post-conflict societies”, S/2004/616, para. 6.

⁴¹ ECOSOC Commission on Crime Prevention and Criminal Justice, “World crime trends and emerging issues and responses in the field of crime prevention and criminal justice”, UN Document E/CN.15/2012/19, 17 February 2012, p.10.

⁴² ECOSOC Commission on Crime Prevention and Criminal Justice, “World crime trends and emerging issues and responses in the field of crime prevention and criminal justice”, UN Document E/CN.15/2012/19, 17 February 2012.