

URGENT ACTION

MALAYSIAN NATIONAL'S DEATH SENTENCE UPHELD

On 5 April the Court of Appeal of Singapore dismissed the appeal of Malaysian national Kho Jabing and upheld his death sentence. This ends the stay of execution the Court had issued last November and his execution can now be re-scheduled at any time.

The Court of Appeal of Singapore unanimously rejected on 5 April the appeal put forward by **Kho Jabing**, a 31-year-old Malaysian national, and lifted the temporary stay of execution it had granted in his case on 5 November 2015. The execution of Kho Jabing was initially set for 6 November, after the President rejected his clemency application on 19 October, but the decision of the Court to admit his last-minute appeal for a review of his case put the execution on hold. Kho Jabing's execution can now be re-scheduled at any time.

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. In 2013, the High Court resented Kho Jabing to life imprisonment and 24 strokes of the cane, but this 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.

Please write immediately in English or your own language:

- Urging the President to immediately halt Kho Jabing's execution and reconsider the rejection of his 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 there is no evidence that the death penalty deters crime more effectively than imprisonment;
- Calling on the authorities to immediately re-impose an official moratorium on all executions with a view to abolishing the death penalty, and commute all existing death sentences.

PLEASE SEND APPEALS BEFORE 17 MAY 2016 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 fourth update of UA 103/15. Further information:

<https://www.amnesty.org/en/documents/ASA36/2841/2015/en/>

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ADDITIONAL INFORMATION

On 18 July 2014, Singapore carried out its first two executions since 2012, when two men were hanged after they had been convicted of and mandatorily sentenced to death for drug trafficking. 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. Since then, the authorities of Singapore have executed at least four other people, including three for drug trafficking. At least five new mandatory death sentences were imposed in 2015, four for drug trafficking and one for murder. At least 23 people remained on death row at the end of the year.

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. 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".

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 in Kho Jabing's case. 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 re-imposed with a close three-to-two majority. The legal appeal submitted in the lead-up to Kho Jabing's scheduled execution on 5 November was rejected on 5 April 2016. While upholding his death sentence unanimously, the Court found that disagreement among the judges is not a ground to review a decision and that a simple majority is sufficient, including in death penalty cases. It also established new guidance restricting the grounds on which legal challenges can be submitted to review final decisions in criminal cases to new evidence or legal arguments, which must be "reliable, substantial and powerfully probative"; or to cases in which a miscarriage of justice has occurred, if "there is a powerful probability that the decision concerned is wrong" and if it can be shown that a decision by the court has been affected by "fraud or a breach of natural justice". The Court also suggested that the Parliament considers the new guidance with a view to further regulating post-conviction appeals.

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; in the Asia-Pacific region, 18 countries 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 36/3782/2016 Issue Date: 5 April 2016