

AMNESTY INTERNATIONAL PUBLIC STATEMENT

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MALAYSIA: FORTHCOMING PARLIAMENTARY SESSION AN UNMISSABLE OPPORTUNITY TO REFORM DEATH PENALTY AND DRUG LAWS

On the occasion of 26 June, International Day against Drug Abuse and Illicit Trafficking, Amnesty International is calling on the authorities of Malaysia to introduce legislation at the forthcoming session of Parliament to repeal the mandatory death penalty for all crimes. This would be a critical first step towards full abolition of the death penalty and reform of the country's punitive response to drug trafficking and crime.

More than 30 years ago, the UN General Assembly established 26 June as an international day to renew efforts, actions and cooperation in the framework of drug control. This year's observance is particularly important as it follows the acknowledgment by all 31 UN agencies that punitive drug policies, including those that encompass the death penalty, have been ineffective both in reducing drug trafficking and in addressing problems associated with the use, production and sale of drugs. Instead, they have undermined the human rights and well-being of people who use drugs, their families and communities.

Further, the UN has reiterated its unequivocal position, as recently as March 2019, that the application of the death penalty for drug-related offences does not respect the spirit of the international drug control conventions and has the potential to become an obstacle to effective cross-border and international cooperation against drug trafficking.

The Malaysian Government should harness this momentum at the international level to create a new impetus in its efforts towards abolishing the death penalty and reframing its drug control laws to ensure that the protection of people's health and human rights are at their centre.

DEATH PENALTY FOR DRUG-RELATED OFFENCES: A FADING PRACTICE

Research by Amnesty International indicates that Malaysia is now among a minority of just 15 countries where the death penalty is known to have been imposed or carried out for drug-related offences in 2018. The Asia-Pacific region was the one with the highest proportion of countries – nine in total – resorting to the death penalty for these crimes.

The global number of known executions for drug-related offences has also been declining, from at least 360 in 2016 to at least 274 in 2017 and at least 98 in 2018. Several countries that had historically resorted to the death penalty for these offences in high numbers have also made important changes to their laws, which could see executions for these offences further decreasing in the future. Most notably, the reform of Iran's Anti-Narcotic law led to a ten-fold drop in its drug-related executions, from 250 in 2017 to 25 in 2018. Thailand also introduced sentencing discretion for selling of drugs, effective from January 2017.

International human rights 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", meaning intentional killing. The UN Human Rights Committee has stated in its General Comment No.36 (2018) 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, [...] for the imposition of the death penalty."

DEATH PENALTY IN MALAYSIA: IN VIOLATION OF INTERNATIONAL LAW AND STANDARDS

Amnesty International has repeatedly raised concern at the wide scope of the death penalty in Malaysia, as well as its continued use as a mandatory punishment for certain crimes, such as murder and some terrorism-related offences. The mandatory death penalty is prohibited under international law and standards as constituting arbitrary deprivation of life – this is because the death penalty is imposed without giving judges any possibility of taking into account the defendant's personal circumstances or the circumstances of the particular offence.

An issue of further concern for Amnesty International is the retention of the “presumptions” under Section 37 of the Dangerous Drugs Act, 1952. When these are invoked, 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 automatically regarded as having knowledge of the drugs and as possessing them for the purpose of trafficking. In those circumstances, the burden of proof is shifted onto the defendant, in violation of the presumption of innocence and fair trial rights. Under international human rights law and standards, the imposition of the death penalty after unfair trials constitutes a violation of the right to life.

REFORMING THE LAW: ALTERNATIVE PUNISHMENTS AND BENEFIT OF LEGISLATIVE CHANGE

International human rights law sets the rehabilitation of the offender as the goal of incarceration; and requires that penalties imposed following fair proceedings be commensurate with the gravity of the crime and the circumstances of the offender.

Further, it requires that neither the punishment itself, nor the way that a punishment is imposed, should violate international standards. In Malaysia, however, recent amendments to the Dangerous Drugs Act, 1952, which came into force on 15 March 2018 and introduced sentencing discretion in limited circumstances of drug trafficking, allowed life imprisonment and no less than 15 strokes of the whip – a cruel punishment that contravenes the absolute prohibition of torture and other ill-treatment – as the only available alternative penalty.

Instead of replicating punitive drug measures that have been ineffective, Malaysia has the opportunity to develop new drug policies that put the protection of public health and human rights at their centre. These should include the expansion of 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 minor, non-violent drug-related offences that, in the absence of harm to others, have proven to be unnecessary and disproportionate to any legitimate aim. If a specific drug-related conduct is to be a criminal offence, it should be clearly defined in law; and aimed at addressing a specific public health problem directly associated with the possible abuse of a particular drug which puts others at risk of sufficiently serious harm – for example selling drugs to children or coercing others to use, transport or sell drugs.

Furthermore, as established in the UN Safeguards guaranteeing the protection of the rights of those facing the death penalty, adopted through Economic and Social Council resolution 1984/50 of 25 May 1984, Malaysia must ensure that any change of law that introduces a lighter penalty is applied retroactively, enabling those sentenced to death for the same crime to benefit from the reform.

Pending full abolition of the death penalty, Amnesty International urges the Government of Malaysia to:

- Ensure the official moratorium on executions established in July 2018 continues to be observed in all cases
- Introduce, at the forthcoming session of Parliament, draft legislation to remove the death penalty from the Dangerous Drugs Act of Malaysia, 1952, and repeal its Sections 36 and 37
- Introduce, at the forthcoming session of Parliament, draft legislation to grant sentencing discretion for all offences that currently carry the death penalty as the only available punishment
- Ensure that any proposed legislative amendments apply retroactively; that fair judicial processes are established to review existing cases, with a view to commutation of the death sentences, and that judges can exercise sentencing discretion as part of those processes
- Ensure that any punishment imposed is consistent with international human rights law and standards
- Ratify without reservations the International Covenant on Civil and Political Rights and its two Optional Protocols