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Malaysia: Decision to review mandatory death penalty for drug trafficking must be first step towards wider reform

The decision of the Malaysian government to allow judges discretion in sentencing in drug trafficking cases is a step in the right direction, Amnesty International said today. However, while the move could result in a significant reduction in the use of the death penalty, the Malaysian authorities should not limit reform to drug trafficking offences or the mandatory death penalty. They should go further and immediately establish a moratorium on all executions, as first steps towards full abolition of the death penalty.

On 23 March 2017 Minister in the Prime Minister's Department and de facto Law Minister Azalina Othman Said stated in response to a parliamentary question that on 1 March the cabinet had tasked the Attorney General with the preparation of amendments to the Dangerous Drugs Act, 1952. The Minister stated that the measure is supposed to include in Section 39(b) "additional clauses to give discretionary power to the courts to bestow other sentences, besides the mandatory death penalty, in certain situations".

Amnesty International welcomes the decision to move forward with the reforms, first announced in October 2012. Figures shared by the Minister in March 2017 indicated that 799 people on death row were convicted of and sentenced to the mandatory death penalty for drug trafficking, including 416 foreign nationals.

However, the proposal as described does not go far enough, as it only involves the

offence of drug trafficking and could also restrict sentencing discretion to specific circumstances, potentially retaining some elements of the mandatory punishment if these conditions are not met. Similar legislative changes became effective in neighbouring Singapore in 2013 in relation to the mandatory death penalty for murder and drug trafficking offences. However, Singapore has nevertheless seen continued use of the mandatory death penalty in such cases as a result of these reforms.

Amnesty International encourages the Malaysian authorities to take the opportunity of this legislative reform to abolish the death penalty fully, and to refrain from introducing clauses that would further violate international law and standards.

The UN Human Rights Committee has stated that "the automatic and mandatory imposition of the death penalty constitutes an arbitrary deprivation of life [...] 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". International law also states that, in countries where the death penalty has not yet been abolished, its imposition must be restricted to "the most serious crimes", meaning intentional killing. The UN Special Rapporteur on extrajudicial, summary or arbitrary executions has specifically underlined that "the death penalty may not be imposed for drug-related offences unless they meet this requirement."

In Malaysia the death penalty is the mandatory punishment for 12 offences, including murder, drug trafficking, terrorism-related offences when these result in death, and some firearms offences. Judges have discretion to apply the death penalty for 10 other offences, including treason, kidnapping and rape when these result in death, and trafficking of firearms. The majority of death sentences are imposed for murder and drug trafficking.

An issue of further concern for Amnesty International is the retention of the presumption, 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, in violation of the presumption of innocence and fair trial rights.

Amnesty International opposes the death penalty unconditionally as a violation of the right to life as proclaimed in the Universal Declaration of Human Rights and the ultimate cruel, inhuman and degrading punishment. As of today, 141 countries have abolished the death penalty in law or practice; in the Asia Pacific region, 19 countries have abolished the death penalty for all crimes and a further eight are abolitionist in practice.

The announcement of reforms to the mandatory death penalty comes only weeks after the family of Shahrul Izani bin Suparman received the good news of the commutation of his death sentence, which had been mandatorily imposed in 2009 after he was caught in possession of 622 grams of cannabis six years earlier– his first criminal offence. This followed the announcement in early February that the King of Malaysia had commuted the mandatory death sentence imposed on Nigerian national Osariakhi Ernest Obayangbon. He had been diagnosed as having schizophrenia before his appeal in 2007 and has been receiving treatment since then.

These cases go a long way in illustrating the critical importance of prompt reforms to Malaysia's death penalty laws. Amnesty International renews its calls on the Malaysian authorities to immediately halt all executions and join the majority of countries that have abolished the death penalty once and for all.