

AMNESTY INTERNATIONAL PUBLIC STATEMENT

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Malaysia: repeal of mandatory death penalty should be a first step towards full abolition

Amnesty International urges the Government of Malaysia to keep its promise to abolish the death penalty once and for all, in light of its recent decision to compromise on total abolition.

On 13 March 2019, Deputy Minister in charge of Law Mohamed Hanipa Maidin announced to Parliament that the Government is proposing to introduce sentencing discretion for 11 offences under the Penal Code and Firearms (Increased Penalties) Act, 1971, which currently carry the mandatory death penalty. The change would leave the imposition of the death penalty in the hands of judges.

This disappointing decision seems to be a watered-down compromise of the Government of Malaysia's previous commitment to fully abolish the death penalty, as announced by the de facto Minister in charge of Law in the Prime Minister's Office, Datuk Liew Vui Keong, on 10 October 2018.

It is expected that bills to abolish the mandatory death penalty will be tabled in Parliament during the current sitting, which ends 11 April.

Amnesty International also calls on the Government and prison authorities across the country to maintain the moratorium on all executions established in July 2018.

Amnesty International believes, nonetheless, that the abolition of the mandatory death penalty would be a critical change in Malaysian law that would advance the protection of the rights of those facing the death penalty. The introduction of full discretion at sentencing would allow judges to consider the individual circumstances of the offender as well as of the offence, while taking into consideration any mitigating factors. This could potentially lead to a decrease in the number of death sentences imposed. However, this does not go far enough in bringing about the stated goal of abolition and should be a very first step in that direction.

Amnesty International calls on the Malaysian authorities to use this opportunity for reform to further amend problematic legislation on the death penalty, including the Dangerous Drug Act, 1952.

The human rights organization is concerned that previous amendments to the Dangerous Drugs Act, which came into effect in March 2018, did not apply to individuals who had previously been convicted, contrary to international law and standards on reform. It also introduced life imprisonment and no fewer than 15 strokes of the whip – a cruel punishment prohibited under international law – as the only alternative sentence.

Amnesty International calls on the Malaysian authorities to ensure that any proposed legislative amendments apply retroactively; that fair and equal judicial processes are established to review existing cases and exercise sentencing discretion; and that any punishment meted out as a result of these processes is consistent with international human rights law and standards.

An issue of further concern for Amnesty International is the retention of presumption, under Section 37 of the Dangerous Drugs Act, 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 shifts to the defendant (Section 36), in violation of the presumption of innocence and fair trial rights.

Safeguard no.5 of the UN Safeguards guaranteeing protection of the rights of those facing the death penalty states 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). The imposition of the death penalty after a violation of the right to a fair trial constitutes a violation of the right to life. Amnesty International therefore encourages the Malaysian Government to repeal Sections 36 and 37 of the Act.

International law states that the primary aim of penitentiary systems should be the reformation and social rehabilitation of prisoners. Bearing this principle in mind, and considering the recent and welcome accession by Malaysia to the Rome Statute creating the International Criminal Court, it should be noted that the death penalty is not a permissible punishment under the Statute even for crimes including genocide, crimes against humanity and war crimes.

Amnesty International encourages the authorities of Malaysia to:

- Abolish the death penalty for all crimes;
- Maintain the moratorium on all executions announced on 2 July 2018 and review all existing cases with a view to commuting the death sentences; and
- Ensure that any proposed legislative amendments fully comply with international law and standards, including by granting the benefit of reform to existing cases; allowing for the judicial reconsideration of all cases, individually, and for the circumstances of the offender and of the offence to be taken into consideration at sentencing.