

Talking points

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Panel 1: *Situation of the mandatory death penalty in Malaysia*

National framework, impact of the mandatory death penalty, challenges to abolition, role and contribution of Parliamentarians

Roundtable on the abolition of the mandatory death penalty

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- Greeting remarks.
- My name is Shamsul Iskandar Mohd Akin, member of the Parliament of Malaysia and PGA Member.
- Our discussion this evening is timely in the light of recent announcement by the Attorney General where *inter alia* he mentioned that the A-G's Chambers will prepare a memorandum to the Cabinet to scrap mandatory death penalties.
- As per the title of the Panel, I will expose very briefly the national legal framework providing for the death penalty in Malaysia. The death penalty in Malaysia can be found in the Malaysian Penal Code, the Internal Security Act, the Firearms (Increased Penalties) Act and the Dangerous Drugs Act. Those acts and codes provide for the mandatory death penalty for the following offenses: offences against the person of the King or federal heads of State, murder, unlawful possession of firearms in designed security areas, terrorism-related offences such as possession, reception and supply of firearms within or outside a security area, discharge of firearms in the commission of a scheduled offence and drug trafficking. In addition, those acts also provide for the death penalty, but not mandatory, for waging war against the King or federal heads of State, abetment of mutiny, giving of fabricating false evidence with intent to procure conviction of a capital offence, abetment of suicide of a child or insane person, attempt to murder resulting in harm and with prior conviction, kidnapping in order to murder, rape resulting in death, gang-robbery with murder, consorting with persons possessing firearms in any security area and trafficking in firearms.
- I believe that the mandatory death penalty has a very important and deep impact on society in Malaysia. In a survey done and reported in the local newspaper, highlighted that Malaysians believe in the death penalty but do not want to impose it. Malaysians prefer incarceration, either jail without parole or an indeterminate life sentence with consideration of parole or a determinate period of years. First of all, the mandatory death penalty does not allow the Judges to take into account the particular circumstances of each case, such as remorse or individual characteristics. The fact that the death penalty is also irrevocable, which can lead to wrongly sentence to death innocent individuals, has to be broadcasted as much as possible, thus having it mandatory can lead to even more judicial mistakes which are irreversible. Indeed, judicial institutions are human institutions and as such are most likely to commit mistakes at some point.
- In chapter 5, verse 45 of the Holy Quran mentions: "And We ordained for them therein a life for a life, an eye for an eye, a nose for a nose, an ear for an ear, a tooth for a tooth, and for wounds is legal retribution. But whoever gives [up his right as] charity, it is an

expiation for him. And whoever does not judge by what Allah has revealed – then it is those who are the wrongdoers.

- Also, I do not believe that the mandatory death penalty has a deterrent effect, in particular for crimes such as drug possession and trafficking. Indeed, I would like to highlight the fact that so far the drug policy of Malaysia has not succeeded in dismantling international drug-trafficking organisations, and that the mandatory death penalty mainly targets low-level couriers. For other crimes, such as murder or firearms offences, we have to consider the fact that either criminals do not foresee their arrest, fail to affiliate an offence with a potential sentence before they commit the crime, or even live in circumstances desperate enough as to choose the potential benefices from the offence over the death penalty. In this regard, it has been recognised that a judicial system centred on rehabilitation instead of retribution can lead to better results in reducing recidivism.
- Indeed, it is important to rather adopt a human rights approach to the death penalty, which I believe undermines Human dignity. Our judicial system and in general our societies should move away from the idea of retribution and revenge which is at its highest when providing for the mandatory death penalty. The right to life, which underpins all other rights, should be the rule, not the exception.
- On a more practical level now, I wish to underline as well that the mandatory death penalty is costly. Indeed, while some believe that the death penalty would diminish costs for any criminal justice system, the costs are actually higher than for non-death penalties. As a matter of fact, capital sentence cases involve more investigative means, extra costs in pre-trials and appeals, which are automatic for capital cases, costs of incarceration and costs of retrial and resentencing. If we abolish the mandatory death penalty, the money not spent on the death penalty could be used for violence-prevention efforts, solving ongoing cases and increasing victim services.
- There are many challenges to the abolition of the mandatory death penalty in Malaysia. While we are here to represent our interest in this matter, political will might be lacking elsewhere in the Government or other State officials. Furthermore, there is a lingering perception that the death penalty deters crimes, and even more so when it is mandatory. Let me stress the fact that it is in reality not the case, as there has never been any conclusive empirical evidence that the death penalty has any deterrent effect on criminals. It has also been established that no evidence pinpoint the death penalty as having a stronger deterrent effect than life imprisonment, whether it be discretionary or mandatory.
- A second challenge to the abolition of the death penalty is the consideration that, regarding drug-related offences, it protects the population from the social ills of drugs. While I do not want to infringe on the following session, I would like to express that drug use should be envisioned as a health problem that might be better taken care of by enhancing and strengthening the effectiveness of the drug-prevention policies and access to medical services.
- Another challenge to the abolition of the mandatory death penalty is the perception that the public opinion is in favour of such a punishment. While it might be true for a portion

of the population, it is important to recall that individuals from the general public can only develop an informed decision on the potential merits and disadvantages of the death penalty when presented with comprehensive information, such as the difference between mandatory and discretionary death penalty and the crimes they are applied to. In addition, genuine public opinion is highly difficult to measure accurately, particularly when there is little – if at all – disclosure of information regarding national practices on the mandatory death penalty in Malaysia.

- On this matter, a recent study of the Death Penalty Project, which I am sure will be further explained to you by Mr. Jabbar who will speak just after me, revealed that roughly 50% of the respondents considered themselves not well-informed, and only 41% know that the death penalty was mandatory for murder, drug-trafficking and firearms related offences. The outcome of the study showed that respondents generally did not support the mandatory death penalty, and were favourable to taking into account mitigating, or aggravating if that be the case, circumstances.
- The myth of the public opinion has also to be understood as the simple desire of vengeance, retaliation. We have seen recently in Jordan, after the execution of a pilot of the Jordanian Army, the government immediately retaliated by executing two members linked to ISIS, answering therefore to Barbary by another act of Barbary. But this is not justice, this are not our values, and as parliamentarians who are at the heart of the political and legal arena, we have a role to play to go beyond vengeance and to ensure the respect of human rights (in particular the right to life) and human dignity. I also wish to recall all my fellow parliamentarians and ministers that public policies should not be dictated by public opinion only. Let me tell you that in countries where the death penalty has been abolished, there has been no uprising and no revolutions to reject the abolition. As Min. Nazri said, necessary reforms are often unpopular, but it is the parliamentarian's role to act as visionaries on these important issues linked to human rights, in order to lead public opinion to understand the necessity to move away from revenge and retaliation. We could also act as leader on this issue at the regional level, amongst fellow Asian countries that also retain the mandatory death penalty.
- As parliamentarians, we can also play a decisive role in significantly promoting the abolition of the mandatory death penalty and the restriction of its use by reaching out to key decision-makers within the Executive branch and urge them to support such a project. It is also our role as members of parliaments to raise awareness on this important issue with the general public, so as to inform more accurately on the challenges of the death penalty.
- Similarly, as parliamentarians we can make use of our unique legislative prerogatives and promote, support and initiate abolition bills, or review and amend such legislation, prior to adoption. In this regard and in my capacity of Member of Parliament, I will support and promote the adoption of a bill abolishing the death penalty for drug-trafficking and firearms-related offences.
- Thank you for your attention.