

International collaborative working towards death penalty abolition

By Melissa Parke

Published on Thursday, 26 November 2015 16:30

Ms Parke (4:30pm) — Last week in Kuala Lumpur I participated in a parliamentary round table concerning the abolition of the death penalty in Malaysia that was co-hosted by the Parliament of Malaysia and the Parliamentarians for Global Action, the PGA, of which I am a member and the chair of the Australian national group.

At the round table I met the family of a 31-year-old Malaysian man, Kho Jabing, who faces imminent execution in Singapore. Kho Jabing's petition for clemency was rejected on 19 October by President Tony Tan Keng Yam, and his execution was initially set for 6 November. Just a day before he was to be sent to the gallows he was granted a temporary stay of execution to allow for the consideration of two separate legal challenges put forward on his behalf.

This is a story all too familiar on death row cases. The life of a young man being held in the balance as lawyers and the courts battle to determine his fate. Kho Jabing and a co-defendant were convicted of murder on 30 July 2010, which at the time carried a mandatory death sentence. In 2012 Singapore amended its penal code to reduce the scope of mandatory death sentences, giving the courts discretion not to impose the death penalty in instances when there is no intention to cause death.

On the basis that Kho Jabing did not intend to cause death, the High Court in 2013 resentenced him to life imprisonment and 24 strokes of the cane. His family rejoiced that his life would be spared, albeit facing the torture of caning, but this decision was quickly appealed by the prosecution. In January 2015, the Court of Appeal converted Kho Jabing's sentence from life imprisonment to death, with a close three-to-two majority decision.

This parliament is currently inquiring into what more Australia can do to advocate for the abolition of the death penalty worldwide. We are resolute in our opposition to the death penalty and we have seen the way state-sanctioned killing harms us all, particularly the family members of those on death row. To be effective, Australia must maintain a principled and consistent opposition to the death penalty in all cases, including when Australians are not involved. I am heartened by the fact that Australians from all walks of life are standing up with Kho Jabing and his family: Amnesty International Australia tells me that more than 18,000 of their supporters have written directly to the President of Singapore, appealing for clemency. I call on the Prime Minister and the Foreign Minister to also make urgent representations to the President of Singapore to respectfully ask him to reconsider Kho Jabing's clemency application and put a halt to his impending execution.

Without downplaying Kho Jabing's crimes in any way, Australia can and must stand up for what is right and advocate for his life to be spared. Earlier this year we celebrated 50 years of diplomatic relations with Singapore, and we have a strong enough relationship to withstand the difficult conversations that need to be had regarding Singapore's continued use of the death penalty.

Meanwhile, in Malaysia, the sentencing laws are even harsher than Singapore, which at least has returned some measure of discretion to judges. In Malaysia, the death penalty is mandatory for murder and for offences relating to firearms and drugs. I am informed that half of the more than 1,000 prisoners on death row in Malaysia are there for drug-related offences. Malaysia has the lowest threshold in the region regarding the amount of drugs that raise a presumption of trafficking and thus attract the death penalty. For example, it is 50 grams of methamphetamines in Malaysia, while it is 250 grams in Singapore, and 3,000 grams in Laos.

In the entire region, only Malaysia applies the mandatory death penalty for possession of firearms in certain circumstances. Meanwhile the much more serious offence of trafficking in firearms attracts a discretionary death penalty. This inconsistency in sentencing could be dealt with by returning discretion to the courts, which would then be able to look at the circumstances of each case.

International human rights bodies have found the mandatory death penalty to be contrary to the right of a convicted person to have mitigating circumstances taken into account, as well as the fundamental principle of judicial independence, as it arbitrarily denies judges the discretion to adjudicate the most appropriate penalty in the light of the circumstances of the convicted person and their crime.

In its response to the Human Rights Council's Universal Periodic Review in 2009 and 2013, Malaysia stated that it is reviewing the mandatory death penalty, with a view to restoring discretionary power to courts, and that it is reconsidering the death penalty for drug offences, with the maximum sentence being reduced to life imprisonment.

At the round table last week, government ministers, Mohamed Nazri and Nancy Shukri, announced that the government will, early next year, introduce a law to abolish the mandatory death penalty—particularly in relation to drug offences, and perhaps more broadly. This announcement was warmly welcomed by the Malaysian and international parliamentarians present, as well as by diplomatic representatives from many countries, the Malaysia Bar Council, the National Human Rights Commission and civil society groups. The PGA will continue to work with the Malaysian parliament, government and other stakeholders towards this goal. I thank the Australian government for its support of PGA's campaign for the abolition of the death penalty in the Asia-Pacific Region.

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