

The Situation of Death Penalty in Malaysia



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MADPET (Malaysians Against Death Penalty and Torture)

2017 Known Executions

- **Rames Batumalai**, aged 44, and his brother **Suthar Batumalai**, aged 39, were reportedly executed at Kajang Prison on March 15, 2017
- **Yong Kar Mun**, aged 48, and **an individual whose identity has not been reported** — were executed by hanging at Sungai Buloh Prison May 24, 2017. Yong - Section 3 of the Firearms (Increased Penalties) Act 1971 for discharging a firearm when committing a robbery

Executions in Malaysia

- **1960 – Feb 2011 – 441 persons hanged** (*228 drug trafficking, 78 for murder, 130 were for illegal processions of arms, 4 for waging war against King and 1 for kidnapping*)
- **1981 - 2005 – 358 hanged** (*statistical breakdown of just 234 - 50 foreign nationals (7 Thailand, 8 Hong Kong, 23 Philippines, 4 Singapore, 2 Indonesia and one each from Australia, Britain and Pakistan. Of 184 Malaysian (48 Malay, 102 Chinese, 15). **Five of the 234 people hanged were women***)
- **2014 - Feb 21, 2017 – 16 executed - 14 Malaysian and 2 foreigners. 15 for murder, 1 for a crime involving firearms**

Statistics - Executions and Persons on Death Row

UNFAIR TRIALS

- SOSMA, POTA, POCA

TORTURE

JOINT TRIALS

Death In Custody

- **110 lock up deaths from 2010 until 2016** (*Berita Daily, 28 March 2017*) - Only one detainee had died in police lock up due to injuries sustained from the police, revealed Home Minister Ahmad Zahid Hamidi
- ***Enforcement Agency Integrity Commission (EAIC)***
- - **Syed Mohd Azlan bin Syed Mohamed Nur death in police custody in November 2014**
- - **death of Dharmendran a/l Narayanasamy in police custody in May 2013**

**Security Offences (Special
Measures) Act 2012
(Sosma)**

ESCAR, POCA, POTA

**ISLAM AND
OTHER
RELIGIONS**

Malaysia – One of 18 that voted against

- *24 of the OIC's 57 member states voted in favour of the moratorium, while 13 abstained and only 18 voted against. The Muslim states that voted against were: Afghanistan, Bangladesh, Brunei, Egypt, Guyana, Iran, Iraq, Kuwait, Libya, **Malaysia**, Maldives, Oman, Pakistan, Qatar, Saudi Arabia, Sudan, Syria and Yemen.*
- *Those who abstained included: Bahrain, Cameroon, Comoros, Djibouti, **Indonesia**, Jordan, Lebanon, Mauritania, Morocco, Niger, Nigeria, Uganda and the UAE.*
- 19/12/2016, UNGA's 6th Resolution :- 117 in favour, 40 Against, 31 abstentions

MALAYSIA

Towards abolition of the Death
Penalty

MALAYSIA

- Death penalty is mandatory for treason (Article 12A, Penal Code), murder (Article 302, Penal Code), firearms offences (Articles 57(1) Articles 3 and 3A of the Firearms (Increased Penalties) Act) and drug-trafficking (Article 39B, Dangerous Drugs Act).
- **Malaysia is in the process of considering the abolition of the death penalty, starting possibly with the abolition of the mandatory death penalty. Nancy Shukri, Minister in the Prime Minister's Department and also the de facto Law Minister, was reported stating that the proposal to amend laws to abolish the mandatory death sentence may be tabled in Parliament as early as March next year[2016].(Malay Mail, 17/11/2015).**

Parliamentarians for Global Action for the Abolition of the Death Penalty

- November 2015, held in Malaysian Parliament. Co-hosted by YB Mohd Nazri Aziz as the Chair of the PGA National Group and also **YB Nancy Shukri Minister of Law in the Prime Minister's Department ...**
- The main outcome of the meeting was that:
- (i) the Malaysian government **pledged to introduce a bill aiming to abolish the mandatory death penalty for all offences and a review of the existing death row cases.**
- (ii) the Malaysian Government instate **an official moratorium on executions pending the assessment of the report on effectiveness of the death penalty;**
- (iii) the Malaysian Government ratify the International Covenant on Civil and Political Rights, in particular its Second Optional Protocol and to remove the reservation to the Convention on the Rights of the Child allowing for capital punishment for children to properly reflect the position of the law under the Child Act of 2001.

MALAYSIA

- Attorney-General Tan Sri Apandi Ali also did commit to propose to the Cabinet that the mandatory death penalty be scrapped (*Malaysian Insider*, 13/11/2015). Appandi Ali, who is also the Public Prosecutor, said that ‘...mandatory death sentences were a "paradox", as it robbed judges of their discretion to impose sentences on convicted criminals....’ “If I had my way, I would introduce the option for the judge in cases where it involves capital punishment. Give the option to the judge either to hang him or send him to prison. “Then we’re working towards a good administration of criminal justice,”.

Malaysia – To repeal death penalty, not just mandatory death penalty?

- Minister in the Prime Minister's Department Datuk Seri Azalina Othman, the new de facto Law Minister, during the Parliamentary session on 2/11/2016 clarified that **Malaysia was not just looking at the mandatory death penalty, but all death penalty**. They were considering possibly replacing the death penalty with life imprisonment. It was indicated that further studies were to be done, and that. "The decision on the implementation of the death penalty in this country, either be repealed or maintained, is a policy matter to be decided by the government based on the results of the study,"(The Sun Daily, 3/11/2016)

DDA – Review?

- ... the Cabinet agreed to **review** the Dangerous Drugs Act 1952 to allow judges to use their discretion in sentencing offenders instead of imposing the mandatory death sentence. (Star, 27/3/2017)
- BUT – still **no official announcement of a moratorium on executions announced**... though unofficially, Malaysian AICHR rep suggested there is on drug trafficking offence

Really long time to study, review...

- At the last Universal Periodic Review(2013-2014), Malaysia said, “...The research arm of the Attorney-General’s Chambers is currently undertaking a comprehensive study to examine the legal and policy frameworks related to the application of the death penalty in Malaysia, **scheduled for completion by end 2014**. The findings and recommendations of the study will subsequently be presented to the Government for policy consideration and decision...”
- Minister in charge said **amendments would be tabled in March 2016**...
- Now again **review** of the Dangerous Drug Act ...**when will the amendments be tabled..**
- **16 inmates - 14 Malaysian and two foreigners - had been executed between 2014 and Feb 21 this year. "From the total, a total of 15 prisoners have been sentenced to death for murder while the other one was due to a crime involving firearms**

Development In Singapore and Vietnam

Vietnam

- Under the revision of the Penal Code, which takes effect July 1, 2016, the country will **abolish the death penalty for seven crimes**: surrendering to the enemy, opposing order, destruction of projects of national security importance, robbery, drug possession, drug appropriation and the production and trade of fake food.
- The new law will **spare the lives of those who are 75 years old or older**.
- Death sentences imposed on **corrupt Vietnamese officials** will now be commuted to life in prison **if they pay back at least 75 percent** of the illegal money they made. *(Source: Al Jazeera, 27/11/2015)*

MANDATORY DEATH PENALTY

- If found guilty, then judges have **no** discretion whatsoever but impose the death penalty.

Singapore

- **2012 - amendments in Singapore to 2 mandatory death penalty laws – MURDER and DRUG TRAFFICKING.(Nov 2012)**
- For murder cases, the discretionary sentence applies to those who committed murder but did not intend to kill, certain categories of murders now no more mandatory death penalty.
- **RIGHT to review of sentence for those that qualify..**

Singapore – Discretion of AG?

- To escape the death penalty, the accused needs to satisfy 2 conditions - (1) Must get a **Certificate Of Substantive Assistance from the Attorney General's Chambers, and** (2) prove on a balance of probabilities, that his involvement in the offence under section 5(1) or 7 was restricted — to transporting, sending or delivering a controlled drug; to offering to transport, send or deliver a controlled drug; to doing or offering to do any act preparatory to or for the purpose of his transporting, sending or delivering a controlled drug; or to any combination of activities above;
- *Hopefully, Malaysia will not make the same mistake ...and give the discretion to judges only...Wrong to allow the AG(also the Public Prosecutor) such power..*

UN Convention on the Rights of the Child (1989)

- Malaysia, and all other ASEAN member states have committed to the CRC.
- **ACKNOWLEDGING** the commitments of individual ASEAN Member States to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC) that have been ratified by all ASEAN Member States... [THE ASEAN DECLARATION ON THE ELIMINATION OF VIOLENCE AGAINST WOMEN AND ELIMINATION OF VIOLENCE AGAINST CHILDREN IN ASEAN](#)



UN Convention on the Rights of the Child (1989)

- ... States Parties shall **ensure that a child shall not be separated from his or her parents** against their will, **except...** that such separation is necessary **for the best interests of the child**..[Art. 9(1)]
- Death Penalty – clearly goes against the best interests of the child... if the person executed is a parent..
- States Parties shall **respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis**, except if it is contrary to the child's best interest [Art. 9(3)]



‘...the best interest of the child...’

- **To have a father, mother, brother, sister, uncle, grandfather executed – Best Interest of the Child?**
- **Not just the loss – but also impact on the child’s life and future, social ‘stigma’, etc**
- **Poverty – Was it the ‘sole bread winner’ or primary bread winner of the family?**
- **Why do the crime? Was poverty the cause?**

Death Penalty Inconsistent With Child Rights

- This concern for the best interest of the child already exists in death penalty laws...
- Malaysia :- Section 275 Penal Code - Sentence of death not to be passed on pregnant woman.
- Where a woman convicted of an offence punishable with death is alleged to be pregnant, or where the Court before whom a woman is so convicted thinks fit, the Court shall direct one or more medical practitioners to be sworn to examine that woman in some private place and to enquire whether she is pregnant or not, and if upon the report of any of them it appears that she is pregnant the **sentence to be passed upon her shall be a sentence of imprisonment for life* instead of sentence of death....**

Vietnam

- Vietnamese legislation says that a pregnant woman or a mother whose child is less than three years old cannot be executed, and the sentence should be commuted to life imprisonment.
- A recent case - Nguyen Thi Hue, 42, **inseminated herself with the help of a male inmate**, She was arrested for drug trafficking in 2012 and sentenced to death in 2014. Her sentence is expected to be commuted. Not the first case, as it also happened before in 2007. (Source: BBC, 16/2/2016, **Vietnam suspends jail guards over death-row pregnancy**)

LAWYER ERRORS

- Afterthought – the failure of lawyer's to raise the point during prosecution's case.
 - *Court did not accept this explanation because it was not raised earlier - and the prosecution witnesses, especially the police, were not asked these questions during cross examination, and this evidence was only presented during the Defence case. The Court's conclusion **was that this was an 'afterthought'** and so it was rejected. The court were of the view that this question should have been put in questions to the police. - Shahrul Izani bin Suparman case at CA, 2012)*
 - **Failure to challenge evidence adduced by prosecution...**
 - **Failure to adduce witnesses for the Defence save the accused?**
 - **Visit of site of alleged crime? Interviewing of Witnesses? Identifying of other witnesses? Alibi Notice?**

OTHER PROBLEMS

- Appeal – points/evidence not adduced in court of 1st Instance.
- Judicial – Presumes that prosecutor/police telling the truth
- Lawyers – many depend on police for ‘business’ > impacts the manner police witnesses are dealt with..
- Lawyers – motivation? Competence?

DEATH ROW

- **Malaysia** - About **1,022** on death row (*October 2015*)

[Population – 31 million]

*# US Total Number of Death Row Inmates as of **January 1, 2016:**
2,943*

[Population – 323 million]

MALAYSIA

- Of the **829 prisoners convicted and sentenced to death between 2010 and 2016**, Deputy Prime Minister Datuk Seri Ahmad Zahid Hamidi said that **95 were pardoned** or given reprieves, while **12 were executed**. (Star, 30/3/2016).

PARLIAMENTARIANS

- MOVE TOWARDS ABOLITION
- AT THE VERY LEAST START WITH:-

Abolish MANDATORY Death Penalty – restore judicial discretion when it comes to sentencing

Remove reliance on 'Legal Presumption' for Prosecution in Death Penalty cases. Obligation for prosecution to prove all elements of the crime...

Ensure fair trial for all – prohibit the usage of SOSMA, POCA and any other such acts to undermine existing Criminal Procedure Code and Evidence Act

Parliamentarians and their political parties must **clearly state their stand for the Abolition of the Death Penalty**

Ask questions, and move motions towards elimination of the Death Penalty, and an immediate moratorium on executions

Poverty and its link to Crime – When the poor are forced into crime, it is the fault of government.

Ensure Malaysia complies with **CRC** and other international commitments, which are contrary to maintaining the Death Penalty

THANK YOU

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FIREARMS (INCREASED PENALTIES) ACT 1971

- 3 Penalty for discharging a firearm in the commission of a scheduled offence
- Any person who at the time of his committing or attempting to commit or abetting the commission of a scheduled offence discharges a firearm with intent to cause death or hurt to any person, **shall**, notwithstanding that no hurt is caused thereby, **be punished with death.**

(1Extortion.2. Robbery.3. The preventing or resisting by any person, of his own arrest or the arrest of another by a police officer or any other person lawfully empowered to make the arrest.4. Escaping from lawful custody.5. Abduction or kidnapping under sections 363 to 367 of the Penal Code and section 3 of the Kidnapping Act 1961 [Act 365].6. House-breaking or house-trespass under sections 454 to 460 of the Penal Code.

- Inconsistent with even 130C Penal Code Committing terrorist acts, where death is the mandatory penalty ONLY if death is a result of the crime