



REFORMS OF MANDATORY DEATH PENALTY IN MALAYSIA: WHAT DO THE BILLS SAY?

Key points on the Abolition of Mandatory Death Penalty Bill 2023 (DR 7) and the Revision of Sentence of Death and Imprisonment for Natural Life (Temporary Jurisdiction of The Federal Court) Bill 2023 (DR 8), introduced in Parliament on 27 March 2023

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The **Abolition of Mandatory Death Penalty Bill 2023 (DR 7)** and the **Revision of Sentence of Death and Imprisonment for Natural Life (Temporary Jurisdiction of The Federal Court) Bill 2023 (DR 8)** were tabled in Parliament on 27 March 2023 to reform the mandatory death penalty and life imprisonment in Malaysia. The measures are expected to be considered by the Dewan Rakyat in early April and the Dewan Negara shortly after that. Their full text can be found at this [link](#).

This document provides in its first part an overview of changes foreseen in the bills, as well as of Amnesty International's key concerns in relation to these. This overview does not include Amnesty International's concerns on other aspects or provisions of existing legislation that are not covered by the bills, but which are still not in line with international human rights law and standards. The second part of the document includes the actual text of the existing legislation, as well as the changes proposed by the bills.

For more information on Amnesty International's concerns on the death penalty in Malaysia, see "[Fatally flawed – Why Malaysia must abolish the death penalty](#)" (ACT 50/1078/2019), October 2019. Amnesty International opposes the death penalty unconditionally, for all cases and under any circumstances.

1. OVERVIEW OF PROPOSED CHANGES

1.1 ABOLITION OF THE DEATH PENALTY

Under the *Abolition of Mandatory Death Penalty Bill 2023 (DR 7)*, the death penalty would be abolished for seven offences, as follows:

- Penal Code, Section 307(2): Attempt to murder when committed by those already serving imprisonment for life or for a term of 20 years if hurt is caused (the death penalty is the mandatory punishment for this offence under these circumstances);*
- Penal Code, Section 364: Kidnapping or abducting in order to murder (the death penalty is currently a discretionary punishment for this offence);*
- Firearms Act, Section 3: Discharge of a firearm with intent to cause death or hurt when committing or attempting to commit an offence (the death penalty is currently a mandatory punishment for this offence);*
- Firearms Act, Section 3A: on accomplices of those discharging firearm with intent to cause death or hurt at the time of committing or attempting to commit an offence (the death penalty is currently a mandatory punishment for this offence, unless they can prove that they have taken all steps to prevent the discharge);*
- Firearms Act, Section 7 on trafficking of firearms (the death penalty is currently a discretionary punishment for this offence);*
- Arms Act, Section 14: Penalty for manufacturing without licence and for breach of conditions of licence (the death penalty is currently a discretionary punishment for this offence);*
- Kidnapping Act, Section 3(1): Abduction, wrongful restraint or wrongful confinement for ransom (the death penalty is currently a discretionary punishment for this offence).*

Although falling short of the full abolition of the death penalty, Amnesty International welcomes that the bill, if adopted, would significantly reduce the scope of the offences for which this punishment may be imposed. However, we

are concerned that the death penalty remains an applicable punishment for several other offences that do not meet the threshold of the “most serious crimes” under international law, including drug trafficking.

INTERNATIONAL STANDARDS: DEATH PENALTY MUST BE RESERVED FOR THE “MOST SERIOUS CRIMES”

International law states that in countries where it has not yet been abolished, the imposition of the death penalty must be restricted to “the most serious crimes”.¹ This restriction has been authoritatively interpreted as referring to **intentional killing**. The UN Human Rights Committee has stated that: “[The term “the most serious crimes” must be read restrictively and appertain only to crimes of extreme gravity”]; and that: “Crimes not resulting directly and intentionally in death, such as [...] drug and sexual offences, although serious in nature, can never serve as the basis, within the framework of article 6, for the imposition of the death penalty.”² As recently as March 2019, the UN has reiterated in unequivocal terms that the application of the death penalty for drug-related offences does not respect the spirit of the international drug-control conventions.³

Among the offences affected by the bill, the death penalty would remain applicable for:

- Penal Code 121: Waging or attempting to wage war or abetting the waging of war against the Yang di-Pertuan Agong, a Ruler or Yang di-Pertua Negeri (it is already discretionary before the amendments);
- Penal Code 121A: Offences against the person of the Yang di-Pertuan Agong, Ruler or Yang di-Pertua Negeri (it becomes discretionary after amendments);
- Penal Code 130C: Committing terrorist acts, if the act results into death (becomes discretionary after amendments);
- Penal Code 130I: Directing activities of terrorist groups, if the act results into death (it becomes discretionary after amendments);
- Penal Code 130N: Providing or collecting property for terrorist acts, if the act results into death (it becomes discretionary after amendments)
- Penal Code 130O: Providing services for terrorist purposes, if the act results into death (it becomes discretionary after amendments);
- Penal Code 130QA: Accepting gratification to facilitate or enable terrorist acts, if the act results into death (it becomes discretionary after amendments);
- Penal Code 130ZB: Accepting gratification to facilitate or enable organized criminal activity, if the act results into death (it becomes discretionary after amendments);
- Penal Code 302: Murder (it becomes discretionary after amendments);
- Penal Code 374A: Hostage-taking, if the act results into death (it becomes discretionary after amendments);
- Dangerous Drugs Act 39B: Trafficking in dangerous drugs (it becomes fully discretionary after amendments);
- Strategic Trade 9: Export, transshipment and transit of strategic items and unlisted items where death is the result of the act (it was already discretionary before the amendments);
- Strategic Trade 10(2)(a): Provision of technical assistance where death is the result of the act (it was already discretionary before the amendments);
- Strategic Trade 11 (2)(a)(i): Brokering of strategic items where death is the result of the act (it was already discretionary before the amendments);
- Strategic Trade 12: Transactions involving unlisted items and restricted activities where death is the result of the act (it was already discretionary before the amendments).

It also remains a possible punishment for several other offences under national legislation, as follows:⁴

- section 132 of the Penal Code [Act 574];
- section 194 of the Penal Code [Act 574];
- section 305 of the Penal Code [Act 574];
- section 376(4) of the Penal Code [Act 574];
- section 396 of the Penal Code [Act 574];
- section 38 Armed Forces Act 1972 [Act 77];
- section 41(viii) Armed Forces Act 1972 [Act 77];
- section 47 Armed Forces Act 1972 [Act 77];
- section 48 of the Armed Forces Act 1972 [Act 77];
- section 88(3)(a) of the Armed Forces Act 1972 [Act 77];
- section 88(3)(b) of the Armed Forces Act 1972 [Act 77];
- section 121 of the Water Services Industry Act 2006 [Act 655].

¹ Article 6(2) of the International Covenant on Civil and Political Rights; UN Safeguards guaranteeing protection of the rights of those facing the death penalty, UN Economic and Social Council resolution 1984/50; UN Human Rights Committee, General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life, CCPR/C/GC/36, 30 October 2018, para.35.

² UN Human Rights Committee, General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life, UN Doc. CCPR/C/GC/36, para.35

³ UN Chief Executives Board, “What we have learned over the last ten years: A summary of knowledge acquired and produced by the UN system on drug-related matters”, UN Doc. E/CN.7/2019/CRP.10

⁴ Source: Office of the Minister of Law, Media Statement on the Mandatory Death Penalty Repeal Bill 2023 and the Death Penalty Review and Imprisonment for Natural Life (Temporary Jurisdiction of the Federal Court) Bill 2023.

We call on the authorities of Malaysia to go further and repeal the death penalty at minimum for all offences that do not meet the threshold of the “most serious crimes” under international law and standards, pending full abolition.

1.2 ABOLITION OF THE MANDATORY DEATH PENALTY

Under the Abolition of Mandatory Death Penalty Bill 2023 (DR 7), the mandatory death penalty would be abolished for 12 offences, as follows:

- Penal Code 121A: Offences against the person of the Yang di-Pertuan Agong, Ruler or Yang di-Pertua Negeri (death penalty retained; Alternative sentence is imprisonment for 30 to 40 years and 12 strokes of the whip);*
- Penal Code 130C: Committing terrorist acts if the act results into death (death penalty retained; Alternative sentence is imprisonment for 30 to 40 years and 12 strokes of the whip);*
- Penal Code 130I: Directing activities of terrorist groups if the act results into death (death penalty retained; Alternative sentence is imprisonment for 30 to 40 years and 12 strokes of the whip);*
- Penal Code 130N: Providing or collecting property for terrorist acts if the act results into death (death penalty retained; Alternative sentence is imprisonment for 30 to 40 years and 12 strokes of the whip);*
- Penal Code 130O: Providing services for terrorist purposes if the act results into death (death penalty retained; Alternative sentence is imprisonment for 30 to 40 years and 12 strokes of the whip);*
- Penal Code 130QA: Accepting gratification to facilitate or enable terrorist acts if the act results into death (death penalty retained; Alternative sentence is imprisonment for 30 to 40 years and 12 strokes of the whip);*
- Penal Code 130ZB: Accepting gratification to facilitate or enable organized criminal activity if the act results into death (death penalty retained; Alternative sentence is imprisonment for 30 to 40 years and 12 strokes of the whip);*
- Penal Code 302: Murder (death penalty retained; Alternative sentence is imprisonment for 30 to 40 years and 12 strokes of the whip);*
- Penal Code 374A: Hostage-taking if the act results into death (death penalty retained; Alternative sentence is imprisonment for 30 to 40 years and 12 strokes of the whip);*
- Firearms Act, Section 3: Discharge of a firearm with intent to cause death or hurt (death penalty removed and substituted with imprisonment for 30 to 40 years and 12 strokes of the whip);*
- Firearms Act, Section 3A on accomplices of those discharging firearm with intent to cause death or hurt (death penalty removed and substituted with imprisonment for 30 to 40 years and 12 strokes of the whip);*
- Dangerous Drugs Act, Section 39B: Trafficking in dangerous drugs when the courier requirement is not met (death penalty retained; alternative sentence is imprisonment for life and 12 strokes of the whip, reduced from 15).*

INTERNATIONAL STANDARDS: THE MANDATORY DEATH PENALTY

The imposition of the mandatory death penalty is prohibited under international law. The UN Human Rights Committee has stated that “[i]n all cases involving the application of the death penalty, the personal circumstances of the offender and the particular circumstances of the offence, including its specific attenuating elements must be considered by the sentencing court. Hence, mandatory death sentences that leave domestic courts with no discretion on whether or not to designate the offence as a crime entailing the death penalty, and on whether or not to issue the death sentence in the particular circumstances of the offender, are arbitrary in nature.”⁵

Amnesty International welcomes the proposed abolition of the mandatory death penalty for all offences, as mandatory death sentences are arbitrary in nature,⁶ as:

- They do not allow judges to consider **mitigating or other relevant factors** relating to the crime or the individual found responsible for it, which could show that the circumstances of the offence were less serious or the individual less culpable;
- **Undermine the separation of powers** between the legislative and judicial branches. By mandating the imposition of the death penalty, the legislature essentially makes the sentencing decision for the judiciary, with the underlying assumption that all cases and all defendants are alike, with limited exceptions.
- Mandatory death sentences **exacerbate discrimination** in the administration of justice: official figures analysed by Amnesty International in a 2019 report indicated that the impact of the death penalty in Malaysia has largely fallen on those convicted of drug trafficking, which has disproportionately included women and foreign nationals.⁷ A significant part of those on death row involved people from less advantaged socio-economic backgrounds, while certain ethnic minorities were overrepresented on death row. These findings gain an even

⁵ UN Human Rights Committee, General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life, CCPR/C/GC/36, 30 October 2018, para.37.

⁶ UN Human Rights Committee, General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life, CCPR/C/GC/36, 30 October 2018, para.37.

⁷ Amnesty International, “Fatally flawed – Why Malaysia must abolish the death penalty” (ACT 50/1078/2019), October 2019, [amnesty.org/en/documents/act50/1078/2019/en/](https://www.amnesty.org/en/documents/act50/1078/2019/en/)

greater significance when considered in the context of laws and policies that are in contravention of international law and standards – for example the lack of access to interpretation from the point of arrest for foreign nationals, or the impossibility of raising coercion or other mitigating circumstances at sentencing for offences punished by the mandatory death penalty, as highlighted in previous sections. These violations have added multiple layers of arbitrariness and discrimination into the use of this punishment, particularly for those whose identity, background or other characteristics can contribute to, or leave them at greater disadvantage of, being sentenced to death. The use of death penalty has further impacted women who are relatives supporting those on death row, as existing structural socio-economic inequalities, stigmatization and discrimination have been deepened by the sentencing to death of their loved ones.⁸

We call on the authorities of Malaysia to support amendments to repeal the mandatory death penalty in full, as an important step towards enhancing the protection of human rights of those facing the death penalty.

1.3 LIFE IMPRISONMENT REMOVED

Under the Abolition of Mandatory Death Penalty Bill 2023 (DR 7), the sentence of life imprisonment is removed for the following offences and substituted with terms of imprisonment, as follows:

- Penal Code 121: Waging or attempting to wage war or abetting the waging of war against the Yang di-Pertuan Agong, a Ruler or Yang di-Pertua Negeri: substituted with imprisonment for 30 to 40 years (and a fine);
- Penal Code 121B: Offences against the authority of the Yang di-Pertuan Agong, Ruler or Yang di-Pertua Negeri: substituted with imprisonment for 30 to 40 years (and a fine);
- Penal Code 122: Collecting arms, etc., with the intention of waging war against the Yang di-Pertuan Agong, a Ruler or Yang di-Pertua Negeri: substituted with imprisonment for up to 40 years (and a fine);
- Penal Code 124K: Sabotage: substituted with imprisonment for 30 to 40 years;
- Penal Code 124M: Espionage: substituted with imprisonment for 30 to 40 years;
- Penal Code 125: Waging war against any power in alliance with the Yang di-Pertuan Agong: substituted with imprisonment not exceeding 40 years (to which fine may be added, or with fine);
- Penal Code 125A: Harboursing or attempting to harbour any person in Malaysia or person residing in a foreign State at war or in hostility against the Yang di-Pertuan Agong: substituted with imprisonment not exceeding 40 years (to which fine may be added, or with fine);
- Penal Code 128: Public servant voluntarily allowing prisoner of State or war in his custody to escape: substituted with imprisonment not exceeding 40 years (with fine);
- Penal Code 130: Aiding escape of, rescuing, or harboursing such prisoner: substituted with imprisonment not exceeding 40 years (with fine);
- Penal Code 130D: Providing devices to terrorist groups: substituted with imprisonment not exceeding 40 years (with fine);
- Penal Code 130J: Soliciting or giving support to terrorist groups or for the commission of terrorist acts: substituted with imprisonment not exceeding 40 years (with fine);
- Penal Code 130K: Harboursing persons committing terrorist acts: substituted with imprisonment not exceeding 40 years (with fine);
- Penal Code 130KA: Member of a terrorist group: substituted with imprisonment not exceeding 40 years (with fine);
- Firearms Act Section 4: exhibiting a firearm in a manner in the likely to put any person in fear of death or hurt: substituted with imprisonment of 30 to 40 years (with 6 strokes of the whip, already in the law);
- Firearms Act Section 5: possession of firearm when committing an offence: substituted with imprisonment of 30 to 40 years (with 6 strokes of the whip, already in the law);
- Firearms Act Section 7: trafficking of firearms: substituted with imprisonment of 30 to 40 years (with 6 strokes of the whip, already in the law);
- Arms Act Section 14: Penalty for manufacturing without licence and for breach of conditions of licence: substituted with imprisonment of 30 to 40 years (with 6 strokes of the whip, already in the law);
- Arms Act Section 32(1): Penalty for use and possession of arms and imitation arms in certain cases: substituted with imprisonment not exceeding 40 years;
- Kidnapping Act Section 3(1): Abduction, wrongful restraint or wrongful confinement for ransom: substituted with imprisonment of 30 to 40 years (with whipping, already in the law);
- Strategic Trade Act Section 9: Export, transshipment and transit of strategic items and unlisted items: imprisonment for natural life substituted with imprisonment of 30 to 40 years;
- Strategic Trade Act Section 10(2)(a): Provision of technical assistance: imprisonment for natural life substituted with imprisonment of 30 to 40 years;
- Strategic Trade Act Section 11(2)(a)(i): Brokering of strategic items: imprisonment for natural life substituted with imprisonment of 30 to 40 years;
- Strategic Trade Act Section 12 (4) (A): Transactions involving unlisted items and restricted activities: imprisonment for natural life substituted with imprisonment of 30 to 40 years.

⁸ Amnesty International, “2021 World Day Against the Death Penalty - The additional burden of the death penalty on women”, AI Index ACT 50/4791/2021, October 2021, p.21, [amnesty.org/en/documents/act50/4791/2021/en/](https://www.amnesty.org/en/documents/act50/4791/2021/en/), including testimony by Shamala T. Manickarajah.

Amnesty International opposes the imposition of the death penalty or any other cruel, inhuman or degrading punishment. Article 10 of the International Covenant on Civil and Political Rights states that the primary aim of penitentiary systems should be the reformation and social rehabilitation of prisoners. Amnesty International welcomes the fact that the substitution of life sentences to terms of imprisonment is in line with this principle.

We are concerned, however, that the death penalty or life imprisonment with whipping are retained under section 39(B) of the Dangerous Drugs Act. We call on the authorities of Malaysia to repeal these punishment and also consider implementing alternatives to the criminalization of other minor, non-violent drug-related offences that, in the absence of harm to others, has proven to be unnecessary and disproportionate to any legitimate aim. When determining whether to make or maintain a specific drug-related conduct as a criminal offence, it must be ensured that the crime is clearly defined in law; that proscribing the conduct is aimed at addressing a specific public health problem directly associated with the possible abuse of a particular drug; and that the conduct puts others at risk of serious harm, for example by knowingly supplying adulterated drugs.

We encourage the authorities of Malaysia to go further and repeal the death penalty and life imprisonment as a punishment for all offences that do not constitute intentional killing, including drug trafficking, pending full abolition.

1.4 ALTERNATIVE PUNISHMENTS: INTRODUCTION AND RETENTION OF WHIPPING

Amnesty International is concerned that the proposed amendments would introduce mandatory whipping as alternative to the death penalty, together with 30 to 40 years of imprisonment, for the following offences.

- Penal Code 121A: Offences against the person of the Yang di-Pertuan Agong, Ruler or Yang di-Pertua Negeri;
- Penal Code 130C: Committing terrorist acts;
- Penal Code 130I: Directing activities of terrorist groups;
- Penal Code 130N: Providing or collecting property for terrorist acts;
- Penal Code 130O: Providing services for terrorist purposes;
- Penal Code 130QA: Accepting gratification to facilitate or enable terrorist acts;
- Penal Code 130ZB: Accepting gratification to facilitate or enable organized criminal activity;
- Penal Code 302: Murder;
- Penal Code 374A: Hostage-taking;
- Firearms Act Section 3: discharge of a firearm with intent to cause death or hurt;
- Firearms Act Section 3A: accomplices of those discharging firearm with intent to cause death or hurt;
- Arms Act Section 14: Penalty for manufacturing without licence and for breach of conditions of licence;
- Kidnapping Act Section 3(1): Abduction, wrongful restraint or wrongful confinement for ransom.

Furthermore, whipping would be retained for:

- Penal Code 364: Kidnapping or abducting in order to murder (made mandatory);
- Firearms Act Section 4: exhibiting a firearm in a manner likely to put any person in fear of death or hurt;
- Firearms Act Section 5: possession of firearm when committing an offence;
- Firearms Act Section 7: trafficking of firearms;
- Dangerous Drugs Act 39B: Trafficking in dangerous drugs (lowered from 15 to 12).

INTERNATIONAL STANDARDS: PROHIBITION OF CRUEL, INHUMAN AND DEGRADING PUNISHMENTS⁹

Corporal punishment constitutes cruel, inhuman and degrading treatment or punishment, and is prohibited under international law.¹⁰ The position of the Committee against Torture, the Human Rights Committee and other treaty bodies is that domestic law that provides for judicial corporal punishment is incompatible with the absolute prohibition of torture and other ill-treatment and both bodies have called for the abolition of judicial corporal punishment.

The Human Rights Committee has stated that “irrespective of the nature of the crime to be punished or the permissibility of corporal punishment under domestic law, corporal punishment constitutes cruel, inhuman and degrading treatment or punishment contrary to article 7 of the Covenant”.¹¹ The Human Rights Committee has also recognized that the imposition of a sentence of corporal punishment violates Article 7 of the ICCPR regardless of whether or not the sentence is carried out.¹²

The Committee against Torture has similarly expressed concern in relation to “the sentencing to, and imposition of, corporal punishment by judicial and

⁹ Amnesty International, Combating torture and other ill-treatment: a manual for action (POL 30/4036/2016), 11 November 2016, [amnesty.org/en/documents/pol30/4036/2016/en/](https://www.amnesty.org/en/documents/pol30/4036/2016/en/)

¹⁰ Committee Against Torture, Concluding Observations of CAT: Saudi Arabia, UN Doc. CAT/C/CR/28/5 (2002), para.4.

¹¹ UN Human Rights Committee, *Osbourne v Jamaica*, UN Doc. CCPR/C/68/D/759/1997 (2000), para.3.3; *Higginson v Jamaica*, UN Doc. CCPR/C/74/D/792/1998 (2002), para. 4.6; *Sooklal v Trinidad and Tobago*, UN Doc. CCPR/C/73/D/928/2000 (2001), para. 4.6; *Errol Pryce v Jamaica*, UN Doc. CCPR/C/80/D/793/1998 (2004), para. 6.2.

¹² UN Human Rights Committee, *Higginson v Jamaica*, UN Doc. CCPR/C/74/D/792/1998 (2002), para.4.6.

administrative authorities, including, in particular, flogging and amputation of limbs, that are not in conformity with the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.¹³

We urge the authorities of Malaysia to urgently remove whipping as punishment for all offences for which it is retained or introduced under the proposed amendments.

1.5 TRANSITIONAL MEASURES

There are two sets of transitional arrangements proposed in the bills. Under the Abolition of Mandatory Death Penalty Bill 2023 (DR 7), provisions are included to ensure that the amended punishments will be applicable to those who are already undergoing trials or have already been convicted and seeking a review of their cases from higher courts. According to official figures shared on 27 March, this will affect 476 people.¹⁴

Those under sentence of death (or imprisonment for natural life) only for offences whose punishments would be amended by the Abolition of Mandatory Death Penalty Bill 2023 (DR 7) and who have already exhausted their legal remedies, would be given the possibility to apply for resentencing under the transitional arrangements set out in the Revision of Sentence of Death and Imprisonment for Natural Life (Temporary Jurisdiction of The Federal Court) Bill 2023 (DR 8). Whether their pardon application has already been considered is not relevant for the judicial resentencing process. The bill, when effective, will grant them the possibility to apply to the Federal Court for resentencing. According to official figures shared on 27 March, this will affect 840 people.¹⁵

The process is not spelled out in detail in the bill as tabled on 27 March. The applications would have to be filed in writing within 90 days of the bill coming into effect, but the Federal Court would have the power to extend the timeframe “if it considers that there is a good reason for doing so” (Article 3.3). In reviewing the sentences, the Federal Court would “call for and examine the record of proceedings, grounds of judgment and other relevant documents, if any” (Article 2.3).

Amnesty International welcomes the decision by the government of Malaysia to include transitional arrangement in the bills that would ensure all those on death row can benefit from the reforms, as applicable. We urge the authorities of Malaysia to ensure that the transitional measures in the Revision of Sentence of Death and Imprisonment for Natural Life (Temporary Jurisdiction of The Federal Court) Bill 2023 include provisions to guarantee the right to a fair trial in the resentencing process, including by protecting:

- **The right to legal counsel** from the point of preparing the application for resentencing to the Federal Court. Many of those on death row who had exhausted their legal appeals would not automatically be supported by legal representation. A dedicated legal aid programme must be instituted and resourced to ensure that all those under sentence of death are informed of their right to appeal and are fully supported and enjoy adequate resources in presenting their case.¹⁶
- **The equal right to access to the courts.** Foreign nationals, who constitute a significant proportion of those on death row in Malaysia, must enjoy access to the courts on an equal basis to citizens, whatever their status. Those applying must have adequate time and facilities, including language interpretation, to prepare his or her defence ahead of resentencing. International fair trial standards require that foreign nationals or others who do not understand or speak the language used by the authorities are entitled to the assistance of an interpreter, free of charge, following arrest, including during questioning, and at all other stages of the proceedings.¹⁷
- **The right to prepare an effective representation**, including by guaranteeing: clarity on the criteria that would be assessed in the resentencing deliberations; prompt access to legal documents essential for conducting the legal defence or appeal, such as official prosecutorial applications to the court, the judgment, the trial transcript or any reports submitted by the Prison Department; the right to introduce new evidence or additional information to that submitted at trial, since sentencing mitigation was not contemplated in the case of

¹³ UN Committee Against Torture, Concluding Observations of CAT: Saudi Arabia, UN Doc. CAT/C/CR/28/5 (2002), para.4.

¹⁴ Office of the Minister of Law, Media Statement on the Mandatory Death Penalty Repeal Bill 2023 and the Death Penalty Review and Imprisonment for Natural Life (Temporary Jurisdiction of the Federal Court) Bill 2023.

¹⁵ Office of the Minister of Law, Media Statement on the Mandatory Death Penalty Repeal Bill 2023 and the Death Penalty Review and Imprisonment for Natural Life (Temporary Jurisdiction of the Federal Court) Bill 2023, 27 March 2023.

¹⁶ Guideline 6 of the Principles on Legal Aid (the UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems), UN Doc. E/CN.15/2012/L.14/Rev.1, para. 47

¹⁷ Article 8 of the Universal Declaration of Human Rights; Articles 2, 3, 14(1) and 26 of the ICCPR; Articles 2 and 15 of the International Convention on the Elimination of All Forms of Discrimination Against Women; Articles 5-6 of the International Convention on the Elimination of Racial Discrimination; Articles 13 (and 9) of the Convention on Rights of Persons with Disabilities; Article 18 of the Migrant Workers Convention; the UN Human Rights Committee General Comment No. 32, paras 8-11. Amnesty International, *Fair Trial Manual*, Chapter 28.6.1

mandatory death sentences; and by providing accessible documents and procedural accommodation for persons with disabilities.

- **The right to appeal to a higher court** against the resentencing decision, before applying for pardon.¹⁸ Guaranteeing the right to appeal against sentencing is a key element to guarantee the right to a fair trial.¹⁹
- **The right to be informed** in advance of when the request will be considered; and a right to be informed promptly about the outcome of the procedure, for all those reapplying.

We further encourage the authorities of Malaysia to request regular reporting to Parliament on the implementation of the measures, so that any systemic issues arising from the process can promptly be assessed and addressed, including through further legislative action.

Finally, pending full abolition, we urge the Government of Malaysia to **ensure that the official moratorium on executions established in 2018 be maintained** beyond the implementation of the legislative amendments to repeal the mandatory death penalty, as the deep and systemic flaws in use of the death penalty documented in Malaysia will not end with the introduction of full sentencing discretion.²⁰

2. PROPOSED AMENDMENTS BY LAW

1. PROPOSED AMENDMENTS TO THE PENAL CODE [ACT 574]

Penal Code [Act 574]: existing text with proposed amendments under DR 7 in red	Key points
<p>Abetment of an offence punishable with death or imprisonment for life 115. Whoever abets the commission of an offence punishable with death or imprisonment for life or imprisonment for a term which may extend to twenty years or upwards, shall, if that offence is not committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with imprisonment for a term which may extend to seven years, and shall also be liable to fine; and shall if any act for which the abettor is liable in consequence of the abetment and which causes hurt to any person, is done, the abettor shall be liable to imprisonment for a term which may extend to fourteen years, and shall also be liable to fine.</p>	<p>This amendment updates this section to reflect the proposed increase to terms of imprisonment to up to 40 years elsewhere in the Penal Code.</p>
<p>Concealing a design to commit an offence punishable with death or imprisonment for life 118. Whoever, intending to facilitate, or knowing it to be likely that he will thereby facilitate, the commission of an offence punishable with death or imprisonment for life or imprisonment for a term which may extend to twenty years or upwards, voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design, shall, if that offence is committed, be punished with imprisonment for a term which may extend to seven years, or if the offence is not committed, with imprisonment for a term which may extend to three years, and, in either case, shall also be liable to fine.</p>	<p>This amendment updates this section to reflect the proposed increase to terms of imprisonment to up to 40 years elsewhere in the Penal Code.</p>
<p>A public servant concealing a design to commit an offence which it is his duty to prevent 119. Whoever, being a public servant, intending to facilitate, or knowing it to be likely that he will thereby facilitate, the commission of an offence, the commission of which it is his duty as such public servant to prevent, voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design, shall, if the offence is committed, be punished with imprisonment for a term which may extend to one-half of the longest maximum term provided for the offence or with such fine as is provided for the offence or with both; or if the offence is punishable with death or imprisonment for life or imprisonment for a term which may extend to twenty years or upwards, with imprisonment for a term which may extend to ten years; or, if the offence is not committed, shall be punished with imprisonment for a term which may extend to one-fourth part of the longest term provided for the offence or with such fine as is provided for the offence or with both.</p>	<p>This amendment updates this section to reflect the proposed increase to terms of imprisonment to up to 40 years elsewhere in the Penal Code.</p>

¹⁸ Human Rights Committee, General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life, UN Doc. CCPR/C/GC/36, para.41.

¹⁹ Article 14(5) of the International Covenant on Civil and Political Rights.

²⁰ See also Amnesty International, "Fatally flawed – Why Malaysia must abolish the death penalty", AI Index ACT 50/1078/2019, October 2019, <https://www.amnesty.org/en/documents/act50/1078/2019/en/>

<p>Waging or attempting to wage war or abetting the waging of war against the Yang di-Pertuan Agong, a Ruler or Yang di-Pertua Negeri 121. Whoever wages war against the Yang di-Pertuan Agong or against any of the Rulers or Yang di-Pertua Negeri, or attempts to wage such war, or abets the waging of such war, shall be punished with death or imprisonment for life, imprisonment for a term of not less than thirty years but not exceeding forty years and if not sentenced to death shall also be liable to fine.</p>	<p>-The death penalty is already discretionary and is retained. - Life imprisonment is removed and substituted with imprisonment for 30 to 40 years (and a fine).</p>
<p>Offences against the person of the Yang di-Pertuan Agong, Ruler or Yang di-Pertua Negeri 121A. Whoever compasses, imagines, invents, devises or intends the death of or hurt to or imprisonment or restraint of the Yang di-Pertuan Agong or any of the Rulers or Yang di-Pertua Negeri, their heirs or successors, shall be punished with death and shall also be liable to fine with death or imprisonment for a term of not less than thirty years but not exceeding forty years and if not sentenced to death, shall also be punished with whipping of not less than twelve strokes.</p>	<p>-The mandatory death penalty is repealed. -The death penalty remains as discretionary punishment. -Alternative sentence is imprisonment for 30 to 40 years and 12 strokes of the whip. -Whipping is introduced; and is mandatory whenever the sentence is terms of imprisonment.</p>
<p>Offences against the authority of the Yang di-Pertuan Agong, Ruler or Yang di-Pertua Negeri 121B. Whoever compasses, imagines, invents or intends the deposition or deprivation of the Yang di-Pertuan Agong from the sovereignty of Malaysia or the deprivation or deposition of the Ruler, his heirs or successors, or of the Yang di-Pertua Negeri from the rule of a State, or the overawing by means of criminal force or the show of criminal force the Government of Malaysia or of any State, shall be punished with imprisonment for life imprisonment for a term of not less than thirty years but not exceeding forty years and shall also be liable to fine.</p>	<p>-No death penalty before/after amendments. -Imprisonment for life is removed. -Alternative sentence is imprisonment for 30 to 40 years (and a fine).</p>
<p>Collecting arms, etc., with the intention of waging war against the Yang di-Pertuan Agong, a Ruler or Yang di-Pertua Negeri 122. Whoever collects or attempts to collect men, arms or ammunition, or otherwise prepares to wage war with the intention of either waging or being prepared to wage war against the Yang di-Pertuan Agong or any of the Rulers or the Yang di-Pertua Negeri or abets the waging or the preparation of such war, shall be punished with imprisonment for life or imprisonment for a term not exceeding twenty years, imprisonment for a term not exceeding forty years and shall also be liable to fine.</p>	<p>-No death penalty before/after amendments. -Imprisonment for life is removed. -Alternative sentence is imprisonment for 40 years (and a fine).</p>
<p>Sabotage 124K. Whoever, by any means, directly or indirectly, commits sabotage shall be punished with imprisonment for life imprisonment for a term of not less than thirty years but not exceeding forty years.</p>	<p>-No death penalty before/after amendments. -Imprisonment for life is removed. -Alternative sentence is imprisonment for 30 to 40 years.</p>
<p>Espionage 124M. Whoever, by any means, directly or indirectly, commits espionage shall be punished with imprisonment for life imprisonment for a term of not less than thirty years but not exceeding forty years.</p>	<p>-No death penalty before/after amendments. -Imprisonment for life is removed. -Alternative sentence is imprisonment for 30 to 40 years.</p>
<p>Waging war against any power in alliance with the Yang di-Pertuan Agong 125. Whoever whether in conjunction with the enemies of the Yang di-Pertuan Agong or otherwise wages war against the Government of any power in alliance or at peace with the Yang di-Pertuan Agong, or attempts to wage such war, or abets the waging of such war, shall be punished with imprisonment for life, to which fine may be added; or with imprisonment for a term which may extend to twenty years imprisonment for a term not exceeding forty years, to which fine may be added, or with fine.</p>	<p>-No death penalty before/after amendments. -Imprisonment for life is removed. -Imprisonment to 20 years is removed. -Alternative sentence is imprisonment for up to 40 years (with fine).</p>
<p>Harbouring or attempting to harbour any person in Malaysia or person residing in a foreign State at war or in hostility against the Yang di-Pertuan Agong 125A. Whoever by any act, harbours or attempts to harbour, either in Malaysia or in the territories of any power at war with, or otherwise in actual hostility against, the Yang di-Pertuan Agong, or elsewhere, the enemies of the Yang di-Pertuan Agong, shall be punished with imprisonment for life, to which fine may be added; or with imprisonment for a term which may extend to twenty years, imprisonment for a term not exceeding forty years to which fine may be added, or with fine.</p>	<p>-No death penalty before/after amendments. -Imprisonment for life is removed. -Imprisonment to 20 years is removed. -Only available sentence is imprisonment for up to 40 years (with fine).</p>
<p>Public servant voluntarily allowing prisoner of State or war in his custody to escape 128. Whoever, being a public servant, and having the custody of any prisoner of State or prisoner of war, voluntarily allows such prisoner to escape from any place in which such</p>	<p>-No death penalty before/after amendments. -Imprisonment for life is removed.</p>

<p>prisoner is confined, shall be punished with imprisonment for life, or imprisonment for a term which may extend to twenty years, imprisonment for a term not exceeding forty years and shall also be liable to fine.</p>	<p>-Imprisonment to 20 years is removed. -Only available sentence is imprisonment for up to 40 years (with fine).</p>
<p>Aiding escape of, rescuing, or harbouring such prisoner 130. Whoever knowingly aids or assists any prisoner of State or prisoner of war in escaping from lawful custody, or rescues or attempts to rescue any such prisoner, or harbours or conceals any such prisoner who has escaped from lawful custody, or offers or attempts to offer any resistance to the recapture of such prisoner, shall be punished with imprisonment for life, or with imprisonment for a term which may extend to twenty years, imprisonment for a term not exceeding forty years and shall also be liable to fine.</p>	<p>-No death penalty before/after amendments. -Imprisonment for life is removed. -Imprisonment to 20 years is removed. -Only available sentence is imprisonment for up to 40 years (with fine).</p>
<p>130A. in the explanations of s.130, the following definition is deleted (f) “imprisonment for life” means (subject to the provisions of any written law conferring power to grant pardons, reprieves or respites or suspension or remission of punishments) imprisonment until the death of the person on whom the sentence is imposed;</p>	<p>-Paragraph removed to bring in line with preferred punishment of imprisonment to 30-40 years.</p>
<p>CHAPTER VIA OFFENCES RELATING TO TERRORISM Interpretation in relation to this Chapter 130B. (1) the following definition is deleted: “imprisonment for life” means (subject to the provisions of any written law conferring power to grant pardons, reprieves or respites or suspension or remission of punishments) imprisonment until the death of the person on whom the sentence is imposed;</p>	<p>-Paragraph removed to bring in line with preferred punishment of imprisonment to 30-40 years.</p>
<p>Committing terrorist acts 130C. (1) Whoever, by any means, directly or indirectly, commits a terrorist act shall be punished— (a) if the act results in death, with death or imprisonment for a term of not less than thirty years but not exceeding forty years and if not sentenced to death, shall also be punished with whipping of not less than twelve strokes; and (b) in any other case, with imprisonment for a term of not less than seven years but not exceeding thirty years, and shall also be liable to fine. (2) Where in any criminal proceeding it is necessary to decide whether any item or substance is a weapon, a hazardous, radioactive or harmful substance, a toxic chemical or a microbial or other biological agent or toxin, a certificate purporting to be signed by an appropriate authority to the effect that the item or substance described in the certificate is a weapon, a hazardous, radioactive or harmful substance, a toxic chemical or a microbial or other biological agent or toxin shall be sufficient evidence of the facts stated in it.</p>	<p>-Mandatory death penalty is removed. -Discretionary death penalty is retained. -Alternative punishment to death penalty is imprisonment for 30 up to 40 years. -Whipping is introduced as mandatory for sentence of imprisonment.</p>
<p>Providing devices to terrorist groups 130D. Whoever knowingly provides or offers to provide any explosive or other lethal device to— (a) a terrorist group; (b) a member of a terrorist group; or (c) any other person for use by, or for the benefit of, a terrorist group or a member of a terrorist group, shall be punished with imprisonment for life or imprisonment for a term not exceeding thirty years, imprisonment for a term not exceeding 40 years and shall also be liable to fine.</p>	<p>-No death penalty before/after amendments. -Imprisonment for life is removed. -Only available sentence is imprisonment for up to 40 years (with fine).</p>
<p>Directing activities of terrorist groups 130I. Whoever intentionally directs the activities of a terrorist group shall be punished— (a) if the act results in death, with death or imprisonment for a term of not less than thirty years but not exceeding forty years, and if not sentenced to death, shall also be punished with whipping of not less than twelve strokes; and (b) in any other case, with imprisonment for a term of not less than seven years but not exceeding thirty years, and shall also be liable to fine.</p>	<p>-Mandatory death penalty is removed. -Death penalty retained as discretionary punishment. -Alternative punishment to death penalty is imprisonment for 30 up to 40 years. -Whipping is introduced as mandatory for sentence of imprisonment.</p>
<p>Soliciting or giving support to terrorist groups or for the commission of terrorist acts 130J. (1) Whoever knowingly and in any manner solicits support for, or gives support to— (a) any terrorist group; or (b) the commission of a terrorist act, shall be punished with imprisonment for life or imprisonment for a term not exceeding thirty years, imprisonment for a term not exceeding 40 years or with fine, and shall also be liable to forfeiture of any property used or intended to be used in connection with the commission of the offence.</p>	<p>-No death penalty before/after amendments. -Imprisonment for life is removed. -Imprisonment to 30 years is removed. -Only sentence is imprisonment for up to 40 years (with fine).</p>

<p>Harbouring persons committing terrorist acts 130K. Whoever harbours, or prevents, hinders or interferes with the arrest of any person knowing or having reason to believe that such person— (a) has committed or is planning or is likely to commit a terrorist act; or (b) is a member of a terrorist group, shall be punished with imprisonment for life, and shall also be liable to fine, or with imprisonment for a term which may extend to twenty years imprisonment for a term not exceeding forty years, and shall also be liable to fine or with fine.</p>	<p>-No death penalty before/after amendments. -Imprisonment for life is removed. -Imprisonment to 20 years is removed. -Only sentence is imprisonment for up to 40 years (with fine).</p>
<p>Member of a terrorist group 130KA. Whoever is a member of a terrorist group shall be punished with imprisonment which may extend to imprisonment for life forty years, and shall also be liable to a fine.</p>	<p>-No death penalty before/after amendments. -Imprisonment for life is removed. -Only sentence is imprisonment for up to 40 years (with fine).</p>
<p>Providing or collecting property for terrorist acts 130N. Whoever, by any means, directly or indirectly, provides or collects or makes available any property intending, knowing or having reasonable grounds to believe that the property will be used, in whole or in part, to commit a terrorist act shall be punished— (a) if the act results in death, with death or imprisonment for a term of not less than thirty years but not exceeding forty years and if not sentenced to death, shall also be punished with whipping of not less than twelve strokes; and (b) in any other case, with imprisonment for a term of not less than seven years but not exceeding thirty years, and shall also be liable to fine, and shall also be liable to forfeiture of any property so provided or collected or made available.</p>	<p>-Mandatory death penalty is removed. -Death penalty retained as discretionary punishment. -Alternative punishment to death penalty is imprisonment for 30 up to 40 years. -Whipping is introduced as mandatory for sentence of imprisonment.</p>
<p>Providing services for terrorist purposes 130O. (1) Whoever, directly or indirectly, provides or makes available financial services or facilities— (a) intending that the services or facilities be used, or knowing or having reasonable grounds to believe that the services or facilities will be used, in whole or in part, for the purpose of committing or facilitating the commission of a terrorist act, or for the purpose of benefiting any person who is committing or facilitating the commission of a terrorist act; or (b) knowing or having reasonable grounds to believe that, in whole or in part, the services or facilities will be used by or will benefit any terrorist, terrorist entity or terrorist group, shall be punished— (aa) if the act results in death, with death or imprisonment for a term of not less than thirty years but not exceeding forty years and if not sentenced to death, shall also be punished with whipping of not less than twelve strokes; and (bb) in any other case, with imprisonment for a term of not less than seven years but not exceeding thirty years, and shall also be liable to fine. (2) For the purposes of subsection (1), “financial services or facilities” includes the services and facilities offered by lawyers and accountants acting as nominees or agents for their clients.</p>	<p>-Mandatory death penalty is removed. -Death penalty retained as discretionary punishment. -Alternative punishment to death penalty is imprisonment for 30 up to 40 years. -Whipping is introduced as mandatory for sentence of imprisonment.</p>
<p>Accepting gratification to facilitate or enable terrorist acts 130QA. Whoever accepts gratification to facilitate or enable the commission of any terrorist act shall be punished— (a) if the act results in death, with death or imprisonment for a term of not less than thirty years but not exceeding forty years and if not sentenced to death, shall also be punished with whipping of not less than twelve strokes; and (b) in any other case, with imprisonment for a term of not less than seven years but not exceeding thirty years, and shall also be liable to fine.</p>	<p>-Mandatory death penalty is removed. -Death penalty retained as discretionary punishment. -Alternative punishment to death penalty is imprisonment for 30 up to 40 years. -Whipping is introduced as mandatory for sentence of imprisonment.</p>
<p>Accepting gratification to facilitate or enable organized criminal activity 130ZB. Whoever accepts gratification to facilitate or enable any organized criminal activity shall be punished— (a) if the act results in death, with death or for a term of not less than thirty years but not exceeding forty years and if not sentenced to death, shall also be punished with whipping of not less than twelve strokes; and (b) in any other case, with imprisonment for a term of not less than seven years but not exceeding thirty years, and shall also be liable to fine.</p>	<p>-Mandatory death penalty is removed. -Death penalty retained as discretionary punishment. -Alternative punishment to death penalty is imprisonment for 30 up to 40 years. -Whipping is introduced as mandatory for sentence of imprisonment.</p>
<p>Causing disappearance of evidence of an offence committed, or giving false information</p>	<p>This amendment updates this</p>

<p>touching it, to screen the offender 201. Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear with the intention of screening the offender from legal punishment, or with the knowledge that he is likely thereby to screen the offender from legal punishment, or with that intention or knowledge gives any information respecting the offence which he knows or believes to be false, shall, if the offence which he knows or believes to have been committed is punishable with death, be punished with imprisonment for a term which may extend to seven years, and shall also be liable to fine; and if the offence is punishable with imprisonment for-life or with imprisonment which may extend to ten years or upwards, shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine; and if the offence is punishable with imprisonment for any term not extending to ten years, shall be punished with imprisonment for a term which may extend to one-fourth part of the longest term of the imprisonment provided for the offence or with fine or with both.</p>	<p>section to reflect the proposed increase to terms of imprisonment to up to 40 years elsewhere in the Penal Code.</p>
<p>Harbouring an offender 212. (1) Whenever an offence has been committed, whoever harbours or conceals a person whom he knows or has reason to believe to be the offender, with the intention of screening him from legal punishment, shall, if the offence is punishable with death, be punished with imprisonment for a term which may extend to five years, and shall also be liable to fine; and if the offence is punishable with imprisonment for life,-or with imprisonment which may extend to ten years or upwards, shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine; and if the offence is punishable with imprisonment which may extend to one year but less than ten years, shall be punished with imprisonment for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence or with fine or with both.</p>	<p>This amendment updates this section to reflect the proposed increase to terms of imprisonment to up to 40 years elsewhere in the Penal Code.</p>
<p>Taking gifts, etc., to screen an offender from punishment 213. Whoever accepts, or agrees to accept, or attempts to obtain any gratification for himself or any other person, or any restitution of property to himself or any other person, in consideration of his concealing an offence, or of his screening any person from legal punishment for any offence, or of his not proceeding against any person for the purpose of bringing him to legal punishment shall, if the offence is punishable with death, be punished with imprisonment for a term which may extend to seven years, and shall also be liable to fine; and if the offence is punishable with imprisonment for life, or with imprisonment which may extend to ten years or upwards, shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine; and if the offence is punishable with imprisonment not extending to ten years, shall be punished with imprisonment for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence or with fine or with both.</p>	<p>This amendment updates this section to reflect the proposed increase to terms of imprisonment to up to 40 years elsewhere in the Penal Code.</p>
<p>Offering gift or restoration of property in consideration of screening offender 214. Whoever gives or causes, or offers or agrees to give or cause, any gratification to any person, or to restore or cause the restoration of any property to any person, in consideration of that person's concealing an offence, or of his screening any person from legal punishment for any offence, or of his not proceeding against any person for the purpose of bringing him to legal punishment, shall, if the offence is punishable with death be punished with imprisonment for a term which may extend to seven years, and shall also be liable to fine; and if the offence is punishable with imprisonment for life-or with imprisonment which may extend to ten years or upwards, shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine; and if the offence is punishable with imprisonment not extending to ten years, shall be punished with imprisonment for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence or with fine or with both.</p>	<p>This amendment updates this section to reflect the proposed increase to terms of imprisonment to up to 40 years elsewhere in the Penal Code.</p>
<p>Harbouring an offender who has escaped from custody, or whose apprehension has been ordered 216. (1) Whenever any person convicted of, or charged with an offence, being in lawful custody for that offence, escapes from such custody, or whenever a public servant, in the exercise of the lawful powers of such public servant, orders a certain person to be apprehended for an offence, whoever, knowing of such escape or order for apprehension, harbours or conceals that person with the intention of preventing him from being apprehended, shall be punished in the manner following, that is to say, if the offence for which the person was in custody, or is ordered to be apprehended, is punishable with death, he shall be punished with imprisonment for a term which may extend to seven years, and shall also be liable to fine; and if the offence is punishable with imprisonment for life, or imprisonment for ten years or upwards, he shall be punished with imprisonment for a term which may extend to three years, with or without fine; and if the offence is punishable with imprisonment for not less than one year but less than ten years, he shall be punished with imprisonment for a term which may extend to one-fourth part of the</p>	<p>This amendment updates this section to reflect the proposed increase to terms of imprisonment to up to 40 years elsewhere in the Penal Code.</p>

<p>longest term of</p> <p>Intentional omission to apprehend on the part of a public servant bound by law to apprehend</p> <p>221. Whoever, being a public servant, legally bound as such public servant to apprehend or to keep in confinement any person charged with or liable to be apprehended for an offence, intentionally omits to apprehend such person, or intentionally suffers such person to escape, or intentionally aids such person in escaping or attempting to escape from such confinement, shall be punished as follows:</p> <p>(a) with imprisonment for a term which may extend to seven years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with or liable to be apprehended for an offence punishable with death;</p> <p>(b) with imprisonment for a term which may extend to three years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with or liable to be apprehended for an offence punishable with imprisonment for life, or imprisonment for a term which may extend to ten years or upwards; or</p>	<p>This amendment updates this section to reflect the proposed increase to terms of imprisonment to up to 40 years elsewhere in the Penal Code.</p>
<p>Punishment for murder</p> <p>302. Whoever commits murder shall be punished with death or imprisonment for a term of not less than thirty years but not exceeding forty years and if not sentenced to death, shall also be punished with whipping of not less than twelve strokes.</p>	<p>-Mandatory death penalty is removed.</p> <p>-Death penalty retained as discretionary punishment.</p> <p>-Alternative punishment to death penalty is imprisonment for 30 up to 40 years.</p> <p>-Whipping is introduced as mandatory for sentence of imprisonment.</p>
<p>Attempt to murder</p> <p>307. (1) Whoever does any act with such intention or knowledge and under such circumstances, that if he by that act caused death he would be guilty of murder, shall be punished with imprisonment for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable to imprisonment for a term which may extend to twenty years.</p> <p>(2) When any person offending under this section is under sentence of imprisonment for life or for a term of twenty years, he may, if hurt is caused, be punished with death.</p>	<p>Discretionary death penalty is removed as punishment for attempted murder committed by those already serving 20 years or life imprisonment</p>
<p>Kidnapping or abducting in order to murder</p> <p>364. Whoever kidnaps or abducts any person in order that such person may be murdered, or may be so disposed of as to be put in danger of being murdered, shall be punished with death or imprisonment for a term which may extend to thirty years and shall, if he is not sentenced to death, also be liable to whipping. imprisonment for a term of not more than thirty years and shall also be punished with whipping.</p>	<p>-Discretionary death penalty is removed.</p> <p>-Substituted with imprisonment of up to 30 years</p> <p>-Whipping made mandatory.</p>
<p>Hostage-taking</p> <p>374A. Whoever seizes or detains and threatens to kill, to injure or to continue to detain another person (“the hostage”) to compel the Government of Malaysia or the Government of any State in Malaysia, any other government, or any international organization or any other person or group of persons to do or refrain from doing any act as an explicit or implicit condition for the release of the hostage shall be punished—</p> <p>(a) if the act results in death, with death or imprisonment for a term of not less than thirty years but not exceeding forty years and if not sentenced to death, shall also be punished with whipping of not less than twelve strokes; and</p> <p>(b) in any other case, with imprisonment for a term of not less than seven years but not exceeding thirty years, and shall also be liable to fine.</p>	<p>-Mandatory death penalty is removed.</p> <p>-Death penalty retained as discretionary punishment.</p> <p>-Alternative punishment to death penalty is imprisonment for 30 up to 40 years.</p> <p>-Whipping is introduced as mandatory for sentence of imprisonment.</p>
<p>House-trespass in order to commit an offence punishable with imprisonment for life</p> <p>450. Whoever commits house-trespass in order to commit any offence punishable with imprisonment for life or imprisonment for a term which may extend to twenty years or upwards, shall be punished with imprisonment for a term not exceeding ten years, and shall also be liable to fine.</p>	<p>This amendment updates this section to reflect the proposed increase to terms of imprisonment to up to 40 years elsewhere in the Penal Code.</p>
<p>Transitional provision:</p> <p>39. Upon the coming into operation of this Act, if a person is convicted by any court for the commission of an offence under section 121, 121a, 302 or 364 or paragraph 130c(1)(a), 130i(a), 130n(a), 130o(1)(aa), 130qa(a), 130zb(a) or 374a(a) of the Code, the person, whether at a trial or on an appeal, shall be sentenced in accordance with the provisions of the Code as amended by this Act even though the offence was committed before the date of coming into operation of this Act.</p>	<p>Benefit of reform granted to those on trial or appealing who were convicted of or sentenced to mandatory or discretionary death penalty, for offences for which these punishments have been amended.</p>

2. PROPOSED AMENDMENTS TO THE CRIMINAL PROCEDURE CODE [ACT 593]

Criminal Procedure Code [Act 593]: existing text with proposed amendments under DR 7 (in red)	Key points
<p>Arrest, how made 15. (1) In making an arrest the police officer or other person making the same shall actually touch or confine the body of the person to be arrested unless there is a submission to the custody by word or action. (2) If such person forcibly resists the endeavour to arrest him or attempts to evade the arrest such officer or other person may use all means necessary to effect the arrest. (3) Nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death or with imprisonment for a term of not less than thirty years but not exceeding forty years or with imprisonment for life.</p>	<p>This amendment updates this section to reflect the proposed increase to terms of imprisonment to up to 40 years elsewhere in the Penal Code.</p>
<p>(3) Subparagraph (1)(c)(ii) shall not apply where— (a) in the case of a serious offence, the accused has a previous conviction for a related or same offence; or (b) where the offence for which the accused is charged with falls within the following: (i) an offence for which the punishment provided under the law is fine only; (ii) an offence for which the punishment provided under the law is imprisonment for natural life imprisonment for a term of not less than thirty years but not exceeding forty years; (iii) any sexual related offence; (iv) any offence committed against a child who is below twelve years of age; or (v) any other offence as may be specified by the Public Prosecutor by order published in the Gazette.</p>	<p>This amendment updates this section to reflect the proposed increase to terms of imprisonment to up to 40 years elsewhere in the Penal Code and abolition of imprisonment until natural death.</p>
<p>When person accused of non-bailable offence may be released on bail 388. (1) When any person accused of any non-bailable offence is arrested or detained without warrant by a police officer or appears or is brought before a Court, he may be released on bail by the Officer in charge of the Police District or by that Court, but he shall not be so released if there appears reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for a term which may extend to forty years or imprisonment for life: Provided that the Court may direct that any person under the age of sixteen years or any woman or any sick or infirm person accused of such an offence be released on bail.</p>	<p>This amendment updates this section to reflect the proposed increase to terms of imprisonment to up to 40 years elsewhere in the Penal Code.</p>
<p>Amendment of section 425a 64. Subsection 425a(2) of the Code is amended by substituting for paragraph (c) the following paragraph: “(c) imprisonment for a term of not less than thirty years but not exceeding forty years.”.</p>	<p>This amendment updates this section to reflect the proposed increase to terms of imprisonment to up to 40 years elsewhere in the Penal Code.</p>
<p>Amendment of the First Schedule See bill</p>	<p>This amendment updates this section to reflect the proposed increase to terms of imprisonment to up to 40 years elsewhere in the Penal Code.</p>

3. PROPOSED AMENDMENTS TO THE DANGEROUS DRUGS ACT 1952 [ACT 234]

Dangerous Drugs Act 1952 [Act 234]: existing text with proposed amendments under DR 7 in red	Key points
<p>Trafficking in dangerous drugs 39B. (1) No person shall, on his own behalf or on behalf of any other person, whether or not such other person is in Malaysia— (a) traffic in a dangerous drug; (b) offer to traffic in a dangerous drug; or (c) do or offer to do an act preparatory to or for the purpose of trafficking in a dangerous drug. *** (2) Any person who contravenes any of the provisions of subsection (1) shall be guilty of an offence against this Act and shall be punished on conviction with death or imprisonment for life and shall, if he is not sentenced to death, be punished with whipping of not less than fifteen strokes. be punished with whipping of not less than twelve strokes.</p>	<p>-Death penalty is retained for drug trafficking, but it is made fully discretionary for all those charged with this offence, without “courier” requirement to qualify for discretion. -Only alternative punishment remains imprisonment for life and mandatory whipping -the amount of strokes is lowered by three</p>

<p>(2A) In exercising the power conferred by subsection (2), the Court in imposing the sentence of imprisonment for life and whipping of not less than fifteen strokes, may have regard only to the following circumstances: (a) there was no evidence of buying and selling of a dangerous drug at the time when the person convicted was arrested; (b) there was no involvement of agent provocateur; or (c) the involvement of the person convicted is restricted to transporting, carrying, sending or delivering a dangerous drug; and (d) that the person convicted has assisted an enforcement agency in disrupting drug trafficking activities within or outside Malaysia.</p> <p>(2B) For the purposes of subsection (2A), "enforcement agency" means — (a) the Royal Malaysia Police; (b) the National Anti-Drugs Agency; (c) the Royal Malaysian Customs Department; (d) the Malaysian Maritime Enforcement Agency; or (e) any other enforcement agency as may be determined by the Minister.</p>	
<p>Transitional provision: 55. Upon the coming into operation of this Act, if a person is convicted by any court for the commission of an offence under section 39b of the principal Act, the person, whether at a trial or on an appeal, shall be sentenced in accordance with the provisions of the principal Act as amended by this Act even though the offence was committed before the date of coming into operation of this Act.</p>	<p>Benefit of reform granted to those on trial or appealing who were convicted of or sentenced to mandatory or discretionary death penalty, for offences for which these punishments have been amended.</p>

4. PROPOSED AMENDMENTS TO THE FIREARMS (INCREASED PENALTIES) ACT 1971 [ACT 37]

Firearms (Increased Penalties) Act 1971 [Act 37]: existing text with proposed amendments under DR 7 in red	Key points
<p>Initial definitions in section 2: The following paragraph is removed ... imprisonment for life" means, notwithstanding section of the Criminal Justice Ordinance, 1953 and any other written law to the contrary, imprisonment for the duration of the natural life of the person sentenced;</p>	<p>This amendment updates this section to reflect the proposed increase to terms of imprisonment to up to 40 years elsewhere in the Act.</p>
<p>Section 3 3. 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 any person, shall, notwithstanding that no hurt is caused thereby, be punished with death be punished with imprisonment for a term of not less than thirty years but not exceeding forty years and with whipping with not less than twelve strokes.</p>	<p>-Death penalty, which is mandatory, is abolished. -Substituted with imprisonment of 30 to 40 years -Whipping made mandatory with 12 strokes specified.</p>
<p>Section 3A Where, with intent to cause death or hurt to any person, a firearm is discharged by any person at the time of his committing or attempting to commit or abetting the commission of a scheduled offence, each of his accomplices in respect of the offence present at the scene of the commission or attempted commission or abetment thereof who may reasonably be presumed to have known that such person was carrying or had in his possession or under his custody or control the firearm shall, notwithstanding that no hurt is caused by the discharge thereof, be punished with death be punished with imprisonment for a term of not less than thirty years but not exceeding forty years and with whipping with not less than twelve strokes unless he proves that he had taken all reasonable steps to prevent the discharge.</p>	<p>-Death penalty, which is mandatory, is abolished. -Substituted with imprisonment of 30 to 40 years -Whipping made mandatory with 12 strokes specified.</p>
<p>Section 4 4. Any person who at the time of his committing or attempting to commit or abetting the commission of a scheduled offence or robbery exhibits a firearm in a manner in the likely to put any person in fear of death or hurt shall be punished with imprisonment for life imprisonment for a term of not less than thirty years but not exceeding forty years and with whipping with not less than six strokes.</p>	<p>-No death penalty before/after -Life imprisonment abolished -Substituted with imprisonment of 30 to 40 years -Whipping already in the law, retained as mandatory for imprisonment.</p>
<p>Section 5 5. Any person who at the time of his committing or attempting to commit or abetting the commission of a scheduled offence has a firearm on his person shall be punished with imprisonment for life imprisonment for a term of not less than thirty years but not exceeding forty years and with whipping with not less than six strokes.</p>	<p>-No death penalty before/after -Life imprisonment abolished -Substituted with imprisonment of 30 to 40 years -Whipping already in the law, retained as mandatory for imprisonment.</p>
<p>Section 7 7. (1) Any person trafficking in firearms shall be punished with (a) death; or</p>	<p>-Discretionary death penalty is abolished -Substituted with imprisonment of</p>

<p>(b) imprisonment for life and with whipping with not less than six strokes. “(1) Any person trafficking in firearms shall be punished with imprisonment for a term of not less than thirty years but not exceeding forty years and with whipping with not less than six strokes.</p>	<p>30 to 40 years -Whipping is retained as mandatory.</p>
<p>Transitional provision: 46. Upon the coming into operation of this Act, if a person is convicted by any court for the commission of an offence under section 3, 3a or 7 of the principal Act, the person, whether at a trial or on an appeal, shall be sentenced in accordance with the provisions of the principal Act as amended by this Act even though the offence was committed before the date of coming into operation of this Act.</p>	<p>Benefit of reform granted to those on trial or appealing who were convicted of or sentenced to mandatory or discretionary death penalty, for offences for which these punishments have been amended.</p>

5. PROPOSED AMENDMENTS TO THE ARMS ACT 1960 [ACT 206]

Arms Act 1960 [Act 206]: existing text with proposed amendments under DR 7 in red	Explanation
<p>Initial definitions in section 2: The following paragraph is removed ... “imprisonment for life” means, notwithstanding section 3 of the Criminal Justice Act 1953 [Act 345] and any other written law to the contrary, imprisonment for the duration of the natural life of the person sentenced;</p>	<p>-Paragraph removed to bring in line with preferred punishment of imprisonment to 30-40 years.</p>
<p>Penalty for manufacturing without licence and for breach of conditions of licence 14. (1) Any person who manufactures an arm or ammunition— (a) without a valid licence granted under section 12, or (b) in contravention of any condition imposed under paragraph 12(2)(a), shall, on conviction, be liable to punishment with— (i) death; or (ii) imprisonment for life and whipping with not less than six strokes, and, in the case of a company, firm, society or body of persons, with a fine not exceeding five hundred thousand ringgit. “(1) Any person who manufactures an arm or ammunition without a valid licence granted under section 12 or in contravention of any condition imposed under paragraph 12(2)(a), shall, on conviction— (a) be punished with imprisonment for a term of not less than thirty years but not exceeding forty years and with whipping of not less than six strokes; and (b) in the case of a company, firm, society or body of persons, be punished with a fine not exceeding five million ringgit.”; and ((2) Any licensed manufacturer who fails to comply with any condition or to observe any restriction imposed by the licence other than conditions imposed under paragraph 12(2)(a) shall, on conviction, be liable to a fine not exceeding twenty five thousand ringgit two hundred and fifty thousand ringgit, and, in the case of a company, firm, society or body of persons, to a fine not exceeding one hundred thousand ringgit one million ringgit.</p>	<p>-Discretionary death penalty is removed. -Substituted with imprisonment of 30 up to 40 years -Whipping introduced as mandatory.</p>
<p>Penalty for use and possession of arms and imitation arms in certain cases 32. (1) (a) If any person makes or attempts to make any use whatsoever of an arm or imitation arm with intent to resist or prevent the lawful apprehension or detention of himself or any other person, he shall, on conviction, be liable to imprisonment for life or for a term not exceeding fourteen years imprisonment for a term not exceeding forty years.</p>	<p>-No death penalty before/after the amendment. -Imprisonment for life removed -term of imprisonment increased from 14 to 40 years.</p>
<p>Jurisdiction of Courts 46. The Sessions Court Judge shall have power to impose the full penalty or punishment, other than the death penalty, provided by this Act.</p>	
<p>Transitional 51. Upon the coming into operation of this Act, if a person is convicted by any court for the commission of an offence under paragraph 14(1)(a) of the principal Act, the person, whether at a trial or on an appeal, shall be sentenced in accordance with the provisions of the principal Act as amended by this Act even though the offence was committed before the date of coming into operation of this Act.</p>	<p>Benefit of reform granted to those on trial or appealing who were convicted of or sentenced to mandatory or discretionary death penalty, for offences for which these punishments have been amended.</p>

6. PROPOSED AMENDMENTS TO THE KIDNAPPING ACT 1961 [ACT 365]

Kidnapping Act 1961 [Act 365]: existing text with proposed amendments under DR 7 in red	Key points
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<p>Abduction, wrongful restraint or wrongful confinement for ransom 3. (1) Whoever, with intent to hold any person for ransom, abducts or wrongfully confines or wrongfully restrains such person shall be guilty of an offence and shall be punished on conviction with death or imprisonment for life and shall, if he is not sentenced to death, also be liable to whipping with imprisonment for a term of not less than thirty years but not exceeding forty years and with whipping.</p>	<p>-Discretionary death penalty is removed. -Substituted with imprisonment of 30 to 40 years -Whipping made mandatory.</p>
<p>Transitional provision: benefit of reform only given to those at trial or appeal stage even if the offence was committed before the date of coming into operation of the Act.</p> <p>Upon the coming into operation of this Act, if a person is convicted by any court for the commission of an offence under section 3 of the principal Act, the person, whether at a trial or on an appeal, shall be sentenced in accordance with the provisions of the principal Act as amended by this Act even though the offence was committed before the date of coming into operation of this Act.</p>	<p>Benefit of reform granted to those on trial or appealing who were convicted of or sentenced to mandatory or discretionary death penalty, for offences for which these punishments have been amended.</p>

7. PROPOSED AMENDMENTS TO THE STRATEGIC TRADE ACT 2010 [ACT 708]

Strategic Trade Act 2010 [Act 708]: existing text with proposed amendments under DR 7 in red	Key points
<p>9. Export, transshipment and transit of strategic items and unlisted items (4) A person who contravenes subsection (1) commits an offence and shall, on conviction— (a) in relation to strategic items which are arms or related material— (i) where the act is done with the intent to unlawfully export, tranship or bring in transit such strategic items without a permit or with knowledge that the export, transshipment or bringing in transit of such strategic items without a permit is unlawful (A) where death is the result of the act, be punished with death or imprisonment for natural life imprisonment for a term of not less than thirty years but not exceeding forty years and in the case of a body corporate, be punished with a minimum fine of thirty million ringgit; or</p> <p>(5) A person who contravenes subsection (2) commits an offence and shall, on conviction— (a) in relation to strategic items or unlisted items which are arms or related material— (i) where the act is done with the intent to unlawfully export, tranship or bring in transit such items without a special permit or with knowledge that the export, transshipment or bringing in transit of such items without a special permit is unlawful (A) where death is the result of the act, be punished with death or imprisonment for natural life imprisonment for a term of not less than thirty years but not exceeding forty years and in the case of a body corporate, be punished with a minimum fine of thirty million ringgit; or</p> <p>(6) A person who contravenes subsection (3) commits an offence and shall, on conviction— (a) in relation to strategic items or unlisted items which are arms or related material— (i) where the act is done with the intent to unlawfully export, tranship or bring in transit such items or with knowledge that the export, transshipment or bringing in transit of such items is unlawful— (A) where death is the result of the act, be punished with death or imprisonment for natural life imprisonment for a term of not less than thirty years but not exceeding forty years and in the case of a body corporate, be punished with a minimum fine of thirty million ringgit; or</p>	<p>-Discretionary death penalty is retained. -Imprisonment for natural life abolished -Substituted with imprisonment for 30 to 40 years.</p>
<p>Provision of technical assistance 10.(1) No person shall provide any technical assistance within or outside Malaysia if such technical assistance is intended for use in connection with a restricted activity. (2) A person who contravenes subsection (1) commits an offence and shall, on conviction— (a) where death is the result of the act, be punished with death or imprisonment for natural life imprisonment for a term of not less than thirty years but not exceeding forty years and in the case of a body corporate, be punished with a minimum fine of thirty million ringgit; or</p>	<p>-Discretionary death penalty is retained -Imprisonment for natural life abolished -Substituted with imprisonment for 30 to 40 years.</p>
<p>Brokering of strategic items 11.(1) No person shall carry out an act of brokering of any strategic items unless he is registered under section 19, and where required under the related laws, holds a valid permit for the brokering of such strategic items from the relevant Authority under the related laws where— (a) he has been notified by the relevant Authority or an authorized</p>	<p>-Discretionary death penalty is retained -Imprisonment for natural life abolished -Substituted with imprisonment for</p>

<p>officer that such strategic items may be intended or are likely to be used, wholly or in part, for or in connection with a restricted activity; (b) he knows that such strategic items are intended to be used, wholly or in part, for or in connection with a restricted activity; or (c) he has reasonable grounds to suspect that such strategic items are intended or are likely to be used, wholly or in part, for or in connection with a restricted activity.</p> <p>(2) A person who contravenes subsection (1) commits an offence and shall, on conviction— (a) in relation to strategic items which are arms or related material— (i) where death is the result of the act, be punished with death or imprisonment for natural life, imprisonment for a term of not less than thirty years but not exceeding forty years, and in the case of a body corporate, be punished with a minimum fine of thirty million ringgit; or</p>	<p>30 to 40 years.</p>
<p>Transactions involving unlisted items and restricted activities</p> <p>12.(1) If a person is informed by the relevant Authority or otherwise knows or has reason to believe that any unlisted item will or may be used for a restricted activity, then the person shall notify the relevant Authority of his intention to export that unlisted item at least thirty days before that export is to be carried out.</p> <p>(2) Upon such notification, the relevant Authority shall decide whether or not to allow that export to proceed. (3) The relevant Authority may decide to allow that export to proceed subject to the granting of a permit under this Act. (4) A person who contravenes subsection (1) commits an offence and shall, on conviction— (a) in relation to unlisted items which are arms or related material (i) where the act is done with the intent to unlawfully export, tranship or bring in transit such unlisted items without a permit or with knowledge that the export, transhipment or bringing in transit of such unlisted items without a permit is unlawful— (A) where death is the result of the act, be punished with death or imprisonment for natural life imprisonment for a term of not less than thirty years but not exceeding forty years, and in the case of a body corporate, be punished with a minimum fine of thirty million ringgit; or</p>	<p>-Discretionary death penalty is retained.</p> <p>-Imprisonment for natural life abolished.</p> <p>-Substituted with imprisonment for 30 to 40 years.</p>
<p>Transitional provision:</p> <p>60. Upon the coming into operation of this Act, if a person is convicted by any court for the commission of an offence under subparagraph 9(4)(a)(i)(A), subparagraph 9(5)(a)(i)(A), subparagraph 9(6)(a)(i)(A), paragraph 10(2)(a), subparagraph 11(2)(a)(i) or subparagraph 12(4)(a)(i)(A) of the principal Act, the person, whether at a trial or on an appeal, shall be sentenced in accordance with the provisions of the principal Act as amended by this Act even though the offence was committed before the date of coming into operation of this Act.</p>	<p>Benefit of reform granted to those on trial or appealing who were convicted of or sentenced to mandatory or discretionary death penalty, for offences for which these punishments have been amended.</p>