

## AMNESTY INTERNATIONAL PUBLIC STATEMENT

4 July 2024 ACT 50/8248/2024

# MALAYSIA: ONE YEAR SINCE REPEAL OF MANDATORY DEATH PENALTY, VIOLATIONS OF INTERNATIONAL LAW AND STANDARDS CONTINUE DESPITE OVERALL DECREASE IN DEATH SENTENCES

During the first year since the death penalty became fully discretionary in Malaysia, Amnesty International recorded a significant decrease in the number of death sentences imposed and upheld by the courts, which positively led to a reduction by more than one third in the total of people on death row. However, according to information assessed by the organization, Malaysia's use of the death penalty and its alternative punishments under the amended laws continue to violate international human rights law and standards.

Although the government stated before Parliament in March 2024 that no policy decisions have been made to lift the moratorium on executions, there has not been any confirmation yet that the government will extend its policy until the death penalty is fully abolished. Therefore, as critical next steps, Amnesty International renews its call on the Government and Members of Parliament to indefinitely extend the official moratorium on executions until the death penalty is fully abolished and all death sentences are commuted; and to swiftly initiate legislative amendments to reform the Dangerous Drugs Act 1952 to remove the death penalty for drug trafficking and legal presumptions of guilt that can be relied on by the state to reach a conviction.

Amnesty International opposes the death penalty unconditionally, for all cases and under any circumstances, as a violation of the right to life and as the ultimate cruel, inhuman and degrading punishment.

## ONE YEAR ON, SIGNIFICANT DECREASE IN USE OF DEATH PENALTY RECORDED

This 4 July marks one year since the Abolition of Mandatory Death Penalty Act 2023 (Act 846) came into effect, repealing the mandatory death penalty and introducing sentencing discretion for all offences for which it was applicable.<sup>1</sup> Under the amended law, defendants convicted by High Courts of capital offences have the possibility of being sentenced to death or being applied an alternative punishment of terms of imprisonment between 30 and 40 years and whipping;<sup>2</sup> or of having their existing death sentence reviewed as part of their ordinary appeals before the Court of Appeal or Federal Court.

In addition, the Revision of Sentence of Death and Imprisonment for Natural Life (Temporary Jurisdiction of The Federal Court) Act 2023 (Act 847), which came into effect on 12 September 2023, gives special jurisdiction to the Federal Court to resentence 906 people under sentence of death who had already exhausted their ordinary judicial proceedings.<sup>3</sup> According to figures shared in Parliament, as of November the 906 figure included 877 (96.80%) people awaiting a decision from the State Board of Pardons; and 29 (or 3%) people that had a final confirmation of their then mandatory death sentence from the Board.<sup>4</sup> A further 369 people had been sentenced to the mandatory death penalty and could still have their sentences reviewed as part of their ordinary appeals before the Court of Appeal and the Federal Court.<sup>5</sup>

<sup>1</sup> Act 846 also repealed sentences to imprisonment for natural life.

<sup>2</sup> Under section 289 of the Criminal Procedure Code, men above the age of 50 and women are exempted from whipping.

<sup>3</sup> An additional 116 people were eligible to apply as they had been sentenced to imprisonment for natural life and had already exhausted their ordinary judicial proceedings. Figures included in oral answer to Parliament, Third meeting, Second term of the Fifteenth Parliament, 7 November 2023, Question no.11.

<sup>4</sup> Parliament of Malaysia, Written answer to Parliament, Third meeting, Second term of the Fifteenth Parliament, November 2023, Question no.50.

<sup>5</sup> Parliament of Malaysia, Oral answer to Parliament, Third meeting, Second term of the Fifteenth Parliament, 7 November 2023, Question no.11.

To prepare this statement, Amnesty International requested official figures to inform its assessment from court registrars, several members of the Cabinet of Malaysia and the Commissioner of Prisons. At the time of publication, Amnesty International received official information from the Chief Registrar of the Federal Court for judicial decisions relating to the death penalty cases taken in High Courts in Peninsular Malaysia and Court of Appeal. For Sabah and Sarawak, it only received information from the Registrar of the High Courts for 2023. Additionally, Amnesty International has assessed publicly available information on decisions taken since 4 July 2023 by the High Courts, Court of Appeal and Federal Court (ordinary and temporary jurisdiction) of Malaysia, as reported on the website of the judiciary and in national media, as well as by government officials in Parliament.<sup>6</sup> Representatives of the organization also observed resentencing hearings before the Federal Court under its temporary jurisdiction in 18 death penalty cases on 16 November and 6 December 2023; and gathered information from lawyers and other stakeholders.

Despite repeated calls from several UN bodies urging states to regularly publish information on their use of the death penalty, official figures in Malaysia are not publicly available with the exception of partial and occasional disclosures from the Government to Parliament in response to written or oral questions.<sup>7</sup> Amnesty International renews its call on the authorities of Malaysia to make information on the use of the death penalty in the country publicly available.

Since 4 July 2023, Amnesty International recorded information on 274 individuals convicted of crimes punishable by death through the ordinary judicial process. In **45 cases (16%), the death penalty** was imposed or upheld whereas, in a remarkable **229 cases (84%), the alternative punishment** to the death penalty was ordered at the High Court or through commutation on appeal through the ordinary court process.<sup>8</sup>

The death penalty was imposed in **18% of recorded cases before the High Courts, whereas this percentage slightly reduced to 12% and 17% before the Court of Appeal and Federal Court (ordinary jurisdiction)**, respectively. Significantly, the majority of cases where the death penalty was imposed or upheld in the ordinary process were for the crime of murder – **23 out of 45 cases (51%)**.

With regard to the special jurisdiction granted to the Federal Court to resentence those on death row who had exhausted their ordinary legal appeals, Datuk Seri Azalina Othman Said, Minister in the Prime Minister's Department (Law and Institutional Reform), shared in Parliament that as of 31 May 2024 the Federal Court had upheld the death penalty in 19 of 474 review applications it had decided.<sup>9</sup> As stated by the Minister, all these death sentences were related to murders that involved more than one victim or where the victim was a child.

## **DRUG-RELATED DEATH SENTENCES AND OTHER VIOLATIONS OF INTERNATIONAL LAW AND STANDARDS**

Following a review of available information on judicial decisions in capital cases since 4 July 2023, Amnesty International found that violations of international human rights law and standards continued to be committed at various stages of the proceedings.

### **DRUG-RELATED OFFENCES**

In 2023, Malaysia was one of only 11 countries known to have sentenced people to death for **drug-related offences**.<sup>10</sup> International human rights law provides that, in countries where the death penalty has not yet been abolished, its imposition must be restricted to the “most serious crimes”.<sup>11</sup> The UN Human Rights Committee has stated that “crimes

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<sup>6</sup> As the date of written grounds is frequently different from the date of when the judicial decision was taken, Amnesty International has made a determination in each case based on available information to ensure that the sentencing took place after the coming into force of the legislative amendments to repeal the mandatory death penalty on 4 July 2023. For the limited number of judgments for which it was not possible to determine the date of sentencing, Amnesty International resolved to exclude those with written grounds dated between 4 July and 4 October 2023. Four judicial decisions with undetermined sentencing date and written grounds dated between 5 October 2023 and 4 January 2024 have been included as part of this assessment.

<sup>7</sup> UN Human Rights Council resolution, 54/35, 13 October 2023, para. 9.

<sup>8</sup> Commutation is the process by which a death sentence is exchanged for a less severe sentence as prescribed by law, by the judiciary on appeal.

<sup>9</sup> Under the Revision of Sentence of Death and Imprisonment for Natural Life (Temporary Jurisdiction of The Federal Court) Act 2023 (Act 847). Parliament of Malaysia, Oral answer to Parliament, Second meeting, Third term of the Fifteenth Parliament, 24 June 2024, Question no.75.

<sup>10</sup> Amnesty International, *Death sentences and executions in 2023* (ACT 50/7952/2024), May 2024, p.14, [amnesty.org/en/documents/act50/7952/2024/en/](https://www.amnesty.org/en/documents/act50/7952/2024/en/)

<sup>11</sup> 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.

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”.<sup>12</sup>

Although it is encouraging that sentencing discretion has resulted in fewer death sentences, it remains **deeply worrying that 49% of all recorded cases** in which the death penalty was imposed or upheld (22 out of 45) since 4 July 2023 were for drug-related offences. Noticeably, the majority of recorded drug-related death sentences (18) were imposed by the High Courts. Official information presented to Parliament indicated that, as of 14 February 2024, 705 out of 1,078 people on death row (65.4%) were convicted of drug trafficking.<sup>13</sup>

Additionally, courts continued to convict people using legal presumptions of guilt which contravene the right to be presumed innocent and have thus rendered trials unfair. These statutory presumptions, when invoked, allow the prosecution to automatically infer guilt when drugs are found in objects or premises that the defendants were responsible for or owned; or that a defendant had knowledge of the drugs when found in possession of them; or that a defendant intended to traffic the drugs when the amounts in their possession went beyond statutory minimums. When these legal presumptions are invoked, the burden of proof is shifted onto the defendant to be rebutted to the higher legal standard of “on a balance of probabilities”, with the effect of lowering the threshold of evidence needed under international human rights law to secure a conviction in capital cases.

### **CRUEL PUNISHMENT OF WHIPPING AS ALTERNATIVE SENTENCE**

Corporal punishment constitutes cruel, inhuman and degrading treatment or punishment, and is prohibited under international law.<sup>14</sup> The Committee against Torture, the Human Rights Committee and other human rights mechanisms have stated that domestic law that provides for judicial corporal punishment is incompatible with the absolute prohibition of torture and other ill-treatment, and have called for the abolition of judicial corporal punishment.<sup>15</sup>

Under the 2023 legislative amendments, however, whipping was retained or introduced for several offences as the mandatory alternative punishment to the death penalty for men below the age of 50, together with terms of 30 to 40 years of imprisonment. Amnesty International found that **142 men out of 274 people (52%)** recorded to have been spared the death penalty through the ordinary judicial process were instead sentenced to terms of imprisonment and **mandatory whipping**. Most of these men were sentenced to 12 strikes of the whip. The remaining people – women or men above 50 years of age – received sentences to terms of imprisonment. Based on available information, Amnesty International recorded a further 43 cases in which the Federal Court imposed the sentence of whipping as it reviewed cases under its temporary jurisdiction.

### **CONCERNS ON ACCESS TO LEGAL COUNSEL**

International standards for a fair trial guarantee to all persons arrested or detained on a criminal charge the right to competent and effective legal counsel from the start of a criminal investigation and as soon as they are deprived of their liberty.<sup>16</sup> This is essential to protect the rights of those accused of a crime, including the right to prepare their defence, and serves as an important safeguard against torture and other ill-treatment, coerced “confessions” or other self-incriminating statements.<sup>17</sup>

During the period under consideration, Amnesty International gathered media reports relating to 101 people – including Malaysian and foreign nationals – who appeared before magistrates’ courts to be charged of capital crimes. Of these, **46 people (46%) were reported as represented, and a significant 46 individuals (46%) as unrepresented** (this information was unconfirmed for nine other people), despite existing legal aid schemes established across Malaysia to

<sup>12</sup> 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.

<sup>13</sup> Parliament of Malaysia, First meeting, Third term of the Fifteenth Parliament, 26 February to 27 March 2024, written question no.557.

<sup>14</sup> Committee Against Torture, Concluding Observations of CAT: Saudi Arabia, UN Doc. CAT/C/CR/28/5 (2002), para.4.

<sup>15</sup> 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; UN Committee Against Torture, Concluding Observations of CAT: Saudi Arabia, UN Doc. CAT/C/CR/28/5 (2002), para. 4.

<sup>16</sup> See Amnesty International, Fair Trial Manual, Chapter 3. The UN Human Rights Committee has stated that the “assistance of counsel should be ensured, through legal aid as necessary, immediately on arrest and throughout all subsequent proceedings to persons accused of serious crimes, in particular in cases of offences carrying the death penalty”. Human Rights Committee, Concluding observations of the Human Rights Committee: Trinidad and Tobago, UN Doc. CCPR/CO/70/TTO, para.7.

<sup>17</sup> Principle 1 of the UN Basic Principles on the Role of Lawyers, adopted by the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

provide legal counsel to defendants of less advantaged socio-economic backgrounds who cannot afford to pay a lawyer of their choice.

## **RECOMMENDATIONS**

The significant reduction in the use of the death penalty, as documented in the first year since sentencing discretion came into effect on 4 July 2023, is a positive step but it must not be the end of Malaysia's journey towards the full abolition of the death penalty. Systemic flaws in the country's criminal justice system and provisions in its laws that are at odds with restrictions to the use of the death penalty and other norms of international law need urgent addressing.

**Pending full abolition of the death penalty, Amnesty International calls on the government of Malaysia to:**

- **Immediately extend the official moratorium on executions established in 2018 and ensure that this policy will be observed until the death penalty is fully abolished and all death sentences are commuted.**
- **Swiftly introduce legislative amendments to the Dangerous Drugs Act 1952 to bring it in line with international human rights law and standards, including by repealing the death penalty for drug-related offences and legal presumptions of guilt. Pending this, the prosecution must immediately end seeking the death penalty as sentence, particularly for drug-related offences.**
- **Promptly impose an immediate moratorium on whipping, and urgently introduce legislative amendments to remove this punishment for all offences.**
- **Ratify the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.**
- **Urgently ensure that international standards for a fair trial are fully met at all stages of the proceedings, from the moment of arrest and when defendants first face criminal charges all the way through to appeals and other recourse procedures.**
- **Regularly publish information on the use of the death penalty in the country, disaggregated at least by date, location, gender, age, nationality, and other status of the defendant, crime and status of judicial and pardon applications.**
- **Reaffirm its commitment to ending executions by voting in favour of the 10<sup>th</sup> UN General Assembly resolution on a moratorium on the use of the death penalty, which is due to be considered at the 79<sup>th</sup> session in late 2024.**

	TOTAL NUMBER OF DEFENDANTS CONVICTED on capital charges	NUMBER OF DEATH SENTENCES IMPOSED/UPHELD ON APPEAL	NUMBER OF SENTENCES NOT INVOLVING THE DEATH PENALTY (INCLUDING COMMUTATIONS ON APPEAL)	
			Total number of sentences to life imprisonment and, if applicable, whipping	Total number of sentences involving whipping
HIGH COURTS <sup>18</sup>	181	<p><b>33, 18% of the recorded total (including 18, or 55%, for drug trafficking)</b></p> <p>For Peninsular Malaysia: 19 new death sentences (official figures). Of these:</p> <ul style="list-style-type: none"> <li>-8 were imposed for murder (including on one woman and three foreign men);</li> <li>-11 were imposed for drug trafficking (including on one woman and three foreign men).</li> </ul> <p>For Sabah and Sarawak: 14 new death sentences (partial official figures). Of these:</p> <ul style="list-style-type: none"> <li>-7 were imposed for murder (including on one woman);</li> <li>-7 were imposed for drug trafficking.</li> </ul>	<p><b>148, 82% of the recorded total</b></p> <p>For Peninsular Malaysia: 138 non-death penalty sentences imposed. Of these:</p> <ul style="list-style-type: none"> <li>-33 sentences were imposed for murder (Including two women, one foreign and one Malaysian; nine men, including five foreign nationals);</li> <li>-105 sentences were imposed for drug trafficking (including eight women, including three foreign nationals; and eight men, all foreign nationals).</li> </ul> <p>For Sabah and Sarawak: 10 non-death penalty sentences imposed (partial official figures). Of these:</p> <ul style="list-style-type: none"> <li>-6 sentences were imposed for murder (including on three foreign men);</li> <li>-4 sentences were imposed for drug trafficking (including on three foreign men).</li> </ul>	<p><b>116 in total</b></p> <p>For Peninsular Malaysia, 108 (official figures)</p> <p>For Sabah and Sarawak, 8 (partial official figures)</p>
COURT OF APPEAL <sup>19</sup>	75 (official figure)	9, or 12% of the recorded total (official figures). Of these:	66, or 88% of the recorded total (official figures). Of these:	15 (official figures)

<sup>18</sup> This assessment is based on official figures received for Peninsular Malaysia by Amnesty International on 1 July 2024. For Sabah and Sarawak, official figures were received for 2023 only; and Amnesty International gathered available information, including from media, to complement information for 2024.

<sup>19</sup> Official figures provided on 1 July 2024. Amnesty recorded a further six death sentences that were upheld since 4 July, based on media reports, which are not included in the table figures.

		-5 were upheld for murder; -4 were upheld for drug trafficking.	-34 were for murder (including on four women and two foreign men); -25 were for drug trafficking; -1 were for kidnapping; -3 were for murder and kidnapping; -3 were for firearms related offences.	
FEDERAL COURT (ORDINARY APPEAL) <sup>20</sup>	18 (as recorded by Amnesty International)	3 (17% of the recorded total) were upheld, for murder. (as recorded by Amnesty International)	15 (83% of the recorded total). Of these: -14 were for murder (including three on foreign men); -1 was for drug trafficking. (as recorded by Amnesty International)	11 (as recorded by Amnesty International)
FEDERAL COURT (TEMPORARY RESENTENCING JURISDICTION) <sup>21</sup>	474 (official figure)	19 (4%), all for murder (official figure)	455 (96%)	43 (as recorded by Amnesty International)

<sup>20</sup> Figures based on Amnesty International's gathering of information, including in media reports.

<sup>21</sup> Under the Revision of Sentence of Death and Imprisonment for Natural Life (Temporary Jurisdiction of The Federal Court) Act 2023 (Act 847). These are official figures shared in Parliament on 24 June 2024. Parliament of Malaysia, Oral answer to Parliament, Second meeting, Third term of the Fifteenth Parliament, 24 June 2024, Question no.75.