

AMNESTY INTERNATIONAL PUBLIC STATEMENT

4 July 2025 ACT 50/9557/2025

MALAYSIA: TWO YEARS SINCE MANDATORY SENTENCING REPEAL, GOVERNMENT URGED TO FULLY ABOLISH THE DEATH PENALTY

Two years since the repeal of the mandatory death penalty in Malaysia came into force, the impact of the reforms has been overwhelmingly positive. A significant decline in the use of the death penalty has been recorded both in relation to the number of people on death row, which reduced by more than 1,000, and in the narrowed scope of the offences for which death sentences have been upheld by the highest court.

However, Amnesty International's recent assessment of the implementation of the new sentencing discretion in Malaysia reveals emerging concerns. These concerns appear to intersect with long-standing systemic flaws previously denounced by the organization, which might have contributed to the imposition and confirmation of the death penalty in some cases. They also add to existing concerns on the retention of laws that violate restrictions to the use of the death penalty, pending its abolition, set out under international human rights law and standards.

While the 2023 death penalty reforms have undoubtedly represented a significant step forward for the protection of human rights in the country, the repeal of the mandatory death penalty must not be the end of Malaysia's journey towards full abolition of this cruel punishment. Amnesty International urges the Government of Malaysia to immediately extend the moratorium on executions indefinitely, commute all death sentences and abolish the death penalty for all crimes as a matter of urgency.

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.

2023 MANDATORY DEATH PENALTY REFORMS: IMPOSITION OF DEATH PENALTY GREATLY REDUCED IN NUMBER AND SCOPE

4 July 2025 marks two years since the Abolition of Mandatory Death Penalty Act 2023 (Act 846) came into effect.¹ The Act repealed the mandatory death penalty and introduced, as alternatives, sentences to imprisonment of 30 or up to 40 years and whipping, as applicable.² In addition, the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, gave special jurisdiction to the Federal Court to resentence people under sentence of death who had already exhausted their ordinary judicial proceedings.

According to information shared in February 2025 by Datuk Seri Azalina Othman Said, Minister in the Prime Minister's Department (Law and Institutional Reform), the Federal Court of Malaysia concluded the review process under its temporary jurisdiction on 29 October 2024, after reviewing the cases of 936 people on death row.³ Simultaneously, the Court of Appeal and the Federal Court reviewed the cases of people who could ask for a reduction of their death sentences as part of the ordinary appeal process.

Over a relatively short period of time, the judicial review process of finalized and non-finalized death sentences has radically changed the outlook for the use of the death penalty in Malaysia. Before the repeal of the mandatory death penalty, 1,337 people were under sentence of death in the country.⁴ Following the reforms, official figures as of 22 January 2025 indicated that the total had reduced to 140 people, including 40 individuals convicted of drug-related

¹ Act 846 also repealed sentences of imprisonment for natural life.

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

³ An additional 120 people had their cases reviewed as they had been sentenced to imprisonment for natural life and had already exhausted their ordinary judicial proceedings. Figures included in answer to Parliament, First session, Fourth term of the Fifteenth Parliament, February 2025, Question no.86.

⁴ Written answer to Parliament, Third meeting, fifth term, fourteenth Parliament, 4 October 2022.

offences.⁵ Taken together with 44 new death sentences imposed between 4 July 2023 and 31 December 2024, these figures show an overall reduction in Malaysia's death row population of approximately 90%.

Figures provided by the Federal Court Registrar to Amnesty International indicate that 761 men and 93 women had their death sentences commuted under the temporary resentencing process (854, or 91% of the applicants); and a further 46, including 3 women, under the ordinary review process up until the end of 2024. In total, the Federal Court commuted 900 death sentences. Additionally, the Court of Appeal commuted 116 death sentences in 2024 alone, bringing the total commutation of death sentences by the Federal Court and Court of Appeal to at least 1,016.

The reduction in the use of the death penalty as a result of the new sentencing discretion is also evident in the narrow scope of offences for which this cruel punishment has been retained following review by the Federal Court, Malaysia's highest court. Under its temporary jurisdiction, the Federal Court affirmed the death sentences of 43 men – including 34 convicted of murder, two of gang robbery and murder and seven of waging war against the Ruler. Figures shared in Parliament in February 2025 indicated that a further 22 cases had their resentencing application administratively cancelled and four people died before their resentencing process concluded.

According to monitoring by Amnesty International as of 1 July 2025, the Federal Court also upheld seven additional death sentences for murder under its ordinary jurisdiction.

Amnesty International has noted some aggravating factors that appear to be common to the death sentences confirmed by the Federal Court. These include whether there were multiple murder victims or the murder victim was a child, whether the convicted person was formerly a state official, and whether the way in which the murder was committed showed particular disregard for human life. This appears to be in line with parliamentary debates and the indication given by Minister Datuk Seri Azalina Othman Said in her written answer to a parliamentary question in June 2024, where she noted that death sentences confirmed by the Federal Court related to murders that involved more than one victim or where the victim was a child.⁶

NEW SENTENCING DISCRETION: A SYSTEM AT ITS INFANCY

While the impact of the 2023 death penalty reforms has been largely positive and represents a significant step in the right direction, Amnesty International remains concerned that violations of international human rights law and standards continue to affect proceedings in capital cases.

Amnesty International has been monitoring death penalty cases and its representatives have been conducting interviews with lawyers and practitioners, including in June 2025. As the new discretionary process for sentencing is taking shape in the Malaysian criminal justice system, Amnesty International's preliminary assessment points to some emerging areas of concern, based on the information it gathered to date.

A first issue identified relates to the lack of written grounds of judgment by the Federal Court during the temporary resentencing process, likely due to the high volume of cases considered in each session. This appears to have resulted in limited guidance for the lawyers defending people facing executions and the lower courts on the judicial principles adopted by the Federal Court to determine whether a case should warrant the death penalty,⁷ and on mitigating factors that would be successfully considered in such cases. This seems to have had a ripple effect on how the mitigation process has been argued and defined in the ordinary judicial process. While some written decisions have been published by the Federal Court in capital cases in more recent months, these have included limited guidance with regard to the sentencing discretion considerations.

In addition, there has been no clear separation between the conviction and sentencing phase of a trial and the appeals before the Court of Appeal and Federal Court, which has likely contributed to a relatively summary development of the mitigating process. Facts of the offence, such as the reliance on circumstantial evidence to infer guilt, appear to have been submitted and considered primarily to challenge murder charges and not as factors weighing on considerations on whether the death penalty should be imposed or retained. International safeguards guaranteeing the protection of the rights of those facing the death penalty indicate that "[c]apital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts."⁸

⁵ Parliament of Malaysia, First session, Fourth term of the Fifteenth Parliament, 3 February to 6 March 2025, Written question no.552.

⁶ Parliament of Malaysia, Oral answer to Parliament, Second meeting, Third term of the Fifteenth Parliament, 24 June 2024, Question no.75.

⁷ See, for example, Free Malaysia Today, "'Rarest of rare' doctrine on death penalty not applicable here, says court", 30 July 2024, <https://www.freemalaysiatoday.com/category/nation/2024/07/30/rarest-of-rare-doctrine-on-death-penalty-not-applicable-here-says-court>

⁸ UN Safeguard no.7, UN Safeguards guaranteeing protection of the rights of those facing the death penalty, adopted in Economic and Social Council resolution 1984/50, 25 May 1984.

Similarly, the criminal justice system has yet to be adapted to accommodate the importance that mitigation can have in capital cases, alongside challenges to a conviction. This requires the provision of adequate resources and increased access for the defence representatives to forensic, medical and mitigation experts. For example, mental health assessments can now acquire a new relevance beyond proving whether the threshold of “mental sanity” for the purpose of the commission of an offence has been met; and can support mitigation on the background of the defendant. Several lawyers told Amnesty International that reports on mental health assessments and on conduct in prison – which could show evidence of good character and prospect of reform – were not submitted and considered by the courts. This is worrisome, particularly when considering that the determination by the Federal Court in favour of the death penalty in many cases appears to have relied upon some common aggravating factors of the murder as noted above.

Amnesty International is further concerned over the lack of an avenue to appeal decisions on sentencing in cases where the mitigation process happened for the first time before the Federal Court as a result of the 2023 reforms. Currently, an application to review a final decision by the Federal Court has to be made to the Federal Court under Rule 137 of the Federal Court Rules 1995. The Federal Court may apply Rule 137 only in “limited grounds and very exceptional circumstances”. This high threshold has made it extremely challenging for cases to be reopened and several lawyers expressed their doubts to Amnesty International on the effectiveness of this remedy.

In addition, it is not clear how mitigating grounds prepared for appeals at the Federal Court at both the resentencing process and in its ordinary judicial proceedings, particularly in cases where no written grounds have been issued, would be submitted to the Pardons Board for consideration of pardon. This is particularly relevant for those facing execution who are not supported by legal counsel to prepare their pardon application.

These emerging concerns add to long-standing systemic flaws which have exacerbated the arbitrariness and discrimination in the use of this cruel punishment in Malaysia, particularly against those from most disadvantaged socio-economic backgrounds. Amnesty International has previously found numerous violations of the right to a fair trial at different points of the criminal justice process that leave defendants vulnerable to the imposition of the death penalty.⁹ Among other issues, restrictions on access to legal counsel and quality of legal representation remain a critical flaw of Malaysia’s judicial system. Other complaints received by the organization include delays in notifying legal aid centres, family members and lawyers, as well as diplomatic representations in the cases of foreign nationals, of a person’s arrest and the insufficient access to interpreters, which can vary greatly depending on the resources made available by the relevant embassy – and in some instances the ethnicity of the foreign defendant.

DEATH PENALTY FOR DRUG-RELATED AND OTHER OFFENCES THAT DO NOT INVOLVE INTENTIONAL KILLING

The death penalty in Malaysia remains applicable under the Penal Code and four other Acts, including for offences that do not meet the threshold of the “most serious crimes” to which the death penalty must be restricted under international law, such as drug trafficking.¹⁰ In 2024, Malaysia was one of only 13 countries known to have sentenced people to death for drug-related offences.¹¹

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”.¹² The UN Human Rights Committee has stated 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”.¹³

According to official figures received from court registrars, nine out of 24 new death sentences imposed in 2024 were on men convicted of drug trafficking.¹⁴ In 2023, Amnesty International recorded 38 new death sentences, of which 20 were for drug-related offences. Six of these were imposed in the second half of the year, following the repeal of the mandatory death penalty. Although it is encouraging that sentencing discretion has resulted in fewer death sentences overall and that, at the time of writing, the Federal Court has not confirmed any drug-related death sentences, it remains deeply

⁹ Amnesty International, *Fatally flawed: Why Malaysia must abolish the death penalty* (ACT 50/1078/2019), 10 October 2019, <https://www.amnesty.org/en/documents/act50/1078/2019/en/>

¹⁰ Armed Forces Act, 1972; Dangerous Drugs Act, 1952; Strategic Trade Act, 2010; and Water Services Industries Act, 2006.

¹¹ Amnesty International, *Death sentences and executions in 2024* (ACT 50/8976/2025), April 2025, p.14, <https://www.amnesty.org/en/documents/act50/8976/2025/en/>

¹² 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.

¹³ 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.

¹⁴ Information on file with Amnesty International.

worrying that 40 people convicted for drug-related offences remained on death row as of January 2025 in violation of restrictions on the use of this punishment set out under international law and standards.

Additionally, legal presumptions of guilt continue to be available to the prosecution. These statutory presumptions, when invoked, allow the prosecution to automatically infer guilt of possession, knowledge or trafficking drugs, shifting the burden of proof onto the defendant to be rebutted to the higher legal standard of “on a balance of probabilities” and contravening the right to be presumed innocent and thus rendering proceedings unfair. This has also had the effect of lowering the threshold of evidence needed under international human rights law to secure a conviction in capital cases.

CRUEL, INHUMAN AND DEGRADING PUNISHMENT OF WHIPPING AS ALTERNATIVE SENTENCE

Under the 2023 legislative amendments, 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, as applicable depending on the offence

In October 2024, a 49-year-old man in Pokok Sena prison died of a bacterial infection after receiving 12 strokes of the whip, as part of his revised sentence of 33 years of imprisonment and 12 strokes. An independent investigation of the National Human Rights Commission of Malaysia (SUHAKAM) confirmed that the individual had not received proper medical attention in prison after being whipped.¹⁵

Corporal punishment constitutes cruel, inhuman and degrading treatment or punishment, and is absolutely prohibited under international law.¹⁶ 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.¹⁷

SECRETIVE PARDONS SYSTEM

Amnesty International remains concerned about the lack of transparency that surrounds the handling of pardon petitions in Malaysia – the last recourse available to people under sentence of death before execution. The lack of transparency has not only aggravated the mental trauma of those on death row and their families, it has also exacerbated the systemic flaws that have undermined the effective exercise of the right to this last review. These flaws have included the absence of a clearly regulated process and timeline for application of the consideration of the pardon application; the lack of legal support for those on death row to prepare the petitions and make direct representations to the Pardons Board; the lack of information with regard to submissions and other documentation put forward by other parties; and prolonged delays in the communication of the decision on the pardon application.

Several UN General Assembly resolutions, including those supported by the Government of Malaysia, have called on all states to ensure that “clemency procedures are fair and transparent and that prompt information is provided at all stages of the process”.¹⁸ The UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems recommend that states introduce measures to ensure that prisoners have access to legal aid including to prepare appeals and requests for pardon, in particular when facing capital punishment.¹⁹ The UN Human Rights Committee has stated that “pardon or commutation procedures should be specified in domestic legislation” and “must offer certain essential guarantees, including certainty about the processes followed and the substantive criteria applied; a right for individuals sentenced to death to initiate pardon or commutation procedures and to make representations about their personal or other relevant circumstances; a right to be informed in advance when the request will be considered; and a right to be informed promptly about the outcome of the procedure.”²⁰

¹⁵ Malaysiakini, “Pokok Sena inmate’s death linked to poor medical care post-caning: Suhakam”, 7 May 2025, [https://www.malaysiakini.com/news/742524#friendshare-link-49U\\$xfZ6J-c8aa03137e80a019e9706af4d7a2d3d7-2a8b6402635c14d87c3469209250dbdbi0](https://www.malaysiakini.com/news/742524#friendshare-link-49U$xfZ6J-c8aa03137e80a019e9706af4d7a2d3d7-2a8b6402635c14d87c3469209250dbdbi0)

¹⁶ Committee Against Torture, Concluding Observations of CAT: Saudi Arabia, UN Doc. CAT/C/CR/28/5 (2002), para.4.

¹⁷ 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.

¹⁸ See, most recently, UN General Assembly resolution 75/183 of 16 December 2020, para.7(f).

¹⁹ UN General Assembly, United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems adopted through resolution 67/187 of 20 December 2012, https://www.unodc.org/documents/justice-and-prison-reform/UN_principles_and_guidelines_on_access_to_legal_aid.pdf

²⁰ Human rights Committee, General comment No. 36 on article 6 of the International Covenant on Civil and Political Rights, on the right to life, UN Doc. CCPR/C/GC/36, 30 October 2018, para. 47.

The right to pardon is an essential safeguard to guarantee the protection of the rights of those facing the death penalty.²¹ The International Court of Justice has taken the view that such clemency procedures, though carried out by the executive rather than the judiciary, are an integral part of the overall system for ensuring justice and fairness in the legal process.²² Including because of emerging concerns on the application of the new sentencing discretion in death penalty cases, the pardon process should work as a safeguard to complement the judicial reviews in each case by considering any extra-legal issues that the courts could not consider, including due to procedural grounds, and address any gaps in the process that might have resulted in mitigating evidence not being submitted and considered by the courts.

RECOMMENDATIONS

Close to eight decades since the adoption of the Universal Declaration of Human Rights, the trend towards worldwide abolition of the death penalty is unmistakable. As of today, 145 countries – more than two-thirds of the world's countries – have abolished the death penalty in law or practice.²³ Malaysia is now in an optimal position to align itself with the global trend and join the majority of countries that have abandoned the death penalty in full and lead the way towards abolition at the regional level. As seen in the process that led to the repeal of the mandatory death penalty, human rights leadership, including through informed public debates on the human rights dimensions of the death penalty, is a critical factor in driving the process of positive human rights change.

In view of the clear goal of the abolition of the death penalty set out under international law and standards and Amnesty International's own view that it violates the right to life and is the ultimate cruel, inhuman and degrading punishment, Amnesty International urges the Government of Malaysia to abolish the death penalty for all crimes as a matter of urgency.²⁴

Pending full abolition, Amnesty International calls on the Government of Malaysia to:

- Immediately extend the official moratorium on executions established in 2018 until the death penalty is fully abolished and all death sentences are commuted.
- Swiftly introduce legislative amendments to the Dangerous Drugs Act 1952 and other laws to bring them in line with international human rights law and standards, including by repealing the death penalty and legal presumptions of guilt. Pending this, the prosecution must immediately end seeking the death penalty as sentence, including for drug-related offences.
- Urgently ensure that international safeguards for a fair trial are fully met at all stages of the proceedings, from the time of arrest and when defendants first face criminal charges, all the way through to appeals and other recourse procedures.
- Ensure that in all cases involving the application of the death penalty, the personal circumstances of the individual facing the death penalty and the particular factors of the offence, including its specific attenuating elements, are effectively documented and meaningfully considered by the courts and pardon boards.
- Impose an immediate moratorium on whipping and urgently introduce legislative amendments to remove this cruel, inhuman and degrading punishment for all offences.
- Ratify without reservations the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Covenant on Civil and Political Rights, and their optional protocols.
- Reform the pardon process to ensure that pardon procedures are an integral safeguard to guarantee justice and fairness in the legal process, including by ensuring that information on criteria used for the consideration of pardon requests and on the process of consideration of the applications is disclosed in a timely manner; those on death row can effectively prepare their application and make representations; and that applicants and their family members and legal representatives are notified of the set time for the consideration of their petition and of the outcome of deliberations in their case.

²¹ UN Safeguard no.7, UN Safeguards guaranteeing protection of the rights of those facing the death penalty, adopted in Economic and Social Council resolution 1984/50, 25 May 1984.

²² International Court of Justice, *Avena Case (Mexico v United States)*, ICJ (2004) para. 142.

²³ Amnesty International, "Abolitionist and retentionist countries as of December 2024", (ACT 50/9240/2025), 7 April 2025, <https://www.amnesty.org/en/documents/act50/9240/2025/en/>

²⁴ Among other examples, Article 6.6 of the International Covenant on Civil and Political Rights.