

Drug-related offences and the abolition of the death penalty in Malaysia

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Background (1)

- 9 May 2018, a new government was elected in Malaysia. One of the new government's manifesto pledges was to abolish the mandatory death penalty in all Acts. However, quite soon thereafter, officials like the new Attorney General were talking of the total abolition of the death penalty.
- Malaysia is not a party to the International Covenant on Civil and Political Rights (ICCPR) nor to its Second Optional Protocol (OP2) aimed at the abolition of the death penalty. Nor is it a party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), nor its First Optional Protocol (OPCAT).
- 28 September 2018, Prime Minister Mahathir addresses the United Nations General Assembly in New York. Announced that Malaysia will accede to the remaining 6 international human rights treaties yet to be signed.

Background (2)

- On 10 October 2018, Minister in charge of Law announced that the government will totally abolish the death penalty in Malaysia. He “hoped” there would be a moratorium on all executions in Malaysia pending passage of amending legislation in Parliament. He said the bill was being finalized and would be introduced in the Parliamentary sitting beginning 15 October 2018. Did not happen.
- On 15 October 2018, the Minister in charge of Law is reported to have said that there was a government-sanctioned moratorium in place in respect of executions. He understood the feelings of families and assured that convicted persons will serve long sentences in prison, maybe up to 30 years.

Background (3)

- On 20 October 2018, the Minister in charge of Law is reported to have said there will be no U-turn on abolishing the death penalty in Malaysia, but government is considering a victim compensation fund. The issue will NOT be referred to a Parliamentary select committee as the Cabinet had already decided to end capital punishment.
- Malaysia has consistently voted against the UN resolution for a universal moratorium on the use of the death penalty since its first tabling in 2007. On 20 October 2018 I communicated with the Minister for Foreign Affairs to ask that, in light of the Cabinet decision to end the use of the death penalty and to order a moratorium on executions, the Malaysian Government should vote to support the worldwide moratorium on the use of the death penalty. This was done in November/December 2018.

Background (4)

- Since the announcement of intended abolition, “pushback” from opposition parties and media attention on families of murder victims. Threats of public demonstrations.
- Major demonstration in Kuala Lumpur to oppose accession to the International Covenant on the Elimination of All Forms of Racial Discrimination. Government climbed down, PM changed his mind.
- Similar(?) group threatens another major demonstration to oppose total abolition of the death penalty.
- So now discussions have returned to only the abolition of the mandatory death penalty.
- Situation is fluid because of the government’s weakness and sensitivity over this issue.

Drug-related offences (1)

- Dangerous Drugs Act 1952 – originally introduced by British Colonial government to combat threat of opium and related substances.
- Progressively expanded by Malayan/Malaysian government to give effect to the UN Single Convention on Narcotic Drugs 1961, and eventually introduced the discretionary death penalty.
- 1983 – death penalty made mandatory – Section 39B.
- Double presumption.
- 2018 – Section 39B amended to give judge discretion of non-imposition of death penalty under certain circumstances.
- Present discussion of removing the death penalty altogether because of failure of deterrent factor and inherent unfairness of double presumption.

Drug-related offences (2)

- 30 August 2018, the High Court at Shah Alam sentenced 29-year-old father of 1 Muhammad Lukman to death by hanging after he was convicted of possession, processing and distribution of cannabis oil. (He was arrested in December 2015 for possessing 3.1 litres of cannabis oil, 279 grams of compressed cannabis and 1.4kg of a substance containing tetrahydrocannabinol (THC)).
- 17 September 2018, a leading government member of Parliament, Nurul Izzah Anwar, is reported to have said she would write to the Attorney-General to appeal for a pardon for Lukman on the basis of the circumstances of his case, and for the legalisation of medical marijuana. Lukman's lawyer said that Lukman only wanted to assist patients who were suffering from ailments that can be treated by THC, an active ingredient in cannabis.

Drug-related offences (3)

- 18 September 2018, Prime Minister Mahathir is reported to have said the government should review Lukman's death penalty for medical marijuana.
- On 12 October 2018 the Minister of Youth and Sports is reported to have said the Cabinet had agreed to a moratorium on Lukman's death penalty. Also reported to have said the Cabinet agreed "to put a moratorium on the death penalty which will be taken down".
- Parliament of Malaysia hosted a 2-day workshop on the abolition of the death penalty organised by ECPM on 30 and 31 October 2018. Highlighted non-effectiveness of death penalty as a deterrent.
- Public seminar by Malaysian Coalition Against the Death Penalty on 11 and 12 January 2019. Press statements and press interviews followed.

Next steps/concerns

- Public exhibition on abolition of the death penalty planned for 1 March 2019.
- Next session of the House of Representatives runs from 11 March to 11 April 2019. The Senate will be in session from 22 April 2019.
- Possibility of defeat of total abolition in the House of Representatives due to public opinion. Alternative of partial abolition. Defeat also possible in the Senate, where the current government does not have a majority.
- Fate of the 1,278 inmates on death row – form of replacement sentence? 900+ of them have been convicted for drug-related offences.