

Drug Offences and the Death Penalty in Malaysia: Fair Trial Rights and Ramifications

Report Briefing

Key Findings and Recommendations

Since 2018, Malaysia has witnessed substantial progress in working towards the abolition of the death penalty. Of most significance in this context, was the introduction of an official moratorium on all executions in 2018, and the introduction of a discretionary death penalty for drug-trafficking offences in a number of limited circumstances, also in 2018.

Notwithstanding, this report has demonstrated how the current Malaysian death penalty framework falls short of current fair trial guarantees and standards that are enshrined either domestically or internationally. Lawyers appearing in criminal trials with experience in death penalty cases who were interviewed for this report, illuminated the ways in which these standards and guarantees are undermined.

Common themes that emerged in these interviews were:

- the unique challenges faced by foreign national defendants who may not have adequate access to interpreters at all stages of a criminal matter;
- that legal aid funding is limited which has an impact on the way in which counsel can defend the matter effectively at all stages of the trial;
- that discovery by the prosecution is insufficient;
- that legal representation is not provided for during the petitions and clemency process because the framework does not necessarily allow for it;
- that the petitions and clemency process can be arbitrary; and
- that reasons for decisions, or dissenting judgments are not published in certain cases.

This was supported by our analysis of cases, which demonstrated the challenges that the drug trafficking provisions pursuant to the DDA present. In particular, our analysis illustrated the four concerns arising in connection with the operation of the double presumptions: unclear wording of the legislation; that the provisions inadvertently provide enforcement agencies with judicial power; that the double presumptions shift the evidential burden on to the accused and that the reforms are not retrospective.

Where the state is empowered to impose the death penalty – the ultimate irrevocable sentence – the judicial system must uphold access to justice and fair trial procedures to the highest standards available.



Evident throughout this report is that a significant population of those sentenced to death in Malaysia is comprised of individuals convicted of drug offending, many of whom face socio- economic, nationality and language barriers that prohibit their access to the requisite level of legal assistance needed to properly test the prosecution case. This is compounded by legal frameworks that fall short of ensuring fair trial guarantees that are paramount. .



Further information about this report

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Full report available: <https://www.monash.edu/law/research/drug-offences-and-the-death-penalty-in-malaysia/>

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