

Mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions

Ref.: OL MYS 7/2021
(Please use this reference in your reply)

22 November 2021

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on extrajudicial, summary or arbitrary executions, pursuant to Human Rights Council resolution 44/5.

In this connection, I am writing to your Excellency's Government regarding **Malaysia's voluntary pledge on the death penalty in the context of your candidacy for the United Nations Human Rights Council for the term 2022-2024.**

I warmly welcome that the list of pledges and commitments includes reference to the death penalty, stating, "on the issue of death penalty, a moratorium has been imposed on all executions of death row inmates since 2018". The pledge further notes that "in 2019, the Government of Malaysia commissioned a study to review the mandatory death penalty for 11 offences to give discretionary powers to the courts in commuting sentences for those offences, constituting a policy shift that will have a major impact on the justice system of Malaysia."¹

I would like to take this opportunity to share relevant standards, which I hope can be taken into consideration as part of the study. In particular, I would like to highlight that a mandatory death sentence fails to take into account the defendant's personal circumstances and the circumstances of the offence. Consequently, it does not permit distinctions to be made between degrees of seriousness of the particular crime for which the penalty is imposed.² Furthermore, a mandatory sentence also undermines the separation of powers between the legislative and judicial organs of the State, at least in the context of capital crimes. The legislature essentially takes the judiciary's decision as to the most appropriate sentence in all like cases.³ In this regard, mandatory death sentences, which leave the domestic courts with no discretion, are arbitrary in nature. I also note that the 2020 General Assembly resolution on the Moratorium on the use of the death penalty calls on states to "reduce the number of offences for which the death penalty may be imposed, including by considering removing the mandatory application of the death penalty."⁴ I welcome that Malaysia voted in favour of this resolution.⁵

In this regard, abolishing the mandatory death penalty in Malaysia would be a highly commendable and important step towards bringing Malaysia's legislation closer in line with international standards on the death penalty.

I would like to take this opportunity to request information on the progress of the study commissioned in 2019 and the steps envisaged to end the mandatory death

¹ Malaysia's candidature to the United Nations Human Rights Council for the term 2022-2024, Voluntary Pledges and Commitments, para 2 (i)

² Report of the Secretary-General, Capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty, E/2015/49, para 63

³ Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, A/67/275, para 62

⁴ Moratorium on the use of the death penalty, A/RES/75/183
Reports of the Third Committee, A/75/PV.46, page 18

penalty in Malaysia. I would also like to express my availability and willingness to engage in constructive conversations with your Excellency's Government's authorities - and to offer advice and assistance where helpful - in relation to this and any other efforts to reform the death penalty in Malaysia.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting [website](#) after 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please accept, Excellency, the assurances of my highest consideration.

Morris Tidball-Binz
Special Rapporteur on extrajudicial, summary or arbitrary executions