



Framing Death Penalty Politics in Malaysia

Thaatchayini Kananatu

Monash University Malaysia, Malaysia

Abstract

The death penalty in Malaysia is a British colonial legacy that has undergone significant scrutiny in recent times. While the Malaysian *Federal Constitution 1957* provides that ‘no person shall be deprived of his life or personal liberty save in accordance with law’, there are several criminal offences (including drug-related crimes) that impose the mandatory and discretionary death penalty. Using Benford and Snow’s framing processes, this paper reviews death penalty politics in Malaysia by analysing the rhetoric of abolitionists and retentionists. The abolitionists, comprising activist lawyers and non-government organisations, tend to use ‘human rights’ and ‘injustice’ frames, which humanise the ‘criminal’ and gain international support. The retentionists, such as victims’ families, use a ‘victims’ justice’ frame emphasising the ‘inhuman’ nature of violent crimes. In addition, the retentionist state shifts between ‘national security’ and ‘national development’ frames. This paper finds that death penalty politics in Malaysia is predominantly a politics of framing.

Keywords: Death penalty; Malaysia; framing processes; politics of framing; human rights.

Introduction

Many that live deserve death. And some that die deserve life. Can you give it to them? Then do not be too eager to deal out death in judgement. (J. R. R. Tolkien, 1954)

Death penalty politics in Malaysia is a contentious story that revolves around the human rights narrative, the call for national sovereignty and security, and social justice. This article traces the historical background of capital punishment in Malaysia from the 1970s to uncover the political trends and official state and civil society rhetoric concerning the death penalty. Using the Benford and Snow (2000) framing processes theory, the various frames—‘human rights’, ‘injustice’, ‘national security’, ‘victims’ justice’ and ‘vulnerabilities’—are identified and located in various online media resources and legal cases, as well as local, regional and international commentaries pertaining to the death penalty in Malaysia.

The death penalty in Malaysia has been studied from various angles: the comparative law and the ‘war on drugs’ perspectives (Harring 1991; Leechaianan and Longmire 2013), the legal and justice approach (Dhillon, Mohammad and Miin 2012), the public perception study (Hood 2012), the ‘Asian values’ or cultural relativist perspective (Novak 2014), the Islamic or Shari’ah law viewpoint (Aziz 2015), miscarriage of justice due to judicial errors (Lim, Ngeow and Arivanathan 2018), universal human rights and international fair trial standards (Antolak-Saper et al. 2020), the criminal justice analysis (Quraishi 2020) and the gender perspective (Harry 2021). These studies have expounded on the reasons for the Malaysian state’s retentionist stand, the legitimisation of the death penalty for drug crimes (in particular) and the sociopolitical challenges faced by the abolitionists.



A similar trend is seen in Singapore's death penalty politics. Singapore and Malaysia share a common history, common law heritage, and common emphasis on the 'Asian values' political discourse and national development. Yet, despite the obvious historical, political, social and legal parallels, past studies concerning the death penalty have been nation-centric. For instance, studies that have examined the political strategies of abolitionist movements centred on the 'war on drugs' in Singapore but not Malaysia, despite the fact that Malaysian nationals account for a high percentage of Singapore's death row population (Chia et al. 2017; Yap and Tan 2020).

More recent studies have begun to highlight the deeper connections, especially in terms of political mobilisation, resources and networking, among Malaysian and Singaporean grassroots movements and cause lawyers (Novak 2020, 2021). These studies have revealed the emergence of a strong transnational abolitionist movement, using human rights litigation across Commonwealth countries and the strategic utilisation of constitutional norms by both the Malaysian and Singaporean legal activists, civil society organisations and abolitionist movements (Novak 2020, 2021).

Studying strategic litigation and social movement strategies is useful to examine the politico-legal mobilisation, resource mobilisation, networking, tactics and overall game plan of more organised abolitionist movements. However, it does not fully unveil the grievances and concerns of victims' families, who tend to be less organised but express resistance to death penalty reform. Recent studies in the United States have ventured into examining death penalty rhetoric from a framing perspective, such as the 'justice' frame that gives closure for victims' families and the 'innocence' frame used to describe the wrongfully convicted (Berns 2013).

Framing capital punishment as 'justice' or 'injustice' or as a human rights issue is not only useful for victims' families, human rights activists and the general public but also can be strategically utilised by the state or government. In a case study of death penalty politics in Russia (Semukhina and Galliher 2009), the government was facing difficulties obtaining public support for the abolition of the death penalty. The Russian presidential intention of removing capital punishment was primarily due to European Union (EU) politics and Russia's plan to eventually become a member of the EU (Semukhina and Galliher 2009: 132). Despite public resistance, the Russian Government went ahead in placing a moratorium on the death sentence by turning the death penalty into a 'symbolic law'—that is, a law that is in the statute books but not enforced (Semukhina and Galliher 2009: 132).

Another example is the study of death penalty politics in the United Kingdom (UK) (Bailey 2000; Flanagan 2012), which found that in the 1960s, Conservative Party retentionists framed the death penalty as significant for 'victims justice' while Labour Party abolitionists framed capital punishment as a gross 'injustice' against human rights. However, from the 1990s onwards, the abolition movement in the UK dominated the discourse and democratic space due to a lack of public participation in discussion of the death penalty (Flanagan 2012: 522).

In essence, framing processes provide a more holistic approach to studying both the abolitionists and retentionists—which comprise a diverse pool of political and social actors: state authorities, activist lawyers, civil society activists, non-government organisations, victims' families and the general public. This article explores the political framing of capital punishment in Malaysia, a controversial legal and sociopolitical issue, by the main actors: the Malaysian Government, the legal complex (comprising the Malaysian Bar Council, cause lawyers and certain members of the judiciary), the victims' families and civil society as a whole (local, regional and international human rights organisations, as well as Islamic groups). By taking a broader perspective, this article analyses death penalty rhetoric within the larger context of politics and society in Malaysia.

Setting the Stage

Capital punishment in Malaysia is a British colonial legacy based on colonial ideologies of law and punishment. Malaya (as it was known in colonial times) declared independence in 1957, and Singapore (formerly part of Malaya) followed suit in 1965. Post-independence, both countries have retained their common law heritage. The Malaysian *Penal Code 1936* (Penal Code) is modelled on the *Indian Penal Code 1861*, which was enacted during the British colonisation of India and the Straits Settlements—that is, Malaya and Singapore (Chan and Wright 2016). The serious offences under the Penal Code for which the mandatory death penalty applies include murder (s 302) and treason (ss 121 and 121A). Other offences which carry the mandatory death penalty include drug trafficking (*Dangerous Drugs Act 1952* s 39B) and offences related to firearms (*Firearms (Increased Penalties) Act 1971* ss 3, 3A, 7). Various other offences in the Penal Code—such as rape or attempted rape, gang robbery and weapons trafficking—carry the discretionary death penalty.

Although the UK suspended the death penalty for murder in 1965 and completely abolished it in 1970 (Bailey 2000: 346), its former colonies of Malaysia and Singapore have retained it. In fact, there was a proliferation of capital punishment during the

1970s due to sweeping state campaigns that declared a ‘war on drugs’. In 1975, the Malaysian Parliament prescribed the death penalty for drug-trafficking offences, in line with the government’s campaign to eliminate drug addiction among the Malaysian population (Harring 1991: 365). The *Dangerous Drugs Act 1952* was amended, and the *Dangerous Drugs (Amendment) Act 1975* included the presumption of trafficking under section 37(d). This inevitably led to the challenge of the ‘double presumption’, whereby the accused is presumed to be guilty of trafficking when deemed to be in possession of drugs of a prescribed quantity (Amnesty International 2019: 7).

These legal reforms shifted the burden of proof to the accused, overriding the more traditional legal presumption of innocence (where an accused is presumed to be innocent until proven guilty). It has been argued that the presumption of innocence is said to be implied in Article 5 of the *Federal Constitution 1957* (FC), which states that ‘no person shall be deprived of his life or personal liberty save in accordance with law’ (Antolak-Saper et al. 2020: 15). In 1983, a further amendment to the law, the *Dangerous Drugs (Amendment) Act 1983*, proceeded to impose the mandatory death penalty for drug-trafficking offences. These major amendments to the drug laws were particularly due to the sudden rise in drug addiction among youth and the government’s need to appease the Malay Muslim electorate (Harring 1991: 369).

It is crucial to understand the sociopolitical context in Malaysia, particularly from 1970 to 1989. Malaysia is a multicultural country, comprising Malays and other natives (collectively known as the *Bumiputera* or ‘sons of the soil’), Chinese, Indians and other minority groups (collectively known as ‘Others’). The majority comprises the Malays, who are of the Muslim faith; the minority groups, including the Chinese, the Indians and Others, are adherents of religions such as Buddhism, Hinduism and Christianity.

1969 was a turning point in Malaysian history—it witnessed the May 13 race riots between Malays and Chinese (*The Times of India*: 8; Case 2004: 87). It was after this incident that Malaysia experienced a tumultuous time leading to a repression of minority political voices. The state began to utilise and enforce several repressive and draconian laws, such as the infamous *Internal Security Act 1960*, which authorises detention without trial, and the *Sedition Act 1948*, which prohibits speech and publications that have ‘seditious tendency’ (subversion against the state). These laws were increasingly used to curb any form of dissent and completely restrict the right to freedom of expression, assembly and association (guaranteed under Article 10 of the FC). Thus, Malaysia became more authoritarian and was known as an illiberal democracy or a ‘pseudo-democracy’, which allowed for democratic elections but restricted civil liberties (Case 2004: 85; Khoo 2017: 143).

The 1980s witnessed the emergence of a powerful executive branch that further weakened an increasingly fragile set of constitutional rights and protections, legitimised by ‘Asian values’ and the so-called ‘war on drugs’ (Novak 2014: 303). The then-prime minister Mahathir Mohamad called for a heavier emphasis on national security and the protection of ‘national sovereignty’ (Harring 1991: 371) and heavily criticised Western liberal ideas and ideologies of civil liberties (Khoo 2017: 147). Generally, the sociopolitical climate during the 1970–1989 period witnessed state domination of the political space and control of what was deemed a civil society influenced by Western liberal ideology. Hence, any calls to abolish the death penalty were dismissed and squashed easily.

Framing the Discourse: ‘War on Drugs’ Versus ‘Injustice’

Framing processes theory (Snow et al. 1986) was developed to understand participation in a social movement, bridging the social, psychological and resource mobilisation factors. Development of the framing processes theory became useful to interpret ‘social movement dynamics’ and collective action, as well as the conceptualisation of ‘frames’ and the sociocultural contexts and ideologies behind them (Benford and Snow 2000: 611–612). As Goffman wrote regarding the ‘schemata of interpretation’ (1974: 21), frames are meant to interpret life events and develop an understanding of experiences (Adams and Goffman 1979). This article uses the Benford and Snow (2000) framing processes theory to study the rhetoric of both the abolitionists and the retentionists to analyse the interpretation and understanding of the death penalty in Malaysia.

The Malaysian state, particularly from 1970 to 1989, was centred on safeguarding national security and sovereignty by declaring a ‘war on drugs’. It is argued that the state’s public policy on drugs resulted in the framing of the death penalty as a necessary evil. The state diagnosed or identified dangerous drugs as a serious social concern that would jeopardise any nation-building efforts. This is termed ‘diagnostic framing’ or ‘problem identification and attributions’ (Benford and Snow 2000: 615). A war against drugs also served to appease the majority Malay Muslim electorate, which was particularly concerned about the proliferation of drug culture among the youth. Essentially, drugs were portrayed as a national ‘problem’ that would destabilise the nation—socially and economically.

The Malaysian state legitimised its retentionist policy by emphasising that harsh penalties such as the death penalty were required to deter drug trafficking. The ‘prognosis framing’, which articulates a prognosis or solution to the problem, often provides for a plan and related strategies (Benford and Snow 2000: 616). The state’s prognosis, or solution, to the drug problem was taking a heavy hand to put an end to the trafficking of drugs into Malaysia. The official plan included the strategic imposition of heavier penalties on drug-related offences, framed as a deterrence mechanism and hence the only viable ‘solution’ to the problem of drug crimes in Malaysia.

The declaration of a ‘war on drugs’ became a final political frame for the state as it not only provided what Benford and Snow (2000:617) referred to as ‘motivational framing’ or ‘call to arms’ but also served to construct a ‘rationale for engaging in collective action’ (Benford and Snow 2000: 617). The Malaysian polity as a collective was made to understand that national security was at serious risk. As then–prime minister Mahathir iterated, the usage of drugs is a ‘security problem with implications for the country’s continued viability and the maintenance of its national sovereignty’ (Harring 1991: 371). Hence, a call to arms was not only necessary but also urgently required to save the nation.

On the flip side, cause lawyers or activist lawyers have always been at the forefront in the abolition of the death penalty for drug crimes in Malaysia. One of the key arguments presented by the abolitionists was that the so-called ‘war on drugs’ posed a threat to key ‘fundamental ideals inherent in the rule of the law, such as the presumption of innocence and the importance of due process’ (Harring 1991:366). The Malaysian Bar Council and activist lawyers with human rights–oriented civil society groups were calling out the ‘injustice’ of the death penalty from the human rights perspective. The legal complex had always been actively involved in civil society initiatives that drew attention to the draconian laws they identified and diagnosed as the source of the ‘problem’. The ‘injustice’ frame became useful to highlight that the state was, in fact, impinging on the constitutional rights and liberties of those accused of drug crimes, particularly the right to life in Article 5 of the FC.

The prognosis or ‘solution’ was essentially to abolish the death penalty, particularly for drug crimes, as it went against the principles of international human rights and fair trial standards. However, due to the state’s restrictions on civil liberties and the clampdown on any form of dissent or resistance to government policy, the abolitionists were unable to mobilise the public successfully. During this time, the *Printing Presses and Publications Act 1984* was utilised heavily to restrict the freedom of the press; hence, any publications that were found to be anti-government were closed and their printing licences withdrawn (Khoo 2017: 146). The abolitionists’ call to action was dismissed easily by the overriding majority whose fear and concern centred on the war on drugs and the government’s clampdown on any form of dissent. The overriding strategy of the government’s framing set in motion a growing public reluctance to abolish the death penalty and dismiss any future calls for abolition.

From the 1990s to the 2000s, the government shifted focus towards rapid national development and economic growth. As such, the mandatory death penalty for drug trafficking continued to be framed by the state as a necessary evil to curb the drug problem—which was counterproductive to raising the socio-economic status of Malaysians. Moreover, the government intended to show an iron fist to Western ‘foreigners’ who were increasingly being caught under the Malaysian drug laws. Such was the case of Kerry Lane Wiley—an American lecturer caught in possession of marijuana in 1989 (Anderson and Van Atta 1990; Deans 1990).

Wiley’s legal representative was Karpal Singh, a renowned Malaysian human rights lawyer, a senior member of the opposition (i.e., the Democratic Action Party) and a prominent critic of the drug laws. During the Wiley case, Singh lamented the draconian laws and clear lack of fair trial standards, stating: ‘my God, if the judge says, “I don’t accept your word,” you’re gone ... there are no proper checks and balances in our system ... you hang somebody and you can’t say later, “look here, we made a mistake”’ (Deans 1990). Karpal Singh’s statement depicts the drug laws as failing to adhere to due process and international human rights standards and disrespecting the sacred right to life embodied in the constitution. Human rights advocates and defence lawyers were clearly diagnosing the problem from an opposite stance—the accused is framed as a victim of draconian laws that fail to adhere to fair trial standards.

However, the government continued to take a hard approach—without any leniency for Malaysians or foreign nationals. From the government’s perspective, the problem was not the draconian laws but the accused, who were depicted as a serious threat to the nation. The then–deputy prime minister Ghafar Baba was reported to have stated clearly at a special United Nations General Assembly that, ‘our laws on drugs are purposefully tough ... We believe that this is the correct way to deal with the problem ... We need not be apologetic’ (Deans 1990). In fact, the former prime minister Mahathir Mohamad was reported to have equated drug trafficking to murder in this statement: ‘we think [drug dealers] are killers, because so many of these young boys who have taken these drugs are dying or dead. It’s murder’ (Anderson and Van Atta 1990: D32). Clearly, the state’s prognosis continued to insist that harsh penalties were required to address the drug problem.

Wiley was eventually ‘set free’ as the court found that the prosecution was unable to prove that the substance in his possession was, in fact, marijuana (*Chicago Tribune* 1993). However, others like Wiley were subjected to the gallows. The report indicated that 39 foreigners had been hanged to death under the harsh drug laws in Malaysia (*Chicago Tribune* 1993).

Political Opportunities and Transnational Networking

From the 2000s, a major political shift was beginning to take place, and the call for attention to human rights and civil liberties, as well as the abolition of the death penalty, became increasingly louder. The rise of three major collective mobilisations—Lawyers Walk for Justice led by the Malaysian Bar Council, the Coalition for Clean and Fair Elections or BERSIH Movement and the Hindu Rights Action Force or HINDRAF Movement—resulted in a series of public demonstrations, rallies and marches in 2007. These collective movements supported by the political opposition leaders called for major legal reform, a check on governmental controls and the abolition of draconian laws (primarily the *Internal Security Act 1960*) that suppressed the constitutional freedom of expression, assembly and association, and minority rights.

In the 2008 general elections, after the ruling party (the *Barisan Nasional* or National Front) lost its two-thirds majority in parliament, the government attempted to placate the electorate through its new socio-economic policies and reforms. In fact, in 2010, minister Nazri Aziz, who was responsible for ‘legal and parliamentary affairs’, reportedly stated that ‘if it is wrong to take someone’s life, then the government should not do it either’ (Lim, Ngeow and Arivananthan 2018: 2). In 2011, the then–prime minister Najib Razak announced the New Economic Model and Government Transformation Programme and promised a review of the criminal justice system as a whole (Farrar 2013: 231).

Despite the government’s assurances, the abolitionists continued to mobilise and raise awareness about the injustice of the death penalty. However, political mobilisation this time was exploring a new democratic space—the internet and social media (Weiss 2013). The Malaysian Bar Council, which had always advocated for human rights and civil liberties in Malaysia, maintained its stand at the forefront of a newly emerging civil society movement’s call for abolition of the death penalty (Novak 2014: 305). The current abolitionist movement in Malaysia is supported primarily by a campaign by the Bar Council of Malaysia and the Human Rights Commission of Malaysia with support from various organisations, including Lawyers for Liberty, Amnesty International Malaysia, Civil Rights Committee of the Kuala Lumpur and Selangor Chinese Assembly Hall, Malaysians Against the Death Penalty and Torture (MADPET) and the National Human Rights Society of Malaysia (Quraishi 2020: 144).

Activist lawyers involved in anti–death penalty organisations sought international and transnational support and advocacy to bring an end to the mandatory death sentence. Framing the death penalty as a ‘human rights’ issue was strategic but required locating the arguments in a Malaysian constitutional context. Strategic litigation and taking a constitutional comparative approach became a useful tool and strategy as it utilised the ‘similarities in colonial-era laws and constitutional provisions’ to push the courts towards adopting and complying with emerging ‘constitutional norms’ (Novak 2021: 149–150). The internationally renowned Death Penalty Project worked hand-in-hand with Malaysian anti–death penalty organisations and activist lawyers to incorporate the human rights frame in the constitutional interpretations. Novak termed this the ‘boomerang model of advocacy’ (2021: 151). Essentially, the successful advocacy of abolition in one Commonwealth nation was useful in progressing an argument in another Commonwealth nation based on constitutional similarities.

One of the key issues at play was the Malaysian public’s perception of the death sentence—which was never before officially measured and determined. In 2012, the Malaysian Bar Council, together with the Death Penalty Project, commissioned a study on public attitudes by Oxford criminologist Roger Hood. The report found that there was minimal public opposition to the abolition of the death penalty, especially for drug crimes (Hood 2012). This provided the impetus for reframing the ‘drug problem’ as a less serious crime. It also helped to further the cause of removing the mandatory death sentence for drug crimes in particular.

Although Singapore is reported to have the highest execution rate for drug offences in the world, Malaysia is not far behind (Leechaianan and Longmire 2013). According to the activist lawyer–led MADPET, as of 2011, of the 441 persons sentenced to death, 228 were convicted for drug-trafficking offences (Shankar 2011). This is a key reason that death penalty politics in Malaysia and Singapore became centred on the problem of drug crimes and human rights activism.

Along with transnational and international networks, regional and cross-border activism became significant. For instance, the Anti-Death Penalty Asia Network was a crucial platform for Asian death penalty activism. Closer to home, activist lawyers and human rights activists in Singapore and Malaysia were starting to share strategies. Both countries had earlier declared a ‘war on drugs’ and experienced the state-led cultural relativist call for ‘Asian values’. Yap and Tan have analysed the Singaporean

state's official discourse on capital punishment for drug crimes, which centres on crime control and the 'war on drugs' (2020: 145). After achieving independence, there emerged in Singapore the Anti-Death Penalty Movement (ADPM), which operated in the fringes as Singapore took a highly restricted approach on activism and civil society movements (Chia et al. 2017: 18). The newly emerging ADPM was shifting the political frames away from the war on drugs and 'Asian values', towards 'innocence', 'justice' and the 'vulnerable'.

Framing Vulnerability: 'The Innocent Carrier' and 'the Vulnerable'

The alliance with the Singaporean ADPM and cause lawyers was a significant move on the part of the Malaysian abolitionists. It is also noted that the highest number of executions due to drug crimes was, in fact, persons of Malaysian nationalities (Yap and Tan 2020: 134). This has led to cross-border activism, particularly in the 2000s, when Malaysian Vignes Mourthi was sentenced to death for drug trafficking. Vignes Mourthi was portrayed as a young 21-year-old factory worker who was arguably an 'innocent carrier'—that is, a drug courier (Lawyers for Liberty 2010). Although the defence counsel had argued on the basis of a 'miscarriage of justice', the Singapore High Court had convicted and sentenced Vignes to death (Chia et al. 2017: 24).

Public campaigning became more prominent during the 2009 case of Malaysian drug trafficker Yong Vui Kong, who was also sentenced to death. ADPM collaborations were established with Malaysian abolitionist movements to lobby Malaysian parliamentarians and exert political pressure (Chia et al. 2017: 27). The strategies taken, which included an online campaign and a joint forum, framed the issue from a human rights perspective and sought justice for a 'vulnerable' young person from a lower socio-economic background (Save Vui Kong n.d.).

The heavy campaigning efforts by the Malaysian Bar Council and various non-government organisations and civil society groups, in addition to Hood's study (2012), culminated in significant changes in the law. In 2017, amendments were made to Section 39B of the *Dangerous Drugs Act 1952*, which previously carried the mandatory death sentence for the offence of trafficking a dangerous drug. The amendment incorporated a discretionary element in judicial sentencing, which allowed for the conviction to be punishable with death or life imprisonment and whipping of not less than 15 strokes. Azalina Othman, minister in the prime minister's department, who enabled the changes in the legislation, commented that 'the government had taken into consideration the views and suggestions of 30 million Malaysians in drafting the amendment which will add an element of mercy in a certain situation where the judge sees fit' (Antolak-Saper et al. 2020: 28). The tides were finally turning, and the 'justice' and 'human rights' frames were gaining traction with the government.

2018 was a significant turning point in the political history of Malaysia as, for the first time, the opposition party Pakatan Harapan (PH) defeated the National Front in the 14th General Elections. The newly victorious PH government had previously been a significant supporter of non-government organisations and civil society groups in their advocacy of human rights in Malaysia. In fact, they had made bold promises in their political manifesto to abolish the mandatory death sentence and proceeded to place a moratorium on executions. This sentiment was boldly shared by the new minister of law, the Hon. Liew Vui Keong, at the 2018 World Day Against the Death Penalty: 'all death penalty will be abolished ... full stop' (Antolak-Saper et al. 2020: 5).

However, there was a significant backlash to this call for abolition; certain segments of the public, especially the Malay Muslim political movements, demanded that the death penalty be retained as a means of controlling crime (Darwis 2018). As Hood's 2012 study had found, Malaysian Muslims accounted for 60 per cent of the sample and were more likely than Buddhists, Hindus and Christians to support the mandatory death penalty (Quraishi 2020: 146). The Islamic Shari'ah perspective recognising the death penalty has become increasingly significant and cannot be overlooked (Aziz 2015: 77–78; Dhillon, Mohammad and Miin 2012; Quraishi 2020: 5–27). This paper argues that Islamic Shari'ah interpretations of the death penalty must be taken into account when analysing public perceptions because Malay Muslims comprise a majority of the population.

In 2019, the PH government formed the Special Committee to Review Alternative Punishments to the Mandatory Death Penalty under the helm of retired chief justice Tan Sri Richard Malanjum to find alternatives to the mandatory death sentence (Noorsharizam 2021). Chief justice Richard Malanjum was renowned as a defender of fundamental civil liberties and had delivered judgements on the double presumption in two well-known drug-trafficking cases (Lim 2019). One of these was the Federal Court decision of *Alma Nudo Atienza v Public Prosecutor* [2019] 5 CLJ 780, where it was found that the 'presumption of innocence' is implied in the 'right to life' in Article 5(1) of the FC.

In addition, a 2019 report by Amnesty International was a significant game changer as it introduced 'vulnerability' as a diagnostic frame. The report listed the composition of people on death row:

As of February 2019, 1,281 people were reported to be on death row in Malaysia, including 568 (44%) foreign nationals. Of the total, 73% have been convicted of drug trafficking. This figure rises to a staggering 95% in the cases of women. Some ethnic minorities are overrepresented on death row, while the limited available information indicates that a large proportion of those on death row are people with less advantaged socio-economic backgrounds. (Amnesty International 2019: 5)

The ‘innocent carrier’ frame coupled with the ‘vulnerable person’ frame provided a new diagnosis of the issue—the problem was shifted away from the state’s ‘war on drugs’ to the ‘vulnerable’ persons inadvertently caught in the illegal drug trade. As Hoyle highlighted:

Some groups recognized as vulnerable—such as juveniles, pregnant women or the intellectually disabled—are in most countries excluded from the ultimate penalty by categorical exemptions, characteristics such as *race, religion and citizenship status are not protective* and are sites of discrimination in the administration of the death penalty. (2019: 177; emphasis added)

In particular, foreign nationals in Malaysia were emerging as a vulnerable group that suffered from legal discrimination in terms of their legal status, language barriers (particularly their right to interpreters in court), adequate legal representation and access to their consulate (Antolak-Saper et al. 2020: 32; Amnesty International 2019: 17; Hoyle 2019: 182). However, foreign nationals were not the only group that was overrepresented on death row. A very high proportion of the women on death row (95 per cent) were involved in drug crimes—significantly higher than their male counterparts (70 per cent) (Harry 2021: 9; Amnesty International 2019). In fact, a study of 146 cases of women on Malaysian death row for drug trafficking found that the overriding reason for offending was ‘economic factors’ (Harry 2021: 9). This indicates vulnerability in relation to both gender and socio-economic background.

The Amnesty International report also found that of the 713 Malaysian nationals on death row, 25 per cent were from the Indian ethnic minority, which accounts for seven per cent of the total Malaysian population (2019: 22). Further, there was an overrepresentation of persons from lower socio-economic groups: 44 per cent of the death row population were either unemployed, had no permanent job or worked as a labourer (Amnesty International 2019: 22).

The shifting of the diagnostic frame to ‘innocent carrier’ and ‘vulnerable persons’ was significant in the abolitionist and PH government efforts to abolish the mandatory death sentence. The PH government’s efforts were met with significant backlash—this time from the families of murder victims who wished to retain capital punishment (Bernama 2020). The primary contention of ‘victim’s justice’ is the inhuman nature of violent crimes such as murder. In fact, the retentionist argument based on ‘victim’s justice’ supports the abolition of the death penalty for nonviolent crimes such as drug crimes. The victims’ families sought justice, closure, and punishment for the perpetrators of violent crime. ‘To abolish or not to abolish’ was the real dilemma facing the incumbent Malaysian Government. Finally, the government decided to revoke the mandatory death sentence for only 11 specific offences (of which drug offences were excluded), with a new bill to be tabled in 2020 (Hector 2020). However, in March 2020, a sudden and controversial change in government and the ensuing COVID-19 pandemic lockdowns put the revocation on hold. It was reported that the proposed laws and amendments were to be presented at the July 2022 parliament sitting (Yuen 2022).

At the time of writing this article, on 10 June 2022, the Minister in the Prime Minister’s Office (Parliament and the Law), Dato’ Wan Junaidi bin Tuanku Jaafar, made a statement indicating that the government has agreed to abolish the mandatory death sentence (Sinar Project, 2022). The statement followed the presentation of the Substitute Punishment Review Report Against the Mandatory Death Penalty at a Cabinet Meeting on 8 June 2022. The statement also indicated that the government will explore changes in the criminal justice system.

Concluding Remarks

According to the Cornell Center on Death Penalty Worldwide (2020), as of October 2020, approximately 1,324 people were on death row in Malaysia, with the last known execution in 2017 (Ruban 2017). The political framing of the death penalty in Malaysia began with the state’s retentionist policy legitimised by a ‘war on drugs’ and the legal complex’s and civil society’s abolitionist stand on ‘justice’ and ‘human rights’. The period of political repression (from 1970 to 2000) had thwarted any opportunities for the abolitionists to put forward their case to the Malaysian public and change perceptions regarding the death penalty. The democratic space opened up significantly after 2001, and major human rights and civil liberties-oriented movements provided significant opportunities for the death penalty to be reframed. The Malaysian Bar Council’s significant contribution, in terms of their networking with the Death Penalty Project and transnational strategic litigation, led to further developments in shifting the public perception towards a more just and rights-based understanding. While the 2018 change in

government brought Malaysians closer to abolishing the death penalty (particularly for drug crimes), new challenges emerged in the form of the COVID-19 pandemic and political turmoil in March 2020. Despite these challenges, the abolitionists have successfully shifted the diagnostic, prognostic and motivational frames associated with the death penalty and drug crimes. The collective efforts of the legal complex (the Bar and the judiciary) and civil society organisations (national, transnational and international advocacy) have begun to make a difference as Malaysia celebrates the proposed abolition of the mandatory death penalty. This hopefully paves the way to the complete abolition of the death penalty in Malaysia.

Correspondence: Dr Thaatchaayini Kananatu, School of Arts and Social Sciences, Monash University Malaysia.
Thaatchaayini.Kananatu@monash.edu

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