



Malaysia's Compliance with the Convention on the Elimination of All Forms of Discrimination Against Women in Relation to the Death Penalty

Submitted by HAYAT

in collaboration with
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Reprieve

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HAYAT is a human rights organization based in Kuala Lumpur, Malaysia. HAYAT, which means life in Malay, is an organization committed to community mobilization and advocacy on the Right to Life and other intersectional issues. HAYAT believes in empowering grassroots communities to become active participants in advocacy on the Right to Life and torture prevention through provision of education, capacity building, and the promotion of dialogue and cooperation. HAYAT envisions a society where the Right to Life is universally respected, and torture is unequivocally condemned.

The Advocates for Human Rights (The Advocates) is a volunteer-based non governmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law. Established in 1983, The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact finding, direct legal representation, education and training, and publications. In 1991, The Advocates adopted a formal commitment to oppose the death penalty worldwide and organized a death penalty project to provide pro bono assistance on post-conviction appeals, as well as education and advocacy to end capital punishment. The Advocates currently hold a seat on the Steering Committee of the World Coalition against the Death Penalty.

Reprieve is a charitable organization registered in the United Kingdom (No. 1114900), with special consultative status with the United Nations Economic and Social Council (ECOSOC). Reprieve provides free legal and investigative support to those who have been subjected to state-sponsored

human rights abuses. In particular, we protect the rights of those facing the death penalty and of victims of arbitrary detention, torture, and extrajudicial execution.

Executive Summary

1. This report addresses Malaysia's compliance with its obligations under the Convention on the Elimination of All Forms of Discrimination Against Women with respect to the death penalty.
2. Malaysia fails to uphold its obligations under the Convention, in particular by failing to ensure consideration of gender-specific mitigation factors in criminal proceedings, and by failing to ensure that women in detention live in adequate conditions, among others mentioned at the List of Issues stage.
3. Malaysia should adopt several key recommendations to better align its death penalty practices with its obligations under the Convention. These steps, among other things, include: (1) Ensure all women who have been sentenced to death, or who are at risk of being sentenced to death, have fair access to competent legal counsel at the time of arrest and throughout their legal proceedings; (2) Ensure the conditions of detention for all women adhere to the Bangkok Rules; (3) Establish transparent procedures for the review of pardon applications, so that the pardon process serves the purpose of being a meaningful safeguard of due process; and (4) Regularly publish full and detailed information—disaggregated by gender, nationality and ethnic background—about the use of the death penalty, and individuals on death row.

IN ITS APPLICATION OF THE DEATH PENALTY, MALAYSIA FAILS TO UPHOLD ITS OBLIGATIONS UNDER THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN.

4. Malaysia is a retentionist state. Since July 2018, Malaysia has observed a de facto nationwide moratorium on all executions.¹ However, there is no moratorium on sentencing people to death.
5. The death penalty was mandatory for a variety of crimes until The Abolition of Mandatory Death Penalty Act 2023 (Act 846) went into effect on July 4, 2023, fully repealing the mandatory death penalty for all crimes and introducing sentencing discretion for all offenses in which it applied.²
6. On September 12, 2023, the Revision of Sentence of Death and Imprisonment for Natural Life (Temporary Jurisdiction of the Federal Court) Act (Act 847) went into effect, beginning a 90-day period for all individuals under a sentence of death or natural life imprisonment in Malaysia to apply for resentencing.³
7. Statistics provided by the Home Ministry show that as of February 2024, there are 1078 individuals under a sentence of death, with 103 of them being women⁴. Although the Ministry confirmed that

¹ Amnesty International, *Malaysia - Death Penalty*. Available online at <https://www.amnesty.my/abolish-death-penalty/> (last visited on February 25, 2024).

² Bernama, Abolition of Mandatory Death Penalty Act 2023 comes into force tomorrow. Available online at <https://www.nst.com.my/news/government-public-policy/2023/07/926926/abolition-mandatory-death-penalty-act-2023-comes-force> (last visited on April 8, 2024).

³ The Star, Law on revision of death sentences and life imprisonment comes into force on Sept 12. Available online at <https://www.thestar.com.my/news/nation/2023/09/11/law-on-revision-of-death-sentences-and-life-imprisonment-comes-into-force-on-sept-12> (last visited on April 8, 2024).

⁴ Question 557, Parliament reply, 1st Meeting, 3rd Term, 15th Parliament. Available online at <https://parlimen.gov.my/files/jindex/pdf/IBL27032024.pdf> (last visited on April 8, 2024).

most of the women were convicted of either drug trafficking or murder, there was no further disaggregation of data ie., the number of women convicted of offenses, their nationalities, or the number of convictions in which the offender is related to the victim. In Southeast Asia, according to research by Carolyn Hoyle and Lucy Harry, most women are sentenced to death for crimes that arise out of “their relationships, be it with their dependents, intimate romantic partners, friends, or relatives.”⁵ The Cornell Center on the Death Penalty Worldwide observes that “manipulative or coercive intimate relationships” can have an effect on the lives of women charged with drug-related offenses.⁶ Hence, data concerning co-offenders are particularly relevant for women. The Cornell Center has reported that in the global context, many women under sentence of death are victims of gender-based violence and come from disadvantaged socio-economic backgrounds.⁷ In many countries that retain the death penalty, however, courts fail to take into account a defendant’s experience as a survivor of gender-based violence when making sentencing decisions, including when a woman kills her abuser.⁸

8. Nonetheless, it remains that most women sentenced to death in Malaysia are foreign nationals.⁹ Data from 2019 indicated that there were 121 female foreign nationals on death row, 120 of whom were convicted of capital drug offenses. This trend was further substantiated by HAYAT’s recent visit to a women’s prison, whereby 95% of the women on death row in said prison were identified as foreign nationals.

Malaysia’s retention of the discretionary death penalty results in the imposition of new death sentences against women – List of Issues Paragraph 22(d)

9. The Committee requested information on Malaysia’s “plans to continue to observe the moratorium on all executions first established in July 2018, until the death penalty is fully abolished, and all death sentences are reviewed and commuted.”¹⁰
10. Malaysia has since abolished the mandatory death penalty and introduced sentencing discretion for all offenses in which it applied through the enactment of Act 846.¹¹
11. Malaysia abolished the death penalty in full for seven offenses under Act 846. However, Malaysia has twenty-seven offenses still punishable by death at the discretion of the judge, almost all of

⁵ Carolyn Hoyle & Lucy Harry, *Compounded Vulnerability: Foreign National Women and the Death Penalty in Southeast Asia*, Amicus J., Mar. 6, 2020, at 2.

⁶ Cornell Center on the Death Penalty Worldwide, “No One Believed Me”: A Global Overview of Women Facing the Death Penalty for Drug Offenses, at 22 (Sept. 2021), <http://fileserv.idpc.net/library/No-One-Believed-Me.pdf> (last visited Sept. 26, 2022).

⁷ *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty*, Cornell Center on the Death Penalty Worldwide, Sept. 2018, at 4, <https://www.deathpenaltyworldwide.org/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>.

⁸ *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty*, Cornell Center on the Death Penalty Worldwide, Sept. 2018, at 4, <https://www.deathpenaltyworldwide.org/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>.

⁹ Amnesty International, *Fatally Flawed: Why Malaysia must abolish the death penalty*, October 10, 2019, p. 6. Available online at <https://www.amnesty.org/en/documents/act50/1078/2019/en/>.

¹⁰ Convention on the Elimination of All Forms of Discrimination Against Women. List of Issues and questions related to the sixth periodic report of Malaysia (March 6, 2023) U.N. Doc. CEDAW/C/MYS/Q/6, ¶ 22(d).

¹¹ Amnesty International, *Malaysia - Death Penalty*. Available online at <https://www.amnesty.my/abolish-death-penalty/> (last visited on February 25, 2024).

which do not meet the threshold of “most serious crimes” under international law.¹² Notably, Act 846 retains the death sentence for drug trafficking under the Dangerous Drugs Act 1952, the most common conviction for individuals under sentence of death in Malaysia.¹³

12. As of November 14, 2023, 978 out of 1,020 individuals under a sentence of death or life imprisonment had applied for their sentences to be reviewed.¹⁴

13. During a monitoring period by Reprieve between November 2023 and February 2024, 99 individuals who were under a sentence of death have undergone the resentencing process under Act 847, with 4 of them being women. Notably, no woman has been resented to death at the time of this report.

14. This trend has not been translated in newer, death-eligible cases. Malaysian courts have continued to impose sentences of death despite now having the discretion to impose an alternative sentence. Based on a monitoring period between July 4, 2023 to December 27, 2023, Malaysian High Courts imposed sentences of death in 8 out of 37 cases – 6 cases of murder and 2 cases of drug trafficking. Among the 8 cases, there was at least one woman sentenced to death for murder.

15. The ongoing disparity in use of the death penalty between those within the resentencing process and those in lower courts indicates the need to establish gender responsive sentencing guidelines for death-eligible offenses, which considers gender bias in crimes committed by women, in further restricting the use of the death penalty towards its full abolition in Malaysia.

Malaysia’s retention of the death penalty invites discriminatory sentences against women – List of Issues Paragraph 22(d)

16. The Committee requested information on policies and procedures in place to ensure that women facing the death penalty are provided with access to competent and independent legal assistance of their choice from the moment of arrest to appeals and other recourse procedures.¹⁵

17. Under Article 5(3) of the Federal Constitution of Malaysia, detainees are supposed to be able to consult and be defended by the legal practitioner of their choice as soon as possible after arrest.¹⁶ Restrictions on access to legal counsel, however, remain a critical defect of Malaysia’s judicial system.¹⁷

¹² Amnesty International, *Malaysia - Death Penalty*. Available online at <https://www.amnesty.my/abolish-death-penalty/> (last visited on February 25, 2024).

¹³ Human Rights Watch, *Malaysia Repeals Mandatory Death Penalty*, April 11, 2023. Available online at <https://www.hrw.org/news/2023/04/11/malaysia-repeals-mandatory-death-penalty>.

¹⁴ The Malaysian Reserve, *95.8% death row and life prison inmates applied for sentence review after mandatory death penalty removed said Azalina*, November 14, 2023. Available online at <https://themalaysianreserve.com/2023/11/14/95-8-death-row-and-life-prison-inmates-applied-for-sentence-review-after-mandatory-death-penalty-removed-said-azalina/>.

¹⁵ Convention on the Elimination of All Forms of Discrimination Against Women. List of Issues and questions in related to the sixth periodic report of Malaysia (March 6, 2023) U.N. Doc. CEDAW/C/MYS/Q/6, ¶ 22(d).

¹⁶ Amnesty International, *Fatally Flawed: Why Malaysia must abolish the death penalty*, October 10, 2019, p. 27. Available online at <https://www.amnesty.org/en/documents/act50/1078/2019/en/>.

¹⁷ Amnesty International, *Fatally Flawed: Why Malaysia must abolish the death penalty*, October 10, 2019, p. 6. Available online at <https://www.amnesty.org/en/documents/act50/1078/2019/en/>.

18. There is a dearth of information as to the effectiveness and duration of legal aid coverage in death penalty cases in general, and information on any legal support received at pre-trial stages is rarely included in publicly available documents.¹⁸
19. Legal aid for death penalty cases is provided through a system referred to as 'Court Assigned Counsel'. This system draws from a short-listed pool of lawyers who are of appropriate practice experience to represent. However, this system is not adequate as it is up to the discretion of the appointed counsel to engage with the person facing the death penalty. Based on HAYAT's observations, few appointed lawyers engage with their clients to the level that would be considered best practice in capital cases. The stage at which they are appointed also means that an accused would not have the chance to receive legal advice or meet these lawyers during the investigation stage, nor are there any guarantees these lawyers would advise and assist on preparing or filing clemency if all legal appeals are exhausted. Lawyers who have undertaken cases through the Court Assigned Counsel system also indicated a lack of overall resources inhibits the ability of the defendants to have access to effective legal representation.¹⁹
20. Civil society organizations have found that since the start of the resentencing process in 2023, there has been a trend where hearings are resolved rapidly with limited avenues for lawyers to conduct in-depth mitigation investigations necessary to assist applicants seeking a review of their death sentences.²⁰ Even when an appointed counsel had the capacity and resources to prepare for mitigation, the court has shown significant reluctance to exercise any further discretion in the resentencing exercise. A resentencing hearing involving a quadriplegic trans woman on death row was resentenced to 30 years life imprisonment despite her condition rendering further incarceration an immediate danger to her life and wellbeing. Diabetic patients are also sentenced to whipping despite meeting medical requirements for exemption under the law. However, it is noted that the court has indicated the prison has the responsibility to make the necessary determination of fitness prior to implementing the sentence.
21. Furthermore, there has not been any formal engagement or training by the government to ensure judicial officers, practitioners and other actors within the criminal justice system are given adequate training on mitigation in general, much less gender-specific mitigation. The absence of thematic training on mitigation in reference to Malaysia's obligations under CEDAW also makes it highly unlikely for gender-related mitigating circumstances to be taken into account, especially within the resentencing process due to the time and resource constraints imposed.
22. Moreover, the conduct of the public prosecutor in resentencing hearings for cases of murder is deeply worrying.²¹ The prosecution has persisted in demanding the death penalty be retained in most murder cases regardless of circumstances and despite cases clearly exhibiting mitigating

¹⁸ Amnesty International, *Fatally Flawed: Why Malaysia must abolish the death penalty*, October 10, 2019, p. 27. Available online at <https://www.amnesty.org/en/documents/act50/1078/2019/en/>.

¹⁹ Amnesty International, *Fatally Flawed: Why Malaysia must abolish the death penalty*, October 10, 2019, p. 28. Available online at <https://www.amnesty.org/en/documents/act50/1078/2019/en/>.

²⁰ Capital Punishment Justice Project, *Malaysia: Foreign national's death sentence upheld in a first for resentencing process*, January 18, 2024. Available online at <https://www.cpjp.org.au/news/joint-statement-resentencing-process-malaysia#:~:text=Since%20the%20start%20of%20the,to%20assist%20applicants%20seeking%20a>.

²¹ Capital Punishment Justice Project, *Malaysia: Foreign national's death sentence upheld in a first for resentencing process*, January 18, 2024. Available online at <https://www.cpjp.org.au/news/joint-statement-resentencing-process-malaysia#:~:text=Since%20the%20start%20of%20the,to%20assist%20applicants%20seeking%20a>.

factors that ought to have been taken into account.²² In a case involving a woman who was convicted alongside another man for the murder of her husband, the prosecution urged the court to retain the death penalty notwithstanding the fact that she has been in prolonged separation from her children, having been incarcerated for 19 years. The woman also grappled with persistent ear and nasal infections while serving time in prison.

23. The need for expertise on gender-specific mitigation is particularly important in cases such as this one, in which a woman kills her spouse or intimate partner. Research by the Cornell Center shows that women are more likely to receive a death sentence when the adjudicating authority perceives that they are violating entrenched gender norms, being cast as the “femme fatale” or the “witch.” Women are often put on trial not only for acts they performed but also for allegedly being “a bad wife, a bad mother, and a bad woman.”²³
24. Those on death row, should their sentences be upheld after the resentencing process, will be eligible to apply for pardon from the Sultan or Ruler under Article 42 of the Federal Constitution.²⁴ No laws outline the process for applying for a pardon nor does any law set out what criteria should be considered or how pardon decisions should be communicated.²⁵ While general principles of clemencies are captured within the Federal Constitution and respective state constitutions, the absence of a clear, regulated process has led to the development of “unwritten rules” to apply for pardon.²⁶ Families and lawyers have described the application process as simple but “not satisfactory,” largely because of lack of transparency and prolonged periods without any feedback.²⁷ The lack of transparent procedures and criteria introduces additional opportunities for gender bias to shape decision making, as officials consider which women are “worthy” of a pardon but never need to explain their conclusions.
25. Malaysian law does not guarantee the right to legal counsel to support the pardon application process.²⁸ While some can afford to hire a lawyer privately to assist them, lawyers have indicated that in the majority of cases prisoners on death row have been preparing such petitions by themselves or with the support of their families and, to some extent, prison officials.²⁹ Some lawyers have reported the quality of the pardon petition varies enormously depending on whether it has

²² Capital Punishment Justice Project, *Malaysia: Foreign national’s death sentence upheld in a first for resentencing process*, January 18, 2024. Available online at <https://www.cjpp.org.au/news/joint-statement-resentencing-process-malaysia#:~:text=Since%20the%20start%20of%20the,to%20assist%20applicants%20seeking%20a>.

²³ Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty, Cornell Center on the Death Penalty Worldwide, Sept. 2018, at 4, <https://www.deathpenaltyworldwide.org/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>.

²⁴ Amnesty International, *Fatally Flawed: Why Malaysia must abolish the death penalty*, October 10, 2019, p. 37. Available online at <https://www.amnesty.org/en/documents/act50/1078/2019/en/>.

²⁵ Amnesty International, *Fatally Flawed: Why Malaysia must abolish the death penalty*, October 10, 2019, p. 37. Available online at <https://www.amnesty.org/en/documents/act50/1078/2019/en/>.

²⁶ Amnesty International, *Fatally Flawed: Why Malaysia must abolish the death penalty*, October 10, 2019, p. 37. Available online at <https://www.amnesty.org/en/documents/act50/1078/2019/en/>.

²⁷ Amnesty International, *Fatally Flawed: Why Malaysia must abolish the death penalty*, October 10, 2019, p. 37. Available online at <https://www.amnesty.org/en/documents/act50/1078/2019/en/>.

²⁸ Amnesty International, *Fatally Flawed: Why Malaysia must abolish the death penalty*, October 10, 2019, p. 39. Available online at <https://www.amnesty.org/en/documents/act50/1078/2019/en/>.

²⁹ Amnesty International, *Fatally Flawed: Why Malaysia must abolish the death penalty*, October 10, 2019, p. 39. Available online at <https://www.amnesty.org/en/documents/act50/1078/2019/en/>.

been prepared with the support of a legal representative or not, including in its structure, argumentation, and credibility.³⁰

26. Even when legal aid resources and pro-bono legal support are available, the decision on who gets that support is not transparent and creates an additional degree of arbitrariness and discrimination in the death penalty system.³¹ For example, a lawyer who had visited two different prisons on three occasions to provide assistance with the pardon applications told Amnesty International that he generally arrives at the prison with other volunteer lawyers on the agreed date and the prisoners have already been selected by the officials.³² On all three occasions, no foreign nationals were included in the groups, despite the high number of non-Malaysians under sentence of death in those prisons.
27. There are also inherent inconsistencies with how clemencies are granted by different states. The inconsistencies generally revolve around whether the post-clemency prison sentence would take place on the date of incarceration or from the date of issuance of clemency. When clemency is issued in the latter form, inmates may be required to serve an additional life sentence (30 years) even if they have previously served 20 years imprisonment on death row.

Malaysia's retention of the death penalty ignores gender-specific healthcare and other needs of women living in detention – List of Issues Paragraph 22(d)

28. Although the Committee did not request information on living conditions of women on death row in Malaysia, the authors are compelled to provide recent findings that came to light based on interviews with 10 women currently on death row.
29. These interviews were conducted under the auspices of a grant to pursue a gender-based and intersectional approach to the question of the death penalty. The primary recipients of the grant are the World Coalition Against the Death Penalty, The Advocates for Human Rights, and the Cornell Center on the Death Penalty Worldwide. The Anti-Death Penalty Asia Network (ADPAN) received funding to conduct interviews with women on death row, in this context. The interviews were conducted by ADPAN, and HAYAT.
30. People sentenced to death in Malaysia spend 23 hours per day in their cells, and this holds true for women too. They get an hour of activity time outside of their cells (albeit within the block) daily: 30 minutes in the morning, and 30 minutes in the evening. This does not include the time provision for visits by their lawyers or family members – though for foreign nationals, family visits are incredibly rare. On top of that, there are periods of time where the women would be deprived of their activity hour; for instance, a few prisoners revealed that they had been deprived of it for two weeks presumably due to the lack of prison staff.
31. Each prisoner is allowed to have up to RM150/month (about EUR30) in their commissary accounts, and RM50 (about EUR10) for prepaid phone access – charged at RM2/minute (about EUR0.40).

³⁰ Amnesty International, *Fatally Flawed: Why Malaysia must abolish the death penalty*, October 10, 2019, p. 39. Available online at <https://www.amnesty.org/en/documents/act50/1078/2019/en/>.

³¹ Amnesty International, *Fatally Flawed: Why Malaysia must abolish the death penalty*, October 10, 2019, p. 39. Available online at <https://www.amnesty.org/en/documents/act50/1078/2019/en/>.

³² Amnesty International, *Fatally Flawed: Why Malaysia must abolish the death penalty*, October 10, 2019, p. 39. Available online at <https://www.amnesty.org/en/documents/act50/1078/2019/en/>.

Women on death row in the facility generally purchase shampoo, soap, and sanitary pads from the prison's commissary.

32. For those who do not receive money required for daily essentials, they rely on either allowances from diplomatic missions (at varying rates) or the prison's general provision of essentials. The Iranian Embassy, for instance, provides their nationals on death row in Malaysia with RM100 (about EUR20) per month, while the Indonesian Embassy would provide their nationals on death row with merely RM100 (about EUR20) per year.
33. Civil society organizations submitted at the List of Issues stage that there is no access to gender-specific healthcare for women in detention in Malaysia, such as access to a gynecologist or sufficient sanitary pads. This is contrary to the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders, also known as the Bangkok Rules.
34. The interviews confirm this issue and more. In one prison, women on death row are asked weekly to notify prison staff of any ailments they hope to get addressed at the clinic by noting down their 'body numbers'. The medical attention to be given, however, hinges on what seems like a 'lottery' system: the clinic randomly selects prison numbers weekly for appointments to be scheduled accordingly. This list gets reset weekly; thus it is entirely possible for one to not get 'selected' for a medical appointment over a lengthy period of time.
35. This 'lottery' system of medical appointments has grave implications. For one prisoner, it took her nearly a year of severe coughs before she was finally diagnosed and treated for tuberculosis (TB) upon intervention from her defense lawyer. For another elderly prisoner, she had suffered vaginal bleeding for as long as two years before receiving medical attention from a specialist for her now-diagnosed cyst. Meanwhile, one elderly prisoner who is suffering from partial loss of sight and spinal injuries has yet to be operated upon due to cost — and noted that her embassy is not able to cover the expense. This instance is in violation of the Nelson Mandela rules, which state that people in detention should have access to the same medical care that is available to the general population outside of prison.
36. Even for those who do receive medication for relatively general illnesses, there is a severe lack in doses prescribed. One woman, who was being interviewed while suffering a fever, revealed that she was only prescribed two days' worth of medication for her condition.
37. Nonetheless, prison staff are generally alerted to those with mental health conditions due to pre-entry screenings. Based on one prisoner's testimony, one Nigerian woman, who seems to be experiencing schizophrenia-like symptoms, is given medicine daily through her food.
38. Period poverty disproportionately impacts women on death row in Malaysia. In one prison, every 8 pieces of "thin", 28CM-long wingless pads would cost a prisoner about RM5 (EUR1). For those with little to no access to money (for 4 months consecutively), the prison provides them with merely 10 pieces of the same type of sanitary pads, along with a quarter bar of body soap and a quarter bar of detergent soap, every 4 months. Women in this predicament cope by cutting up old shirts or towels into smaller pieces to be used and reused during menstruation. As a result, ringworm infections are not uncommon among the women.

39. 6 of the women interviewed had obvious skin infections from this issue. Some of them showed symptoms on their limbs, while others revealed that they were suffering symptoms on their private parts. They occasionally receive allergy medication from the prison, but the dosages were never enough to cure the infections. Some women also reported a tussle between the in-house clinic and diplomatic missions, whereby despite (verbal) orders from the doctor that the women should already be receiving medication for their condition from their Embassy, there is a lack of cooperation from diplomatic staff as they would demand for a doctor's letter instead. As a result of this as well as lack of access to antibacterial soaps, the women's conditions remain.

RECOMMENDATIONS

40. The authors offer the following recommendations for Malaysia:

- 40.1. Continue to observe a moratorium on executions until the death penalty is abolished in full.
- 40.2. In the interim, reduce the application of the death penalty for offenses that do not meet the international law standard of 'most serious' crimes, including but not limited to drug trafficking.
- 40.3. Establish sentencing guidelines for offenses eligible for the discretionary death penalty, including a mandatory consideration of mitigating factors, and codify gender-specific mitigation factors.
- 40.4. Ensure that the criminal justice system takes full account of any mitigating factors related to women's backgrounds, including evidence of trauma, economic pressures, child marriage, domestic and gender-based violence, as well as psycho-social and intellectual disabilities.
- 40.5. Ensure all women (including foreign nationals) being sentenced to death, or who are at risk of being sentenced to death, have fair access to competent legal counsel from the time of arrest.
- 40.6. Ensure the conditions of detention for all women (including foreign nationals) on death row are in accordance with the Bangkok Rules, including immediate rectification of period poverty in prison.
- 40.7. Establish transparent procedures for the review of pardon applications, so that the pardon process serves the purpose of being a meaningful safeguard of due process.
- 40.8. Establish a right to representation during the pardon process for all individuals sentenced to death.
- 40.9. Ensure that the provision of health care to women under sentence of death complies with Article 24.1 of the Nelson Mandela Rules and does not discriminate on the basis of gender or national origin, as required under Article 2.1 of the rules.
- 40.10. Provide and publish transparent information on the number of women sentenced to death and on death row, disaggregated by age, age of dependent children (if any), nationality, ethnic group, relationship to any victim or co-offender, crimes of conviction, and date of conviction, to facilitate continued analysis of the demographics of women on death row.