

Call for input on the imposition of the death penalty and its impact

From: ADPAN, CPJP & Eleos Justice

1. Procedures and conditions of detention

Common themes in the countries examined were:

1. Death row inmates are kept in solitary confinement under poor conditions (in some cases tantamount to torture) until their sentence is finalized, and, in some instances, post sentencing.

- Malaysia: In Malaysia, sources indicate that prisoners may spend ten or more years on death row, kept in solitary confinement for approximately 23 hours per day.¹
- India: Almost all death row prisoners are in solitary confinement. “The cell opens from 6:00 a.m. to 7:30 a.m., 11:30 a.m. to 12:30 p.m. and 3:30 p.m. to 4:30 p.m. I remain in solitary confinement for more than 21 hours. This is not a jail; it’s a zoo.”—Balasubramaniam.²
- Singapore: Prisoners under sentence of death are kept in strict isolation in individual cells measuring approximately three square metres.³
- Japan: Many death row inmates are placed in solitary confinement as treatment for 24 hours a day.⁴
- Indonesia, India, Thailand, Singapore: Despite limitations set down in the UN Minimum Rules for the Treatment of Prisoners (‘Mandela Rules’),⁵ prolonged solitary confinement (which is prohibited) for women and men on death row has been reported in Indonesia, India, Thailand and Singapore.⁶ There are disincentives for reporting torture in Thailand, as on some occasions, government and security authorities have responded to torture allegations by victims, family members and NGOs by bringing criminal defamation charges against the accuser.⁷
- China: shackles are used at all times on death rows (on hands and feet) in contravention of Article 47 of the Mandela Rules.⁸ There have been reports that children are required to help shackled women eat, illustrating the impacts of this humiliating and unnecessary practice.⁹ CPJP is aware of death eligible cases of Australian nationals who are kept shackled on death rows in China.
- Laos: Reports have emerged indicating that death row prisoners are incarcerated for long periods of time in solitary confinement in dark rooms.¹⁰

¹ ‘The Death Penalty in Law and in Practice’, *ADPAN* (Booklet, April 2021) (Malaysia).

² Project 39A, ‘Deathworthy: A Mental Health Perspective of the Death Penalty,’ *National Law University* (October 2021) 256 available at https://static1.squarespace.com/static/5a843a9a9f07f5ccd61685f3/t/616fd7988256c93ab9735618/1634719720928/Deathworthy_MainReport_19Oct_2021.pdf (India).

³ Amnesty International, ‘Singapore: The Death Penalty – A Hidden Toll of Executions’ (January 2004) available at <https://www.amnesty.org/en/wp-content/uploads/2021/09/asa360012004en.pdf> (Singapore).

⁴ International Federation for Human Rights, ‘The Death Penalty in Japan: A Practice Unworthy of a Democracy’ (May 2003) 19 available at <https://www.fidh.org/IMG/pdf/jp359a.pdf> (Japan).

⁵ Resolution/adopted by the General Assembly, 8 January 2016, A/RES/70/175, available at <https://www.refworld.org/docid/5698a3a44.html>

⁶ https://cdn.penalreform.org/wp-content/uploads/2018/10/PRI-Women-on-death-row-briefing-paper_SINGLES-003.pdf (China) (Thailand) (India). See also ‘Behind the Walls, A Look at Thailand’s Prison Conditions After the Coup’ *FIDH* (2017) No 688(a) available at <https://www.refworld.org/pdfid/58b593dd4.pdf> (Thailand).

⁷ Department of Foreign Affairs and Trade, ‘Country Information Report Thailand’ (10 July 2020) available at <https://www.dfat.gov.au/sites/default/files/country-information-report-thailand.pdf>

⁸ Rule 62, ‘United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)’: Resolution Adopted by the General Assembly (17 December 2015) A/RES/70/175, available at <https://www.refworld.org/docid/5698a3a44.html>

⁹ Ibid.

¹⁰ Macalesher, J, ‘Death Row Phenomenon and the Circumstances Under Which it Could Amount to Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment’, available at <https://cdn.penalreform.org/wp-content/uploads/2013/05/Expert-Consultation-death-row-phenomenon-presentation-26June2012.pdf> (Laos) (Malaysia) (Japan).



- Research indicates that lack of stimuli and the isolation from social engagement result in cognitive decline and other psychiatric concerns.¹¹

2. The number of Death Row inmates and general information surrounding those on death row are often limited and kept obtuse by their respective countries

- Singapore: The International Commission of Jurists has drawn attention to the lack of public information on death row inmates and their cases.¹²
- Malaysia: Executions are carried out in secret, without prior notice – a practice that has been regularly denounced by international and national human rights institutions and by families of those executed.¹³
- Vietnam: there are no accurate figures about numbers of executions in Vietnam in recent years¹⁴
- China: As in previous years, the execution total does not include the estimated thousands of executions carried out in China. China treats data on the death penalty as a state secret.¹⁵
- Japan: Amnesty International has repeatedly condemned Japan’s execution procedures as being “shrouded in secrecy.”¹⁶
- Laos: “a lack of transparency and the failure of the State to provide disaggregated data in respect of individuals on death row precludes accurate reporting, or details on the crimes for which people are being sentenced.”¹⁷

3. Death row inmates often have inadequate health services and often suffer from mental health issues or disabilities, which may call into question their competence to be executed

- Malaysia and Thailand: Overcrowding in the Malaysian and Thai prison systems has resulted in a lack of access to health care, a decrease in quality and quantity of food, shortage of hygienic products available free of charge (soap, sanitary towels etc.) (this included non-death row prisoners).¹⁸
- Japan: Chizuo Matsumoto’s family argues that he was “psychologically incompetent” and therefore his execution violated a provision in the code of Criminal Procedure prohibiting execution of people with psychological disabilities.¹⁹

¹¹ World Coalition Against the Death Penalty, ‘Living on Death Row: Detailed Fact Sheet’ (2020) available at https://worldcoalition.org/wp-content/uploads/2020/09/EN_FactSheet_WD2018-1.pdf.

¹² International Commission of Jurists, ‘Singapore: Impending Executions Must be Stopped’ (23 September 2020) available at <https://www.icj.org/wp-content/uploads/2020/09/Singapore-Impending-Executions-Press-Release-2020-ENG.pdf>.

¹³ Berrih, C and Ying, N, ‘Malaysia: Isolation and Desolation: Conditions of Detention of People Sentenced to Death’ ADPAN, (2020) available at <https://adpan.org/adpan-reports/> (Malaysia).

¹⁴ <https://thediplomat.com/2020/11/explaining-southeast-asias-addiction-to-the-death-penalty/> (Vietnam) (Laos); Tran, K & Vu, C, ‘The Changing Nature of Death Penalty in Vietnam: A Historical and Legal Inquiry’ (2019) 9(3) Societies 56 (Vietnam); Hutt, D. ‘Beware Vietnam’s Death Machine’ available at <http://thediplomat.com/2017/04/beware-vietnams-death-machine> (accessed on 29 May 2018)] (Vietnam); Yem, N ‘Lethal Injection A New Method of Execution in Vietnam’ available at <http://www.hvcsnd.edu.vn/vn/Acedemy/Phap-luat/84/955/Tiem-thuoc-doc-Mot-bien-phap-thi-hanh-an-tu-hinh-moi-o-Viet-Nam.aspx> (accessed on 17 June 2017) (Vietnam).

¹⁵ <https://deathpenaltyinfo.org/news/amnesty-international-report-confirmed-executions-and-death-sentences-continue-global-decline-but-secrecy-hinders-accurate-assessment-of-trends> (China) (Malaysia)

¹⁶ <https://deathpenaltyinfo.org/news/death-row-prisoners-in-japan-sue-over-same-day-notice-of-executions>.

¹⁷ https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/LAO/INT_CCPR_CSS_LAO_31395_E.pdf (Laos)

¹⁸ ADPAN, ‘Malaysia: The Death Penalty in Law and in Practice’ (April 2021) (Malaysia); ‘No-one Believed Me; A Global Overview of Women Facing the Death Penalty for Drug Offences’, *The Cornell Centre on the Death Penalty Worldwide* (September 2021) 35, available at <http://fileserver.idpc.net/library/No-One-Believed-Me.pdf> (Malaysia) (Thailand).

¹⁹ <https://www.asahi.com/ajw/articles/14567002> (Japan).

- India: “Narratives of ideations and acts of self-harm, episodes of auditory and visual hallucinations, and the feeling of losing one’s mind, are shockingly common [for those in solitary confinement].”²⁰
- Singapore: Courts often ignore mental and intellectual disabilities of capital defendants in drug cases and dismiss legal proceedings to request access for independent psychiatrists to death row inmates.²¹

4. There is a consistent theme of improper use of power in all studied countries that may have led to a miscarriage of justice

- Thailand: A woman was sentenced to death in 2019 following an appeal by the Prosecution against her acquittal. She was not given the opportunity to appeal the sentence.²² CPJP has/is supporting individuals at risk of death sentences in Thailand who have been wrongfully convicted at the trial stage in the absence of any forensic evidence, and with well-documented evidence of police corruption and corruption within the criminal justice system. In Thailand, foreigners who appear to have assets are frequently targeted by Thai police, and police corruption is widespread.²³
- Singapore: 13 cases have been identified where letters between lawyers and clients on death row were leaked to the Attorney General’s Chambers by the Singaporean Prison Service.²⁴
- Malaysia: there are restrictions on access to legal counsel, which prevent arrested persons from receiving good quality legal assistance before charges are brought.²⁵
- Vietnam: continues to impose death sentences under legal proceedings that do not meet international fair trial standards.²⁶ Testimonies from families indicate that death row inmates repeatedly stated that their attorneys are often faced with obstacles when trying to meet with their clients in prison.²⁷
- China: Uyghurs have not been given the right to a fair trial and due process. Abdughapar Abdurusul did not have access to adequate legal representation, and Ghopur was convicted for a crime that he might commit in 10 years.²⁸

²⁰ ‘Conditions in Death Row are a Recipe for Mental Health Disasters’ (2016) available at <https://thewire.in/rights/death-row-mental-health> (India).

²¹ https://tbinternet.ohchr.org/Treaties/CRPD/Shared%20Documents/SGP/INT_CRPD_ICO_SGP_35640_E.docx (Singapore);

<https://www.tandfonline.com/doi/abs/10.1080/13218719.2010.498771?journalCode=tppl20> (China);

https://static1.squarespace.com/static/5a843a9a9f07f5ccd61685f3/t/616fd7988256c93ab9735618/1634719720928/Deathworthy_MainReport_19Oct_2021.pdf (India).

²² Boyle, G, ‘Woman Sentenced to Death for Murder of Japanese Partner,’ *Bangkok Post* (6 August 2019) available at www.bangkokpost.com/learning/easy/1725467/woman-sentenced-to-death-for-murder-of-japanese-partner (Thailand).

²³ Neubauer, I, ‘Tourists are Reporting Dramatic Surge in Harassment by Thai Police,’ *Time Magazine* (20 January 2015) available at <https://time.com/3674200/thailand-tourism-police-corruption-shakedown-extortion/>

²⁴ <https://www.straitstimes.com/singapore/courts-crime/13-prisoners-file-civil-case-against-ag-over-forwarded-personal-letters>. (Singapore)

²⁵ Berrih (n 13) available at <https://worldcoalition.org/document/report-conditions-of-detention-malaysia/>.

²⁶ Amnesty International, Global Report: Death Sentences and Executions (Annual Report, 2019) 12.

²⁷ Thang, T, ‘Presumption of Innocence and Practice in Vietnam’ (Paper presented at the ‘The Presumption of Innocence’ Online Experts Workshop, 25 July 2020) available at https://law.unimelb.edu.au/_data/assets/pdf_file/0006/3442398/Paper_Thai-Vinh-Thang.pdf; Amnesty International, Global Report: Death Sentences and Executions, Annual Report (2019) 12 (Vietnam).

²⁸ Hoja, G, ‘Xinjiang Authorities Sentence Uyghur Philanthropist to Death For Unsanctioned Hajj’, *Radio Free Asia* (online, 21 November 2018) available at <https://www.rfa.org/english/news/uyghur/philanthropist-11212018131511.html>; Hoshur, S, ‘Prominent Uyghur Intellectual Given Two-Year Suspended Death Sentence For Separatism,’ *Radio Free Asia* (online, 28 September 2018) available at <https://www.rfa.org/english/news/uyghur/sentence-09282018145150.html>; Amnesty International, ‘China: Uyghur Academic Figure Faces Execution in China: Tashpolat Tiyyip (10 September 2019))’ available at <https://www.amnesty.org/en/documents/asa17/1006/2019/en/> (China); Gulchehra Hoja, ‘Xinjiang Authorities Sentence Uyghur Philanthropist to Death For Unsanctioned Hajj’, *Radio Free Asia* (online, 21 November 2018)) available at <https://www.rfa.org/english/news/uyghur/philanthropist-11212018131511.html> (China).

- Malaysia: 28% of the High Court and 50% of the Court of Appeal judgments on death penalty cases were overturned by the respective immediate higher courts.²⁹

5. *Death sentences are used for crimes that don't fit the "serious crimes" requirement set out in Article 6 of the ICCPR.*

- China/Indonesia/Singapore/Malaysia/Thailand/Vietnam/Laos:
 - These countries, along with 28 other countries (including some others in Asia) retain the death penalty for drug offences (as of 2020)³⁰
- China:
 - Abdughapar Abdurusul was sentenced to death for taking an unsanctioned Muslim holy pilgrimage to Saudi Arabia³¹
 - Tashpolat Tiyip disappeared into detention and received a suspended death sentence on charges of playing a role in trying to split Xinjiang from China.³² There has since been no official information about his whereabouts or the charges against him since.³³

2. Family members' experience

- In **China**, capital defendants' families are often not provided with information regarding the whereabouts of their family members.³⁴ In worse cases, the family of the subjects are taken into custody and presumed guilty by association; a subject's wife even died in custody.³⁵
- In **Malaysia**, whilst the subject is on death row, family members may choose between visiting the individual for 45 minutes per week, or sending a written letter. The government does not provide any financial assistance to the families and many have had to borrow money, sometimes illegally, to pay for lawyer's fees. The families are also stigmatised "as if the family was tainted by the conviction." Families are only given partial or false information about the day of execution and some are carried out in secret, without prior notice to the families.³⁶
- **Singapore's** executions are not transparent. The families of death row inmates are often only told 5 days to a week before the execution date that the execution is impending, it has been argued that this is to make last minute appeals more difficult.³⁷
- In **India**, most of the death row prisoners come from families that are already experiencing poverty. Due to their lack of resources, they are alienated from the justice process at various levels and exploited by the accused's lawyer. The family's community responds by labelling the family as guilty by association: they are threatened, physically assaulted, and/or alienated by society.

²⁹ Berrih (n 13) available at <https://www.ecpm.org/wp-content/uploads/mission-enquete-Malaisie-GB-2019-280420-WEB.pdf> (Malaysia).

³⁰ Harm Reduction International, 'Death Penalty for Drug Offences: Global Overview 2020,' available at <https://www.hri.global/death-penalty-2020> (Singapore) (Malaysia) (Thailand) (Vietnam).

³¹ Hoja (n 28) available at <https://www.rfa.org/english/news/uyghur/philanthropist-11212018131511.html>.

³² Su, A and Wilkinson, T 'A Uighur Scholar Facing Potential Execution is One of Over a Million Detained by China', Los Angeles Times (online, 29 September 2019) available at <https://www.latimes.com/world-nation/story/2019-09-28/a-uighur-scholar-faces-execution-as-international-pressure-fails-to-budge-chinas-xinjiang-policies> (China).

³³ Amnesty International, 'China: Further Information: Fears for Uyghur Academic Demand Answers' (online, 20 April 2020) available at <https://www.amnesty.org/en/documents/asa17/2175/2020/en/>.

³⁴ Su (n 32) available at <https://www.latimes.com/world-nation/story/2019-09-28/a-uighur-scholar-faces-execution-as-international-pressure-fails-to-budge-chinas-xinjiang-policies> (China).

³⁵ Hoja (n 28) available at <https://www.rfa.org/english/news/uyghur/philanthropist-11212018131511.html>.

³⁶ Berrih (n. 13).

³⁷ 'Singapore Must be Transparent in the Implementation of Executions', International Commission of Jurists (November 2020) available at <https://www.icj.org/singapore-must-be-transparent-in-implementation-of-executions/>

- **India:** prison visits (mulqaats) are overrun and overcrowded by other prisoners and families. Families wait hours and their visit is ‘accompanied by humiliation.’ The conditions of the visit themselves involve glass barriers, wire mesh barriers, and often no-contact policies are implemented.³⁸

3. Methods of Execution

Hanging	Afghanistan, Bangladesh, India, Japan, Malaysia, Pakistan, New Zealand, South Korea, Sri Lanka, Tonga
Lethal injection	China, Thailand, Vietnam
Shooting	Indonesia, Laos, Taiwan

Additional arguments against lethal injection in China, Thailand and Vietnam (using USA sources)

- Lethal injection is inhumane and should be abolished. A study of autopsy reports in the USA showed that a very high proportion of those analysed demonstrated evidence that the individuals had suffered from pulmonary edema irrespective of the drug protocols used.³⁹
- Medical practitioners and researchers have found that the death penalty by lethal injection is a cruel, inhuman and degrading treatment or punishment.⁴⁰
- Untested drugs are often used experimentally in lethal injection cocktails. Untested drugs exacerbate the likelihood of inflicting cruel, inhuman and degrading treatment on subjects as it prolongs the time taken to die, and increases their pain.⁴¹ For example, Nguyễn Anh Tuấn took 2 hours to die by lethal injection in Vietnam in 2013.⁴²

Note re Methods of Execution in China:

- A study into heart and lung transplants found 71 cases involving prisoners where brain death could not have been properly declared prior to organ procurement.⁴³ The ultimate cause of death must have been organ removal.⁴⁴ In all cases the individuals would have experienced extreme suffering and pain.

7. Treatment of bodies of the executed

- In China in 2007 it was stated that effectively 95% of all organ transplants were taken from prisoners,⁴⁵ and their consent was not required.⁴⁶ Officially this practise ceased in 2015, however it may continue in secret.⁴⁷

³⁸ Project 39A (n 2).

³⁹ <https://www.npr.org/2020/09/21/793177589/gasping-for-air-autopsies-reveal-troubling-effects-of-lethal-injection>

⁴⁰ <https://www.hrw.org/reports/1994/usdp/8.htm>

⁴¹ Vietnam Committee on Human Rights 6.

⁴² Ibid.

⁴³ Robertson, M and Lavee, J, 'Execution by Organ Procurement: Breaching the Dead Donor Rule in China' (2022) *American Journal of Transplantation* 1, 3.

⁴⁴ Ibid 4.

⁴⁵ Robertson and Lavee, 2 citing Huang J 'Ethical and Legislative Perspectives on Liver Transplantation in the People's Republic of China' (2007) 13(2) *Liver Transplant*, 193–196.

⁴⁶ Robertson and Lavee, 6 citing Xu G. 'Voluntary Citizen Donation Sustains Life Transparently,' Phoenix Television (2015) available at https://web.archive.org/web/20200810002232/http://phtv.ifeng.com/a/20150316/41011507_0.shtml

⁴⁷ Robertson (n 45) 6–7.