

Submission to the United Nations Special Rapporteur on extreme poverty and human rights

14 June 2019

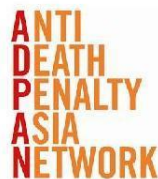
Reporting organisations:



Harm Reduction International is a leading NGO dedicated to reducing the negative health, social and legal impacts of drug use and drug policy. We promote the rights of people who use drugs and their communities through research and advocacy to help achieve a world where drug policies and laws contribute to healthier, safer societies.



Release is the national centre of expertise on drugs and drugs law in the UK. The organisation provides free non-judgmental, specialist advice and information to the public and professionals on issues related to drug use and to drug laws and advocates for evidence-based drug policies that are founded on principles of public health rather than a criminal justice approach.



Anti-Death Penalty Asia Network (ADPAN) is an independent inter-regional network committed to working to end the death penalty in the Asia-Pacific region. ADPAN is made up of NGOs, organisations, groups from civil society, lawyers and individual members. It is not linked to any political party, religion or government.

Word count: 1,420.

Mr Philip Alston
UN Special Rapporteur on extreme poverty and human rights
srextremepoverty@ohchr.org

14 June 2019

Re: Submission to the UN Special Rapporteur on extreme poverty and human rights ahead of his 2019 visit to Malaysia

Dear Special Rapporteur,

Harm Reduction International, Release and ADPAN welcome the opportunity to provide you with updated information concerning Malaysia's repressive drug policy, which disproportionately impacts the human rights of the poor, ahead of your visit to the country. You have our permission to publish this submission on your website.

For years, the Malaysian authorities have sustained a repressive approach to drug control that disproportionately targets and impacts people living in poverty. With over 900 people on death row for drug-related offences, and over 5,000 people who use drugs forcibly interned in so-called "rehabilitation centres", this approach has serious human rights implications.

At this time, the intervention of the Special Rapporteur on extreme poverty could be instrumental in driving change on the ground.

- In October 2018, the government of Malaysia announced its intention to abolish the death penalty,¹ while the law minister called for the decriminalization of drug use.² This might signal a wider revision of Malaysia's approach to drug control, from access to harm reduction services to law enforcement.
- Although these statements are encouraging, no legislative or policy developments have yet taken place. The government has since backtracked on its promise of abolition,³ and at least two death sentences for drug-related offences have been imposed.⁴
- Investigating the disproportionate impact of punitive drug policies on the poor could be critical in driving change, and would set an example for neighbouring countries such as Thailand, Singapore, Indonesia and Lao (countries which also retain the death penalty for drug offences).

This submission focuses on the major human rights violations of the poor committed by the Malaysian authorities in the context of drug control: the death penalty for drug-related offences and compulsory drug detention centres.

We are also incorporating as an Annex a number of recommendations for locations to visit and people to meet during your visit.

1. Major human rights violations disproportionately impacting people living in poverty

1.1. The impact of drug policy on people living in poverty

Drug use occurs across all demographics. However, in Malaysia economically and socially excluded people disproportionately bear the brunt of punitive drug policy.

- **Criminalization and stigmatisation.** People who use drugs in Malaysia are often subject to a vicious cycle of social exclusion, lack of access to basic services, and poverty. A recent study on women who use drugs in Malaysia found that 31% of surveyed women were either homeless or unstably housed, a staggering 91.3% had been jailed, and almost half had been placed in a compulsory drug detention centre.⁵

A survey of 45 women who use drugs in Malaysia found that “poverty was a key theme”, with respondents reporting that they did not have adequate access to reproductive health and welfare services.⁶ A similar survey reported that the “cycle of poverty” was a key driver of drug use.⁷

- **Violation of fair trial rights.** In 2018, the majority (55%) of prisoners in Malaysia were detained for drug offences,⁸ most of them “poor people.”⁹ The fair trial rights of the poor are often severely impeded due to a lack of resources and competent representation, and limited familiarity with the law.¹⁰ UN experts, including this Special Rapporteur, have noted that the application of the death penalty is inextricably linked to poverty.¹¹
- **Punitive drug policies are wasteful.** Punitive policies drive resources away from evidence- and rights-based approaches to drugs, and from addressing underlying determinants of drug use and drug-related harms. A recent study confirmed that imprisoning and forcibly treating people who use drugs in Malaysia is substantially more expensive and less effective than providing access to evidence-based harm reduction services.¹²

1.2. The death penalty for drug offences in Malaysia

Despite recent steps and commitments towards reducing its application, Malaysia continues to sentence individuals to death, often for minor drug offences, in violation of international human rights law.¹³

- **932 persons on death row for drugs.** Although the last known execution for drug offences occurred in 2013, at least 932 of the 1200+ people on death row in Malaysia at the end of 2018 were convicted for drug offences.¹⁴ In 2018 alone, at least 136 death sentences for drug trafficking were recorded, 72% of all death sentences that year.¹⁵
- **Alternatives to the death penalty.** Malaysian law was revised¹⁶ in 2017 to allow for the imposition of a life imprisonment and caning sentence instead of the death penalty, if the accused has ‘assisted an enforcement agency in disrupting drug trafficking activities’.¹⁷ This measure is discriminatory as low-level offenders typically lack the material information and competent legal representation necessary to exploit it.

1.2.1. Impact on socially excluded persons

Several studies show that foreign nationals and women are particularly vulnerable to human rights violations, including due process guarantees, in death penalty cases in Malaysia.

- At least 400 foreign nationals are reportedly on death row in Malaysia,¹⁸ many for drug-related offences. A 2018 study on death sentences for drug trafficking found that foreign nationals are half as likely to have their judgment revised;¹⁹ and many are not provided with interpreters during their trials.²⁰
- The same study found that women convicted for drug trafficking have considerably less chances than their male counterparts of seeing their cases overruled.²¹

1.3. Compulsory drug detention centres (CDDCs) in Malaysia

Nearly 5,000 of people who use drugs are currently involuntarily confined in CDDCs (known as Cure and Care Rehabilitation Centres) across Malaysia, where they receive “treatment” without their explicit and informed consent.²² This impinges on their right to health and constitutes a form of arbitrary detention.²³

According to the Malaysian Drug Dependents (Treatment and Rehabilitation) Act, upon their arrest people who use drugs undergo drug-testing. If the test is positive, the individual appears before a magistrate, who can send them to a drug treatment centre for a period of up to two years.²⁴

1.3.1. CDDC population and poverty

The UN Working Group on Arbitrary Detention has noted that this form of detention has “a disproportionate impact on vulnerable groups, such as women, children, minority groups and people who use drugs”,²⁵ while research suggests that street-based individuals are particularly likely to experience ‘adversarial’ contact with the police,²⁶ and are thus more vulnerable to arrest and detention.

Due to a lack of transparency, there is currently no data confirming this trend at the national-level. The Special Rapporteur’s investigation on this subject would thus be extremely useful in shedding light on the links between poverty and the involuntary detention of people who use drugs in Malaysia.

1.3.2. The impact of CDDCs on human rights

According to UN experts, CDDCs inherently constitute a form of arbitrary detention, as drug consumption or dependence are not valid grounds for detention,²⁷ and threaten the health of detainees.²⁸ States should replace such facilities with voluntary, evidence- and rights- based care and support in the community.²⁹

- **Cruel, inhuman or degrading treatment.** A study of Malaysia’ CDDCs shows that only a minority of detainees were tested for HIV or tuberculosis, and none received treatment for either. While mandatory testing violates human rights, availability of this service is an essential gateway to prevention, treatment and care.³⁰ Furthermore, while 95% of participants met criteria for opioid dependence, none received access to opioid substitution therapy.³¹ Instead, non evidence-based treatments centred around abstinence were administered, often supervised by staff with limited or no health expertise.³² Denial and/or absence of medical care in detention settings can constitute cruel, inhuman or degrading treatment.³³

- **Right to health.** CDDCs violate health rights on many levels. Among others, the right to health includes the right to be free from non-consensual medical treatment³⁴ and requires that health services are consistent with the best evidence in clinical medicine and public health.³⁵
- **Not effective.** A Malaysia-specific 2016 study found that people who use opioids in CDDCs had significantly more rapid relapse to opioid use post-release (31 days), compared to people that were part of voluntary treatments (9352 days).³⁶
- **Social stigma.** People detained in Malaysia CDDCs immediately lose their jobs. In a Malaysian survey of 400 “rehabilitees”, 72% of respondents reported difficulties in obtaining employment due to their former “drug addict” status.³⁷

2. Recommendations for locations that the SR should visit

Contact details are provided in Annex A.

3. Recommendations for individuals and organizations with whom the SR should meet

Contact details are provided in Annex B.

We thank you in advance for your collaboration.

Contacts:

HRI: <https://www.hri.global> | gen.sander@hri.global

Release: <https://www.release.org.uk> | niamh@release.org.uk

ADPAN: <https://adpan.org/> | contactadpan@gmail.com

ENDNOTES

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ANNEX A

Recommendations for locations that the SR should visit

1. Visit a Compulsory Drugs Detention Centre

Visits are usually arranged through the National Anti-drugs Agency (NADA), and should be requested one month in advance.

NADA general contact details:
Agensi Antidadah Kebangsaan Malaysia
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NADA Director General contact details:
Zulkifli Bin Abdullah (DG assistant)
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2. Visit a voluntary drug rehabilitation centre

(1) Pengayish Malaysia
3201, Jalan Syers, Bukit Tunku, 50480 Kuala Lumpur
Phone: +60 03-6201 3179

(2) Pertubuhan KOMITED Malaysia
Founder: Khalid Bin Hashim
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ANNEX B

Recommendations for people and organizations that the SR should visit

1. Civil society

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2. Academia

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