

Malaysia: Fact Sheet on Women, Incarceration, Drug Offences & the Death Penalty

*This factsheet was compiled with grateful thanks to Lucy Harry**

Statistics are hard to come by, but latest figures from the [World Prison Brief](#) suggest that there are approximately 3,247 women incarcerated in Malaysia (4.5% of the total prison population).

Over-incarceration of women for drug offences

Of particular concern in this jurisdiction is the over-incarceration of women for drug offences: while statistics are not disaggregated by gender, it is estimated that [two-thirds of people in Malaysia's prisons are convicted for drug-offences](#); a major contributor to prison overcrowding. Under [the current legislation](#), those convicted of drug possession face up to 5 years in jail or the maximum fine of RM20,000, or both. Those convicted of drug use face a maximum fine of RM5,000 and a jail sentence of up to two years, or are put through mandatory rehabilitation and supervision for four years, or face a combination of the two. [Covid-19 has exacerbated the issues faced by people who use drugs in Malaysia](#), such as violations of human rights, criminalisation, violence, stigma and health issues.

The decriminalisation of drugs movement in Malaysia

In June 2019, the then Health Minister, [Dzulkefly Ahmad announced Malaysia's plans to decriminalise drug use](#). Yet we are [still awaiting the new Drug and Substance Abuse Act 2020](#), which, it is thought, will reduce the numbers of people being sent to prison for drug use and possession, and who will instead be sent to rehabilitation institutions. However, [a recent publication in the Lancet](#), written by global experts on drug research, called for the end of compulsory drug treatment in the Asia-Pacific region, citing major health and human rights concerns. It is thought that the decriminalisation of drug offences will go some way to [reduce the stigma](#) related to drug use in Malaysia. NGOs such as the [International Drug Policy Consortium](#) and [Penal Reform International](#) explore gender-sensitive alternatives to incarceration, some examples include: counselling, mentoring, referrals to training or education, voluntary drug treatment and harm reduction, legal assistance, mental health support and social services.

** Please note that the actions and viewpoints of these organisations do not necessarily represent those of Women Beyond Walls and nor do we bear any responsibility for materials published on their websites.*

The death penalty for drug offences

The death penalty, governed by Section 39B of the Dangerous Drugs Act 1952, is a key arsenal in the Malaysian 'War on Drugs', and operates on a largely mandatory basis. When it comes to the death penalty for drug offences, Malaysia is considered one of seven '[high application states](#)' due to the frequency with which this punishment is meted out.

Disproportionate number of foreign national women under sentence of death

According to latest statistics from [Amnesty International](#), there are currently 141 women on death row in Malaysia, 95% of whom are on death row for drug trafficking, and 86% are foreign nationals (that percentage increases to 90% foreign nationals when only considering those under sentence of death for drug offences). A report by [Monash University](#) found that women and foreign nationals facing the death penalty for drug trafficking in Malaysia often put forward the defence that they are an "innocent carrier" – i.e. they are a courier working at the behest of someone else who is profiting from the transaction – however this defence is rarely accepted by courts. [Amnesty International](#) reviewed 30 cases of women who had been sentenced to death in Malaysia for drug trafficking and stated there is a "common story of coercion and deception".

Pathways to death row

In terms of "pathways" to death row, [research](#) shows that many women become involved in drug couriering (knowingly or unknowingly) as a result of economic precarity, and indeed there is a preponderance of [migrant domestic workers facing the death penalty in the region](#), as well as concerns that some of the women on death row for drug trafficking are [in fact victims of human trafficking](#). The role of romantic partners is also a [key pathway](#), and [drug couriering facilitated by online romance scams](#) is an issue in this jurisdiction.

Fair trial concerns

Both [Amnesty International](#) and [Monash University](#) have raised concerns over fair trials: including issues such as restrictions on the right to access counsel, and indeed access to *effective* counsel, as well as concerns about the lack of interpretation provided for foreign national accused persons. Other [research](#) has shown that foreign nationals face disadvantage and discrimination in capital trials, and their [rights to consular assistance are not uniformly guaranteed](#). With regards to gender: the [Penang Institute](#) found that women convicted of drug trafficking have a significantly lower chance than their male counterparts of having their cases reviewed and overruled.

Conditions on death row

A report by the [ECPM](#) found that women are subjected to deplorable conditions on death row, including being held in solitary confinement for 23 hours per day, and denied access to gender-specific healthcare services. During the COVID-19 pandemic, [prison overcrowding](#) has been a particular concern.

Stories of women on death row

In a recent [New Naratif article](#), lawyer ChowYing Ngeow mediates the account of her client 'Joey', a Hong Kong woman on death row for drug trafficking in Malaysia. The [latest report from Cornell's Center on the Death Penalty Worldwide](#) also includes the profiles of two women on death row in Malaysia, 'Bonnie' and 'Avalie'.

Key organisations

[Anti-Death Penalty Asia Network \(ADPAN\)](#)

[Amnesty International Malaysia](#)

[Asia Pacific Forum on Women, Law & Development \(APWLD\)](#)

[International Women's Rights Action Watch Asia Pacific \(IWRAW\)](#)

[Malaysian CARE](#)

[Malaysian Centre for Constitutionalism and Human Rights \(MCCHR\)](#)

[People's Action Group for Change \(PELUANG\)](#)

[The Human Rights Commission of Malaysia \(SUHAKAM\)](#)

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