The Howard Journal of Crime and Justice

The Howard Journal of Crime and Justice | Howard League for Penal Reform

ORIGINAL ARTICLE OPEN ACCESS

Hierarchical Citizenship and Racialised Discretion: Police and Consular Officers' Handling of Capital Cases in Malaysia

Carolyn Hoyle[1] | Lucy Harry[1,2]

[1]Death Penalty Research Unit, Centre for Criminology, University of Oxford, Oxford, UK | [2]Department of Sociology, University of Calgary, Calgary, Alberta, Canada

Correspondence: Carolyn Hoyle (carolyn.hoyle@crim.ox.ac.uk)

Received: 5 January 2025 | **Revised:** 17 August 2025 | **Accepted:** 19 January 2026

Keywords: border criminology | consular assistance | death penalty | hierarchical citizenship | racialised discretion | Southeast Asia

ABSTRACT

This article examines the death penalty in Malaysia, where foreign nationals have historically been sentenced to death at a disproportionately high rate. The international community has recognised that foreign defendants are disadvantaged in alien criminal justice systems and made efforts to address this through the United Nation's Vienna Convention on Consular Relations 1963, to which Malaysia is a signatory and has incorporated its obligations into domestic legislation. However, data from our 49 interviews with criminal justice professionals and officials at consulates in Kuala Lumpur and our review of 77 court judgments found that foreign nationals are not equally disadvantaged. Some consulates are notified in a timely fashion of the arrest of a national for a capital offence; others are not, and the level of assistance provided by consulates varies considerably. We utilise border criminological theorising on 'hierarchical citizenship' and 'racialised discretion' to understand these discriminatory differences.

1 | Introduction

In 2019, the publication of a report by Amnesty International on the death penalty in Malaysia generated recognition among local news outlets that 'Foreigners make up nearly half of death row inmates in Malaysia' (Malay Mail 2019). The Malaysian death penalty has undergone reform since then, culminating in the passing of the Abolition of the Mandatory Death Penalty Act in July 2023. This Act abolished the mandatory death penalty (the Act took effect retroactively, so that those sentenced under the previous, mandatory regime became entitled to a sentence review) yet retained the discretionary death sentence for 27 offences, including murder and several drug offences. Before the abolition of the mandatory death penalty, 415 of the 906 people sentenced to death in the jurisdiction were foreign nationals (that is to say, 45%) (Amnesty International 2019). Following the legal reform and resentencing process, 140 people remain under sentence of death, 27 of whom are foreign nationals (around one-fifth of the total death row population) (Amnesty International Malaysia 2023).

Although the passage of the Abolition of the Mandatory Death Penalty Act has made a capital sentence less likely, the possibility of being sentenced to death has not been removed, and foreign nationals detained for alleged drug offences are at very high risk of spending decades in prison, with many experiencing corporal punishment as part of their sentence. Moreover, they endure unique disadvantages and violations of their fair trial rights as compared to Malaysian nationals, stemming from their precarious socio-economic status and their inadequate understanding of local laws, language and criminal procedures (Hoyle and Girelli 2019). The possibility of a foreign national in a death penalty-retentionist country being disadvantaged was recognised by Article 36(1b) of the Vienna Convention on Consular Relations 1963 (VCCR), which was ratified by 182 nations (Cullen 2021). Malaysia incorporated the Convention into its domestic law in

1999 through the Consular Relations (Vienna Convention) Act, the purpose of which was to ameliorate the disadvantages faced by foreign nationals by 'securing procedural equality between foreign nationals and citizens' following an arrest.

Yet our research, based on 49 interviews conducted in Kuala Lumpur just before the 2023 legislative change, as well as a review of 77 court judgements, finds that the Malaysian state is falling short of these commitments. Not only are foreign national defendants disadvantaged when facing a capital charge as compared to Malaysian nationals, but not all foreign national defendants are treated equally. Utilising theorising on 'hierarchical citizenship' (Franko 2024) as well as the concept of 'racialised discretion' (Parmar 2021), we trace these disparities back to the way capital charges are handled by the arresting officers and then by the respective consular officials, with reference to their Vienna Convention obligations. We find that Malaysian police officers' decisions about whether to notify a foreign national's embassy are guided by their perceptions of a defendant's nationality, which are 'animated' by race (Parmar 2021, 41). Moreover, if a consulate is indeed notified of the detention of their national, the varying levels of support the foreign national defendant is offered can also be understood with reference to 'global hierarchies' as well as 'informality' on the part of consular officers (Johns 2025, 4; Fabini 2014; Waseem 2024).

Through this exploration of 'hierarchical citizenship' (Franko 2024) and 'racialised discretion' (Parmar 2021), we contribute to the capital punishment scholarship as well as the burgeoning field of border criminological studies (cf., Bosworth 2008, 2017; Franko Aas and Bosworth 2013; Ham and Pickering 2015; Barker 2017; Franko 2020). There is a relative dearth of such literature emerging from Southeast Asia, and so we add to an understanding of the criminology of migration in this post-colonial context where methods of crime control 'reproduce, albeit in a new way, the old problems of inequality, dependence and subordination', here, directed at certain foreign nationals (Aliverti et al. 2021, 304). Furthermore, we enhance our understanding of capital punishment in a region with a 'high application' of the death penalty, especially for drug offences (Girelli et al. 2025). Although border criminological scholars are increasingly paying attention to 'new' non-state actors who are involved in the policing of migration (Bosworth 2017; Bhatia 2020; Bosworth and Zedner 2022), consular officials have received relatively little attention despite their mandate to protect their citizens abroad, including those facing the gravest of punishments.

2 | Does the Vienna Convention Ameliorate the Disadvantage Faced by Foreign Defendants in Capital Cases?

There is an increased acknowledgement of the role that citizenship plays in criminal justice systems, as well as awareness that new actors—such as actors from the private sector, non-governmental organisations, international agencies and foreign governments—have been imbued with power in criminal processes (Bosworth 2017; Bhatia 2020; Bosworth and Zedner 2022). With regard to capital punishment specifically: Consular authorities can play a vital role in the protection of foreign national defendants. Accordingly, regular statements on the question of the death penalty from the United Nations General Assembly remind states of their duties to comply fully with their international obligations under Article 36(1b) of the VCCR 1963, pointing out that an arresting state's failure to promptly inform detained foreign nationals of their right to consular notification may render the imposition of the death penalty contrary to Article 6(1) of the International Covenant on Civil and Political Rights (concerning the right to receive information on consular assistance within a legal procedure) (United Nations Economic and Social Council, 2015).

In 1999, the Inter-American Court of Human Rights underscored the importance of consular officials in death penalty cases, recognising them as an important safeguard that could materially improve the defence (Aceves 2000). However, some jurisdictions frequently fail to comply. In the United States of America (US)—which ratified the Vienna Convention in 1969 and where much of the research on this topic has been carried out—the rules have been widely ignored (Fleishman 2003). By way of example, a study carried out by Reprieve between 2009 and 2012 identified 134 foreign nationals on death rows in America, as well as 20 with dual (US and other) nationality. Of those 102 cases for which Reprieve was confident that it had undisputed data, in only five had there been VCCR compliance. Of the four convicted by a federal court, only one had received appropriate Vienna Convention notice.

Several court decisions have demonstrated that the US chooses not to be bound by this international treaty. Notorious cases include Angel Breard, a citizen of Paraguay, executed by the Commonwealth of Virginia in 1998 (Breard v. Greene 1998), and Karl and Walter LaGrand, German citizens, who were executed in 1999 (Germany v. United States of America 2001); in both cases, the US was found by the International Court of Justice (ICJ) to have failed to abide by its obligations to inform foreign nationals of their right to have their consulate told of their detention. In the US, it is most often Mexican migrants who are denied these rights. In 2004, the ICJ held that the US had violated its obligation under the Convention in 51 out of 52 cases (a case referred to as 'Avena and other Mexican nationals' (Mexico v. U.S.A (Avena) 2004)) and that the US should review, through the judicial process, the convictions and sentences imposed in each case. In response, in 2005, the US withdrew from the Optional Protocol to the Vienna Convention so that it would no longer be subject to adjudication by the ICJ. Since then, Texas executed Mexican nationals Jose Ernesto Medellin, Humberto García Leal, Edgar Tamayo Arias and Hernandez Llanas (all 'Avena' cases), executions held by the ICJ to be in breach of the US' obligations under international law and condemned by the Inter-American Commission on Human Rights, the Mexican Foreign Minister and numerous other governments (Hoyle 2019; Hood and Hoyle 2015, 281–85). Perhaps not surprisingly, US states' failures to observe their consular obligations have not typically been successful when advanced as a ground for post-conviction appeals (Carter 2005; O'Driscoll 2000; Vandiver 1999; Schiffman 2002; Quigley 1998, 2018).

Of course, the US is not the only jurisdiction to be held to account for breaching foreign nationals' Article 36 rights to consular support. The most recent case heard by the ICJ concerned Pakistani authorities' failure to inform an Indian citizen of his

rights to consular assistance. Kulbhushan Sudhir Jadhav, accused of involvement in espionage and terrorism activities, was later sentenced to death by a military court (India v. Pakistan 2019). Not only did Pakistan fail to inform Mr Jadhav of his rights but also delayed in informing the Indian High Commission of his arrest by 3 weeks, in breach of their obligation to inform 'without delay' as required by Article 36(1)(b). The ICJ rejected Pakistan's argument that the VCCR did not apply to Jadhav on account of his espionage activities. Unlike prior cases before the ICJ, here, India sought relief, including the annulment of the conviction and Mr Jadhav's release and safe transfer back to India. The ICJ ruled that Pakistan should provide an effective review of the case and reconsideration of the conviction and sentence, giving full weight to the violation of consular rights, and that a stay of execution is an indispensable condition for an effective review (Kattan 2020).

The existing research underscores the fact that detainees find themselves at the mercy of police officers—who are the first and main gatekeepers of consular assistance—while at risk of a capital sentence (Quigley 2018, 3–4). For example, if a criminal suspect is a foreigner denied consular access, they may find themselves deprived of the services of a translator. As such, they may answer police questions with the fear of deportation rather than criminal conviction at the forefront of their mind and may not have the language skills to understand or adequately respond to questions from police that might establish early in the investigation a credible defence. Furthermore, foreigners are less likely to understand their right to refuse to answer police questions and may be more readily accepting of coercive or deceptive police practices in interrogation (particularly if they are from a nation where police forces are less professional and they may fear physical reprisal). Meanwhile, police officers may be less likely to believe a foreigner and misinterpret a foreigner's body language and their reactions to questions as signs of guilt. Taken together, these factors place foreigners who have been denied consular help at increased risk of conviction and capital punishment (Quigley 2018; Hoyle 2019).

3 | 'Hierarchies of Citizenship'[1] and 'Racialised Discretion'[2]

'Bordered penality' is one of the key conceptual developments in the border criminological paradigm; the idea that in an era of mass mobility, the criminal justice system has been put to work managing migration, and through this we have witnessed 'a gradual emergence of a differentiated, two-tier approach to criminal justice and a more exclusionary penal culture directed at non-citizens' (Franko Aas 2014, 520). The difference in treatment between citizens and non-citizens, it is thought, can be explained with reference to the latter group's 'deportability' (Franko Aas 2014, 526). However, making a binary distinction between citizens' and non-citizens' treatment by the 'crimmigration' system (Stumpf 2006) obscures the fact that non-citizens are not a homogenous group. Consequently, in more recent scholarship, Franko (2024) has proposed the concept of 'hierarchical citizenship', which she explains as follows:

> By conceptualizing the contemporary membership regime in scalar terms, as a *hierarchy of citizenship*, we are able to sharpen our analytical gaze and take into account global aspects of citizenship. An analytical focus on state sovereignty (as a driving force behind mobility restrictions) frames exclusions of non-citizens vis-à-vis the national polity. A scalar approach, on the other hand, shifts focus on the disadvantages of certain citizenship categories relative to others (18–19).

These hierarchies have 'imperial roots' and can be explained by 'global inequality', and indeed, 'the deeply stratified patterns of mobility further deepen existing economic and racial inequalities and bring them to the fore' (Franko 2024, 13).

This concept of 'hierarchical citizenship' has been applied in different empirical settings (Di Molfetta 2025; Chakrabarty 2024; de Noronha 2022). By way of example, a year-long ethnography of a criminal courtroom in Northern Italy, with many cases involving foreign nationals, revealed that language proficiency, or lack thereof, contributes towards 'hierarchies of non-citizenship' (Di Molfetta 2025, 3). The author references the much-publicised *Iuventa* case, which involved German defendants who were operating a migrant rescue ship and were arrested and charged with aiding and abetting illegal migration in 2017 (albeit they were eventually acquitted) (Tondo 2024). In this case, 'no one accused them of lying or fabricating language barriers', unlike most of the defendants in the other trials who were young men from the Global South or Eastern Europe (Di Molfetta 2025, 14). Although existing research has considered language barriers as a form of procedural unfairness (Aliverti and Seoighe 2017), this research found that it is also 'an independent vector of inequality that interacts with citizenship status, nationality, race, ethnicity and social class to shape judicial practices and reinforce hierarchies of non-citizens' (Di Molfetta 2025, 5).

In contrast, Chakrabarty (2024) has conducted research on 'hierarchical citizenship' and criminalisation in the Northeast Indian state of Assam. Here, the criminalisation of migrants morphs with Brahminical culture, caste society and Islamophobia to position those citizens who do not possess an indigenous Assamese identity as 'citizen outsider[s]' (Chakrabarty 2024, 345). Similar to the concerns around caste, other scholarship, this time focusing on family and friends of those who have been deported to Jamaica from the United Kingdom (UK), finds that 'racism produces hierarchies of (non)citizenship' as not all citizens nor migrants are 'equally vulnerable to illegalisation and deportation' (de Noronha 2022, 428). In addition, indeed, other notable work has underscored the importance of race when considering border control (Bosworth et al. 2018).

A key mechanism for racialised criminalisation to manifest itself at the external and internal borders is through the informal practices of individual officers operating in systems characterised by considerable discretion. Previous work has noted the use of individual officers' discretion when policing migration (Weber 2003, 2011; van der Woude and van der Leun 2017). In addition, although research has shown that discretion *can* lead to racial discrimination, Parmar (2021, 41) has argued that '[t]he attention towards discretion (rather than race) further allows race to operate without being explicitly named'. Through her exploration of Operation Nexus in the UK—a policy where immigration

officers collaborated with police officers to apprehend criminal suspects who might have irregular migration statuses—Parmar (2021) focused on 'racialised discretion', asserting that 'certain discretionary practices and decisions are animated *because of race, through race and with the effect (intentional or not) of racially disproportionate outcomes*' (41). She provides the example of the arrest of a Black male in his mid-thirties, after which the police officer remarked to the immigration officer: '[h]e says he's British. But… he doesn't look in the least bit like he's lived in England for longer than a week. Can we do a status check to confirm?' (Parmar 2021, 46). She suggests that the officer's discretionary power was racialised in his assessment of the man's somatic features and their relationship to the likelihood of his holding British citizenship (Parmar 2021, 46).

Other research, this time from Canada, examines racial profiling at the border and how 'the slippage between race [and] nationality effectively enables both official denials of racial profiling as well as the continued play of racialised risk knowledges at the border' (Pratt and Thompson 2008, 620). Other research on police officers in Italy shows that they exercise discretion and 'informal practices', including whether or not to stop someone for an ID and immigration check; if they are found to be undocumented, deciding whether or not to take them to a police headquarter or 'turn a blind eye'; and if a deportation order is issued, the police decide the manner in which it is executed (Fabini 2014, 11). In addition, again, we find that assumptions are based on 'nationality', which likely concealed racialised assumptions. In this case, according to those officers interviewed, 'nationality is an indicator of one's propensity for crime… For instance… Roma people are usually labelled as "car stealers"' (Fabini 2014, 12). Hierarchical (non-)citizenship, racialised discretion and informal practices are all themes that we will return to in relation to the Malaysian context.

4 | Examining a Punishment That is Frequently Meted Out to Foreigners

In recent years, politics and policy concerning the administration of the death penalty in Malaysia have undergone significant shifts. On 10 October 2018, the World Day Against the Death Penalty, the then-Minister for Law, Datuk Liew Vui Keong, declared that capital punishment was to be abolished (Ibrahim 2018). The most recent execution had taken place only the previous year, but Keong's announcement marked the start of a moratorium which remains today. However, it also triggered a backlash from victims' rights groups and local religious conservatives, who argued that death sentences were an effective deterrent to both homicide and drug crimes. Facing political pressure from parliamentarians, the government reneged on its promise (Latiff 2023). Instead of full-blown abolition, it established a Special Committee to Review Alternative Sentences to the Mandatory Death Penalty (The Sun 2020), which opted to abolish only the *mandatory* death penalty (as well as whole life sentences), and the Abolition of the Mandatory Death Penalty Act was passed in July 2023. Malaysia retained a discretionary death sentence for 27 offences, including murder and several drug offences, but the Act took effect retroactively, so that death row prisoners who had been sentenced under the previous, mandatory regime became entitled to a sentence review.

Following resentencing hearings between November 2023 and October 2024, the number of people on death row fell from about 1300 to just 140, and in January 2025, only two women remained. As most of those who benefitted from resentencing were on death row for drug offences, the population of foreign nationals declined significantly from approximately 568 in February 2019 (just under half of the then total) to just 27 by the start of 2025. However, although they may no longer be facing execution, serious concerns persist about the fairness of their trials and their due process rights, given that their punishment is still severe, with the Act requiring judges conducting sentence reviews to choose between capital punishment and a jail sentence of between 30 and 40 years, along with not less than 12 strokes of the birch. Furthermore, although foreign nationals will continue to be at threat of the discretionary death penalty or disproportionately long prison terms, recent statements about inadequate access to legal representation for foreign nationals must be of concern (ADPAN 2025).

Accordingly, although this article examines the plight of foreign nationals who were exposed to capital punishment in Malaysia before the passage of the Act and subsequent sentence reviews, consular assistance remains crucially important for those still at risk of the death penalty and long prison terms under the discretionary sentencing regime. We draw from empirical research we conducted in Malaysia between 2018 and 2020, including interviews with consular officials (12); defence lawyers who have collectively represented hundreds of foreign nationals at risk of capital punishment (18); prosecutors (2); government officials (including an advisor to the Prime Minister's Department of Police) (3); a police officer (1); representatives of leading NGOs who have worked with foreign nationals at risk of capital punishment or their families (5); court translators involved in such cases (3); and representatives of Malaysia's Bar Council and Human Rights Commission (SUHAKAM) (5). Although we were not able to gain access to prisoners, almost all our interviewees could provide information on foreign nationals who had been sentenced to death. We were also unable to secure access to prison and police officers, bar one. In 'closed' or 'partially closed' criminal justice systems, it can be challenging to secure access to state institutions, such as the police, and indeed, such 'elite' interviews can pose issues with 'reliability and validity', as there are questions about 'who is "authorised" to speak for a given legal system or specific practice' as well as concerns about those individuals just promulgating an 'official line' (Nelken 2010, 91 in Pascoe 2016, 205). Therefore, we interviewed those who work with those actors closely on foreign nationals' cases and thus had experience of how these institutions work in practice, rather than just the official policies. To triangulate these findings, we also conducted a review of court judgements (77) involving foreign nationals facing the death penalty in Malaysia (2016–2021) to review any due process considerations. The 5-year period was selected to provide a 'snapshot' in time during which Malaysian courts made regular use of the death sentence, and we only included available court judgements—those which were reliable and relevant—though we are aware there were other cases during this time. Overall, from our thematic analysis of the interviews and court judgements, the role of the police, foreign embassies and the actors who work within them emerged as central to concerns about access to consular support, and we argue that

their varying levels of action and inaction can largely be explained by hierarchies of racialised non-citizenship.

5 | 'Global Colour Line'[3]: Inadequate Notification of Consular Authorities

> The Africans, when they are arrested, the police don't treat them with respect and integrity. If there is a European, for example, I think they will be more careful and do all the necessary things. (Malaysian criminal defence lawyer)

The right to consular access, from the arrest of a foreign national, extending to application for pardon or clemency after the passing of a sentence, sits at the heart of a foreign national's right to a fair trial. There are two related rights to consular access under Malaysia's Consular Relations Act 1999: 'consular notification' and 'consular assistance'. At the first stage, the relevant Malaysian authorities (usually the police) are obligated immediately after arresting or detaining a foreign national to inform them of their right to request that the relevant consular authorities be notified of the arrest and/or detention. Once the accused makes this request, the Malaysian police must notify the consular authorities without delay. They must also, without delay, facilitate communication by the foreign national with their consular authority. Following notification by the Malaysian police (or by the prison authorities if notification did not take place during detention in police custody), the consular authorities have the right to correspond freely with the foreign national, to arrange for legal representation, to visit the foreign national in prison and to assist in other ways. If the accused were always notified in a timely fashion, and if consular authorities consistently provided adequate assistance, foreign nationals would experience considerably less disadvantage[4]. However, our findings suggest that this is not the case and that this is explicable with reference to conceptions of 'hierarchical citizenship' and 'racialised discretion' (Franko 2024; Parmar 2021).

As the quotation above makes clear, the decision as to whether a consulate will be notified by the Malaysian police can be shaped by a range of non-legal and informal factors, including the suspect's racialised nationality. The extant literature makes clear that racist assumptions about nationality in responses to foreign 'suspects' can lead to the 'protection of affluence and reinforcement of global class and racial divides' (Pratt and Thompson 2008; Franko 2024, 18). Moreover, scholarship that has focused on informal policing practices in the post-colonial context reveals that discriminatory discretion is 'especially common in former colonies where the criminal justice apparatus and legal frameworks were designed to suspect, survey, and suppress communities based on caste, class, and racial divides' (Waseem 2024, 1548). In the Malaysian post-colonial context, we find that police officers are 'more discriminatory against Black people for example', and indeed, a criminal defence lawyer we interviewed insisted that the discrimination is based on '[your] colour. They don't care where you came from. They wouldn't have gone that far, to have [even] checked where you are from', highlighting the 'slippage' between race and nationality (Pratt and Thompson 2008, 620; Parmar 2021). Our interview with a police inspector confirmed his belief that 'Africans' in Malaysia are associated with criminality, particularly drug offending and scams. In addition, indeed, we find this association of certain racialised nationalities with criminality in other jurisdictions too, with Parmar's (2021) research on Operation Nexus finding that if, for example, there were concerns around credit card fraud, the criminal investigation team would be tasked with investigating intelligence from Nigeria, Romania and Lithuania (30).

One lawyer we interviewed represented a Nigerian woman who was at risk of capital punishment for a drug crime. He told us: 'I asked her, "did your embassy come to you?" and she said "no". I said, "did you request?", she said "yes, I requested the prison to contact my embassy"'. In comparing her treatment with other foreign nationals, he lamented: 'They never play around with the European embassies or US embassy, they never play around… if they catch an American, they are scared!'. Another lawyer we interviewed concurred: 'When a person is arrested it is not immediately known to the embassy, especially Asian embassies. American [and other] Western embassies get to know about arrests quite quickly'. A further lawyer talked about how many of their clients were from 'less politically powerful countries', such as states in Africa, Latin America and the Pacific Islands, saying the 'authorities aren't so prompt with regards to notifying the embassies', but 'states from the European Union do not have to face this problem of not being notified when their foreign national has been arrested'. This sentiment was echoed by others we interviewed, including by the director of a non-governmental organisation involved in death penalty advocacy:

> The Malaysian authorities treat different embassies differently. When dealing with an embassy that comes from a developed country… the Malaysian authorities are more careful. If the embassy comes from a poorer country that sends migrant workers to Malaysia the treatment is different. The police don't inform those embassies that their nationals have been arrested.

These findings accord with Franko's (2024) notion of 'hierarchical citizenship', and she writes that '[p]enal power used at the border… is also a symptom of a deeply stratified world and a tool for protection of affluence and reinforcement of global class and racial divides' (18). In addition, indeed, we find this trend in other scholarship on migrant workers facing a death sentence abroad, where any diplomatic assistance provided to assist their defence in a capital trial is influenced by the economic relationship between the country of origin and the host state (Hoyle et al. 2023; Harry et al., 2023).

From our interviews, we learnt about the ad hoc nature of consular notification. Despite Malaysia incorporating the Vienna Convention into their domestic legislation, those we interviewed did not believe that Malaysian police officers were aware of these legal obligations: 'the police don't know about the other consular rights, and they don't care'; and 'they don't even know what the Vienna Consular Relations is'. Even with police officers who are aware of their obligations, the decision whether to notify a suspect's consular authority appears arbitrary and informal: '[notification] takes place on an ad-hoc basis'; 'it's up to the "mood" of the police'. As one embassy official joked, 'the

police may have started the process to communicate with the embassy but there was "some problem with the line"'. Another consular official, from a country which had had numerous cases, explained to us that their embassy had only been immediately notified by the Malaysian authorities in one case, and in another, notification was delayed by a month. On all other occasions, notification took place long afterwards, at the beginning of the trial, after investigations had been completed. We were also told that consular authorities from some states, including Peru, Bulgaria and Fiji, had been told nothing by police or prison authorities and learnt about detained nationals only from news reports or family members of the accused. In some cases, when consular authorities visited prisons to meet one of their nationals in fulfilment of their obligations, they became aware of other incarcerated nationals about whom they had received no notification. Additionally, we interviewed a senior government official in the then Prime Minister's Department for Malaysian Police who explained the process of consular notification as follows:

> I'd just like to inform that we have quite a number of embassies that have requested us to keep them posted… the Iranian embassy, the British High Commissioner and the Australian High Commissioner have insisted that we inform them. That also includes Argentina, Ecuador, a few countries who have asked for our assistance to inform of the number of detainees under remand or otherwise from their country. And I think we have obliged because the moment there is a request, we keep them informed. We will just put them in our list and because it's a computer-generated thing. Let's say, if you put in the nationality as British, you automatically appear in the British list. If it's Iranian, it'll appear in the Iranian list. So, the computer will remind us every month that these are the people who are under death row, in capital cases etc. so that we can inform. And we do that, as part of our standard operating procedure for the department and I think we have had no complaints after that. Of course, we do not supply the list if it's not requested by the embassy.

This remarkable quotation illustrates the high levels of informality on the part of the Malaysian authorities when it comes to their Vienna Convention obligations. The interviewee gives the impression of impartiality in regular practice, but in taking a purely reactive rather than proactive stance (as the law demands), and within the context of our understanding (from other interviewees) that consular offices for certain African countries are not proactive in protecting the rights of their nationals, this pattern provides evidence of how 'the law is an essential element in creating and maintaining inequalities of citizenship' (Franko 2024, 16).

Consular authorities respond unevenly to these breaches. Several have filed complaints before Malaysia's Ministry of Foreign Affairs, the first point of contact for the consular authorities, which acknowledged the situation before forwarding complaints to the Ministry of Home Affairs and then to the Police. Others complained directly to the police or the immigration authorities. Regardless, such complaints rarely receive a response, and even when they do, the practices relating to notification remain unchanged. Yet although this is a source of considerable frustration to consular officials, they are typically reluctant to rock the boat. An appeal lawyer in one case asked embassy staff to testify in court about lack of consular notification in order to demonstrate that the appellant had not received a fair trial, but the embassy in question was reluctant to criticise the Malaysian authorities for fear of hindering access to other nationals. A strategic decision was made not to seek to provide mitigating evidence at appeal, which may have assisted one of their nationals with the aspiration of better protecting all others coming through the system.

One embassy official we interviewed, who *had* been notified of the detention of their nationals, alluded to the informality of the process and the importance of developing relationships with key officials: 'If there is advice I would give to other embassies, I'd say have a relationship with the relevant parties just to make sure that both parties are communicating with each other. I think relationships are important'. This point was reiterated by defence lawyers, one of whom said that 'notification of embassies depends on the relationship'. Others talked about the need for consular officials to be proactive in pursuing information from the Malaysian authorities. For example, in response to challenges in the past, the Indonesian embassy employed a law firm to make proactive contact with all police stations, officers in charge of police districts, prisons and courts to ensure it receives information about Indonesian nationals who have been arrested or detained. Yet this is an imperfect solution, as the onus is on the foreign state to make the effort to secure data on their nationals. This disadvantages defendants from less developed Global South countries whose embassies may have limited resources or diplomatic power to pursue cases actively involving their nationals, leaving the underclass of global citizenry particularly vulnerable to penal sanctions, including the death penalty and long terms of imprisonment.

6 | 'Inequalities of the Passport'[5]: Inconsistent Assistance From Consular Authorities

> For instance, if you have an American national, the US consular authorities are very concerned about their citizens. They contact us and ask about their citizen. Sometimes they even recommend lawyers. Countries like America, UK, Australia are very concerned, and they will do their best. Indonesia works harder for their people. Thai and Sudanese embassies are also very good. They really care for their people. Another country that takes care of their citizens is Ukraine. The Indian embassy visits their nationals in the prison, but they don't get involved much during the trial. They don't contact the defence lawyers unless of course the lawyers are appointed by the Indian embassy. But then there are some countries which are slow moving on these issues, and certainly not very interested… The countries I have heard complaints about include Vietnam, Nigeria (Malaysian criminal defence lawyer)

The previous section showed how 'racialised discretion' and informality likely impacts whether the Malaysian police will

notify consulates of the arrest of their national facing a capital charge. In what follows, we will see how this disadvantage is compounded by global inequalities, which affect what resources can be put towards these nationals' cases; as Franko (2024) finds, 'the adversity of this condition [of non-citizenship] depends on a variety of circumstances which are also grounded in international inequalities among various nations' (20).

As indicated by the above quotation, if embassies are indeed notified of the detention of their foreign national pending capital charges, their responses and assistance can be quite varied. Another lawyer stated, 'there are big differences in the way different consular offices will react to notification'. A third said, 'some embassies are less interested about their foreign nationals than others'. What this means in practice is that staff from the more proactive embassies, such as the UK's, will explain to their nationals the imminent legal processes and provide them with a list of English-speaking lawyers during the pre-trial stage, and although the UK does not pay their legal fees, British nationals at risk of capital punishment or incarceration may be able to benefit from pro bono legal assistance offered by organisations such as the UK-based Death Penalty Project (no date). Some consular authorities, such as the embassies of Indonesia, Iran, the Philippines and Venezuela, do appoint local legal firms to represent their nationals facing the death penalty and will pay the legal fees, whereas the Indian and Nepalese embassies have in-house counsel who may represent their nationals at the pre-trial stage. At times, some embassies may work to secure witnesses or provide evidence at trial (Lopatkina Klavdiia v. Public Prosecutor 2019, Nabweteme Hadija v. Public Prosecutor 2015), Public Prosecutor v. Rita Krisdianti 2016) and others, such as the Bangladesh embassy, will provide interpretation at trial.

Most embassies restrict their consular responsibilities under Article 36 of the Vienna Convention to facilitating communication between the accused and their family members and offering pastoral care. The consulates of Indonesia, Peru, Argentina, Fiji and Bulgaria, among others, appear to perform these responsibilities diligently. The Argentinian embassy, for instance, maintains a 24-h 'duty cell phone', allowing family members to contact prisoners. Visits from consular authorities are possible under Regulation 101 (4) of Malaysia's Prison Regulations 2000, which allow an imprisoned foreign national who has been convicted and given notice of appeal to meet with his or her consular representative in private, in practice usually for about 20–30 min. A foreign prisoner who is not yet convicted has the right to send and receive letters from their consular representative, as well as the opportunity to receive visits from their relatives and friends. We found that proactive consular authorities liaise between the detaining authorities and the foreign nationals about prison conditions and medical needs, including cases where the consulates have provided anti-retroviral medication for their nationals detained and living with HIV. Other consular authorities donate small sums of money and other basic amenities like clothes, toothpaste or books to imprisoned foreign nationals. The consular authorities of the UK provide assistance to their fellow nationals to receive money from family members in their prison accounts. Clearly, proactive consular assistance can improve both the defendant's legal representation as well as their experience of imprisonment on foreign soil.

So, how do these 'hierarchies of citizenship' play out in practice? What explains the varying levels of assistance offered by different consulates? Our interviews revealed that lack of resources was key to understanding unresponsive embassies, with one lawyer describing certain consular offices as 'overwhelmed'. This was particularly an issue for consulates from less developed countries with many nationals in Malaysia:

> We find differences among them… I think that's about smaller or poorer countries having inadequate capacity [to] offer much help (NGO advocate)

> Subject to economic resources at the disposal of the embassy, the embassy offers some pastoral support to foreign nationals… Embassies can do more… but I don't know how, because this depends as well on their resources (Embassy worker)

> Some embassies have more resources which allow them to offer more services to their nationals, while other embassies have less… Embassies with lesser resources do not have the same kind of reach that bigger embassies have (Embassy worker)

> Embassies do not provide legal aid to their nationals, especially in capital punishment because they don't have the resources (Criminal defence lawyer)

The Nigerian embassy was singled out by several interviewees as being uninterested and unhelpful: 'the worst example is the Nigerian embassy… The Nigerian embassy is hopeless' (criminal defence lawyer). Indeed, the Human Rights Commission of Malaysia (SUHAKAM) has received complaints from imprisoned Nigerian nationals that no one from their embassy had visited them. In one case, the Nigerian embassy remained unresponsive despite being notified by the Malaysian police after a request was made by an arrested Nigerian national. However, it is possible that this perception of the Nigerian embassy, which we heard in relation to some other embassies from sub-Saharan Africa, is informed, at least in part, by racist assumptions about the lengths that they will go on behalf of their citizens, which may in turn impact the likelihood that they are notified by the Malaysian authorities, meaning that the disadvantage is continually reinforcing. These attitudes are held by lawyers too, with some expressing implicitly racist characterisations of the embassy workers of such states: 'the Africans don't bother… I used to write letters to the embassies before, but they didn't reply, so I stopped' (criminal defence lawyer); 'some embassies don't "claim" their nationals… this practice is prevalent in embassies from African states' (human rights activist and lawyer). Yet, we found evidence to the contrary, for example, with embassy officials from Uganda being heavily involved in the defence of one of their nationals at risk of the death penalty in Malaysia (Nabweteme Hadija v. Public Prosecutor 2015). This would suggest that Malaysian authorities and criminal justice professionals may be utilising 'racialised discretion' (Parmar 2021) to tarnish all African embassies, which then disadvantages other African defendants' cases, as their consulates are not notified in a timely fashion, if at all.

Moreover, our interviews suggest that some consular authorities' responsiveness, compared to others, is shaped by their commitment to death penalty abolitionism (and thus human rights). This again reflects global power structures, with much of the recent abolitionist dynamic having its roots in European enlightenment and being much more prevalent among Western states, with the notable exception of the US (Hood and Hoyle 2015). This point was reflected in our interview responses:

> In the case of Europeans, they are doing this because there is a positive obligation on the part of the country to protect the citizens from suffering the death penalty. Of course, there is a spectrum, but the Europeans are giving much more help. The European countries are extremely proactive… They export their own jurisdictions' values and opinions about the death penalty to their assistance overseas (Criminal defence lawyer).

> It is harder for embassies to intervene proactively when their own countries retain the death penalty. For example, Singapore. The Pakistani embassy is not involved very much (Criminal defence lawyer)

We identified that informality on the part of consular officials is another way that non-citizens face differing levels of support. By way of example, Bulgaria does not have an official consulate in Malaysia and operates through an Honorary Consul, and they tackled the issue of poor notification in a creative way. In a case involving three Bulgarian nationals, the Malaysian police initially sent notification, by letter, to an address which did not exist. In response, the son of the Honorary Consul of Bulgaria made great efforts to forge relationships with the police in charge of the case. This improved communication between him and the Malaysian authorities such that the police officer conducting the investigation kept in regular contact with him via WhatsApp. Interviewees also suggested the treatment of foreign nationals varied depending on those working at the embassy at that time, their opinions on the alleged crimes of their nationals, and what might constitute an appropriate level of assistance. One embassy worker we interviewed expressed his personal view on whether the embassy should provide interpretation support to its citizens: '[i]t is my position that the country that detained the foreign national has a moral and legal obligation to provide such services and it should not be left to the embassy'. Levels of support can change when there are staff changes at embassies, as one interviewee told us in relation to a Latin American embassy:

> Initially, the embassy was completely "negative" about their citizens. The embassy didn't want to be involved because they felt the accused were delinquents and criminals… In the same embassy, the new Ambassador brought in a counsellor who is a lawyer. He was very cooperative and attended many cases (Court translator who assists with death penalty cases).

Others discussed how the sympathy, or lack thereof, felt by the embassy officials towards their nationals, based on the circumstances of their alleged offence, influenced their level of assistance:

> The eagerness or interest shown by embassies depends on certain cases. We have to go to the facts of the case. For example, if it's a very clear murder case, where this guy murdered someone with the intent to rob them, it's very clear, you stabbed them, and they died. These kinds of cases, usually, any consular authorities aren't very interested to pursue… they just say [their national] needs to handle this by themselves, you committed a crime in this country and you need to face the consequences… Where the facts aren't so clear, is when the embassy gives extra attention compared to those clear cases, like drug trafficking… In those cases, the embassy will give attention (Criminal prosecutor)

> Their attitude is such that the accused has tarnished the image of the country in Malaysia, so why offer protection and assistance? (Court translator who assists with death penalty cases)

Other research on 'street-level bureaucrats' working in consulates has found that their scope for discretion is much wider than ordinary civil servants, 'influenced by their belief that they are acting to defend the national interest' (Alpes and Spire 2013, 261). Reliance on the whims and informal relationships of individual actors is clearly unacceptable given the levels of protection and support needed when foreign nationals are facing the pains of an irreversible death sentence or a long sentence of imprisonment.

7 | Conclusion

Foreign nationals potentially facing the death penalty or long-term incarceration are a vulnerable group of defendants in need of special protection. This article demonstrated that the Malaysian criminal justice system, on paper, ensures that local citizens and foreign nationals enjoy the same set of rights during criminal proceedings through the VCCR Act 1999. However, in practice, this is not the case. Crucially, we find that not *all* foreign nationals face the same level of disadvantage. This can be understood with reference to the concepts of 'hierarchical citizenship' (Franko 2024): We should view borders and their porosity as a 'scale', rather than a binary site of exclusion versus inclusion, and often the different scales of access are determined by the discretion of actors, such as police officers, who are guided by racialised ideas of non-citizenship (Parmar 2021), which then determines whether or not they notify embassies of the arrest of their nationals. This potential disadvantage is then compounded by global inequalities of resources and informal relationships between consular officials and Malaysian officials, which introduce arbitrariness and stratified treatment of foreign national defendants.

Yet, to the best of our knowledge, there is not a single reported Malaysian case where a foreign national has successfully challenged a conviction or sentence of death on the grounds that Malaysia did not honour its consular obligations, although we

are aware of one case that tried to introduce this at appeal. This raises the related question of the potential for remedies at the ICJ. As discussed above, in both the *LaGrand* and *Avena* cases, and more recently in the *Jadhav* case, the ICJ held that foreign nationals whose Article 36 rights were violated were entitled to 'review and reconsideration' of their convictions and sentences. Notwithstanding US states' reluctance to take seriously rulings by the ICJ, as Babcock (2012) explained, '[r]eview and reconsideration is not a "get out of jail free" pass'; in each case there would need to be evidence of 'actual prejudice' before a conviction or sentence was vacated. Even then the foreign national would be subject only to a retrial, not automatic release. Perhaps the ICJ should be bolder in its remedies, as one lawyer had expected it to be in *Jadhav* (Polak 2017), but it could struggle without the VCCR being clearer on rights and obligations.

Although the obligations on host states to facilitate consular assistance are clear within international law, those on the nationals' home states are less so. States have rights to assist their nationals, but nothing in the VCCR *requires* them to do so. In other words, as Cullen (2021) has pointed out, there is no individual right to receive consular assistance. We would strongly argue that the VCCR would benefit from amendments to make the offering of assistance a requirement, subject to international legal scrutiny, in capital cases. In 2019, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions suggested that failure to provide adequate consular assistance in death penalty cases could constitute a violation of the home state's obligation to protect the lives of their nationals and could violate the principle of non-discrimination. Such arguments 'remain at a relatively emergent stage', and jurisprudence would need to establish what constitutes 'adequate' consular assistance, but the VCCR could be developed to provide clearer guidance on this (Cullen 2021).

Non-governmental organisations advocating for the abolition of the death penalty in Malaysia have reflected on the plight of foreign nationals under investigation for capital offences, explaining that they '… are not necessarily provided with immediate and professional interpretation during the crucial hour of police investigation and interrogation, rendering confession based on misrepresentation and/or induced by the investigating officer' (Together Against the Death Penalty et al. 2018 in Antolak-Saper et al. 2020, 22–23). This article has offered a more nuanced account, showing that rather than blanket discrimination against foreign nationals, there are variations in levels of assistance provided, based on racialised ideas of certain nationalities and the intersection of these prejudices among Malaysian authorities with the global structural inequalities across consular offices. In this way, our work responds to Franko's (2024) insistence that 'more empirical and theoretical attention should be paid to the variety of ways in which citizenship status functions as a conductor of social inequality' (21).

In the present globalised era, as more foreign nationals are convicted and sentenced for criminal offences in foreign states, criminologists would be remiss not to study the importance of embassies and their roles in the criminal justice process as well as the actors who facilitate their role, such as arresting officers, who are obliged to notify them under the VCCR 1963, in order to ameliorate any disadvantage that comes from being part of the hierarchy of non-citizens in a foreign justice system. If *all* foreign nationals were allowed to exercise their rights to consular access, legal aid and interpretation support from the moment of their arrest, and if indeed the level of support was uniform across all of the consulates, they would be much more likely to mount an effective defence, which may in the end save them from a death sentence or decades of imprisonment. They should not be denied this right due to a 'passport lottery' and the racially informed discretion of bureaucratic actors.

Acknowledgements

We thank Sanjeeb Hossain, formerly of the Faculty of Law at Warwick University, who assisted with some of the interviews we draw on here. We also thank Saul Lehrfreund of The Death Penalty Project and Abdul Rashid Ismail, a Malaysian human rights lawyer, for their assistance in making contact with embassies and defence lawyers.

Conflicts of Interest

The authors declare no conflicts of interest.

Endnotes

[1] Here, referencing K. Franko's (2024) conceptualisation.

[2] Here, referencing A. Parmar's (2021) conceptualisation.

[3] This is in reference to the work of Lake and Reynolds (2008) who find that '[i]n drawing the global colour line, immigration restrictions become a version of racial segregation on an international scale' (5).

[4] By way of illustration, during our interviews, a representative of the EU Delegation to Malaysia confirmed that several years ago a young Nordic mother, who entered Malaysia with her child carrying enough drugs for a capital trafficking charge, benefitted from reduced charges due to the proactive role played by her consular authorities.

[5] This is in reference to a quote from K. Franko (2024:13).

References

Aas, K. J. 2014. "Bordered Penality: Precarious Membership and Abnormal Justice." *Punishment and Society* 16, no. 5: 520–541.

Aceves, W. J. 2000. "The Right of Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law. Advisory Opinion OC-16-99." *American Journal of International Law* 94, no. 3: 555–563.

ADPAN. 2025. *Statement on Malaysia's Progress in Death Penalty Reform and Indefinite Juvenile Detention*. ADPAN. https://adpan.org/malaysiasprogress/.

Aliverti, A., H. Carvalho, A. Chamberlen, and M. Sozzo. 2021. "Decolonizing the Criminal Question." *Punishment and Society* 23, no. 3: 297–316.

Aliverti, A., and R. Seoighe. 2017. "Lost in Translation? Examining the Role of Court Interpreters in Cases Involving Foreign National Defendants in England and Wales." *New Criminal Law Review* 20, no. 1: 130–156.

Alpes, M. J., and A. Spire. 2013. "Dealing With Law in Migration Control: The Powers of Street-Level Bureaucrats at French Consulates." *Social and Legal Studies* 23, no. 2: 261–274.

Amnesty International Malaysia. 2023. *Death Penalty*. Amnesty International Malaysia. https://www.amnesty.my/abolish-death-penalty/.

Amnesty International. 2019. *Fatally Flawed: Why Malaysia Must Abolish the Death Penalty*. Amnesty International.

Antolak-Saper, N., S. Kowal, S. Lindsey, C. Y. Ngeow, and T. Kananatu. 2020. *Drug Offences and the Death Penalty: Fair Trial Rights and Ramifications*. Monash University. https://www.monash.edu/__data/assets/pdf_file/0016/2220622/MU_ADPAN_report_v7.pdf.

Babcock, S. 2012. "The Limits of International Law: Efforts to Enforce Rulings of the International Court of Justice in U.S. Death Penalty Cases." *Syracuse Law Review* 62: 183–197.

Barker, V. 2017. "Penal Power at the Border: Realigning State and Nation." *Theoretical Criminology* 21, no. 4: 441–457.

Bhatia, M. 2020. "The Permission to be Cruel: Street-Level Bureaucrats and Harms against People Seeking Asylum." *Critical Criminology* 28, no. 2: 277–292.

Bosworth, M. 2008. "Border Control and the Limits of the Sovereign States." *Social and Legal Studies* 17, no. 2: 199–215.

Bosworth, M. 2017. "Border Criminology and the Changing Nature of Penal power." In *The Oxford Handbook of Criminology*, edited by A. Liebling, S. Maruna, and L. McAra, 373–390. Oxford University Press.

Bosworth, M., A. Parmar, and Y. Vázquez, eds. 2018. *Race, Criminal Justice, and Migration Control: Enforcing the Boundaries of Belonging*. Oxford University Press.

Bosworth, M., and L. Zedner, eds. 2022. *Privatising Border Control: Law at the Limits of the Sovereign State*. Oxford University Press.

Breard v. Greene. 1998. 523 U.S. 371, 118 S.Ct. 1352, 140 L.Ed2d 529.

Carter, L. E. 2005. "Lessons From *Avena*: The Inadequacy of Clemency and Judicial Proceedings for Violations of the Vienna Convention on Consular Relations." *Duke Journal of Comparative & International Law* 15, no. 2: 259–280.

Chakrabarty, A. 2024. "Structural Intersections, Hierarchical Citizenship and Criminalization of the Migrant in Assam." *Critical Criminology* 32, no. 2: 339–355.

Cullen, D. 2021. *Foreign* Nationals Facing *the* Death Penalty: The Role *of* Consular Assistance. Death Penalty Research Unit. https://blogs.law.ox.ac.uk/research-and-subject-groups/death-penalty-research-unit/blog/2021/11/foreign-nationals-facing-death.

Death Penalty Project. no date. "What We Do." Accessed November 15, 2024. https://deathpenaltyproject.org/what-we-do/#:~:text=We%20provide%20access%20to%20justice,those%20individuals%20we%20directly%20assist.

de Noronha, L. 2022. "Hierarchies of Membership and the Management of Global Population: Reflections on Citizenship and Racial Ordering." *Citizenship Studies* 26, no. 4–5: 426–435.

Di Molfetta, E. 2025. "'Parli L'italiano?': Revealing Hierarchies of Non-Citizenship in Judicial Practices Through the Lens of Language Proficiency." Theoretical Criminology. https://doi.org/10.1177/13624806251349191.

Fabini, G. 2014. "The Illegal Immigration Law: A Regime of Law, Discourses, and Police Practices." *Illegality Regimes: Mapping the Law of Irregular Migration* 11, no. 2: 1–17.

Fleishman, M. 2003. "Reciprocity Unmasked: The Role of the Mexican Government in Defense of Its Foreign Nationals in United States Death Penalty Cases." *Arizona Journal of International and Comparative Law* 20, no. 2: 359–407.

Franko, K. 2024. "Hierarchies of Citizenship: Borders, Global Inequality and the Injustice of Membership." In *Handbook on Border Criminology*, edited by M. Bosworth, K. Franko, M. Lee, and R. Mehta, 11–24. Edward Elgar Publishing.

Franko, K. 2020. *Globalization and Crime*. 3rd ed. SAGE Publications.

Franko Aas, K., and M. Bosworth, eds. 2013. *The Borders of Punishment: Migration, Citizenship, and Social Exclusion*. Oxford University Press.

Germany v. United States of America. LaGrand Case, International Court of Justice, Judgment 27 July 2001. 104.

Girelli, G., M. Jofré, and A. Larasati. 2025. *The Death Penalty for Drug Offences: Global Overview 2024*. Harm Reduction International.

Ham, J., and S. Pickering, eds. 2015. *The Routledge Handbook on Crime and International Migration*. Routledge.

Harry, L., C. Hoyle, and J. Hutton. 2023. "Migratory Dependency and the Death Penalty: Foreign Nationals Facing Capital Punishment in the Gulf." *Punishment & Society* 26, no. 1: 109–127.

Hood, R., and C. Hoyle. 2015. *The Death Penalty: A Worldwide Perspective*. 5th ed. Oxford University Press.

Hoyle, C. 2019. "Capital Punishment at the Intersections of Discrimination and Disadvantage: The Plight of Foreign nationals." In *Comparative Capital Punishment*, edited by J Steiker and C. Steiker, 155–200. Edward Elgar Publishing.

Hoyle, C., and G. Girelli. 2019. *The Death Penalty for Drug Offences: Foreign Nationals*. Harm Reduction International.

Hoyle, C., J. Hutton, and L. Harry. 2023. "A Disproportionate Risk of Being Executed: Why Pakistani Migrants Are Vulnerable to Capital Punishment in Saudi Arabia." *British Journal of Criminology* 63, no. 6: 1423–1440.

Ibrahim, I. N. 2018. "Minister: Putrajaya to Abolish Death Penalty." *Malay Mail*, October 10.

International Court of Justice. Jadhav (India v. Pakistan) *2019 ICJ 168*.

Johns, F. 2025. "On Consular Internationalism." *Leiden Journal of International Law* 38, no. 2: 1–24.

Kattan, V. 2020. "Jadhav Case (India v. Pakistan)." *American Journal of International Law* 114, no. 2: 281–287.

Lake, M., and H. Reynolds. 2008. *Drawing the Global Colour Line: White Men's Countries and the International Challenge of Racial Equality*. Cambridge University Press.

Latiff, R. 2023. "Malaysia Scraps Mandatory Death Penalty, Natural-Life Prison Terms." *Reuters*, April 3.

MLJU. 2019. Lopatkina Klavdiia (N/Ukraine) v. Public Prosecutor. MLJU 974.

Malay Mail. 2019. "Amnesty: Foreigners Make Up Nearly Half of Death Row Inmates in Malaysia." *Malay Mail*, October 10.

Mexico v. United States of America (Avena). *2004 International Court of Justice J 128*.

Nabweteme Hadija v. Public Prosecutor. *[2015] 1 LNS 1259*.

Nelken, D. 2010. *Comparative Criminal Justice: Making Sense of Difference*. Sage.

O'Driscoll, C. S. 2000. "Execution of Foreign Nationals in Arizona: Violations of the Vienna Convention on Consular Relations." *Arizona State Law Journal* 32, no. 1: 323–344.

Parmar, A. 2021. "The Power of Racialised Discretion in Policing Migration." *International Journal for Crime, Justice and Social Democracy* 10, no. 3: 41–55.

Pascoe, D. 2016. "Researching the Death Penalty in Closed or Partially-Closed Criminal Justice systems." In *The Changing Contours of Criminal Justice*, edited by M. Bosworth, C. Hoyle, and L. Zedner, 197–212. Oxford University Press.

Polak, M. J. 2017. "The Jadhav Case and the Right to Consular Assistance: 'Confessions', Spies, and Remedies in International Law." *Indian Journal of International Law* 57, no. 3–4: 385–409.

Pratt, A., and S. K. Thompson. 2008. "Chivalry, 'Race' and Discretion at the Canadian Border." *British Journal of Criminology* 48, no. 5: 620–640.

MLJU. 2016. Public Prosecutor v. Rita Krisdianti [W/Indonesia]. *MLJU 1221*.

Quigley, J. 1998. "Execution of Foreign Nationals in the United States: Pressure From Foreign Governments against the Death Penalty." *ILSA Journal of International & Comparative Law* 4, no. 2: 589–598.

Quigley, J. B. 2018. *Foreigners on America's Death Rows: the Legal Combat Over Access to a Consul*. Cambridge University Press.

Schiffman, H. S. 2002. "The Lagrand Decision: The Evolving Legal Landscape of the Vienna Convention on Consular Relations in the U.S. Death Penalty Cases." *Santa Clara Law Review* 42, no. 4: 1099–1135.

Stumpf, J. 2006. "The Crimmigration Crisis: Immigrants, Crime, and Sovereign Power." *American University Law Review* 56, no. 2: 367–419.

The Sun. 2020. "Special Committee Submits Report on Death Penalty Alternatives." *The Sun*. https://www.thesundaily.my/local/special-committee-submits-report-on-death-penalty-alternatives-YD1995551.

Together Against the Death Penalty (ECPM), Harm Reduction International (HRI), Anti-Death Penalty Asia Network (ADPAN), and The Advocates for Human Rights & World Coalition Against the Death Penalty (WCADP). 2018. Death Penalty in Malaysia: Joint Stakeholder Report for the 31st session of the Working Group on the Universal Periodic Review. https://upr-info.org/sites/default/files/documents/2019-08/js6_upr31_mys_e_main.pdf.

Tondo, L. 2024. "Crew of Migrant Rescue Boat Acquitted in Italy After Seven-Year Ordeal." *The Guardian*. April 19. https://www.theguardian.com/world/2024/apr/19/italian-court-acquits-crew-of-migrant-refugee-rescue-boat-iuventa.

United Nations Economic and Social Council. 2015. Capital *Punishment* and *Implementation* of the *Safeguards Guaranteeing Protection* of the *Rights* of *Those Facing* the *Death Penalty*: Report of the Secretary-General. https://www.ohchr.org/sites/default/files/Documents/Issues/DeathPenalty/E-2015-49.pdf.

van der Woude, M., and J. van der Leun. 2017. "Crimmigration Checks in the Internal Border Areas of the EU: Finding the Discretion That Matters." *European Journal of Criminology* 14, no. 1: 27–45.

Vandiver, M. 1999. ""An Apology Does Not Assist the Accused": Foreign Nationals and the Death Penalty in the United States." *Justice Professional* 12, no. 2: 223–245.

Waseem, Z. 2024. "'It's Like Crossing a Border Everyday': Police-Migrant Encounters in a Postcolonial City." *Journal of Urban Affairs* 46, no. 8: 1547–1569.

Weber, L. 2003. "Down that Wrong Road: Discretion in Decisions to Detain Asylum Seekers at Arriving at UK Ports." *Howard Journal* 42, no. 3: 248–262.

Weber, L. 2011. "'It Sounds Like They Shouldn't be Here': Immigration Checks on the Streets of Sydney." *Policing and Society* 21, no. 4: 456–467.