

Workshop on

Resentencing in Capital Cases

9 and 10 Dec 2023 (Saturday and Sunday) | 9:00 am to 6:00 pm**Raja Aziz Addruse Auditorium**Level 2, Wisma Badan Peguam Malaysia
2 Leboh Pasar Besar, 50050 Kuala Lumpur

16 CPD points will be allocated

*This is a FREE event***Register online here**

The "Revision of Sentence of Death and Imprisonment for Natural Life (Temporary Jurisdiction of the Federal Court) Act 2023 [Act 847]" took effect on 12 Sept 2023. In line with this, the Bar Council Criminal Law Committee ("CLC"), together with Reprieve, a non-governmental organisation from the United Kingdom, is organising a workshop that will introduce overarching aspects of mitigation investigation and adducing mitigation evidence in resentencing applications.

This two-day workshop will cover the following areas:

- ♦ Fundamentals of litigation;
- ♦ Mitigation for communities and demographics;
- ♦ Post-conviction mitigation;
- ♦ Mental illness and other mental impairments of inmates; and
- ♦ Best practices in client interviewing.

Speakers**Bwighane Mwenifumbo**

Bwighane is the Chief Legal Advocate of the Malawi Legal Aid Bureau where she oversees the Bureau's legal team in the provision of legal services to indigent Malawians. She is a qualified legal practitioner of nine years' standing at the Malawi Bar. She is an advocate of the High Court and Supreme Court of Malawi and is a member of the Malawi Law Society. Her work in the criminal justice system involved representing a large number of defendants in capital cases. She also represented many applicants in the Kafantayeni Resentencing Project. The Project helped to reduce the sentences of over 150 death row inmates in Malawi, resulting in many releases of inmates from prison. She is a Fellow of the Makwanyane Institute for Capital Defense Lawyers and has participated in the training of capital defence lawyers from all over Africa.



and Assistant Author of the *Death Penalty India Report* (2016), which was a first-of-its-kind report on the socio-economic profile of death row prisoners across India and their experience through the criminal justice system. At Project 39A, Shreya also heads the work on forensics, which aims to promote the use of valid and reliable science within the criminal justice system.

Kitson Foong

Kitson has appeared at the Court of Appeal and Federal Court of Malaysia. In a legal career spanning three decades, he has served in public service and private practice. He held various positions such as Vice-President (Legal & Corporate) at Malaysia's Northern Corridor Implementation Authority ("NCIA/Koridor Utara"), senior legal specialist in health, safety and environmental law at Qatar Petroleum as well as corporate advisor to several Government-Linked Companies ("GLCs") and public-listed companies. An active Member of the Malaysian Bar, Kitson has served CLC and the Bar Council Common Bar Course Committee. He is the co-founder of the Bar Council Legal Aid Dock Brief and Prison programmes, which provide free legal representation to underprivileged persons. Kitson remains a passionate legal educator who regularly give talks and training workshops to Sessions Court judges, registrars, deputy public prosecutors, and police officers at Malaysia's Judicial and Legal Training Institute (Institut Latihan Kehakiman dan Perundangan, "ILKAP").

**Shreya Rastogi**

Shreya Rastogi is the Founding Member of Project 39A, a criminal justice centre at National Law University, Delhi working on issues relating to the death penalty, mental health, forensics, prevention of torture, and legal aid. As part of its death penalty efforts, Project 39A provides *pro bono* legal representation to prisoners sentenced to death and conducts rigorous empirical and doctrinal research on the death penalty in India. Shreya heads the death penalty litigation team at Project 39A, and regularly appears before the Indian Supreme Court and various High Courts in its *pro bono* death penalty matters. She was also the Deputy Director



This workshop is free of charge, but **advance registration is required.**

Registration will close on **8 Dec 2023 (Friday) at 12:00 noon.**

Please note that no additional registration will be accepted once the closing date has passed, or if the workshop is full (whichever comes first).

We may not permit future registration if you fail to attend the workshop after registering, unless you provide an acceptable and valid reason(s).

A collaboration between
the Bar Council Criminal Law Committee and Reprieve



Should you have any enquiries, please contact:

Florence Laway (florence@malaysianbar.org.my)

Rajeswari Gunarasa (rajeswari@malaysianbar.org.my)

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TENTATIVE PROGRAMME

| DAY 1 LAWYERS AND JUDICIAL OFFICERS | |
|---------------------------------------|---|
| 0900 | Registration of participants and coffee |
| 0930 | Overview / Discussion of Malaysia's Resentencing Process <ul style="list-style-type: none">Brief walk-through of the processIdentification of key documents for resentencing cases — needed for the preparation of case management and hearingsDemographics / statistics on eligible applicantsIntroduction to Reprieve's existing resources / materials which may be useful for the participantsIdentifying existing unknowns / gaps in the process |
| 1030 | Fundamentals of Mitigation in Capital Cases <ul style="list-style-type: none">Difference between sentencing and resentencing;Building jurisprudence around mitigation, including post-conviction mitigation;The need to set precedents to narrow the scope for handing down death sentences in line with the spirit and intention of the legislation to abolish the mandatory death penalty; andThe potentially wide scope of mitigation investigation. |
| 1200 | Lunch |
| 1300 | Panel Event: Lessons from Malawi, Kenya and India <ul style="list-style-type: none">Trends in early cases of resentencing applications in said countries, including with respect to defining aggravating and mitigating factors using common law jurisprudence; andChallenges in setting precedents to narrow the scope of the imposition of the death penalty (eg around adducing post-conviction mitigation evidence) |
| 1400 | Mitigation for Particular Offences <ul style="list-style-type: none">Drug offencesMurder |
| 1500 | Coffee break |
| 1530 | Mental Illness and Other Mental Impairments of Resentencing Applicants — Mitigating Evidence |

| DAY 2 MORNING — LAWYERS AND JUDICIAL OFFICERS | |
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| 0830 | Coffee |
| 0900 | Recap from Day 1 and Questions for Discussion |
| 0930 | Mitigation for Particular Communities / Demographics <ul style="list-style-type: none">WomenElderlyForeign nationals |
| 1100 | Procedural Questions — Facilitated Discussion between Lawyers and Judicial Officers <p>Examples of discussion topics:</p> <ul style="list-style-type: none">Presenting new evidence to the Federal CourtPost-conviction mitigation evidence in Federal CourtProcedural / evidential issues |
| 1200 | Lunch |

| DAY 2 MORNING — AFTERNOON — LAWYERS | |
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| 1300 | Case Study: <ul style="list-style-type: none">Reviewing record of appealWriting investigation planDrafting submissions |
| 1500 | Coffee break |
| 1530 | Case Study: Oral Submissions <ul style="list-style-type: none">Procedural/evidential issues |

| DAY 2 MORNING — AFTERNOON — JUDICIAL OFFICERS | |
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| 1300 | Closed-Door Discussion for Judicial Officers with Judicial Officers / Judges from Kenya, Malawi and/or India |
| 1500 | Coffee (Attendees: Bar Council, Reprieve and Judicial Officers) |