



PERMANENT MISSION OF THE REPUBLIC OF SINGAPORE
UNITED NATIONS | GENEVA

PERMANENT REPRESENTATIVE

11 November 2021

Mr Morris Tidball-Binz

Special Rapporteur on extrajudicial, summary or arbitrary executions

Mr Gerard Quinn

Special Rapporteur on the rights of persons with disabilities

Mr Felipe González Morales

Special Rapporteur on the human rights of migrants

Mr Nils Melzer

Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Dear Mr Tidball-Binz, Mr Quinn, Mr Morales, Mr Melzer,

I refer to your Joint Urgent Appeal (“**JUA**”) dated 29 October 2021 [Ref: UA SGP 2/2022]. I would like to provide clarifications relating to the scheduled execution of Nagaenthiran A/L K Dharmalingam (“**Nagaenthiran**”) and Singapore’s use of the death penalty.

The death penalty is an important component of Singapore’s criminal justice system. It is applied only after due process of law and with judicial safeguards. We use capital punishment in the most limited of circumstances to deter the most serious crimes in Singapore’s context, such as murder and drug trafficking, and this has proven effective. For example, in the four years after the mandatory death penalty was introduced in 1990 for the trafficking of more than 1,200 grammes of opium, the average net weight of opium trafficked into Singapore fell by 66%. Capital punishment serves the larger interest of Singapore society by ensuring our people’s fundamental human right to safety and security.

Facts of Case

Nagaenthran was arrested by Singapore's Central Narcotics Bureau officers at Woodlands Checkpoint on 22 April 2009, as he was entering Singapore from Malaysia. A packet of granular substance weighing a total of 454.8 grammes was found on him. The granular substance was analysed and found to contain not less than 42.72 grammes of diamorphine (or pure heroin).

Nagaenthran was charged with, and convicted of, importing one packet of granular substance containing not less than 42.72 grammes of diamorphine. He was sentenced to the death penalty on 22 November 2010. Singapore's Misuse of Drugs Act ("**MDA**") provides for the death penalty if the amount of diamorphine imported is more than 15 grammes. To put this in perspective, the amount of diamorphine imported by Nagaenthran was almost three times the threshold for the applicability of the death penalty and is equivalent to about 3,560 straws of heroin, which is sufficient to feed the addiction of about 510 abusers for a week. Nagaenthran's mental condition at the time of the offence was taken into consideration by the Courts.

Exercising his rights under the law, Nagaenthran appealed against his conviction and sentence, and the Court of Appeal dismissed his appeal after due consideration on 27 July 2011.

Further Applications and Appeals

Singapore continually reviews its criminal justice system to ensure its effectiveness and relevance in keeping Singapore safe and secure. In 2012, Singapore removed the mandatory death penalty for certain drug trafficking cases, where specific, tightly defined conditions are met. A trafficker who was involved only in transporting, sending or delivering the drugs need not face the mandatory death penalty if one of two conditions are met. The first is where the trafficker has substantively assisted the Central Narcotics Bureau in disrupting drug trafficking activities. The second is where the person was suffering from an abnormality of mind which substantially impaired his mental responsibility. These changes were the result of a regular criminal justice review, and rigorous, open debates in Parliament.

After the amendments to the death penalty regime under the MDA came into effect in January 2013, Nagaenthran was eligible to apply for re-sentencing. On 24 February 2015, Nagaenthran filed a re-sentencing application to set aside the death sentence imposed on him and to substitute a

sentence of life imprisonment in its place. The re-sentencing application sought to determine whether he was suffering from an abnormality of mind which substantially impaired his mental responsibility for the offence. This is contrary to the assertion in the JUA that the re-sentencing application was made for the purpose of arguing that he was a mere courier. The High Court dismissed the application on 14 September 2017, having considered all the facts of the case, including expert evidence from psychiatrists and further submissions by Nagaenthran. Notably, among the evidence considered was the testimony of Nagaenthran's own psychiatric expert, who agreed in Court that Nagaenthran was not suffering from any intellectual disability. During the re-sentencing hearing, the High Court specifically considered whether Nagaenthran met the diagnostic criteria for intellectual disability under the Diagnostic and Statistical Manual of Mental Disorders ("DSM-V"), which included, among other things, deficits in intellectual and adaptive functioning. The High Court found that Nagaenthran was of **borderline intellectual functioning, but did not suffer from mild intellectual disability**. In coming to this finding, the High Court noted that the DSM-V stated that "IQ test scores are approximations of conceptual functioning but may be insufficient to assess reasoning in real life situations and mastery of practical tasks."

On 27 March 2015, Nagaenthran filed a judicial review application against the Public Prosecutor's decision to not issue a certificate of substantive assistance under the MDA. The High Court dismissed this application on 4 May 2018.

Nagaenthran appealed against the High Court's decisions on both the 24 February 2015 and 27 March 2015 applications, and the Court of Appeal dismissed both appeals on 27 May 2019.

The High Court and Court of Appeal held that Nagaenthran clearly understood the nature of his acts and did not lose his sense of judgment of the rightness or wrongness of what he was doing. They found that he knew it was unlawful for him to be transporting the drugs, and he concealed the drugs to avoid them being found. Despite knowing the unlawfulness of his acts, he undertook the criminal endeavour so that he could pay off some part of a monetary debt. The Court of Appeal found that this was the working of a criminal mind, weighing the risks and countervailing benefits associated with the criminal conduct in question, and that Nagaenthran took a calculated risk which, contrary to his expectations, materialised. It was a deliberate, purposeful and calculated decision on Nagaenthran's part to take the chance.

Nagaenthran was accorded full due process under the law and was represented by legal counsel throughout the process. He filed a petition to the President for clemency on 2 September 2019, which was rejected on 1 June 2020.

Nagaenthran brought an application for leave to commence a second judicial review proceeding on 2 November 2021, which was heard before the High Court on 8 November 2021. According to the Court, the application hinged on one factual contention, namely that Nagaenthran's counsel believes that Nagaenthran possesses the mental age of a person below 18 years of age. Nagaenthran's counsel had conceded that he possesses no medical expertise to comment on this matter. However during the hearing, he refused to consent to having Nagaenthran's latest medical and psychiatric reports placed before the Court.

Moreover, the High Court considered evidence from the Singapore Prison Service officer presently looking after Nagaenthran, which made it clear that Nagaenthran's counsel had only met Nagaenthran once in the last three years, for a mere 26 minutes in all on 2 November 2021. The High Court concluded that there was no credible basis for the assertion by Nagaenthran's counsel that Nagaenthran possesses the mental age of a person below 18 years of age. The High Court therefore dismissed the leave application on 8 November 2021 on the grounds that Nagaenthran had not established any arguable case or *prima facie* case. The High Court reiterated that Nagaenthran has been accorded due process in accordance with the law.

Nagaenthran's counsel had lodged a Notice of Appeal and the appeal was fixed before the Court of Appeal on 9 November 2021. There are outstanding legal applications before the Courts pertaining to Nagaenthran's judicial execution. The Court of Appeal has issued a stay of execution until all proceedings are concluded. We will leave it to the Court to make its ruling on these matters.

No International Consensus on the Death Penalty

International law does not prohibit the death penalty. There is no international consensus for or against the use of the death penalty when it is imposed according to the due process of law and judicial safeguards. There is also no international consensus on what constitutes the "most serious crimes", which is not explicitly defined under international human rights law.

It is the sovereign right of every country to decide the use of capital punishment for itself, considering its own circumstances and in accordance with its international law obligations. This right was reaffirmed most recently and for the third consecutive time by a significant number of UN Member States voting in support of the sovereignty amendment in the 75th UN General Assembly resolution on a “Moratorium on the use of the death penalty”. This right should be respected.

The JUA claims that the International Narcotics Control Board considers the use of the death penalty for drug crimes incompatible with international law. We note that the Board has not made any such categorical assertion.

Singapore’s Response to Other Assertions in the JUA

The JUA alleges that “life and death decisions” are left in the hands of the Public Prosecutor. The Public Prosecutor carries out its duties independently of the Government and assesses from evidence whether substantive assistance was indeed provided. The Public Prosecutor’s discretion is not unfettered and can be subject to judicial review. In this case, the Public Prosecutor’s decision not to issue a certificate of substantive assistance was challenged by Nagaenthran, and his challenge was considered and dismissed by both the High Court and the Court of Appeal.

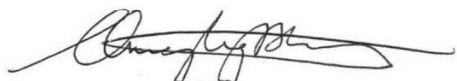
Separately, the JUA claims that Nagaenthran’s family members were “given a long list of COVID-19 rules and regulations” to follow, and that they were not permitted to take public transportation to visit Nagaenthran in prison. The requirements that Nagaenthran’s family members have to adhere to reflect Singapore’s prevailing protocols to safeguard public health and safety amidst the ongoing COVID-19 pandemic. They apply not only to Nagaenthran’s family members, but to all travellers entering Singapore from Malaysia during this period. The Singapore authorities have been in close contact with Nagaenthran’s family members to guide them on the process and facilitate their entry into and stay in Singapore.

Statistics Relating to the Use of the Death Penalty in Singapore

Singapore publishes the number of judicial executions carried out every year in the Singapore Prison Service’s annual statistics release. The latest statistics can be found in the release for the year 2020 at the following link: <https://www.sps.gov.sg/news-about-us/in-the-news/singapore-prison-service-annual-statistics-release-for-2020-1>.

I hope that the above helps to clarify any erroneous information and misperceptions on Nagaenthran's case.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Umej Bhatia', with a stylized, flowing script.

UMEJ BHATIA

Ambassador and Permanent Representative