



PERMANENT MISSION OF THE REPUBLIC OF SINGAPORE
UNITED NATIONS | GENEVA

PERMANENT REPRESENTATIVE

26 April 2022

Mr Morris Tidball-Binz

Special Rapporteur on extrajudicial, summary or arbitrary executions

Mr Gerard Quinn

Special Rapporteur on the rights of persons with disabilities

Ms Tlaleng Mofokeng

Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Ms Siobhán Mullally

Special Rapporteur on trafficking in persons, especially women and children

Dear Mr Tidball-Binz, Mr Quinn, Ms Mofokeng, Ms Mullally,

I refer to your Joint Urgent Appeal (“**JUA**”) dated 20 April 2022 [Ref: UA SGP 4/2022].

Singapore’s replies dated 11 November 2021 and 2 March 2022 to your previous JUAs regarding the case of Nagaenthran A/L K Dharmalingam (“**Nagaenthran**”) would have addressed most of the points in your latest JUA. This reply provides clarification about Nagaenthran’s mental condition in prison, the Singapore Court of Appeal’s dismissal of Nagaenthran’s latest legal applications to the courts, and the notification period provided to Nagaenthran’s family prior to Nagaenthran’s scheduled execution.

Clarifications

Nagaenthran's Mental Condition

In dismissing Nagaenthran's latest applications, the Court of Appeal found that **there was no evidence to support the assertions that Nagaenthran had a mental age below 18 years, or that his mental faculties had deteriorated since the time of his offence** – claims on which Nagaenthran's legal applications were based. The main piece of evidence presented on behalf of Nagaenthran was the “bare assertion” by Nagaenthran's counsel – who had himself acknowledged that he had no medical expertise – as to Nagaenthran's mental condition. The Court of Appeal said that the “firm belief” asserted by Nagaenthran's counsel in his own speculation about Nagaenthran's mental condition was “self-serving and not supported by anything at all”.

Further, **despite professing a concern over Nagaenthran's mental faculties, Nagaenthran's counsel had objected to the admission of Nagaenthran's recent medical reports as evidence**, citing Nagaenthran's interest in medical confidentiality. Nagaenthran's counsel also contended that the reports should be sent only to Nagaenthran's family and counsel, and should not be seen by the courts. The Court of Appeal said that Nagaenthran's position on the admission of his medical records “smack[ed] of bad faith”, and supported the inference that he “is seeking to prevent the court from accessing that evidence because he knows or believes it would undermine his case”.

Dismissal of Nagaenthran's Legal Applications

You expressed concern that “the legitimate process of appeal proceedings” by Nagaenthran's legal counsel was “denounced” as an abuse of process.

The Court of Appeal had detailed in its judgment numerous instances in which Nagaenthran's counsel had acted “in a manner that is contrary to the applicable rules and [...] basic expectations of fairness to the other party and of courtesy to the court”.¹ For instance,

- (a) During the High Court hearing of Nagaenthran's originating summons (the “**first application**”) on 8 November 2021, challenging the carriage of his sentence of death, Nagaenthran's counsel filed a

¹ The Court of Appeal's judgement on Nagaenthran's legal application can be found at www.elitigation.sg/gd/s/2022_SGCA_26

second application (Criminal Motion 30/2021) which contained “essentially the same” arguments as those presented in the first application and which sought in substance the same relief. Nagaenthran’s counsel failed to explain why it was necessary for him to file this second application.

(b) In support of the second application, Nagaenthran’s counsel tendered two versions of an affidavit (one affirmed on 5 November 2021 and one unaffirmed) from Nagaenthran’s [REDACTED] which purported to attest to the same issue of Nagaenthran’s current mental state. However, there were material differences between the two versions for which no explanation was provided. Nagaenthran’s counsel also failed to explain why neither of the affidavits were filed for the first application when at least one of them was available before the said hearing.

(c) Just before the hearing in the Court of Appeal on 9 November 2021 in relation to the first and second applications, Nagaenthran’s counsel filed a third application (Criminal Motion 31/2021) seeking leave to apply for a review of Nagaenthran’s previously concluded appeals. The Court of Appeal observed that the third application was predicated upon the “same factual contention” raised in the first and second applications, and that it was unclear why this third application needed to be pursued separately. In any event, despite being granted leave by the Court of Appeal to make the said review application, Nagaenthran’s counsel took no steps whatsoever to do so.

(d) Before the Court of Appeal hearing first fixed on 9 November 2021, Nagaenthran’s counsel filed two expert reports dated 5 November 2021 and 7 November 2021 respectively, without any explanation as to why these documents had not been filed before the High Court hearing of the first application on 8 November 2021. Further, at the adjourned Court of Appeal hearing on 1 March 2022, Nagaenthran’s new counsel sought to admit a further expert report dated 27 February 2022. She did not provide any explanation for the late attempt to admit this document.

The Court of Appeal, considering the manner in which the various applications have been made, found that it was a “drip-feeding of applications in a bid to thwart the court’s efforts to discharge its responsibility to dispose of the matter timeously, in accordance with its merits.” The Court also posited

that Nagaenthran's brother's evidence "was deliberately withheld for the purpose of deploying it in support of a further application".

In relation to the proceedings as a whole, the Court of Appeal concluded that the proceedings "constitute a blatant and egregious abuse of the court's processes... conducted with the seeming aim of unjustifiably delaying the carrying into effect of the sentence imposed on [Nagaenthran]; and the case mounted by [Nagaenthran's] counsel was baseless and without merit, both as a matter of fact and of law."

Notification Period

You highlighted information received suggesting that Nagaenthran's family in Malaysia would not have sufficient time to travel to Singapore to visit him prior to his execution.

The Singapore authorities have been in close contact with Nagaenthran's family to facilitate their entry and stay in Singapore. Nagaenthran started receiving extended visits from his [REDACTED] working in Singapore on the day he and his family were notified of the execution date. His other [REDACTED] began arriving in Singapore for visits the following day.

Singapore's Position on Capital Punishment

I reiterate once again that there is no international consensus firstly, against the use of the death penalty, and secondly, that the death penalty amounts to cruel, inhuman, or degrading punishment, when it is imposed according to the due process of the law and with judicial safeguards. There is also no explicit definition under international law nor international consensus on what constitutes "most serious crimes".

It is the sovereign right of every country to decide on 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.

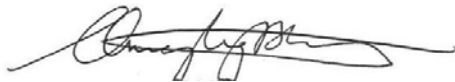
Singapore's Approach against Drugs

Capital punishment in Singapore is only applied to the most serious crimes which cause grave harm to others and to society. This includes drug trafficking, which causes immense harm to the drug abusers and their families.

Capital punishment has deterred drug trafficking and kept Singapore's domestic drug situation well under control. Consequently, we have avoided the crimes and suffering that many societies with liberal drug laws have had to live with.

Countries should be free to choose the approach that best suits their own circumstances, and we will continue to implement measures that have worked well for us in our fight against drugs.

Yours sincerely,



UMEJ BHATIA

Ambassador and Permanent Representative