



PERMANENT MISSION OF THE REPUBLIC OF SINGAPORE
UNITED NATIONS | GENEVA

PERMANENT REPRESENTATIVE

16 May 2022

Mr Morris Tidball-Binz
Special Rapporteur on extrajudicial, summary or arbitrary executions

Mr Mumba Malila SC
Vice-Rapporteur of the Working Group on Arbitrary Detention

Mr Felipe González Morales
Special Rapporteur on the human rights of migrants

Mr Fernand de Varennnes
Special Rapporteur on minority issues

Dear Mr Tidball-Binz, Mr Malila, Mr Morales, Mr Varennnes,

I refer to the Joint Urgent Appeal dated 27 April 2022 [Ref: UA SGP 5/2022]. I would like to address the serious allegations made about Singapore's criminal justice system and clarify the facts about the scheduled execution of convicted drug trafficker Datchinamurthy A/L Kataiah ("**Datchinamurthy**").

Singapore's Criminal Justice System is Fair and Impartial

Your letter stated that you had received information alleging that ethnic minorities in Singapore "experience structural discrimination and reduced protection of their rights at various stages of the Singaporean criminal justice system, particularly in the context of drug related offenses". You expressed concern that "persons belonging to ethnic minorities, particularly Malays, are overrepresented in the criminal justice system in Singapore, especially among persons sentenced to the mandatory death penalty under the Misuse of Drugs Act", citing a concluding observation of the Committee on the Elimination of Racial Discrimination ("**the Committee**") from Singapore's first review before the Committee last year.

Singapore categorically rejects these allegations. The rule of law is the foundation upon which Singapore was built. It is undergirded by the following principles:

- a. No person is above the law;
- b. We maintain a separation of powers amongst the Executive, Legislature and Judiciary. State power is exercised in accordance with the law, and the law is upheld by an impartial and credible judiciary;
- c. We are a society governed by impartial and objective laws which are passed by a democratically elected Parliament, and published for all to see; and
- d. Laws are enforced fairly, without fear or favour. There are avenues for people to challenge any arbitrary exercise of power.

These principles are borne out in practice, at all levels of the criminal justice system. Singapore is known for our fair and impartial criminal justice system, and independent and effective judiciary. Singapore was ranked first in criminal justice within the East Asia and Pacific region, and seventh worldwide in the World Justice Project Rule of Law Index 2021.

Singapore's laws apply equally to all, regardless of race or nationality. Both attributes play no part in the professional discharge of duties by our law enforcement agencies, in the prosecutorial decisions of the Public Prosecutor, or in the decisions of the judiciary. Those who break our laws will not be subject to differentiated treatment based on race or nationality.

All criminal proceedings in Singapore, including capital cases, are conducted with due process before an impartial and independent judiciary. The Singapore High Court will not record a finding of guilt in a capital case unless the defendant is tried and the Public Prosecutor leads evidence to prove its case at the trial. Defendants can only be convicted and sentenced to the death penalty if their guilt has been proven in accordance with the law.

Further to the above, all persons facing capital charges in the High Court are ensured legal representation under the Legal Assistance Scheme for Capital Offences. Once a person is charged with a capital offence, legal counsel will be offered to the person free of charge regardless of his or her race or nationality.

These points were made very clear to the Committee during Singapore's review before the Committee last year.

Datchinamurthy's Case

Right to Fair Trial Not Prejudiced

The facts of Datchinamurthy's case had already been set out in Singapore's statement dated 28 April 2022 in response to comments made by the Office of the High Commissioner for Human Rights on 25 April 2022 regarding the scheduled executions of Datchinamurthy and Nagaenthran A/L K Dharmalingam. I append that statement to this letter for reference at the Annex.

Singapore rejects the allegation that Datchinamurthy's right to fair trial was prejudiced and reiterates that Datchinamurthy was accorded full due process under the law and had access to legal counsel. His petitions to the President of Singapore for clemency were unsuccessful.

In view of a legal application raised by Datchinamurthy on 27 April 2022, the Singapore High Court has granted a stay of execution until the conclusion of the application.

Execution Notice Period

You expressed concern about the notice period for executions and suggested that it amounted to "discriminatory treatment for foreign nationals [...] whose families must undertake international travel to visit them [...]".

On being notified of the execution, Datchinamurthy was granted extended visits in prison. The Singapore authorities were in close contact with Datchinamurthy's family to facilitate their entry into Singapore. Datchinamurthy's family started visiting him on the same day that they were notified.

Clarifications: Statutory Presumption under the Misuse of Drugs Act (“MDA”)

You reflected concerns about “the existence of laws, particularly those relating to drug offences, where the presumption of innocence is not fully guaranteed, as the burden of proof lies partially on the accused.”

Defendants in Singapore enjoy a presumption of innocence in **all** criminal cases, including cases involving drug offences under the MDA. This is embodied in the principle that the Prosecution is required to prove the guilt of defendants beyond reasonable doubt. The presumptions in the MDA operate only as evidential tools that shift the burden of disproving certain elements of the offence to the defendant.

However, for these presumptions in the MDA to apply, the Prosecution is first required to prove certain facts that lead to an inference of the presumed fact. Even then, the presumptions can still be and have successfully been rebutted in Court. They do not change the fundamental presumption of innocence, which defendants enjoy and is a fundamental tenet of the rule of law in Singapore.

No International Consensus on Capital Punishment

I reiterate 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.

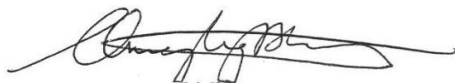
Singapore's Approach against Drugs Is Effective

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 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

Annex

STATEMENT BY THE PERMANENT MISSION OF SINGAPORE REGARDING COMMENTS MADE BY THE OHCHR ON SCHEDULED EXECUTIONS IN SINGAPORE

We refer to the comments made on 25 April 2022 by the Spokesperson for the UN High Commissioner for Human Rights Ms Ravina Shamdasani regarding the scheduled executions of two individuals, Nagaenthran A/L K Dharmalingam (“Nagaenthran”) and Datchinamurthy A/L Kataiah (“Datchinamurthy”), who have been convicted of drug trafficking (accessible at <https://www.ohchr.org/en/statements/2022/04/imminent-singapore-executions>).

Facts of Case: Nagaenthran

Nagaenthran was arrested by Singapore’s Central Narcotics Bureau (“CNB”) officers 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 sentenced to the death penalty by the Singapore High Court on 22 November 2010 after being convicted of an offence of importing not less than 42.72 grammes of diamorphine. Singapore’s Misuse of Drugs Act (“MDA”) provides for the death penalty if the amount of diamorphine imported is more than 15 grammes. The amount of diamorphine imported by Nagaenthran was almost three times the threshold for the applicability of the death penalty and is sufficient to feed the addiction of about 510 abusers for a week. Nagaenthran appealed against his conviction and sentence, and the Singapore Court of Appeal dismissed his appeal on 27 July 2011.

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 CNB 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 the Parliament of Singapore.

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.

Nagaenthran's Intellectual Capacity

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."

The High Court considered the facts, expert evidence from four different psychiatric and psychological experts, as well as further submissions by the Public Prosecutor and Nagaenthran's Defence. **It assessed the evidence of the psychiatrists, including one called by Nagaenthran's Defence on behalf of Nagaenthran, who agreed in Court that Nagaenthran was not intellectually disabled.**

The High Court found that Nagaenthran was able to plan and organise on simpler terms, and "was relatively adept at living independently". It also noted that his actions in respect of the drug importation offence revealed that he was "capable of manipulation and evasion". For instance, when Nagaenthran was stopped at the checkpoint, he attempted to forestall a search by telling CNB officers that he was "working in security". This sought to appeal to the social perception that security officers were trustworthy. Nagaenthran was also noted to be "continuously altering his account of his education qualifications, ostensibly to reflect lower educational qualifications each time he was interviewed". The High Court held that Nagaenthran knew what he was doing and upheld the sentence of death.

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 Court of Appeal affirmed the High Court's decision and said that it was satisfied that Nagaenthran clearly understood the nature of his acts. It noted that Nagaenthran knew that it was unlawful for him to be transporting drugs, and hence attempted to conceal the bundle of drugs by strapping it to his left thigh and then wearing a large pair of trousers over it. He undertook the criminal endeavour in order to pay off his debts, and hoped to receive a further sum of money upon successful delivery. The Court of Appeal found that Nagaenthran's actions "evidenced a deliberate, purposeful and calculated decision", "in the hope that the endeavour would pay off, despite the obvious risks". It said that this was "the working of a criminal mind, weighing the risks and countervailing benefits associated with the criminal conduct in question". Nagaenthran considered the risks, balanced it against the reward he had hoped he would get, and decided to take the risk.

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 made by Nagaenthran's counsel that he believes that Nagaenthran possesses the mental age of a person below 18 years of age. Nagaenthran's counsel 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 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 subsequently appealed against the dismissal of the case. He also filed two applications to the Court of Appeal.

- (a) The first application was for Nagaenthran to be assessed by an independent panel of psychiatrists and for a stay of execution of his sentence in the meantime.

- (b) The second application was for leave for the Court of Appeal to review its earlier decision affirming the death sentence on Nagaenthran and to set aside the sentence.

On 29 March 2022, the Court of Appeal dismissed Nagaenthran’s appeal and the first application. The Court found that there was no evidence to support the assertion that Nagaenthran had a mental age below 18 years, or that his mental faculties had deteriorated since the time of his offence. 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 Nagaenthran’s counsel’s asserted “firm belief” 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 reports in respect of recent psychiatric and medical assessments conducted on Nagaenthran, citing Nagaenthran’s interest in medical confidentiality. Nagaenthran’s counsel also contended that the reports should be sent to Nagaenthran’s family and counsel, but not be seen by the court. The Court of Appeal said that Nagaenthran’s position on the disclosure 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”.

Nagaenthran’s second application lapsed after Nagaenthran failed to file a review application despite being granted leave to do so.

On 25 April 2022, Nagaenthran and his mother brought an application seeking a stay of his execution pending the filing and disposal of certain applications which they intended to file, in order to set aside the decisions in various matters presided over by Chief Justice Sundaresh Menon on the basis of a reasonable apprehension of bias. In essence, their case was that Menon CJ was the Attorney-General who had control, supervision and authority over Nagaenthran’s prosecution, and this was incompatible with his judicial function in hearing those matters.

The Court of Appeal dismissed the application, finding it devoid of merit and nothing more than a blatant and impermissible attempt to further obstruct the imposition of the sentence imposed. Menon CJ was not personally involved in, and did not make any decisions pertaining to, Nagaenthran’s matter during his tenure as Attorney-General. Furthermore, Nagaenthran had confirmed, with legal

advice and through his legal counsel, that he did not object to Menon CJ hearing the matters. The Court of Appeal observed that Nagaenthran's allegation that he had been denied a fair trial was clearly an afterthought and not made in good faith.

Throughout the process, Nagaenthran was accorded full due process under the law and had access to legal counsel. His petitions to the President of Singapore for clemency were unsuccessful.

Facts of Case: Datchinamurthy

Datchinamurthy was arrested by the CNB on 18 January 2011 after five packets of granular or powdery substance weighing about 2.27 kilogrammes were found with him. The substance was subsequently found to contain not less than 44.96 grammes of diamorphine (or pure heroin) – an amount equivalent to about 3,750 straws of heroin, which is sufficient to feed the addiction of about 540 abusers for a week.

On 15 April 2015, Datchinamurthy was convicted in the High Court for importing the drugs and was sentenced to the death penalty. On 5 February 2016, Datchinamurthy's appeal against his conviction and sentence was dismissed in the Court of Appeal.

On 3 February 2021, Datchinamurthy filed an application to review the Court of Appeal's dismissal of his appeal based on claims that procedural safeguards were not met as there was no distinct inquiry into whether the facts of his case were sufficient to establish wilful blindness on his part. On 5 April 2021, the Court of Appeal dismissed the application and said that Datchinamurthy failed to show any legitimate basis for the court to exercise its power of review of its earlier decision. The Court of Appeal stated that Datchinamurthy was found to have actual knowledge of the nature of drugs in his possession and there was thus no need to consider wilful blindness.

Datchinamurthy was accorded full due process under the law and had access to legal counsel. His petitions to the President of Singapore for clemency were unsuccessful.

Assistance Rendered to Nagaenthran and Datchinamurthy's Families

The Singapore authorities have been in close contact with the families of Nagaenthran and Datchinamurthy to facilitate their entry into and stay in Singapore for visits. Both men were granted extended visits from the day they were notified of the execution date. Their family members from Malaysia have been visiting them.

No International Consensus on the Death Penalty

There is no international consensus against the use of the death penalty when it is imposed according to the due process of the law and with judicial safeguards.

Every country has the sovereign right to determine its own criminal justice system, considering its own circumstances and in accordance with its international 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.

In Singapore, the death penalty is only applied to the most serious crimes, which cause grave harm to others and to society. This includes drug trafficking. The use of the death penalty is applied only after due process of law and with judicial safeguards. Given Singapore’s position as a transportation hub in the region, Singapore faces the danger of being exploited as a transit centre for drug traffickers. The drugs they traffic can feed the addictions of many abusers, causing immense harm to the abusers and their families, and to society at large.

The death penalty has deterred major drug syndicates from establishing themselves in Singapore. This has in turn helped to reduce the supply of drugs to Singapore and protected the larger community.

Our concern for our society and our broader public interest is the reason Singapore has adopted a zero tolerance approach towards drugs and drug trafficking. We will continue to do what is best and what works to ensure the safety and security of Singaporeans, residents and visitors to our nation.

Singapore consistently tops international rankings on safety and security. Singaporeans and foreign nationals and companies value the high level of personal safety they enjoy in Singapore, testifying to the appropriateness and effectiveness of our criminal justice policies.

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