

Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Working Group on Arbitrary Detention; the Special Rapporteur on the rights of persons with disabilities; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on trafficking in persons, especially women and children

Ref.: UA SGP 3/2021
(Please use this reference in your reply)

21 December 2021

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on extrajudicial, summary or arbitrary executions; Working Group on Arbitrary Detention; Special Rapporteur on the rights of persons with disabilities; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and Special Rapporteur on trafficking in persons, especially women and children, pursuant to Human Rights Council resolutions 44/5, 42/22, 44/10, 42/16, 43/20 and 44/4.

In this connection, we would like to bring to the attention of your Excellency's Government new information we have received concerning the **deterioration of the mental health of Mr. Nagaenthran a/l K Dharmalingam, a Malaysian national who is at risk of imminent execution for drug offences in Singapore.**

The case of Mr. Nagaenthran was the subject of previous communication JUA SGP 2/2021 sent on 29 October 2021 and a [press release](#) issued on 8 November 2021. We would like to thank your Excellency's Government for the detailed reply received on 11 November 2021. However, we remain concerned that the execution of Mr. Nagaenthran would be contrary to international human rights law. This is further expanded on below.

According to the information received:

Mr. Nagaenthran was arrested in 2009 and interrogated. During interrogation, he indicated he had been given the bundle by a friend and that he knew it contained diamorphine. At trial, he indicated that he had been threatened to deliver the bundle by his friend and had not known the contents.

The court accepted evidence that Mr. Nagaenthran he has an IQ score of 69, mild ADHD of the inattentive type, and also that his executive functioning skills (including verbal fluency, set-shifting, abstract reasoning, strategy formation, and problem solving) were impaired.

Reportedly, a state psychiatrist concluded in 2017 that Mr. Nagaenthran would have been impaired in his internal rationality and more specifically, his ability to appropriately assess the risks of his actions.

At the time of his arrest, no scheme was in place in Singapore to assist people with intellectual, developmental and psychosocial disabilities during interrogation, meaning Mr. Nagaenthran gave his confession without procedural accommodations. Despite this, his original confession has been considered authoritative by the courts. Singapore implemented the Appropriate Adult Scheme (AAS) for persons with mental disabilities nationwide in all law enforcement agencies in 2015.

Mr. Nagaenthran was scheduled to be executed on 10 November 2021 for drug offences.

His legal representation made an application to the High Court seeking a declaration that executing him would be unconstitutional and that he is not competent for execution due to his mental health. This was dismissed. The dismissal was appealed to the high court. A stay was granted until the Court of Appeal decided the appeal.

On 8 November 2021, the Court of Appeal hearing was adjourned after Mr. Nagaenthran tested positive for COVID-19. Reportedly, the judge stated that “we have got to use logic, common sense and humanity.”

The hearing has now been rescheduled for 30 November 2021. If dismissed, Mr. Nagaenthran’s would be at risk of imminent execution.

According to family members who have visited and spoken to Mr. Nagaenthran recently, his mental health has significantly deteriorated.

Reportedly, [REDACTED]
[REDACTED] He has a delayed response to stimuli and is often incoherent. He also speaks of activities that have not occurred. He is reportedly unaware that he is at risk of execution. He has indicated that he is receiving medication [REDACTED] although it is unclear which medication he has been provided or on the basis of what diagnosis.

We would like to express serious concern at information that Mr. Nagaenthran’s mental health has seriously deteriorated and our grave concern that he remains at risk of imminent execution if the Court of Appeal hearing is dismissed.

Without making any judgment as to the accuracy of the information made available to us, the above allegations appear to be in contravention of the right of every individual to life, liberty and security as set out in article 3 and 9 of the Universal Declaration of Human Rights (UDHR) and the guarantee that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment in article 5 of the

same. We remind that the right to life is a jus cogens, peremptory norm from which no derogation is permitted. We further refer the Convention on the Rights of persons with disabilities which Singapore ratified on 18 July 2013, in particular article 10 which requires state parties to take all necessary measures to ensure the right to life of persons with disabilities on an equal basis with others and article 13 regarding equal access to justice.

In view of the urgency of the matter, and of the irreversibility of the punishment of the death penalty, we call upon the judiciary and all relevant organs of the Singaporean state to ensure Mr. Dharmalingam is not executed. His execution, on the facts available to us would constitute a violation of applicable international human rights standards, and would thus be an arbitrary execution. We also urge the President to consider granting clemency in this case, including in consideration of reports on his current mental health.

Under international law, a **death sentences may only be imposed in respect of “the most serious crimes” in cases which involve intentional killing.** Your Excellency’s Government’s letter dated 11 November 2021 in reply to communication JUA SNG 2/2021 (henceforth “your Excellency’s Government’s reply”) states that there is no consensus on what constitutes the “most serious crimes.” We would like refer your Excellency’s Government to the report of the former Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, which considers this issue at length.¹ It notes that *“the conclusion to be drawn from a thorough and systematic review of the jurisprudence of all of the principal United Nations bodies charged with interpreting these provisions is that the death penalty can only be imposed in such a way that it complies with the stricture that it must be limited to the most serious crimes, in cases where it can be shown that there was an intention to kill which resulted in the loss of life.”* Drug crimes do not meet this internationally recognized threshold.

We also note, based on the long experience of this mandate, and a careful review of studies and evidence, **that the death penalty has never been proved to be an effective deterrent for crimes, including drug crimes.**

With regards to the observation in your Excellency’s Government’s reply regarding the reduction of the amount of net weight trafficked into Singapore in the four years after 1990 when the mandatory death penalty was introduced, we would like to highlight that fluctuations in the weight of drugs received cannot be attributed to a single factor and that correlation does not equate causation.

In this respect, the Secretary General’s report on Capital punishment and the implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty states that “there is no evidence that the death penalty in fact deters drug-related or other crime more than other methods of punishment” and notes that “public health approaches have led to significant successes in a range of national

¹ Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, [A/HRC/4/20](#), paras 39 – 53

contexts.”² We note that the International Narcotics Control Board has reiterated that drug control measures do not exist in a vacuum; in their implementation of these measures, States must comply with their international human rights obligations and has repeatedly encouraged those States which retain and continue to impose the death penalty for drug-related offences to consider abolishing the death penalty for such offences.³ The United Nations Office on Drugs and Crime does not support the death penalty.⁴

We reiterate that **mandatory death sentences are inherently over-inclusive and unavoidably violate human rights law.** The categorical distinctions that may be drawn between offences in the criminal law are not sufficient to reflect the full range of factors relevant to determining whether a death sentence would be permissible in a capital case. In such cases, individualized sentencing by the judiciary is required in order to prevent cruel, inhuman or degrading punishment and the arbitrary deprivation of life.⁵ We re-iterate our concern that in Singaporean legislation, with the exception of limited cases where the defendant is found to have substantially assisted the Public Prosecutor or in cases of “abnormality of the mind,” the death sentence remains mandatory, preventing other mitigating factors from being considered.

With regard to Mr. Nagaenthran’s intellectual disability, we note that reportedly the court recognised Mr. Nagaenthran had borderline intellectual functioning and that a state psychiatrist recognised he had impaired internal rationality and his ability to appropriately assess the risks of his actions. We note that Singapore has recognised the importance of procedural accommodations to facilitate effective access to justice on people face special barriers in defending themselves on an equal basis with others⁶ and put in place an Appropriate Adult Scheme in 2015. We note that this scheme was not in place when Mr. Nagaenthran was interrogated and that reportedly **he did not have access to any such procedural accommodations.**

With regard to reports that Mr. Nagaenthran’s **mental health has seriously deteriorated**, we would like to highlight that death row and indeed prolonged detention can have significant impacts on prisoners’ mental health.⁷ We note that Mr. Nagaenthran deteriorating mental health condition was observed by family members who have visited and spoken with him recently. This information appears to indicate the need for independent psychiatric and psychological assessments of his current health status.

² Capital punishment and the implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty, [A/HRC/42/28](#), para 10.

³ For example, Report of the International Narcotics Control Board (INCB) [for 2014](#), foreword, , page iii, INCB reiterates its call to States to consider the abolition of the death penalty for drug-related offences, [Press release](#), UNIS/NAR/1290

⁴ UNODC, [Statement attributable to the UNODC spokesperson on the use of the death penalty](#)

⁵ Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, A/HRC/4/20, para 4.

⁶ Replies of Singapore to the list of issues in relation to its initial report, CRPD/C/SGP/RQ/1, paras 57-61

⁷ Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, A/HRC/38/36, paragraph 46 and Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment A/67/279 para 42

We reiterate that the death penalty should not be carried out against persons with psychosocial or intellectual disabilities, and this is applicable both to the situation of the individual at the time of the offence, as well as at the time of execution.⁸

We are also concerned about alleged details of the case that could be evidence of a situation of trafficking in persons, given the alleged threats directed to Mr. Nagaenthran to deliver the bundle containing the drugs, as well as the abuse of a position of vulnerability by the trafficker, given Mr. Nagaenthran mental health status. In this regard, in the absence of an assessment of the situation as a trafficking case and the identification of Mr. Nagaenthran as a potential victim, we would like to remind your Excellency's Government of the obligations regarding identification and protection of victims, including through the application of the principle of non-punishment, as established in the ASEAN Convention against Trafficking in persons, ratified by your Excellency's Government in 2016, in particular, articles 11 and 14, and more precisely article 14.7 which calls States to "consider not holding victims of trafficking in persons criminally or administratively liable, for unlawful acts committed by them, if such acts are directly related to the acts of trafficking". We would also like to bring to your attention, the obligations to identify and protect victims of trafficking derived from the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, acceded to by your Excellency's Government in 2015. Finally, the Special Rapporteur on trafficking in persons, especially women and children, highlighted in her last report to the Human Rights Council on the application of the non-punishment principle that "States are required to ensure non-discrimination and disability inclusion in all anti-trafficking measures, including in ensuring the non-punishment of trafficked persons with disabilities. That requirement is particularly urgent where persons with disabilities may be at heightened risk of exploitation, including for the purpose of forced criminality" (A/HRC/47/34, para 27.)

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide information on whether any independent psychiatric and psychological assessments of Mr. Nagaenthran's current health status have been carried out, and in the case they have, what were the result and recommendations;

⁸ Capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty, [E/2010/10](#), section VI.C.4, CRPD, Concluding observations on the initial report of Saudi Arabia, [CRPD/C/SAU/CO/1](#) para 17 and 18, CRPD, Concluding observations on the initial report of Kuwait, [CRPD/C/KWT/CO/1](#), paras. 20–21, Question of the death penalty, [A/HRC/45/20](#), section V.B

3. Please provide information on whether Mr. Nagaenthran had any procedural accommodations during his interrogation and subsequent trial proceedings and if none were available, how reliance on his testimony given without such accommodations is compliant with Singapore's obligations under the Convention on the rights of persons with disabilities.
4. Please provide information on any efforts envisaged to remove the mandatory death penalty in Singapore at least for drug offences and/or to reduce the scope of application of the death penalty.

In view of the urgency of the matter, we would appreciate a response on the steps currently considered by your Excellency's Government to safeguard the above-mentioned person in compliance with international instruments and human rights norms, including under the Convention on the rights of persons with disabilities.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

We may continue to publicly express our concerns in the near future on this case, which in our view merits prompt and undivided attention, as Mr. Nagaenthran's life is at stake, and the execution of a death penalty is irreversible. We also believe that this matter is one of public concern and that the public should be informed about it, and about its human rights implications. Any public expression of concern from our part would indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

We would like to inform your Excellency's Government that after having transmitted this joint urgent appeal to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. This communication of allegations in no way prejudices any opinion the Working Group may render. The Government is required to respond separately to the urgent action procedure and the Working Group's regular procedure.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

We would like to inform your Excellency's Government that a copy of this communication will be sent to the Government of Malaysia.

Please accept, Excellency, the assurances of our highest consideration.

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

Elina Steinerte
Chair-Rapporteur of the Working Group on Arbitrary Detention

Gerard Quinn
Special Rapporteur on the rights of persons with disabilities

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