

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 the human rights of migrants; 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 1/2022
(Please use this reference in your reply)

20 January 2022

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 the human rights of migrants; 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, 43/6, 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 **case of Mr. Nagaenthran a/l K Dharmalingam, a Malaysian national with deteriorating mental health, who is at risk of imminent execution for drug offences in Singapore.**

The case of Mr. Nagaenthran was the subject of previous communications including JUA SGP 2/2021 sent on 29 October 2021 and JUA SGP 3/2021 sent on 26 November 2021. We would like to thank your Excellency's Government for the detailed reply received to the first letter, but regret that no reply has been received to the second letter. We remain concerned that Mr. Nagaenthran a/l K Dharmalingam is at risk of execution.

According to the information received:

Mr. Nagaenthran's case is currently pending before the Court of Appeal following a filing from his legal representation that his execution would be unconstitutional and that he is not competent for execution due to his mental health. The Court of Appeal hearing was adjourned on 8 November 2021 after Mr. Nagaenthran tested positive for COVID-19. It was reportedly originally rescheduled for 30 November 2021. However, the hearing did not take place.

Mr. Nagaenthran's case is now due to be heard by the Court of Appeal on 24 January 2022.

We take note of the postponement of the Court of Appeal hearing until 24 January, in view of which we wish to express serious concern that

Mr. Nagaenthran's remains at risk of imminent execution if the Court of Appeal hearing is dismissed.

We would like to reiterate the concerns raised in JUA SGP 2/2021 sent on 29 October 2021 and JUA SGP 3/2021 sent on 26 November 2021.

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. We would also like to remind your Excellency's Government of the obligations regarding identification and protection of victims of trafficking, 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 the Report of the Special Rapporteur on trafficking in persons, especially women and children on the application of the non-punishment principle, which provides 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.)

We would also like to recall finding of the Study of the Working Group on Arbitrary Detention "Arbitrary detention relating to drug policies" (A/HRC/47/40) that imposing the death penalty for drug-related offences is incompatible with international standards on the use of the death penalty.

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.

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

We are issuing this appeal in order to safeguard the rights of abovementioned individuals from irreparable harm and without prejudicing any eventual legal

determination. It is relief *pendente lite*.¹

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 like to re-iterate the queries raised in JUA SGP 3/2021:

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;
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

¹ Article 41 ICJ Statute 'Interim Protection': Part III, Section D (Incidental Proceedings), Subsection 1

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.

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

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

Miriam Estrada-Castillo
Vice-Chair of the Working Group on Arbitrary Detention

Gerard Quinn
Special Rapporteur on the rights of persons with disabilities

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

Felipe González Morales
Special Rapporteur on the human rights of migrants

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

Siobhán Mullally
Special Rapporteur on trafficking in persons, especially women and children