

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 and the Special Rapporteur on the human rights of migrants

Ref.: UA SGP 2/2022

(Please use this reference in your reply)

18 February 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 and Special Rapporteur on the human rights of migrants, pursuant to Human Rights Council resolutions 44/5, 42/22, 44/10, 42/16 and 43/6.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **imminent execution of Mr. Rosman bin Abdullah, an individual with intellectual disabilities who reportedly did not receive procedural accommodations. We are also concerned that two other individuals, Mr. Roslan bin Bakar and Malaysian national Mr. Nagaenthran a/l K Dharmalingam, both of whom also have intellectual disabilities, remain at risk of execution.**

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 and JUA SGP 1/2022 sent on 17 February 2022. 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 or third letter. We remain concerned that Mr. Nagaenthran a/l K Dharmalingam is at risk of execution.

According to the information received:

Mr. Rosman bin Abdullah

In 2010, Mr. bin Abdullah was given a mandatory death sentence for trafficking 57.43 grams of diamorphine and has been on death row ever since.

In 2011 a first appeal was dismissed and a petition for clemency was rejected.

In 2012, the Misuse of Drugs Act was amended to give the court discretion to sentence individuals to life imprisonment in lieu of the death penalty if their involvement in the offence was as a "courier" and either the Public Prosecutor had issued a certificate of substantive assistance or they were "suffering from an abnormality of mind." In all other circumstances, the death sentence remains mandatory.

The case was reheard in 2015 and dismissed by the High Court. In 2016 an appeal was dismissed. Evidence was submitted to indicate that Mr. bin Abdullah had psychosocial disabilities and had a history of drug dependence. A psychiatrist reported that he had “long-term polysubstance use history from a very young age [...] likely due to a combination of factors including underlying low IQ and learning difficulties exacerbated by undiagnosed and untreated ADHD, long-term physical abuse and neglect from early childhood, and the resulting subsequent stunted emotional and cognitive development.” The Court of Appeal found that the report was “neutral” and that it did not support the assertion that Mr. bin Abdullah “was suffering from such abnormality of mind that impaired his mental responsibility for his crimes.” They dismissed the appeal, noting that he was not found to meet the definition of a courier set out in the Misuse of Drugs Act and thus the issue of whether he had an “abnormality of the mind,” was moot. Mr. bin Abdullah did not have access to procedural accommodations for his psychosocial disabilities during interrogation.

On 16 February 2022, his family received information that he will be executed on 23 February 2022.

Mr. Roslan bin Bakar

Mr. Roslan bin Bakar was arrested on 18 July 2008, after four other individuals, reportedly identified him as the mastermind behind a drug transaction, which had occurred a few days prior. Mr. bin Bakar was charged with trafficking 96.07 grams of diamorphine and 76.37 grams of methamphetamine. During trial, he claimed that he was not present at the scene and that the four others who had identified him as the mastermind had framed him. The judge found his alibi unconvincing and found “no credible evidence or any motive” for a conspiracy.

On 22 April 2010, Mr. Roslan bin Bakar was found guilty and sentenced to death.

In 2011, the appeal was dismissed with only oral grounds given.

In 2013, one of the four individuals recanted his evidence that Mr. bin Bakar was the person he collected money from and indicated in a handwritten note that there had been a conspiracy with the other arrested individuals to frame Mr. bin Bakar in order to receive reduced charges and later filed an affidavit confirming this. He reportedly indicated that he would inform the Central Narcotics Bureau as such and a letter from Mr. bin Bakar’s legal representation in 2014 indicated that they understood the Central Narcotics Bureau (CNB) had been informed. The CNB later indicated at trial that to the best of their knowledge they were not aware of the handwritten statement until February 2015.

In 2015, Mr. bin Bakar filed a motion to adduce new factual evidence for a retrial on the basis of the handwritten note from 2013. Mr. bin Bakar

submitted that he was at the scene only to receive drugs for consumption. He indicated that he felt compelled to lie about his presence at the scene because he did not think the investigating officer would believe his account and once he had claimed he was not present “he was unable to go back on it for fear that if he told the truth, he would not be believed and his statements would instead be used against him.” Mr. bin Bakar also indicated that the interpreter present during the investigation had told him to confess and that the investigating officer informed him that other persons arrested had given statements that he was head of the syndicate. The investigating officer denied these claims.

The point of law raised in the motion was whether the court could reopen a case on the basis of recantation of evidence. The court indicated that recantation of one witness is usually insufficient to change the outcome if the case is built on multiple strands of evidence. It also indicated that recantation evidence is “inherently suspect,” and that the court must be astute to dismiss bare applications which are based on the unreliable testimony of witnesses who seek to retract their earlier testimony...[amounting to]... opportunistic attempts to reverse convictions” and thus that the recantation “would usually demonstrate the precise opposite” of a miscarriage of justice.

In rejecting the application, the court noted that sufficiently good reasons had not been provided to explain why the individual recanting his testimony lied at first instance, waited two years to recant and that the evidence at trial was inconsistent. They also found it “extremely suspicious” that the handwritten note was dated 2013 but the motion was only filed in 2015. They found that the other four individuals accounts of Mr. bin Bakar’s involvement was “too detailed and too consistent to be fabricated” and noted the investigating officers denial that Mr. bin Bakar had not told him of the conspiracy prior to 2015.

In 2017, Mr. bin Bakar filed a motion on the grounds that he was acting as courier and had an “abnormality of the mind” under s33B(3)(b) of the Misuse of Drugs Act. Mr. bin Bakar has reduced intellectual functioning and an expert found that he had “limited capacity for judgment, decision-making, consequential thinking, impulse control and executive function” due to the underlying cognitive defects. The Director of Public Prosecutions argued that he “was within the borderline range of intellectual functioning” relying on the testimony of Institute of Medical Health psychologists. Reportedly, Mr. bin Bakar did not have access to procedural accommodations during interrogation.

The motion based on the defendants’ intellectual disability was dismissed by the judge, who stated that Mr. bin Bakar was “functioning in ways no different from people with higher IQ level in relation to the drug offences.” The judge also noted that he “was the central figure in the drug transaction. He directed the actions of the others involved and orchestrated its moving parts.” The judge considered that a low IQ level alone is not evidence of an abnormality of mind.

On 26 September 2018, the Court of Appeal dismissed the appeal on behalf of the defendant, giving oral grounds only and agreeing with the High Court's assessment.

On 9 February 2022, the family of Mr. bin Bakar were informed that they are scheduled to be executed on Wednesday 16 February.

An application to halt the executions was dismissed by the Court of Appeal on the 15 February 2022.

An application for judicial review was filed with the High Court, which was dismissed on 16 February 2022. The High Court gave permission to appeal the decision to the Court of Appeal as long as submissions were filed by 1pm and provided 20,000 Singapore dollars security of costs was provided. The Court of appeal rejected the appeal.

A further application was filed on the grounds that the manner in which the death penalty has been administered in Singapore breaches the right to life and constitutes unequal treatment. A hearing was originally scheduled for 17 February 2022. However, the President ordered a respite. The case is now scheduled to be heard on 28 February 2022.

Mr. Nagaenthran a/l K Dharmalingam

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 and then 24 January 2022. However, these hearing did not take place.

Mr. Nagaenthran's case is now due to be heard by the Court of Appeal on 1 March.

Executions in Singapore

Singapore has not carried out any executions since November 2019. The number of individuals on death row is not known, but it is believed as many as 20 people may be at risk of imminent execution.

We would like to express serious concern at the alleged the imminent execution for drug offences Mr. bin Abdullah, who reportedly has an intellectual disabilities and did not receive procedural accomodations during interrogation. We welcome the President's respite of the exeuction of Mr bin Bakar, but are concerned that he, and Mr. Nagaenthran, remain at risk of execution for drug offences despite them both reportedly having intellectual disabilities and not receiving procedural accommodations during interrogation.

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). 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 (CRPD) 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. Further, article 12 of the CRPD emphasizes that persons with disabilities who require support in decision-making must be accommodated, throughout the entirety of the criminal justice process. The International Principles and Guidelines on Access to Justice for Persons with Disabilities further reinforce the right of persons with intellectual disabilities to procedural accommodations. Principle 5 emphasizes that procedural accommodations, when needed, must be available to all persons with disabilities, including suspects and accused persons, who require assistance to participate effectively in investigations and judicial proceedings. Principle 5 also provides that suspects or accused persons with disabilities must be provided with accessible and understandable information about their rights, including the right not to incriminate oneself and that the provision of procedural accommodations be made to persons with disabilities at the time of their arrest, including procedural adjustments and communication support. Principle 6 affirms the right of persons with disabilities to free or affordable legal assistance

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. bin Abdullah, Mr bin Bakar and Mr. Nagaenthran are not executed. Their 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 these cases.

With regard to Mr. bin Abdullah's, Mr bin Bakar's and Mr. Nagaenthran's reported intellectual disability, we note that 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 others¹ and put in place an Appropriate Adult Scheme in 2015. We note that this scheme was not in place when the three individuals were interrogated and they reportedly **did not have access to any such procedural accommodations.**

We note 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.²

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

² 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

We furthermore would like to remind the Government that the General Assembly has consistently called upon all States to establish a moratorium on executions with a view to abolishing the death penalty since its resolution 62/149 of 18 December 2007 (para.7) and most recently, in its resolution 73/175 of 17 December 2018 (para. 7), called upon all States to respect the safeguards guaranteeing protection of the rights of those facing the death penalty.³

We also highlight that under international law, a **death sentences may only be imposed in respect of “the most serious crimes” in cases which involve intentional killing**. 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.

We emphasise 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.⁴ We re-iterate our concern that in Singaporean legislation, with the exception of limited cases where the defendant is found to be a courier and 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.

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

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency’s Government to safeguard the rights of the above-mentioned person(s) in compliance with international instruments.

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

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 Mr. bin Abdullah, Mr. bin Bakar and is Mr. Nagaenthran had any procedural accommodations during their interrogation and subsequent trial proceedings and if none

³ See A/HRC/WGAD/2020/92

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

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.

3. 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.
4. Please provide information on the number of people currently on death row in Singapore and their respective offences.
5. Please provide information on the queries raised on the case of Mr. Nagaenthran in SGP 3/2021 and SGP 1/2022.

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. bin Abdullah, Mr. bin Bakar and is Mr. Nagaenthran lives are 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

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