

**Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; 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 trafficking in persons, especially women and children**

Ref.: UA SGP 4/2022  
(Please use this reference in your reply)

20 April 2022

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on extrajudicial, summary or arbitrary executions; 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 trafficking in persons, especially women and children, pursuant to Human Rights Council resolutions 44/5, 44/10, 42/16 and 44/4.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the risk of imminent execution of Mr. Nagaenthran a/l K Dharmalingam, scheduled for 27 April 2022**, a person with intellectual disability and deteriorating mental health condition, charged with drug related offenses that do not meet the threshold for "most serious crimes," following the dismissal of his final appeal.

The case of Mr. Nagaenthran was the subject of previous communications including [JUA SGP 2/2021](#) sent on 29 October 2021, [JUA SGP 3/2021](#) sent on 26 November 2021 and [JUA SPG 1/2022](#) sent on 20 January 2022. We would like to thank your Excellency's Government for the detailed replies received to these letters. While we appreciate that your Excellency's Government continues to address the concerns expressed in these communications, we regret that your responses continue to reaffirm the death penalty for drug related offenses as a successful method of deterring future offenses, despite the lack of evidence worldwide that this type of punishment has a particularly deterrent effect on the commission of crimes. We recall that the resumption of the use of the death penalty is inconsistent with the aim of crime reduction.

According to the information received:

On 22 April 2009, Mr. Nagaenthran a/l K Dharmalingam, also known as Naga, a Malaysian national, was arrested while entering Singapore from Malaysia, allegedly carrying a bundle of 42.72 grams of diamorphine, which he claimed to be unaware of. Mr. Nagaenthran is a person with intellectual disability who was allegedly forced to carry narcotic drugs when crossing the border.

In November 2010, Mr. Nagaenthran was sentenced to death for drug-related charges by the High Court of Singapore and has been on death row ever since. In the years following this verdict, while in solitary confinement, Mr. Nagaenthran's mental condition reportedly deteriorated sharply.

Several attempts were made to appeal Mr. Nagaenthran's death sentence, including to obtain a new sentence of life imprisonment under § 33B(1)(b) in conjunction with § 3B(3) of the Misuse of Drugs Act (MDA), on the grounds that Mr. Nagaenthran was only a courier of narcotic drugs pursuant to § 33B(3)(a); to commence judicial review proceedings against the Public Prosecutor's decision not to issue him a certificate of substantive assistance pursuant to § 33B(2)(b) of the MDA; and to seek resentencing so that he could be evaluated by an independent panel of psychiatrists, and be granted a stay of execution of his sentence in the interim. All of these applications were unsuccessful on the grounds, among others, that Mr. Nagaenthran's borderline intellectual abilities and impairments were considered to be insufficient to constitute "abnormality of the mind" for the purposes of the MDA, for which Mr. Nagaenthran would have received life imprisonment rather than the death penalty.

On 29 March 2022, the Court of Appeal dismissed Mr. Nagaenthran final appeal following a filing from his legal representation that his execution would be unconstitutional and that he is not fit for execution due to his deteriorating mental health condition. The Court found that there was no conclusive evidence that Mr. Nagaenthran's mental condition was in fact worsening and that the death penalty for drug-related offenses remained mandatory under the relevant provisions of the MDA and should be enforced in his case.<sup>1</sup> In this decision, the Court relied on the testimony of a prison official who stated that Mr. Nagaenthran would not show any signs of "abnormality of mind."<sup>2</sup> In contrast, the Court found that the testimony of a person associated with Mr. Nagaenthran, who was called as a witness by the defense and had recently visited Mr. Nagaenthran in prison, was "wholly unreliable" and biased.<sup>3</sup> The observations of this witness indicated that Mr. Nagaenthran's mental health condition appeared to have deteriorated significantly on death row and that he did not fully understand that he was facing execution. The Court also reportedly did not allow for an independent psychiatric assessment of Mr. Nagaenthran's current mental health condition. Finally, the Court suggested that the requests by Mr. Nagaenthran's legal representative to challenge the legality of his death sentence constituted a "blatant and egregious abuse of the court's processes" aimed at unjustifiably stalling the implementation of the death penalty.<sup>4</sup>

With this dismissal, all possible legal remedies against Mr. Nagaenthran's death sentence have been exhausted. The day after the decision was announced, Singapore carried out its first execution since 2019, effectively ending its de facto moratorium.

On 31 March 2022, the second clemency petition submitted to the President of the Republic of Singapore on behalf of Mr. Nagaenthran was rejected and the

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<sup>1</sup> See [https://www.elitigation.sg/gd/s/2022\\_SGCA\\_26](https://www.elitigation.sg/gd/s/2022_SGCA_26)., para.55 and 57.

<sup>2</sup> Ibid., paragraph. 35.

<sup>3</sup> Ibid., paragraph. 38.

<sup>4</sup> Ibid., paragraph 2.

death sentence in his case upheld despite his reported intellectual disability and deteriorating mental health condition. Persons associated with him were reportedly notified of this decision on 11 April 2022 and have since experienced fear and anxiety at the possibility that Mr. Nagaenthran's execution is imminent.

On 20 April 2022, the execution date for Mr. Nagaenthran was set for 27 April 2022. With only seven days between the notification of the execution date and the scheduled execution, there exists strong doubt that persons associated with Mr. Nagaenthran will have sufficient time to travel from Malaysia to Singapore to visit him prior to his execution.

We take note of the recent rejection of Mr. Nagaenthran's second appeal and clemency petition on 29 and 31 March 2022, respectively, and the scheduling of his execution date for 27 April 2022, in view of which we wish to express the most serious concern that Mr. Nagaenthran remains at risk of imminent execution notwithstanding his reported intellectual disability, deteriorating mental health condition and the fact that he may be a victim of human trafficking.

We would like to reiterate the concerns raised in JUA SGP 2/2021 sent on 29 October 2021, JUA SGP 3/2021 sent on 26 November 2021 and JUA SPG 1/2022 sent on 20 January 2022.

Without making any judgment as to the accuracy of the information made available to us, the execution of Mr. Nagaenthran appears to be a blatant violation 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.

While we acknowledge the need for States to tackle drug-related offences, we recall that the death penalty can only be imposed for the “most serious crimes”, which are considered to be those involving intentional killing. **Drug-related offences do not meet this threshold** (A/50/40, para. 449). Executions for such crimes constitute unlawful killings.

In light of the allegations that Mr. Nagaenthran may have been forced to import 42.72 grams of diamorphine into Singapore, in a package whose contents he was unaware of, we recall that article 4 of the United Nations Safeguards Protecting the Rights of those Facing the Death Penalty highlights that the death penalty may only be imposed when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts. Furthermore, paragraph 7 of the above-mentioned Safeguards establishes that anyone sentenced to death shall have the right to seek pardon or commutation of the sentence and that pardon or commutation may be granted in all cases of capital punishment.

Death row, as well as prolonged incarceration, can have a significant impact on prisoners' mental health.<sup>5</sup> We note that Mr. Nagaenthran's deteriorating mental health has been observed by family members who have recently visited and spoken with him. This information indicates that an independent psychiatric and psychological evaluation of his current health status is warranted. Therefore, we are alarmed by the allegations that Mr. Nagaenthran's intellectual disability and deteriorating health, which appear to render him unsuitable for execution, have reportedly not been adequately considered. In this regard, we refer your Excellency's Government to article 3 of the above-mentioned Safeguards, which emphasizes that the death sentence may not be carried out on persons with a condition of intellectual disability, who face special barriers in defending themselves on an equal basis with others.

The Convention on the Rights of persons with disabilities, which Singapore ratified on 18 July 2013, in particular in its article 10, and article 13 regarding equal access to justice, requires state parties to take all necessary measures to protect the right to life of persons with disabilities on an equal basis with others. 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 the state of Singapore 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.)

Singapore has maintained a de facto moratorium on the imposition of the death penalty, including the intended execution of Mr. Nagaenthran, since 2019. We deeply deplore the execution of Mr. Abdul Kahar bin Othman despite the concerns raised by the United Nations Special Procedures in relation to his case (JUA SGP 3/2022) and the resulting de facto suspension of the moratorium. We recall 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. We reiterate that any measures to abolish the death penalty should be seen as progress towards the realization of the right to life and that, by extension, the resumption of executions results in less protection of the right to life (see Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, A/69/265).

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<sup>5</sup> 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 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.<sup>6</sup> 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.

We are also concerned that the legitimate process of appeal proceedings by Mr. Nagaenthran's legal counsel has been denounced as an "abuse of process". We point out that appellate proceedings are an integral part of due process and fair trial.

**In view of the urgency of the matter, the irreversibility of the punishment of the death penalty and the ongoing development of an emerging customary law standard prohibiting the death penalty as a form of cruel, inhuman, or degrading punishment,<sup>7</sup> we reiterate once again our call upon the judiciary and all relevant institutions to ensure Mr. Nagaenthran a/l K Dharmalingam is not executed. His execution, on the facts available to us, would constitute a flagrant violation of applicable international human rights standards and would thus be an arbitrary execution. We urge the President of the Republic of Singapore to consider granting clemency and commuting the sentence in this case or to transfer Mr. Nagaenthran back to Malaysia, where he would serve his sentence, as Malaysian authorities have agreed to the prisoner's transfer.**

The full texts of the human rights instruments and standards recalled above are available on [www.ohchr.org](http://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.

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 independent psychiatric and psychological assessments were conducted regarding Mr. Nagaenthran's recent deterioration of mental health condition in light of the denial of his second appeal and clemency petition and the scheduling of his execution date, and if so, what were the findings and

<sup>6</sup> Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, A/HRC/4/20, para 4.

<sup>7</sup> Report of the former Special Rapporteur on Torture, A/67/279.

recommendations.

3. Please provide detailed information on whether a legality assessment of the execution of a person with psychosocial and intellectual disabilities was considered in light of the rejection of Mr. Nagaenthran's final appeal, and if so, to what extent the enforcement of the death penalty in his case complies with international human rights law prohibiting the execution of a person with intellectual disabilities, including the United Nations Safeguards Protecting the Rights of those Facing the Death Penalty.
4. Please provide detailed information on why persons associated with Mr. Nagaenthran were given a period of only seven days between the announcement of the execution and its scheduled enforcement given that they reside outside Singapore and therefore have to take into account international travel-related arrangements to visit Mr. Nagaenthran for the last time, and whether transferring the prisoner to Malaysia under the International Transfer of Prisoners Act 2012, where Mr. Nagaenthran could serve his sentence, was considered as an alternative to implementing the death penalty in Singapore.
5. Please provide detailed information on the reasons for lifting the de facto moratorium in place since 2019 and the extent to which the resumption of executions is consistent with the international human rights obligations of your Excellency's Government.
6. 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.
7. 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 ask that prompt steps be taken to stop the execution of the death penalty against Mr. Nagaenthran scheduled for 27 April 2022, that his case be thoroughly reviewed by a separate court, taking into account the multiple mitigating factors such as his intellectual disability and mental health condition referred to in this communication, and which seem to have been repeatedly disregarded. In the light of this case, we also recommend that similar judicial process in capital punishment cases for drug related charges be thoroughly reviewed to prevent any future risk of arbitrary death sentences and executions.

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.

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 letter has been 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

Gerard Quinn  
Special Rapporteur on the rights of persons with disabilities

Tlaleng Mofokeng  
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