

Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Working Group on Arbitrary Detention; the Special Rapporteur on the human rights of migrants and the Special Rapporteur on minority issues

Ref.: UA SGP 5/2022
(Please use this reference in your reply)

27 April 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 human rights of migrants; and Special Rapporteur on minority issues, pursuant to Human Rights Council resolutions 44/5, 42/22, 43/6 and 43/8.

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. Datchinamurthy Kataiah, a Malaysian national, scheduled for 29 April 2022, for drug related offenses that do not meet the threshold for "most serious crimes" and despite pending legal proceedings, in a context that appears to indicate an extremely alarming acceleration of execution notices for this type of offense in the country.**

The case of Mr. Datchinamurthy Kataiah is one of a series of cases in which the death penalty has been imposed for drug related offenses, and concerning which we have recently sent various communications to your Excellency's Government (UA SGP 4/2022, UA SGP 3/2022, JUA SGP 1/2022; JUA SGP 3/2021 and JUA SGP 2/2021), including a [public statement](#). While we thank you for the responses provided by your Excellency's Government, we reiterate that there is no evidence worldwide that the death penalty has a particular deterrent effect on the commission of crimes.

According to the information received:

On 18 January 2011, at 5:35 a.m., Mr. Datchinamurthy Kataiah entered Singapore via the Woodlands Checkpoint to meet a person of alleged Indian nationality at a fruit stall in Woodlands Central. This person reportedly asked him to retrieve five packages from a motorcycle parked near the location, and to hand them to another person whom Mr. Datchinamurthy was to meet at Depot Close. Mr. Datchinamurthy reportedly suffered from family and financial difficulties and debt problems, which led him to participate in this handover.¹ Around 9 a.m., shortly after the packages were handed over to the specified person, Mr. Datchinamurthy was arrested by officers of the Central Narcotics Bureau while carrying a red plastic bag containing five packets of brown granular substance, which it was later determined constituted a total of 44.96 grams of diamorphine.

¹ Public Prosecutor v Christeen d/o Jayamany and another [2015] SGHC 126, paragraph 9.

On 8 May 2015, Mr. Datchinamurthy was convicted by the High Court of Singapore for trafficking a total of 44.96 grams of diamorphine from Malaysia to Singapore on 7, 14 and 18 January 2011 under section 5(1)(a), Chapter 185, punishable under section 33 of the 1973 Misuse of Drugs Act (MDA), Chapter 185.

In his defense, Mr. Datchinamurthy stated that he knew that the packages contained drug-like substances, but that he had not been aware of the nature of those. He reportedly trusted the person who handed him the packages and who assured him that they were “not serious drugs.”² Moreover, looking at the color of the brown, rocky/granular substances that were in the packets, Mr. Datchinamurthy concluded that they contained illegal Chinese medicine, since, to his knowledge, heroin was a white powder.³ Dismissing this explanation, the Court charged Mr. Datchinamurthy with presumption of knowledge under section 18(2) of the MDA, considering that he must have “had at least a strong suspicion that he was carrying diamorphine and that he turned a blind eye to it.”⁴ The trial judge also argued that Mr. Datchinamurthy received large sums of money (\$300) for supposedly simple tasks, from which he could have concluded that the packages would contain drugs. Finally, the Court observed that Mr. Datchinamurthy had conducted two previous transfers on 7 January and 14 January, respectively, and that he would therefore have had sufficient time to verify what type of substances were contained in the delivered packages.⁵ His failure to do so would indicate that he was willing to transport narcotic substances. Mr. Datchinamurthy was therefore not considered to be a mere courier within the meaning provided under section 33B of the MDA nor could he be issued a certificate of substantive assistance under section 33B(2)(b) of the MDA that would have resulted in Mr. Datchinamurthy receiving life imprisonment. Instead, the trial judge imposed the mandatory death penalty in Mr. Datchinamurthy's case.⁶

On 5 February 2016, the Singapore Court of Appeal dismissed an appeal brought by Mr. Datchinamurthy's legal counsel on the grounds that the presumption of knowledge under Section 18 of the MDA had not been rebutted. His legal counsel's asserted that Mr. Datchinamurthy could not be presumed to have knowledge of the contents of the packages; that it was improperly presumed that he acted willfully blind; that the burden of proof was wrongfully shifted to Mr. Datchinamurthy; and that there would be limited, if any, evidentiary and legal analysis of questions of fact and law that must be proven to establish willful blindness. Moreover, Mr. Datchinamurthy's Malaysian legal counsel pointed out that applications for access to prison facilities had been denied by Singapore Prison Services without giving reasons, which would have prejudiced Mr. Datchinamurthy's rights to a fair trial. This is reported to stem from the fact that Singaporean authorities would not recognize Malaysian lawyers who advocate on behalf of Malaysian death

² Ibid. paragraph 16.

³ Ibid.

⁴ Ibid. paragraph 35.

⁵ Ibid. paragraph 19.

⁶ Ibid. paragraph 88.

row inmates and their families.

In July 2019, a clemency petition by Mr. Datchinamurthy to the President of the Republic of Singapore requesting that his sentence be commuted to life imprisonment was rejected.

On 21 January 2020, the President of the Republic of Singapore ordered that the death sentence imposed on Mr. Datchinamurthy be carried out at Changi Prison on 12 February 2020. On 31 January 2020, the President ordered a stay of execution pending further order after Mr. Datchinamurthy's legal counsel appealed arguing that the method of execution was inhumane.

On 5 April 2021, an application for leave to review the 2016 Court of Appeal's decision, in which Mr. Datchinamurthy's appeal against his conviction had been dismissed, was launched. Although the Court accepted Mr. Datchinamurthy's contention that the trial judge "did not specifically find that Datchinamurthy knew the nature of the drugs," it concluded that Mr. Datchinamurthy could not rebut the presumption of knowledge and denied the application for leave to appeal.⁷

On 21 April 2022, persons associated with Mr. Datchinamurthy received notice from the Singapore Prison Service that his execution date was set for 29 April 2022, despite an ongoing legal challenge due for a hearing on 20 May 2022, that reportedly relates to the alleged breach of privileged communication between Mr. Datchinamurthy and his legal counsel, which was referred by prison authorities to the Attorney-General's Chambers. Given that there are only seven days between the notification of the execution date and the scheduled execution, there exists significant concern that persons associated with Mr. Datchinamurthy will not have sufficient time to travel from Malaysia to Singapore to visit him prior to his execution.

It is further alleged that defendants of Malaysian nationality, like Mr. Datchinamurthy, belonging to an ethnic minority 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.

While we do not wish to prejudge the accuracy of these allegations, we are gravely concerned at the risk of impending execution of Mr. Datchinamurthy Kataiah, scheduled for 29 April 2022, although his sentence does not yet appear to be final due to ongoing court proceedings, specifically a hearing scheduled for 20 May 2022, and despite the fact that his drug-related charges do not fall within the category of "most serious crimes," required under international law for the imposition of the death penalty.

Without making any judgment as to the accuracy of the information made available to us, the above allegations appear to be a blatant violation of the right of

⁷ [2021] SGCA 30, Criminal Motion No 9 of 202, paragraph 37.

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 reiterate our deep concern that in the case of Mr. Datchinamurthy, the death penalty was not imposed for offenses corresponding to the most serious crimes which, under international law, provide for intentional killing. We would like to refer your Excellency's Government to the report of the former Special Rapporteur on extrajudicial, summary or arbitrary executions, indicating 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*" ([A/HRC/4/20](#), paragraphs 39-53). As has already been communicated to your Excellency's Government, **drug crimes do not meet this internationally recognized threshold**. In this connection, 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** ([A/HRC/42/28](#), para 10.).

Apart from the fact that a death sentence in connection with drug related offenses constitutes *per se* a violation of international law, we are concerned by the fact that the execution date in Mr. Datchinamurthy's case has been set while other legal proceedings are still pending. With reference to paragraphs 4, 5 and 8 of the United Nations Safeguards for the Protection of the Rights of Persons Facing the Death Penalty, adopted by the UN Economic and Social Council in 1984, we would like to recall that in the case of offenses that in fact reach the threshold of the most serious crimes, which does not appear to be the case in this instance, the death penalty can only be carried out on the basis of a final judgment by a competent court after the completion of all ongoing judicial and other proceedings relating to pardon or commutation of the sentence. We recall that all defendants facing the imposition of capital punishment must benefit from the services of a competent defence counsel at every stage of the proceedings. Defendants must be presumed innocent until their guilt has been proved beyond a reasonable doubt, in strict application of the highest standards for the gathering and assessment of evidence. In this connection, concerns have been expressed about the existence of laws, particularly those relating to drugs offences, where the presumption of innocence is not fully guaranteed, as the burden of proof lies partially on the accused (E/CN.4/1997/60, para 81).

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.

As previously noted, we are very concerned by the rapid increase in the number of execution notices issued in Singapore since the beginning of the year,

mainly for drug related offenses. We are alarmed by the de facto suspension of the moratorium since 2019 and deeply deplore the execution of Mr. Abdul Kahar bin Othman on 30 March 2022 and of Mr. Nagaenthran Dharmalingam on 27 April 2022. We note that at least three other individuals, including Roslan bin Bakar and Rosman bin Abdullah, remain at risk of imminent execution due to drug related crimes and that more than 50 individuals are reportedly on death row in Singapore. 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).

We are also concerned about the practice of notifying persons associated with death row inmates only seven days before the scheduled execution date. This appears to be a discriminatory treatment for foreign nationals on death row in Singapore whose families must undertake international travel to visit them for the last time.

We reaffirm 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.⁸ 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. In this connection, we recall that the Special Rapporteur on extrajudicial, summary or arbitrary executions indicated that the death penalty should under no circumstances be mandatory by law, regardless of the charges involved and that “[t]he mandatory death penalty which precludes the possibility of a lesser sentence being imposed regardless of the circumstances, is inconsistent with the prohibition of cruel, inhuman or degrading treatment or punishment.”⁹

The jurisprudence of the Working Group on Arbitrary Detention makes it clear that capital punishment may only be carried out pursuant to a final judgment rendered by a competent court, after legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the Covenant, including the right to adequate legal assistance at all stages of the proceedings. We also recall the Study of the Working Group on Arbitrary Detention “Arbitrary detention relating to drug policies” stating that imposing the death penalty for drug-related offences is incompatible with international standards on the use of the death penalty.

⁸ Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, A/HRC/4/20, para 4.

⁹ Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, E/CN.4/2005/7, para 80.

We also share the concern by the Committee on the Elimination of Racial Discrimination expressed in its concluding observations pursuant to Singapore's first review in 2021, 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.¹⁰ The Committee recommended that Singapore takes concrete and effective steps to eliminate racial inequalities at all stages of the criminal justice system, including by implementing effective national strategies or action plans aimed at eradicating structural discrimination, particularly in relation to drug trafficking offenses, and by applying a moratorium on the death penalty with a view to its abolition. (CERD/C/SGP/CO/1, para 22).

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,¹¹ we call upon the judiciary and all relevant institutions to ensure Mr. Datchinamurthy Kataiah 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. Datchinamurthy Kataiah back to Malaysia, where he would serve his sentence.

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

In the context of repeated reporting on the imposition of the death penalty and the speedy implementation of executions, we once again call on Singapore to reconsider its longstanding position on the death penalty, particularly in relation to drug offenses, which constitutes a per se violation of international law, in light of mounting evidence of its ineffectiveness as a deterrent. We urge your Excellency's Government to impose a moratorium on all death sentences pending such necessary review.

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 detailed information on the extent to which the execution of the death penalty in the case of Mr. Datchinamurthy Kataiah while his appeal is pending, and in light of the alleged

¹⁰ Committee on the Elimination of Racial Discrimination Concluding observations on the initial report of Singapore, CERD/C/SGP/CO/1 2 February 2022, para 21

¹¹ Report of the former Special Rapporteur on Torture, A/67/279.

irregularities in his trial, is consistent with international human rights law, including the United Nations Safeguards for the Protection of the Rights of Persons Facing the Death Penalty.

3. Please provide detailed information on why persons associated with Mr. Datchinamurthy Kataiah 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. Datchinamurthy Kataiah for the last time, and whether transferring the prisoner to Malaysia under the International Transfer of Prisoners Act 2012, where Mr. Datchinamurthy could serve his sentence, was considered as an alternative to implementing the death penalty in Singapore.
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. Please also provide detailed information on how many individuals are currently held on death row with drug related charges.
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.

While awaiting a reply, we ask that prompt steps be taken to stop the execution of the death penalty against Mr. Datchinamurthy Kataiah scheduled for 29 April 2022, while legal proceedings are ongoing. 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.

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 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. Datchinamurthy'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 the information contained in the present communication to the Government, the Working Group on Arbitrary Detention may also transmit the case

through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. The present communication in no way prejudices any opinion the Working Group may render. The Government is required to respond separately to the allegation letter and the regular procedure.

We would like to inform your Excellency's Government that a similar letter will be transmitted 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

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

Felipe González Morales
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