



## Singapore: It's time for meaningful engagement with civil society on the death penalty

31 October 2022

On 22nd October, the Ministry of Home Affairs' (MHA) in Singapore shared its response to Sir Richard Branson's Blog Post on 10th October in conjunction with the 20th World Day Against the Death Penalty. The content of the MHA response was not new, evidenced by references to their earlier statements, their self-proclaimed 'Facts of the Case of Nagaenthran a/l K Dharmalingam' and quotes given by Minister K. Shanmugam in media interviews.

The Anti-Death Penalty Asia Network (ADPAN) - a regional network of anti-death penalty advocates - takes up the opportunity to respond to key errors reiterated in the MHA press release.

This statement is borne out of the inability of Singapore to meaningfully engage with Singaporean experts, lawyers, activists, journalists and family members of those on death row who are all too aware of the cruel realities and laws of the practice of the death penalty in the nation. Yet MHA seek to draw attention to themselves by inviting Mr Branson for a live televised debate on the matter.

Firstly, to best understand the cruel realities and flaws of the practice of the death penalty in Singapore (where so far at least 11 men have been killed this year, all for non-violent drug offences) head over to the [#StopTheKilling](#) campaign. [Transformative Justice Collective](#) is the movement of activists, journalists and human rights defenders in Singapore behind this campaign whose work is informed directly by death row prisoners and their families. [#StopTheKilling](#) calls for an immediate moratorium on executions, followed by an independent and transparent review of the use of the death penalty in Singapore.

- Error #1: MHA's claim that Nagaenthran A/L K Dharmalingam was not intellectually disabled

In 2017, the High Court of Singapore found that Nagaenthran had a diagnosis of borderline intellectual function (IQ: 69) and ADHD. These diagnoses did not amount to the legal test of 'abnormality of the mind' under s33B(3) of the Misuse of Drugs Act; this does not mean that

the MHA can erase the reality that Nagaenthran lived with a disability. The MHA ought to be guided by the voices of persons with disabilities in Singapore. In November 2021, We Who Witness released a joint [Call from Persons with Disabilities to Halt the Imminent Execution of Nagaenthran a/l K Dharmalingam](#), noting that Nagaenthran had “difficulties with attention, verbal fluency, set-shifting, abstract reasoning, strategy formation and problem solving, and may have had difficulties in knowing who to trust”<sup>1</sup>.

Rather than debating whether or not an assessed IQ score of 69 fits into the Singaporean Governments’ chosen definition of ‘intellectual disability’, Singapore should adhere to its obligations as a State Party to the United Nations Convention on the Rights of Persons with Disabilities, which “takes an interactions-based, rather than individual and medical, approach to disability”<sup>2</sup>. A person with Nagaenthran’s diagnostic profile should have been afforded procedural accommodations at all stages of the criminal justice system, from police interview right up until the point of execution.

A retrospective debate about Singapore’s definitions of intellectual disability in relation to Nagaenthran causes further trauma to his family given that Nagaenthran was hanged by Singapore on 27 April this year.

- Error #2: MHA’s claim that Singapore’s drug policy has had a ‘clear deterrent effect on drug traffickers’

Regardless of the selective reliance on survey data by the MHA to justify its ongoing ‘war on drugs’ policy, there is no evidence-based research to support the claim that “the death penalty in fact deters drug-related or other crime more than other methods of punishment”<sup>3</sup>. Surveying peoples’ opinions regarding drug trafficking into Singapore is not a measure of actual deterrence effect.

In 2019, the United Nations Office on Drugs and Crime confirmed that not only is the death penalty not supported by any of the three international drug conventions, but countries that maintain the death penalty for drug offences are impeded in their ability to fight drug trafficking due to other countries’ domestic laws prohibiting the exchange of information and extradition with states that retain the death penalty<sup>4</sup>. There are ample evidence-based harm reduction policies in relation to persons who use drugs and crime; MHA ought to

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<sup>1</sup> We Who Witness, ‘[Call from Persons with Disabilities to Halt the Imminent Execution of Nagaenthran a/l K Dharmalingam](#)’ (6 November 2021)

<sup>2</sup> Ibid

<sup>3</sup> UN HRC, Capital punishment and the implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty, Annual Report of the UNHCHR and reports of the OHRSG (A/HR/42/28, 28 August 2019)

<sup>4</sup> UNODC, [Statement attributable to the UNODC spokesperson on the use of the death penalty](#) (27 June 2019)

meaningfully engage with subject-matter experts to be guided on best practices, rather than remain one of the handful of countries that execute persons for drug offending.

- Error #3: MHA's claim that 'suspicion of alleged racial bias' of those on death row and those executed is false

There is evidence of an over-representation of persons of ethnic-Malay descent and other minorities sentenced to death in Singapore.<sup>5</sup> Transformative Justice Collective reports that "64.9% of persons who received death sentences between 2010 and 2021 for drug offences were of Malay ethnicity, from different nationalities".<sup>6</sup> UN experts corroborate that "A disproportionate number of minority persons were being sentenced to the mandatory death penalty in Singapore."<sup>7</sup>

In its response, MHA asserts that any allegations of racial bias are 'sweeping generalisations unsubstantiated by any specific evidence' without the support of data on racial composition of the death row population. Unfortunately in July this year, Minister K. Shanmugam maintained he would not disclose data due to concerns regarding the adverse impact this could have on society.<sup>8</sup>

This lack of transparency by the authorities has led to the ongoing debate on the matter, both locally and internationally. If the MHA is right about the unsubstantiated claims of racial bias, simply righting this narrative with specific data will not have any adverse impact on society as claimed by Minister Shanmugam.

- Error #4: MHA claims that it is a 'falsehood' to allege capital defence lawyers are unwilling to appear on capital cases

The MHA maintains that 'Every accused person who faces a capital sentence is provided with legal counsel to defend them'. Access to Counsel is only meaningful if it is provided from the start of a police investigation until the moment an execution is carried out. The practice of seeking personal costs orders against lawyers who appear pro-bono for persons on death row has meant lawyers no longer feel they can appear on late-stage hearings, regardless of the perceived merit of the case.

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<sup>5</sup> United Nations, '[Experts of the Committee on the Elimination of Racial Discrimination congratulate Singapore on initial report, and ask about the death penalty and about protection against discrimination for migrant workers](#)' (Media Release, 19 November 2021)

<sup>6</sup> '[Investigating the presence of structural bias in the criminal punishment system](#)', *Transformative Justice Collective* (Web page, 16 August 2021)

<sup>7</sup> United Nations, '[UN experts deplore execution of Malaysian nationals in Singapore](#)' (Media Release, 8 July 2022)

<sup>8</sup> Hariz Baharudin, '[Govt careful with disclosing racial data of prison inmates, criminals as minorities are over-represented: Shanmugam](#)', *The Straits Times* (Web page, 4 July 2022)

The Attorney-General Chambers and the judiciary has insisted that these filings constitute an abuse of court processes and consistently reject any legal appeal put forward by lawyers. However, past cases suggest such challenges and appeals cannot be considered as an abuse of court processes. In the Yong Vui Kong<sup>9</sup> case in 2013, his life was spared following last-minute appeals; more recently in the case of Pannir Selvam Pranthaman where, after a stay of execution was granted<sup>10</sup>, it was discovered that private correspondence with legal counsel was exposed to the Attorney-General Chambers<sup>11</sup>.

Since April 2022, there have been a number of Court hearings where persons facing imminent execution have had to self-represent before the full Court of Appeal. This is an incredibly intimidating and stressful situation to be in less than 24 hours before ones' death. ADPAN concurs with the [joint letter of the International Bar Association's Human Rights Institute and the International Commission of Jurists](#) on 27 October, who note that where cases involve the death penalty, they must strictly adhere to fair trial guarantees. Otherwise, these cases violate the right to life under international law. Surely Singapore cannot in good conscience consider a situation where those on death row must represent themselves in appellate courts as an example of fair trial rights being upheld?

ADPAN repeats its numerous calls for Singapore to halt its current spate of executions. The global trend towards abolition of the death penalty reflects both a respect for the dignity of humanity, an abhorrence of the cruelty of the practice, and evidence-based knowledge that the death penalty is not a more effective deterrent than other forms of serious punishment<sup>12</sup>. ADPAN calls on the MHA engage in direct dialogue with civil society to move towards abolition of the death penalty. This would demonstrate that they are committed to being an ethical state actor, open to serving the people that they are elected to represent, through meaningful and transparent engagement.

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<sup>9</sup> [Yong Vui Kong v Public Prosecutor](#) [2012] SGCA 23

<sup>10</sup> Bernama '[Singapore Court of Appeal grants stay to Pannir Selvam](#)', New Straits Times, (Web page, 23 May 2019)

<sup>11</sup> [Pannir Selvam a/l Pranthaman v Attorney General](#) [2022] SGCA 35

<sup>12</sup> IBAHRI & ICJ, [Letter to H.E. Mr K Shanmugam, Minister for Law and Home Affairs, Singapore](#) (Letter, 27 October 2022)