

10 November 2021

STATEMENT OF CONCERN REGARDING IMPOSING THE DEATH PENALTY ON MR NAGAENTHRAN K. DHARMALINGAM IN SINGAPORE

LAWASIA notes with deep concern the impending execution of Malaysian National Mr Nagaenthran K. Dharmalingam in Singapore.

LAWASIA's objectives include the promotion of the administration of justice, the protection of human rights and the maintenance of the rule of law within the Asia and the Pacific Region. In pursuit of the objectives, in 2018, the LAWASIA Council resolved to call on governments in the ESCAP region which currently retain the death penalty to review their respective policies on capital punishment.¹ We note that in 2007, the Law Society of Singapore was invited to provide a report to the Ministry of Home Affairs regarding proposed amendments to the penal code. LAWASIA supports the Law Society of Singapore's recommendation that the death penalty be made discretionary.²

In addition to the concerns relating to the persistence of mandatory sentencing of the death penalty, for drug related offences in Singapore, LAWASIA has particular concerns relating to the conviction against Mr Nagaenthran.

It was found that Mr Nagaenthran suffered from 'mild ADHD condition of the inattentive subtype as well as his borderline intellectual functioning'³ but it was insufficient to justify commuting the death sentence to life imprisonment.

LAWASIA is concerned that Mr Nagaenthran has been sentenced to execution, despite a legal mechanism to allow the Court discretion not to impose sentence of death under certain circumstances, one of which is 'abnormality of mind.'⁴

In LAWASIA's view, the severity of the death penalty is inappropriate in cases where any medical evidence suggests a person's capacity is in doubt. LAWASIA urges that Mr Nagaenthran is re-sentenced to a punishment proportionate to the severity of the crime, considering the potential of his reduced capacity.

LAWASIA notes that Singapore is a signatory to the UN Convention on the Rights of Persons with Disabilities, and article 15 ensures against 'torture or cruel, inhuman or degrading treatment or

¹ https://lawasia.asn.au/sites/default/files/2021-11/LAWASIA%20Resolution%20on%20Death%20Penalty%2C%20%20November%202018_1.pdf

² *Law Society of Singapore*, 'Report of the Council of the Law Society on the Amendments to the Penal Code Proposed by the Ministry of Home Affairs' 30 March 2007. https://www.lawsociety.org.sg/wp-content/uploads/2020/02/070330_Report_of_Council_on_Amnd_to_Penal_Code_Proposed_by_MHA.pdf

³ *Nagaenthran a/l K Dharmalingam v Public Prosecutor* [2017] SGHC 222 [77]
https://www.elitigation.sg/gdviewer/s/2017_SGHC_222

⁴ s 33B(3) *Misuse of Drugs Act* (Cap 185, 2008 Rev Ed) (Singapore)

punishment’.⁵ We refer to the Law Council of Australia’s Policy Statement Against the Death Penalty, which states ‘the practice of the death penalty, necessarily, constitutes torture and cruel, inhuman or degrading treatment in that it is impossible to avoid torture, cruel, inhuman and degrading treatment in the methods of execution and the living conditions of people on death row.’⁶

LAWASIA further notes that under article 22 of the Constitution of Singapore the President has a power of clemency, pardon or reprieve of any offender. Additionally, article 6(4) of the International Covenant on Civil and Political Rights outlines that anyone sentenced to death shall have the right to seek pardon or commutation of the sentence, and amnesty shall be granted in all cases.⁷

Noting the above, LAWASIA:

- Implores the Singaporean Government to consider the gravity of the penalty in relation to the conflicting medical evidence and utilize the legislative measure under s. 33B(3) of the Misuse of Drugs Act.
- Calls upon the President to consider exercising the clemency powers under Article 22 of the Constitution.
- Urges the Singapore Government implement a moratorium on the use of the death penalty and review their policies relating capital punishment.

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President, LAWASIA

⁵ Singapore signed the UNCRPD on 30th Nov 2012 and ratified the convention on 18 July 2013. Full text of the Article 15 of the Convention is available here:

<https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/article-15-freedom-from-torture-or-cruel-inhuman-or-degrading-treatment-or-punishment.html>

⁶ Law Council of Australia, ‘Policy Statement on the Death Penalty’ October 2021

<https://www.lawcouncil.asn.au/files/pdf/policy-statement/2021%2010%2007%20-%20PS%20-%20Policy%20Statement%20on%20the%20Death%20Penalty.pdf>

⁷ LAWASIA notes that Singapore is not a signatory to the International Convention on Civil and Political Rights. It is the view of LAWASIA that the principle of *jus cogens* applies.