

SINGAPORE

**Submission to the Committee on the Rights of Persons with Disabilities**

12 Pre-Sessional Working Group (23 Sep 2019 - 27 Sep 2019)

26 July 2019

### **Submitting organisation**

1. **Harm Reduction International (HRI)** is a leading NGO dedicated to reducing the negative health, social and legal impacts of drug use and drug policy. We promote the rights of people who use drugs and their communities through research and advocacy to help achieve a world where drug policies and laws contribute to healthier, safer societies.
2. Since 2007, HRI has been at the forefront of advocating for the abolition of the death penalty for drug-related offences worldwide; including via the [Death Penalty for Drug Offences: Global Overview](#) series.

### **Introduction**

3. HRI welcomes the opportunity to call the Committee's attention to the use of death penalty for people with intellectual and/or psychosocial disabilities in Singapore, in violation of article 10 (right to life) and article 13 (access to justice) of the Convention on the Rights of Persons with Disabilities (CRPD).
4. Related to this, HRI notes with particular concern, the following issues:
  - a) People with intellectual and/or psychosocial disabilities can be executed in Singapore for committing drug offences.
  - b) Singapore's Misuse of Drugs Act (MDA) allows for a sentence of life imprisonment rather than the death penalty if the public prosecutor certifies that a drug courier has substantively assisted the disruption of trafficking activities. The decision to issue this certificate is opaque and discretionary, and discriminates indirectly against people with intellectual and/or psychosocial disabilities.
  - c) The death penalty can also be avoided if the defendant can prove "abnormality of mind". However, in drug-related cases, the courts have found that the defendant's ability to take part in the drug crime proves that this criterion is not met. Furthermore, there are reports that Singaporean courts have demonstrated bias against evidence regarding mental health submitted by independent psychiatrists.
  - d) No information is available on the appropriate procedural accommodations taken to ensure that the fair trial rights of persons with intellectual and/or psychosocial disabilities facing the death penalty are fulfilled, as required by Article 13 CRPD.
  - e) Singapore provides no information on how many people with intellectual and/or psychosocial disabilities have been executed, sentenced to death or are facing death penalty charges.
5. This submission will elaborate on these issues and recommend questions for the Committee to ask the Singaporean authorities.

### **Background: the death penalty for drug-offences in Singapore**

6. Singapore is one of the world's most vocal supporters of the death penalty for drug offences. In 2018 alone, Singaporean courts handed down at least 16 death sentences for drug offences,<sup>1</sup> and nine prisoners were executed.<sup>2</sup> All executions in 2018 were for non-violent drug offences.
7. Singapore's MDA envisages the mandatory death penalty for trafficking certain classes of illegal drugs over certain amounts. To put this in perspective, while trafficking 500 grams of cannabis is a capital offence in Singapore, the maximum penalty for selling 1kg of cannabis in Poland is two years in prison.<sup>3</sup>

8. International human rights law stipulates that the death penalty can only be applied “for the most serious crimes” (Article 6.2 ICCPR), which is interpreted as meaning intentional killing.<sup>4</sup> Although Singapore is not party to the ICCPR, several UN resolutions that apply to Singapore have adopted this “most serious crimes” standard, and have stressed that drug offences do not meet this threshold.<sup>56</sup>

### **The death penalty for people with intellectual and/or psychosocial disabilities under international human rights law**

#### *Negative obligation: abolishing the death penalty*

9. The execution of people with intellectual and/or psychosocial disabilities is prohibited under international law. This has been acknowledged by the Human Rights Council,<sup>7</sup> the Economic and Social Council,<sup>8</sup> and the Human Rights Committee,<sup>9</sup> as well as by an overwhelming number of domestic jurisdictions.<sup>10</sup>

#### *Positive obligation: procedural accommodations*

10. People with intellectual and/or psychosocial disabilities are especially vulnerable when facing the justice system as they bear a disproportionate risk of rights violations, such as abuse during questioning;<sup>11</sup> and face increased and unfair risk of receiving a death sentence compared to defendants with no or lesser impairments, particularly if they are misunderstood during proceedings.<sup>12</sup>
11. This Committee has also noted that persons with psychosocial and/or intellectual disabilities may face a greater risk of incurring the death penalty because of a lack of procedural accommodations to their personal situation.<sup>13</sup> These accommodations might include delivering information in an accessible manner,<sup>14</sup> and providing decision-making support to people with disabilities, including when dealing with law enforcement officials.

### **Singaporean law allows for the execution of people with intellectual and/or psychosocial disabilities**

12. In 2013, Singapore’s MDA was reformed in order to allow two exceptions to the mandatory death penalty for drug offences. Despite this reform, people with intellectual and/or psychosocial disabilities still receive the death penalty for certain crimes, predominantly drug offences.

#### *First exception: a certificate of substantive assistance provided by the Public Prosecutor*

13. The first exception to the mandatory death penalty is set in Article 33B(2) MDA, which gives judges the discretion to impose a punishment of life imprisonment and no less than 15 strokes of a cane to drug couriers that obtain a certificate of substantive assistance from Singapore’s Public Prosecutor for disrupting drug trafficking.
14. According to Amnesty International, defence lawyers are not present when law enforcement officials and prosecutors interrogate detainees.<sup>15</sup> Once the certificate is issued, prosecutors are not obliged to disclose the reasoning behind their decision, the assistance provided by the detainee, or how was it used. The decision is not subject to review.
15. In the context of opaque and unassisted negotiations with the Public Prosecutor, people with intellectual and/or psychosocial disabilities may face barriers to benefiting from the opportunities presented by Article 33B(2) MDA. For instance, they might be less likely to take advantage of the information they possess, or they might be subjected to unscrupulous or abusive questioning.<sup>16</sup> As far as we know, the Singaporean authorities have not put in place any special measures to guard against these barriers.

16. As a consequence, Article 33B(2) constitutes a form of “indirect discrimination”, which is defined by this Committee in General Recommendation No. 5 as “when an opportunity that appears accessible in reality excludes certain persons owing to the fact that their status does not allow them to benefit from the opportunity itself”.<sup>17</sup>

*Second exception: reduced responsibility for “abnormality of mind”*

17. Under Article 33B(3) MDA, Singaporean courts are able to deliver a life imprisonment sentence instead of the death penalty if the defendant can prove both that:

- (a) they are “suffering from an abnormality of mind”; and
- (b) that the “abnormality of mind” has substantially impaired their “mental responsibility” for acts and omissions in relation to the offence.

18. Substantiating an intellectual or psychological disability does not in itself provide an exemption from the death penalty as it only satisfies the first of the two requirements. The defendant must also prove that their disability has impaired their “mental responsibility” – an undefined, non-medical concept. See in this regard the 2017 High Court decision on *Nagaenthiran v Public Prosecutor*:

Even if I take the applicant’s case at its absolute highest ... the applicant would be unable to show that any of the diagnosed abnormalities of mind [in this case, mild intellectual disability (IQ under 70), and ADHD] has substantially impaired his mental responsibility for his offence (...).<sup>18</sup>

19. In the two death penalty cases reviewed, the courts concluded that the mere fact that the defendants were functionally able to take part in a drug offence proves that they have no “abnormality of mind”, even though reports by independent psychiatrists point to the contrary.<sup>19</sup>
20. In this regard, the courts and prosecutors in Singapore have been accused of being biased against reports submitted by independent psychiatrists, and consistently dismissing their evidentiary value as a matter of principle.<sup>20</sup>

**Lack of information**

21. Due to lack of comprehensive data, it is not possible to know exactly how many people with intellectual and/or psychosocial disabilities have been prosecuted, sentenced to death, and/or executed in Singapore.
22. A review of the judicial decisions available online has revealed two cases in which the courts considered a defence based on intellectual disability for persons sentenced to death for drug offence. The details are provided in Annex 1.

**List of questions that HRI recommends the Committee ask the Singaporean authorities:**

Article 10 CRPD (Right to life)

1. *Does the government keep track of how many people with intellectual and/or psychological disabilities receive the death penalty, are sentenced to death, and executed? If so, could the government make this information publicly available?*
2. *What measures does the government of Singapore take to identify whether defendants facing the death penalty have intellectual and/or psychosocial disabilities?*

3. *Are defendants facing the death penalty provided with the means and procedural opportunities to submit independent psychiatric reports on their mental health? What is the government doing to ensure that courts give due consideration to such reports?*

Article 13 CRPD (Access to justice)

4. *What measures has the government taken to ensure that people with intellectual and/or psychosocial disabilities are not discriminated against during the “substantive assistance” process?*
5. *What measures has the government taken to ensure that the fair trial rights of people with intellectual and/or psychosocial disabilities facing the death penalty are fulfilled?*
6. *Does the government take any of the following procedural accommodations?*
  - a. *Delivering information to the defendant that is accessible?*
  - b. *Ensuring that the defendant receives an adequate legal defence?*
  - c. *Providing external/independent support, including decision-making support, during negotiations with prosecutors and law enforcement officials?*

Annex 1

Cases of persons with psychosocial and/or intellectual disabilities sentenced to death for drug offences as identified by Harm Reduction International

1. Nagaenthran K Dharmalingam

<i>Full name</i>	<i>Nagaenthran K Dharmalingam</i>
<i>Nationality</i>	<i>Malaysian</i>
<i>Status</i>	<i>Last appeal rejected in May 2019. Clemency petition to the President of Singapore (no petition has been considered since 1998).</i>
<i>Date of detention</i>	<i>2009</i>
<i>Offence</i>	<i>Transporting 47.72 grams of diamorphine as a drug courier.</i>
<i>Diagnosed</i>	<i>Mild intellectual disability (IQ 69), ADHD</i>
<i>Judicial case</i>	<i>Nagaenthran a/l K Dharmalingam v Public Prosecutor [2017] SGHC 222. High Court case (<a href="#">link</a>) Nagaenthran a/l K Dharmalingam v Public Prosecutor and another appeal [2019] SGCA 37. Court of Appeals case (<a href="#">link</a>).</i>
<i>More information</i>	<i>Article published in Free Malaysia Today on 23 July 2019 (<a href="#">link</a>).</i>

2. Pausi bin Jefridin

<i>Full name</i>	<i>Pausi bin Jefridin</i>
<i>Nationality</i>	<i>Unknown</i>
<i>Status</i>	<i>Last appeal rejected in September 2018. We don't know if he has been executed.</i>
<i>Date of detention</i>	<i>Unknown</i>
<i>Offence</i>	<i>Drug courier (quantity/drug unknown).</i>
<i>Diagnosed</i>	<i>Mild intellectual disability (IQ 67)</i>
<i>Judicial case</i>	<i>Roslan bin Bakar v Public Prosecutor and another matter [2017] SGHC 291 (<a href="#">link</a>)</i>
<i>More information</i>	<i>Non-existent.</i>

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## ENDNOTES

- <sup>1</sup> Giada Girelli, 'The Death Penalty for Drug Offences: Global Overview 2018' (Harm Reduction International, February 2019), [https://www.hri.global/files/2019/02/22/HRI\\_DeathPenaltyReport\\_2019.pdf](https://www.hri.global/files/2019/02/22/HRI_DeathPenaltyReport_2019.pdf), 8.
- <sup>2</sup> Ibid.
- <sup>3</sup> European Monitoring Centre for Drugs and Drug Addiction, "Drug Trafficking Penalties across the European Union: A Survey of Expert Opinion," January 2017, <http://www.emcdda.europa.eu/system/files/publications/3573/Trafficking-penalties.pdf>, 15.
- <sup>4</sup> United Nations Human Rights Council, "Question of the Death Penalty: Report of the Secretary-General," September 14, 2018, UN Doc. A/HRC/39/19, 49.
- <sup>5</sup> See United Nations Economic and Social Council, "Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty," May 25, 1984, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/DeathPenalty.aspx>, para 1.
- <sup>6</sup> United Nations Commission on Human Rights, "Resolution 2003/67: The Question of the Death Penalty," April 24, 2003,
- <sup>7</sup> See United Nations Human Rights Council, "Capital Punishment and the Implementation of the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, UN Doc. A(HRC/36/26," August 22, 2017, <https://undocs.org/en/A/HRC/36/26>.
- <sup>8</sup> Ibid 5.
- <sup>9</sup> United Nations Human Rights Committee, "Communication No. 684/1996, UN Doc. CCPR/C/74/D/684/1996," April 15, 2002, <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsjtHAqLKwkCG9F7oAVmXfOUZRP1F2ThPPEIU3PkV9il6gLdcPZc0nUyXnzJk%2b%2b6trfLNDDol6V%2f3i6zz7%2fsVXcLWhmzY0cajFrd aMNA6fHB%2fPCb2l%2bUzJt4UM9bwqzky3g%3d%3d>.
- <sup>10</sup> Ibid 4.
- <sup>11</sup> Amnesty International, "Fair Trial Manual - Second Edition," April 9, 2014, 80.
- <sup>12</sup> Amnesty International, "United States of America: The Execution of Mentally Ill Offenders," January 2006, <https://www.amnesty.org/download/Documents/72000/amr510032006en.pdf>, 67.
- <sup>13</sup> Committee on the Rights of Persons with Disabilities, "Concluding Observations on the Initial Report of the Islamic Republic of Iran, UN Doc. CRPD/C/IRN/CO/1," May 10, 2017, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/114/69/PDF/G1711469.pdf?OpenElement>, para. 10.
- <sup>14</sup> Committee on the Rights of Persons with Disabilities, "General Comment No. 6 (2018) on Equality and Non-Discrimination, UN Doc. CRPD/C/GC/6," April 26, 2018, para 48.
- <sup>15</sup> Amnesty International, "Cooperate or Die: Singapore's Flawed Reforms to the Mandatory Death Penalty", 11 October 2017, <https://www.amnesty.org/download/Documents/ACT5071582017ENGLISH.PDF>, 7.
- <sup>16</sup> Ibid 23.
- <sup>17</sup> Ibid 14, para 17.
- <sup>18</sup> Nagaenthran a/l K Dharmalingam v Public Prosecutor [2017] SGHC 222 (Singapore High Court September 14, 2017), para 87.
- <sup>19</sup> Roslan bin Bakar v Public Prosecutor and another matter [2017] SGHC 291 (High Court of Singapore November 13, 2017), para 6.
- <sup>20</sup> Ainaa Aiman, "Don't Execute Mentally Challenged Malaysian, Singapore Urged," *Free Malaysia Today* (blog), July 23, 2017, <https://www.freemalaysiatoday.com/category/nation/2019/07/23/dont-execute-mentally-challenged-malaysian-singapore-urged/>.