

Report to the UN Secretary-General on the question of the death penalty, pursuant to UN Human Rights Council Decision 18/117 and Resolution 22/11

11 March 2022

Reporting organisation:



Harm Reduction International (HRI) is a leading NGO dedicated to reducing the negative health, social and legal impacts of drug use and drug policy. HRI promotes 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.

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

Harm Reduction International (HRI) welcomes the opportunity to comment on crucial issues and developments concerning the use of the death penalty; and urges the Secretary-General to continue prioritising this issue. We further reaffirm the call for a moratorium on the death penalty as a step towards its definitive abolition worldwide.

This submission will provide information on developments since 1 July 2020, with a focus on drug offences and on persons with mental or intellectual disabilities. Because of a widespread lack of transparency on the phenomenon, when not censorship, all figures are minimum confirmed figures, likely to represent only a fraction of actual death sentences, executions, and death row populations. Unless specified, all information is from *The Death Penalty for Drug Offences: Global Overview 2021*.¹

a) Global trend

As of March 2022, 35 countries and territories prescribe the death penalty as a punishment for drug offences in their legislation, in violation of international human rights and drug control law.² In 12 countries, death is the mandatory punishment for at least certain drug offences.³

At least 3563 people have been executed for drug offences around the world between 2011 and 2021. This excludes figures from China and Vietnam, where information related to the imposition of the death penalty is subject to state secret, as well as North Korea. After a drastic drop in known drug-related executions in 2020 (30 executions confirmed, of which 25 in Iran⁴), a 336% increase was recorded in 2021. HRI's 2021 Global Overview reported a minimum of 131 drug-related executions; all carried out in Iran. Executions were also carried out in China, and likely in Vietnam and North Korea.

A minimum of 237 death sentences for drug crimes were reported in at least 16 countries (an almost 30% increase from 2019), of which around a tenth against foreign nationals. At least 3000 people are believed to be on death row for drug offences in at least 19 countries – likely many more. In 2021, this figure increased in Malaysia (+2%) and Indonesia (+30%); a drop was observed in Thailand (-27%), possibly because of COVID-19 related disruptions to trials, and/or amnesties.

One important trend confirmed in 2021 is the shocking lack of information on the death penalty for drugs. The restricted group of countries actively executing individuals for drug is increasingly characterised by opacity and secrecy, if not outright censorship.

¹ 'The Death Penalty for Drug Offences: Global Overview 2021' (London: Harm Reduction International, 2022), <https://www.hri.global/death-penalty-2021>.

² Bahrain, Bangladesh, Brunei Darussalam, China, Cuba, Egypt, India, Indonesia, Iran, Iraq, Jordan, Kuwait, Lao PDR, Libya, Mauritania, Malaysia, Myanmar, North Korea, Oman, Pakistan, Palestine, Qatar, Saudi Arabia, Singapore, South Korea, South Sudan, Sri Lanka, Sudan, Syria, Taiwan, Thailand, United Arab Emirates, United States of America, Vietnam, Yemen

³ Brunei Darussalam, Iran, Jordan, Kuwait, Lao PDR, Malaysia, Myanmar, Oman, Singapore, Sudan, United Arab Emirates, Yemen.

⁴ For more details on drug-related death sentences and executions in 2020, see 'The Death Penalty for Drug Offences: Global Overview 2020' (London: Harm Reduction International, 2021), https://www.hri.global/files/2021/04/07/HRI_Death_Penalty_Report_2020_FINAL.pdf.

b) National developments since July 2020

Figures by the Abdorrahman Boroumand Centre for Human Rights in Iran show a significant increase in confirmed drug-related executions in Iran; from 25 in 2020 to 131 in 2021 (a 424% rise), against a 28% increase in total executions in the country. Drug-related executions in Iran represented a higher percentage of total executions than in 2020: from 10% to 42%. While the root causes of such a sharp surge are yet to be conclusively identified, this trend confirms experts' fears that the impact of the 2017 Amendments to the Law for Combating Illicit Drugs⁵ may be temporary.

No drug-related executions were carried out in **Saudi Arabia** in 2021, for the first year in over a decade. This might be due to the moratorium declared by Prince bin Salman in early 2020 on drug-related executions. However, as the moratorium has not yet been formalised or finalised via law reform, executions may restart at any time; thus, people on death row for drug crimes are still at imminent risk of execution.

Singapore issued four notices of executions against individuals on death row for drug trafficking between November 2021 and February 2022. As of 10 March 2022, the executions have been halted pending judicial review.⁶

c) The death penalty for drug offences against people with mental or intellectual disabilities in Singapore

Individuals from vulnerable and marginalised groups, including foreign nationals, individuals from ethnic minority backgrounds, and women, are overrepresented among people facing the death penalty for drug offences.⁷

Recent developments in Singapore hinted at the potential pervasiveness of mental health issues and/or intellectual disabilities among people on death row. All four people who received a notice of execution in Singapore since November 2021 appear to have a history of mental health issues. Notably, all were first sentenced to death as a mandatory punishment under the Misuse of Drugs Act (MDA), and none had access to procedural accommodations during the initial interrogations, as these were only introduced in 2015.⁸

- Rosman bin Abdullah was first sentenced to the mandatory death penalty in 2010 for trafficking 57.43gr of diamorphine. A first appeal was dismissed in 2011, and a petition for clemency submitted in 2011 was rejected. The court reheard the case after the MDA was amended to allow judges a limited discretion in imposing life imprisonment rather than the

⁵ For more details on the reform, see: 'The Death Penalty for Drug Offences: Global Overview 2018' (London: Harm Reduction International, 2019), https://www.hri.global/files/2019/02/22/HRI_DeathPenaltyReport_2019.pdf, p. 10 -11.

⁶ For more information, see: 'Recap of Nagen's Court of Appeal Hearing' *Transformative Justice Collective* (2 March 2022), <https://transformativejusticecollective.org/2022/03/02/recap-of-nagens-court-of-appeal-hearing/>; 'No law or treaty bars execution of people with IQ under 70: Court of Appeal' *The Straits Times* (9 March 2022), <https://www.straitstimes.com/singapore/courts-crime/no-law-or-treaty-bars-execution-of-people-with-iq-under-70-court-of-appeal>.

⁷ For more information on the impact of the death penalty for drug offences on women, see: 'No One Believed Me: A Global Overview of Women Facing the Death Penalty for Drug Offences' (New York: Cornell Centre on the Death Penalty Worldwide, 2021).

⁸ UN Convention on the Rights of Persons with Disabilities, 'Initial report submitted by Singapore under article 35 of the Convention, due in 2015'. UN Doc. CPRD/C/SGP/1 (16 November 2018), para. 171 – 173.

death penalty in drug trafficking cases that meet specific criteria. At this stage, evidence was submitted to indicate that Mr bin Abdullah has psychosocial disabilities and a history of drug dependence. The court accepted that *“Mr. Rosman’s long-term polysubstance use history from a very young age [...] is likely due to a combination of factors including underlying low IQ and learning difficulties exacerbated by undiagnosed and untreated ADHD, long-term physical abuse and neglect from early childhood, and the resulting subsequent stunted emotional and cognitive development”* but the appeals were dismissed.⁹

The court also clarified that an eventual *“abnormality of mind”* would have no impact on his death sentence. According to the court, although Singapore has ratified the Convention on the Rights of Persons with Disabilities, Singaporean law does now exclude the execution of a person suffering from an *“abnormality of mind”*. The only case where such state has relevance is the one envisaged by Art. 33B of the MDA (as revised in 2013) whereby judges can sentence a person to life imprisonment – rather than the mandatory death penalty – for a capital drug offence, if (a) the person is found to be a drug courier (as defined by Art. 33B(3)(a)) and *“he or she was suffering from such abnormality of mind [...] as substantially impaired his or her mental responsibility for his or her acts and omissions in relation to the offence.”*¹⁰

- Pausi bin Jefridin, a Malaysian national, was sentenced to death for drug trafficking in 2010 when he was 25 years old. During subsequent appeals, the court accepted that Mr bin Jefridin was a mere courier, and heard evidence that he has an IQ of 67 - meeting the international standard of intellectual disability. Nevertheless, his death sentence was upheld, and he has spent over 11 years on death row. News reports indicate that Pausi’s execution was scheduled for 16 February 2022 and later halted pending judicial review of his case in late February 2022.¹¹
- Roslan bin Bakar was sentenced to the mandatory death penalty in 2010 for drug trafficking. During subsequent appeals the defense presented evidence that Mr bin Bakar had *“reduced intellectual functioning”* and *“limited capacity for judgment, decision-making, consequential thinking, impulse control and executive function”* but the appeals were dismissed by the court.¹² Applications submitted in February 2022 were also dismissed.¹³
- Nagaenthran a/k Dharmalingam, a Malaysian national sentenced to death in 2011 for importing with the intent to traffic 42.72gr of diamorphine, experiences mental health issues. He has an intellectual disability in the form of *“borderline intellectual functioning”*, an IQ of 69, and ADHD, among others. In late October 2021, his execution was announced for 10 November 2021, sparking worldwide condemnation, including by disability rights activists, networks of people who use drugs, the Malaysian Prime Minister and King, members of the

⁹ Rosman bin Abdullah v Public Prosecutor [2016] SGCA 62 https://www.elitigation.sg/gdviewer/s/2016_SGCA_62.

¹⁰ Ibid.

¹¹ ‘Malaysian Pausi Jefridin due to be hanged today granted stay of execution’ *New Straits Times* (16 February 2022), <https://www.nst.com.my/news/crime-courts/2022/02/771914/malaysian-pausi-jefridin-due-be-hanged-today-granted-stay-execution>. See also footnote 13.

¹² Roslan bin Bakar v Public Prosecutor and another matter [2017] SGHC 291

¹³ See [2022] SGCA 18, [https://www.singaporelawwatch.sg/Portals/0/Docs/Judgments/2022/\[2022\]%20SGCA%2018.pdf](https://www.singaporelawwatch.sg/Portals/0/Docs/Judgments/2022/[2022]%20SGCA%2018.pdf) and [2022] SGCA 20 [https://www.singaporelawwatch.sg/Portals/0/Docs/Judgments/2022/\[2022\]%20SGCA%2020.pdf](https://www.singaporelawwatch.sg/Portals/0/Docs/Judgments/2022/[2022]%20SGCA%2020.pdf).

legal and medical profession, and UN human rights experts.¹⁴ A last-minute application was dismissed, but the execution was stayed on 9 November 2021, after Mr Dharmalingam tested positive for COVID-19. Mr Dharmalingam’s mental health reportedly further deteriorated since his execution was announced.¹⁵ During a hearing on 1 March 2022, the Singapore Court of Appeal reiterated the point made in Mr bin Abdullah’s case regarding the death sentencing of persons with an “*abnormality of mind*” that do not meet the definition of ‘couriers’ under domestic law; and noted the lack of provisions in Singaporean law to exempt from executions persons who developed mental disabilities while on death row.

The cases illustrated above indicate that:

- a) In Singapore, individuals with intellectual or psychosocial disabilities found guilty of drug trafficking can be sentenced to the *mandatory* death penalty if they are not found to qualify as ‘drug couriers’ under domestic law;¹⁶ and
- b) As also admitted by the Appeal Court in Mr Dharmalingam’s case, there are no provisions in domestic law to safeguard a person from execution who developed and/or was diagnosed with an intellectual disability after the imposition of the death sentence.

As such, Singaporean law is contrary to international human rights law and standards, according to which death sentences cannot be imposed nor executed against persons with mental or intellectual disabilities.¹⁷

Meanwhile, at least one more person is currently on death row for drug trafficking in Singapore with a history of mental health issues (in the form of major depressive disorder).¹⁸

¹⁴ For a full list, see ‘Civil Society Groups Urge Government to Pay Heed to People’s Voice on Nagen’s Clemency’ *Transformative Justice Collective* (18 January 2022), <https://transformativejusticecollective.org/2022/01/18/civil-society-groups-urge-government-to-pay-heed-to-peoples-voice-on-nagens-clemency/>.

¹⁵ For more details on the case, see also: 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 human rights of migrants and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Communication to the Government of Singapore UA SGP 2/2021 (29 October 2021); Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Working Group on Arbitrary Detention; 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; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on trafficking in persons, especially women and children, Communication to the Government of Singapore UA SGP 3/2021 (21 December 2021).

¹⁶ See footnote 9.

¹⁷ Among others: Office of the High Commissioner for Human Rights, Human Rights Resolution 59/2005. UN Doc. E/CN.4/RES/2005/59 (20 April 2005), <https://www.refworld.org/docid/45377c730.html>; UN General Assembly, Report of the Special Rapporteur of the Commission on Human Rights on extrajudicial, summary or arbitrary executions. UN Doc. A/51/457 (7 October 1996).

¹⁸ Public Prosecutor v Roszaidi bin Osman” [2021] SGHC 22 (2021).