



# COOPERATE OR DIE

SINGAPORE'S FLAWED REFORMS TO THE  
MANDATORY DEATH PENALTY

AMNESTY  
INTERNATIONAL



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**Cover photo:** Parliament House (foreground) in Singapore, 1 May 2011.  
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# GLOSSARY

WORD	DESCRIPTION
<b>ABOLITIONIST IN PRACTICE</b>	Countries which retain the death penalty in law for ordinary crimes but have not executed anyone during the past 10 years and are believed to have a policy or established practice of not carrying out executions
<b>CERTIFICATE OF ASSISTANCE</b>	A certificate issued at the sole discretion of the prosecution attesting that the person convicted of drug trafficking has assisted the authorities in disrupting drug trafficking activities. A new requirement under the revised Misuse of Drugs Act for those convicted of drug trafficking and found by the court to be merely “couriers” to be entitled to discretionary sentencing.
<b>CLEMENCY</b>	An act showing mercy or leniency, usually by the executive, by lessening or even completely eradicating a sentence; used as a general term covering both commutations and pardons.
<b>COMMUTATION</b>	The death sentence is replaced by a less severe punishment, such as a term of imprisonment, often by the judiciary on appeal, but sometimes also by the executive.
<b>MANDATORY DEATH PENALTY</b>	The death penalty is the only available punishment for a given offence. Unlike discretionary sentencing, the mandatory death penalty does not allow judges to take into consideration the circumstances of the offence or of the offender.
<b>MOST SERIOUS CRIMES</b>	The category of crimes to which the use of the death penalty must be restricted under international law. International bodies have interpreted this as being limited to crimes involving intentional killing.
<b>MORATORIUM ON EXECUTIONS</b>	A public commitment made by the highest authorities or courts, which officially suspends the carrying out of death sentences, or even imposition of the death penalty as such; to be distinguished from a period of time where executions have in fact not been carried out.
<b>PRESUMPTIONS</b>	In drug-related cases, the prosecution and judges can rely in charging and convicting individuals on “presumptions” under the Misuse of Drugs Act. When these are invoked, people are found in possession of specified amount of drugs, or have keys to vehicles or places in which controlled drugs were found, can be presumed to be trafficking prohibited substances. In these circumstances, the burden of proof was shifted onto the defendant, in violation of the presumption of innocence, a fundamental principle of the right to a fair trial.

# EXECUTIVE SUMMARY

In July 2012, Singapore's Deputy Prime Minister and Minister for Home Affairs told Parliament that from the previous year all executions in the country had been suspended, with the authorities carrying out a review of the country's laws that make the death penalty mandatory for murder and drug trafficking. In the city-state that once had the highest per capita execution rate in the world, this was an unheard of development.

Death penalty reforms followed swiftly, coming into force in January 2013. But five years on, while some people have escaped death sentences as a result of these reforms, they have ultimately not lived up to the expectations that were raised. Executions continue to be carried out and the mandatory death penalty continues to be imposed including on those who appear to occupy a relatively low position in the drug-trade, often foreigners or from disadvantaged socio-economic backgrounds. Furthermore, the reforms contained deep flaws which have handed life and death decisions to prosecutors rather than judges.

## THE DEATH PENALTY IN SINGAPORE

Prior to the 2013 reforms, Singapore's use of the death penalty had been on the wane for several years, with executions dropping from more than 70 annually in the mid-1990s to single figures in the following decade.

Despite this progress, executions continued to be carried out regularly, notwithstanding the lack of evidence that the death penalty has any unique effect in deterring crime. People were executed for drug-related offences – which do not meet the threshold of the “most serious crimes” to which the use of this punishment must be restricted under international law. Death sentences were imposed mandatorily, without courts being given any discretion over sentencing, also prohibited under international law.

In drug-related cases, the prosecution and judges frequently relied, in charging and convicting individuals, on “presumptions” under the Misuse of Drugs Act. These allowed for people to be convicted of drug trafficking when they had been found in possession of specified amounts of drugs, or had keys to vehicles or places in which controlled drugs were found. In these cases, the burden of proof was shifted onto the defendant to demonstrate they were not guilty, in violation of the presumption of innocence.

In this context, the Deputy Prime Minister's 2012 announcement of legislative reforms of the death penalty raised hopes for positive human rights change. However, the scope of the reforms was very narrow. This report assesses the impact of the reforms since they entered into force. It finds that while they have had some positive impact, they are far too limited and introduce some new flaws into the criminal justice system. Singapore must prioritise the development and implementation of comprehensive death penalty reforms.

Amnesty International sought engagement of the authorities in relation to this report, writing twice in September 2017. These requests have gone unanswered. Amnesty International continues to seek opportunities to discuss its concerns and recommendations with the authorities of Singapore.

## LIMITED CHANGES TO THE LAW

The 2013 death penalty reforms introduced limited and narrow discretion for judges when sentencing people convicted of non-intentional murder and drug trafficking. The “presumptions” of drug trafficking remained in law. Thirty-four people convicted of capital crimes meeting the requirements set out in the new law were to be allowed to apply for resentencing.

The amendments introduced a new section in the Misuse of Drugs Act which gives courts discretion to sentence persons found guilty of drug trafficking or importing prohibited substances over certain amounts if they can prove that their involvement in the offence was restricted to that of a “courier”; and if the Public Prosecutor issues a “certificate of substantive assistance”, confirming that the convicted person has substantively assisted in disrupting drug trafficking activities.

In these cases, judges have the option of imposing the death penalty or life imprisonment and 15 strokes of the cane – a cruel punishment prohibited under international law. Alternatively, those found to be “couriers” can also be entitled to discretionary sentencing if they had a mental or intellectual disability that substantially impaired their mental responsibility for their acts and omissions in relation to the offence, in which case they would not be subjected to caning.

The 2013 amendments also introduced sentencing discretion for murders that do not amount to intentional killing, allowing judges to impose either death or life imprisonment with caning (with caning also being a discretionary punishment).

The Supreme Court of Singapore has further restricted the newly introduced sentencing discretion by, for example, limiting the definition of “courier” in drug trafficking cases to very narrow circumstances, excluding those who have reasonably good claims to be considered couriers from being classified as such and allowing them to face the mandatory death penalty.

### **IMPACT OF THE REFORMS ON DEATH PENALTY CASES**

Amnesty International has analysed judgments issued by Singapore’s High Court and Court of Appeal of Singapore, between 1 January 2008 and 30 September 2017 - five years before and nearly five years after the amendments became effective. The judgments relate to the cases of 137 people who were charged with capital offences and who had their trial and appeals decisions published within the selected period on *SingaporeLaw.sg*, the designated online portal maintained by the Singapore Academy of Law. Amnesty International also considered judicial decisions taken in certain relevant non-capital cases.

This data shows that the 2013 amendments did have some positive impact. The overall number of death sentences imposed each year has been declining, compared to the five years before the reforms took place. Several men and women who would have previously been automatically sentenced to death have been spared the ultimate punishment.

Since 1 January 2013, 41 out of 93 cases of people tried after that date and convicted of capital offences involving murder or drug trafficking, or who were resentenced under the revised laws, resulted in death sentences while 35 people, or 38%, were spared the death penalty. Twenty-seven of the 82 men escaped the gallows, while 9 of the 11 women did so.

However, the mandatory death penalty continues to be imposed in a significant number of cases, and the death penalty remains the preferred sentencing option when discretion is available. The figures paint a picture in which the death sentence does not appear to be used as a “quite exceptional measure”, as required under international law and standards.

Furthermore, Amnesty International’s analysis shows that, in cases where information is available, the burden of the death penalty appears to fall on those with less advantaged socio-economic backgrounds. In drug trafficking cases, a significant proportion of the prisoners are foreign nationals (23%), who might not speak the language fluently, and who are primarily dependent on the efforts of their embassies to advocate on their behalf. Most of those involved in drug trafficking cases were unemployed or unskilled workers. Several told courts they had financial troubles and said they had agreed to carry drugs as a way to overcome these struggles.

### **DISRUPTING DRUG TRAFFICKING?**

The authorities have promoted the role of 2013 death penalty reforms in disrupting drug trafficking activities. In July 2015 the Deputy Prime Minister of Singapore, Teo Chee Hean, stated before Parliament that through the substantive assistance given by those convicted as “couriers”, the authorities of Singapore were able to “reach higher into the hierarchy of [drug] syndicates”.

However, annual reports of the Central Narcotics Bureau state that its major operations to disrupt drug trafficking activities in Singapore targeted “middle-level traffickers, street-level pushers and drug abusers” – an official acknowledgement that the government is mainly targeting individuals who are at a higher risk of exposure, but who do not hold leadership positions in drug-trafficking syndicates.

This appears to be confirmed by the fact that the majority of those who were sentenced to death for drug trafficking since 2013 had been convicted of importing relatively small amounts of controlled substances – suggesting that they may only have held only low-ranking positions in drug trafficking rings, and begging the question of whether either their co-operation or their death would substantively disrupt the drug trade.

### **CERTIFICATE OF ASSISTANCE**

The 2013 legislative amendments to the mandatory death penalty introduced a concerning feature to Singapore’s administration of justice. The requirement for the prosecutor to issue a certificate of assistance before a judge can exercise discretion in drug trafficking cases means that the ultimate discretion lies not in

the hands of the court but with the prosecutor – if the prosecution does not provide a certificate of assistance, the court is deprived of *any* discretionary powers and must sentence the accused to death.

Amnesty International has found that since 1 January 2013, 34 people, including 2 women, out of 51 were sentenced to the mandatory death penalty for drug trafficking, as they did not meet both or either requirements necessary to qualify for discretionary sentencing.

This not only narrows the court's discretionary powers considerably, it violates the right to a fair trial as it places life and death decisions in the hands of an official who is neither a judge nor a neutral party in the trial and should not have such powers. This provision breaks down the clear separation that must exist between prosecution and court. In addition, those among the "couriers" who are lower in the drug trafficking hierarchy, are the least likely to be capable of providing meaningful "assistance" to the CNB, therefore more likely to face execution.

One High Court Justice eloquently expressed the life and death implications of the law in a judgement delivered in 2016:

*"He is not given a certificate of substantive assistance by the CNB. We do not know why. He might not have much assistance to give. He might have declined to assist, in which event, we do not know if his depressive illness had any connection to that attitude. [...] The language of the law here is precise and simple. Life, on the other hand, is not so."*

Of further concern is the fact that the decision to issue the certificate of assistance rests entirely with the Public Prosecutor and can only be appealed on the basis of narrow grounds. The process that leads to the decision to issue a certificate of assistance and the reasoning for it is not transparent. Defence lawyers are not present when a defendant is interrogated by the Central Narcotics Bureau and they and judges are only informed of the outcome of the prosecution's decision on the certificate. The prosecution does not provide information as to what assistance the prisoners gave and on how it decided to issue or not the certificate of assistance, for example.

While the right of those facing the death penalty to appeal to a higher court against their conviction and sentence is guaranteed under international law, in reality it is difficult for defendants in Singapore to challenge decisions by prosecutors not to issue certificates of assistance.

## **PREVENTING CHALLENGES TO THE DEATH PENALTY**

The evidentiary threshold that must be met in Singapore for extraordinary appeals to challenge death penalty sentences that have already been finalised is higher than in other countries and only pertains to the probability of miscarriages of justice and not, for example, to manifestly excessive punishments. It is of serious concern that new guidance issued in 2016 has resulted in a significant decrease in the number of such appeals.

## **RECOMMENDATIONS**

Singapore plays an influential role in the region and internationally. It could and should play a leadership role in advancing the protection and promotion of human rights. In this context, the Government of Singapore will need to develop a comprehensive reform plan to address ongoing concerns in its use of the death penalty and guide the country towards full abolition. With more and more countries joining the global trend towards abolition of the ultimate cruel, inhuman and degrading punishment, Singapore's international reputation is at stake.

Pending full abolition, Amnesty International urges the Government of Singapore authorities to implement the following recommendations as a matter of priority:

- In line with six UN General Assembly resolutions adopted since December 2007, establish an immediate moratorium on all executions and commute all death sentences, as an urgent first step towards full abolition of the death penalty for all crimes.
- Bring provisions in national legislation that allow for the use of the death penalty into line with international human rights law and standards, including by removing from the scope of the death penalty any offence other than intentional killing, abolishing the mandatory death penalty and ensuring that all those who have been sentenced to death for other offences, in particular for drug-related offences, have their sentences reviewed and commuted accordingly.
- Ensure that in proceedings related to offences where the death penalty might be imposed, the most rigorous internationally recognized standards of fair trial are respected.
- Amnesty International opposes the death penalty in all cases and under any circumstances, regardless of the nature of the crime, the characteristics of the offender, or the method used by the

state to carry out the execution. The organization considers the death penalty a violation of the right to life as recognized in the Universal Declaration of Human Rights and the ultimate cruel, inhuman and degrading punishment.

## METHODOLOGY

This report is based on research carried out by Amnesty International. The primary source for the analysis outlined in this briefing is judgments delivered by the High Court and Court of Appeal of Singapore in capital cases between 1 January 2008 and 30 September 2017. This period covers five years before, and four years and nine months after, the amendments became effective. The judgments relate to the cases of 137 people who were charged with capital offences and who had their trial and appeals decisions published within the selected period on *SingaporeLaw.sg*, the designated online portal maintained by the Singapore Academy of Law. Amnesty International also considered relevant judicial decisions taken in additional, non-capital cases to inform the analysis of case law development.

The judgments also form the basis for the figures provided in the report. It is not uncommon in Singapore for judicial decisions not to be recorded in writing, particularly when they are not appealed. Because of this, the figures relating to death sentences Amnesty International presents in this report should be considered as minimum figures.

The analysis of the judgments is complemented by information gathered by Amnesty International through its monitoring of the use of the death penalty in Singapore. Sources for this monitoring include official information published by the authorities, as well as legal and clemency appeals, publications by UN bodies, academics, media and information shared by civil society representatives from Singapore and the region.

Amnesty International has requested information directly from the authorities of Singapore on several occasions. The organization has written every year to the Office of the Attorney General and Minister of Home Affairs, seeking input for its annual report on the global use of the death penalty; representatives of Amnesty International requested meetings with the Permanent Mission of Singapore to the UN in New York; and Amnesty International sought engagement of the authorities specifically in relation to this report, writing twice in September 2017. All these requests have gone unanswered.

Amnesty International continues to seek opportunities to discuss its concerns and recommendations with the authorities of Singapore and to be allowed to visit the country for research purposes. The overall challenges relating to access to official information are compounded by the controlled environment in the country, which has involved the harassment of those who have vocally criticized the administration of justice and might have deterred lawyers from sharing their experiences with Amnesty International or seek further remedies for those on death row.<sup>1</sup>

Not least because of these challenges, Amnesty International is grateful to those dedicated lawyers and human rights activists who agreed to be interviewed by, or provided information to, representatives of the organization. Amnesty International hopes that this report will prove a useful resource and contribute to informed debates on the current state of the death penalty in Singapore, with a view to its abolition, and offer support to those seeking to challenge the use of this punishment.

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<sup>1</sup> See section 4 of this document.



# 1. BACKGROUND: THE DEATH PENALTY IN SINGAPORE

**“To portray the debate as simply one of taking lives versus not taking lives is a straw man argument. No civilised society can glorify in the taking of life. The question is whether, in very limited circumstances, it is legitimate to have the death penalty so that the larger interest of society is served.”**

Kasiviswanathan Shanmugam, Minister for Foreign Affairs and Minister for Law, 25 September 2014<sup>2</sup>

**“From the point of view of the law, the death penalty is the ultimate punishment because there is no way back. It closes the door to exoneration in the event of subsequent exculpatory evidence or events”**

High Court Justice, judgment delivered on 7 March 2016<sup>3</sup>

## 1.1 SIGNIFICANT PROGRESS

Singapore once had the world’s highest execution rate, relative to its population.<sup>4</sup> Although the country’s international reputation as one of the most vocal and unwavering supporters of the death penalty remains,

<sup>2</sup> Ministry of Foreign Affairs of Singapore, Transcript of Statement for Foreign Affairs and Minister for Law K Shanmugam at the High-Level Side Event at the 69th Session of the United Nations General Assembly “Moving Away from the Death Penalty: National Leadership”, 25 September 2014.

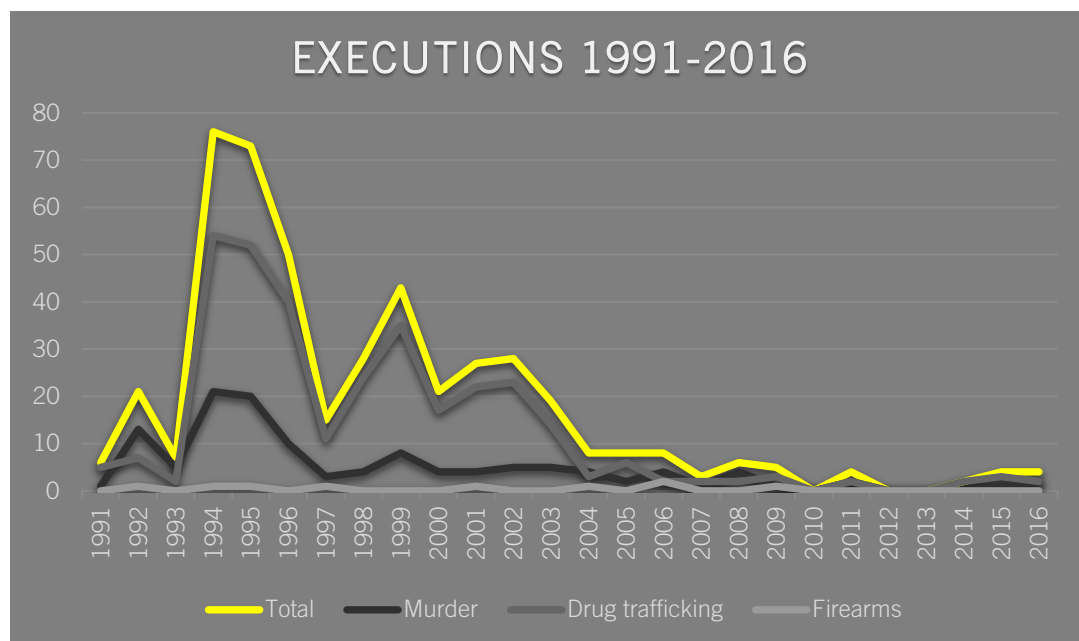
<sup>3</sup> *Public Prosecutor v Chum Tat Suan* [2016] SGHC 27.

<sup>4</sup> According to the UN Secretary-General’s quinquennial report on capital punishment, for the period 1994 to 1999 Singapore had a rate of 13.57 executions per one million population, representing the highest rate of executions in the world at the time. Report of the UN Secretary-General on capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty, UN document E/CN.15/2001/10, para. 68. See also Amnesty International, “Singapore: the death penalty – a hidden toll of executions” (ASA 36/001/2004), January 2004.

data released by the authorities since 2011 shows a significant reduction in their resort to this punishment in more recent decades.<sup>5</sup>

The number of executions carried out yearly significantly dropped from the peak of the mid-1990s, when more than 70 people were hanged in one year; and progressively decreased to eight just a decade later. (See graphic “Executions 1991-2016” below). Five or fewer executions were reported yearly since 2009. Remarkably the past decade (2007-2016) has even seen three years during which no executions were carried out.

It is difficult to determine precisely what the factors behind this reduction are, particularly in light of the limited information made available by the authorities. Some commentators have pointed to international pressure, including following the release of Amnesty International’s 2004 report, and subsequent government policy change.<sup>6</sup> Singaporean academic Prof. Michael Hor suggests that there may have been an “unannounced change in official policy towards the necessity of executions”;<sup>7</sup> others have suggested that prosecutors have exercised discretion in charging defendants with non-capital crimes.<sup>8</sup>



The government’s publication of execution figures – including the number of executions carried out each year, disaggregated by crime – which began systematically in 2011, also marked an important shift by the government towards increasing transparency on the use of the death penalty. The authorities have historically only published detailed information – including names of prisoners and dates of the implementation of death sentences – for only a limited number of cases which appear to have caught public attention, either because of the offences involved or the campaigning around them.

The government still does not systematically publish detailed information on executions before and after these are carried out; nor on the number of persons under sentence of death; or of pardon applications granted and rejected, contrary to the requirements of international bodies and standards.<sup>9</sup> Judgments by the courts are published and easily accessible online, but figures on the number of death sentences imposed, commuted, and upheld are not.

In this context, the steps the authorities have taken since 2011 constitute a first meaningful stride that should be used as a stepping stone to achieve full transparency in the use of the death penalty – an

<sup>5</sup> Figures compiled from information provided by the Ministry of Home Affairs, as published by national newspaper Straits Times on 1 March 2012; the Office of the Attorney General; and the yearly reports published by the Singapore Prison Service.

<sup>6</sup> Roger Hood and Carolyn Hoyle, *The Death Penalty – A Worldwide Perspective*, Fifth Edition, Oxford: Oxford University Press, 2015, p.114.

<sup>7</sup> Michael Hor, “Singapore’s Death Penalty: The Beginning of the End?” in Hood and Deva, *Confronting Capital Punishment in Asia – Human Rights, Politics, and Public Opinion*, Oxford: Oxford University Press, 2013.

<sup>8</sup> Peggy Pao-Keerhi Pei Yu, “Looking Beyond prospective guidance- Sentencing Discretion in Capital Drug Framework and Lessons from the US”, 26 *Singapore Academy of Law Journal*, (2014), p.21.

<sup>9</sup> See, among others, UN Human Rights Council resolution 30/5 of 1 October 2015; UN Economic and Social Council resolution 1989/64 of 24 May 1989.

essential safeguard of due process and a prerequisite to inform public opinion on this often controversial, misrepresented topic.<sup>10</sup>

## 1.2 CONTINUED DISREGARD FOR INTERNATIONAL LAW AND STANDARDS

The progress witnessed in recent years has however not eased concerns domestically and internationally at the continued use of the death penalty in Singapore. Although several laws provide for it,<sup>11</sup> the death penalty has been imposed mainly for murder as well as drug-related offences which do not meet the threshold of the “most serious crimes” to which its use must be restricted under international law – including possession of controlled drugs above certain amounts. More than half of the 28 executions carried out in the past ten years were drug-related.

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<sup>10</sup> International law recognizes the importance of making public the information on decisions in criminal matters and recognizes the right to seek, receive and impart information. (Article 19 of the Universal Declaration on Human Rights). As highlighted by the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, the publishing of regular and comprehensive information on the use of the death penalty is in the interest of the public as it gives the opportunity to analyse whether this punishment is applied in a fair and non-discriminatory manner. Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, UN Doc. A/67/275, 9 August 2012, para. 107.

<sup>11</sup> Under the Armed Forces Act, section 112(1), for murder of other offences under any written law had he been convicted by a civil court for such other offence; under the Arms Offences Act, sections 4 and 5, for using or attempting to use any weapon, or using or attempting to use any weapon while committing or attempting to commit another offence, or for accomplices that do not prevent the use of weapons; under the Misuse of Drugs Act, section 33, for trafficking prohibited substances above specified amounts if certain conditions are not met (see section 2 of this document); under Terrorism (Suppression of Bombings) Act, section 3(1) for intentionally and without lawful excuse delivering, placing, discharging or detonating an explosive or other lethal device with intent to cause death or serious bodily injury and death is caused; and under the Penal Code, for murder committed with an intention to kill (section 300(a)), committing or attempting to commit murder while carrying out piracy (s.130(b)), killing of a person while committing genocide (s.130(e)).

## THE DEATH PENALTY UNDER INTERNATIONAL LAW AND STANDARDS: ONLY IN EXCEPTIONAL CASES AND NEVER AS MANDATORY PUNISHMENT

The UN and several other international bodies have set out safeguards, including prohibitions, aimed at regulating and restricting the use of the death penalty, with a view to its abolition.<sup>12</sup> In particular, the UN Economic and Social Council adopted the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, which set out the most basic guarantees to be observed in all death penalty cases. The UN Safeguards were endorsed by the UN General Assembly in 1984 without a vote.<sup>13</sup>

Among other restrictions, international human rights law provides that, in countries where the death penalty has not yet been abolished, its imposition must be restricted to “**the most serious crimes**”.<sup>14</sup> This restriction has been interpreted as referring to lethal crimes or crimes with extremely grave consequences. The Human Rights Committee, the expert UN body charged with overseeing the implementation of the International Covenant on Civil and Political Rights, has stated that “[T]he expression ‘most serious crimes’ must be read restrictively to mean that the death penalty should be a quite exceptional measure.”<sup>15</sup> Most recently, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions (Special Rapporteur) has stated that the term “most serious crimes” is restricted to cases of intentional killing.<sup>16</sup> The Special Rapporteur specifically underlined that “The death penalty **may not be imposed for drug-related offences** unless they meet this requirement.”<sup>17</sup> The UN Office on Drugs and Crime (UNODC), the agency responsible for coordinating the different UN anti-drug programmes, emphasized in a recent statement that the death penalty is **not supported by the international drug control conventions**.<sup>18</sup> Similarly, the International Narcotics Control Board (INCB), an independent committee established to oversee the implementation of the UN Drug Conventions, has also called on States that still retain the death penalty for drug-related offences to consider its abolition for such offences.<sup>19</sup>

The imposition of the **mandatory death penalty** is also prohibited under international law.<sup>20</sup> The Human Rights Committee has stated that “the automatic and mandatory imposition of the death penalty constitutes an arbitrary deprivation of life [...] in circumstances where the death penalty is imposed without any possibility of taking into account the defendant’s personal circumstances or the circumstances of the particular offence”.<sup>21</sup> In addition, the Special Rapporteur has stated that “the death penalty should under no circumstances be mandatory by law”<sup>22</sup> 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”.<sup>23</sup>

Singapore is a state party or signatory to only five international human rights treaties.<sup>24</sup>

<sup>12</sup> UN General Assembly resolution 2857 (XXVI) of 20 December 1971 affirms that to fully guarantee the right to life, which is provided for in Article 3 of the Universal Declaration of Human Rights, States should progressively restrict “the number of offences for which capital punishment may be imposed, with a view to the desirability of abolishing this punishment in all countries.” Subsequent instruments adopted since then, including the International Covenant on Civil and Political Rights, have set abolition as the goal to be achieved.

<sup>13</sup> UN Safeguards guaranteeing protection of the rights of those facing the death penalty, approved by Economic and Social Council resolution 1984/50 of 25 May 1984.

<sup>14</sup> Article 6(2) of the International Covenant on Civil and Political Rights; Safeguards guaranteeing protection of the rights of those facing the death penalty, adopted by the UN Economic and Social Council in resolution 1984/50 of 25 May 1984.

<sup>15</sup> Human Rights Committee, General Comment No. 6: The Right to Life, UN Doc. HRI/GEN/1/Rev.1, 27 May 2008, 27 July 1982, para. 6.

<sup>16</sup> Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, UN doc. A/67/275, 9 August 2012, para. 35.

<sup>17</sup> UN doc. A/67/275, para.122.

<sup>18</sup> UNODC, Statement by the UNODC Executive Director on the recent executions in Indonesia, 29 July 2016, available at <https://www.unodc.org/unodc/en/press/releases/2016/July/statement-by-the-unodc-executive-director-on-the-recent-executions-in-indonesia.html>; see also International Narcotics Control Board, “INCB reiterates its call to States to consider the abolition of the death penalty for drug-related offences”, 1 August 2016, available at [https://www.incb.org/incb/en/news/press-releases/2016/press\\_release010816.html](https://www.incb.org/incb/en/news/press-releases/2016/press_release010816.html)

<sup>19</sup> International Narcotics Control Board, Report 2014. New York, 2013, pp. iii. In its 2016 yearly report, the Board noted that Singapore continues to apply the death penalty for drug-related offences and called “upon the Government of Singapore to commute death sentences that have already been handed down and to consider the abolition of the death penalty for drug-related offences.” (para.282).

<sup>20</sup> Report of the Special Rapporteur on Extrajudicial, summary or arbitrary executions, UN Doc. A/HRC/14/24, 20 May 2010, para. 51.

<sup>21</sup> Human Rights Committee, *Pagdayawon Rolando v Philippines*, Communication No. 1110/2002, UN Doc. CCPR/C/82/D/1110/2002, 8 December 2004, para. 5.2.

<sup>22</sup> Report of the Special Rapporteur on Extrajudicial, summary or arbitrary executions, UN Doc. E/CN.4/1999/39, 6 January 1999, para.63.

<sup>23</sup> Report of the Special Rapporteur on Extrajudicial, summary or arbitrary executions, UN Doc. E/CN.4/2005/7, 22 December 2004, para. 80.

<sup>24</sup> Singapore is a state party to Convention on the Elimination of All Forms of Discrimination Against Women; the Convention on the Rights of Persons with Disabilities; the Convention on the Rights of the Child and its Optional Protocol on the Involvement of Children in Armed Conflict. It has also signed, but not ratified, the International Convention on the Elimination of All Forms of Racial Discrimination. For more information, visit the Singapore page on the website of the UN Office of the High Commissioner on Human Rights, <http://www.ohchr.org/EN/Countries/AsiaRegion/Pages/SGIndex.aspx>

Contrary to international law and with some limited changes since 2013,<sup>25</sup> the death penalty has been imposed in Singapore as mandatory punishment for murder, drug trafficking and some firearms offences. This is despite significant evidential concerns. For example, in drug-related cases, the prosecution and judges have frequently been relying, in charging and convicting individuals, on “presumptions” under Sections 17 and 18 of the Misuse of Drugs Act.<sup>26</sup> When these are invoked, defendants (a) found in possession of amounts of controlled drugs specified in the Act are automatically presumed guilty of possession for the purpose of trafficking; (b) those in possession of keys to vehicles or places in which controlled drugs are found, or documents relating to the controlled drugs, are automatically presumed to be in possession of the substances themselves; and (c) those proved or presumed to have controlled drugs in their possession are presumed to have knowledge of the nature of the substances. In these circumstances, the burden of proof is shifted onto the defendant, in violation of the presumption of innocence, a fundamental principle of the right to a fair trial.<sup>27</sup> Furthermore, to rebut these presumptions defendants cannot simply raise a reasonable doubt, but need to show their proof to the higher standard of “on a balance of probabilities”,<sup>28</sup> which makes the rebuttal of these presumptions significantly more challenging; and, in turn, increases the risk that those whose guilt was not proven in court beyond reasonable doubt – a fundamental principle of criminal prosecutions<sup>29</sup> – are sent to face the gallows.

Again, contrary to international human rights law and standards,<sup>30</sup> statements taken from defendants during police interrogation without a lawyer present have often been used as evidence to convict, even when defendants have raised that these were made under coercion.<sup>31</sup> Against this backdrop of failure to respect and protect the right to a fair trial, it is important to note that only six appeals for executive clemency have been granted since Singapore gained independence in 1965.<sup>32</sup>

## 1.3 STAUNCH SUPPORT FOR THE DEATH PENALTY

The staunch support of the Singapore government for the death penalty does not appear to have decreased in recent years, even as the execution rate has fallen. The government has continued to justify its retention as an effective deterrent on crime. As summarized by the Minister of Foreign Affairs, Vivian Balakrishnan, at the UN General Assembly in September 2016: “In our view, capital punishment for drug-related offences and for murder has been a key element in keeping Singapore drug free and keeping Singapore safe. Singapore is probably one of the few countries in the world which has successfully fought this drug problem. And we do not have slums, we do not have ghettos, we do not have no-go zones for the police. The death penalty has deterred major drug syndicates from establishing themselves in Singapore, and we have successfully kept the drug situation under control.”<sup>33</sup>

Empirical evidence, however, has failed to prove that the death penalty deters crime any more effectively than life imprisonment. A respected study comparing murder rates in Hong Kong and Singapore – both of which have a similar size of population, history and level of safety – for a 35-year period between 1972 and 2007 found that the abolition of the death penalty in the former and the high execution rate in the mid-1990s in the latter had little impact on murder levels.<sup>34</sup> The authors of the study highlighted how Singapore’s murder rate was lower in 2007, after ten years of declining executions, than in the peak execution years of

<sup>25</sup> See section 2 of this document.

<sup>26</sup> Presumption of possession is also permitted under Section 9 of the Arms Offences Act.

<sup>27</sup> See, among others, Article 11(1) of the Universal Declaration of Human Rights; Article 14(2) of the International Covenant on Civil and Political Rights.

<sup>28</sup> See, for example, Court of Appeal, *Masoud Rahimi bin Mehrzad v Public Prosecutor and another appeal*, [2016] SGCA 69, 30 December 2016, para.42: “It is, in our view, settled law in Singapore that an accused against whom the s 18(2) presumption operates bears a legal burden of rebutting this presumption on a balance of probabilities. As such, it is not sufficient for the accused to raise a reasonable doubt vis-à-vis the issue of knowledge”.

<sup>29</sup> See for instance Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, UN Doc. CCPR/C/GC/32, 23 August 2007, para. 30.

<sup>30</sup> See, among others, Safeguard no. 5 of the UN Safeguards guaranteeing protection of the rights of those facing the death penalty, Economic and Social Council resolution 1984/50 of 25 May 1984, endorsed by the UN General Assembly resolution 39/118 of 14 December 1984. For more information see Amnesty International, *Fair Trial Standards* (POL 30/002/2014), Second edition, 9 April 2014.

<sup>31</sup> See, for example, *Public Prosecutor v Abdul Kahar bin Othman* [2013] SGHC 164; *Public Prosecutor v Lim Boon Hiong and another* [2010] SGHC 205; and *Public Prosecutor v Mohamad Fadzly bin Din* [2010] SGHC 117.

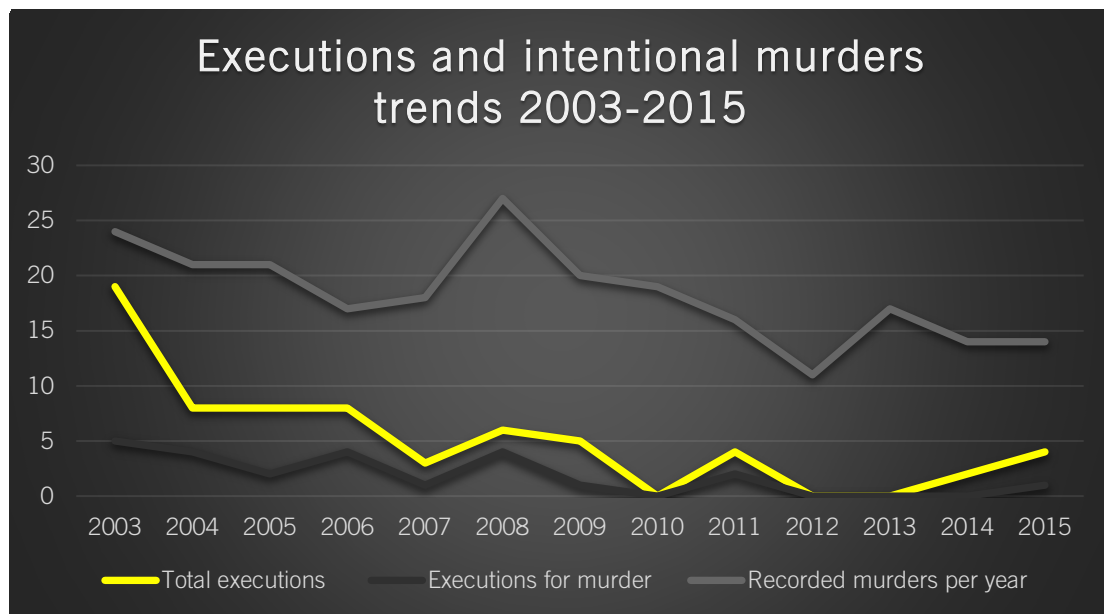
<sup>32</sup> Amnesty International, “Singapore: the death penalty – a hidden toll of executions” (ASA 36/001/2004), January 2004. See also Daniel Pascoe, “Singapore and Thailand: Explaining Differences in Death Penalty Clemency” in Liu, J., Travers, M., & Chang, L., *Comparative Criminology in Asia*, Springer, 2016.

<sup>33</sup> Ministry of Foreign Affairs, “Transcript of Minister Vivian Balakrishnan’s Intervention at the High-Level Side Event at UNGA – ‘Moving Away from the Death Penalty: Victims and the Death Penalty’”, 21 September 2016, available at [https://www.mfa.gov.sg/content/mfa/media\\_centre/press\\_room/pr/2016/201609/press\\_20160922.html](https://www.mfa.gov.sg/content/mfa/media_centre/press_room/pr/2016/201609/press_20160922.html)

<sup>34</sup> Franklin E. Zimring, Jeffrey Fagan, David T. Johnson, “Executions, deterrence and homicide: a tale of two cities”, 31 August 2009, Columbia Public Law Research Paper No. 09-206; CELS 2009 4th Annual Conference on Empirical Legal Studies Paper.

1994-1996, making Singapore “a slightly safer city in an era of 5 executions per year than it was with 60.”<sup>35</sup> While the study, as noted by the authors, neither proves nor disproves the deterrent effect of the death penalty in itself, it does show that there is a lack of clear connection between executions and homicide rates.

Data on murder counts in Singapore, as gathered by the UN Office on Drug and Crime, for the period 2003-2015 also shows no apparent correlation with execution trends for the same period (see graphic below, *Executions and murder trends 2003-2015*).<sup>36</sup> Murder rates remained stable or declined up to 2006, when executions were also declining or remaining stable; and rose from 18 in 2007 to 27 in 2008 during a year when executions doubled, from three to six. While murder counts rose from 11 to 17 in 2012-2013, when a moratorium on executions was in place, they have essentially remained stable when executions were resumed and have increased in more recent years.



Similarly, in regards to drug-related crime, evidence shows that punitive policies have had little influence on the prevalence of drug use.<sup>37</sup> Countries that have enacted harsh laws and implemented widespread arrests and imprisonment of people who use drugs, even imposing death sentences, did not present lower levels of drug use and related challenges than countries with more tolerant approaches.<sup>38</sup> As the annual world drug reports published by UNODC show, the number of people who use drugs globally has overall remained stable, and harsh punishments have not eliminated or reduced either drug trafficking nor drug use.<sup>39</sup> Use of controlled drugs in Asia, as suggested by UNODC, is at levels similar to or below the global average – including regions where the death penalty is not used.<sup>40</sup> By contrast, evidence has shown that punitive policies encourage and perpetuate high-risk drug use behaviours<sup>41</sup> and the marginalization of those who use drugs.<sup>42</sup>

<sup>35</sup> Franklin E. Zimring, Jeffrey Fagan, David T. Johnson, p.27.

<sup>36</sup> Intentional murder data retrieved from the UNODC statistical database, available here: <https://data.unodc.org/#state:0>

<sup>37</sup> Degenhardt L, Chiu W-T, Sampson N, Kessler RC, Anthony JC, et al. “Toward a global view of alcohol, tobacco, cannabis, and cocaine use: Findings from the WHO World Mental Health Surveys.” *PLoS Med* 5(7) (2008), available at <http://journals.plos.org/plosmedicine/article?id=10.1371%2Fjournal.pmed.0050141>.

<sup>38</sup> Global Commission on Drug Policy. War on Drugs. June 2011, available at [http://www.globalcommissionondrugs.org/wp-content/themes/gcdp\\_v1/pdf/Global\\_Commission\\_Report\\_English.pdf](http://www.globalcommissionondrugs.org/wp-content/themes/gcdp_v1/pdf/Global_Commission_Report_English.pdf).

<sup>39</sup> For more information, see annual World Drug Reports produced by UNODC, available at <http://www.unodc.org/wdr2015/>.

<sup>40</sup> United Nations Office on Drugs and Crime, World Drug Report 2015, May 2015, pp. 15, available at [https://www.unodc.org/documents/wdr2015/World\\_Drug\\_Report\\_2015.pdf](https://www.unodc.org/documents/wdr2015/World_Drug_Report_2015.pdf).

<sup>41</sup> Joanne Csete et al., “Public Health and international drug policy” in *The Lancet*. April 2016

<sup>42</sup> Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health: Mission to Viet Nam UN Doc. A/HRC/20/15/Add.2, 4 June 2012, para. 45. See also United Nations Development Programme, Addressing the Development Dimensions of Drug Policy, June 2015.

## CANING – A CRUEL, UNLAWFUL PUNISHMENT

Judges' discretion in certain death penalty cases includes the imposition of caning. Caning is used in Singapore as a judicial punishment, as disciplinary punishment in prisons and the military, as well as in schools. Like all forms of corporal punishment, however, caning in all these contexts, is unlawful under international human rights law, a prohibition that extends to all forms of such punishment, for all crimes and in all circumstances. Caning and other forms of corporal punishment constitute cruel, inhuman or degrading punishment, and often torture, which are prohibited under international law.<sup>43</sup>

Amnesty International has consistently called on all states still practicing corporal punishment, including Singapore, to immediately stop using this vicious measure and repeal all laws allowing its use.

Singaporean public support for the death penalty seems to be more nuanced than the government portrays it, when analysed more closely. While the reliance on opinion polls as evidence of public support for the death penalty has long been challenged,<sup>44</sup> two surveys carried out in 2016 show that there is a significant variation in the people's support for and confidence in the death penalty when questions relating to specific crimes or circumstances are asked.

- A study commissioned by the Singapore government and published in October 2016 indicated that 80% of the interviewees supported the retention of the death penalty. However, those supporting this punishment showed varied views depending on the offence for which the death penalty would be imposed, with murder attracting 81% of supportive views; using a firearm to commit a serious offence, 78%; arms trafficking, 74%; and drug trafficking, 67%. In this same survey, despite clear evidence to the contrary (see above), 64% believed that there were adequate safeguards in Singapore to ensure that no person was wrongly sentenced to death.<sup>45</sup>
- A survey carried out by the National University of Singapore and published in December 2016 used a more detailed methodology. Quite significantly, in this survey support for the death penalty dropped to 56% for intentional murder, 43% for drug trafficking and 47% for discharging a firearm, respectively, when the interviewees were asked to think about how they would feel about this punishment if it were not proven to be a greater deterrent than life or long term imprisonment; and to 35%, 28%, 31%, respectively, if it were proven that innocent people have been executed. The findings of this study also show that only 47% of the interviewees supported the mandatory death penalty for intentional murder, 32% for drug trafficking and 36% for firearms offences.<sup>46</sup>

With evidence from different countries showing that the public support for the death penalty progressively declines years after its abolition,<sup>47</sup> these figures should certainly be cause for reflection on how public support for this punishment can change according to the information available, putting a greater onus on the authorities to facilitate and contribute to informed public debates on the issue.

So far, however, it has been individual cases that have focussed public attention on the true reality of the death penalty in Singapore. It was arguably the public outcry over the case of Yong Vui Kong – a 19 year-old Malaysian national who was arrested in 2007 and later convicted of possessing 47 grams of heroin, while his Singaporean ringleader had the 26 charges against him dropped<sup>48</sup> – that laid the ground for the establishment of a moratorium on executions in July 2011 and subsequent legal reforms to the mandatory death penalty that took effect in 2013.

<sup>43</sup> See Amnesty International, Combating torture and other ill-treatment: A manual for action, 2016, pp. 84-8, available at [www.amnesty.org/ctm](http://www.amnesty.org/ctm). On the use of caning, under similar laws, dating back to colonial times, in Singapore's neighbour, Malaysia see Amnesty International, "Malaysia: A blow to humanity: Torture by judicial Caning in Malaysia" (ASA 28/013/2010), 2010, available at: <https://www.amnesty.org/en/documents/ASA28/013/2010/en/>

<sup>44</sup> For a short overview, see section 8 of Amnesty International, "Submission to the Law Commission of India on the abolition of the death penalty" (ACT 50/003/2014), 30 July 2014, available at <https://www.amnesty.org/en/documents/act50/003/2014/en/>

<sup>45</sup> Reach, "Findings of Poll on Attitudes towards the Death Penalty", 6 October 2016, available at <https://www.reach.gov.sg/read/news-and-press-releases>

<sup>46</sup> National University of Singapore, Death penalty support not clear-cut, 13 December 2016, available at <http://news.nus.edu.sg/highlights/death-penalty-support-not-clear-cut> The full survey is available from <https://maruahsg.files.wordpress.com/2016/12/nus-public-opinion-report.pdf>

<sup>47</sup> See section 8 of Amnesty International, "Submission to the Law Commission of India on the abolition of the death penalty" (ACT 50/003/2014).

<sup>48</sup> More information on his case available at Amnesty International, Singapore: landmark ruling lifts death penalty for drug offender, 14 November 2013, available at <https://www.amnesty.org/en/press-releases/2013/11/singapore-landmark-ruling-lifts-death-penalty-drug-offender/>

## THE DEATH PENALTY IN THE ASEAN REGION

Singapore is a country of great influence in Asia and internationally, including when it comes to the death penalty. Developments in this country resonate well beyond its borders. Only three months after the Singapore government presented to the Parliament its proposal for the review of the mandatory death penalty laws, the government of Malaysia announced in October 2012 that it would review the imposition of the death penalty for drug-related offences and consider establishing a moratorium on executions pending reforms.<sup>49</sup> The draft legislative amendments are yet to be introduced in the Malaysian Parliament.

Other member states of the Association of Southeast Asian Nations (ASEAN) face similar challenges to some degree, particularly regarding drug-related offences. However, their response to these has been varied and so has their resort to the death penalty. To date, Cambodia and the Philippines are the only two ASEAN Member States that have fully abolished the death penalty.<sup>50</sup> Three countries are abolitionist in practice: Brunei Darussalam, where the last known execution was carried out in 1957; Laos, in 1989; and Myanmar, in 1988. Thailand retains the death penalty, but has not carried out any executions since 2009.

Four countries in the region – Indonesia, Malaysia, Singapore, Viet Nam – have carried out executions in the past five years, including for drug-related offences.

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<sup>49</sup> Borneo Post, "Nazri: Possible moratorium on death sentences", 21 October 2012, available at <http://www.theborneopost.com/2012/10/21/nazri-possible-moratorium-on-death-sentences/>

<sup>50</sup> Thousands of people have been killed since President Rodrigo Duterte launched the "war on drugs" after taking office in June 2016. Amnesty International has documented that many of these killings amount to extrajudicial executions and that victims overwhelmingly come from the country's poorest neighbourhoods. See, among other outputs, Amnesty International, Philippines: "If you are poor, you are killed": Extrajudicial killings in the Philippines' "War on Drugs" (ASA 35/5517/2017), 31 January 2017, available at <https://www.amnesty.org/en/documents/asa35/5517/2017/en/>



# 2. 2013 AMENDMENTS: WHO GETS THE DEATH PENALTY?

**“Where possible, where practical, where it is realistic, and where it does not substantially impact our crime control framework, we must move towards giving greater discretion to the courts. [...] Mandatory sentences are and should be the exception”**

Kasiviswanathan Shanmugam, Minister of Law, 14 November 2012<sup>51</sup>

## 2.1 2013 AMENDMENTS: SMALL STEPS

On 9 July 2012, the Deputy Prime Minister and Minister for Home Affairs, Teo Chee Hean, and the Minister of Law, Kasiviswanathan Shanmugam, presented to Parliament a government proposal for legislative amendments to the mandatory death penalty and announced that “all executions have been suspended since July 2011, when the current review [of the law] began. Executions will continue to be suspended until the proposed changes are enacted.”<sup>52</sup>

The Ministers clarified that the reforms would serve two objectives, taking a strong stance on crime and

**“The refinement of our approach towards sentencing offenders. Our cardinal objectives remain the same. Crime must be deterred and society must be protected against criminals. But justice can be tempered with mercy and where appropriate, offenders should be given a second chance. How these objectives are achieved and balanced depend on the values and expectations of society, as it evolves and matures.”<sup>53</sup>**

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<sup>51</sup> Parliament of Singapore, “Penal Code (Amendment) Bill, Transcript of sitting on 14 November 2012”, Vol.89.

<sup>52</sup> Parliament of Singapore, “Changes to the application of the mandatory death penalty to homicide offences (Statement by the Minister of Law)”, vol. 89, 9 July 2012. Executions resumed on 18 July 2014; “Enhancing our drug control framework and review of the death penalty (Statement by the Deputy Prime Minister and Minister for Home Affairs)”, vol.89, 9 July 2012.

<sup>53</sup> Parliament of Singapore, “Changes to the application of the mandatory death penalty to homicide offences (Statement by the Minister of Law)”, vol. 89, 9 July 2012.

In addition to societal changes, the Deputy Prime Minister, Teo Chee Hean, cited changes in the operations of drug trafficking syndicates as a reason to bring about the reforms, to ensure greater efficiency in the crime control operations:

**“In recent years, by making use of improvements in communications technology, syndicates supplying drugs to Singapore have responded to the increased risks of apprehension by moving off-shore, with their leaders controlling their operations remotely. The higher-ups in the syndicates try to avoid direct contact with the drugs. They employ others to transport the drugs into and within Singapore to minimise the risks to themselves. They will consciously target and exploit vulnerable groups to the high-risk for them, while remaining behind the scenes.”<sup>54</sup>**

**“The policy intent of this substantive cooperation amendment to our mandatory death penalty regime is to maintain a tight regime – while giving ourselves an additional avenue to help us in our fight against drugs, and not to undermine it. We cannot be sure how exactly couriers or the syndicates will respond to this new provision. But we have weighed the matter carefully, and are prepared to make this limited exception if it provides an additional avenue for our enforcement agencies to reach further into the networks, and save lives from being destroyed by drugs and hence make our society safer.”<sup>55</sup>**

In his presentation, the Minister of Law further clarified that the scope of the reforms encompassed drug-related and homicide offences but not those involving firearms, for which the mandatory death penalty would remain in place. All those convicted of capital crimes meeting the requirements set out in the new law –34, according to figures released by the Attorney General in November 2012 – were to be allowed to apply for resentencing.<sup>56</sup>

The scope of the reforms as adopted by the Parliament in November 2012 ultimately proved to be very limited, with the mandatory death penalty – which is prohibited under international law – being retained. The interpretation of the Courts in response to questions emerging in the implementation of the new legislative instructions further contributed to restricting the potential for change and for reduction in the resort to the death penalty that could have been otherwise achieved. Instead, the case law strengthened the influence of prosecutorial discretion on sentencing outcomes.<sup>57</sup> The amendments became effective on 1 January 2013.<sup>58</sup>

## 2.1.1 CHANGES TO THE MISUSE OF DRUGS ACT

The legislative amendments adopted by the Parliament of Singapore included a new section, 33B, in the Misuse of Drugs Act which gives courts discretion to sentence persons found guilty of drug trafficking or importing prohibited substances over certain amounts to either the death penalty or life imprisonment and 15 strokes of the cane<sup>59</sup> if they can prove, on a balance of probabilities, that their involvement in the offence was restricted to that of a “courier”, meaning transporting, sending or delivering a controlled drug; or to offering to transport, send or deliver a controlled drug; to doing or offering to do any act preparatory to or for the purpose of transporting, sending or delivering a controlled drug; or to any combination of these activities;

And if the Public Prosecutor issues a “certificate of substantive assistance” confirming that, in his/her determination, the person has substantively assisted the Central Narcotics Bureau in disrupting drug trafficking activities within or outside Singapore; or if they had a mental or intellectual disability that substantially impaired their mental responsibility for their acts and omissions in relation to the offence, in which case they would not be subjected to caning.

As it dealt with cases under the revised law, the courts restricted the definition of “courier” to very narrow circumstances, in which the involvement of the defendant is limited to delivering the drugs “from point A to point B” and excludes, for example, “packing” of prohibited substances.<sup>60</sup> The courts further elaborated

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<sup>54</sup> “Enhancing our drug control framework and review of the death penalty (Statement by the Deputy Prime Minister and Minister for Home Affairs)”, vol.89, 9 July 2012.

<sup>55</sup> Parliament of Singapore, Statement by the Deputy Prime Minister during the Second Reading of the Bill, *Official Report*, 12 November 2012, vol.89.

<sup>56</sup> Channel NewsAsia, “AGC to work with defence counsel for death row inmates affected by revised law”, 14 November 2012, available at <http://www.channelnewsasia.com/news/singapore/agc-to-work-with-defence-counsel-for-death-row-inmates-affected--8370500>

<sup>57</sup> On this point, see section 3 of this document.

<sup>58</sup> Misuse of Drugs (Amendment) Act 2012, Act no.30 of 2012, assented to by the President on 7 December 2012; and Penal Code (Amendment) Act 2012, Act no.32 of 2012, notified by the Minister of Home Affairs on 24 December 2012.

<sup>59</sup> Under Section 325 of the Criminal Procedure Code, women, men over 50 years old and those who have their death sentence confirmed cannot be subjected to this punishment.

<sup>60</sup> *Public Prosecutor v Abdul Haleem bin Abdul Karim and another* [2013] SGHC 110; *Public Prosecutor v Chum Tat Suan and another*, [2015] 1 SLR 834.

some criteria that judges could apply in their determination as to whether a defendant meets the “courier” requirement, which include the defendant’s involvement being limited to a “common and ordinary incident of transporting, sending or delivering a drug”, and excludes participation in any other acts associated with drug supply and distribution unless these acts are necessary to the delivery of the substances itself; or whether the defendant is only following instructions, without any decision-making power.<sup>61</sup> The effect of these determinations is that those who have reasonably good claims to be considered as couriers would not be classified as such and face the mandatory death penalty.

## 2.1.2 CHANGES TO HOMICIDE PROVISIONS IN THE PENAL CODE

The 2013 amendments to the Penal Code retained in section 302 the mandatory death penalty for intentional murder, as defined under section 300(a). For murders that do not amount to intentional killing,<sup>62</sup> judges were given discretion to impose either death or life imprisonment with caning (with caning also being a discretionary punishment).

Following the adoption of the amendment, the Court of Appeal had to consider how to determine what punishment to impose in cases of murder for which both the death penalty and life imprisonment and caning are sentencing options. The Court established that the death penalty should be imposed primarily after consideration of the manner by which the offender carried out the murder and whether it “exhibits viciousness or a blatant disregard for human life”. Other factors, such as the offender’s age and intelligence, could also be considered.<sup>63</sup>

In the particular case under consideration, involving non-intentional murder under section 300(c) of the Penal Code, the decision as to whether there had been “blatant disregard for human life” was determined by the number of strikes imposed on the murder victim (two or more than two). Three judges found that the defendant’s actions did deserve to be punished by death, while the other two held that the evidence available did not prove that he had hit the victim more than twice,. On this basis the death penalty was re-imposed and later upheld; and the execution carried out in May 2016.

## 2.2 IMPACT OF THE REFORMS

The figures Amnesty International has been able to gather primarily through the analysis of judgments of the High Court and Court of Appeal of Singapore until 30 September 2017 show that the 2013 amendments did have some positive impact, with several men and women who would have previously been automatically sentenced to death being spared the ultimate punishment.

While the overall impact will become clearer as more cases go through the courts – also because of the expected hiatus in the use of the death penalty while the reforms are being considered and enacted – the decisions taken since 2013 point to an overall decline in the number of new death sentences imposed each year, compared to the five years before the reforms took place. (See graphic below, *Death sentences imposed 2008-2017*.)

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<sup>61</sup> Public Prosecutor v Christeen d/o Jayamany and another, [2015] SGHC 126.

<sup>62</sup> Under sections 300(b)-300(c) of the Penal Code.

<sup>63</sup> Public Prosecutor v Kho Jabing, [2015] SGCA 1.



Furthermore, according to Amnesty International's findings, since 1 January 2013 a total of 93 people, including 11 women, were either tried after that date and convicted for capital offences involving murder or drug trafficking, or were resentenced under the revised laws having already been on death row.<sup>64</sup> Of these, 41 resulted in the sentence of death while 35 people, or 38%, were spared the death penalty. Twenty-seven of the 82 men escaped the gallows, while the number is significantly higher for women, 9 out of 11.

Of the 83 new cases (tried or resentenced after 1 January 2013), 37 were sentenced to death and 29 to life imprisonment and caning (as applicable) for offences that would have resulted in the death penalty before 2013.<sup>65</sup> Six persons convicted before 2013 had their death sentence commuted, while 4 had their death sentence upheld.

Sentences imposed since 1 January 2013 for murder and drug trafficking (includes resentencing of pre-2013 cases)						
	Murder: 10			Drug trafficking		
	Mandatory death sentence (under 300a of the Penal Code)	Discretionary death sentence(300 b-d, under section 300b-d of the Penal Code)	Life imprisonment (with caning if applicable)	Mandatory death sentence	Discretionary death sentence	Life imprisonment (with caning if applicable)
Men	6	3	1	32	0	19
Women	0	0	0	2	0	9
Total	6	3	1	34	0	28

While these numbers show that the reforms are having some positive impact in restricting the use of the death penalty in Singapore, the data gathered by Amnesty International also points to some concerning patterns, with the mandatory death penalty continuing to be imposed in a significant number of cases; and the death penalty remaining the preferred sentencing option when discretion is available. The figures paint a picture in which this punishment does not appear to be used as a "quite exceptional measure", as required under international law and standards.

<sup>64</sup> Amnesty International was able to record the outcome of resentencing procedures for only 10 cases out of 34 announced by the Attorney General Chambers in November 2012. It is possible that some are still awaiting for resentencing, but Amnesty International is not aware of the number.

<sup>65</sup> The sentencing outcome was unclear or not decided at the time of writing for 17 cases.

Of the ten murder cases that were considered by the courts since 2013 (all men), six were charged as intentional murder under section 300(a), which carries the mandatory death penalty; three had discretionary sentencing. Of the latter, a disconcerting 90% resulted in the imposition of the death penalty.

Amnesty International's analysis of drug trafficking cases– which result in a significantly higher proportion of the death sentences imposed each year compared to murder – also showed that a great number of the convictions or resentencing decisions resulted in the imposition of the mandatory death penalty. Since 1 January 2013, 34 people, including 2 women, were found guilty of drug-related offences amounting to drug trafficking and sentenced to the mandatory death penalty.

In almost all these cases, the judgments explicitly mentioned, in convicting the defendants that the prosecution relied on one of more presumptions of possession and knowledge (see section 1.2 of this document) in their case against the defendants.

Thirty-four people were sentenced to the mandatory death penalty for drug trafficking as they did not meet both or either requirements necessary to qualify for discretionary sentencing. Twenty-eight, including nine women, did, after they were found to be “couriers” and have substantively cooperated with the CNB (or in one case, had mental disability) and were sentenced to life imprisonment with caning as applicable.<sup>66</sup>

## 2.3 WHO GETS THE DEATH PENALTY?

Amnesty International has analysed xx cases since 2013 where information included in judgments and media reports in media about the individuals sentenced to death. This provides some insights into the socio-economic backgrounds of the defendants. Similarly to other countries where information is available, the information available for the cases of those facing the death penalty in Singapore shows that the burden of the death penalty appears to fall on those with less advantaged socio-economic backgrounds.

In drug trafficking cases, a significant proportion of the prisoners on death row are foreign nationals (23%). Malaysia, the only state which shares a border with Singapore, is the country of foreign nationality mostly represented, while other nationalities frequently represented include Indonesia, Nigeria and Viet Nam. Their disadvantage in facing proceedings in a different country is exacerbated for those who might not speak the language fluently, and who are primarily dependent on the efforts of their embassies to advocate on their behalf.

Most of those cited in drug trafficking cases were unemployed, followed by unskilled workers. Some men appeared to have part-time, irregular employment. A handful worked in café or shops, and only one person appeared to have a regular and relatively high income, as a Senior Sales Consultant. Several cited financial troubles and said they had agreed to carry drugs as a way to overcome these struggles. Most resorted to state-appointed counsel for all or parts of the proceedings in their cases.



### CASE 1

A Singaporean man with three children and a history of heroin use was working as an assistant to a caterer when he lost his job in early April 2012, after being arrested – not for the first time – for drug consumption. According to one of the statements he made during police investigation, a few days after his release, he met a man he had known while serving a 2005 drug consumption sentence at Changi Prison, and explained his dire situation – he was out of work and in debt. The man gave him some money and told him to meet him later that day. On the evening of 25 April, the man tasked him with holding a bag and delivering it to an unknown person who would come close to his apartment on the following day. He was offered a payment of S\$1,000, but was arrested on the following day and charged with possession of 2,520.5 grams of granular/powdery substance containing 52.87 grams of diamorphine, which automatically constitutes drug-trafficking.

While he did not dispute the possession of the bag at the time of arrest, he consistently maintained that he had not checked the content of the bag and was not aware of its content. The prosecution relied on the presumption of knowledge of the nature of the drugs, which formed the basis of his conviction. The prosecution did not dispute the judge's finding that he was merely a “courier”, but did not issue him with

<sup>66</sup> See section 3 of this document.

a “certificate of assistance”. On 9 September 2016 the man was sentenced to the mandatory death penalty.<sup>67</sup>

The cases of women convicted of drug trafficking present several similarities. All relatively young in age (add age range), the details of their cases indicate that they were lured or deceived into drug trafficking by trusted men, in several cases friends. Some said that their friends put the drugs into their bags without them knowing.



## CASE 2

A 32 year-old woman from Thailand, was spared the death penalty after she was found to be a “courier” and was issued with a certificate of cooperation by the prosecution. She did know she was carrying illegal items into Singapore, but had been made to believe by her friend, with whom she had begun a relationship, that these were actually clothes and shoes. She had checked the bags prior to departure and saw no drugs, which were in fact found by the CNB officers in a false compartment in the backpack when she arrived in Singapore.<sup>68</sup>

Studies on the death penalty in other countries have shown that it is often those from marginalized and low socio-economic backgrounds who are at greater disadvantage in their experience of the criminal justice system as well as at greater risk of receiving the death penalty.<sup>69</sup> This is not only because of their limited financial means, which directly affect the defendants’ ability to engage and retain effective legal counsel, but because their low literacy level and their marginalised or absent social networks can in some cases be an influencing factor in their engagement with state institutions. In its 2016 comprehensive study on death rows in India, for example, the National Law University in Delhi, found that: “the burden of the death penalty falls disproportionately on different marginalised groups considered along axes of class, gender, caste, religion and levels of educational attainment. [...] These structural concerns [with the criminal justice system] seem to not just have disparate impact, they also seem to further disempower and marginalise certain sections.”<sup>70</sup>

## 2.4 DISRUPTING DRUG TRAFFICKING

The impact of the 2013 death penalty reforms on the disruption of drug trafficking activities appears unclear.

In July 2015, approximately two-and-a-half years after the 2013 death penalty reforms came into effect, the Deputy Prime Minister of Singapore, Teo Chee Hean, was asked in a parliamentary question to assess the impact of the legislative amendments in disrupting drug trafficking activities within or outside Singapore. The Deputy Prime Minister stated that through the substantive assistance given by those convicted as “couriers”, the authorities of Singapore were able to “reach higher into the hierarchy of [drug] syndicates”, and that:

**“The information provided by drug couriers and joint collaboration with regional counterparts have led to the arrest of more than 40 drug traffickers and disrupted the operations of drug trafficking syndicates. However, we recognise that the drug trafficking syndicates are constantly evolving their mode of operations to circumvent our laws. The new law has thus brought some successes, which have assisted CNB to maintain its tough and vigilant enforcement approach.”<sup>71</sup>**

The annual reports of the Central Narcotics Bureau (CNB) of Singapore, however, seem to paint a less positive picture.<sup>72</sup> The reports indicate that in the number of drug seizures has decreased, particularly for the years 2014 and 2016, which could be linked to a number of factors including shifting routes for the trafficking (see table below, *Variations in drug seizures by year 2013-2016*); but the CNB reports also

<sup>67</sup> Judgment available on request. As of October 2017, the Court of Appeal has not yet decided on his appeal.

<sup>68</sup> Public Prosecutor v Samruamchit Wipha [2015] SGHC 219.

<sup>69</sup> See for example Equal Justice Initiative, “Race and poverty”, <http://eji.org/death-penalty/race-and-poverty>; NAACP, “NAACP death penalty fact sheet”, 17 January 2017, <http://www.naacp.org/latest/naacp-death-penalty-fact-sheet/>; National Law University, “Death Penalty India Report”, Delhi Press, February 2016, vol. I, available at <http://www.deathpenaltyindia.com/>; and Human Rights Council, Capital punishment and the implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty-Yearly supplement of the Secretary-General to his quinquennial report on capital punishment, UN Doc. A/HRC/36/26, 22 August 2017.

<sup>70</sup> National Law University, “Death Penalty India Report”, Delhi Press, February 2016, vol. I.

<sup>71</sup> Parliament of Singapore, “Written Answers to Questions for Oral Answer Not Answered by 3.00 – Effectiveness of Misuse of Drugs Act Amendments in Disrupting Trafficking”, 13 July 2015. Available at

<sup>72</sup> 2013, 2014, 2015 and 2016 reports of the Central Narcotics Bureau, available at <https://www.cnb.gov.sg/default.aspx>

indicate that the major operations carried out each year with the support of the Singapore Police Force to disrupt drug trafficking activities in Singapore targeted “middle-level traffickers, street-level pushers and drug abusers” – an official acknowledgement that the government is mainly targeting individuals who are at a higher risk of exposure, but who are less involved in the drug supply chain and do not hold leadership positions in drug-trafficking syndicates.

Variations in drug seizures by year 2013-2016				
Year	2013	2014	2015	2016
Increase/Decrease in drug seizures compared to previous year	+12%	-60%	+5%	Overall figure not provided in the report. A calculation of the figures for seizures by type of drugs indicates seizures decreased by 80%

Because the majority of those who were sentenced to death or are awaiting sentencing for drug trafficking since 2013 had been convicted of importing relatively small amounts of controlled substances (see the example of diamorphine, the substance involved in most of the convictions, in the table below) and in the absence of detailed official information, the fact that the drug trafficking operations have not reached the highest levels of the trafficking chain is hardly surprising. Figures provided by the government to the Parliament in 2015 indicated that, with street level purity of approximately 2.3% and a street price of \$30, each straw or dose of diamorphine would weight approximately 0.3 grams.<sup>73</sup> The majority of those sentenced to death for drug trafficking or convicted and awaiting sentencing (more than 70%) were carrying the equivalent of between 60 and 160 doses – meaning they were holding only low-ranking positions in drug trafficking rings, and begging the question of whether either their cooperation or their death would substantively disrupt the drug trade.

Amounts of death sentences imposed since 2013 relative to the amounts of diamorphine mentioned in the charge (includes cases for which sentencing outcome suspended).											
Amount of diamorphine mentioned in the charge	15-19	20-29	30-39	40-49	50-59	60-69	70-79	80-89	90-99	100-109	110+
Amount of death sentences	3	14	5	6	2	2	1	1	0	0	7

The 2016 CNB report further notes that “[i]t has become easy for anyone to order items on the Internet and have them delivered by post or courier. Drug syndicates and peddlers have taken advantage of the borderless nature of the Internet to conduct illegal drug activities”.<sup>74</sup>

<sup>73</sup> “Enhancing our drug control framework and review of the death penalty (Statement by the Deputy Prime Minister and Minister for Home Affairs)”, 9 July 2012.

<sup>74</sup> 2013, 2014, 2015 and 2016 reports of the Central Narcotics Bureau.

# 3. CERTIFYING LIFE AND DEATH: WHO DECIDES WHO LIVES AND WHO DIES?

**“He is not given a certificate of substantive assistance by the CNB. We do not know why. He might not have much assistance to give. He might have declined to assist, in which event, we do not know if his depressive illness had any connection to that attitude. [...] The language of the law here is precise and simple. Life, on the other hand, is not so”**

High Court Justice, judgment delivered on 22 April 2016<sup>75</sup>

Under section 33(B) of the revised Misuse of Drugs Act, as revised in 2013, persons convicted of drug trafficking may escape a mandatory death sentence if they can convince the court that they were merely “couriers” and if the Prosecutor certifies that they have substantively assisted the CNB “in disrupting drug trafficking activities within or outside Singapore.”

Amnesty International found that since 1 January 2013, 34 people, including 2 women, were sentenced to the mandatory death penalty for drug trafficking, as they did not meet both or either requirements necessary to qualify for discretionary sentencing. Of these, at least 16 people were found by the Courts not to qualify as “couriers”, while at least 12 others, who were, were not issued with a certificate of substantive assistance in “disrupting drug trafficking activities” within or outside Singapore (certificate of assistance) by the Public Prosecutor.

The fact that both requirements have to be met means that the ultimate discretion lies not in the hands of the court but with the prosecutor – if s/he does not provide a certificate of assistance, the court is deprived of *any* discretionary powers and must sentence the accused to death. As summarized by the Court of Appeal on 2 December 2016, the certificate requirement “is a legislative prescription for the exercise of judicial power to be conditional upon the exercise of executive power.”<sup>76</sup>

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<sup>75</sup> *Phua Han Chuan Jeffery v Public Prosecutor*, [2016] SGHC 73.

<sup>76</sup> *Prabakaran a/l Srivijayan v Public Prosecutor and other matters*, [2016] SGCA 67.



This not only narrows the court's discretionary powers considerably, it violates the right to a fair trial as it places life and death decisions in the hands of an official who is neither a judge nor a neutral party in the trial and should not have such powers. This provision breaks down the clear separation that must exist between prosecution and court. Thus the principle of "equality of arms," namely the equal powers of prosecution and defence before the courts, is abandoned.<sup>77</sup> In addition, those among the "couriers" who are lowest in the drug trafficking hierarchy, who as noted tend to be from poor and marginalised communities, are the least likely to be capable of providing meaningful "assistance" to the CNB, therefore more likely to face execution.

Furthermore, the decision to issue the certificate of assistance rests entirely with the Public Prosecutor and can only be appealed on the basis of three grounds: if the determination is done in "bad faith" (using the discretionary power for "extraneous" purposes); or "with malice"; or as unconstitutional.<sup>78</sup> The process that leads to the decision to issue a certificate of assistance and the reasoning for it is not transparent. International law and standards for a fair trial guarantee all persons arrested or detained on a criminal charge have the right to competent and effective legal counsel from the start of a criminal investigation and as soon as they are deprived of their liberty and at all stages of criminal proceedings.<sup>79</sup> But in Singapore, defence lawyers are not present when a defendant is interrogated by the Central Narcotics Bureau.<sup>80</sup> They and judges are only informed of the outcome of the decision and are not given information as to how the assistance was tendered, for example. While the right of those facing the death penalty to appeal to a higher court against their conviction and sentence is guaranteed under international law,<sup>81</sup> in reality it is difficult for defendants in Singapore to challenge this decision. This is because the merit of the facts cannot be used to appeal; and as without adequate information it is difficult to show that the prosecution acted in bad faith or with malice when it decided not to issue the certificate. This is a further breach of the principle of "equality of arms" referred to above.

Furthermore, the determination of the Public Prosecutor "involve[s] a multi-faceted inquiry" taking into account a multitude of factors such as the upstream and downstream effects of any information provided, the operational value of any information provided to existing intelligence, and the veracity of any information provided when counterchecked against other intelligence sources", as clarified by the Court of Appeal.<sup>82</sup> For the certificate of assistance to be issued, the Public Prosecutor has to be satisfied not only that a defendant cooperated with the authorities, but that the assistance he or she gave was effective in disrupting drug trafficking activities – a factor seen as essential to determine the sincerity of the cooperation on the part of the defendant.

**"Every courier, once he is primed, will seem to cooperate. Remember we are dealing not with an offence committed on the spur of the moment. We are dealing with offences instigated by criminal organisations which do not play by the rules, which will look at what you need, what your criteria are and send it to you. So if you say just cooperate, just do your best, all your couriers will be primed with beautiful stories, most of which will be unverifiable but on the face of it, they have cooperated, they did their best. And the death penalty will then not be imposed and you know what will happen to the deterrent value. Operational effectiveness will not be enhanced."**

Kasiviswanathan Shanmugam, Minister of Law, 14 November 2012<sup>83</sup>

The individual circumstances of the defendant or of the criminal conduct are not considered relevant for the decision on whether he or she has "substantively assisted" the Central Narcotic Bureau.<sup>84</sup> However, in death penalty cases, the consideration of these individual circumstantial factors constitutes an essential safeguard against the arbitrary deprivation of life.<sup>85</sup>

<sup>77</sup> On equality of arms as a component of the right to a fair trial see for instance Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, UN Doc. CCPR/C/GC/32, 23 August 2007, para.8.

<sup>78</sup> Section 33(4) of the Misuse of Drugs Act and *Muhammad Ridzuan bin Md Ali v Public Prosecutor and other matters*, [2014] 3 SLR 721.

<sup>79</sup> See, among others, UN Human Rights Committee, General Comment No. 32-Article 14: Right to equality before courts and tribunals and to a fair trial, UN doc. CCPR/C/GC/32, 23 August 2007.

<sup>80</sup> Barring defence counsel from interrogations also means the absence of an important safeguard against torture and other cruel, inhuman or degrading treatment or punishment. See Amnesty International, *Combating torture and other ill-treatment: A manual for action*, 2016, pp. 153-5. Available at: [www.amnesty.org/ctm](http://www.amnesty.org/ctm).

<sup>81</sup> Safeguard no.6 of the UN Safeguards guaranteeing protection of the rights of those facing the death penalty. See footnote no.16.

<sup>82</sup> *Muhammad Ridzuan bin Md Ali v Public Prosecutor and other matters*.

<sup>83</sup> Parliament of Singapore, "Penal Code (Amendment) Bill, Transcript of sitting on 14 November 2012", Vol.89.

<sup>84</sup> *Muhammad Ridzuan bin Md Ali v Public Prosecutor and other matters*, para.45.

<sup>85</sup> See for instance Report of the Special Rapporteur on Extrajudicial, summary or arbitrary executions, UN doc. E/CN.4/2005/7, 22 December 2004, para.80.



### CASE 3

A 32 year-old Malaysian man was arrested in the early morning of 9 April 2015, after he entered Singapore by motorbike and officers from the Central Narcotics Bureau found him in possession of 16.56 grams of diamorphine – just 1.5 grams above the threshold that triggers the death penalty. In his statements to the police, he said that he had been working in Singapore as a bus captain until a month earlier, when his employment was terminated after he got into a traffic accident. It was at this point that a friend approached him and offered him the equivalent of 236USD to deliver some “panas”, the Malay street word for diamorphine. At trial, the High Court convicted him of drug trafficking. While the defence lawyer asked the Court that his client be considered as “courier”, the Prosecution declined to issue a certificate of assistance leaving the judge with no other option but to impose, on 24 March 2017, the mandatory death penalty.<sup>86</sup>

In the litigation that followed the adoption of the 2013 amendments to the mandatory death penalty laws, several of the abovementioned concerns were put to the Court of Appeal. In its decisions, the Court clarified that the requirement for a “certificate of assistance” had been put in place by Parliament primarily to allow the authorities to gather information to prevent drug trafficking activities. In the words of Minister Shanmugam during the Parliamentary debates on the changes:

**“The issue is not what we can do to help couriers avoid capital punishment. It is about what we can do to enhance the effectiveness of the Act in a non-capricious and fair way without affecting our underlying fight against drugs. Discretionary sentencing for those who offer substantive assistance is the approach we have taken. For those who cannot offer substantive assistance, then the position is as it is now.”<sup>87</sup>**

In other words, people pay with their lives for failing to provide information which they are incapable of providing.

This has followed the Minister’s line: “The very phrase ‘substantive assistance’ is an operational question and turns on the operational parameters and demands of each case. Too precise a definition may limit and hamper the operational latitude of the Public Prosecutor, as well as the CNB. It may also discourage couriers from offering useful assistance which falls outside of the statutory definition.”<sup>88</sup>

Regrettably, the Court did not find an interference by the executive in the sentencing process, as in its view the judiciary retains discretion under the conditions set out by the law once a defendant meets the two necessary conditions to qualify for the discretionary punishment; this, in the Court’s view, in turn ensures equality to all offenders: “First, the Prosecution acts only in the public interest. That immediately distinguishes it from those who appear in a private law suit to pursue the interest of a private client. On this basis, there would generally be no need for the Prosecution to adopt a strictly adversarial position. Second, that public interest extends not only to securing the conviction in a lawful and ethical manner of those who are factually guilty, but also to securing the appropriate sentence. Indeed, the number of offenders who have been certified to have provided substantive assistance to the CNB attests to the non-partisan manner (in the general sense) in which the PP has undertaken this function thus far.”<sup>89</sup> However, this judgment fails to address the important point that it is only after the decision of the prosecution that the Court is given sentencing discretion after a process that puts the defendant at disadvantage without the support of a lawyer and without information necessary to for him or her to influence this decision. It could further result in a situation in which a defendant that genuinely did not have information on prohibited drug-related activities could be sentenced to death while someone with greater knowledge of these be given the possibility of discretionary sentencing.

Prosecutorial discretion over certain issues is a feature of criminal justice systems around the world, and so are statutory sentences. In Singapore, for example, the prosecution has long used its discretion by preferring to charge individuals who have committed acts with the intention of causing the victim’s death with culpable homicide rather than intentional murder, when the defendants have a proven history of mental disabilities. The changes brought by the 2013 legislative amendments, however, have essentially limited the mandatory death penalty in drug trafficking cases by introducing some sentencing discretion first and foremost for the

<sup>86</sup> Judgment available on request.

<sup>87</sup> Parliament of Singapore, “Penal Code (Amendment) Bill, Transcript of sitting on 14 November 2012”, Vol.89.

<sup>88</sup> *Muhammad Ridzuan bin Md Ali v Public Prosecutor and other matters*.

<sup>89</sup> *Prabakaran a/l Srivijayan v Public Prosecutor and other matters*, [2016] SGCA 67.

prosecution – even in circumstances where the judges have identified a defendant as a “courier” – to the point of precluding judges from exercising their discretion as to what punishment to impose.

This is all the more concerning in a country where clemency applications have been rarely granted.

# 4. PREVENTING CHALLENGES TO THE DEATH PENALTY

**“There is no question that [...] capital punishment is different because of its irreversibility. For this reason, capital cases deserve the most anxious and searching scrutiny. [...] But, once the processes of appeal and/or review have run their course, the legal process must recede into the background”**

Court of Appeal Justice, 5 April 2016<sup>90</sup>

The legislative amendments of 2013 – the first to affect the mandatory death penalty for murder in nearly 120 years – have also had the collateral effect of generating renewed activism against executions.

Litigation and campaigning on behalf of Yong Vui Kong, a young Malaysian national convicted of drug trafficking, had already put the use of the death penalty in Singapore back in the spotlight, domestically and internationally.<sup>91</sup> While the authorities have never acknowledged that his case was influential, the announcement of a moratorium on executions and reforms to the mandatory death penalty, just as his case reached the final appeals filled abolitionist advocates with new hopes. As the criminal justice system worked to adjust to the new laws in the months that followed, defence attorneys filed, and the Courts unusually allowed, extraordinary appeals which resulted in temporary reprieves in some cases.<sup>92</sup>

The resumption of executions in July 2014, however, signalled a return to business as usual. It was not long before that the Court of Appeal restricted the grounds on which legal challenges can be submitted in criminal cases to review decisions that are already final.

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<sup>90</sup> *Kho Jabing v Public Prosecutor*, [2016] SGCA 21, para.50.

<sup>91</sup> Amnesty International, “Singapore authorities urged to save Malaysian man from execution”, 9 May 2012, available at <https://www.amnesty.org/en/press-releases/2012/05/singapore-authorities-urged-save-malaysian-man-execution/>

<sup>92</sup> See for example, Straits Times, “Last-minute stay of execution granted for convicted murderer Jabing Kho”, 19 May 2016, available at <http://www.straitstimes.com/singapore/courts-crime/stay-of-execution-granted-for-convicted-murderer-jabing-kho> In the words of the Court of Appeal: “Applications to reopen concluded criminal appeals have burgeoned. In 2015, 11 criminal motions of this nature were filed by accused persons in the Court of Appeal alone: six seeking leave to appeal against the outcome of Magistrate’s Appeals [...] and five seeking to move this court to re-examine its own decisions in concluded criminal appeals arising from decisions made by the High Court at first instance. Of these 11 criminal motions, eight were dismissed summarily for being wholly without merit”. *Kho Jabing v Public Prosecutor*, [2016] SGCA 21.

In April 2016, the Court stated in *Kho Jabing v Public Prosecutor* that requests to re-open concluded cases must be restricted to new evidence or legal arguments, which must be “reliable, substantial and powerfully probative” and “capable of showing almost conclusively that there has been a miscarriage of justice”. In these circumstances, it is not enough for the defence to “show that there is a real possibility that the decision is wrong. Instead, it must be shown, based on the material tendered in support of the application for review alone and without the need for further inquiry, that there is a powerful probability that the decision concerned is wrong” and if it can be shown that a decision by the court has been affected by “fraud or a breach of natural justice”.<sup>93</sup> The Court also suggested that Parliament consider the new guidance with a view to further regulating post-conviction appeals.<sup>94</sup>

On 24 July 2017 the Ministry of Law opened a public consultation on proposed legislative amendments to the Criminal Procedure Code (CPC) and Evidence Act. Among other measures that would affect criminal cases, the Government is proposing to introduce new procedures “to prevent abuse of court process in concluded criminal cases”. The amendments, if adopted, would require anyone wanting to bring an appeal after their conviction and sentence are finalized to seek permission of the court; and would give courts power to dismiss the appeal expeditiously and to consider all matters in one hearing.<sup>95</sup> Only one post-conviction appeal would be allowed and strict time-lines imposed. The allowed grounds for these applications would be restricted to the ones proposed by the Court in *Kho Jabing v Public Prosecutor*.

While regulation of post-conviction appeal is common in other national and international criminal justice systems to allow review of convictions and sentences,<sup>96</sup> the evidentiary threshold that must be met in Singapore for these is higher than in other countries and only pertains to the probability of miscarriages of justice and not, for example, to manifestly excessive punishments. Even in cases in which the irrevocable punishment of death is imposed, the principle of finality of judgment is (except “in limited circumstances”) given greater weight than evidence that could result in a different sentencing outcome. The formulation of this new guidance has since resulted in a significant decrease in the number of appeals brought outside the ordinary judicial review process, and the Court has so far allowed only one extraordinary appeal.<sup>97</sup>



#### CASE 4: ILECHUKWU UCHECHUKWU CHUKWUDI

Ilechukwu Uchechukwu Chukwudi is a 32 year-old Nigerian national. According to his testimony to the court, he used to run a business in Lagos, selling second-hand electronic goods, such as laptops. He arrived in Singapore on 13 November 2011 to source for cheap second-hand electronic goods for resale in Nigeria, with the support of a contact a childhood friend put him in touch with. He carried with him a bag, which he checked to make sure it did not contain drugs, as a friend had asked him to bring it to another contact in Singapore.

Ilechukwu Uchechukwu Chukwudi was arrested after delivering the bag on the night of his arrival in Singapore, and charged with trafficking of 1,963.3 grams of methamphetamine under section 5(1)(a) of the Misuse of Drugs Act. He was initially acquitted on 5 November 2014. But he was later convicted and sentenced to death, after the prosecution appealed, on 29 June 2015. The Court of Appeal ruled that the trial judge had failed to properly consider the impact of lies and omissions in his statements to the Central Narcotics Bureau (CNB), which indicated that he had knowledge of the drugs.

At the request of the prosecution, a medical expert examined Ilechukwu Uchechukwu Chukwudi to assess his mental state at the time of the offence and of giving his statement to the CNB. The expert diagnosed him as suffering from Post-Traumatic Stress Disorder (PTSD), which arose as a result of childhood trauma. According to the evaluation report, Ilechukwu Uchechukwu Chukwudi lived as a young Christian in a Muslim-dominated town, where he witnessed an attack by a Muslim tribe during which people were “attacked with choppers and cutlass [*sic*] (a short sword with a slightly curved blade) and maimed and killed”.<sup>98</sup> The medical expert held that the childhood trauma him to suffer intermittently from PTSD symptoms throughout his life and were triggered by the CNB officers that he faced the death penalty. He concluded that his PTSD was *likely to have led to an overestimation of [the] threat to his life which could have prompted him to utter unsophisticated and blatant falsehoods in order to save his*

<sup>93</sup> *Kho Jabing v Public Prosecutor*, [2016] SGCA 21.

<sup>94</sup> *Kho Jabing v Public Prosecutor*, [2016] SGCA 21.

<sup>95</sup> Ministry of Law, “Annex C-Fact Sheet on Key Proposed Legislative Changes to the Criminal Procedure Code (“CPC”) and the Evidence Act”, 24 July 2017, available at <https://www.mlaw.gov.sg/content/minlaw/en/news/public-consultations/public-consultation-on-proposed-amendments-to-the-criminal-proce.html>

<sup>96</sup> See, for example, Article 84 of the Rome Statute of the International Criminal Court.

<sup>97</sup> The case of *Ilechukwu Uchechukwu Chukwudi v Public Prosecutor* [2017] SGCA 44.

<sup>98</sup> *Ilechukwu Uchechukwu Chukwudi v Public Prosecutor* [2017] SGCA 44.

*life*”[emphasis added]. On the basis of this medical report, the Court of Appeal allowed on 2 August 2017 for the case to be reopened and for the conviction to be reconsidered.

The courts have also restricted legal activism against the death penalty. Following the execution of Kho Jabing on 20 April 2016, the Attorney-General publicly criticized the three lawyers who brought applications to stay the implementation of his death sentence, characterizing their actions as “abuse of court”.<sup>99</sup> Two of the lawyers publicly responded to the accusation, reaffirming their commitment to serve the best interest of their clients. After the Attorney-General indicated that some of his statements were in contempt of court, on 30 May 2016 the lawyers publicly apologized and addressed a letter to the Registrar of the Supreme Court.”<sup>100</sup>

Three months after the adoption of the decision in *Kho Jabing*, the Parliament of Singapore enacted the Administration of Justice (Protection) Act on 15 August 2016 which widened the scope of the offence of contempt of court by “scandalizing the court”. The law, for example, widens the scope of already stifling restrictions on what can be said or written on the internet. All material that can be accessed by people in Singapore, regardless of whether it originated from there, can be subjected to the new legislation. Amnesty International has expressed concern that the new law would further restrict discussions by human rights defenders and civil society of any judicial proceeding, including cases of public interest and crucial importance to the enhancement of human rights in the country.<sup>101</sup>

International human rights law protects the **right to freedom of expression**<sup>102</sup> and limits the grounds on which it can be restricted to extremely narrow circumstances, which must be construed with care and be necessary for a legitimate purpose. In its General Comment no.34, the UN Human Rights Committee stated that “the mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties.” It further noted that “[w]hen a State party invokes a legitimate ground for restriction of freedom of expression, it must demonstrate in specific and individualized fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat.” The Committee held that “Contempt of court proceedings relating to forms of expression may be tested against the public order (ordre public) ground. [...] such proceedings and the penalty imposed must be shown to be warranted in the exercise of a court’s power to maintain orderly proceedings.”<sup>103</sup>

On 7 August 2017, a lawyer who acted as counsel for several death row prisoners was fined with \$6,000 under the new law. The High Court found him to have made statements that were in contempt of court in a *Facebook* post hours before one of the prisoners he represented was executed for drug trafficking on 19 May 2017.<sup>104</sup>

Amnesty International is concerned about the ongoing pattern, seen in relation to anti-death penalty activism as well as other human rights issues, of targeting human rights defenders who vocally criticize the administration of justice or the authorities of Singapore. The continued resort on the part of the authorities to the contempt of court laws seems to be intended to intimidate and silence those who criticise the authorities.

On 3 September 2017, the police required an NGO activist and nine others was requested to appear at a police investigation under the Public Order Act in relation to a peaceful vigil that took place without a permit on 13 July 2017.<sup>105</sup> The vigil was held to show solidarity with the family of Prabakaran Srivijayan, a death row prisoner who was executed on the morning of 14 July. The authorities’ continued resort to restrictive laws undermines the enjoyment of the rights to freedom of expression and peaceful assembly, guaranteed under international law.<sup>106</sup>

<sup>99</sup> Attorney-General’s Chambers, Media statement - Abuse of Process of Court in Kho Jabing’s Case, 25 May 2015, available from <https://www.agc.gov.sg/newsroom/media-releases/newsitem/agc-media-statement-abuse-of-process-of-court-in-kho-jabing-s-case>

<sup>100</sup> Straits Times, “Lawyer Alfred Dodwell apologises for ‘misleading’ allegations against Supreme Court”, Straits Times, 30 May 2016, available at <http://www.straitstimes.com/singapore/lawyer-alfred-dodwell-apologises-for-misleading-allegations-against-supreme-court>

<sup>101</sup> Amnesty International, “Singapore: Contempt of court bill is a threat to freedom of expression”, 16 August 2016, available at <https://www.amnesty.org/en/latest/news/2016/08/singapore-contempt-of-court-law/>

<sup>102</sup> See Article 19 of the Universal Declaration of Human Rights and of the International Covenant on Civil and Political Rights.

<sup>103</sup> Human Rights Committee, General comment No.34 (102nd session), UN Doc. CCPR/C/GC/34, 12 September 2011, paras. 38, 35 and 31, respectively.

<sup>104</sup> Straits Times, “Lawyer fined \$6k for contempt of court”, Straits Times, 8 August 2017, available at <http://www.straitstimes.com/singapore/courts-crime/lawyer-fined-6k-for-contempt-of-court>

<sup>105</sup> See also Amnesty International, Singapore: investigation into peaceful assembly is the latest effort to intimidate human rights defenders (ASA 36/7076/2017), 8 September 2017, available at <https://www.amnesty.org/en/documents/asa36/7076/2017/en/>

<sup>106</sup> Article 20 of the Universal Declaration of Human Rights and Articles 21 and 22 of the International Covenant on Civil and Political Rights.

# 5. CONCLUSIONS AND RECOMMENDATIONS

Singapore has recorded a significant reduction in its use of the death penalty in recent years, with executions dropping from more than 70 per year in the mid-1990s to single figures in the subsequent decade. This decrease was coupled with an increased transparency regarding the number of executions carried out in more recent years.

In this context, the 2012 announcement of a suspension in executions and of imminent legislative reforms of the death penalty represented as a unique opportunity for positive human rights change. The recent reforms to Singapore's mandatory death penalty have resulted in some positive impact, with the overall number of death sentences imposed since the amendments came into force decreasing considerably. However, data collated by Amnesty International indicates that laws providing for a mandatory death penalty continue to be extensively applied, and that drug-related offences, which do not meet the threshold of the "most serious crimes" to which the death penalty must be restricted under international law, constitute a significant proportion of the death sentences and the executions of recent years. The reforms have also introduced a new sentencing requirement that violates the right to a fair trial as places life and death decisions in the hands of an official who is neither a judge nor a neutral party in the trial.

Singapore plays an influential role in the region and internationally and could play a leadership role in advancing the protection and promotion of human rights. In this context, the Government of Singapore will need to develop a comprehensive reform plan to address ongoing concerns in its use of the death penalty and guide the country towards full abolition of the death penalty.

Amnesty International opposes the death penalty in all cases and under any circumstances, regardless of the nature of the crime, the characteristics of the offender, or the method used by the state to carry out the execution. The organization considers the death penalty a violation of the right to life as recognized in the Universal Declaration of Human Rights and the ultimate cruel, inhuman and degrading punishment.

With more and more countries joining the global trend towards abolition of the ultimate cruel, inhuman and degrading punishment, Singapore's international reputation is at stake. Amnesty International reiterates its calls on the government of Singapore to establish an immediate moratorium on all executions as a first step towards abolition of the death penalty, in line with six UN General Assembly resolutions adopted since December 2007.

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Pending full abolition, Amnesty International urges the Singapore authorities to consider and implement the following recommendation:

## TO THE GOVERNMENT

- Establish an immediate moratorium on all executions and commute all death sentences, as an urgent first step towards full abolition of the death penalty for all crimes.

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<sup>107</sup> Including, most recently, UN General Assembly resolution 71/187 of 19 December 2016.

- Bring provisions in national legislation that allow for the use of the death penalty into line with international human rights law and standards, including by removing from the scope of the death penalty any offence other than intentional killing, abolishing the mandatory death penalty and ensuring that all those who have been sentenced to death for other offences, in particular for drug-related offences, have their sentences reviewed and commuted accordingly.
- Ensure that in proceedings related to offences where the death penalty might be imposed, the most rigorous internationally recognized standards of fair trial are respected.
- Initiate an impartial and independent review of all cases where there is credible evidence that defendants were sentenced to death on the basis of coerced statements or through the resort to statutory presumptions of trafficking, possession and knowledge, or concerning premises under sections 17-19 of the Misuse of Drugs Act, or who did not meet criteria to be entitled to sentencing discretion, with a view to the commuting their death sentence.
- Regularly publish full and detailed information, disaggregated by gender, age, offence, nationality and ethnic background, about the use of the death penalty which can contribute to a public debate on the issue. These should include: the number of persons sentenced to death and for what offences; the number of persons appealing the sentences and at what level; location of detention; information on past and imminent executions; the total number of persons under sentence of death; the number of death sentences reversed or commuted on appeal; and the number of instances in which clemency has been granted.
- Initiate an informed public and parliamentary debate on the abolition of the death penalty, as well as public awareness initiatives on the human rights issues associated with the use of this punishment.
- End the penalization, intimidation and harassment of human rights defenders and lawyers in the country and repeal or amend all legal provisions in national legislation that violate the rights to freedom of expression and peaceful assembly.
- Support regional and international initiatives aimed at promoting the abolition of the death penalty.

#### **TO THE JUDICIARY**

- Exclude from proceedings all statements and other “evidence” extracted through coercion, that is, torture or other cruel, inhuman or degrading treatment or punishment, and ensure that any allegations made in court or to a judge or other judicial officer that a defendant or witness has been subjected to such treatment are thoroughly and independently investigated.
- Ensure that defendants have competent legal representation from the time of arrest and throughout the whole process.

#### **TO THE PARLIAMENT**

- Conduct an independent and impartial review on the impact of the 2013 legislative amendments to the mandatory death penalty, including on reduction in the imposition of death sentences, and make its findings public.
- Take measures to abolish the death penalty in national law, most urgently by excluding from the scope of the death penalty any crimes other than intentional killing and abolishing the mandatory death penalty completely.
- Ensure that those who did not meet the criteria to be entitled to sentencing discretion are afforded a new resentencing hearing without resort to the death penalty, and repeal provisions that allow for the issuing of certificates of assistance as a prerequisite for judicial sentencing discretion.
- Repeal provisions for presumptions of trafficking, possession and knowledge and concerning premises (sections 17-19) from the Misuse of Drugs Act and ensure that those convicted through resort to these are offered a retrial that fully complies with international fair trial standards and which does not impose the death penalty.
- Repeal provisions in national legislation that unduly restrict the rights to freedom of expression and peaceful assembly and which are used to penalize, intimidate and harass human rights defenders and lawyers in the country, including in the Public Order Act and the Administration of Justice (Protection) Act.
- Repeal all provisions in national legislation that provide for corporal punishment.



- Ratify international human rights treaties, including the International Covenant on Civil and Political Rights and its Optional Protocols.

#### **RECOMMENDATIONS TO THE INTERNATIONAL COMMUNITY, INCLUDING GOVERNMENTS, THE UN AND INTERGOVERNMENTAL AGENCIES**

- Raise concerns with the authorities regarding the use of death penalty in Singapore and advocate for its abolition and for compliance with international law and standards in all cases.
- Continue dialogue with the authorities of Singapore on the issue of the death penalty and provide support for informed debates on this issue, with a view to reviewing legislation and bringing it into line with international law, pending full abolition.

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IS A GLOBAL MOVEMENT  
FOR HUMAN RIGHTS.  
WHEN INJUSTICE HAPPENS  
TO ONE PERSON, IT  
MATTERS TO US ALL.**

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# COOPERATE OR DIE

## SINGAPORE'S FLAWED REFORMS TO THE MANDATORY DEATH PENALTY

Singapore has recorded a significant reduction in its use of the death penalty in recent years, with executions dropping from more than 70 per year in the mid-1990s to single figures in the subsequent decade. Despite this progress, the death penalty in the country continues to be used in violation of international law and standards, particularly with respect to its mandatory application and use for drug-related offences.

The 2012 announcement of legislative reforms on the mandatory death penalty represented an opportunity for positive human rights change. The information gathered by Amnesty International shows that the reforms have resulted in some positive impact, with the number of death sentences imposed since the amendments came into force decreasing. However, data collated by Amnesty International indicates that the mandatory death penalty continues to be extensively applied, and that drug-related offences constitute a significant proportion of the death sentences and the executions of recent years.

Executions continue to be carried out and the mandatory death penalty continues to be imposed including on those who appear to occupy a relatively low position in the drug-trade, often foreigners or from disadvantaged socio-economic backgrounds. Furthermore, the reforms introduced a new requirement in drug trafficking cases, the certificate of cooperation, means that the ultimate decision on the sentence lies not in the hands of the court, but with the prosecutor, in procedures that are far from transparent.