

## TABLE OF CONTENTS

1. INTRODUCTION .....	1
2. THE DEATH PENALTY: A VIOLATION OF HUMAN RIGHTS .....	2
3. SINGAPORE AND THE INTERNATIONAL COMMUNITY .....	3
3.1 Defying worldwide trends towards abolition .....	3
3.2 Not a question of human rights? The government's stance .....	3
4. INTERNATIONAL STANDARDS AND THE DEATH PENALTY .....	4
5. EXECUTIONS: THE DEATH TOLL CONTINUES TO RISE .....	5
5.1 Executions of foreign nationals .....	7
6. RELENTLESS, CRUEL AND ARBITRARY: THE DEATH PENALTY IN PRACTICE .....	8
6.1 Conditions on death row .....	8
6.2 Case studies .....	8
7. THE SCOPE OF THE DEATH PENALTY .....	11
7.1 Mandatory death sentences .....	12
8. DRUGS AND THE DEATH PENALTY .....	12
8.1 The Misuse of Drugs Act .....	13
8.2 Presumed guilty: Erosion of the right to a fair trial .....	13
8.3 Not an effective deterrent.....	14
9. TRIALS AND APPEALS PROCEDURES .....	15
10. AMNESTY INTERNATIONAL'S RECOMMENDATIONS FOR ACTION .....	16
10.1 Recommendations to the Government of Singapore.....	16
10.2 Recommendations to the international community .....	17



# SINGAPORE

## The death penalty: A hidden toll of executions

*“Singapore recognizes that the death penalty is a severe penalty and cannot be remedied in the event of any mistake in its application. That is why we have used it sparingly and only for the most heinous crimes.”<sup>1</sup>*

### 1. INTRODUCTION

More than 400 prisoners have been hanged in Singapore since 1991, giving the small city-state possibly the highest execution rate in the world relative to its population of just over four million people. The execution figures include a significant percentage of foreign nationals. It is not known how many prisoners are currently on death row, but the shocking death toll from executions continues to rise.

Most of those executed were convicted of drug trafficking while others were executed for murder or firearms offences. These offences carry a mandatory death penalty, which means that trial judges have no option but to impose a death sentence on those who are convicted. A series of clauses in the Misuse of Drugs Act and the Arms Offences Act contain presumptions of guilt, conflicting with the right to be presumed innocent until proven guilty and eroding the right to a fair trial.

Official information about the use of the death penalty in Singapore is shrouded in secrecy. Some executions, but by no means all, are reported in the press. The government does not normally publish statistics about death sentences or executions, however on rare occasions it has made information about executions available to journalists or in response to a parliamentary question. From this information Amnesty International has been able to compile statistics of executions. The organization has written to the Singapore authorities requesting official statistics but has received no response.

In September 2003, in an interview with the BBC, Prime Minister Goh Chok Tong was questioned about the number of people executed in 2003. He stated that he believed it was *“in the region of about 70 to 80”*. When asked why he did not know the precise number he said, *“I’ve got more important things to worry about.”*<sup>2</sup> Two days later he retracted his statement, saying that the death penalty had in fact been carried out on ten occasions so far during the year.<sup>3</sup>

Amnesty International has recorded at least four death sentences passed in 2003 but the true figure is likely to be higher. They include Yen May Woen, a 36-year-old woman hairdresser sentenced to death for possession of 30 grams of heroin, and Ismail Abdul Rahman, aged 37, sentenced to death under the Arms Offences Act for killing a former colleague. It is not known how many prisoners are currently awaiting execution.

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<sup>1</sup> Letter dated 27 October 1999 from the Permanent Representative of Singapore to the United Nations, addressed to the President of the General Assembly, UN reference: A/C.3/54/5

<sup>2</sup> BBC HARDtalk interview with Goh Chok Tong, televised on 23 September 2003.

<sup>3</sup> AFP, 25 September 2003.

There is virtually no public debate about the death penalty in Singapore. The government has consistently maintained that capital punishment is not a human rights issue. Controls imposed by the government on the press and civil society organizations curb freedom of expression and are an obstacle to the independent monitoring of human rights, including the death penalty. Despite such restrictions, there have been some attempts at raising public awareness about death penalty issues in Singapore. For example, the non-governmental organization the Think Centre has published its concerns on its website and in October 2003 it urged the government to impose a moratorium on executions.<sup>4</sup> In July 2001 then parliamentarian and prominent human rights campaigner J.B. Jeyaretnam called for a parliamentary debate about the case of a drug addict who was facing execution, urging the Cabinet to consider various aspects of the case during examination of his clemency appeal. J.B. Jeyaretnam was given a few minutes to speak, before his arguments were rebutted by the Minister of State for Law and Home Affairs. No further discussion took place about the case, or about the death penalty in general, and the execution went ahead two months later.<sup>5</sup>

The government also claims that the death penalty has been effective in curbing crime. In 2000 the Minister for Law and Foreign Affairs stated that: *“The relatively safe and crime-free environment is one important attraction of Singapore to tourists and investors...Our crime rate has generally been falling for more than a decade now...Singapore has some of the toughest laws in the world such as for drug trafficking and the use of firearms offences, both of which attract the capital punishment.”*<sup>6</sup>

## 2. THE DEATH PENALTY: A VIOLATION OF HUMAN RIGHTS

*“My son is my world, my life and the very essence of my existence...If the death sentence is carried out, it would also be my death sentence because the sorrow of the loss of my only son would surely kill me.”* Extract from a clemency appeal sent to the President.<sup>7</sup>

Amnesty International opposes the death penalty worldwide in all cases without exception. The death penalty is a violation of one of the most fundamental of human rights: the right to life. It is the premeditated and cold-blooded killing of a human being by the state in the name of justice. It is the ultimate cruel, inhuman and degrading punishment. There is no escaping the risk of error which can lead to the execution of an innocent person.<sup>8</sup>

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<sup>4</sup> See <http://www.thinkcentre.org>

<sup>5</sup> See case of Zulfikar Bin Mustaffah, page 9.

<sup>6</sup> Speech by Prof. S Jayakumar, Minister for Law and Foreign Affairs, 12 April 2000.

<sup>7</sup> Straits Times, 9 May 1998.

<sup>8</sup> No justice system in the world can be free from the risk of error in imposing the death penalty. In the United States for example, 107 prisoners have been released from death row since 1973 after evidence emerged of their innocence. Some had come close to execution after spending many years under sentence of death. Recurring features in their cases include prosecutorial or police misconduct; the use of unreliable witness testimony, physical evidence or confessions; and inadequate defence representation. Other US prisoners have gone to their deaths despite serious doubts over their guilt. In January 2000 the Governor of the US state of Illinois declared a moratorium on executions following the exoneration of the 13<sup>th</sup> death row prisoner found to have been wrongfully

As an organization concerned with the victims of human rights abuses, Amnesty International recognizes the suffering of families of crime victims. However, executions are brutalizing, achieve nothing but revenge, and cause great anguish for the families of those who are executed. Studies have shown that the death penalty is disproportionately imposed on the poorest, least educated and most vulnerable members of society. It takes the lives of offenders who might otherwise have been rehabilitated. Crime is often linked to other social problems such as poverty, drug abuse, unemployment and the disintegration of the family, problems which are not solved by executions.

Scientific studies have consistently failed to find convincing evidence that the death penalty deters crime more effectively than other punishments. Criminologists have long argued that the best way to deter crime is to increase the certainty of detection, arrest and conviction. The most recent survey of research findings on the relation between the death penalty and homicide rates, conducted for the United Nations in 1988 and updated in 2002, concluded that *“it is not prudent to accept the hypothesis that capital punishment deters murder to a marginally greater extent than does the threat and application of the supposedly lesser punishment of life imprisonment”*.<sup>9</sup>

*“I do not now believe that any one of the hundreds of executions I carried out has in any way acted as a deterrent against future murder. Capital punishment, in my view, achieved nothing except revenge”*. Former British executioner Albert Pierrepoint.<sup>10</sup>

### **3. SINGAPORE AND THE INTERNATIONAL COMMUNITY**

#### **3.1 Defying worldwide trends towards abolition**

By imposing death sentences and carrying out high numbers of executions, Singapore is running counter to the worldwide trend towards abolition of the death penalty. Over half the countries in the world have now abolished it in law or practice. In the past decade more than three countries a year on average have abolished the death penalty for all crimes. They include: Angola, Côte d'Ivoire, Mauritius, Mozambique, South Africa, Canada, Paraguay, Hong Kong, Nepal, Azerbaijan, Bulgaria, Cyprus, Georgia, Poland, Serbia and Montenegro, Turkmenistan and Ukraine. At present there are 112 countries which are abolitionist in law or practice. 83 countries retain and use the death penalty but the number of countries which carry out executions each year is far lower.

#### **3.2 Not a question of human rights? The government's stance**

The Singapore authorities have been criticized by both the United Nations (UN) and the European Union (EU) for their use of the death penalty. The EU has expressed particular

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convicted in the state since the USA resumed executions in 1977. For more information about the death penalty in the USA, see <http://www.amnestyusa.org/abolish/index.html>

<sup>9</sup> Roger Hood, *The Death Penalty: A Worldwide Perspective*, Oxford University Press, third edition, 2002, p. 230.

<sup>10</sup> See *Executioner: Pierrepoint*, by Albert Pierrepoint, published by Harrap, London, 1974, preface.

concern about Singapore's use of the mandatory death penalty and high executions rates.<sup>11</sup> Member states of the EU resolved in their 1998 policy paper on the death penalty to “*work towards universal abolition of the death penalty.*”

The Government of Singapore has consistently argued that the use of the death penalty is not a question of human rights. It has vigorously defended its stance that executions have been effective in deterring crime, particularly drug trafficking. In a letter addressed to the UN Special Rapporteur on extrajudicial, summary or arbitrary executions and circulated in 2001 at the 57<sup>th</sup> session of the Commission on Human Rights, the Permanent Representative of the Republic of Singapore to the UN stated: “...*the death penalty is primarily a criminal justice issue, and therefore is a question for the sovereign jurisdiction of each country. [...] the right to life is not the only right, and [...] it is the duty of societies and governments to decide how to balance competing rights against each other.*”<sup>12</sup>

In 2002 the Government of Singapore criticized the work of the Special Rapporteur, claiming she had “*repeatedly exceeded her mandate and degraded the credibility of her office*” after she expressed concern about the case of two men facing execution for drug trafficking.<sup>13</sup>

In April 2003 the UN Commission on Human Rights adopted a resolution calling for the establishment of moratoria on executions and stating that the abolition of the death penalty contributes to the progressive development of human rights.<sup>14</sup> Singapore has consistently opposed this stance and signed a statement disassociating itself from the resolution.<sup>15</sup>

#### 4. INTERNATIONAL STANDARDS AND THE DEATH PENALTY

International human rights standards encourage states to move towards complete abolition of the death penalty and state that where it is still maintained, it should only be imposed for the most serious of crimes. While Singapore is not a party to major international human rights treaties including the International Covenant on Civil and Political Rights (ICCPR), there have been a number of resolutions adopted by UN bodies which apply to all member states, including Singapore.

Safeguard 1 of the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, adopted by the UN Economic and Social Council in 1984, states: “*In countries which have not abolished the death penalty, capital punishment may be imposed only for the most serious crimes, it being understood that their scope should not go beyond intentional crimes with lethal or other extremely grave consequences.*”

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<sup>11</sup> European Union Annual Report on Human Rights, 2002, page 87.

<sup>12</sup> UN document: E/CN.4/2001/153

<sup>13</sup> UN document: E/CN.4/2003/3/Add.1.

<sup>14</sup> Resolution 2003/67 of 24 April 2003. For more details, see page 5.

<sup>15</sup> UN document: E/CN.4/2003/G/84.

Safeguard 4 states that: “*Capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts.*”

The UN Special Rapporteur on extrajudicial, summary or arbitrary executions has reiterated that “*proceedings leading to the imposition of capital punishment must conform to the highest standards of independence, competence, objectivity and impartiality of judges and juries, in accordance with the pertinent international legal instruments. All defendants facing the imposition of capital punishment must benefit from the services of a competent defence counsel at every stage of the proceedings. Defendants must be presumed innocent until their guilt has been proved beyond a reasonable doubt, in strict application of the highest standards for the gathering and assessment of evidence. In addition, all mitigating factors must be taken into account.*”<sup>16</sup>

Each year since 1997 the UN Commission on Human Rights (UNCHR) has passed a resolution encouraging states to stop executions. In its most recent resolution, 2003/67, it called for states still retaining the death penalty:

- “5(a) *Progressively to restrict the number of offences for which the death penalty may be imposed...;*
- (b) *To abolish the death penalty completely and, in the meantime, to establish a moratorium on executions;*
- (c) *To make available to the public information with regard to the imposition of the death penalty and to any scheduled execution;*

In resolution 1989/64, adopted on 24 May 1989, the UN Economic and Social Council recommended that UN member states “*publish, for each category of offence for which the death penalty is authorized, and if possible on an annual basis, information about the use of the death penalty, including the number of persons sentenced to death, the number of executions actually carried out, the 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...*” The resolution also urges states *inter alia* to eliminate the death penalty “*for persons suffering from mental retardation or extremely limited mental competence, whether at the stage of sentence or execution.*”

## **5. EXECUTIONS: THE DEATH TOLL CONTINUES TO RISE**

Singapore is believed to have the world’s highest *per capita* execution rate, relative to its population. 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 by far the highest rate of executions in the world. This is followed by Saudi Arabia (4.65), Belarus (3.20), Sierra Leone (2.84), Kyrgyzstan (2.80), Jordan (2.12) and China (2.01). The largest overall number of executions for the same period

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<sup>16</sup> UN document: E/CN.4/1997/60, 24 December 1996, paragraph 81.

took place in China, followed in descending order by the Islamic Republic of Iran, Saudi Arabia, the United States of America, Nigeria and Singapore.<sup>17</sup>

The following table of executions was compiled by Amnesty International from several sources. The sources include figures supplied by the Ministry for Home Affairs in answer to a parliamentary question in January 2001, and government figures reported by AFP in September 2003. Amnesty International is aware of at least three further executions since that date.

YEAR	MURDER	DRUG TRAFFICKING	FIREARMS	TOTAL EXECUTED
1991	1	5	-	6
1992	13	7	1	21
1993	5	2	-	7
1994	21	54	1	76
1995	20	52	1	73
1996	10 [7] <sup>18</sup>	40 [10]	-	50
1997	[3]	11 [2]	1	15
1998	4 [1]	24 [5]	-	28
1999	8 [2]	35 [7]	-	43
2000	4 [2]	17 [5]	-	21
2001	No information	No information	No information	27
2002	No information	No information	No information	28
2003	No information	No information	No information	13 (as of October 2003)
<b>TOTAL</b>				<b>408</b> (as of October 2003)

<sup>17</sup> 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.

<sup>18</sup> Figures in square brackets indicate the number of foreign nationals executed, according to information disclosed by the Ministry of Home Affairs.

### **5.1 Executions of foreign nationals**

Although the Singapore authorities have not published figures for the number of foreign nationals executed in recent years, the total percentage is believed to be very high. Out of 174 executions recorded by Amnesty International from press reports between 1993 and 2003, the number of foreign nationals totals 93, which is more than half. Many of them are believed to have been migrant workers. They have included nationals or citizens of the following: Malaysia, Hong Kong, Indonesia, Thailand, the Philippines, Bangladesh, India, Pakistan, Sri Lanka, Nigeria, Ghana, the Netherlands, United Kingdom and Portugal. According to one source who had been informed by the Ministry of Home Affairs, 44 foreign nationals were executed between 1996 and 2000, out of a total of 157 executions which took place during that period (see table on the previous page).

Foreign nationals facing the death penalty are confronted by additional difficulties threatening their right to life and right to a fair trial. For instance, they may not always be familiar with the laws of the country where they are tried, and they may have difficulty understanding the charges against them or participating in the proceedings if facilities for interpretation are inadequate. The government of their home country will want to protect its citizens abroad, but its appeals for clemency, although motivated by humanitarian considerations, may lead to accusations of interference in the administration of justice. The government of a country which sentences a foreigner to death is also placed in a dilemma. If it carries out the execution, it risks damaging its relations with the government of the prisoner's country of origin. If it does not, people may claim that a double standard is being applied.

The execution in 1995 of Flor Contemplacion, a Filipino domestic worker, led to an unprecedented diplomatic crisis between Singapore and the Philippines. Flor Contemplacion was sentenced to death for the murder of a fellow Filipino domestic worker and her employer's child. Her execution went ahead despite concerns raised about the fairness of her trial. Another execution in 1995, of Macau-born Angel Mou Puipeng, also caused diplomatic alarm. The 25-year-old resident of Hong Kong, who had been convicted of trafficking in heroin, was hanged after being granted a temporary reprieve to spend Christmas with her 9-year-old son. The execution was condemned by the authorities of both Macau and Hong Kong, the Governor-General of Macau describing it as "revolting".<sup>19</sup>

In November 2002 an Australian court ordered the extradition to Singapore of a British national facing murder charges. While Australian law forbids extradition to countries with capital punishment, Singapore had reportedly given an undertaking that the man would not be executed if convicted, despite the existence of a mandatory death sentence for murder.<sup>20</sup> In November 2003 the man's appeal against his extradition was pending before the Australian courts.

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<sup>19</sup> South China Morning Post, 7 January 1995.

<sup>20</sup> AFP, 15 November 2002.

## 6. RELENTLESS, CRUEL AND ARBITRARY: THE DEATH PENALTY IN PRACTICE

*“Any humane criminal justice system could not continue to justify the retention of the death penalty based on retribution.”*<sup>21</sup>

### 6.1 Conditions on death row

Executions are carried out by hanging and take place at Changi Prison on Friday mornings at dawn. Relatives are allowed to collect the prisoner’s body several hours later, once the death certificate has been issued.

Due to a lack of independent inspections of prisons it is difficult to establish the facts about conditions on death row. Relatives have informed Amnesty International that prisoners under sentence of death are kept in strict isolation in individual cells measuring approximately three square metres. The cells are thought to have walls on three sides, with bars on the remaining side. Cells are sparse, furnished only with a toilet and a mat for sleeping, but no bedding. Inmates are allowed the use of a bucket for washing. It is believed that they are not permitted to go outside for fresh air or exercise. They may receive one 20-minute visit per week in a special area where they are separated from visitors by a thick pane of glass and have to communicate via a telephone. About four days before the execution date, as a special concession, prisoners are permitted to watch television or listen to the radio and are given meals of their choice, within the prison’s budget. They are also allowed extra visits from relatives but no physical contact is permitted at any time before the execution.

The authorities maintain strict controls on visitors and may refuse permission to visit to anyone who does not possess the correct papers proving their relationship with the prisoner. Amnesty International was told by one relative that the authorities had even refused her permission to bring in crayon drawings made by her young daughter. Families of convicts are normally informed of the impending execution date less than one week beforehand, causing them great anxiety and uncertainty.

*“You are advised to make the necessary funeral arrangements. If you are unable to do so, cremation will be carried out by the state.”* Extract from a letter signed by the Superintendent of Changi Prison notifying the family of Malaysian national Vignes s/o Mourthi of his impending execution.<sup>22</sup>

### 6.2 Case studies

The following six stories represent a tiny fraction of the hundreds of prisoners who have been executed in Singapore. The majority of executions do not receive any public attention because of the lack of media reporting or public debate in the country. The cases below

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<sup>21</sup> The Think Centre, <http://www.thinkcentre.org>

<sup>22</sup> The Star, 26 September 2003.

illustrate how, in practice, the death penalty often falls disproportionately and arbitrarily on the most marginalized or vulnerable members of society. They include young people who are just entering adulthood, drug addicts, the poorly educated, the impoverished or unemployed, and migrant workers.

#### **Executed for selling cannabis: Rozman Jusoh from Malaysia**

Rozman Jusoh, a 24-year-old labourer from Malaysia, was arrested allegedly after trying to sell 1.04 kg of cannabis to an undercover officer of the Central Narcotics Bureau. In March 1995 he was acquitted of the capital offence of drug trafficking after the trial judge found him to have “*sub-normal intelligence, with an IQ of 74.*” Instead he was found guilty of the lesser offence of drug possession and sentenced to a prison term. After the prosecution filed an appeal, the appeal judge sentenced him to death, stating, “*He was educationally sub-normal but that does not absolve him from his criminal deeds.*”<sup>23</sup> In an interview with Singapore’s *New Paper* his mother said, “*When someone’s talking to him, he would merely smile or look at you blankly. I don’t know how he ever made it through to Secondary 3 in school.*” She said that the family had planned to enrol him in religious classes and steer him back to the “right path” once he was released from prison. Rozman Jusoh was hanged in April 1996.

#### **Shop assistant executed for drug trafficking: Poon Yuen-chung from Hong Kong**

Poon Yuen-chung, a shop assistant from Hong Kong, was only 18 years old when she and her 17-year-old friend, Lam Hoi-ka were arrested at Changi Airport, Singapore, after arriving from Bangkok. The two girls had gone on holiday to Bangkok after telling their parents they were going on a local camping trip. Airport officials found heroin hidden in a secret compartment in their luggage. Both girls denied any prior knowledge of the drugs and said they had been befriended by a Chinese couple in Bangkok who had taken them out to dinner and on sightseeing tours, and later bought suitcases for them. “*My sister is a simple and naïve girl who can do foolish things sometimes*”, Poon Yuen-chung’s sister later told the *Sunday Morning Post*, a Hong Kong newspaper. Despite appeals for clemency, Poon Yuen-chung was executed in April 1995. Her friend Lam Hoi-ka, however, was sentenced to life imprisonment as she was under 18 at the time of the offence.

#### **Drug addict executed: Zulfikar Bin Mustaffah**

Zulfikar Bin Mustaffah, aged 32, an unemployed Singaporean, was sentenced to death in November 2000 after being arrested in possession of a package containing approximately 70 grams of heroin. He had allegedly agreed to deliver the package to a man he did not know, but claimed that he was unaware of the contents. Addicted to drugs since the age of 14, Zulfikar Bin Mustaffah dropped out of school at 15 and had spent most of his life in drug rehabilitation centres or in detention. Because drug addicts are treated as criminals in Singapore, Zulfikar had a criminal record, making it very difficult for him to find work.

<sup>23</sup> *New Paper*, 15 August 1995.

During a sitting of parliament in July 2001, the then parliamentarian J.B. Jeyaretnam, called for a parliamentary debate on the case, saying, *“It is a known fact that someone who is given to drug taking over a period of time will have his mental faculties affected, his power to think carefully and to rationalise. He becomes weak-minded and particularly [...] vulnerable to people who try to use him or exploit him.”*<sup>24</sup> Zulfikar Bin Mustaffah was hanged in September 2001.

#### **Executed after denying involvement in a cannabis case: Thiru Selvam**

Thiru Selvam, a 28-year-old Singaporean father of two young children, was arrested after a friend of his was found in possession of approximately 800 grams of cannabis. The friend reportedly told the police that the drugs belonged to Thiru Selvam. At his trial the judge is said to have told him that if he confessed he would be sentenced to 25 years in prison and 24 strokes of the cane. However Thiru Selvam reportedly refused to confess and claimed he was innocent. He was sentenced to death in September 2000, while his friend was given a 25-year prison term.

Thiru Selvam’s mother died when he was a baby. His father remarried but began drinking heavily and died when Thiru Selvam was only 16. He began using drugs when he was 14 years old and was admitted to a drug rehabilitation centre the following year. Thiru Selvam was hanged in September 2001.

#### **Executed after an unfair trial: Vignes s/o Mourthi<sup>25</sup> from Malaysia**

Vignes s/o Mourthi, a 23-year-old Malaysian national, grew up in a poor family and received only basic education. He was arrested while carrying a plastic bag containing approximately 27 grams of heroin. At his trial he stated that he had been asked by an old family friend, Moorthy A/L Angappan, to carry the bag from Malaysia to Singapore, where he travelled every day for work. He insisted he was unaware of the bag’s contents.

Amnesty International is concerned about a number of alleged irregularities during the trial proceedings. The judge refused to adjourn the trial hearing to grant Vignes s/o Mourthi’s request to appoint a new lawyer, following his complaint that he was inadequately represented. His conviction appears to have been based largely on a written record, provided by the prosecution, of an incriminating conversation which allegedly took place between him and an officer of the Central Narcotics Bureau. Vignes s/o Mourthi denied the conversation took place. The court however deemed the evidence to be admissible despite the fact that no date had been recorded on it and neither Vignes s/o Mourthi nor his lawyer were aware of its existence before it was produced in court.

Following rejection by the President of Vignes s/o Mourthi’s appeal for clemency, his new lawyer, convinced of his innocence, lodged a motion for a re-trial on the grounds that there had been a miscarriage of justice and that he had not received a fair trial. Two similar motions lodged by him were rejected. On 25 September 2003, Chief Justice Yong Pung How dismissed his final appeal for a re-trial on the basis that the case could not be reopened as it

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<sup>24</sup> See <http://www.thinkcentre.org/article.cfm?ArticleID=973>

<sup>25</sup> “s/o” stands for “son of”. In Malay this is indicated as “A/L”.

had already been dealt with by the courts. He reportedly told the lawyer, “*You can say he is an innocent man, but as far as the law is concerned, he has been found guilty and convicted. You better say goodbye to him, that’s all you can do.*”<sup>26</sup> Vignes s/o Mourthi and Moorthy A/L Angappan were hanged the following morning at dawn. In a distressing scene following the execution, distraught family members reportedly climbed onto the hearse carrying Vignes’ body and pummelled his chest, trying to revive him.<sup>27</sup>

### **Executed for killing a man during an argument: Arunprakash Vaithilingam from India**

Arunprakash Vaithilingam, a 24-year-old migrant worker from Tamil Nadu, India, went to work in Singapore as a ship’s electrician in 2000, sharing a cramped flat with several other migrant workers. He was sentenced to death for killing one of his room-mates, who was stabbed to death with a kitchen knife during a drunken argument. At his trial Arunprakash Vaithilingam stated that he had not intended to kill his room-mate and that initially he did not even realize he had stabbed him. He and several friends who witnessed the argument immediately rushed the wounded man to hospital but he was pronounced dead shortly afterwards. Despite eyewitness evidence, the High Court found him guilty of murder, which carries a mandatory death sentence. Appeals for clemency lodged on his behalf by the Government of India were rejected and he was hanged in October 2003.

## **7. THE SCOPE OF THE DEATH PENALTY**

The death penalty is prescribed in Singapore for a wide range of offences. However in recent years it is only known to have been imposed for drug trafficking, murder and firearms offences, all of which carry a mandatory death sentence. According to the Criminal Procedure Code, the death penalty may not be imposed on pregnant women or on youth offenders who are aged under 18 at the time of the offence.

The death penalty was employed in Singapore during British colonial rule and was retained after the country became an independent republic in 1965. The Penal Code provides for the death sentence for at least ten different offences.<sup>28</sup> The crimes of murder, attempted murder or endangering a person’s life during an act of piracy and “offences against the President’s person” carry a mandatory death sentence.

At least four other Acts also provide for imposition of the death penalty. The Misuse of Drugs Act provides for a mandatory death sentence for at least 20 different drug offences (see further information on page 13). The Internal Security Act stipulates a death sentence for certain offences involving firearms, ammunition or explosives; the Arms Offences Act

<sup>26</sup> Straits Times, 26 September 2003.

<sup>27</sup> Straits Times, 26 September 2003.

<sup>28</sup> Murder; waging or attempting to wage war against the government; offences against the President’s person; attempted murder or endangering another person’s life during an act of piracy; abetting or committing mutiny; fabricating false evidence leading to the conviction and execution of an innocent person; abetting the suicide of a child or “insane” person; the commission of certain offences in prison, if imprisoned for life and hurt is caused; kidnapping in order to commit murder; gang robbery with murder.

provides for a mandatory death sentence for anyone, including accomplices, using or attempting to use firearms or trafficking in arms. The Kidnapping Act provides for the death penalty for kidnapping for ransom.

### 7.1 Mandatory death sentences

The provision of mandatory death sentences deprives the courts of the discretion to weigh the evidence in capital cases in order to consider mitigating circumstances. This can result in decisions which are both arbitrary and disproportionate to the circumstances of the case.

The UN Special Rapporteur on extrajudicial, summary or arbitrary executions has stated that the death penalty “*should under no circumstances be mandatory.*”<sup>29</sup> A mandatory death penalty can make it difficult, if not impossible, for the court to take into account a variety of mitigating or extenuating circumstances that might remove a particular offence from the category of most serious crimes.<sup>30</sup> The Special Rapporteur has also expressed concern at the imposition of a mandatory death penalty for crimes which do not constitute “most serious crimes”, or where fair trial standards were not respected.<sup>31</sup>

Other countries have ended the use of mandatory death sentences. For example, in a landmark judgment in April 2001, the East Caribbean Court of Appeal ruled that the mandatory death penalty is unconstitutional in the seven countries under its jurisdiction. The Court ruled that, “*The dignity of human life is reduced by a law that compels the court to impose death by hanging upon all convicted of murder, granting none an opportunity to have the individual circumstances of his case considered by the court that is to pronounce sentence.*”<sup>32</sup>

In November 2003 the Judicial Committee of the Privy Council in London, which acts as the final court of appeal for certain Caribbean countries, ruled that the mandatory death penalty for murder in Trinidad is unconstitutional. In its ruling the court is reported to have noted the possibility of executing a person who was falsely convicted.<sup>33</sup>

## 8. DRUGS AND THE DEATH PENALTY

“*You would no doubt appreciate the harm to society that is brought about by the activities of these drug traffickers whose actions, more often than not, lead to the indiscriminate loss of life. In that sense, they are no better than murderers and serial killers.*” Letter to an Amnesty International member from the Registrar of the Supreme Court of Singapore in March 1997.

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<sup>29</sup> A/55/288, para.34.

<sup>30</sup> UN document: E/CN.15/2001/10, para. 96.

<sup>31</sup> UN document: E/CN.4/2002/74, para. 114.

<sup>32</sup> *Spence and Hughes v. The Queen*, Criminal Appeal No. 20 of 1998, East Caribbean Court of Appeal, Judgment, 2 April 2001. See also Roger Hood, “The Death Penalty, A Worldwide Perspective”, Third Edition.

<sup>33</sup> Associated Press, 21 November 2003.

*"It is never the real traffickers who are caught. The ones who are caught and hanged are often poor, desperate people, who are being made use of. By hanging them, we are helping to perpetuate the plan of the real traffickers who are very smart. They use people they can afford to lose to carry the drugs for them. So if we carry on with the death penalty, they will get away and the root of the problem is never really solved."* A Singaporean lawyer, quoted in the New Paper, 17 June 2001.

### 8.1 The Misuse of Drugs Act

The Misuse of Drugs Act provides for a mandatory death penalty for at least 20 different offences. Anyone found guilty of trafficking, importing or exporting the following specified amounts of drugs faces a mandatory death sentence: more than 1,200 grams of opium, more than 30 grams of morphine, more than 15 grams of heroin, more than 30 grams of cocaine, more than 500 grams of cannabis, more than 1,000 grams of cannabis mixture, more than 200 grams of cannabis resin, more than 250 grams of methamphetamine. The manufacture of the same drugs also carries the death penalty. The UN Special Rapporteur on extrajudicial, summary or arbitrary executions has called for the death penalty to be eliminated for drug-related offences, referring to the Safeguards for the protection of the rights of those facing the death penalty, which state that the scope of crimes subject to the death penalty should not go beyond *"intentional crimes with lethal or other extremely grave consequences."*<sup>34</sup>

### 8.2 Presumed guilty: Erosion of the right to a fair trial

The Misuse of Drugs Act contains a series of presumptions which shift the burden of proof from the prosecution to the accused. This conflicts with the universally guaranteed right to be presumed innocent until proven guilty. Amnesty International is gravely concerned that such presumptions erode the right to a fair trial, increasing the risk that an innocent person may be executed, particularly as the law provides for a mandatory death sentence. The UN Special Rapporteur on extrajudicial, summary or arbitrary executions has also expressed concern about these clauses and has urged the government to amend the Misuse of Drugs Act in order to bring it in line with international standards.<sup>35</sup> Similar presumptions of guilt are also contained in the Arms Offences Act.

According to Clause 17 of the Misuse of Drugs Act, any person proved to have had in their possession more than specified quantities of drugs, is presumed to have that drug for the purpose of "trafficking" unless the contrary can be proved. Clause 18 states *inter alia* that anyone found in possession of the keys of anything containing a controlled drug or the keys of any premises where a controlled drug is found, is presumed to have had that drug in their possession. Anyone proved or presumed to have a controlled drug in their possession is presumed to know the nature of the drug, unless the contrary can be proved. According to the law, these presumptions cannot be rebutted by proof that the accused never had physical possession of the drug. In addition, where one of two or more people, with the knowledge

<sup>34</sup> UN document no: E/CN.4/1998/68

<sup>35</sup> UN document no: E/CN.4/1997/60/Add.1

and consent of the others, is in possession of a controlled drug, it is presumed to be in the possession of “each and all of them”.

Such clauses allow for a mandatory death sentence to be imposed for possession of fairly small amounts of drugs, increasing the arbitrary nature of the death penalty. This means that the decision whether or not to hang a prisoner depends on the amount of drugs found. This increases the risk of executing vulnerable drug addicts or minor drug pushers, while those who play a leading role in drug trafficking syndicates often escape detection and prosecution. Amnesty International has recorded a number of executions in Singapore of individuals found in possession of relatively small quantities of drugs such as cannabis, the use of which is treated as a minor offence in some countries, or is not even criminalized.

Further concerns have been expressed that the Misuse of Drugs Act allows for secret evidence from informers to be used during trials. The use of testimony from an anonymous witness violates the accused’s right to examine witnesses, because the accused is deprived of the necessary information to challenge the witness’s reliability. The use of evidence from anonymous witnesses may render the trial as a whole unfair. Observers in Singapore have expressed concerns that the use of information secured from secret informants increases the risk of a miscarriage of justice.

In May 2001 the Court of Appeal ruled that people who help drug traffickers could no longer plead a minor role and would therefore face the death penalty. The ruling following an appeal by an unemployed man, Ali Serti, against his death sentence after he was arrested with more than 100 grams of heroin. He claimed that he was merely earning pocket money by helping the supplier pack the drugs into sachets, and argued that he should have been jailed for possession of drugs rather than sentenced to death for trafficking.<sup>36</sup> It is not known whether he has been executed.

### **8.3 Not an effective deterrent**

Amnesty International recognizes the need to combat drug trafficking, and the harm that illicit drugs can cause. However there is no convincing evidence that the death penalty deters would-be traffickers more effectively than other punishments. There is always a risk that minor traffickers or vulnerable drug addicts will be executed, while those who mastermind the crime of trafficking evade arrest and punishment.

In the countries which impose the death penalty for drug offences Amnesty International is aware of no evidence of a decline in drug trafficking which could be clearly attributed to the threat or use of the death penalty. While certain countries have introduced the death penalty for drug offences, its use has been rejected elsewhere. Nigeria abolished the death penalty for drug offences in 1986 after several executions provoked widespread protests. Turkey abolished the death penalty for drug trafficking in 1990 as part of a general reduction in the crimes punishable by death. In Mauritius, where the death penalty for drug trafficking had been introduced in 1986, the section of the law providing for the death penalty was declared unconstitutional in 1992.

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<sup>36</sup> AFP, 14 May 2001.

Claiming that the death penalty has been effective in controlling the trade in illicit drugs, the Singapore authorities reported an overall decline in the number of drug abusers arrested between 1994 and 2001.<sup>37</sup> However, despite the use of the death penalty and high execution rates, drug addiction continues to be a problem, particularly among the poorly educated, impoverished, unemployed and young people from broken homes. According to the website of the Singapore Central Narcotics Bureau (CNB), a total of 3,393 drug abusers were arrested in 2002. The number of new drug abusers increased by 16% compared to the figures for 2001. The CNB announced that it had seized 63 kilograms of heroin and 34 kilograms of cannabis during 2002, and also reported a significant increase in the use of methamphetamine. This is despite the fact that the scope of the death penalty was increased in 1998 to introduce a mandatory death sentence for importing, exporting, or trafficking in more than 250 grams of the drug.

Those convicted of more minor drugs offences also face cruel, inhuman and degrading punishment. Persistent or so-called “hardcore” drug addicts who have been admitted more than twice to a drugs rehabilitation centre are treated as criminals and may be imprisoned for up to 13 years and sentenced to caning.

Observers have drawn attention to the need to combat the social conditions which can give rise to drug abuse and addiction, rather than resorting to executions as a solution.

*“The eradication of the supply of drugs is important but equally important is the alleviation of social conditions that encourage would-be traffickers or addicts. The socially excluded young and poor school dropouts are the most affected and drug addictions are disproportionately high among males with poor education... Are we assisting the socially excluded to reintegrate into society or are we disposing them off [sic] as rejects?”<sup>38</sup>*

## 9. TRIALS AND APPEALS PROCEDURES

Those unable to afford a lawyer are entitled to the assistance of two state-appointed counsels until the proceedings up to the appeal stage are concluded. Trials are heard by a single High Court Judge, who decides on the guilt or otherwise of the accused person. Prisoners sentenced to death have the right to lodge an appeal against their sentence with the Court of Appeal.

The Court of Appeal is known to have overturned death sentences on occasion but it is not known how many people previously sentenced to death have been acquitted on appeal. In 1995, for example, Poh Kay Keong, a drug user, was sentenced to death after police officers found heroin in his brother’s flat. He was acquitted when the Court of Appeal ruled that his statement to a Central Narcotics Bureau officer should not have been admitted at his trial. The court noted that the officer may have threatened that his brother and sister-in-law

<sup>37</sup> See “Singapore Drug Situation 2002”, <http://www.cnb.gov.sg/report/index.asp?page=244>

<sup>38</sup> Think Centre, in its clemency appeal to the President on behalf of a drug addict who was hanged for drug trafficking, published on its website on 13 July 2001 at <http://www.thinkcentre.org>

would be arrested for drug trafficking and their flat confiscated, if Poh Kay Keong did not confess to the crime.<sup>39</sup>

If the Court of Appeal rejects an appeal against a death sentence, there are no further opportunities for the courts to pursue the matter. The prisoner's final recourse is to lodge an appeal for clemency with the President, who has the power to commute the death sentence. Decisions are made on the advice of members of the Cabinet, with input from the Attorney General, but it is extremely unusual for clemency to be granted.

In May 1998, in a rare move, the President granted clemency to 19-year-old Mathavakannan Kalimuthu, who had been sentenced to death for murder, commuting his sentence to life imprisonment. It was reportedly only the sixth occasion that clemency had been granted in the previous 35 years.<sup>40</sup> Information about the grounds for refusal of clemency is not made public.

*"Each execution comes to the Cabinet and we look at it. If we decide a certain person has got to be executed, he's executed..."*<sup>41</sup>

Amnesty International has asked the Singapore authorities for information about the procedures for carrying out executions but no reply has been forthcoming. In October 2002 the Minister for Home Affairs launched a preventive drug education website, commissioned by the National Council against Drug Abuse, which tells the harrowing story of a young drug addict who is hanged for trafficking in heroin. The following is an extract from the website:<sup>42</sup> *"There are three good reasons for hooding the prisoner. Firstly, it is very important that the condemned person does not move at the last moment, just as the lever is being pulled – which could easily alter the position of the noose and thus cause them a slow death. The second reason is to minimise rope burns and marking of the skin. The third is so they don't have to look at you."*

## 10. AMNESTY INTERNATIONAL'S RECOMMENDATIONS FOR ACTION

### 10.1 Recommendations to the Government of Singapore

- Take immediate steps towards abolition of the death penalty, in accordance with UN Commission on Human Rights (UNCHR) resolutions, by imposing a moratorium on all executions; commute all pending death sentences to terms of imprisonment.
- End the secrecy surrounding statistics on the application of the death penalty; make publicly accessible the number of death sentences passed and carried out every year, giving full information about the names of the accused and the crimes of which they were convicted.

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<sup>39</sup> Straits Times, 2 December 1995.

<sup>40</sup> Straits Times, 9 May 1998.

<sup>41</sup> Prime Minister Goh Chok Tong, in a BBC HARDtalk interview, 23 September 2003.

<sup>42</sup> See <http://www.davidsdiary.org.sg>

- Encourage discussion in Parliament and other public fora about the death penalty; take leadership in preparing public opinion for abolition.
- Make public information about clemency procedures used by the President, Cabinet and Attorney General. Make public the number of cases which have been considered for clemency, the criteria used and those recommended for pardon, giving full information on the names and cases of the individuals involved.
- Launch a review of the Penal Code, the Misuse of Drugs Act, the Arms Offences Act, the Internal Security Act and the Kidnapping Act, with a view to removing the death penalty as a punishment for any crime. Revise the Misuse of Drugs Act and the Arms Offences Act to remove all presumption of guilt clauses, in order to protect the right of all suspects to be considered innocent until proven guilty.
- Ensure that all trials in capital cases scrupulously observe international standards protecting the right to a fair trial including the following: The court should give preference to appointing counsel chosen by the accused, including for the appeal, even if it requires adjournment of the hearing; the conduct of a trial must ensure that the prosecution bears the burden of proof throughout the trial.
- Article 9 (1) of the Constitution states that “No person shall be deprived of his life or personal liberty save in accordance with law”. This article should be amended to preclude the use of the death penalty in any circumstance.
- Sign and ratify key international human rights treaties, including the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

## **10.2 Recommendations to the international community**

- Urge the authorities of Singapore to implement the above recommendations.
- Forbid the extradition of prisoners to any country where they may face a death sentence.

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