

I. EXECUTIVE SUMMARY

1. This submission addresses three main issues regarding Singapore's:
 - **Continued use of the Mandatory Death Penalty (“MDP”) for intentional murder and drug trafficking offences:** The MDP continues to apply for intentional murder and drug offences even after amendments made in 2012. The retention of the MDP for drug offences might also constitute a violation of a growing customary international norm that the death penalty should only be applied for the most serious offences, and hence should not apply to drug offences.
 - **Problems with the exceptions to the MDP for drug offences:** These exceptions are problematic both in principle and in practice. The “courier” requirement is unnecessarily rigid in definition. The “substantive assistance” requirement is inappropriate because by nature of the limited role a courier play, s/he is unlikely to possess useful information to assist the authorities. Whether the accused possess useful information is also dependent on factors outside the control of the accused. Moreover, the Prosecution’s discretion in issuing the certificate of co-operation lacks transparency and accountability.
 - **General problems with the practice of the death penalty in Singapore:** First, there is no express legal prohibition against execution of accused persons who are mentally ill at the time of execution. Second, the Cabinet is not legally obliged to consider the accused’s representation in considering whether a clemency should be granted. Third, there is a persistent lack of important factual information on the death penalty, despite the government’s acceptance of a recommendation during Singapore’s last Universal Periodic Review (“UPR”) in 2011. Fourth, there is a lack of sufficient notice of execution given to inmates or their families.
2. Due to space constraints, any issues that are not critique in this report should not be taken as acceptance of the status quo.
3. **The following recommendations have been made in this report:**
 - Recommendation 1: The number of offences punishable with death should be reduced as far as possible. The state should take concrete steps towards abolition of the death penalty.
 - Recommendation 2: The MDP should be removed for all offences, and judges be given full discretion in deciding whether to impose the death sentence, as an interim step towards abolition of the death penalty.
 - Recommendation 3: The execution of those who are mentally ill at the time of execution should be statutorily prohibited.

- Recommendation 4: The Cabinet should be statutorily or constitutionally required to consider the offender's personal representation in deciding whether to grant clemency.
 - Recommendation 5: The government should:
 - Make available statistics and other factual information regarding the death penalty as stated in the accepted recommendation during the last UPR and;
 - Facilitate independent criminological studies on the deterrent effect of the death penalty compared to alternative punishments such as life imprisonment.
 - Recommendation 6: The government should provide at least 2 months of advanced notice to inmates and their families before executions.
4. Singapore remains a non-signatory of the International Covenant of Civil and Political Rights. During Singapore's last UPR in 2011, the government received seven recommendations, with particular emphasis on the removal of the mandatory death penalty and the implementation of a moratorium with the view of abolishing the death penalty.¹ The government rejected these recommendations.² The only recommendation accepted was by Finland to make available statistics and other factual information on the use of the death penalty, which the government has not done so till date.³

¹ UPR Info's 2RP "Responses to recommendation; List of all recommendations made to Singapore and its responses" <<http://www.upr-info.org/en/review/Singapore/Session-11---May-2011/UPR-Info%27s-2RP-%28responses-to-recommendations%29#top>> at p 8.

² *Id.*

³ UPR Info's 2RP "Responses to recommendation; List of all recommendations made to Singapore and its responses" <<http://www.upr-info.org/en/review/Singapore/Session-11---May-2011/UPR-Info%27s-2RP-%28responses-to-recommendations%29#top>> at p 4.

II. AMENDMENTS TO THE MANDATORY DEATH PENALTY IN 2012

5. In 2012, amendments were made to the MDP regime for murder and drug offences. These changes took legal effect in 2013. Whilst welcomed, there are nevertheless grave and serious problems with the amendments, which will be discussed in detail below.

Amendments to the MDP for murder

6. For murder offences, the death penalty remains **mandatory** for murder with an intention to kill under s 300(a) of the Penal Code (“intentional murder”).⁴
7. Where the killing was committed;
 - a. With the intention of causing such bodily injury the offender knows likely to cause the death of the person,
 - b. With the intention of causing a bodily injury and such bodily injury was sufficient in the ordinary course of nature to cause death, or;
 - c. With the knowledge that inflicting such bodily injury must in all probability cause death,

the judge has the discretion to sentence the offender to death or life imprisonment with caning.⁵

Amendments to the MDP for drug offences

8. The death penalty remains mandatory for the manufacturing of certain quantities of Class A drugs.⁶
9. For the importation, exportation or trafficking of certain quantities of Class A drugs, the death penalty remains mandatory *unless* two exceptions are fulfilled:
 - a. The offender must demonstrate that s/he was a drug courier, *and* either;
 - b. The Public Prosecutor certifies (which we refer to as a “**certificate of cooperation** or **CoC**”) that the offender has substantively assisted the authorities in disrupting drug trafficking activities within or outside Singapore (“**the substantive assistance exception**”), or;
 - c. The offender proves that s/he was suffering from an abnormality of mind which substantially impaired his/her mental responsibility for in relation to the offence (“**the diminished responsibility exception**”)⁷

⁴ Refer to Appendix B.

⁵ Refer to Appendix B.

⁶ Section 6 of the Misuse of Drugs Act read together with the Second Schedule Offences Punishable on Conviction.

10. If the offender fulfills the substantive assistance exception, the judge will only have the discretion impose *either* the death penalty or life imprisonment with at least 15 strokes of the cane.⁸
11. If the diminished responsibility exception is made out, the offender can only be sentenced to life imprisonment.⁹
12. As the 2012 amendments applied retrospectively to accused persons who had been convicted prior to 2013 (“**pre-amendment cases**”), these inmates were given an opportunity to have their sentences reviewed under the new law.

III. STATISTICAL OVERVIEW

13. Although 28 offences remain punishable with death,¹⁰ the death penalty is most commonly imposed for those convicted of murder or drug offences. Two inmates were executed in 2014, whilst one was executed in 2015, with more expected to take place.¹¹ Currently, 23 individuals are estimated to be on death row. Two of those 23 are known to have a pending decision on their clemency petition.¹²

Recommendation 1: The number of offences punishable with death should be reduced as far as possible. The state should take concrete steps towards abolition of the death penalty.

14. The following statistics on the death penalty were obtained by our own research through various news reports and online resources.

	Pre-amendment cases	Post Amendment cases (cases that have been tried after the 2013 Amendments)
Drug-Trafficking	Total Cases: 25 <ul style="list-style-type: none"> • 2 executed (Tang Hai Liang, Foong Chee Peng) • 1 acquitted (Mervin Singh) • 1 passed away (Ramalingam) 	Total Cases: 18 <ul style="list-style-type: none"> • 7 received the CoC and: <ul style="list-style-type: none"> ▪ 1 sentenced to life imprisonment with 24 strokes of the

⁷ Refer to Appendix C for further details.

⁸ Misuse of Drugs Act (Cap 185, 2008 Rev Ed) s 33B(2). In the Singaporean context, life imprisonment means an incarceration term for the remainder of a person’s natural life, see: *Abdul Nasir bin Amer Hamsah v Public Prosecutor* [1997] 2 SLR(R) 842. The offender must serve at least 20 years of his/her sentence before the Minister can consider granting an early release, see: Prisons Act (Cap 247, 2000 Rev Ed) s 50P.

⁹ Refer to Appendix C for further details.

¹⁰ Refer to Appendix A for the full list of offences that carries the death penalty.

¹¹ In 2015, Muhammad bin Kadar, who was convicted of intentional murder. (Source, <http://www.channelnewsasia.com/news/singapore/convicted-murderer-who/1790984.html>) In 2014, two inmates, On 18th July 2014, inmate Tang Hai Liang, 36, and Foong Chee Peng, 48 were executed. Both inmates were convicted of drug trafficking. (Source: Press Release, Central Narcotics Bureau http://www.cnb.gov.sg/newsroom/current/news_details/14-07-18/Execution_of_convicted_drug_traffickers.aspx)

¹² The statistics are based on our own research.

	Ravinthran) <ul style="list-style-type: none"> • 15 cases whose status is not publicly known • 4 cases where the Prosecutor has granted a CoC, and all 4 have been re-sentenced to life imprisonment with 15 strokes of the cane • 2 cases where the diminished responsibility requirement has been successfully raised. 	cane <ul style="list-style-type: none"> ▪ 6 sentenced to life imprisonment with 15 strokes of the cane • 5 sentenced to life imprisonment • 3 did not receive the CoC and remains on death row • Status of 3 other cases not publicly known
Murder	Total cases: 6 <ul style="list-style-type: none"> • 1 executed (Mohammed Kadar) • 5 cases have been resentenced <ul style="list-style-type: none"> ▪ 1 sentenced to death (Kho Jabing) ▪ 1 sentenced to life imprisonment and 18 strokes of the cane ▪ 2 sentenced to life imprisonment and 24 strokes ▪ 1 sentenced to life imprisonment and 10 strokes of the cane 	Total Case: 2 <ul style="list-style-type: none"> • 1 sentenced to death (Michael Garing) • 1 sentenced to life imprisonment with 24 strokes of the cane

IV. PROBLEMS WITH THE CONTINUED APPLICATION OF THE MDP FOR INTENTIONAL MURDER

15. The MDP continues to apply to murder committed with the intent to kill under s 300(a) of the Penal Code. The most recent execution in April 2015 was conducted on an offender convicted under this provision.
16. The MDP should be abolished even where an intention to kill is present. Mitigating factors may be present, but the MDP precludes judges from taking them into consideration.

V. PROBLEMS WITH THE CONTINUED APPLICATION OF THE MDP FOR DRUG OFFENCES

17. Singapore remains one of 14 countries that impose the MDP for drug offences. Only 6 out of these 14 countries continue to execute, Singapore being one of them.¹³ In 2014, two accused persons were executed for drug trafficking.

¹³ Harm Reduction International, "Global State of Harm Reduction 2014 Report" <<http://www.ihra.net/contents/1524>> at p 32. See also, The Economist, "Which countries have the

18. Apart from the problems with the mandatory nature of the penalty, the continued retention of the death penalty for drug offences is contradictory to a growing customary trend towards the application of the death penalty the *most serious offences* only. The United Nations Human Rights Committee¹⁴ and the United Nations Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions have categorically stated that drug-related offences do not constitute the most serious crimes that justify the death sentence.¹⁵

VI. PROBLEMS WITH EXCEPTIONS TO THE MANDATORY DEATH PENALTY FOR DRUG OFFENCES

19. There are numerous problems, both in principle and in practice, with the exceptions to the MDP for drug offences.

A. “Courier” requirement is unduly narrow

20. In order to raise either exception, an offender must first prove that his/her role is limited to that of a courier.¹⁶ Couriers are defined as those whose roles are limited to “transporting, sending or delivering” drugs, offering to do so, or doing any act in preparation of or for the purposes of transporting, sending or delivering drugs.¹⁷
21. This is an unnecessarily rigid definition since offenders who commit acts other than the abovementioned might nevertheless rank lowly on the drug syndicate’s hierarchy and are thus of similar culpability.

B. Substantive assistance requirement is unrealistic and unprincipled

22. By requiring “substantive assistance” to be provided,¹⁸ offenders would only be allowed to escape the MDP if they are useful to the state. While we recognize that the provision of assistance can (and should) be a mitigating factor, it should not be the sole determinant of whether a person lives or dies. Doing so is offensive to the notion of human dignity and human rights.
23. The “substantive assistance” requirement is also inappropriate in itself. If drug couriers are expected to be at the bottom of the syndicate’s hierarchy, they are also less likely to have information that may assist the authorities.

death penalty for drug smuggling?” (28th April 2015) <<http://www.economist.com/blogs/economist-explains/2015/04/economist-explains-28>>.

¹⁴ “Concluding observations of the United Nations Human Rights Committee: Thailand”, UN Doc CCPR/CO/84/THA, 8th July 2005 at para 14; “Concluding observations of the United Nations Human Rights Committee: Sudan”, UN Doc CCPR/C/SDN/CO/3, 29 August 2007 at para 19.

¹⁵ ‘Extrajudicial, Summary or Arbitrary Executions: Report by the Special Rapporteur Asma Jahangir’, UN DOC E/CN.4/1997/60 at para 91.

¹⁶ Misuse of Drugs Act (Cap 185, 2008 Rev Ed) s 33B(2) and (3).

¹⁷ Misuse of Drugs Act (Cap 185, 2008 Rev Ed) s 33B(2) and (3).

¹⁸ Misuse of Drugs Act (Cap 185, 2008 Rev Ed) s 33B(2)(b).

24. Additionally, the exception's practical effect is to allow the fate of offenders to be determined by factors largely outside their control. For example, the usefulness of information depends on the willingness and ability of the authorities to chase down leads provided by the offender. Cheong Chun Yin's aptly illustrates this point. After declining to provide Chun Yin with a CoC, the Prosecution subsequently changed their position and issued him one even though no new information had been provided.

C. Prosecutorial discretion in issuing CoC lacks transparency and accountability

25. The Public Prosecutor's discretion over the granting of certificates is shrouded by a near total lack of transparency, despite it being largely determinative of an offender's fate. The decision to deny an offender the certificate cannot be reviewed by judges unless it can be shown that the Prosecutor acted in bad faith or malice.¹⁹ This is an almost impossible task for offenders especially because there is no obligation on the Prosecutor to give reasons for its denial of the CoC to an offender.

D. Restrictiveness of the diminished responsibility requirement

26. It is encouraging that the death penalty has been removed for couriers who suffer from a mental abnormality that substantially impaired their mental responsibility at the time of the offence.²⁰ However, the exception should also be extended to all offenders who can show that they were suffering from a mental abnormality, regardless of whether they were couriers.

Recommendation 2: The MDP should be removed for all offences, and judges be given full discretion in deciding whether to impose the death sentence, as an interim step towards abolition of the death penalty.

VII. GENERAL PROBLEMS WITH THE PRACTICE OF DEATH PENALTY IN SINGAPORE

27. This section sets out the general problems relating to the use of the death penalty in Singapore.

A. No legal prohibition against execution of mentally ill accused persons

28. At present, only the execution of persons below 18 years and pregnant women are prohibited. There are no legal prohibitions against the execution of those who are mentally ill at the time of the execution.²¹

Recommendation 3: The execution of those who are mentally ill at the time of execution should be statutorily prohibited.

¹⁹ Misuse of Drugs Act (Cap 185, 2008 Rev Ed) s 33B(4).

²⁰ Misuse of Drugs Act (Cap 185, 2008 Rev Ed) s 33B(3).

²¹ Criminal Procedure Code (Cap 68, 2012, Rev Ed) s 314 and S 315.

B. *Cabinet not legally obligated to consider offender's representation in deciding whether to grant clemency*

29. While clemencies may be granted to offenders, there is no obligation for the Cabinet (who makes the decision) to consider their personal representations. The power to grant clemency is provided by Art 22P of the Singapore Constitution, which only obliges the Cabinet to consider the opinions of the Chief Justice, trial judge and Public Prosecutor. There have only been 7 clemencies granted since Singapore's independence in 1965,²² with the last one granted in 1998.²³

Recommendation 4: The Cabinet should be statutorily or constitutionally required to consider the offender's personal representation in deciding whether to grant clemency.

C. *Persistent lack of information on the Death Penalty*

30. The Singapore government has yet to fully implement a recommendation to "make available statistics and other factual information on the use of the death penalty" that it accepted in 2011.²⁴
31. Information on death row inmates and the application of capital punishment continues to remain scant in Singapore. Except for the number of executions carried out each year and the names of those executed, little else is known. According to interviews carried out with Darshan Singh – Singapore's last known executioner, now retired – execution procedure is classified under the Official Secrets Act.²⁵
32. Data that we seek includes (but is not limited to) a constant update of the number of people on death row, execution procedures, impending executions, as well as demographic breakdowns of death row inmates according to age, nationality and offence. The authorities have not been forthcoming with this information. In a 2012 correspondence, Prison authorities indicated that such information was "confidential in nature."²⁶ The persistent lack of such important information continues to hamper a well-informed public discourse on this issue.

²² The Online Citizen, "Past Presidents powerless, never actually decided clemencies?" (August 18th 2010) <<http://www.theonlinecitizen.com/2010/08/past-presidents-powerless-never-actually-decided-clemencies/>>.

²³ Zul Othman, "From death sentence to life in prison to freedom" (January 23, 2012)<<http://news.asiaone.com/News/Latest+News/Singapore/Story/A1Story20120121-323282.html>>.

²⁴ See n 6.

²⁵ Connie Levett and Steve Butcher, "They struggle like chickens... the hangman's sickening outburst", *The Sydney Morning Herald* (30TH November 2005) <<http://www.smh.com.au/news/world/they-struggle-like-chickens-x2026-the-hangmans-sickening-outburst/2005/11/29/1133026469650.html>>.

²⁶ Kirsten Han, "A correspondence with the Singapore Prison Service", *We Believe in Second Chances*, (22nd August 2012) <<http://secondchances.asia/a-correspondence-with-the-singapore-prison-service/>>.

33. There have also been no publicly available criminological studies on the effectiveness of the death penalty in Singapore.²⁷

Recommendation 5: The government should:

- **Make available statistics and other factual information regarding the death penalty as stated in the accepted recommendation during the last UPR and;**
- **Facilitate independent criminological studies on the deterrent effect of the death penalty compared to alternative punishments such as life imprisonment.**

D. Lack of sufficient notice of execution given to inmates or their families

34. It has come to our notice that inmates and their families are only provided with less than a week's notice of executions. This gives them very little time to interact with each other until the inmates' execution. For those whose families are overseas, this provides almost insufficient time for travel into Singapore for their last visit.

Recommendation 6: The government should provide at least 2 months of advanced notice to inmates and their families before executions.

-End of Report-

²⁷ Transcript of Statement by Minister 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) <http://www.mfa.gov.sg/content/mfa/media_centre/press_room/pr/2014/201409/press_201409261.html>.

