

MEDIA STATEMENT

20 November 2010

MARUAH SUPPORTS CALL TO SUSPEND EXECUTIONS

Dear Editor,

On 11 November 2010, the United Nations Human Rights Committee adopted a resolution calling for a moratorium on executions. The resolution was adopted by 107 votes in favour, 38 against with 36 abstentions at the UN General Assembly's Third Committee in New York. The full text of the document is at - <http://www.un.org/News/Press/docs/2010/gashc3996.doc.htm>.

MARUAH has, in its submission to the Human Rights Council on the Universal Periodic Review of Singapore earlier this month, called for the immediate repeal of all instances of the mandatory death penalty in Singapore, as well as a more general review of the death penalty and its effectiveness, as well as the criminal trial process in capital cases. In the meantime, MARUAH supports the call for an immediate moratorium on all executions.

We also note the following passages from the UN document -

1. *The third (amendment), sponsored by Singapore, (document A/C.3/65/L.63) would insert the following as a new operative paragraph 1: "Reaffirms the sovereign right of all countries to develop their own legal system, including determining appropriate legal penalties, in accordance with their obligations under international law."*

MARUAH affirms that Singapore, like any other sovereign member of the UN, has the right to develop its own legal system. However, that right has to be subject to international human rights law and norms, and no country has the sovereign right to violate human rights. MARUAH contends that customary international law has changed such that it now prohibits the death penalty, and in particular the mandatory death penalty, in which case Singapore's continued use of the death penalty, would not be consistent with international law.

2. *The representative of Singapore said there was no international consensus on the death penalty. It was not a human rights issue, but a criminal justice*

matter allowed under international law. Singapore and other retentionist countries had tried to work on the language of the main text with the co-sponsors, but some had refused to engage in dialogue. Why was that so? Some countries wanted things either their way, or not at all. The amendment was critical in balancing the tone of the draft resolution. The question today was not about death penalty per se; it was about the sovereign right of a country to decide the issue by itself.

MARUAH reiterates that while countries ought to have the sovereign right to develop its own legal system that right has to be subject to international human rights laws and norms.

3. *Taking action on the third and last proposed amendment, the Committee heard from the representative of Singapore, its main sponsor, who read the text in full. That all countries had a sovereign right to develop their own legal systems was a basic truth, she said. The amendment was simple, factual and balanced, and upheld the principle that a State itself must choose its own path of development. That was the crux of the issue. While her delegation appreciated the effort by some co-sponsors to work on the text, a "select group of co-sponsors" did not want to. If the intention of the resolution was to open a dialogue on the death penalty, then the amendment should be supported.*

MARUAH believes that dialogue on the abolishment of the death penalty must continue and that Singapore, as a sovereign nation, must as part of its own development adopt behavior that is in step with that of other developed nations. This necessarily means that Singapore should immediately adopt a moratorium on the death penalty, while repealing the mandatory death penalty and undertaking a broader review of the death penalty and its effectiveness, as well as the criminal trial process in capital cases.

For more information, please read -

- United Nations –
- <http://www.un.org/News/Press/docs/2010/gashc3996.doc.htm>
- Amnesty International - <http://www.amnesty.org/en/news-and-updates/un-votes-once-again-end-executions-2010-11-12>
- MARUAH's UPR Submission on the Death Penalty is in the Annex Document

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About MARUAH (Working Group for an ASEAN Human Rights Mechanism, Singapore)

MARUAH is a group of individuals from diverse backgrounds, who made a commitment to the process of facilitating the establishment of the ASEAN Intergovernmental Commission for Human Rights and are now continuing to work on human rights issues at both domestic and regional levels.

MARUAH means Dignity in Malay, Singapore's national language. Human rights is all about maintaining, restoring and reclaiming one's dignity at the individual, regional and international level.

MARUAH is the Singapore focal point for the Working Group for an ASEAN Human Rights Mechanism, a regional group with its secretariat based in Manila. The regional Working Group has national representatives from all of the founding Member States of ASEAN, namely Indonesia, Malaysia, the Philippines, Singapore and Thailand. The regional Working Group is an NGO officially recognized in the ASEAN Charter as a stakeholder in ASEAN.

More information on MARUAH can be found at www.maruah.org

MARUAH's Submission on the Death Penalty in Singapore to the Universal Periodic Review.

Full text of the submission is at –

<http://maruahsg.files.wordpress.com/2010/11/universal-periodic-review-singapore-cosingo-final-hrc-30oct10.pdf>

1. The law and practice. The death penalty has been practised in Singapore since the earliest days of British colonial rule. In 1871, the Penal Code was enacted with a handful of offences punishable by death, including murder (for which death was and remains mandatory). After Singapore attained self-government in 1959, the death penalty was introduced for several other offences: discretionary death for kidnapping for ransom (recently extended to kidnapping for a “terrorist” cause),⁽¹⁾ mandatory death for certain firearm offences,⁽²⁾ and most significantly, mandatory death for certain drug offences, including trafficking in certain stipulated drugs above a certain amount.⁽³⁾ It seems likely that almost all executions are for murder or drug offences.⁽⁴⁾ The President may grant clemency, but this is rarely done – one known example was a drug offender who already had terminal cancer.

2. Legality of death penalty. Article 9(1) of the Singapore Constitution provides that no person “*shall be deprived of his life or personal liberty save in accordance with law.*” The courts have interpreted this to mean that Parliament may constitutionally impose the death penalty, so long as it is in accordance with law, which includes the fundamental rules of natural justice.⁽⁵⁾ However, there is at least a very strong case for arguing that customary international law has changed such that it now prohibits the death penalty, in which case Singapore’s continued use of the death penalty would contravene such norms.

3. Principle of proportionality. It is likely that Article 6(2) of the ICCPR, providing for the death penalty to be imposed only for the most serious crimes, has become customary international law. Accordingly, the continued use of the death penalty in the following types of cases, which clearly should not be considered to be “the most serious crimes”, is disproportionate and hence contravenes human rights: (a) murder under Section 300(c) of the Penal Code, where death results from an intended injury even where the person inflicting the injury did not intend to cause death;⁽⁶⁾ (b) constructive liability for murder, such as where there is a common intention to commit a crime, in connection with which a murder was committed by another person,⁽⁷⁾ or where under the provisions for abetment⁽⁸⁾ or robbery;⁽⁹⁾ and (c) kidnapping, firearms and drug cases, which although serious, do not involve the intentional causation of death and do not need to result in death at all.

4. Mandatory death penalty. All of the death penalty cases in the five years up to 2007 carried the mandatory death penalty, being drug trafficking, murder and firearms-related cases.⁽¹⁰⁾ The judge has no sentencing discretion in such cases. This deprives an accused person of the opportunity to have the judge consider all relevant factors in sentencing, and is inconsistent with the emerging, if not established, norm in customary international law against mandatory death penalties. In March 2007, the Law Society of Singapore sent a report to the Ministry of Home Affairs, arguing for judges to be given discretion in whether to impose the death penalty.⁽¹¹⁾ However, the Singapore courts have consistently upheld the mandatory death penalty as constitutional,⁽¹²⁾ despite recent Privy Council decisions to the contrary.⁽¹³⁾

5. Due process and fairness. Given the irreversible nature of the death penalty, the criminal process in capital cases must be fair at all stages. In this regard, several features of Singapore's criminal process, which are generally troubling, become particularly alarming in capital cases. Firstly, accused persons can be denied access to counsel for up to two weeks after arrest,⁽¹⁴⁾ purportedly to enable the police to conduct investigations without undue interference, despite a constitutional right to counsel. There is anecdotal evidence that counsel is routinely denied until incriminatory statements (which are admissible at trial) are successfully extracted from the accused, or at least, until exhaustive attempts have been made to do so. Secondly, Singapore law allows an accused person to be convicted based entirely on her confession recorded in the course of police interrogation. Accused persons routinely alleged that their confessions are involuntary (which would make them inadmissible), but proof is near-impossible in the absence of any independent verification or supervision of the confession.⁽¹⁵⁾ Thirdly, the provisions on capital firearms and drug offences include presumptions that can be difficult, if not practically impossible, to rebut. Yet, persons can and have been hanged on the basis of such presumptions.⁽¹⁶⁾ These presumptions violate the fundamental presumption of innocence in the most ominous of contexts, viz. the potential of a mandatory death penalty. Finally, a recent book on the death penalty in Singapore⁽¹⁷⁾ has alleged that the Government makes or influences prosecution decisions such that offenders who are foreigners from rich countries do not face the death penalty, so as to avoid any adverse impact on economic and trade relations; while the author is facing contempt of court proceedings (the decision in which is pending as at the date of writing), the Government has to date not issued any official rebuttal or denial to, or any clarification on, these allegations.

6. Effectiveness as deterrence. The Government has consistently justified the death penalty on the basis of its purported role in ensuring the excellent law and order situation in Singapore. However, there is scant evidence for any such causative relationship between the death penalty and the law and

order situation. Indeed, there is some indication that the contrary is true. Almost all murders are “crimes of passion”, which are not susceptible to deterrence. The incidence of drug offending since the introduction of the death penalty has fluctuated so much that it is impossible to ascertain any causative link. While there is also no convincing evidence that the death penalty has failed as deterrence, MARUAH holds that the Government has to date failed to discharge its moral burden of persuasive proof that the death penalty does work.

7. Recommendations. MARUAH recommends that the Government review the scope of capital offences, so as to ensure that the death penalty is imposed only in the most serious of crimes; the death penalty not be used in the context of group crimes, where the accused person has not personally intended to commit murder; all instances of the mandatory death penalty be immediately repealed and replaced with a discretion to impose the appropriate sentence up to death; the criminal process be reviewed to ensure that capital cases undergo the most rigorously fair pre-trial and trial process, including access to counsel immediately upon arrest, an effective system of supervision of the extraction and recording of confessions by the police, and a repeal of the use of presumptions in capital cases; and the Government publish persuasive, objective evidence of the deterrent effect of the death penalty.

[1] Kidnapping Act, Cap.151..

[2] Arms Offences Act, Cap.14.

[3] Misuse of Drugs Act, Cap.185. For instance, death is mandatory for trafficking above 15g of heroin and above 500g of cannabis.

[4] A government press release dated 24 July 2007 revealed that in the 5 preceding years, 138 people were executed: 110 for drug offences, and most of the remainder for murder, with a sprinkling of firearms offences.

[5] *Ong Ah Chuan v PP* (1981) AC 648, a decision of the Privy Council on appeal from Singapore. Appeals to the Privy Council were later abolished. This position was recently affirmed by the Singapore Court of Appeal in *Yong Vui Kong v PP* (2010) SGCA 20, despite more recent rulings by the Privy Council holding that *Ong Ah Chuan* was wrongly decided.

[6] See for instance the case of *Lim Poh Lye* (2005) SGCA 31, where the accused was convicted of murder for stabbing someone he was trying to rob in the leg, with the intention of preventing him from escaping. He unknowingly ruptured the femoral artery and the victim bled to death.

[7] See the very recent case of *Daniel Vijay Katherasan* (2010), where the Court of Appeal found that the members of a criminal gang who had a common intention to commit a criminal act would be guilty of murder if any member commits murder in furtherance of the criminal enterprise, and it was immaterial whether or not the other gang members intended or knew that anyone would be killed.

[8] See Sections 111 and 113 of the Penal Code, Cap.224.

[9] See Section 396 of the Penal Code, Cap.224.

[10] See footnote 5 above.

[11] See paragraph 6.1 of the report, available at http://www.lawsociety.org.sg/feedback_pc/pdf/execSummary.aspx (accessed 27 Oct 2010).

[12] See footnote 6 above. See also *Nguyen Tuong Van v PP* (2004) SGCA 47.

[13] See for instance *Reyes v The Queen* (2002) 2 AC 235. In the recent case of *Yong Vui Kong*, the Singapore Court of Appeal found that those decisions did not apply because they were based on constitutional prohibitions against cruel and inhuman punishment in those countries, and the Singapore Constitution did not contain such a prohibition. However,

it must surely now be undeniable that the right against torture and inhuman punishment is a rule of customary international law.

(14) *Jasbir Singh v PP* (1994) 2 SLR (Singapore Law Reports) 18

(15) Calls for audio or video recording have been consistently dismissed, and counsel is not permitted to be present.

(16) For example, a person in possession of 15g of heroin is presumed to have possession for purposes of trafficking, unless she can prove otherwise, even if reasonable doubt exists as to the existence of any such intent.

(17) Shadrake, Alan, *Once A Jolly Hangman: Singapore Justice in the Dock* (2010, Strategic Information and Research Development Centre).