

# National Sovereignty versus Universal Human Rights: drugs and the mandatory death penalty in Singapore

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## Introduction

Singapore is among the ten percent of United Nations member countries known to have executed its citizens and foreign nationals in the past year. A highly developed country, with the second-highest GDP per capita in the world, Singapore is a multi-party democracy, with free elections. On the face of it, it is an unlikely bedfellow with other member states that regularly carry out executions, including Afghanistan, Iran, Iraq, North Korea, Somalia, South Sudan and Yemen. However, it asserts a sovereign right to retain and use the death penalty, including and especially for drug trafficking, rejecting the human rights objections to capital punishment espoused by the majority of UN member states. It is able to do so in large part due to its powerful government. The People's Action Party, has significant control over Singaporean politics and people and has governed the country continuously since independence from the United Kingdom and Malaysia in 1959. This article explores the clash between human rights and sovereignty in this small city-state in Southeast Asia.

## A brief history of abolition and retention around the world

The threat of punishment by death was widely accepted as an effective weapon of social control throughout the world from ancient times until the late eighteenth century, although the extent to which it was enforced varied between countries and historical periods. One of the purposes of capital punishment was to display the power of the state over its subjects, in order to warn them what a government could do to those who broke its laws.<sup>1</sup> Found in jurisdictions from England to China and beyond, death was the appointed punishment for a wide range of offences, which varied enormously in their gravity. There was no proportionality between the crime committed and the punishment threatened.

The call to restrict the death penalty to only the gravest crimes began in Britain, the fledgling USA, and in several European states. Those who criticised the scope of capital punishment presented both ethical and practical arguments. In their view, to sentence offenders to death for crimes less serious than murder implied there was no moral distinction between such offences and culpable homicide. The proponents of reform also argued that under the existing system, there was no incentive for an offender to avoid killing his or her victim in the course of committing another crime, such as robbery. In 1794, the

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American state of Pennsylvania became the first jurisdiction in the world to abolish capital punishment for all crimes except what it termed 'first degree' murder. The progressive restriction of the death penalty continued over the nineteenth and twentieth centuries. In many countries, it came to be reserved for the most heinous lethal crimes and the most culpable of offenders. Those who had not attained adulthood and offenders with learning difficulties were, typically, excluded.

The state of Michigan abolished the death penalty as far back as 1846, and Venezuela became the first sovereign state to do so in 1863. However, until the late 1980s, the trend towards outright abolition advanced slowly. The picture then changed dramatically. Over the 11 years from 1989 to 1999, 41 countries abolished capital punishment. A new 'human rights dynamic' was gaining traction. Its advocates aimed to generate acceptance that however it is administered, the death penalty violates the human rights of all citizens exposed to it. This position is rooted in the normative framework of international human rights law.

Since then, other countries have joined the abolitionist camp, though the rate of change has slowed. Today, more than two-thirds of the world's sovereign states are either abolitionist in law or in practice, and in many of them, capital punishment has been declared to be unconstitutional, either through legislation or in judgments by their highest courts. The death penalty has now been abolished in all but one country in Europe (Belarus), most of Central Asia and all of Latin America. It is hardly applied across sub-Saharan Africa (where only Botswana, Somalia and South Sudan have carried out executions in the past few years), and although a handful of death sentences are still handed down each year in the Caribbean (primarily in Trinidad and Tobago), the only country in the Americas that frequently executes them is the United States. Even there, where the pro-death penalty lobby remains active and vociferous, the rate has declined dramatically over the past years.

Change has been sufficiently marked to encourage international legal and criminological scholars, including the first author of this article, to call for the death penalty to be recognized as a violation of a *jus cogens* norm of international law, not least because in practice it violates the international conventions against torture.<sup>ii</sup>

Nevertheless, the human rights movement still struggles to make inroads into jurisdictions where political will remains opposed to abolition, and where the trenchant defence of national sovereignty threatens the supposed universality of human rights norms. Among the countries where this is particularly noticeable is Singapore. There, it is often claimed that the nation has an unchallengeable, sovereign right to retain the death penalty, both on the grounds of its purported deterrent utility, and of the alleged cultural preferences and expectations of its citizens.

Singapore is consistently in the top ten executing countries in the world. It is also among just four that have executed people for drug-related offences in the last year (2022), as, indeed it has done in most recent years.<sup>iii</sup> (The other three are China, Iran and Saudi Arabia.) Indeed, all 11 of the persons Singapore executed last year had been sentenced to its mandatory death penalty for drug offences. It also imposed mandatory death sentences on another five people during 2022, all for drug offences. It has been argued that the proceedings involved in such cases often breach international fair trial standards.<sup>iv</sup> For example, at least one of those executed in 2022 had an intellectual disability. At least 54 people remain on Singapore's death row and two executions have taken place in 2023, both for drug trafficking. Many of those sentenced to death and executed are foreign nationals.

A notorious example is provided by the case of Nagaenthran K. Dharmalingam, a Malaysian national from a working-class family in Ipoh. He was convicted and sentenced to the mandatory death penalty in November 2010, when he was a young adult, for importing into Singapore almost 43 grams of heroin, notwithstanding his intellectual disability. Medical evidence showed that he had borderline intellectual functioning with an IQ of just 69, and cognitive impairments that might have influenced his decisions as regards to the offence. The Singapore Court of Appeal ruled that this did not diminish his culpability.<sup>v</sup> But while he was a particularly vulnerable young man, his case was not otherwise unusual.

Since 2020, we have been engaged in a 'mapping' project, recording the prevalence and experiences of foreign nationals sentenced to death and executed in the Middle East and Asia between 2016 and 2021, drawing on a range of methods.<sup>vi</sup> Our data on Singapore show that foreign nationals make up about 27% of the population.<sup>vii</sup> However, 48% of the executions in Singapore during the five years between 2016 and 2021 were of foreigners, 67% of them for drug offences. During that time, there were 36 foreign nationals on death row, all male, of whom 30 had been convicted of drug offences<sup>viii</sup> and just 6 of murder. All of those convicted for drugs offences were relatively young, born between 1972 and 1992. The majority (26) were from Malaysia, with three from Nigeria and one from Ghana. By the end of the research period, eight had been executed, one death sentence had been commuted to 15 years, six had been acquitted and 15 remained on death row.

These executions for drug-related offences are in clear violation of international human rights law which prohibits the death penalty for offences that are not among the 'most serious crimes'. They also breach fair trial procedures in many respects, not least in giving judges no opportunity to exercise discretion in sentencing in response to mitigating factors. They take place in a world that is increasingly turning away from the death penalty, and in a jurisdiction whose immediate neighbour, Malaysia, has recently abolished the mandatory death penalty for drugs. This article considers Singapore's retention of the death penalty for drug offences, in law and in policy, in the context of the tension between the government's

entrenched position on the matter of sovereignty and citizens' increasing willingness to defy their government and protest death sentences executed in their name.

## Punishment for drug offences in Singapore

Drug production and trafficking are increasing each year and drug markets are becoming more complex, with over 35 million people experiencing drug use disorders globally, disproportionately the socially and economically disadvantaged.<sup>ix</sup> The 'Golden Triangle' was traditionally a source of opiates, but the types of drugs available there and in the surrounding region have now multiplied.<sup>x</sup> In Southeast Asia, the illicit production of methamphetamines, ecstasy and cocaine is at record levels, with a retail market value of more than US\$61 billion. Seizures of synthetic drugs in the region have increased year-on-year over the last decade,<sup>xi</sup> fuelling perceptions that there is a 'drugs crisis' that is having a dangerous impact.<sup>xii</sup>

Southeast Asian nations have developed drug policies that attempt to identify and control access to substances believed to be harmful. Their goals are to reduce the supply of and demand for drugs; to reduce the harms arising from drug use and supply; and to prevent the commencement of drug use. These aims require a combination of law enforcement and criminal justice interventions, treatment programmes, harm reduction programmes and prevention efforts. They have, inevitably, developed in different ways in different jurisdictions, despite efforts to harmonise responses across the globe, with drug control being recognised as a global issue since the UN General Assembly held its first Special Session on the 'world drug problem' in 1990.<sup>xiii</sup>

The imposition of the death penalty for drug crimes began as a response to what became known as the global 'war on drugs'. Singapore and Malaysia enacted laws applying the death penalty for drug offences in the 1970s, and Indonesia first executed a prisoner for drug offences in 1995. Seven years earlier, the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotic Substances had established obligations under international law on states to enact harsh penalties for drug offenders, although its proponents had not envisaged these punishments would include death.<sup>xiv</sup> Since 2011, when the first report of the Global Commission on Drugs was published, there has been some movement from law enforcement to health-based responses. Nevertheless, policy and resources remain heavily concentrated on law enforcement.<sup>xv</sup> Even by the standards of the region, where harsh penal policies for drugs can be found in Indonesia, Vietnam, Malaysia and the Philippines, Singapore has maintained a particularly punitive response. (In the Philippines, the judicial death penalty has been abolished, but government-sponsored extrajudicial killings of suspected drug offenders continue.)

Although Malaysia is in the fourth year of an execution moratorium, it continues to impose death sentences for drugs, further increasing its death row population of more than 1,200 - about 70% of which was convicted for drug trafficking.<sup>xvi</sup> While recently the mandatory death penalty was abolished<sup>xvii</sup>, it is not yet known how many people will remain on death row for drug offences. Even in cases where the death penalty is not applicable, long prison sentences are common in Southeast Asia for relatively low-level drug offences. In addition to the death penalty, Singapore punishes drug dealers and traffickers with both imprisonment and whipping.<sup>xviii</sup>

Singapore today executes fewer people than it has in the past. In the mid-1990s, it had the world's highest execution rate per head of population, with 74 executions in a single calendar year, 1994 - about two-thirds of which were for drug trafficking, a charge often laid on the basis of the possession of quite small amounts of illegal substances. In recent years, executions in Singapore have typically totalled between five and ten annually, a fall that has arisen during a period of increasing population, from about four million in 2000 to 5.6 million today. The declining rate of executions in Singapore since the beginning of this century is probably the steepest in the world, and may have been influenced by a damning report published by Amnesty International in 2004,<sup>xix</sup> which attracted global attention, and is widely thought to have damaged Singapore's reputation. However, Michael Hor has suggested that the most likely cause of the reduction was the exercise of prosecutorial discretion, with a shift to what he termed the '14.99 charge', possession of an amount of heroin just below the 15 grams required to charge a carrier with trafficking, for which the death penalty is mandatory.<sup>xx</sup> David Johnson has reached a similar conclusion<sup>xxi</sup> - although some recent cases have suggested prosecutors may now be less willing to exercise discretion.

In April 2023, a Singaporean man called Tangaraju Suppiah was executed for abetting the trafficking of just 2.2 pounds of cannabis, after the court heard evidence that he was in telephone communication with two other men who had been caught trying to smuggle the drug into Singapore. The prosecution case was described by the Transformative Justice Collective as 'shockingly thin', largely circumstantial and based on unsubstantiated inferences.<sup>xxii</sup> In any event, while Singapore's execution rate today is lower than in the mid-1990s, it remains relatively high. Meanwhile, international and national pressure on the government to cease executions, especially for drug offences, and to provide better due process protections for those subject to capital punishment, has thus far fallen on deaf ears.

## Singapore's death penalty within international law

Singapore breaches international law on a number of grounds relating to fair trial procedures but here we focus on two significant features: its retention of the death penalty for drug crimes which are not the most serious offences and its retention of the mandatory death penalty.

## The ‘most serious crimes’

The International Covenant on Civil and Political Rights (ICCPR), which aimed to incorporate the principles of the Universal Declaration on Human Rights (UDHR), was drafted in the late 1950s, when few countries had embraced abolition. Its text emerged as a compromise between the abstract right to life set out in the UDHR and the reality of disparate criminal justice practices around the world. Article 6(2) of the ICCPR states that ‘[i]n countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes’. This was not intended to justify the perpetuation of the death penalty, but to restrict its application, until it is abolished, as made clear by Article 6(6): ‘Nothing in this Article shall be invoked to delay or prevent the abolition of capital punishment by any State Party to the present Covenant’.

The scope of ‘most serious crimes’ remains poorly defined, and is supposedly restricted to apply only to ‘intentional crimes with lethal or other extremely grave consequences’. The meaning of the term ‘serious’ in this context remains a contentious issue, and is interpreted quite differently around the retentionist world.<sup>xxiii</sup> Nevertheless, as we have seen, states across Asia and the Middle East continue to impose the death penalty for drug trafficking, and Singapore, which has not acceded to the ICCPR, is among them. In a region that sees considerable drug traffic across borders, this inevitably poses a significant risk that people will be sentenced to death there, but the limits to discretion of prosecutors and judges further increases the chances.

## The mandatory death penalty

The mandatory death penalty violates human rights because it allows no scope for treating dissimilar circumstances and individuals differently, imposing the same penalty on them with no possibility of mitigation by reference to the circumstances of the offence or the individual offender.<sup>xxiv</sup> It is, therefore, an arbitrary deprivation of the right to life as defined in international law. Thus, human rights treaties have helped to fuel efforts at progressive restriction of the death penalty by creating the space to frame challenges to its constitutionality. Recent examples of such efforts have been seen in both the US<sup>xxv</sup> and in India<sup>xxvi</sup>. These cases drew on earlier challenges in the Commonwealth Caribbean and Africa in the early years of the new millennium.<sup>xxvii</sup>

In a climate where the notion of ‘evolving standards of decency’ has sometimes been applied in jurisdictions’ highest courts, the Death Penalty Project, UK has engaged in strategic litigation resulting in the abolition of the mandatory death penalty in many commonwealth nations, and as a result, thousands of prisoners have had their death sentences commuted.<sup>xxviii</sup> For example, the Ugandan constitutional court established that

the mandatory death penalty was incompatible with universal human rights in 2009.<sup>xxxix</sup> In the English-speaking Caribbean, Trinidad and Tobago is now the only country to retain the mandatory death penalty.

In 2012, the government of Singapore announced a suspension of executions to allow for a review of the mandatory death penalty and the consequent Misuse of Drugs (Amendment) Act 2012 moderated the law by making the sentence for drug trafficking discretionary under certain restrictive conditions: when a convicted drug offender can convince the Court that they have played no role beyond being a mere courier and, if this is accepted, the prosecutor has issued a certificate at his or her discretion declaring that the offender has 'substantially assisted' in disrupting trafficking activities. The Act also allows a non-capital sentence when offenders can persuade the court they were suffering from a mental illness that reduced their criminal responsibility.<sup>xxx</sup>

The first commutation of a drug-related offence took place in November 2013, when Yong Vui Kong, a Malaysian national who was sentenced to death for trafficking heroin, was deemed to have acted only as a drug courier.<sup>xxxi</sup> He had unsuccessfully appealed his mandatory sentence in 2010, and his case had played a significant part in the agitation for the legislative change.<sup>xxxii</sup>

However, these revisions to the Misuse of Drugs Act clearly did not go far enough and, in many cases, did not prevent the mandatory imposition of death sentences. Prabakaran (Praba) Srivijayan, a 25-year-old Malaysian man, was arrested in April 2012 when 22g of heroin was found in the car he was driving, which he had borrowed from a friend. The law in Singapore presumes that an illegal substance in a vehicle belongs to the driver unless they can prove, on the balance of probabilities, that they did not know anything about the drugs. Praba identified the owner of the car and his friend who suggested he borrow it, but no witnesses were called to give evidence at trial. Though he gave evidence to assist the investigating authorities, he was not provided with a certificate of assistance to allow for discretion in sentencing and was convicted of drug trafficking and sentenced to death in 2014.

Following an unsuccessful appeal, the Death Penalty Project and his Malaysian legal team tried to bring a Judicial Review Proceeding before the Malaysian courts on behalf of Praba and three other Malaysians who had also been given mandatory death sentences in Singapore.<sup>xxxiii</sup> The team argued that Malaysia had failed in its responsibilities towards the appellants and was compelled to bring proceedings against Singapore in the International Court of Justice to protect the rights of its citizens. Praba's execution date was set while his proceedings were still pending before the Malaysian courts. A last-minute application for a stay of execution was refused and Praba was executed before the Malaysian court had an opportunity to make a decision in his case.

Meanwhile, in 2022, Singapore passed the Post-appeal Applications in Capital Cases Act, further restricting the circumstances in which those facing the death penalty can apply for a review of their case after their ordinary appeal rights have been exhausted. This will make last-minute appeals to halt executions unlikely to succeed.<sup>xxxiv</sup>

## Singapore as a sovereign power

How do we make sense of Singapore's reluctance to follow other countries around the world and abolish the mandatory death penalty, at the very least? One explanation is that in Singapore, punishment is a product of internal political imperatives.<sup>xxxv</sup> In seeking to generate political capital, Singapore's leaders assert that its tough stance on drug trafficking has helped to successfully control illicit drug use in the country. As in Indonesia, the government argues that capital punishment is limited to those who deserve death for their crimes, and that this heavy price keeps law-abiding citizens safe.<sup>xxxvi</sup> When the pressure from the international community is high, Singapore defends what it terms its community-oriented 'Asian values' against 'individualistic' human rights, and asserts that it has the sovereign right to use the criminal justice process for utilitarian good. Having not signed and ratified the ICCPR, it is legally free to do so.

Since the end of the Covid-19 pandemic restrictions, Singapore has seen rising agitation among a small but apparently growing minority of young people against their government's death penalty policy and practice. This tends to become especially prominent in advance of planned executions. Nevertheless, the government remains intransigent, unmoved and unwilling to compromise on its position that it, and only it, has the sovereign power to determine Singapore's penal policy.

Singapore's hard line on sovereignty has been most apparent in its consistent voting against the United Nations General Assembly resolution calling for a worldwide moratorium on the imposition of death sentences and executions. Early attempts by the abolitionist nations at United Nations Congresses--in the General Assembly, beginning in 1994, and at the Commission on Human Rights, annually from 1997--to press for this resolution met with hostility from many retentionist nations. Singapore argued that the resolution imposed a particular set of values from countries which have abolished capital punishment on those which have not, and suggested an amendment. Many countries were unwilling to accept the amendment because it failed to uphold the universal principles of human rights and made no mention of international law. This pattern was repeated in subsequent years. On each occasion, Singapore, joined by a small number of other retentionist states, emphasised their right to choose their own political, economic, and social systems without interference from the UN or other countries. However, their proposed amendments were thought to do such damage to the original resolution that abolitionist states would rather have the resolution

fail than allow an altered text that did not recognise the universality or validity of human rights.<sup>xxxvii</sup>

One year where this conflict of values became starkly apparent was 2007, when Singapore and other retentionist nations proclaimed that ‘there is no international consensus on whether the death penalty is a violation of human rights’.<sup>xxxviii</sup> This echoed the then-recent reasoning of the Singapore Court of Appeal in the case of *Nguyen Tuong Van* [2004]. Here, the Court held that ‘While the prohibition against cruel and inhuman treatment or punishment was a widely-accepted rule in customary international law, there was neither a general customary international law prohibition against the death penalty nor a specific customary international law prohibition against hanging as a mode of execution’.<sup>xxxix</sup> However, by this time, there were sufficient supporters of the resolution to overcome such objections and the 2007 resolution was passed and endorsed by the General Assembly. In response, Singapore, with a minority of retentionist countries, sent a *Note Verbale* to the UN Secretary-General early in 2008 which dissented from the resolution on the same grounds, namely that it was an attempt to interfere with national sovereignty.<sup>xi</sup>

Since that time, every two years, the resolution has passed with slowly increasing numbers in favour and declining numbers against. On each occasion, Singapore, joined by a small cohort of retentionist nations within East Asia and the Islamic world, have continued to sign a *Note Verbale* in condemnation of the resolution. In 2016, it introduced a ‘sovereignty amendment’ and in the 2020 vote, though 123 countries were in favour of the resolution, an increased minority of 24 voted for the amendment on ‘the sovereign right of all countries to develop their own legal systems, including determining appropriate legal penalties, in accordance with their international law obligations’.<sup>xii</sup>

In a UN speech in 2016, September 2016, Dr. Vivian Balakrishnan, the Foreign Minister of Singapore, expressed his country’s view that “every State has the sovereign right, indeed a sovereign duty, to decide for itself what works, and to take into account its own circumstances.” In Singapore, he added, “there are very high levels of support on the part of our people for the death penalty to remain on our books.”<sup>xiii</sup>

However, the evidence suggests that this may not be the case. Research by the National University of Singapore in 2016 revealed that only five percent of people were very interested in or concerned about the death penalty, with 62% of respondents saying they knew ‘little or nothing’ about its use. Though 72% were generally in favour of the death penalty, only 9% said they were *strongly* in favour of it. When told about the worldwide trend to abolish the mandatory death penalty, the proportion of those who supported it for any crime fell from 60% to 40%. Furthermore, when asked to select an appropriate sentence for three lifelike vignettes, only 12% of the 1,500 respondents chose death in all three cases.

Ultimately, when offered alternatives to the death penalty, support in Singapore drops to less than half of the population – a phenomenon found in other retentionist and abolitionist *de facto* countries. While the vast majority of Singaporeans surveyed said they supported the death penalty, almost half said they would withdraw their support if it were proved that it is not a more effective deterrent than life or long-term imprisonment.<sup>xliii</sup>

On this important issue, a comparative study of homicide rates over a period of 35 years in Singapore and Hong Kong provided a novel test for the deterrent hypothesis.<sup>xliiv</sup> It showed that the trend in murder rates was almost identical across both jurisdictions – although the former retained the death penalty, while Hong Kong had abolished it in 1993, having not carried out an execution since 1966. These data suggest that the most punitive sentences do not deter murder any more than life sentences, a finding that lends further support to this consensus from most American studies.<sup>xliv</sup>

International organisations such as Human Rights Watch and Amnesty International have long criticised the government of Singapore for its human rights record, not least on the death penalty, but local actors have been reluctant to speak out because of the government’s repressive stance on freedom of speech. That has changed over the past two or three years.

While the case of Yong Vui Kong, discussed above, caught the public attention and brought ordinary Singaporeans, not just human rights organisations, into active engagement with the government on criminal justice, many for the first time,<sup>xlvi</sup> most political agitation has been from beyond Singapore’s borders, or very quietly from within.

This changed with the establishment of the Transformative Justice Collective in 2020. This new organisation focuses attention on the death penalty, within a wider remit of criminal justice, and in 2022 launched a #StopTheKilling campaign, having been inspired by a groundswell of protest and public outcry against executions that year. Their position is uncompromising—‘we demand an immediate moratorium on executions, followed by an independent and transparent review of the use of the death penalty in Singapore’.<sup>xlvii</sup> Perhaps the most high-profile member of this NGO is the Singaporean journalist Kirsten Han, who explains that Nagaenthran Dharmalingam’s case (see above) caught the public attention, causing many to risk the wrath of the police and protest:

“I was genuinely surprised by not only the support for Nagen from Singaporeans, but actual action. I hadn’t expected there to be a particularly big turn-out for our protest in early April, but about 400 people showed up, which is very significant for Singapore. And later that month, when we held another protest/vigil for Nagen and Datchinamurthy Kataiah (another young Malaysian man on death row), the turn-out was around 400 again. It was really powerful to see so many Singaporeans not just

support or 'like' posts on social media, but actually feel strongly enough to show up.<sup>»xlvi</sup>

The #StopTheKilling website presents information on people on death row in Singapore. Many, as we have seen, are from Malaysia. In such cases, locals opposed to capital punishment have attracted support from condemned prisoners' native jurisdictions.

## Conclusion

Despite gradual declining rates of executions across Asia, and restrictive strategies in Japan and India, where the death penalty is applied only in the 'rarest of rare' cases, abolition has not made much progress in Asia, where there remain 19 retentionist countries.<sup>xlix</sup> The politics of authoritarian nations militate against reform, not least in China, Vietnam, and North Korea.

Notwithstanding a clear human rights dynamic across Europe and South America and considerable progress in Africa, many countries in the Middle East, North Africa and Asia continue to assert that criminal and penal policy must be determined by their own political, social, and cultural circumstances and values, and dismiss human rights treaties and resolutions as a form of Western cultural imperialism. Singapore has long espoused this position.

International efforts to curb the illicit drug trade have not been successful. In 2009, the United Nations Office on Drugs and Crime released a declaration of failure accompanied by further action plans to ensure a balanced strategy. In 2016, The UN General Assembly released an Outcome Document reporting the conclusions from their Special Session on the World Drug Problem and highlighting the areas in need of development to efficiently fight illicit drug trades without violating human rights. More specifically, it emphasised the role of harm reduction and affirmed a respect for human rights and dignity when developing drug-related programmes and strategies. However, while some countries move slowly towards a harm reduction approach to illicit drug use and less punitive responses to illegal production and trading in drugs, Singapore's political leadership holds steadfast to its view that the death penalty will deter drug trafficking, despite the complete absence of any empirical evidence that would support it. While it does so, young, poor, precarious and often vulnerable men and women, many from neighbouring countries, are being killed by the city state of Singapore. They can be seen as collateral damage in a 'war on drugs' that has failed to achieve its goals.

- <sup>i</sup> S. Banner, (2002) *The Death Penalty: An American History* (Cambridge Mass, Harvard University Press) 13–16 at 14; J. Bessler (2023) *The Death Penalty's Denial of Fundamental Human Rights: International Law, State Practice, and the Emerging Abolitionist Norm* (2023).
- <sup>ii</sup> Jus cogens norms are peremptory, non-derogable and enjoy the highest status within international customary law (see J. Bessler, 2023, A Torturous Practice: Prohibiting the Death Penalty's Use Through a Peremptory Norm of International Law, Death Penalty Research Unit blog at <https://blogs.law.ox.ac.uk/death-penalty-research-unit-blog/blog-post/2023/05/torturous-practice-prohibiting-death-penalty>)
- <sup>iii</sup> There had been a two-year hiatus in executions from 2020-2021 as a result of the Covid-19 pandemic.
- <sup>iv</sup> Data from Amnesty International (2023) Death Sentences and Executions 2022 at
- <sup>v</sup> Human Rights Watch (2022) Singapore: Halt Execution of Man with Disability at <https://www.hrw.org/news/2021/11/05/singapore-halt-execution-man-intellectual-disability> [accessed 6 June 2023]; DPRU Q&A blog by Jocelyn Hutton: Kirsten Han, anti-death penalty advocate in Singapore at <https://blogs.law.ox.ac.uk/research-and-subject-groups/death-penalty-research-unit/blog/2022/05/dpru-qas-kirsten-han-anti-death> [accessed 6 June 2023].
- <sup>vi</sup> See <https://www.law.ox.ac.uk/research-and-subject-groups/death-penalty-research-unit/mapping-death-row> for further details.
- <sup>vii</sup> <https://www.population.gov.sg/our-population/population-trends/overview/>
- <sup>viii</sup> Their convictions related to trafficking in Diamorphine (22), Methamphetamine (5), Heroin (4), and Cannabis (1).
- <sup>ix</sup> UNODC (2021) World Drug Report 2021 at <https://www.unodc.org/unodc/en/data-and-analysis/wdr2021.html>
- <sup>x</sup> Wojcik, J. (2020) 'Southeast Asia has a synthetic drug problem, China has key state in fixing it', *Oxford Political Review*, August 15.
- <sup>xi</sup> UNODC (2020b) Synthetic Drugs in East and Southeast Asia: Latest Developments and Challenges' at [https://www.unodc.org/documents/scientific/ATS/2020\\_ESEA\\_Regional\\_Synthetic\\_Drug\\_Report\\_web.pdf](https://www.unodc.org/documents/scientific/ATS/2020_ESEA_Regional_Synthetic_Drug_Report_web.pdf)
- <sup>xii</sup> Ibid.
- <sup>xiii</sup> A. Ritter (2022) *Drug Policy*, Routledge, pp. 4-5.
- <sup>xiv</sup> R. Lines, D. Barrett and P. Gallahue, The Death Penalty for Drug Offences: 'Asian Values' or Drug Treaty Influence? *Opinion Juris*, 21 May 2015 at <http://opiniojuris.org/2015/05/21/guest-post-the-death-penalty-for-drug-offences-asian-values-or-drug-treaty-influence/> [accessed 28 March 2023].
- <sup>xv</sup> United Nations Office on Drugs and Crime (2013) 2013 World Drug Report, Vienna: UNODC.
- <sup>xvi</sup> Harm Reduction International (2021) *The Death Penalty for Drug Offences: Global Overview 2020*.
- <sup>xvii</sup> United Nations (2023), Malaysia: UN experts hail parliamentary decision to end mandatory death penalty at [https://www.ohchr.org/en/press-releases/2023/04/malaysia-un-experts-hail-parliamentary-decision-end-mandatory-death-penalty#:~:text=GENEVA%20\(11%20April%202023\)%20-,1300%20prisoners%20on%20death%20row.](https://www.ohchr.org/en/press-releases/2023/04/malaysia-un-experts-hail-parliamentary-decision-end-mandatory-death-penalty#:~:text=GENEVA%20(11%20April%202023)%20-,1300%20prisoners%20on%20death%20row.) [accessed 1 May 2023].
- <sup>xviii</sup> Clift-Matthews A and Jabbar P, Singapore Should be Ashamed of Lashings, *The Times*, 3 September 2020.
- <sup>xix</sup> AI, *Singapore: The Death Penalty – A Hidden Toll of Executions* (2004).
- <sup>xx</sup> M. Hor (2014) 'Singapore's Death Penalty: The Beginning of the End?' in R. Hood and S. Deva (eds.) *Confronting Capital Punishment in Asia*, 141-67.
- <sup>xxi</sup> David T. Johnson, 'The Jolly Hangman, the Jailed Journalist, and the Decline of Singapore's Death Penalty' (2013) 8 (1) *Asian Journal of Criminology* 41-59 at 54-55; see also Hor, (n 258) 167.
- <sup>xxii</sup> Heather Chen, Singapore executes man for trafficking two pounds of cannabis, CNN April 26, 2023 at <https://edition.cnn.com/2023/04/25/asia/singapore-cannabis-execution-tangaraju-suppiah-intl-hnk/index.html> [accessed 6 June 2023].
- <sup>xxiii</sup> Safeguard No. 1 of 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. Failure to comply with the Safeguards is reviewed by ECOSOC in quinquennial reports by the Secretary-General on developments and trends in the use of capital punishment.
- <sup>xxiv</sup> *Thompson v Saint Vincent and the Grenadines* Communication No 806/1998, UN doc CCPR/C/70/D/806/1998; see further UN Human Rights Committee, General Comment No. 36, CCPR/C/GC/36, 3 September 2019, para. 37.
- <sup>xxv</sup> *Woodson v. North Carolina*, 1976.
- <sup>xxvi</sup> *Mithu v State of Punjab*, 1983.
- <sup>xxvii</sup> Starting with the 2001 case of *Spence & Hughes v. R* that struck down the mandatory death penalty in St Vincent and The Grenadines and Saint Lucia on the basis that it amounted to inhuman and degrading punishment.
- <sup>xxviii</sup> P. Jabbar (2019) 'Imposing a mandatory death penalty: a practice out of sync with evolving standards', in C. Steiker and J. Steiker (eds.) *Comparative Capital Punishment*, Elgar publishing, 138-159.
- <sup>xxix</sup> *Kigula & others v AG*, 2009

- <sup>xxx</sup> See, for an excellent explanation and critique of this change in the law, Michael Hor, 'Singapore's Death Penalty: The Beginning of the End?' In R. Hood and S. Deva (eds) *Confronting Capital Punishment in Asia* (n 2) 141-167 at 166-167.
- <sup>xxxi</sup> See 'Singapore Lifts Death Penalty on Drug Trafficker for First Time' *Reuters* 14 November 2013.
- <sup>xxxii</sup> For a helpful discussion of this case, see Michael Hor, 'Singapore's Death Penalty: The Beginning of the End?' in Hood and Deva, (n 182) 141-167.
- <sup>xxxiii</sup> <https://deathpenaltyproject.org/story/prabakaran-srivijayan/> [accessed 7 June 2023].
- <sup>xxxiv</sup> Parliament of Singapore, Bill No. 34/2022 at <https://www.parliament.gov.sg/docs/default-source/default-document-library/post-appeal-applications-in-capital-cases-bill-34-2022.pdf> [accessed 6 June 2023].
- <sup>xxxv</sup> S. Bae (2008) "Is The Death Penalty An Asian Value?," *Asian Affairs*, 39(1), pp.47-56.
- <sup>xxxvi</sup> A. Yap and S.J. Tan (2020). "Capital punishment in Singapore: A critical analysis of state justifications from 2004 to 2018," *International journal for crime, justice and social democracy*, 9(2), pp. 133-151.
- <sup>xxxvii</sup> For a discussion of the history of the resolution process, see R. Hood and C. Hoyle (2015) *The Death Penalty: An International Perspective*, pp. 40-44.
- <sup>xxxviii</sup> *Inter Press Service*, 4 January 2007.
- <sup>xxxix</sup> *Nguyen Tuong Van v Public Prosecutor* [2004] SGCA 47; [2005] SLR 103 at 106.
- <sup>xl</sup> A *Note Verbale* is issued between one and nine months after each UNGA resolution and circulated among UN member states to condemn the vote; see D. Pascoe and S. Bae (2020) 'Idiosyncratic voting in the UNGA death penalty moratorium resolutions', *The International Journal of Human Rights*, 25, 6, 974-1006.
- <sup>xli</sup> N. Pillay and R. Dreifuss (2020) 'Many Countries Cheer Gains to Ending the Death Penalty Globally, but Foes Harden their Stance', at <https://www.passblue.com/2020/12/17/many-countries-cheer-gains-to-ending-the-death-penalty-globally-but-foes-harden-their-stance/> [accessed 7 June 2023].
- <sup>xlii</sup> Cited in R. Hood (2018) 'Is Public Opinion a Justifiable Reason not to Abolish the Death Penalty? A Comparative Analysis of Surveys in Eight Countries', *Berkeley Journal of Criminal Law*, 23(2). 101-124.
- <sup>xliiii</sup> Wing-Cheon Chan et al. (2018) 'How Strong is Public Support for the Death Penalty in Singapore?', *Asian Journal of Criminology* 13, 91.
- <sup>xliv</sup> F. Zimring, J. Fagan and D.T. Johnson (2010) 'Executions, Deterrence and Homicide: A Tale of Two Cities', *Journal of Empirical Legal Studies* 1-29.
- <sup>xlv</sup> See R. Hood and C. Hoyle (2015) *The Death Penalty: A Worldwide Perspective*, ch. 9.
- <sup>xlvi</sup> DPRU Q&A blog by Jocelyn Hutton: Kirsten Han, anti-death penalty advocate in Singapore at <https://blogs.law.ox.ac.uk/research-and-subject-groups/death-penalty-research-unit/blog/2022/05/dpru-qas-kirsten-han-anti-death> [accessed 6 June 2023].
- <sup>xlvii</sup> See <https://sites.google.com/view/stopthekilling> and for information on Transformative Justice Collective, see <https://transformativejusticecollective.org>
- <sup>xlviii</sup> DPRU Q&A blog by Jocelyn Hutton: Kirsten Han, anti-death penalty advocate in Singapore at <https://blogs.law.ox.ac.uk/research-and-subject-groups/death-penalty-research-unit/blog/2022/05/dpru-qas-kirsten-han-anti-death> [accessed 6 June 2023].
- <sup>xlix</sup> Afghanistan, Bangladesh, Brunei Darussalam, China, India, Indonesia, Japan, Laos, Malaysia, Maldives, Myanmar, North Korea, Pakistan, Singapore, South Korea, Sri Lanka, Taiwan, Thailand, Vietnam.