**Submission to the Office of the High Commissioner for Human Rights ahead of the Report of the Secretary-General to the Human Rights Council on the question of the death penalty**

March 2024

**Introduction**

**Reprieve** is a charitable organisation registered in the United Kingdom (No. 1114900), with special consultative status with the United Nations Economic and Social Council (ECOSOC). Reprieve provides free legal and investigative support to those who have been subjected to state-sponsored human rights abuses. In particular, we protect the rights of those facing the death penalty and of victims of arbitrary detention, torture, and extrajudicial execution.

We are writing in response to your request dated 20 February 2024 for relevant information concerning the question of the death penalty arising since 1 July 2022, paying special attention to the imposition of the death penalty on persons younger than 18 years of age at the time of the offence, on pregnant women and on persons with mental or intellectual disabilities. We understand that this request is in relation to the UN Secretary General’s report to the Human Rights Council at its fifty-seventh session. This submission reports on developments in Malaysia and Singapore.

Submission: 1277 words

**Submission**

**Malaysia**

There is extremely limited scope for individuals facing the death penalty in Malaysia to adduce mitigating evidence on mental or intellectual disabilities for the purposes of seeking a reduced sentence. This is a significant barrier for individuals seeking to avail themselves of new legislation abolishing the mandatory death penalty and creating the opportunity for individuals under death sentences to seek alternative sentences (‘resentencing’).

Abolition of the mandatory death penalty with retrospective effect

In 2023, Malaysia abolished the mandatory death penalty with retrospective effect through the Mandatory Death Penalty Abolition Act 2023 (Act 846) and the Revision of Sentence of Death and Imprisonment for Natural Life (Temporary Jurisdiction of the Federal Court) Act 2023 (Act 847). Act 846 provides for alternative sentences to the death penalty for drug trafficking, murder, hostage-taking, accepting gratification to facilitate organised crime, various firearms offences and various terrorism and treason offences. It abolishes the death penalty completely for all other formerly death penalty-eligible offences.

Act 846 provides only one alternative sentence for each death penalty-eligible offence: a term of imprisonment together with whipping. The term of imprisonment is life imprisonment (capped at 30 years) for drug offences. For all other offences, it is 30 to 40 years. Act 847 permits individuals under death sentences upheld by the Federal Court (apex court) prior to 12 September 2023 to seek the relevant alternative sentence now permitted under Act 846, also known as resentencing. Individuals may only make a resentencing application under Act 846 *once*.

Limited scope for adducing mitigating evidence on mental and intellectual disabilities

Reprieve is monitoring the implementation of Acts 846 and 847. We have observed in person almost all court hearings on resentencing, which began on 14 November 2023. We are concerned that there is extremely limited scope and resources for individuals facing the death penalty to obtain and adduce evidence of mental or intellectual disability to mitigate against being sentenced or resentenced to death.

The Federal Court heard applications from at least 98individuals seeking a review of death sentence under Act 847 between 14 November 2023 and 14 February 2024. Of these, we are made aware that no less than 4 individuals have been resentenced to death, unable to seek another review of their sentence under Act 847.

In the case of one of the individual resentenced to death, there were clear indications that the person had a mental disability from the facts of the case. The person had been under a death sentence for two decades. There had been discussions on the person’s mental health in the earlier proceedings and the facts unveiled indicates that they may have suffered from severe mental illness. We are deeply concerned that in this case, life-saving evidence on mental or intellectual disability was not discussed during the resentencing hearing, which we observed in person.

A plain reading of the provisions of Act 847 does not appear to prevent individuals from raising issues of mental or intellectual disability during resentencing hearings. However, there is extremely limited scope for an individual to obtain expert evidence, or any form of assessment on their mental or intellectual disability in the context of *sentencing* given the current legal framework on mental health assessments. It appears that the only available avenue for assessments to be conducted is through section 342 of the Penal Code, which provides that a Judge or Magistrate and Public Prosecutor may order for an accused person to be remanded at a psychiatric hospital for assessment for a month, if there is reason to suspect that the accused person is of “unsound mind” and consequently *incapable of making their defence*. The Penal Code stipulates that should be done at the earliest available opportunity, ideally before trial.

The current framework does not create a clear and accessible avenue for resentencing applicants to obtain assessments of mental or intellectual disability in the context of *sentencing rather than conviction*. The question of whether a *sentence is proportionate* given the circumstances of the offence committed as well as the circumstances of the individual convicted is *separate to the question of whether a person is of “unsound mind” and incapable of making their defence*. In the context of resentencing, individuals have been on death row for many years, sometimes over one or two decades, and are now being given an opportunity to seek a revision of their death sentences. This is a valuable, one-time, life-saving opportunity and there is no clear path for individuals to adduce expert evidence of mental and intellectual disability in order to commute their death sentences.

**Singapore**

In the last three years, there has been extensive discussion on the rights of individuals with mental and intellectual disabilities facing the death penalty in Singapore, both within the country and the international community. Most of the discussion centred on the case of Nagaenthran Dharmalingam, a young man with intellectual disabilities executed for drug offences on 27 April 2022. His case highlighted significant barriers to access to justice for individuals with intellectual disabilities facing the death penalty in Singapore. Three more men, Rosman bin Abdullah, Pausi bin Jefridin and Roslan bin Bakar, who had adduced evidence of mental and intellectual disabilities during their court proceedings were executed in 2022.

Executions in violation of the Convention on the Rights of Persons with Disabilities

Mr Nagaenthran fell squarely within the protection of the Convention on the Rights of Persons with Disabilities (CRPD) and was executed in violation of its provisions. During his legal proceedings, a total of five expert psychiatric and psychological reports variously found him to have an intellectual disability; borderline intellectual functioning; overall intellectual functioning in the extremely low range; an IQ score of 69 (which meets the criteria for intellectual disability in multiple internationally accepted diagnostic standards[[1]](#footnote-1)); mild ADHD of the inattentive type; and impaired executive functioning skills.[[2]](#footnote-2)

In the course of their legal proceedings, expert evidence that Mr Rosman, Mr Pausi and Mr Roslan had intellectual or psychosocial disabilities was adduced. In the three cases,

‘psychiatrists called by the Defence during their respective court proceedings made observations as to their cognitive abilities. Roslan bin Bakar was assessed to have “limited capacity for judgement, decision-making, consequential thinking, impulse control and executive function”. The Prosecution in his case also stated that he was “within the borderline range of intellectual functioning”[.] His co-accused [Mr Pausi] was assessed to have an IQ of 67 by a psychiatrist, which is lower than the average individual’s IQ of between 90 and 109. Rosman bin Abdullah was assessed to display “ADHD symptomatology, low IQ, and stunted emotional development”.’[[3]](#footnote-3)

Under the CRPD, the death penalty should not be imposed on individuals with intellectual disabilities in Singapore. In September 2022, UN Committee on the Rights of Persons with Disabilities (CRPD Committee) observed as follows:

‘The Committee is gravely concerned about the legality, the imposition and the execution of the death penalty in the State party on persons with intellectual disabilities, persons with psychosocial disabilities, and autistic persons, as well as for crimes not involving intentional killing. It is equally concerned about the execution of a person with intellectual disabilities despite the prior intervention of the Committee’s Chair.’[[4]](#footnote-4)

The Committee

‘urgently [recommend that Singapore] abolish the death penalty for persons with psychosocial disabilities, for persons with intellectual disabilities, and for autistic persons, as well as for crimes not involving intentional killing, and immediately halt all impositions and executions of the death penalty in such cases, in accordance with the limits established under international law.’[[5]](#footnote-5)

Singapore has not taken steps towards implementing these recommendations and people with mental and intellectual disabilities in the country continue to be at increased risk of execution in violation of international law.

1. International Statistical Classification of Diseases and Related Health Problems, 10th Revision (IDC-10), Code F70 <<https://icd.who.int/browse10/2019/en#/F70-F79>> ; American Psychiatric Association, DSM-5 Intellectual Disability Fact Sheet <<https://www.psychiatry.org/File%20Library/Psychiatrists/Practice/DSM/APA_DSM-5-Intellectual-Disability.pdf>> [↑](#footnote-ref-1)
2. *Nagaenthran A/L K Dharmalingam v Public Prosecutor* [2017] SGHC 222 [↑](#footnote-ref-2)
3. Transformative Justice Collective, ‘Statement: Immediately halt scheduled executions’ (Transformative Justice Collective, 20 February 2022) <<https://transformativejusticecollective.org/2022/02/20/immediately-halt-scheduled-executions/>> [↑](#footnote-ref-3)
4. Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of Singapore (Advance Unedited Version) (9 September 2022) UN Doc CRPD/C/SGP/CO/1 <https://tbinternet.ohchr.org/\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2FC%2FSGP%2FCO%2F1&Lang=en> [19] [↑](#footnote-ref-4)
5. Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of Singapore (Advance Unedited Version) (9 September 2022) UN Doc CRPD/C/SGP/CO/1 <https://tbinternet.ohchr.org/\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2FC%2FSGP%2FCO%2F1&Lang=en> [20] [↑](#footnote-ref-5)