

From:
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Madam Halimah Yacob
Office of the President of the Republic of Singapore
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Copied to:

Mr Lee Hsien Loong
Prime Minister's Office
Orchard Road
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Singapore 238823

3 December 2021

Dear Madam Halimah Yacob,

Re: Clemency for Nagaenthran A/L K Dharmalingam

My name is Panchalai Supermaniam and I am the mother of Nagaenthran A/L K Dharmalingam ("Nagen"). I am writing on behalf of Nagen to plead for clemency from the death penalty, and have attached legal arguments in support of clemency prepared by an international legal team that has been assisting Nagen and our family.

Nagen got mixed up in criminal activity and sentenced to death because he has disabilities that affect his reasoning and judgment. Now, his mental condition has become so bad that he is not competent for execution. I know he is facing the death penalty because he made a mistake, but he is intellectually disabled and does not deserve to die. His mistake will cost him his life unless you exercise mercy, and grant him clemency.

Nagen's childhood

Nagen was a sweet, caring and helpful child who loved being with his family. He had a strong sense of responsibility towards all of us, and grew up very close with his siblings, grandparents, aunts, uncles and cousins. Throughout his childhood, I was the main breadwinner of the family and we struggled financially. While he was in secondary school, he would work part-time jobs, such as fixing up canopies or accompanying me to the glove factory, so that he could contribute to our family's income.

I did not want Nagen to go to Singapore. I was worried about him. But Nagen had a friend who told him to go to Singapore to find work, and he insisted on going. He has two younger siblings who are

much younger than him. He wanted to work in Singapore so that he could lessen my burden. Around the time of Nagen's arrest, his father, who does not live with us and only visited now and then throughout Nagen's childhood, was having health issues, and also needed help with his medical bills.

In school, Nagen had difficulty understanding concepts and struggled with his school work. He would often ask his older sister for help to complete his projects. His friends said that he struggled to pay attention in class and would doze off. At that time, we did not have the knowledge or resources to get him assessed by experts and have his disability diagnosed. We did not know that Nagen needed help from more specialised educators, as well as other support to assist him with his intellectual disability. We know now that the problems he faced in school were related to his borderline intellectual functioning and his attention deficit hyperactivity disorder. We were not able to protect him from being convicted of a crime, but we have never stopped loving and supporting Nagen.

Nagen's intellectual disability

I ask that you spare Nagen from execution because he is a person with an intellectual disability. Since childhood, Nagen has been vulnerable because of his intellectual disability. Nagen has always been timid and trusting. He is very easily influenced by others. As long as someone speaks nicely to him or shows him affection, he will immediately trust them, and be willing to blindly follow them into anything. Many 21-year-old boys are not yet fully mature in their thought processes and behaviours; this was even more so for Nagen because of his cognitive impairments. We believe that his intellectual disability made him susceptible to the situation which led to his conviction and death sentence. He does not deserve to die for this.

To us, it is clear that Nagen needed additional help and support throughout the criminal justice process because of his intellectual disability. Nagen did not receive procedural accommodations during the course of criminal justice proceedings. There were insufficient measures to ensure that he had access to justice on the same basis as others. Although international principles and guidelines advise that there be procedural adjustments for persons with disabilities, such as allowing them to be accompanied by family at all stages of the process, our family were not informed of Nagen's arrest until about a week later.

According to Singapore's Ministry for Social Development and Family, the Singapore Police Force only began training officers to identify suspects and witnesses with mental disabilities in 2013, and the Appropriate Adult Scheme for Persons with Mental Disabilities was only introduced in 2015. Nagen was arrested in 2009 and would not have benefitted from this scheme or any of the training that police officers later received. Even if the investigating officers had followed the protocol that was standard at the time, our knowledge on how to make sure that persons with disabilities have equal access to justice has grown. The introduction of training for officers and the Appropriate Adult Scheme shows that the Singapore government itself recognises that previous practices were insufficient and could be improved upon.

Madam President, I know that you and the Singapore government care about protecting people with intellectual disabilities. The progress that Singapore has made in offering additional support to persons with disabilities throughout the process is important and necessary, but came only after

my son had already been convicted and sentenced to death. Please protect my son Nagen by granting him clemency.

Nagen's current mental competence

Nagen has now been in prison far away from his family for almost a third of his life. He was so young when he was arrested, and has spent all these years away from us, and all alone, living in a single cell. His mental condition has deteriorated dramatically after being in prison for so long.

We visited Nagen in early November. We found his mental condition to have deteriorated from the last time we'd seen him years ago. Nagen is disoriented, and can't sustain eye contact when he talks to people. Nagen has moments of lucidity, but then doesn't register what people say to him and speaks about himself as if he is a different person. He doesn't speak in full sentences, and is incoherent. Sometimes his eyes dart around the room as if he is looking at people who are not there. Nagen talks about going home and eating my home-cooked food. It breaks my heart to hear him say that when I know he is facing death by hanging. I am very concerned that Nagen does not seem to understand that "execution" means that he will die.

Nagen has not had any independent psychological or psychiatric assessment to tell us about his current condition. Nagen told my younger son Navin that he is on medication, which helps him feel calm. We, his family, have not been told what medication this is, but Nagen told Navin that without the medication he would end up in a mental hospital. Nagen's condition is not stable. It makes me cry when I think about what Nagen is experiencing.

Plea for clemency

Madam Halimah, you are a mother and I am writing to you as a mother. My beloved son Nagen needs your help. He needs compassion and mercy. You have power that I do not to save my son's life. You have the power to grant him clemency, to spare him from the noose. Please, let my son live free from the threat of death.

Yours sincerely,



Panchalai Supermaniam

**Appendix to Letter from Panchalai Supermaniam requesting clemency
on behalf of Nagaenthran A/L K Dharmalingam**

LEGAL ARGUMENTS IN SUPPORT OF CLEMENCY

*Prepared by the international legal team acting on behalf of Mr Nagaenthran A/L K
Dharmalingam for submission with his family's plea for clemency*

I. PROHIBITION ON EXECUTION OF PERSONS WITH INTELLECTUAL DISABILITIES

1. International law prohibits the imposition of the death penalty on persons with mental or intellectual disabilities.¹ This has been affirmed by the UN General Assembly,² the UN Economic and Social Council³ and in regional and domestic courts around the world.⁴ There is no requirement for an intellectual disability to be severe; a mild intellectual disability meets the definition if it hinders full and effective participation in society on an equal basis.
2. Mr Nagaenthran's right to life is protected by the UN Convention on the Rights of Persons with Disabilities, ratified by Singapore on 18 July 2013. Article 10 of the CRPD "*reaffirm[s] that every human being has the inherent right to life*" and that states must "*take all necessary measures to ensure that persons with disabilities are able to enjoy this right on an equal basis with others*". As explained by the Committee on the Rights of Persons with Disabilities and the Human Rights Committee, states must "*refrain from imposing the death penalty on individuals who face specific barriers in defending themselves on an equal basis with others, such as persons whose psycho-social and intellectual disabilities impeded their effective defense*".⁵
3. In the course of legal proceedings in Mr Nagaenthran's case, credible evidence was put forward not just by the defence but also by the prosecution that Mr Nagaenthran has an intellectual impairment, which qualifies as a disability within the meaning of international human rights law. The expert reports submitted to the courts variously found Mr Nagaenthran to have the following conditions: 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 standards⁶); mild ADHD of the inattentive type; and impaired executive functioning skills (including verbal fluency, set-shifting, abstract reasoning, strategy formative, and problem solving).⁷
4. According to these expert reports, Mr Nagaenthran meets the definition of intellectual disability under Article 1 of that Convention, which states that persons with disabilities include "*those who have long-term ... intellectual ... impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others*".
5. Mr Nagaenthran falls within the definition of intellectually disability according to Singapore's own Enabling Guide,⁸ which states that "*[i]ntellectual disability is mainly established by a person's intelligence quotient (IQ of 70 or below)*". Mr Nagaenthran is also intellectually disabled according to international diagnostic standards.⁹ and according to the World Health Organisation, which has defined intellectual disability as including impaired intelligence with impaired social functioning which has a lasting effect on development.¹⁰

6. Mr Nagaenthran is a person with an intellectual disability under international human rights law. Accordingly, he should not be executed, and his sentence should be commuted.

II. MR NAGAENTHRAN IS NOT COMPETENT FOR EXECUTION

7. There is clear evidence that Mr Nagaenthran is suffering from mental ill health, raising serious concerns about his competence for execution. Under international law, the death penalty should not be imposed or carried out on persons with mental health conditions.
8. In recent interactions with him, Mr Nagaenthran's family have reported a severe deterioration in his mental state. Naga's family have described him as being "*completely disoriented*", "*incoherent*" and unaware of what is happening to him. They also report that Mr Nagaenthran relies upon medication in order to experience brief moments of clear-mindedness, which evidences that he is suffering from acute mental health problems.
9. Clemency should be granted to Mr Nagaenthran in light of clear evidence of acute mental illness, and the fact that he does not fully understand that he is facing imminent execution.

III. FAIR TRIAL AND PROCEDURAL ACCOMMODATIONS FOR PERSONS WITH INTELLECTUAL DISABILITIES

10. Article 13 of the Convention on the Rights of Persons with Disabilities obliges Singapore to ensure there are procedural accommodations in all legal proceedings (including at investigative stages) to ensure that persons with intellectual disabilities can have effective access to justice on an equal basis with others.¹¹ Specific guidance on this is found in the International Principles and Guidelines on Access to Justice for Persons with Disabilities, under which states "*shall provide ... individualised procedural accommodations ... [which] encompass all the necessary and appropriate modifications and adjustments needed in particular case, including procedural adjustments and modifications, [and] adjustments to the environment and communication support*".¹²
11. Procedural adjustments which would have ensured equal access to justice for Nagen were not made. Such adjustments include "*ensuring that police officers, prosecutors and others involved in arrests and investigations are ... alert to the possibility that a person may have a disability and, throughout the course of an arrest or investigation, adjust their responses accordingly*".¹³
12. In court, Nagen did not benefit from "*[m]odifications to the method of questioning in appropriate circumstances, such as allowing leading questions, avoiding compound questions, finding alternatives to complex hypothetical questions, providing extra time to answer, permitting breaks as needed and using plain language*".¹⁴
13. The Singaporean government has shown that it wants to protect people in Singapore who have intellectual disabilities, including by ratifying the Convention on the Rights of Persons with Disabilities. Under that Convention, every human being has the inherent right to life, and Singapore must take all necessary measures to ensure that persons with disabilities are able to enjoy this right on an equal basis with others.¹⁵ The UN has repeatedly confirmed that all persons with mental and intellectual disabilities should not be executed.

¹ See *inter alia* United Nations General Assembly Resolutions 71/187 of 2 February 2017; 73/185 of 17 December 2018; 75/183 of 16 December 2020; and the UN Commission on Human Rights Resolution 2005/59 of 20 April 2005.

² *Ibid.*

³ UN Economic and Social Council Resolution 1984/50 of 25 May 1984, available at <https://www.ohchr.org/en/professionalinterest/pages/deathpenalty.aspx>.

⁴ For example, Inter-American Court of Human Rights, *Lackey v United States*, Cases 11.575, 12.333 & 12.341, Report No. 52/13 (2013) at [213]; Indian Supreme Court, *Shatrughan Chauhan v Union of India* (2014) 3 SCC 1.

⁵ UN Human Rights Committee, General Comment No. 36, Article 6: right to life, 3 September 2019, CCPR/C/GC/36, paragraph 49; UN Committee on the Rights of Persons with Disabilities, Comments on the draft General Comment No. 36 of the Human Rights Committee on article 6 of the International Covenant on Civil and Political Rights, available at <https://www.ohchr.org/Documents/HRBodies/CCPR/GCArticle6/CRPD.docx>.

⁶ See International Statistical Classification of Diseases and Related Health Problems, 10th Revision (ICD-10), Code F70, available at <https://icd.who.int/browse10/2019/en#/F70-F79>; American Psychiatric Association, DSM-5 Intellectual Disability Fact Sheet, available at https://www.psychiatry.org/File%20Library/Psychiatrists/Practice/DSM/APA_DSM-5-Intellectual-Disability.pdf.

⁷ *Nagaethran A/L K Dharmalingam v Public Prosecutor* [2017] SGHC 222.

⁸ Singapore Enabling Guide, 2019, available at <https://www.enablingguide.sg/disability-info/intellectual-disability>.

⁹ See International Statistical Classification of Diseases and Related Health Problems, 10th Revision (ICD-10), Code F70, available at <https://icd.who.int/browse10/2019/en#/F70-F79>; American Psychiatric Association, DSM-5 Intellectual Disability Fact Sheet, p 2, available at https://www.psychiatry.org/File%20Library/Psychiatrists/Practice/DSM/APA_DSM-5-Intellectual-Disability.pdf.

¹⁰ World Health Organisation, European Declaration on the Health of Children and Young People with Intellectual Disabilities and their Families, EUR/51298/17/6, 26 November 2010, footnote 1, available at https://www.euro.who.int/_data/assets/pdf_file/0015/121263/e94506.pdf.

¹¹ Article 13(1), Convention on the Rights of Persons with Disabilities.

¹² UN Office of the High Commissioner for Human Rights, International Principles and Guidelines on Access to Justice for Persons with Disabilities, Principle 3, paragraph 31, August 2020, available at https://www.ohchr.org/Documents/Issues/Disability/SR_Disability/GoodPractices/Access-to-Justice-EN.pdf.

¹³ UN Office of the High Commissioner for Human Rights, International Principles and Guidelines on Access to Justice for Persons with Disabilities, Principle 3, paragraph (h), August 2020, available at https://www.ohchr.org/Documents/Issues/Disability/SR_Disability/GoodPractices/Access-to-Justice-EN.pdf

¹⁴ UN Office of the High Commissioner for Human Rights, International Principles and Guidelines on Access to Justice for Persons with Disabilities, Principle 3, paragraph (c)(vi), August 2020, available at https://www.ohchr.org/Documents/Issues/Disability/SR_Disability/GoodPractices/Access-to-Justice-EN.pdf

¹⁵ Article 10, UN Convention on the Rights of Persons with Disabilities