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An abiding commitment to the death penalty? Centrality of the rule of law in the administration of capital punishment in Singapore

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AN ABIDING COMMITMENT TO THE DEATH PENALTY? CENTRALITY OF THE RULE OF LAW IN THE ADMINISTRATION OF CAPITAL PUNISHMENT IN SINGAPORE

Capital punishment remains in use in Singapore. The Singapore government's position is that the death penalty works in deterring the most serious crimes. Public trust and confidence remains healthy that the death penalty regime in Singapore has the requisite deterrent effect on criminals and has sufficient safeguards to prevent any miscarriage of justice. In 2012, the Singapore Parliament made significant amendments to the Penal Code and the Misuse of Drugs Act, marking a shift from the longstanding mandatory to a discretionary death penalty system for some of the most serious crimes. It demonstrates the authorities' belief that the mandatory death penalty is not needed for all types of serious crimes. This shift away from the mandatory death penalty is to be welcomed because it demonstrates that there is no abiding commitment to the death penalty. The attraction and force of the mandatory death penalty was its unequivocal demonstration of zero tolerance and resolve in maximum deterrence. This article examines the applicable laws, policies, and jurisprudence on the death penalty regime in Singapore. Singapore's administration of capital punishment underscores that the adherence to the letter and spirit of the law that applies to persons facing capital charges must be a central tenet in the administration of criminal justice. The constant challenge is to calibrate the appropriate balance of rights and responsibilities between those who commit serious crimes, the victims and their families, and the rest of society.

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I. Overview

1 In clockwork fashion since 2008, the United Nations General Assembly ("**UNGA**") deliberates biennially on the imposition of a global moratorium on the use of the death penalty, with a view to abolishing it. Singapore participates purposefully in the serious debate

[*] I am grateful for the assistance provided by the various government agencies for the data and information requested. Much appreciation goes to the *Singapore Law Journal* Editors-in-Chief Ms Lim Yu Jie Isabelle and Mr Ivan Tang Wu Hwan for their helpful edits, insightful comments, and thoughtful queries. All errors of fact, interpretation, and analysis are, of course, mine alone.

on the death penalty at the international fora. In September 2016, Singapore Foreign Minister Vivian Balakrishnan put forth Singapore's views on the death penalty at a high-level side event at the UNGA. Noting that the debate was a "heated, painful and emotional one," he affirmed Singapore's belief that "all human life is sacred" and the paramount objective to protect all human life.[1] He posited that the relevant question in the death penalty debate was "whether in very limited circumstances, it is legitimate to have the death penalty so that the larger interest of society is served".[2] Thus, the rights of the offenders must be weighed against the rights of the victims and their families, and the "broader rights of the community and society to live in peace and security".[3]

2 Singapore's position on the use of the death penalty is more nuanced than the abolitionists' austere characterisation of an abiding commitment to the death penalty.[4] In 2012, Parliament made significant amendments to the Penal Code 1871 ("**PC**") and the Misuse of Drugs Act 1973 ("**MDA**"), marking a shift from the longstanding mandatory death penalty system to a discretionary one. These amendments do not lessen the severity of murder and drug trafficking offences. Rather, they

[1] Vivian Balakrishnan, Minister of Foreign Affairs, "Moving Away from the Death Penalty: Victims and the Death Penalty", Intervention at the High-Level Side Event at the United Nations General Assembly (21 September 2016) <https://www.mfa.gov.sg/Newsroom/Press-Statements-Transcripts-and-Photos/2016/09/MFA-Press-Release-Transcript-of-Minister-Vivian-Balakrishnans-Intervention-at-the-HighLevel-Side-Eve> (accessed 14 February 2024).

[2] Vivian Balakrishnan, Minister of Foreign Affairs, "Moving Away from the Death Penalty: Victims and the Death Penalty", Intervention at the High-Level Side Event at the United Nations General Assembly (21 September 2016) <https://www.mfa.gov.sg/Newsroom/Press-Statements-Transcripts-and-Photos/2016/09/MFA-Press-Release-Transcript-of-Minister-Vivian-Balakrishnans-Intervention-at-the-HighLevel-Side-Eve> (accessed 14 February 2024).

[3] Vivian Balakrishnan, Minister of Foreign Affairs, "Moving Away from the Death Penalty: Victims and the Death Penalty", Intervention at the High-Level Side Event at the United Nations General Assembly (21 September 2016) <https://www.mfa.gov.sg/Newsroom/Press-Statements-Transcripts-and-Photos/2016/09/MFA-Press-Release-Transcript-of-Minister-Vivian-Balakrishnans-Intervention-at-the-HighLevel-Side-Eve> (accessed 14 February 2024).

[4] See critiques such as Amnesty International's *Cooperate or Die: Singapore's Flawed Reforms to the Mandatory Death Penalty* (London: Amnesty International, 2017); the erroneous understanding of Singapore's death penalty regime in Mark Findlay, "Counterblast: Escaping the Gallows Singapore Style" (2014) 53(1) *The Howard Journal of Criminal Justice* 101.

represent a subtle shift that is "consonant with the modern drive for greater texture and nuance in the application of criminal penalties".[5]

3 This article examines the death penalty regime in Singapore. It is a descriptive study that has its origins in the thematic study on "The Right to Life: The Treatment of Prisoners Convicted of the Death Penalty" commissioned by the ASEAN Intergovernmental Commission on Human Rights ("**AICHR**")[6], where I was responsible for the Singapore country study. For a variety of reasons, consensus could not be reached in 2021 for the thematic study—comprising ten country studies and a regional synthesis—to be published as originally planned. It was a missed opportunity to place in the public domain for the first time a baseline study of the laws and policies that govern the death penalty in various ASEAN member states. This article is a significantly revised version of the Singapore country study and seeks to examine the applicable laws, policies, and jurisprudence on the death penalty regime in Singapore. It is useful to mention at the outset the limitations of the study in this article. As with the AICHR thematic study, this article does not engage in the contested debate between retentionist and abolitionist states on the use of the death penalty; that would require a wholly different publication. This article's purpose is more modest: it examines the death penalty regime and how the rights of persons sentenced to death are protected under Singapore laws. As such, the article adopts a descriptive discussion of the death penalty regime in Singapore.

4 The article is organised as follows. In **Part II**, an overview of the approach to the administration of criminal justice in Singapore and the role of the death penalty therein is provided. **Part III** considers the legal framework that governs the right to life and the death penalty in Singapore, including the introduction of the discretionary death penalty. The treatment of and state's legal assistance for persons sentenced to death is dealt with in **Part IV**. **Part V** is concerned with the clemency process, the notice period for and method of execution. This section will also present data on the number of judicial executions, and considers the

[5] Steven Chong, Justice of the High Court, "Recalibration of the Death Penalty Regime: Origin, Ramifications and Impact", speech at the 28th *Singapore Law Review* Annual Lecture (8 November 2016) at para 22. The Lecture is published in (2017) 35 *Singapore Law Review* 1.

[6] AICHR is the overarching institution in the Association of Southeast Asian Nations (ASEAN) tasked with the promotion and protection of human rights in ASEAN. See the ASEAN Charter (2007) Article 14, and AICHR's website at <https://aichr.org/> (accessed 30 March 2024).

good practices Singapore has in place to protect the various rights of individuals being tried for or sentenced to the death penalty. **Part VI** operates in lieu of a conclusion.

II. Overview of Singapore's approach to administration of criminal justice

5 Like most criminal justice systems, Singapore's system is shaped by the historical developments, the values, and the socio-economic mores of society. In particular, for a young nation-state, Singapore's approach to the administration of criminal justice was moulded significantly by her response to the social disorder in the 1950s and 1960s, a period bookended by the end of the Second World War and independence in 1965.[7] The political imperative and social need to tackle and quell social disorder and lawlessness precipitated significant reforms to the criminal justice system, which Singapore had inherited from the United Kingdom. These changes, including the abolition of trial by jury and the removal of the right of accused persons to make unsworn statements from the dock, were made within a few years of independence.

6 This section serves to provide an overview of Singapore's approach to the administration of criminal justice. More specifically, it introduces: (**a**) the philosophy undergirding Singapore's criminal justice system; (**b**) the relevant legal actors in the criminal justice system; and (**c**) the characterisation of the death penalty as a criminal justice rather than a human rights issue in Singapore.

A. The quest for law and order

7 The criminal justice process in Singapore is founded on two cardinal principles, namely, the supremacy of the rule of law and the protection of the public. The principal objectives of Singapore's criminal justice system are to deter crime and to protect society against criminals.[8] The Government regards the safety and security of the person to be a fundamental human right, without which other rights cannot genuinely

[7] Andrew Phang Boon Leong, *The Development of Singapore Law: Historical and Socio-Legal Perspectives* (Singapore: Butterworths, 1990).

[8] Singapore, *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: 2nd Universal Periodic Review*, UN Human Rights Council, A/HRC/WG.6/24/SGP/1 (18-29 January 2016) at paras 100–101.

be enjoyed.[9] In turn, "[t]he safety and security of Singapore is ensured by a criminal justice system that is robust, fair and serving the needs of all".[10]

8 Singapore's approach to criminal justice approximates that of the crime control model.[11] The 1976 amendments to the Criminal Procedure Code and the Evidence Act, marked this change in approach from the then due process model in the direction of the crime control model. Under this model, the control and reduction of crime are attained through increased police and prosecutorial powers, an emphasis on uniform and expeditious processing of accused persons through the legal system, and the punishment of offenders according to the severity of their crimes. Efficiency and effectiveness in the law enforcement process are valued.

9 Deterrence remains the foundation of Singapore's criminal justice system. Capital punishment is still regarded by the government as an effective tool in law enforcement. As the Law Minister K.

[9] Singapore, *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: 2nd Universal Periodic Review*, UN Human Rights Council, A/HRC/WG.6/24/SGP/1 (18-29 January 2016) at paras 100–101.

[10] Singapore, *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: 2nd Universal Periodic Review*, UN Human Rights Council, A/HRC/WG.6/24/SGP/1 (18-29 January 2016) at paras 100–101.

[11] Then-Chief Justice Chan Sek Keong referenced the features of the crime control model that Professor Herbert Parker of Stanford University had described in a 1964 paper. The features are as follows:

> (a) The repression of crime should be the most important function of criminal justice because order is a necessary condition for a free society.
> (b) Criminal justice should concentrate on vindicating victims' rights rather than on protecting defendants' rights.
> (c) Police powers should be expanded to make it easier to investigate, arrest, search, seize and convict.
> (d) Legal technicalities that handcuff the police should be eliminated.
> (e) If the police make an arrest and a prosecutor files criminal charges, the accused should be presumed guilty because the fact-finding of police and prosecutors is highly reliable.
> (f) The criminal justice process should operate like an assembly-line conveyor belt, moving cases swiftly along toward their disposition.
> (g) The main objective of the criminal justice process should be to discover the truth or to establish the factual guilt of the accused.

See Chan Sek Keong, Chief Justice, "David Marshall and the Law – Some Reflections on His Contributions to Criminal and Civil Justice in Singapore", speech at "David Marshall: His Life and Legacy A Symposium in Commemoration of the 100th Birthday Anniversary of Mr David Marshall" (12 March 2008) <https://www.sal.org.sg/sites/default/files/PDF%20Files/Speeches/Speeches%20Archive/David%20Marshall%20Symposium%20-%20CJ's%20speech%20FINAL.pdf> (accessed 14 February 2024).

Shanmugam puts it, "Crime must be deterred. Society must be protected against criminals".[12] Even when Singapore moved from a mandatory death penalty regime to a discretionary death penalty regime in 2012 for certain offences, the Government stressed that this change would "not substantially impact our crime control framework".[13] It reasoned that Singapore's low homicide rate had enabled the reforms providing for the discretionary death penalty regime to co-exist with the mandatory death penalty regime.[14]

10 However, Singapore's penal philosophy is not only concerned about deterrence. Rehabilitation is an increasingly important part of the administration of criminal justice. Where possible, offenders are given the opportunity to be rehabilitated and reintegrated into society. Prison programmes seek to address inmates' different criminogenic risks and rehabilitation needs.[15] This is complemented by the Yellow Ribbon Project, which aims to engage the community in giving ex-offenders second chances in life through concerted community action in supporting ex-offenders and their families.[16]

11 In Singapore's context, the communitarian emphasis on how society is organised and run is another distinctive feature of her governance.[17] All things being equal, the collective interest takes precedence over the individual interest. Chief Justice Sundaresh Menon observed that Singapore's fidelity to the rule of law has "co-existed comfortably with a prominent feature of our cultural substratum, which is an emphasis on communitarian over individualist values. These include notions such as dialogue, tolerance, compromise and placing the

[12] *Singapore Parliamentary Debates, Official Report* (14 November 2012) vol 89 (K. Shanmugam, Minister for Law).
[13] *Singapore Parliamentary Debates, Official Report* (14 November 2012) vol 89 (K. Shanmugam, Minister for Law).
[14] *Singapore Parliamentary Debates, Official Report* (14 November 2012) vol 89 (K. Shanmugam, Minister for Law).
[15] For examples, see the Singapore Prison Service annual reports from 2011 to 2022, available online at <https://www.sps.gov.sg/resource/annual-reports/>.
[16] See the Yellow Ribbon's 10th anniversary commemorative book, *The Courage to Believe: Unlocking Life's Second Chances* (Singapore Prison Service, 2013) <https://www.yellowribbon.gov.sg/docs/default-source/yellow-ribbon/the-courage-to-believe.pdf> (accessed 14 February 2024). See also Chua Chin Kiat, *The Making of Captains of Lives* (Singapore: World Scientific Publishing, 2012).
[17] The communitarian ethos is evident in Singapore's five Shared Values adopted by the Singapore Parliament in 1991 – see White Paper on Shared Values (Cmnd 1 of 1991).The shared values are: (**a**) Nation before community and society above self; (**b**) Family as the basic unit of society; (**c**) Community support and respect for the individual, (**d**) Consensus, not conflict; and (**e**) Racial and religious harmony.

community above self. These values have modulated the court's approach in ensuring that the rule of law rules".[18] As then Chief Justice Chan Sek Keong said, "Efficiency and strict enforcement of the criminal law are our strong points. But practicality and pragmatism are also our strong points. The guiding principles are economy, efficiency and functionality. The law is fashioned to detect and punish criminal behaviour. A balance has to be struck between the right to life and liberty and the right to order and a safe society".[19] Similarly, Law Minister K Shanmugam has said that, "When you look at a criminal justice system, you don't only look at the processes. Never forget the balance between society and the individual, the trial process, we try to be fair but we have to be fair to society as well".[20]

12 As is necessary for any human-devised system or institution, the criminal justice system is regularly reviewed to keep it relevant and fit for purpose as well as to ensure its legitimacy. As societal values and norms change with time, evolution is necessary for the criminal justice system to function effectively and efficiently. Even as society evolves, Singapore's criminal justice system is governed by and anchored in four principles: Protecting the community, ensuring due legal process, enforcing the laws effectively, and reforming offenders.[21]

B. Relevant legal actors

13 Under Singapore's constitutional framework and the separation of powers, each of the co-equal and coordinate branches of government (*ie*, the Legislature, the Executive (which includes the Attorney-General), and the Judiciary) has a distinct role to play in the criminal justice process.

[18] Sundaresh Menon, Chief Justice, "The Rule of Law: The Path to Exceptionalism" (2016) 28 SAcLJ 413 at para 24.
[19] Chan Sek Keong, Chief Justice, keynote address at the New York State Bar Association Seasonal Meeting (27 October 2009) at para 36.
[20] K Shanmugam, Minister for Foreign Affairs and Law, speech at the Criminal Law Conference 2014 (16 January 2014) <https://www.mlaw.gov.sg/news/speeches/speech-by-min-at-criminal-law-conference-2014.html> (accessed 14 February 2024).
[21] K Shanmugam, Minister for Foreign Affairs and Law, speech at the Criminal Law Conference 2014 (16 January 2014) <https://www.mlaw.gov.sg/news/speeches/speech-by-min-at-criminal-law-conference-2014.html> (accessed 14 February 2024).

(1) The Legislature

14 The Legislature is vested with the power to make laws.[22] This includes the power to define offences and to prescribe punishments for them, whether the punishments are mandatory or discretionary, or fixed or within a prescribed range.[23] In the exercise of its legislative powers under the Singapore Constitution, especially passing laws, including criminal laws, Parliament has to ensure that the proposed laws do not violate the Singapore Constitution.

(2) The Attorney-General as Public Prosecutor

15 The Attorney-General's Chambers ("**AGC**") is an organ of state led by the Attorney-General of Singapore. The Attorney-General plays an important role in upholding the rule of law in Singapore. He is the principal legal adviser to the Government in both domestic and international law and his office is responsible for the drafting of written laws.[24] The Attorney-General, in his capacity as the Public Prosecutor, is "the guardian of the people's rights, including the rights of the accused".[25] As the "guardian of the public interest", he also has a duty to safeguard the rights of prisoners in the custody of the Singapore Prison Service.[26]

16 In the administration of criminal justice, a key function of the Executive, specifically the Attorney-General,[27] is to "institute, conduct or discontinue proceedings for any offence".[28] The Singapore Constitution specifically confers the power and discretion to do so only on the Attorney-General, who is also the Public Prosecutor.[29] In deciding whether to "institute, conduct or discontinue proceedings for

[22] Constitution of the Republic of Singapore (2020 Rev Ed) (henceforth, the "**Singapore Constitution**") Article 38.
[23] *Mohammad Faizal Bin Sabtu v Public Prosecutor* [2012] 4 SLR 947 at [44]–[45].
[24] See Article 35(7) of the Singapore Constitution.
[25] See *Gobi a/l Avedian and another v Attorney-General and another appeal* [2020] 2 SLR 883 at [93], citing the apex court's earlier decisions in *Khor Soon Lee v Public Prosecutor* [2011] 3 SLR 201 and *Bachoo Mohan Singh v Public Prosecutor* [2010] 1 SLR 966.
[26] See *Gobi a/l Avedian and another v Attorney-General and another appeal* [2020] 2 SLR 833 at [93].
[27] *Gobi a/l Avedian and another v Attorney-General and another appeal* [2020] 2 SLR 833 at [93].
[28] Singapore Constitution Article 35(8).
[29] See also Criminal Procedure Code 2010 s 11(1).

any offence", the Public Prosecutor acts independently.[30] In this regard, the apex court recently reiterated that "prosecutorial decisions undertaken by the Attorney-General in his capacity as the Public Prosecutor to initiate prosecution against an accused person will be presumed to be lawful unless there is reason to think otherwise. This is a consequence of the high constitutional office held by the Attorney-General and the co-equal status of the prosecutorial power and the judicial power enshrined in Art 35(8) and Art 93 of the Constitution respectively".[31]

17 In exercising his prosecutorial discretion, the Public Prosecutor possesses absolute control and direction of prosecutions for criminal offences. The decision to prosecute is brought if there is sufficient evidence to make out an offence under the law and the Public Prosecutor's assessment of where the public interest lies.[32] Acting in the name of the public requires that "criminal prosecutions are brought not to further the private interests of the victim, but to further the larger public interest".[33] Law enforcement agencies, such as the Singapore Police Force, the Central Narcotics Bureau, and the Corrupt Practices Investigation Bureau, conduct investigations and make recommendations to the Public Prosecutor. However, the final decision on whether to prosecute and on what criminal charges lies solely with the Public Prosecutor.[34]

[30] Lucien Wong, Attorney-General, "Prosecution in the Public Interest", speech at *The Singapore Law Review* Lecture 2017 (19 October 2017) at para 17 <https://www.agc.gov.sg/docs/default-source/default-document-library/singapore-law-review-annual-lecture-2017---prosecuting-in-the-public-interest.pdf> (accessed 14 February 2024).

[31] *Kottakki Srinivas Patnaik v Attorney-General* [2024] SGCA 5.

[32] Lucien Wong, Attorney-General, "Prosecution in the Public Interest", speech at *The Singapore Law Review* Lecture 2017 (19 October 2017) at paras 9 and 10 <https://www.agc.gov.sg/docs/default-source/default-document-library/singapore-law-review-annual-lecture-2017---prosecuting-in-the-public-interest.pdf> (accessed 14 February 2024).

[33] Lucien Wong, Attorney-General, "Prosecution in the Public Interest", speech at *The Singapore Law Review* Lecture 2017 (19 October 2017) at para 22 <https://www.agc.gov.sg/docs/default-source/default-document-library/singapore-law-review-annual-lecture-2017---prosecuting-in-the-public-interest.pdf> (accessed 14 February 2024).

[34] Lucien Wong, Attorney-General, "Prosecution in the Public Interest", speech at *The Singapore Law Review* Lecture 2017 (19 October 2017) at para 20 <https://www.agc.gov.sg/docs/default-source/default-document-library/singapore-law-review-annual-lecture-2017---prosecuting-in-the-public-interest.pdf> (accessed 14 February 2024).

18 This discretion as to when and how prosecutorial powers are exercised is unfettered except for unconstitutionality or when the power is exercised in bad faith.[35] In this regard, in the seminal case of *Chng Suan Tze v Minister for Home Affairs*[36] ("***Chng Suan Tze***"), the Court of Appeal stated that, "the notion of a subjective or unfettered discretion is contrary to the rule of law. All power has legal limits and the rule of law demands that the courts should be able to examine the exercise of discretionary power".[37] Similarly, the Court of Three Judges in *Law Society of Singapore v Tan Guat Neo Phyllis*[38] also referred to this statement of constitutional principle in affirming that the constitutional power to prosecute, although not unfettered, is judicially reviewable only where: (**a**) prosecutorial power is abused, *ie*, where it is exercised in bad faith for an extraneous purpose; and (**b**) the exercise of prosecutorial power contravenes constitutional protections and rights.[39]

19 There are duties inherent to the role of the prosecutor. Prosecutors are more than advocates and solicitors. They are "ministers of justice" assisting in the administration of justice.[40] In this regard, the apex court has stated that:[41]

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[35] *Law Society of Singapore v Tan Guat Neo Phyllis* [2008] 2 SLR(R) 239 at [145]–[149]. The Court of Appeal affirmed this principle in *Ramalingam Ravinthran v Attorney-General* [2012] 2 SLR 49 at [17]. In *Syed Suhail bin Syed Zin v Attorney-General* [2021] 1 SLR 809, the apex court noted at [63]:

> Although the acts of those holding public office enjoy a presumption of constitutionality (see *Ramalingam Ravinthran v Attorney-General* [2012] 2 SLR 49 at [47], citing *Howe Yoon Chong* (1990) ([53] supra) at [13]), this presumption, like that enjoyed by primary legislation, "can be no more than a starting point" that the acts in question "will not presumptively be treated as suspect" (*Saravanan Chandaram v Public Prosecutor and another matter* [2020] 2 SLR 95 at [154]; and see *Wham Kwok Han Jolovan v Public Prosecutor* [2020] SGCA 111 at [26]–[28]). In other words, it merely reflected the incidence of the evidential burden of proof on the appellant. Further, the same searching scrutiny we have just described would equally apply when considering whether the appellant has discharged his evidential burden and thereby overcome the presumption of constitutionality.

[36] [1988] 2 SLR(R) 525.

[37] *Chng Suan Tze v Minister for Home Affairs and others and other appeals* [1988] 2 SLR(R) 525 at [86]. In *Law Society of Singapore v Tan Guat Neo Phyllis* [2008] 2 SLR(R) 239 at [149] and in *Yong Vui Kong v Attorney- General* [2011] 2 SLR 1189 at [78], the gloss "legal" was added to "power": "… All legal power has legal limits and the rule of law demands that the courts should be able to examine the exercise of discretionary power."

[38] [2008] 2 SLR(R) 239.

[39] *Law Society of Singapore v Tan Guat Neo Phyllis* [2008] 2 SLR(R) 239 at [149].

[40] *Muhammad bin Kadar and another v Public Prosecutor* [2011] 3 SLR 1205 at [109]. See also *R v Banks* [1916] 2 KB 621 at 623.

[41] *Muhammad bin Kadar and another v Public Prosecutor* [2011] 3 SLR 1205 at [109]. See also *R v Banks* [1916] 2 KB 621 at 623.

> The duty of prosecutors is not to secure a conviction at all costs. It is also not their duty to timorously discontinue proceedings the instant some weakness is found in their case. Their duty is to assist the court in coming to the correct decision. Although this assistance often takes the form of presenting evidence of guilt as part of the adversarial process, the prosecutor's freedom to act as adversary to defence counsel is qualified by the grave consequences of criminal conviction. The certainty required by the court before it will impose these consequences is recognised in the presumption of innocence enjoyed by the accused. For this reason, a decision to prosecute in the public interest must be seen as compatible with a willingness to disclose all material that is prima facie useful to the court's determination of the truth, even if it is unhelpful or even detrimental to the Prosecution's case.

20 Furthermore, the Court of Appeal has stated that "The Prosecution acts at all times in the public interest. In that light, it is generally unnecessary for the Prosecution to adopt a strictly adversarial position in criminal proceedings".[42] In a similar vein, Justice Steven Chong (as he then was), speaking extra-judicially, put it in these terms:[43]

> The accused, the Court and the community are entitled to expect that in performing his function in presenting the case against an accused person, the Prosecutor will act with fairness and detachment with the sole and unadulterated objective to establish the whole truth in accordance with the law. ... The role of the Prosecutor therefore excludes any notion of winning or losing a case. ... His role is to seek and achieve justice, and not merely to convict. The role is to be discharged with an ingrained sense of dignity and integrity.

[42] *Muhammad Nabill bin Mohd Fuad v Public Prosecutor* [2020] 1 SLR 984 at [37].
[43] See Steven Chong, Justice of the High Court, "The Role and Duties of a Prosecutor – The Lawyer Who Never 'Loses' a Case, Whether Conviction or Acquittal", speech to Legal Service Officers and Assistant Public Prosecutors (10 November 2011) at para 8.

(3) The Judiciary

21 Article 93 of the Singapore Constitution vests judicial power in a Supreme Court and in such subordinate courts as the law may provide. In criminal matters, the Judiciary's role is to adjudicate on criminal cases brought by the Public Prosecutor, specifically, to decide on the accused person's legal guilt. The standard of proof in criminal cases requires the Public Prosecutor to prove beyond a reasonable doubt the charge(s) against an accused person. Having determined that the accused person is guilty of the offence he is charged with, the court is duty-bound to "pass sentence according to law".[44] In Singapore, an accused person can only be found guilty of a capital charge if the prosecution leads evidence and proves its case at trial. This strict requirement applies even if the accused does not contest the charge.

22 Following an accused person's conviction, the courts will exercise their sentencing discretion in line with the sentences prescribed by Parliament for the relevant offences. The prescribed type or range of sentences for an offence is determined by Parliament after taking into account policy considerations. Where a law is found not to violate any constitutional prohibitions, the Court of Appeal has observed that "whether or not our existing MDP [mandatory death penalty] legislation should have been enacted and/or whether such legislation should be modified or repealed are policy issues that are for Parliament to determine in the exercise of its legislative powers under the Singapore Constitution. It is for Parliament, and not the courts, to decide on the appropriateness or suitability of the MDP as a form of punishment for serious criminal offences".[45] The polycentric nature of such issues means that the Judiciary and the judicial process are not suitably equipped for nor properly accountable to deal with them.[46]

23 After the sentence is passed, the Executive (in cases where imprisonment is imposed, this will principally be the Singapore Prison Service governed by the Prisons Act 1933) is legally bound to carry the

[44] Criminal Procedure Code 2010 s 228(6).
[45] *Yong Vui Kong v Public Prosecutor* [2010] 3 SLR 489 at [122]. See also Article 2 of the Singapore Constitution, which states that law "includes written law and any legislation of the United Kingdom or other enactment or instrument whatsoever which is in operation in Singapore and the common law in so far as it is in operation in Singapore and any custom or usage having the force of law in Singapore".
[46] *Tan Seet Eng v Attorney-General and another matter* [2016] 1 SLR 779 at [93].

sentence into effect. That said, it should be highlighted that Article 22P of the Singapore Constitution empowers the Executive, through the exercise of the extraordinary power of clemency, to grant a pardon, or any reprieve or respite to an offender, or to remit his sentence.[47]

24 The bottom line in judicial review in a case involving the death penalty, whether under constitutional law or administrative law, is that "the notion of a subjective or unfettered discretion is contrary to the rule of law. All power has legal limits and the rule of law demands that the courts should be able to examine the exercise of discretionary power".[48] The Legislature and Executive do not possess the unfettered power or discretion to legislate and to make policy and exercise executive powers in any manner they like. Governmental actions and powers cannot run afoul of the Constitution, as the supreme law of the land, and legislation. Furthermore, in undertaking judicial review of the Executive's decision-making process, the courts' role remains abidingly as the last line of defence. Judicial review is the "sharp edge that keeps government action within the form and substance of the law".[49]

C. Death penalty as a criminal justice issue

25 Singapore's declared and consistent approach to the death penalty is that it is a criminal justice issue, rather than a human rights one.[50] Relatedly, its approach to human rights has been described as such:[51]

[47] See **Part V(*A*)** of this article.
[48] Wee Chong Jin CJ in *Chng Suan Tze v Minister for Home Affairs* [1988] 2 SLR(R) 525 at [86]. Article 93 of the Constitution is commonly cited to support the Judiciary's power of judicial review.
[49] See Chief Justice Sundaresh Menon, "The Rule of Law: The Path to Exceptionalism" (2016) 28 SAcLJ 413 at para 30.
[50] See, *eg*, Ministry of Information, Communications and the Arts, "The Singapore Government's Response to Amnesty International's Report '*Singapore: The Death Penalty – A Hidden Toll on Executions*'" (30 January 2004) <https://www.nas.gov.sg/archivesonline/data/pdfdoc/2004013005.htm> (accessed 16 February 2024).
[51] Singapore, *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: 2nd Universal Periodic Review*, UN Human Rights Council, A/HRC/WG.6/24/SGP/1 (18-29 January 2016) at para 4. See also Singapore, *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: 3rd Universal Periodic Review*, UN Human Rights Council, A/HRC/WG.6/38/SGP/1 (3-14 May 2021).

> We are fully committed to the protection and promotion of the human rights of our citizens. We take a practical, not an ideological approach to the realisation of human rights. Human rights exist in specific cultural, social, economic and historical contexts. In every country, accommodation must be reached among the competing rights of the individuals who make up the nation and the interests of society as a whole. We therefore firmly apply the rule of law to ensure stability, equality and social justice, which are the necessary conditions for respecting the fundamental human rights enshrined in our Constitution and the Universal Declaration of Human Rights. We also focus on delivering good socio-economic outcomes through pragmatic public policies.

26 On the inter-relationship between customary international law and domestic law, Singapore adopts a dualist conception. The Court of Appeal has held that a customary international norm is part of Singaporean domestic law only where it had "already been recognised and applied by a domestic court as part of Singapore law".[52] In other words, customary international law is not self-executing and does not automatically apply in the sense of becoming (Singapore) "law". Thus, for customary international law to be part of domestic law, a Singapore court would first need to determine whether the relevant customary international law rule is consistent with domestic statutes and judicial precedent "and either declare that rule to be part of Singapore law or apply it as part of our law".[53]

III. Legal framework regarding right to life

27 With an overview of Singapore's approach towards the administration of criminal justice, this section focuses on the legal regime on the right to life. Specifically, it will, following a short introduction to Singapore's conception of the right to life, examine the legal frameworks governing: (**a**) the crimes punishable with the death penalty; (**b**) the discretionary death penalty regime; (**c**) appeals against

[52] *Yong Vui Kong v Public Prosecutor* [2010] 3 SLR 489 at [44].
[53] *Yong Vui Kong v Public Prosecutor* [2010] 3 SLR 489 at [90]–[91].

the death sentence; (**d**) the conduct of criminal revisions; (**e**) last-minute applications for review of the death sentence; as well as (**f**) exclusions from the death penalty.

A. The right to life as a fundamental liberty

28 The right to life is a fundamental liberty guaranteed by the Singapore Constitution. 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 word "life" in Article 9(1) is generally taken to refer to the physical life of an individual person. This constitutional provision does not outlaw the use of the death penalty in Singapore, and capital punishment is an integral part of the administration of criminal justice. As the Court of Appeal observed in *Yong Vui Kong v Public Prosecutor*[54], while the right to life is "the most basic of human rights", the Singapore Constitution permits the State to take away a person's life "in accordance with law".[55]

29 The word "law" in the phrase "[i]n accordance with law" in Article 9(1) is broadly interpreted as extending beyond statutory or posited law. A literal reading of "law" in the Singapore Constitution, especially in Part IV concerning fundamental liberties, was rejected by the Judicial Committee of the Privy Council in the Singapore case of *Ong Ah Chuan v Public Prosecutor*[56] ("***Ong Ah Chuan***"). Singapore's then apex court determined that the word "law" in the Singapore Constitution could not be confined to a collection of rules only properly passed by a competent legislature.[57] Based on the Westminster model, the Singapore Constitution is an integral part of "a system of law which incorporates those fundamental rules of natural justice that had formed part and parcel of the common law in England that was in operation in Singapore at the commencement of the Constitution".[58]

[54] [2010] 3 SLR 489.
[55] *Yong Vui Kong v Public Prosecutor* [2010] 3 SLR 489 at [84].
[56] [1979-1980] SLR(R) 710.
[57] The Court of Appeal became Singapore's final court of appeal on 8 April 1994, when the Judicial Committee (Repeal) Act 1994 came into effect. This Act abolished all appeals to the Judicial Committee of the Privy Council. By 1989, however, appeals to the Privy Council were already severely restricted.
[58] *Ong Ah Chuan v Public Prosecutor* [1979-1980] SLR(R) 710 at [26].

30 The Court of Appeal's decision in *Yong Vui Kong v Public Prosecutor*[59] made it clear that the fundamental rules of natural justice are procedural rights aimed at securing a fair trial, and do not contain substantive legal rights.[60] While fundamental rules of natural justice (which are part of the common law)[61] are not automatically incorporated into the Criminal Procedure Code 2010 ("**CPC**") or other criminal legislation, they may be used to supplement the Code or other criminal legislation where these are silent on a matter of criminal procedure.[62] The fundamental principles of natural justice are aligned with the norms intrinsic to law itself, such as fairness and justice, which "affords 'protection' for the individual in the enjoyment of his fundamental liberties".[63]

31 Section 9A of the Interpretation Act 1965 provides for the purposive interpretation of written law. This means that in statutory interpretation, the judicial enquiry can be directed at ascertaining the statutory purpose behind any particular rule enacted.[64] In a recent case, a five-judge Court of Appeal unanimously endorsed the importance of pitching correctly the level of generality of a legislative purpose or object. The legislative purpose or object should not be articulated in whatever terms in order to support one's preferred interpretation of the law.[65]

32 In *Ong Ah Chuan*, the Privy Council identified three "fundamental elements" in Singapore's administration of criminal justice. They are: (**a**) criminal convictions are secured only on proof beyond reasonable doubt by the prosecution of all constituent elements of the offence; (**b**) the tribunal in question must not be biased; and (**c**)

[59] [2015] 2 SLR 1129.
[60] *Yong Vui Kong v Public Prosecutor* [2015] 2 SLR 1129 at [62], [64], [73] and [75].
[61] These include the rule against bias and hearing both sides to a dispute.
[62] Section 6 of the Criminal Procedure Code 2010 states that where there are matters of criminal procedure for which no special provision has been made by the Code or any other law for the time being in force, "such procedure as the justice of the case may require, and which is not inconsistent with this Code or such other law, may be adopted".
[63] *Ong Ah Chuan v Public Prosecutor* [1979-1980] SLR(R) 710 at [26].
[64] Interpretation Act 1965. See also *Attorney-General v Ting Choon Meng* [2017] 1 SLR 373 at [59], *Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850 at [54], and *Public Prosecutor v Lam Leng Hung and others* [2018] 1 SLR 659 at [67].
[65] See *Public Prosecutor v Lam Leng Hung* [2018] 1 SLR 659 at [67]–[72]. See further the Court of Appeal's decision in *Tan Cheng Bock v Attorney-General* [2017] 5 SLR 850 on the purposive approach to constitutional interpretation. On this point regarding the purposive interpretation of written law, see also the Chief Justice's reasoning in *Attorney-General v Ting Choon Meng* [2017] 1 SLR 373 at [60]–[61].

the accused person must be afforded and heard in his defence.[66] A breach of any of these constitutional norms of natural justice would form the basis for a constitutional challenge for the violation of Article 9(1).[67]

33 Furthermore, a convicted person's loss of his right to life under Article 9(1) of the Constitution at the end of the criminal process does not extinguish his other legal rights. The State must exercise its discretion in a manner which is consistent with the prisoners' legal and constitutional rights. In *Yong Vui Kong v Attorney-General*[68], the Court of Appeal cited with approval a Privy Council's ruling that "a man is still entitled to his fundamental rights, and in particular to his right to the protection of the law, even after he has been sentenced to death".[69] The rule of law demands that the courts should be able to examine the exercise of discretionary power by the state. This cherished notion of the rule of law, and how unfettered discretion is problematic in law, was first articulated in *Chng Suan Tze*, where the Court of Appeal emphasised that:[70]

> … In our view, the notion of a subjective or unfettered discretion is contrary to the rule of law. … If therefore the Executive in exercising its discretion under an Act of Parliament has exceeded the four corners within which Parliament has decided it can exercise its discretion, such an exercise of discretion would be *ultra vires* the Act and a court of law must be able to hold it to be so…

34 Hence, bearing in mind that the interpretation of Article 9(1) authorises legislation imposing the death penalty for certain offences (subject to compliance with the three "fundamental elements" of the criminal justice system mentioned in *Ong Ah Chuan*), the rest of this section will consider the offences that attract the death penalty in Singapore, the introduction of the discretionary death penalty regime, appeals against the death sentence, reopening concluded criminal

[66] *Ong Ah Chuan v Public Prosecutor* [1979-1980] SLR(R) 710 at [27].
[67] *Ong Ah Chuan v Public Prosecutor* [1979-1980] SLR(R) 710 at [26].
[68] [2011] 2 SLR 1189.
[69] *Yong Vui Kong v Attorney-General* [2011] 2 SLR 1189. The Privy Council case is *Thomas Reckley v Minister of Public Safety and Immigration (No 2)* [1996] AC 527 and Lord Goff's quote is at 540.
[70] *Chng Suan Tze v Minister for Home Affairs* [1988] 2 SLR(R) 525 at [86].

appeals and post-appeal applications, and offenders excluded from the death penalty.

B. Crimes punishable with the death penalty

35 Introduced in the late nineteenth century during the colonial era, capital punishment has been an integral part of Singapore's criminal justice system in the quest for law and order.[71] The death penalty is imposed for only the most serious of crimes. Personal safety and public security are valued in their own right and are integral to the creation of a cohesive, peaceful, and prosperous country.

36 Thirty-one offences on the statute books attract the death penalty, with fifteen of them being mandatory sanctions upon conviction.[72] The table at **Annex A** lists the various offences that attract the death penalty. It also indicates which offences would result, upon conviction, in the application of the mandatory death penalty. Broadly, these offences can be grouped under the following categories:

(a) Offences against the person (murder, kidnapping, hostage-taking);

(b) Drug offences (trafficking, import and export, and manufacture of drugs);

(c) Terrorism;

(d) Offences directed against nuclear facilities;

[71] See further, Asad Latif, *Singapore Chronicles: Policing* (Singapore: Institute of Policy Studies & Straits Times Press, 2017) at 7-15, for the so-called inverted "order and law" approach in Singapore.

[72] The Criminal Law Reform Act 2019 s 38 which, *inter alia*, repealed and re-enacted s 121A of the Penal Code (on offences against the President's person) limiting its scope by removing the "thought crime" limbs of the offence. More importantly, the death penalty was removed as a punishment option for this offence, and an imprisonment sentence of up to 20 years included as a sentencing option. Section 121A now reads: "Whoever plans the death of or hurt to or unlawful imprisonment or restraint of the President, shall be punished with imprisonment for life or for a term which may extend to 20 years and shall, if he is not sentenced to imprisonment for life, also be liable to fine". The repealed section read as: "Whoever compasses, imagines, invents, devises, or intends the death of or hurt to or imprisonment or restraint of the President, shall be punished with death, or with imprisonment for life and shall, if he is not sentenced to death, also be liable to fine".

(e) Firearms/explosives offences;

(f) Offences against the state; and

(g) Other offences.

37 In deciding whether to apply the death penalty to a particular offence, the Government considers (among other factors) three key considerations. First, the seriousness of an offence, in terms of the harm that the offence will cause to the victim and to society. Second, how frequent or widespread an offence is. Third, the need for deterrence. These considerations are considered in totality. For example, the fact that an offence is not widespread now, may not, by itself, be a decisive factor.[73]

C. Introduction of the discretionary death penalty regime

38 The death penalty for murder was mandatory for close to 130 years (1883-2012) until Parliament passed the Penal Code (Amendment) Bill 2012.[74] With the landmark amendments, only murder falling within the meaning of s 300(*a*) of the PC, that is, intentional killing, will attract the mandatory death penalty. For all other forms of murder where there was no intention to kill (*viz,* ss 300(*b*), (*c*), and (*d*)), the court has the discretion to impose a sentence of life imprisonment and caning (where applicable), in lieu of the death penalty.

39 The jurisprudence on the imposition of the discretionary death penalty in murder cases is not in dispute. It can be summarised as follows:

(a) First, the death penalty is warranted where the actions of the murderer "*outrage the feelings of the community*".[75] In

[73] *Singapore Parliamentary Debates, Official Report* (5 October 2020) vol 95 (K Shanmugam, Minister for Home Affairs). On the trafficking of significant quantities of drugs, the Minister noted that the capital sentence threshold amount of 15 grams of pure heroin (diamorphine) was equivalent to 1,250 straws of heroin, which could feed 180 drug abusers for a week, stating that "This is bringing death, or at least a life of ruin, to a large number of abusers and their families".

[74] See *Singapore Parliamentary Debates, Official Report* (14 November 2012) vol 89 (K Shanmugam, Minister for Law). See also *Singapore Parliamentary Debates, Official Report* (9 July 2012) vol 89 (K Shanmugam, Minister for Law).

[75] *Public Prosecutor v Chia Kee Chen* [2018] 2 SLR 249 at [110(a)] (emphasis in original).

other words, the offender's actions are "so grievous an affront to humanity and so abhorrent that the death penalty may … be the appropriate, if not the only, adequate sentence".[76]

(b) Second, the actions of the offender would outrage the community where the offender had acted in a way that "*exhibits viciousness or a blatant disregard for human life*".[77]

(c) Third, in determining whether the offender had acted in blatant disregard for human life, two relevant factors are: (**i**) the offender's mental state at the commission of the offence; and (**ii**) the offender's actual role or participation in the attack.[78]

(d) Fourth, the court will weigh all the circumstances, including relevant factors such as the motive and intention of the offender at the time of the offence and the offender's age and intelligence, even as the offender's regard for human life remains at the forefront of the court's consideration.[79]

40 The mandatory death penalty for certain drug offences was introduced in 1975, two years after the MDA was first enacted into law. It was explained then that the rationale for the imposition of the mandatory death penalty for certain drug offences was the increase in the number of major traffickers and financiers apprehended since the MDA was passed. If not dealt with appropriately, the government argued that the drug scourge could potentially become a "dangerous national security problem".[80] Left unchecked, the drug problem could threaten the very survival of Singapore.[81] Against this context, the death penalty, which is imposed for the import, export, and trafficking of certain drugs

[76] *Public Prosecutor v Kho Jabing* [2015] 2 SLR 112 at [44].
[77] *Public Prosecutor v Chia Kee Chen* [2018] 2 SLR 249 at [110(b)] (emphasis in original). This is a factual inquiry of the way the offender acted.
[78] *Michael Anak Garing v Public Prosecutor* [2017] 1 SLR 748 at [54].
[79] *Public Prosecutor v Kho Jabing* [2015] 2 SLR 112 at [51].
[80] *Singapore Parliamentary Debates, Official Report* (20 November 1975) vol 34 at col 1379 (Chua Sian Chin, Minister for Home Affairs).
[81] *Singapore Parliamentary Debates, Official Report* (20 November 1975) vol 34 at cols 1381-1382 (Chua Sian Chin, Minister for Home Affairs).

above a specified threshold quantity, is regarded as a necessary deterrent for the continued effectiveness of Singapore's anti-drug regime.[82]

41 The Singapore authorities regard the drug menace then and now as a serious problem with severe impact on the individual, family, community and society. Singapore's no-nonsense approach to curbing the scourge that drugs pose is well known internationally, especially at a time when some jurisdictions are decriminalising drug consumption. The severe penalties for drug offences serve to provide the necessary deterrence to everyone in the drug demand and supply chain: drug lords, traffickers, pushers, and drug addicts. The Singapore government continually reaffirms Singapore's strong anti-drug stance and renews the fight against drugs through "(**a**) applying tough laws to deter the trafficking of drugs into Singapore; (**b**) investing in the rehabilitation of drug addicts; and (**c**) preventing a drug-tolerant culture from being established in Singapore".[83] The Inter-Ministry Committee ("**IMC**") on Drug Prevention for Youths, which seeks to develop a whole-of-government response to the youth drug problem, was established in 2023 to deal with the youth drug problem.[84]

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[82] *Singapore Parliamentary Debates, Official Report* (20 November 1975) vol 34 at col 1385 (Chua Sian Chin, Minister for Home Affairs). In 1990, the law was amended to provide for the death penalty for trafficking more than 1.2kg of opium: Misuse of Drugs (Amendment) Act 1989 (Act 38 of 1989).

[83] For a recent discussion on the drugs menace in Singapore, see the parliamentary debate on the motion, "Strengthening Singapore's Fight against Drugs," where it was resolved, "That this House strengthens the fight against drugs by reaffirming Singapore's strong anti-drug stance and calls on the Government to continue (**a**) applying tough laws to deter the trafficking of drugs into Singapore; (**b**) investing in the rehabilitation of drug addicts; and (**c**) preventing a drug-tolerant culture from being established in Singapore". See *Singapore Parliamentary Debates, Official Report* (4 April 2017) vol 94. In 2019, the anti-drug policy moved towards a more calibrated approach to focus on helping persons who are pure drug abusers. If they only abuse drugs, and have not committed other offences, they are channelled to receive treatment, and do not get a criminal record: Misuse of Drugs (Amendment) Act 2019 (Act 1 of 2019).

[84] At the 2024 Committee of Supply Debate on the budget estimates for his Ministry, the Home Affairs Minister K Shanmugam touched on three of the IMC's planned initiatives – see K Shanmugam, Minister for Home Affairs and Minister for Law, "United and Secure – Safeguarding Singapore's Future" speech at the 2024 Committee of Supply Debate 2024 (29 February 2024) <https://www.mha.gov.sg/mediaroom/parliamentary/committee-of-supply-debate-2024-on-united-and-secure-safeguarding-singapore-future/> (accessed 27 May 2024). First, from 2024, every third Friday of May will be designated as 'Drug Victims Remembrance Day', to remember the victims of drug abuse. The Government, schools and institutes of higher learning will be organising various activities on Remembrance Day. Secondly, schools will cover preventive drug education (PDE) in their school curricula, by extending it to other subjects, such as General Paper. Thirdly, to better sustain the drug-free message beyond schools, PDE will be enhanced for full-time national servicemen and better equip national service commanders to identify and support drug

42 In 2012, the Government announced the introduction of the discretionary death penalty regime for drug offences. Under this regime, for drug trafficking, and the import and export of drugs, where specific, tightly defined conditions are met, the death penalty is either no longer mandatory but imposed at the discretion of the courts or removed altogether. This was to "keep pace with the evolving operational landscape and societal changes".[85] Drug syndicates had grown more sophisticated in their operation and were targeting and exploiting persons from vulnerable groups to perform the risky work of transporting the drugs while managing the operations from afar, often from outside the jurisdiction.[86] The premise for making substantive assistance a precondition for alternative sentencing provided law enforcement agencies with an "additional avenue" to "reach further into the networks" and target those who are higher up in the supply chain.[87]

43 Under the discretionary death penalty regime, the court has a discretion in sentencing where:

(a) The accused proves on a balance of probabilities that he was merely a "courier" – that is to say, that his role in the offence was restricted only to the transportation, sending, or delivery of a controlled drug; *and*

(b) The Public Prosecutor certifies that the accused has substantively assisted the Central Narcotics Bureau in disrupting drug trafficking activities within or outside Singapore.

abusers and those at risk. See further *Singapore Parliamentary Debates, Official Report* (8 May 2024) vol 95 (K Shanmugam, Minister for Home Affairs) for the Ministerial Statement on Singapore's national drug control policy.

[85] See *Singapore Parliamentary Debates, Official Report* (9 July 2012) vol 89 (Teo Chee Hean, Deputy Prime Minister and Minister for Home Affairs) for the Ministerial Statement on "Enhancing Our Drug Control Framework and Review of Death Penalty".

[86] *Singapore Parliamentary Debates, Official Report* (9 July 2012) vol 89 (Teo Chee Hean, Deputy Prime Minister and Minister for Home Affairs). See also the subsequent debate on the Second Reading of the Misuse of Drugs (Amendment) Bill 2012 in *Singapore Parliamentary Debates, Official Report* (14 November 2012) vol 89.

[87] *Singapore Parliamentary Debates, Official Report* (14 November 2012) vol 89 (Teo Chee Hean, Deputy Prime Minister and Minister for Home Affairs).

Under the discretionary death penalty regime, the court has the discretion to impose a term of life imprisonment and caning, instead of the death penalty, for "substantive assistance" cases.[88]

44 As part of the discretionary death penalty regime, another category of drug traffickers who might be spared the death penalty is where a drug trafficker suffered from "diminished responsibility" at the time of alleged offence. Under this category, the accused needs to prove on a balance of probabilities that: (**a**) he was only a courier; *and* (**b**) he was suffering from such abnormality of mind as had substantially impaired his mental responsibilities for the acts and omissions constituting the offence. In such cases of "diminished responsibility", the court can only impose life imprisonment.[89]

45 Crucially, the 2012 amendment Acts to the PC and the MDA provided that all persons who were convicted of capital charges before the entry into force of the amendment Acts could apply to be re-sentenced under the new sentencing framework.[90] Earlier, in 2010, the CPC was amended to provide that the High Court (now the General Division of the High Court) shall not record a guilty plea in a capital case unless the accused is tried and the Public Prosecutor leads evidence to prove that the elements of the offence have been made out in a trial.[91] This requirement is an additional safeguard before the imposition of the death penalty and helps ensure that no accused person is convicted of a capital offence unless there is sufficient evidence to prove the person's guilt.

46 The Singapore government has determined that the mandatory death penalty is not needed for all types of serious crimes. This is an important first step notwithstanding the fact that the attraction and force of the mandatory death penalty was its unequivocal demonstration of zero tolerance and resolve in maximum deterrence. Yet, the shift to the

[88] On this discretion of court not to impose sentence of death in certain circumstances, see s 33B of the Misuse of Drugs Act 1973.
[89] See also s 33B of the Misuse of Drugs Act 1973.
[90] See s 4 of the Penal Code (Amendment) Act and s 27 of the Misuse of Drugs (Amendment) Act.
[91] Criminal Procedure Code 2010 s 227(3). This provision was introduced via the Criminal Procedure Code 2010, which commenced on 2 January 2011.

discretionary death penalty regime should not be misconstrued as letting up on serious crimes such as drug trafficking and murders.[92]

D. Appeals against the death sentence

47 All capital offences are under the jurisdiction of the General Division of the High Court.[93] Trials involving capital offences are heard in open court and the public may attend the trials. Any written judgment or grounds of decision of the trial court and the appellate court (if an appeal is filed) are made available online at the Supreme Court's website. In some cases, an oral judgment or an *ex-tempore* judgment may be delivered in court.

48 Appeals involving the death penalty against the General Division of the High Court's decisions are made to the Court of Appeal, Singapore's apex court. A convicted person sentenced to death by the trial court is entitled to appeal against both the conviction and the sentence.[94] A judgment, sentence or order of the General Division of the High Court may be reversed or set aside only where the Court of Appeal is "satisfied that it was wrong in law or against the weight of the evidence or, in the case of a sentence, manifestly excessive or manifestly inadequate in all the circumstances of the case".[95]

49 Singapore is "still paradigmatically a one-appeal jurisdiction".[96] The appeal process is provided for in s 377 of the CPC: "… [a] person who is not satisfied with any judgment, sentence or order of a trial court in a criminal case or matter to which he is a party may appeal to the appellate court against that judgment, sentence or order in respect of any error in law or in fact, or in an appeal against sentence, on the ground that the sentence imposed is manifestly excessive or

[92] See also Chan Wing Cheong, "Escape from the Hangman's Noose? Singapore's Discretionary Death Penalty for Drug Traffickers" (2023) 24(1) *Australian Journal of Asian Law* 83.
[93] The criminal jurisdiction of the District Courts is limited to trying offences for which the maximum term of imprisonment does not exceed 10 years – see Criminal Procedure Code 2010 s 8(1)(*a*). The General Division of the High Court, in the exercise of its original criminal jurisdiction, generally tries cases where the offences are punishable with death or imprisonment for a term which exceeds 10 years.
[94] But see s 375 of the Criminal Procedure Code 2010 where an accused who had pleaded guilty and has been convicted on that plea in accordance with Criminal Procedure Code "may appeal only against the extent or legality of the sentence".
[95] Criminal Procedure Code 2010 s 394.
[96] *Kho Jabing v Public Prosecutor* [2016] 3 SLR 135 at [8].

manifestly inadequate". Where an accused person has pleaded guilty and has been convicted on that plea, he may appeal only against the extent or legality of the sentence.[97] Section 374(2) of the CPC provides that an appeal may lie "on a question of fact or a question of law or on a question of mixed fact and law".

50 Section 377(2) of the CPC stipulates that a notice of appeal against any judgment, sentence or order of the trial court must be lodged by the appellant with the Registrar of the relevant trial court within 14 days after the date of the sentence. The time for filing a notice of appeal may be extended by the Court under s 380(1) of the CPC. Furthermore, s 383(3) of the CPC provides that in the case of a conviction involving a sentence of death, the execution of the death sentence "must not be carried out until after the sentence is confirmed by the Court of Appeal pursuant to an appeal by the accused, or a petition for confirmation by the Public Prosecutor".

51 Put simply, a sentence of death cannot be carried out on a convicted person until two tiers of courts have reviewed the matter of the person's sentence. The first-tier court hearing is in the General Division of the High Court, in which the matter of his sentence is considered. The second-tier court hearing is where an appeal on the sentence and/or conviction is considered by the Court of Appeal.

52 This process of scrutiny applies even in cases where a convicted person opts not to appeal, or withdraws his appeal. In such a circumstance, under s 394A(1) of the CPC, the Public Prosecutor shall, on the expiry of 90 days after the time allowed under the Code for appeal, lodge a petition for confirmation with the Registrar of the Supreme Court and serve the petition on the accused. When the petition for confirmation has been lodged, the trial court shall transmit to the Court of Appeal, the Public Prosecutor, and the accused or his advocate, a signed copy of the record of the proceedings and the grounds of decision free of charge.[98]

[97] Criminal Procedure Code 2010 s 375. See, generally, Division 1 of Part 20 of the Criminal Procedure Code 2010.
[98] Criminal Procedure Code 2010 s 394A(2). See, generally, Division 1A of Part 20 of the Criminal Procedure Code 2010.

53 In reviewing the death sentence, the Court of Appeal examines the record of proceedings and the grounds of decision and shall satisfy itself of the "correctness, legality and propriety" of: (**a**) the conviction of the accused for the offence for which the sentence of death is imposed; and (**b**) the imposition of the sentence of death for the offence, where the sentence of death is not mandatory by law.[99]

E. Reopening concluded criminal appeals – reviewing the appellate court's earlier decision

54 Where the Court of Appeal has confirmed the conviction and sentence, a person sentenced to death may apply for the case to be reviewed under Division 1B of Part 20 of the CPC, if the strict criteria for reviewing a concluded case are met. In other words, review applications are applications to review an earlier decision of an appellate court. Where there are genuine legal issues, the justice system provides ample opportunity to raise such issues in relation to the conviction and the sentence, and to have those issues considered by the courts at the appropriate time. To reiterate, a post-appeal review "takes place after the merits have been reviewed not only at trial but on appeal and it is a discretionary process that is made available to avert possible miscarriages of justice in rare cases where there has been some development in terms of the law or the evidence".[100]

55 The filing of unmeritorious applications to reopen concluded criminal appeals takes up valuable resources which can and should go towards the disposal of cases which are slated for appeal for the first time. It is accepted, however, that the Court of Appeal possesses the inherent power of review.[101] This power of review, whether to accommodate new legal arguments or fresh evidence, is an avenue for the correction of miscarriages of justice but it is also a power to be used sparingly.

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[99] Criminal Procedure Code 2010 s 394B.

[100] *Iskandar bin Rahmat and others v Attorney-General and another* [2022] 2 SLR 1018 at [45].

[101] This power is a facet of the judicial power vested in the Court of Appeal by virtue of Article 93 of the Singapore Constitution. See also the recently enacted statutory framework for the review of an earlier decision of an appellate court in Division 1B (Review of earlier decision of appellate court) in Part 20 of the Criminal Procedure Code 2010 which was introduced by the Criminal Justice Reform Act 2018 (and came into force on 31 October 2018).

56 The test to re-open a concluded case was set out by the Court of Appeal in *Kho Jabing v Public Prosecutor*[102]. The Court recognised that in criminal cases, "the principle of finality cannot be applied in as unyielding a manner as in the civil context", and it should, "in exceptional cases, be able to review its previous decisions where it is necessary to correct a miscarriage of injustice".[103]

57 The court's power to re-open a concluded criminal appeal is an important one to prevent miscarriages of justice. However, this must be carefully balanced against the need for finality in criminal proceedings and to deter frivolous and unmeritorious applications. A convicted prisoner facing imminent execution is likely to latch on to any possibility, no matter how remote, that he would not be executed. So would the convicted prisoner's family. Hence, they might be encouraged to make frivolous and unmeritorious applications for their cases to be reviewed. However, such applications are not only an abuse of the court process but could give convicted prisoners and their families false hopes that would ultimately be dashed, making the reality harder to accept.

58 In reviewing a concluded criminal appeal (as opposed to hearing an appeal or reviewing a case where there is no appeal), the Court of Appeal is primarily concerned with the question of whether there has been a miscarriage of justice, and not with the correctness of the decision under review.[104] A miscarriage of justice occurs in two scenarios: (**a**) where a decision of the court on conviction or sentence is shown to be "demonstrably wrong"; or (**b**) where the decision under challenge is tainted by fraud or a breach of natural justice, such that the

[102] [2016] 3 SLR 135.
[103] *Kho Jabing v Public Prosecutor* [2016] 3 SLR 135 at [2]. A recent example of such an exceptional case is *Ilechukwu Uchechukwu Chukwudi v Public Prosecutor* [2017] 2 SLR 741 where the fresh evidence adduced was held to be sufficiently exceptional to warrant a review under the principles set out in *Kho Jabing*. Subsequently, the Court of Appeal in an exceptional 4-1 majority decision (an enlarged coram from the usual coram of three judges) ruled that its 2015 conviction was demonstrably wrong in the light of the fresh evidence, which arose out of exceptional circumstances (in this case, an opinion proffered by the Prosecution's psychiatrist instead of the applicant's own appointed psychiatrist). Accordingly, the order of the High Court acquitting the Applicant of the trafficking charge was affirmed: *Ilechukwu Uchechukwu Chukwudi v Public Prosecutor* [2021] 1 SLR 67.
[104] See *Gobi a/l Avedian v Public Prosecutor* [2021] 1 SLR 180 at [21]–[24], citing and explaining s 394J of the CPC. It is important to distinguish between a review and an appeal, and between the statutory power of review (in no-appeal cases) and the inherent power of review. This is to avoid any misunderstanding of the statement that the Court of Appeal is not primarily concerned with the correctness of the decision when reviewing a concluded criminal appeal.

integrity of the judicial process is compromised.[105] An application for a review on the grounds of fraud or breach of natural justice is available to both the accused and the prosecution. Furthermore, pursuant to s 394G(2) of the CPC, the prosecution cannot make a review application on any other ground.

59 The concern of the review court in an alleged case of a miscarriage of justice is to strike "the right balance between the prevention of error (which demands some degree of corrigibility) and the according of proper respect to the principle of finality (which necessitates a policy of closure)".[106] The general test is that there must be "sufficient material on which the court can say that there has been a miscarriage of justice".[107] This test comprises two essential components:

(a) An evidential requirement of "sufficient material": The court must be satisfied that the material adduced in support of the application for review is both "new" and "compelling" before it will consider the application. The burden of producing the relevant material rests on the applicant; and

(b) A substantive requirement that a "miscarriage of justice" must have occurred. This is the threshold that must be crossed before the court will consider that a concluded criminal appeal ought to be reopened. The burden of proving this also rests on the applicant.[108]

60 The Court of Appeal emphasised that the principle of finality is no less important in cases involving the death penalty: "There is no question that as a modality of punishment, capital punishment is different because of its irreversibility. For this reason, capital cases deserve the most anxious and searching scrutiny".[109] The court also observed that:[110]

[105] See *Gobi a/l Avedian v Public Prosecutor* [2021] 1 SLR 180 at [21]–[24], citing and explaining s 394J of the CPC.
[106] *Kho Jabing v Public Prosecutor* [2016] 3 SLR 135 at [49].
[107] *Kho Jabing v Public Prosecutor* [2016] 3 SLR 135 at [24] and [44] which sets out the test for determining whether there is sufficient material for the Court to conclude that there has been a miscarriage of justice.
[108] *Kho Jabing v Public Prosecutor* [2016] 3 SLR 135 at [44]
[109] *Kho Jabing v Public Prosecutor* [2016] 3 SLR 135 at [50].
[110] *Kho Jabing v Public Prosecutor* [2016] 3 SLR 135 at [47].

> That said, this does not mean that society should stand paralysed with indecision, or that every legal finding must be open to continual challenge because of perpetual anxiety over the possibility of an error. The perfect, as they say, cannot be allowed to be the enemy of the good. Finality is also a function of justice. It would be impossible to have a functioning legal system if all legal decisions were open to constant and unceasing challenge, like so many tentative commas appended to the end of an unending sentence. Indeed, in the criminal context, challenges to legal decisions are very likely (and are also likely to be continuous and even interminable), given the inherently severe nature of criminal sanctions and the concomitant desire on the part of accused persons to avoid them as far as they can. The concern here is not just with the saving of valuable judicial resources (vital though that is), but also with the integrity of the judicial process itself. Nothing can be as corrosive of general confidence in the criminal process as an entrenched culture of self-doubt engendered by abusive and repetitive attempts to re-litigate matters which have already been decided.

61 The apex court's longstanding concern with repeated applications to reopen concluded criminal trials is with frivolous and unmeritorious applications and the abuse of the court process. As it noted of defence counsels who submit "last-minute applications" after the appeal process has been completed: "We take exception to such a drip-feeding approach which clearly squanders valuable judicial time. Strong reasons must be advanced to explain why a point taken later could not have been made earlier. The courts will not allow themselves to be used by either ingenious counsel or a determined applicant as a means for delaying the conclusion of a case".[111] Such applications would not only consume precious public resources, but it would also give convicted prisoners false hopes that they might not be executed.

[111] *Prabagaran a/l Srivijayan v Public Prosecutor and other matters* [2017] 1 SLR 173 at [19].

62 In late 2018, the CPC was amended to provide for a new statutory framework under which accused persons may apply to reopen concluded criminal appeals.[112] Under s 394H(1) of the CPC, an applicant must first obtain leave from the appellate court before making a criminal review application. Such an application may be dismissed either summarily or after an oral hearing. Before refusing a leave application summarily, the court must consider the applicant's written submissions (if any) and may, but is not required to, consider the Prosecution's written submissions (if any), as per s 394H(8) of the CPC.

63 Section 394J of the CPC codifies several judicial decisions on striking the right balance between preventing miscarriages of justice and the need for finality in criminal proceedings where all appeals have already been exhausted. Such applications will only be allowed in exceptional cases, where an accused person shows that there is sufficient material, either evidential or of a legal nature, on which the appellate court may conclude that there has been a miscarriage of justice. Such material may include legal arguments based on a change in the law after the appeal had been concluded. The Court of Appeal has reiterated its position in *Kho Jabing v Public Prosecutor*[113] that there is a miscarriage of justice only if there was a "manifest error" or an "egregious violation of a principle of law or procedure which strikes at the very heart of the decision under challenge".[114] This may be shown through the earlier decision being "demonstrably wrong" (s 394J(5)(*a*)), or that the earlier decision is tainted by fraud or a breach of the rules of natural justice such that the integrity of the judicial process is compromised (s 394J(5)(*b*)).[115]

64 To reiterate, an accused person may apply to reopen a concluded criminal appeal where there is sufficient material for legal arguments based on a change in the law after the appeal had been concluded. In *Public Prosecutor v Gobi a/l Avedian*[116], the accused was convicted of attempting to import a Class C controlled drug (a non-capital charge) and was sentenced to 15 years' imprisonment and ten

[112] See Division 1B of Part 20 of the CPC for the statutory framework governing the review of an earlier decision of appellate court.
[113] [2016] 3 SLR 135.
[114] *Syed Suhail bin Syed Zin v Public Prosecutor* [2021] 1 SLR 159 at [14].
[115] *Syed Suhail bin Syed Zin v Public Prosecutor* [2021] 1 SLR 159. At [14], the court reiterated that "*stringent* requirements that *must* be satisfied before the court will exercise its power to review an earlier decision of the appellate court" (emphasis in original).
[116] [2017] SGHC 145.

strokes of the cane.[117] On appeal, in *Public Prosecutor v Gobi a/l Avedian*[118] ("***Gobi (Appeal)***"), the Court of Appeal initially set aside the applicant's conviction on the non-capital charge and convicted him instead on a capital charge of importing diamorphine. The Court of Appeal held that he failed to rebut the presumption under s 18(2) of the MDA, which presumed that he knew the nature of the drugs. At the time of this decision, the law stated that the presumption under s 18(2) of the MDA encompassed the doctrine of wilful blindness.[119]

65 However, in the later case of *Adili Chibuike Ejike v Public Prosecutor*[120] ("***Adili***"), the Court of Appeal held that wilful blindness was a mental state falling short of actual knowledge, and therefore was incompatible with a presumption of knowledge. This decision was made in relation to the presumption under s 18(1) of the MDA, that is, that the accused had the drug in his possession and knew of the existence of the drug. The court expressly declined to decide on the implications of its decision for the separate presumption under s 18(2), that is, that the accused knew the nature of the drug. That said, the court noted that in two earlier decisions, it had previously decided that the presumption under s 18(2) of the MDA encompassed the doctrine of wilful blindness. Following *Adili*, in *Gobi a/l Avedian v Public Prosecutor*[121] ("***Gobi (Review)***"), the applicant in *Gobi (Appeal)* successfully applied under the statutory framework to reopen his concluded criminal appeal, after a change in the law.[122]

66 In *Gobi (Review)*, the Court of Appeal asked the parties to submit on whether the reasoning in *Adili* extended to the presumption under s 18(2) of the MDA, and if so, what the implications were for *Gobi (Appeal)*. The AGC submitted that the reasoning in *Adili* could extend to the presumption under s 18(2). The court agreed and departed from its two earlier decisions by finding that wilful blindness was not compatible with the presumption under s 18(2). The AGC had also submitted that there was no miscarriage of justice in *Gobi (Appeal)* because the AGC's case at trial and the appeal was consistently one of

[117] *Public Prosecutor v Gobi a/l Avedian* [2017] SGHC 145.
[118] [2019] 1 SLR 113.
[119] The Prosecution successfully appealed in *Public Prosecutor v Gobi a/l Avedian* [2019] 1 SLR 113.
[120] *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254.
[121] [2021] 1 SLR 180.
[122] *Gobi a/l Avedian v Public Prosecutor* [2021] 1 SLR 180.

actual knowledge, and not wilful blindness. However, the Court found that the case the prosecution ran at trial was one premised on wilful blindness, and reversed its previous decision.[123]

67 The AGC studies every decision issued by the courts in criminal matters, to determine if a decision affects previously decided cases. For instance, where a change in the law could potentially affect prior decided cases, the AGC will assess how the change may affect those cases. Where necessary, the AGC will take the appropriate action to surface these cases to the courts.[124]

68 As a safeguard, and as earlier explained (at para 52 onwards), where no appeal was filed, the law also provides for a mandatory statutory regime for the death penalty sentence to be reviewed and confirmed.[125]

F. Post-appeal applications in capital cases – last-minute applications

69 Applications to reopen concluded criminal appeals have burgeoned in recent years, often to delay executions after all appeals have been exhausted. The apex court recently stated that repeated applications to reopen *concluded* criminal appeals until a desired outcome is achieved would be the "very *perversion* of justice and fairness and would make a *mockery* of the rule of law".[126] These stringent requirements give effect to the principle of finality and reflect the fact that the review procedure involves a case that the Court has already heard at least twice.[127] The court "will not hesitate to summarily dismiss patently unmeritorious applications in the future – even at the

[123] In short, the applicant's conviction on the capital charge was set aside, the High Court's conviction on the amended non-capital charge as well as the sentence of 15 years' imprisonment and ten strokes of the cane was reinstated.
[124] The Law Minister, in his reply to a parliamentary question on 2 November 2020, indicated that the AGC was studying the decision in *Gobi (Review)*, and undertaking a review of how the decision might affect previous cases and cases that are currently before the courts: see *Singapore Parliamentary Debates, Official Report* (2 November 2020) vol 95 (K Shanmugam, Minister for Law and Home Affairs).
[125] See Division 1A to Part 20 of the Criminal Procedure Code 2010 specifying the requirements for the review of the sentence of death where no appeal was filed. The amendment Act enacted in 2012 came into force on 1 January 2013.
[126] *Syed Suhail bin Syed Zin v Public Prosecutor* [2021] 1 SLR 159 at [1] (emphasis in original).
[127] *Syed Suhail bin Syed Zin v Public Prosecutor* [2021] 1 SLR 159 at [20]. See also *Sinnappan a/l Nadarajah v Public Prosecutor* [2021] SGCA 10.

leave stage".[128] Earlier, the Court of Appeal stated that "once the processes of appeal and/or review have run their course, the legal process must recede into the background, and attention must then shift from the legal contest to the search for repose. We do not think it benefits anyone – not accused persons, not their families nor society at large – for there to be an endless inquiry into the same facts and the same law with the same raised hopes and dashed expectations that accompany each such fruitless endeavour".[129]

70 In 2022, Parliament passed the Post-appeal Applications in Capital Cases Act 2022 ("**PACC Act**") to clarify the process for last-minute applications in capital cases, after all avenues of appeal have been exhausted.[130] To be clear, PACC applications do not include review applications under the CPC.[131] The PACC procedure applies to applications filed by a person sentenced to death after the appeal in the capital case has concluded or the capital sentence has been confirmed. Second, the application is for a stay of execution of the capital sentence, or the determination of the application calls into question, or may call into question, the propriety of the conviction of, the imposition of the capital sentence on, or the carrying out of the capital sentence on, the prisoner awaiting capital punishment. As all appeals have been exhausted, no further applications are normally possible. Under this new law, the Court of Appeal's permission must be obtained before such an application can be filed.[132] In deciding whether to grant permission, the court has to consider the following four matters:[133]

[128] *Syed Suhail bin Syed Zin v Public Prosecutor* [2021] 1 SLR 159 at [41]. A very recent example of a criminal motion summarily dismissed without setting it down for hearing is *Khartik Jasudass and another v Public Prosecutor* [2021] SGCA 13.
[129] *Kho Jabing v Public Prosecutor* [2016] 3 SLR 135 at [50].
[130] Post-appeal Applications in Capital Cases Act 2022. See further *Singapore Parliamentary Debates, Official Report* (29 November 2022) vol 95. The law was assented to by the President on 27 December 2022 and published in the Government Gazette on 13 January 2023. PACC applications include an application for a stay of execution of a capital sentence, a judicial review application challenging the President's decision not to grant clemency, and a judicial review application challenging the Public Prosecutor's decision not to grant a certificate of substantive assistance under the Misuse of Drugs Act 1973.
[131] See **Part III*(E)*** of this article. There will be consequential amendments to align the procedure for review applications under the CPC with the new procedure for PACC applications.
[132] See the new s 60G which has been introduced into the Supreme Court of Judicature Act 1969 through s 2 of the Post-appeal Applications in Capital Cases Act 2022.
[133] Post-appeal Applications in Capital Cases Act 2022 s 60G(7).

(a) Whether the intended application is based on material that could not have been adduced in court before the relevant date, even with reasonable diligence.

(b) Whether there was any delay in applying for permission after the material was obtained, and the reasons for the delay.

(c) Whether the prescribed supporting documents have been filed within the prescribed time, including supporting affidavit(s) on, among others, the grounds for the application and the reasons for not filing the application earlier.

(d) Whether the intended application has a reasonable prospect of success.

Even if these four matters are not satisfied, the court has the discretion to grant permission for the application if it thinks fit.

71 Moreover, under this procedure, the Court of Appeal may make a finding that there has been an abuse of process in a relevant application, or any other application or action in order to delay or frustrate the carrying out of the capital sentence. The finding may be made on the court's own motion or upon the application of the Attorney-General or Public Prosecutor. This is in line with the court's current powers to make findings of abuse of process. In deciding whether to make a finding of an abuse of process, the court may take additional evidence, and may inquire into and take into account whether the prescribed matters for the making of the application or a review application have been satisfied. Being procedural in nature, this law does not lay down any substantive law and the substantive rights of a person sentenced to death are not affected.[134]

72 As was noted by the General Division of the High Court in a very recent case, the PACC Act "governs the very tail end of the criminal process, the principle of finality of proceedings gains prominence. The PACC Act provides clarity as to the procedure for post-appeal

[134] *Masoud Rahimi bin Mehrzad and others v Attorney-General* [2023] SGHC 346 at [33].

applications, while implementing features designed to sift out unmeritorious applications".[135] Justice Hoo Sheau Peng added that:[136]

> Access to justice does not require a criminal system to allow unmeritorious applications brought at the tail end of the criminal process to progress to the fullest extent. This would be at the expense of judicial and other scarce resources. A balance has been struck by the legislature within the new procedure to allow access to justice, while ensuring proper utilisation of judicial resources, and to preserve the integrity of the judicial process. The impugned provisions form two aspects of this new procedure. Given that PACPs [prisoner awaiting capital punishment] making PACC applications have had their convictions and sentences affirmed by the Court of Appeal, there is no basis for the claim that these safeguards on post-appeal applications are "onerous" and "oppressive".

G. Offenders excluded from the death penalty

73 In Singapore, two categories of offenders excluded from the death penalty are: (**a**) offenders who, at the time the offence was committed, were below the age of 18 years;[137] and (**b**) female offenders who are pregnant.[138] In both cases, the offenders are sentenced to life imprisonment.

74 Section 2 of the CPC states that a juvenile is "a person who, in the absence of legal proof to the contrary, is 7 years of age or above and below the age of 16 years in the opinion of the court". The minimum age for criminal responsibility in Singapore is 10 years old.[139] Offenders

[135] *Masoud Rahimi bin Mehrzad and others v Attorney-General* [2023] SGHC 346 at [45].
[136] *Masoud Rahimi bin Mehrzad and others v Attorney-General* [2023] SGHC 346 at [54]. Furthermore, s 3(*a*) of the PACC Act also provides that a capital sentence may be carried out unless (**a**) The President has ordered a respite; (**b**) the Court of Appeal has granted a stay of execution; or (**c**) There is a pending application for permission to apply for a stay of execution, or an application for a stay of execution, that meets the specified criteria.
[137] Criminal Procedure Code 2010 s 314.
[138] Criminal Procedure Code 2010 s 315.
[139] Section 82 of the Penal Code. Prior to 1 July 2020, the minimum age of criminal responsibility in Singapore was 7 years old. The high-level Penal Code Review Committee (PCRC) had recommended that the age of criminal responsibility be raised from 7 to 10

below the age of 18 years at the time the offence was committed cannot be executed. The law determines that such a person is to be spared the gallows because of his age. Instead, the court must sentence such a juvenile capital offender to life imprisonment.[140] He will have to serve a minimum period of 20 years before being reviewed for possible release.[141]

75 A sentence of death cannot be passed on a pregnant woman. If the court finds the woman pregnant, it must pass a sentence of life imprisonment on her.[142] Where a woman convicted of an offence punishable with death alleges that she is pregnant, or where the court before whom a woman is so convicted thinks fit, the question whether or not the woman is pregnant must, before sentence is passed on her, be determined by the court.[143] If the court finds the woman not to be pregnant, she may appeal to the Court of Appeal against that finding.[144] On hearing the appeal, the Court of Appeal, if satisfied for any reason that the finding should be set aside, must set aside the sentence, and pass a sentence of life imprisonment.[145] There is no legislation prohibiting the execution of a mother who has infant children.

76 Where an offender was of unsound mind[146] at the time of the commission of offence, the offender will be acquitted of the offence by

years: see section 23.5 of the PCRC's report of August 2018 for its examination of the minimum age of criminal responsibility. The PCRC report is available online at: <https://www.mlaw.gov.sg/content/dam/minlaw/corp/News/Public%20Consultations/PCRC%20Report%20Public%20Consult%209%20Sept.pdf> (accessed 14 February 2024). Robust and extensive checks are done to verify the age of a juvenile offender.

[140] See s 314 of the Criminal Procedure Code 2010. In its 1997 decision in *Abdul Nasir bin Amer Hamsah v Public Prosecutor* [1997] 2 SLR(R) 842, the Court of Appeal ruled that a term of "life imprisonment" meant imprisonment for the duration of the prisoner's natural life, and not 20 years. Before this decision, it was mistakenly assumed that a life imprisonment sentence lasted for 20 years with remission.

[141] Section 50P of the Prisons Act 1933 provides that where a prisoner has served 20 years of his sentence of life imprisonment, the Minister is required to review the prisoner's case and may, in his discretion, direct the Commissioner to make a remission order. If the Minister does not direct the Commissioner to make a remission order, he is required to review the prisoner's case at intervals not exceeding 12 months.

[142] Criminal Procedure Code 2010 s 315(2).

[143] Criminal Procedure Code 2010 s 315(1).

[144] Criminal Procedure Code 2010 s 315(3).

[145] Criminal Procedure Code 2010 s 315(4).

[146] Section 84 of the Penal Code 1871 on the "act of a person of unsound mind" provides that:

> Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is —
> (*a*) incapable of knowing the nature of the act;

reason of the defence of unsoundness of mind under s 84 of the PC, which applies to all offences, including non-Penal Code offences.[147] In addition, for offences involving culpable homicide, a diminished responsibility defence is provided under Exception 7 to s 300 of the PC.[148] Where established, an offender would not be guilty of murder, but rather, of the lesser offence of culpable homicide, which does not attract the death penalty.

77 Where a court has reason to suspect that an accused person is of unsound mind and, as such, incapable of making his defence, the court is required to investigate the fact of such unsoundness of mind.[149] The court, on its own motion or on the application of the Public Prosecutor, shall postpone the inquiry or trial or other proceeding, if it is not satisfied that the person is capable of making his defence. The court shall order that person to be remanded for observation in a psychiatric institution for a period not exceeding one month.[150] Sections 248 to 256 of the CPC

> (*b*) incapable of knowing that what he is doing is wrong (whether wrong by the ordinary standards of reasonable and honest persons or wrong as contrary to law); or
> (*c*) completely deprived of any power to control his actions.
>
> *Illustration*
>
> *A*, while labouring under a delusion, believes that he has received divine instructions to kill *Z* and that it is morally right for him to do so. A however knows that it is contrary to law to kill *Z*. *A* kills *Z*. Here, the defence of unsoundness of mind is not available to *A* as he is capable of knowing that it is contrary to law to kill *Z*.

[147] Section 251 of the Criminal Procedure Code 2010 provides that, "If an accused is acquitted by operation of section 84 of the Penal Code 1871, the finding must state specifically whether he committed the act or not".

[148] Exception 7 reads:

> Culpable homicide is not murder if at the time of the acts or omissions causing the death concerned, the offender was suffering from such abnormality of mind (whether arising from a condition of arrested or retarded development or any inherent causes or induced by disease or injury) as substantially —
> (*a*) impaired the offender's capacity —
> (i) to know the nature of the acts or omissions in causing the death or in being a party to causing the death; or
> (ii) to know whether such acts or omissions are wrong (whether wrong by the ordinary standards of reasonable and honest persons or wrong as contrary to law); or
> (*b*) impaired the offender's power to control his acts or omissions in causing the death or being a party to causing the death.

[149] Criminal Procedure Code 2010 s 247. Section 84 of the Penal Code 1871 on the defence of unsoundness of mind include cases where the accused person by reason of a mental disorder was completely deprived of any power to control his actions. However, such a defence is not available to an accused person if he or she is capable of knowing that what he or she is doing is either wrong by the ordinary standards of reasonable and honest persons or wrong as being contrary to law.

[150] Criminal Procedure Code 2010 s 247(4).

further provide for how an accused person may be dealt with whether he is found to be of sound or of unsound mind.

78 The Court of Appeal in *Public Prosecutor v Chia Kee Chen*[151], a case involving the discretionary death penalty for an offence of murder under s 300(*c*) of the PC, affirmed that "mental conditions are relevant to sentencing if they lessen the offender's culpability for the offence and therefore justify a reduced sentence".[152] The Court of Appeal also expressly held that an "offender's mental condition is relevant in so far as it bears on the question of whether the offender can be said to have acted viciously or with blatant disregard for human life", which is central to the Court's exercise of its discretion in imposing the death penalty under s 302(2) of the PC.[153] The sentencing court has to "examine the nature and gravity of the offender's mental disorder and its impact on the commission of the offence before arriving at a sentence that takes into account and balances the relevant sentencing objectives".[154] This general principle applies to cases involving the possible imposition of the death penalty.[155]

IV. Treatment of and legal assistance for prisoners awaiting capital punishment

79 Having examined the right to life and the death penalty, we will now examine the rights of prisoners awaiting capital punishment from another angle, specifically, how they are treated in prison and the legal assistance available to them.

80 Prisoners sentenced to death are segregated from other prisoners. The section of the prison where they are accommodated provides basic amenities, including in-cell shower and toilet facilities, recreational yards, and a medical centre. Such prisoners are provided with the same kind of clothing and bedding as all other prisoners.[156]

81 Prisoners sentenced to death have access to visitors throughout their stay in prison. They are allowed weekly visits, and all visitors,

[151] [2018] 2 SLR 249.
[152] *Public Prosecutor v Chia Kee Chen* [2018] 2 SLR 249 at [112].
[153] *Public Prosecutor v Chia Kee Chen* [2018] 2 SLR 249 at [113].
[154] See *Lim Ghim Peow v Public Prosecutor* [2014] 4 SLR 1287 at [52].
[155] *Public Prosecutor v Chia Kee Chen* [2018] 2 SLR 249 at [113].
[156] Prisons Regulations (Cap 247, Rg 2, 2002 Rev Ed) rule 163.

family members and non-relatives, must be verified and approved by prison authorities. Inmates are also notified at every stage of the legal and clemency process.[157]

82 Such prisoners have access to medical facilities, food (three meals a day) and recreational facilities.[158] They are also allowed out of their cells on a regular basis for recreation.[159] In addition, all prisoners awaiting capital punishment have access to religious counselling from the time of their admission into prison.[160] Where convicted prisoners have a desire for counselling, the availability of such services can help them cope with the sentence and their psychological wellbeing. There is also support for the families of prisoners sentenced to death, primarily through the provision of psychological support by trained personnel from the Singapore Prison Service after they have been informed of the execution.[161]

83 Under s 79 of the Prisons Act 1933, the Minister for Home Affairs shall appoint a Board of Visiting Justices, comprising Justices of the Peace. These members inspect the prisons and ensure that the basic welfare of prisoners is taken care of. Prisoners also have access to the Visiting Justices. In addition, under s 79(3) of the Act, a Visiting Justice "(**a**) may at any time visit any prison or reformative training centre and may inspect the several wards, cells, yards, solitary or punishment cells and other apartments or divisions of the prison, inspect and test the quality and quantity of the prisoners' food, hear the complaints (if any)

[157] See paras 10 and 11 of "Singapore's submission to the Special Rapporteur on Extrajudicial, summary, or arbitrary execution's call for Input on the imposition of the death penalty and its impact" (OHCHR, 25 April 2022) <https://www.ohchr.org/sites/default/files/2022-05/singapore-reply-dp.pdf> (accessed 14 February 2024).

[158] See, generally, Prisons Regulations rules 101, 105, 110. See also SPS website at <https://www.sps.gov.sg/learn-about-corrections/inmates-regime/basic-needs/> (accessed 14 February 2024).

[159] See para 13 of "Singapore's submission to the Special Rapporteur on Extrajudicial, summary, or arbitrary execution's call for Input on the imposition of the death penalty and its impact" (OHCHR, 25 April 2022) <https://www.ohchr.org/sites/default/files/2022-05/singapore-reply-dp.pdf> (accessed 14 February 2024).

[160] Prisons Regulations rules 114 and 164. See also paras 12 and 13 of "Singapore's submission to the Special Rapporteur on Extrajudicial, summary, or arbitrary execution's call for Input on the imposition of the death penalty and its impact" (OHCHR, 25 April 2022) <https://www.ohchr.org/sites/default/files/2022-05/singapore-reply-dp.pdf> (accessed 14 February 2024).

[161] See paras 16-19 of "Singapore's submission to the Special Rapporteur on Extrajudicial, summary, or arbitrary execution's call for Input on the imposition of the death penalty and its impact" (OHCHR, 25 April 2022) <https://www.ohchr.org/sites/default/files/2022-05/singapore-reply-dp.pdf> (accessed 14 February 2024).

of the prisoners, and question any prisoner or prison officer; (**b**) must ascertain, so far as possible, whether the prison regulations are adhered to, and must call the attention of the Superintendent to any irregularity that may be observed in the working of the prison or reformative training centre or in the treatment of any prisoner confined therein; and (**c**) is to exercise and perform such other powers and duties that may be prescribed". Under rule 72 of the Prisons Regulations, Visiting Justices are not to be accompanied by the Superintendent in their visits of inspection round the prisons.

84 Convicted prisoners can also engage legal counsel to assist them with their cases. Further, all persons facing capital charges in the High Court are ensured legal representation under the Legal Assistance Scheme for Capital Offences ("**LASCO**"). The LASCO scheme, which is overseen by the Supreme Court, provides pro bono legal aid for individuals charged with capital offences. LASCO is provided regardless of the accused person's nationality, without any means testing or other eligibility criteria. Once a person is charged with a capital offence, legal counsel will be offered to the person. Two counsels, one leading and one assisting, will be assigned to defend the accused.[162] This applies to legal representation at both the initial trial and subsequent appeal.[163] The LASCO counsel's assignment will "cease immediately upon … the pronouncement of the verdict disposing of the appeal or application".[164] Consular access to foreign prisoners is also granted.

85 As with all pro bono criminal legal aid in Singapore, LASCO relies on the support of the legal fraternity. Practising lawyers apply through the Supreme Court to serve as LASCO counsel. Those who qualify are put on a list maintained by the Registrar of the Supreme

[162] SG Courts, "Join the Legal Assistance Scheme for Capital Offences" <https://www.judiciary.gov.sg/join-us/join-legal-assistance-scheme-capital-offences-counsel> (accessed 24 January 2024).

[163] See, generally, SG Courts, "Guidelines for appointment and responsibilities of assigned Counsel in capital cases," (13 September 2021) <https://www.judiciary.gov.sg/docs/default-source/volunteer-docs/guidelines-to-lasco-sep-2021.pdf> (accessed 15 February 2024).

[164] See para 3.10 of the "Guidelines for appointment and responsibilities of assigned Counsel in capital cases," (13 September 2021) <https://www.judiciary.gov.sg/docs/default-source/volunteer-docs/guidelines-to-lasco-sep-2021.pdf> (accessed 15 February 2024). The High Court in *Iskandar bin Rahmat and others v Attorney-General* [2024] SGHC 122 rejected the argument that the right to counsel, provided for in Article 9(3) of the Singapore Constitution, entitles an individual them to be represented by LASCO counsel not only at the trial and appeal stages but also for post-appeal applications.

Court. When there is a case, LASCO counsels are notified and a LASCO panel counsel may volunteer to take on the case. The LASCO Case Assignment Panel assigns counsel(s) to the case after deliberation. Currently, about 200 lawyers are LASCO counsel. All assigned counsel are paid an honorarium according to certain rates.[165]

V. The clemency process, and the notice period for and method of execution

86 Building on the previous section, which discussed the treatment of and the state's legal assistance provided to prisoners awaiting capital punishment, this section will introduce the remaining processes which a prisoner awaiting capital punishment can expect to go through, namely: (**a**) the clemency process; and (**b**) the extent of notice for and the method of execution. Relatedly, it will then: (**c**) present some data on the application of the death penalty in Singapore; and (**d**) highlight some good practices adopted in Singapore with regard to the treatment of convicted persons who have been sentenced to death.

A. Legal framework for clemency

87 The role of the court in a capital case is to adjudicate legal guilt, and if a finding of guilt is made, to pass sentence in accordance with law. On the other hand, the role of the Executive in wielding the clemency power is to grant the offender reprieve from the law taking its course where the Executive deems it appropriate. The President may grant a person sentenced to death a pardon, reprieve, or respite on such conditions as the President thinks fit, of the execution of the sentence, or remit the whole or any part of the sentence imposed by law.[166] This is provided for in Article 22P of the Singapore Constitution and s 333 of the CPC.[167]

[165] SG Courts, "Join the Legal Assistance Scheme for Capital Offences" <https://www.judiciary.gov.sg/join-us/join-legal-assistance-scheme-capital-offences-counsel> (accessed 24 January 2024).
[166] Clemency includes pardons (leading to prisoner's release from prison) and commutations (death sentence reduced to a fixed or life imprisonment).
[167] Section 334(*a*) of the Criminal Procedure Code 2010 provides that the President may commute a sentence of death for a sentence of imprisonment or fine or both.

88 In other words, the Singapore Constitution has removed the power to grant clemency from the realm of the prerogative and instead places it firmly within the realm of written law. The President, as head of state, exercises clemency power in accordance with the advice of the Cabinet.[168] The President has no discretion in the matter under the Singapore Constitution.[169] Clemency petitions are considered on a case-by-case basis. Singapore does not have a tradition/practice of granting amnesties against death penalty sentences. There is also no provision for the automatic commutation of the death penalty imposed.

89 As executive mercy, the clemency power is a discretionary power that can undo the death sentence imposed on a prisoner and replace it with a lesser punishment. As the exercise of this power is governed by law and policy, it may be regarded as a corollary of the right to life and personal liberty guaranteed by Article 9(1) of the Singapore Constitution, which provides that "[n]o person shall be deprived of his life or personal liberty save in accordance with law". Put simply, the requirements of Article 22P(2) must be complied with as that is what the law mandates. Denying a prisoner sentenced to death of his right to apply for clemency is denying him of his fundamental rights, especially his right to the protection of the law, even after he has been sentenced to death. [170] In the specific context of a death sentence case, the Court of Appeal has observed that:[171]

> … the grant of clemency to the offender confers a gift of life on him. This is because the offender has effectively already been deprived of his life by the law due to his conviction for a capital offence. If clemency is granted to the offender, his life will be restored to him, whereas if clemency is not granted, his life will be forfeited as decreed by the law. In other words, in a death sentence case, the clemency decision made, be it in favour of or against the offender, *does not* deprive the offender of his life; the law (in terms of the conviction and death sentence meted out on the offender by a court of law) has already done so.

[168] See Article 21(1) of the Singapore Constitution.
[169] See *Yong Vui Kong v Attorney-General* [2011] 2 SLR 1189 at [82] and [180].
[170] *Yong Vui Kong v Attorney-General* [2011] 2 SLR 1189 at [84]–[85].
[171] *Yong Vui Kong v Attorney-General* [2011] 2 SLR 1189 at [74(e)] (emphasis in original).

90 The discretion afforded to the Cabinet to advise the President on the exercise of clemency power is a very wide power. Judicial review of the exercise of discretionary power under Article 22P is confined only to procedural matters, or where the exercise of clemency power was exercised in bad faith for an extraneous purpose, or where its exercise contravened constitutional protections and rights.[172] In this regard, the Singapore courts adhere to the merits-legality distinction in judicial review.[173]

91 In Singapore, the Court of Appeal has had the opportunity to consider whether legal limits should be placed on how presidential clemency is exercised.[174] While "clemency power is a legal power of an extraordinary character",[175] the court held that it is not an "extra-legal" power beyond legal constraints or restraints.[176] Although a highly discretionary constitutional power vested in the Executive, it is still subject to legal limits.[177] The Cabinet, when advising the President on the exercise of clemency power, "cannot be held to the same standard of impartiality and objectivity as that applicable to a court of law or tribunal exercising a quasi-judicial function".[178]

92 For example, if a sentenced person is able to show that the relevant reports required were not furnished, or not sent to the Attorney-General, or if the Cabinet did not advise the President, such non-compliance with the constitutional requirements necessitates a judicial remedy. In these limited situations, such a sentenced person is entitled to apply for judicial review on the basis that the clear requirements laid down in Article 22P have not been satisfied. Article 22P(2) stipulates as follows:

> Where any offender has been condemned to death by the sentence of any court and in the event of an appeal such sentence has been confirmed by the appellate court, the President shall cause the reports which are made to him by the Judge who tried the case and the

[172] *Yong Vui Kong v Attorney-General* [2011] 2 SLR 1189 at [81]–[85] and [190].
[173] See, *eg*, *CBB v Law Society of Singapore* [2021] 1 SLR 977 at [19].
[174] *Yong Vui Kong v Attorney-General* [2011] 2 SLR 1189.
[175] *Yong Vui Kong v Attorney-General* [2011] 2 SLR 1189 at [74]–[76].
[176] *Yong Vui Kong v Attorney-General* [2011] 2 SLR 1189 at [76].
[177] For instance, the rule against bias also applies in the clemency context: see *Yong Vui Kong v Attorney-General* [2011] 2 SLR 1189 at [191].
[178] See *Yong Vui Kong v Attorney-General* [2011] 2 SLR 1189 at [191].

> Chief Justice or other presiding Judge of the appellate court to be forwarded to the Attorney-General with instructions that, after the Attorney-General has given his opinion thereon, the reports shall be sent, together with the Attorney-General's opinion, to the Cabinet so that the Cabinet may advise the President on the exercise of the power conferred on him by clause (1).

93 Furthermore, the procedure outlined in Article 22P(2) of the Singapore Constitution is "a highly private process by which the relevant materials ultimately come before the Cabinet. Even the courts whose reports are prepared first have no access to the Attorney-General's opinion or the Cabinet's advice".[179] In other words, the petitioner has no substantive right to the materials which will be before the Cabinet when it advises the President on the clemency petition. Specifically, in advising the President on the exercise of his/her clemency power, the Cabinet must consider the materials it has been provided under Article 22P(2) "impartially and in good faith".[180]

94 In advising the President on whether to grant clemency, the Cabinet is entitled to take into account public policy considerations concerning the nature of the offence and the legislative policy underlying the imposition of the prescribed punishment for that offence.[181] The Cabinet is not expected to ignore these policy considerations, and its conduct "in giving effect to such considerations by advising the President not to grant clemency in a particular case cannot, without more, amount to bias, whether actual or apparent".[182]

95 Each clemency petition is carefully considered on its own merits. While the Cabinet can have policy guidelines to ensure a principled and consistent handling of all clemency petitions, it cannot advise the President "in accordance with a policy so absolute that the mere identification of a clemency petition as falling within a certain broad category of cases (such as drug-related cases) would automatically lead to it being rejected".[183] The court explained that a policy in such

[179] *Yong Vui Kong v Attorney-General* [2011] 2 SLR 1189 at [82].
[180] *Yong Vui Kong v Attorney-General* [2011] 2 SLR 1189 at [82].
[181] See concurring judgment of Andrew Phang and V K Rajah JAs (which Chan CJ also agreed with) in *Yong Vui Kong v Attorney-General* [2011] 2 SLR 1189 at [192].
[182] *Yong Vui Kong v Attorney-General* [2011] 2 SLR 1189 at [192].
[183] *Syed Suhail bin Syed Zin v Attorney-General* [2021] 1 SLR 809 at [40].

stark terms, if it existed, would arguably be unconstitutional as "it would not be meaningfully different from an omission by the Cabinet to consider the appellant's case at all".[184]

96 Based on media reports, very few prisoners awaiting capital punishment had their death sentences commuted to life imprisonment.[185] Nonetheless, the mere fact that few or even no clemency petitions have been granted over a long period of time was not sufficient to raise the suspicion that the Cabinet did not give each clemency petition individual consideration.[186] The reasons for the grants of clemency are not publicly disclosed. However, it would appear that clemency had been granted very selectively.[187] As a scholar observed of the practice of clemency grants in Singapore: "…only exceptional case-based characteristics, rather than political benefits, have driven the Singaporean Executive to replace a death sentence with life imprisonment".[188] This was attributed to the Singapore Executive deriving its "domestic legitimacy from the ballot box and from rising living standards, rather than ruling through 'strategies of benevolence' designed to enhance their power over life and death in the eyes of their constituents".[189]

97 As would be apparent from the above discussion, the merits of a clemency decision are not reviewable, in accordance with the separation of powers doctrine.[190] The courts cannot substitute their decision for the President's simply because they disagree with him on the matter. There is no expressly stipulated timeline by which the Cabinet's advice on a clemency application should be rendered to the

[184] *Syed Suhail bin Syed Zin v Attorney-General* [2021] 1 SLR 809 at [40].
[185] Wing-Cheong Chan, "The Death Penalty in Singapore: In Decline But Still Too Soon for Optimism" (2016) 11(3) *Asian Journal of Criminology* 179.
[186] *Syed Suhail bin Syed Zin v Attorney-General* [2021] 1 SLR 809 at [41].
[187] Daniel Pascoe, "Singapore and Thailand: Explaining Differences in Death Penalty Clemency" in *Comparative Criminology in Asia* (Liu Jianhong, Max Travers & Lennon Y.C. Chang eds) (Springer, 2017) at 165–183.
[188] Daniel Pascoe, "Singapore and Thailand: Explaining Differences in Death Penalty Clemency" in *Comparative Criminology in Asia* (Liu Jianhong, Max Travers & Lennon Y.C. Chang eds) (Springer, 2017) at 165–183.
[189] Daniel Pascoe, "Singapore and Thailand: Explaining Differences in Death Penalty Clemency" in *Comparative Criminology in Asia* (Liu Jianhong, Max Travers & Lennon Y.C. Chang eds) (Springer, 2017) at 165–183.
[190] *Yong Vui Kong v Attorney-General* [2011] 2 SLR 1189 at [75].

President or by which the President's Office should reply to the petitioner.[191]

B. Extent of notice for and method of execution and safeguards

98 The extent of notice for execution is usually about a week, although it could vary depending on the circumstances. The Superintendent of Prisons will personally inform convicted prisoners of their impending executions. For offenders whose death sentences have been scheduled, arrangements will be made to facilitate access to their family members who are residing overseas.

99 Between 2016 and 2019, it was the procedure for a prisoner and his family to receive both the notification of the clemency outcome from the President's Office and the notification of the execution date from the Singapore Prison Service at the same time. However, in 2019, the Court of Appeal had stated that a prisoner ought to have a reasonable opportunity to consider and take advice on whether he has any grounds on which to challenge the clemency decision.[192] The Government has since thus reviewed the procedure, in particular, to notify the prisoner and the petitioner of the clemency outcome some time in advance of the notification of the execution date.[193]

100 After being notified of the date of the execution, the prisoner's family may visit the prisoner more frequently, and for an extended period of time for each visit. The Singapore Prison Service facilitates requests from the prisoner and his family as much as possible, while

[191] See Minister for Home Affairs K Shanmugam's written response to the parliamentary question on the "Timeframe from final appellate court decision to date of hanging, and timing of notification of clemency outcome and execution date to petitioner," *Singapore Parliamentary Debates, Official Report* (8 July 2019) vol 94 (K Shanmugam, Minister for Home Affairs).

[192] *Pannir Selvam a/l Pranthaman v Public Prosecutor* (CA/CM 6/2019): In this case, the applicant was informed of the rejection of his clemency petition at the same time as his scheduled date of execution, which was just one week away. This was held to be inadequate. The apex court noted that "the passage of an adequate period of time" (or, "the *Pannir Selvam* period") is required between the notification of the rejection of a clemency application and the scheduled date of execution. (See also *Syed Suhail bin Syed Zin v Attorney-General* [2021] 1 SLR 809 at [47].)

[193] See *Singapore Parliamentary Debates, Official Report* (8 July 2019) vol 94 (K Shanmugam, Minister for Home Affairs).

ensuring the safety and security of prisoners and their families. As such, physical contact is not allowed for safety reasons.[194]

101 The prison authorities provide the use of a private room to the family members of convicted prisoners, for them to grieve on the eve of the execution. The private room complements other measures that the Singapore Prison Service has put in place to support family members of convicted prisoners, such as the provision of extended visitation periods and referral to the Family Resource Centre for families that require social or financial assistance.[195] Counsellors are also assigned to each family to support them during the period leading up to and after the carrying out of the sentence.[196]

102 The Court of Appeal has considered whether a prolonged delay in the execution of a death sentence, due to the time taken in the appeal and clemency processes, amounted to cruel and inhuman punishment such that a stay of execution of the death sentence was justified. The apex court noted that the prisoner "can always avail himself of the procedure of petitioning the President for clemency.[197] This petition should be filed within a reasonable period of time".[198] On the facts of the case, the court found that that there was no "undue and unconscionable delay in the execution".[199] Instead, "the delay was attributable in a large measure to the appellant's solicitors' failure to file the [clemency] petition expeditiously and also in light of the second accused's desire to appeal to the Privy Council".[200]

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[194] See *Singapore Parliamentary Debates, Official Report* (6 February 2017) vol 94 (Desmond Lee, Senior Minister of State for Home Affairs).

[195] The Family Resource Centre is located at Prison Link Centre (Changi). It provides assistance and support to inmates' families to help them cope in the inmates' absence. For example, families receive information on community resources available. There are also trained social workers who provide case management services in areas such as childcare assistance, housing, and employment.

[196] See *Singapore Parliamentary Debates, Official Report* (6 February 2017) vol 94 (Desmond Lee, Senior Minister of State for Home Affairs).

[197] *Jabar bin Kadarmastan v Public Prosecutor* [1995] 1 SLR(R) 326 at [63].

[198] *Jabar bin Kadarmastan v Public Prosecutor* [1995] 1 SLR(R) 326 at [63].

[199] *Jabar bin Kadarmastan v Public Prosecutor* [1995] 1 SLR(R) 326 at [63].

[200] *Jabar bin Kadarmastan v Public Prosecutor* [1995] 1 SLR(R) 326 at [63]. The apex court agreed at [62] with the views of the United States Court of Appeals, Ninth Circuit, in *Richmond v Lewis* 948 F 2d 1473 (9th Cir, 1990) at 1491-1492, that:

> A defendant must not be penalized for pursuing his constitutional rights, but he also should not be able to benefit from the ultimately unsuccessful pursuit of those rights. It would indeed be a mockery of justice if the delay incurred during the prosecution of claims that fail on the merits could itself accrue into a

103 In a recent case, the Court of Appeal made the following observation: "Once the legal system has delivered a final verdict that the death penalty is to be carried out, it is only reasonable for the State to seek to minimise any further anguish to the prisoner in being detained in wait of execution. To this end, it is reasonable to take the position that this anguish would begin to mount from the date on which the prisoner is sentenced to death, and therefore, where there is a need to make a decision as to the sequence in which executions are carried out, to do so in an order that minimises the total time spent on death row for each prisoner".[201]

104 It is incontrovertible that the State has a discretion to schedule executions.[202] The authorities would have regard to the following non-exhaustive list of "supervening factors based on policy considerations" in scheduling the executions … : (**a**) the date of the pronouncement of the death sentence; (**b**) the determination of any other court proceedings affecting the prisoner or requiring his involvement; (**c**) the policy that co-offenders sentenced to death will be executed on the same day; (**d**) whether the prisoner has previously been scheduled to be executed; and (**e**) the availability of judges to hear any application by the prisoner to the courts before the intended date of execution.[203]

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substantive claim to the very relief that had been sought and properly denied in the first place. If that were the law, death-row inmates would be able to avoid their sentences simply by delaying proceedings beyond some threshold amount of time, while other death-row inmates — less successful in their attempts to delay — would be forced to face their sentences. Such differential treatment would be far more 'arbitrary and unfair' and 'cruel and unusual' than the current system of fulfilling sentences when the last in the line of appeals fails on the merits.

[201] *Syed Suhail bin Syed Zin v Attorney-General* [2021] 1 SLR 809 at [71]. In *Jabar bin Kadarmastan v Public Prosecutor* [1995] 1 SLR(R) 326, the Court of Appeal said at [46]: "We accept that condemned prisoners on death row should not be subjected to a prolonged period of imprisonment. We do not doubt that they suffer a certain level of anguish and mental agony whilst awaiting execution. However, such anguish is an inevitable consequence which, in our view, does not amount to a contravention of the constitutional rights of the prisoner".

[202] In *Syed Suhail bin Syed Zin v Attorney-General* [2021] 1 SLR 809, the Ministry of Home Affairs ("**MHA**") filed a sworn affidavit to address questions the court had. In the judgment at [18]–[19], the court noted that it was stated in MHA's affidavit that there were two prerequisites that had to be met before it would commence scheduling an execution: (**a**) the death sentence must have been upheld by the Court of Appeal, and (**b**) the Cabinet must have advised the President not to grant clemency.

[203] *Syed Suhail bin Syed Zin v Attorney-General* [2021] 1 SLR 809 at [18]–[19]. The affidavit stressed that factors such as the type of offence, age, race, gender and nationality in the scheduling of executions were not taken into account.

105 However, such discretion exercised by the executive is susceptible to judicial review. Convicted prisoners "have a legitimate legal expectation under Article 12(1) that they be treated equally in the scheduling of their executions, and any departure from equal treatment ought to be justified by legitimate reasons".[204] Generally, equal treatment in this entails that "all else being equal, prisoners whose executions arise for scheduling should be executed in the order in which they were sentenced to death".[205] The courts recognise that "some flexibility in scheduling was desirable and intended" but that such flexibility "must be exercised lawfully".[206]

106 The government's discretion to determine the time and manner in which an execution is to be carried out is subject to legal limits. A person sentenced to death has a legal expectation of fair treatment under Article 12(1) of the Singapore Constitution in relation to the scheduling of his execution. This is derived from his having his death sentence carried out with due regard to his constitutional rights. Where life and liberty are at stake, the Court of Appeal has ruled in a recent case that the test for whether executive action has breached an applicant's right to equal protection under Article 12(1) of the Singapore Constitution required determining: (**a**) whether the executive action resulted in the applicant being treated differently from other equally situated persons; and (**b**) whether the differential treatment was reasonable in that it was based on legitimate reasons.[207] It added that a court, when applying the Article 12(1) test, must be searching in its scrutiny where its decision was one which affected the appellant's life and liberty to the gravest degree.[208]

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[204] *Syed Suhail bin Syed Zin v Attorney-General* [2021] 1 SLR 809 at [72].
[205] *Syed Suhail bin Syed Zin v Attorney-General* [2021] 1 SLR 809 at [72].
[206] *Syed Suhail bin Syed Zin v Attorney-General* [2021] 1 SLR 809 at [72]. The court made no conclusive determination as to what legitimate reasons would justify differential treatment, beyond stating that legitimate reasons were reasons that bore a sufficient rational relation to the object for which the power was conferred – see *Syed Suhail bin Syed Zin v Attorney-General* [2021] 1 SLR 809 at [62].
[207] *Syed Suhail bin Syed Zin v Attorney-General* [2021] 1 SLR 809. In this case, on whether leave for judicial review should be granted, one ground of challenge was that the scheduling of the applicant's execution ahead of other prisoners similarly awaiting capital punishment breached Article 12(1). The appellant alleged that there were other prisoners who had been sentenced to death prior to him but had not been scheduled for execution. The apex court ruled that on the facts there was a *prima facie* case of reasonable suspicion that merited closer examination in judicial review proceedings and so permission was granted to commence judicial review proceedings solely on the scheduling ground.
[208] *Syed Suhail bin Syed Zin v Attorney-General* [2021] 1 SLR 809 at [63].

107 Following the final imposition of the death sentence after the disposal of any appeal by the Court of Appeal, several legally prescribed steps must be taken before the death sentence can be carried out. An outline of the procedure for carrying out the death penalty follows:

(a) Under Article 22P(2) of the Singapore Constitution, the trial judge and the presiding judge of the Court of Appeal that dealt with the case must furnish reports to the President, who will forward them to the Attorney-General. The Attorney-General provides his opinion on them, and the reports and the Attorney-General's opinion are sent to the Cabinet so that it may advise the President on the exercise of the clemency power under Article 22P(1).

(b) Under s 313(*e*) of the CPC, a more comprehensive set of documents relating to the case is forwarded to the Minister by the presiding judge of the Court of Appeal who dealt with the case.

(c) Under Article 22P(1) of the Singapore Constitution, the Cabinet is to consider whether to advise the President to grant clemency, and the President is obliged to act in accordance with the Cabinet's advice.

(d) If clemency is not granted, then under s 313(*f*) of the CPC, the President is to transmit to the Court of Appeal an order stating the time and place of execution. Section 313(*f*) stipulates that this must be done "in accordance with the Constitution". By virtue of Article 21(1) of the Singapore Constitution, this means that the President must act in accordance with the advice of the Cabinet (or a Minister acting under the general authority of the Cabinet) when setting the time and place of execution.

(e) Under s 313(*g*) of the CPC, upon receiving the President's order under s 313(*f*), the Court of Appeal will issue a warrant under the seal of the Supreme Court setting out the prescribed time and place of execution. The warrant is

directed to the Commissioner of Prisons, who must then carry out the execution (s 313(*i*) of the CPC).[209]

(f) Under s 313(*h*) of the CPC, the President may order a respite of the execution before it is carried out, and subsequently appoint some other time or place for the execution. The President's power to order a respite of the execution of any sentence is set out in Article 22P(1)(*b*) of the Singapore Constitution, and this power must therefore also be exercised in accordance with the Cabinet's advice.

108 A capital sentence cannot be carried out where: (**a**) the President has ordered a respite; (**b**) the Court of Appeal has granted a stay of execution; or (**c**) there is a pending application for permission to apply for a stay of execution, or an application for a stay of execution, that meets the specified criteria.[210] This provides further clarity to all parties when a capital sentence may be carried out. It will also provide statutory protection to persons awaiting capital punishment by prohibiting the carrying out of the capital sentence–even without a stay of execution–where there is a pending application for permission to apply for a stay of execution, or an application for a stay of execution, that meets the specified criteria.

109 The method of execution in Singapore is hanging. Section 316 of the CPC states that: "Where any person is sentenced to death, the sentence must direct that he must be hanged by the neck until he is dead but shall not state the place where nor the time when the sentence is to be carried out". The mandatory death penalty is not in breach of the fundamental liberties guaranteed by the Singapore Constitution. The Singapore High Court has also held that hanging, as the specified form of execution, is constitutional. It rejected the argument that death by hanging is cruel, inhuman and degrading.[211] The Court of Appeal has

[209] In *Syed Suhail bin Syed Zin v Attorney-General* [2021] 1 SLR 809 at [84], the Court of Appeal observed that it "will almost invariably cause the warrant of execution under s 313(*g*) [of the CPC] to be issued upon receipt of the President's order under s 313(*f*) to carry out the execution, as the issuance of the warrant is a duty which carries minimal if any fresh discretion. The warrant issued under s 313(*g*) therefore does not even go so far as to certify the legality or constitutionality of the President's order and the decisions underlying it, beyond the fact that the order appeared on its face to be one validly made under s 313(*f*)".
[210] See Post-appeal Applications in Capital Cases Act 2022 s 3.
[211] *Public Prosecutor v Nguyen Tuong Van* [2004] 2 SLR(R) 328 at [102]–[108].

held that there was insufficient evidence of state practice to show a specific customary international law prohibition against hanging as the specified form of execution.[212] It also held that, even if there was such a customary international law rule, the domestic statute (*ie*, the MDA) would prevail in the event of inconsistency.[213]

110 At the execution of the death sentence, the superintendent of the prison, a medical officer of the prison, and any other prison officers that the Commissioner of Prisons requires must be present.[214] There may also be present a minister of religion in attendance at the prison and any other persons that the Commissioner of Prisons thinks proper to admit.[215] Rules 166(*a*) and 166(*b*) of the Prisons Regulations direct that the Superintendent must ensure that "the gallows and other equipment used for executions in a prison are properly maintained" and that "executions in a prison are carried out in accordance with the law and the procedures approved by the Commissioner".[216] It is uncontroversial that an allegation of an unlawful method of execution would be subject to judicial review, but any evidence and arguments placed before the court alleging an illegal execution method cannot be skimpy or vague and bare assertions will not suffice.[217]

111 Immediately after the death sentence has been carried out, the prison's medical officer present must examine the body of the person executed, ascertain the fact of death, and sign a death certificate and deliver it to the Commissioner of Prisons.[218] Within 24 hours after the execution, a Coroner must hold an inquiry as provided under the Coroners Act 2010 and satisfy himself of the identity of the body and whether the sentence of death was duly carried out.[219] A copy of the Coroner's findings must be forwarded to and filed in the Registry of the

[212] *Nguyen Tuong Van v Public Prosecutor* [2005] 1 SLR(R) 103 at [91].
[213] *Nguyen Tuong Van v Public Prosecutor* [2005] 1 SLR(R) 103 at [94]. Put simply, the apex court is asserting the supremacy of domestic law over international norms and that unambiguous domestic statutes take precedence even when inconsistent with international law.
[214] Criminal Procedure Code 2010 s 313(*j*). Rule 165 of the Prisons Regulations stipulate that the Superintendent, the medical officer, and the prison's Chief Rehabilitation Officer, and such other prison officers as may be detailed by order of the Superintendent to attend an execution.
[215] Criminal Procedure Code 2010 s 313(*k*).
[216] Prisons Regulations (Cap 347, Rg 2, 2002 Rev Ed), rule 166.
[217] See *Gobi a/l Avedian and another v Attorney-General and another appeal* [2020] 2 SLR 883 at [54].
[218] Criminal Procedure Code 2010 s 313(*l*).
[219] Criminal Procedure Code 2010 s 313(*m*).

Supreme Court and another must be forwarded to and filed in the office of the Minister for Home Affairs.[220]

C. Data on the application on the death penalty (2007–2022)

112 The number of judicial executions between 2007 and 2022 is reproduced below with the category of offences (murder, firearms, or drugs) for which the offenders were executed.[221]

Year	Offences	Number of judicial executions
2007	Murder	1
	Firearms	0
	Drugs	2
2008	Murder	4
	Firearms	0
	Drugs	2
2009	Murder	1
	Firearms	1
	Drugs	3
2010	Murder	0
	Firearms	0
	Drugs	0
2011	Murder	2
	Firearms	0
	Drugs	2
2012	Murder	0
	Firearms	0
	Drugs	0
2013	Murder	0
	Firearms	0
	Drugs	0
2014	Murder	0
	Firearms	0
	Drugs	2
2015	Murder	1
	Firearms	0
	Drugs	3

[220] Criminal Procedure Code 2010 s 313(*n*).

[221] Information taken from data.gov.sg on "Judicial Executions," <https://beta.data.gov.sg/datasets?query=judicial%20executions> (last updated on 22 March 2023) (accessed 16 February 2024). Data.gov.sg is the Singapore government's one-stop open data portal.

2016	Murder	2
	Firearms	0
	Drugs	2
2017	Murder	0
	Firearms	0
	Drugs	8
2018	Murder	2
	Firearms	0
	Drugs	11
2019	Murder	2
	Firearms	0
	Drugs	2
2020	Murder	0
	Firearms	0
	Drugs	0
2021	Murder	0
	Firearms	0
	Drugs	0
2022	Murder	0
	Firearms	0
	Drugs	11

Table 1: *Number of judicial executions between 2007 and 2022 with breakdown by offence*

113 Persons charged with and convicted of drug offences formed the bulk of judicial executions between 2007 and 2022.[222] There is no official moratorium on the death penalty. In July 2011, all executions were deferred pending the outcome of a comprehensive review of the death penalty regime.[223]

[222] These MDA offences when first introduced did not attract the death penalty. The death penalty for certain offences relating to morphine and diamorphine was introduced by the Misuse of Drugs (Amendment) Act 1975. See also *Zainudin bin Mohamed v Public Prosecutor* [2018] 1 SLR 449 at [2]. The death penalty was imposed for all murder offences in the Penal Code (Amendment) Ordinance 1883.

[223] Steven Chong, Justice of the High Court, "Recalibration of the Death Penalty Regime: Origin, Ramifications and Impact", speech at the 28th *Singapore Law Review* Annual Lecture (8 November 2016). The lecture is published in (2017) 35 *Singapore Law Review* 1.

D. Good practices in the treatment of convicted persons sentenced to death

114 *First*, the practice of regular and robust reviews of the death penalty regime must continue. Such reviews are necessary to evaluate the need and use of the death penalty as an integral part of the administration of criminal justice in Singapore. Singapore's no-nonsense approach towards crime has made security and order defining features of the Singaporean society. As society and the crime situation evolve, the imperative is to keep the criminal justice system relevant and legitimate in the face of changing realities. This is vital to maintaining public confidence while also keeping faith with the values that Singaporeans regard as important. Currently, the stated threshold for the death penalty is for the most serious crimes, which is commonly understood as requiring that "their scope should not go beyond intentional crimes with lethal or other extremely grave consequences".[224]

115 Where capital punishment is still needed as a deterrent, future law reform should consider whether these offences could carry a discretionary death penalty. Presently, there are fifteen offences that are punishable, upon conviction, with the mandatory death penalty.[225] Giving the Supreme Court judges the discretion in sentencing empowers them to better individualise sentencing. In this way, the punishment meted out can better fit the crime, and offenders are given a second chance in appropriate cases.

116 *Second*, the conscientious move towards a discretionary death penalty regime for certain murder and drug offences, was a step in the right direction. They enable justice to be appropriately meted and to achieve an even-handed balance between the degree of moral blameworthiness and the appropriate criminal punishment. This practice of seeking an even-handed balance between moral blameworthiness and criminal punishment should be pursued relentlessly.

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[224] *Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty*, approved by the UN Economic and Social Council resolution 1984/50,1st Sess (25 May 1984). In some quarters, this is confined to acts involving an intention to kill which result in loss of life: see, for example, *Question of the Death Penalty: Report of the Secretary-General,* UN Human Rights Council, 24th Sess, A/HRC/24/18 (1 July 2013).

[225] Refer to **Annex A** below for the list of offences that still attract the mandatory death penalty.

117 *Third*, the practice of ensuring that all persons facing capital charges in the General Division of the High Court are provided with adequate legal representation under LASCO is commendable. It is crucial for the proper administration of justice and for the accused person to have access to proper legal advice during the pre-trial, trial, and appeal stages. The provision of legal assistance for the purposes of preparing the prisoner's petition to the President for clemency is important as well. Relatedly, the law could provide for all persons sentenced to death to be automatically considered for clemency. Given the irrevocability of the death penalty, it should not be left to the individual to decide whether he/she should make a clemency petition.

118 *Fourth*, all convicted prisoners, if they so desire, should have ready access to religious counselling from the time of their admission into prison. This service can help them cope with their eventual fate. Counselling for psychological wellbeing can also be provided on a secular (non-faith) basis.

119 *Fifth*, the provision of psychological support by trained personnel from the Singapore Prison Service, and social or financial assistance to the immediate families of executed prisoners where required upon request, through referrals to Family Resource Centres, is a good practice. As the executions affect the families, any improvements or enhancements to such support provided is welcomed.

120 *Sixth*, the statutory requirement for all sentences of death to be carried out only after a convicted person has had two tiers of courts review the matter of the person's sentence even where a convicted person opts not to appeal must continue. This can prevent the possibility of a miscarriage of justice and provides confidence on the correctness, legality and propriety of the conviction of the accused and the imposition of the sentence of death.

VI. In lieu of a conclusion

121 At the international fora, there are increasing—perhaps even more strident—calls for the complete abolishment of the death penalty. In the past few years, the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has urged UN member states to consider whether the death penalty fails to respect the

inherent dignity of the person, causes severe mental and physical pain and suffering and amounts to torture or cruel, inhuman or degrading punishment.[226] Singapore has not ignored or disregarded these international developments. Singapore, however, rejects the link between the death penalty and torture, cruel, inhuman and degrading treatment.

122 Singapore has consistently voted against the UNGA resolutions on the moratorium on the use of the death penalty. As Singapore's Permanent Representative to the United Nations explained Singapore's vote on the "Moratorium on the use of the death penalty" resolution in 2022:[227]

> 4 Firstly, this resolution is not consistent with the provisions of international law. It is a well-known fact that Article 6 of the International Covenant on Civil and Political Rights expressly allows for the use of the death penalty for the most serious crimes, and in accordance with due process of law. The moratorium resolution has unfortunately not acknowledged this important and relevant point. The letter and spirit of the moratorium resolution is not only one-sided; it is not at all consistent with the provisions of international law.
>
> 5 Secondly, this resolution has made no reference to the rights of victims and the rights of their families. The resolution ignores the reality faced by many countries around the world in dealing with rising rates of violent crimes, including crimes related to gangs, gun violence, drug trafficking and drug cartels. We regard the omission of the rights of victims

[226] UN Special Rapporteur, United Nations, "Death penalty increasingly viewed as torture, UN Special Rapporteur finds," (23 October 2012) <https://www.ohchr.org/en/press-releases/2012/10/death-penalty-increasingly-viewed-torture-un-special-rapporteur-finds> (accessed 14 February 2024).

[227] See "Explanation of vote after the vote by Ambassador Burhan Gafoor, Permanent Representative of Singapore to the United Nations, on draft resolution XII under agenda item 68(B), "Moratorium On The Use Of The Death Penalty", Plenary Meeting of the General Assembly", (Ministry of Foreign Affairs, 15 December 2022) <https://www.mfa.gov.sg/Overseas-Mission/New-York/Mission-Updates/Plenary/2022/12/20221215> (accessed 14 February 2024).

> and the rights of their families to be a serious flaw in this resolution.
>
> 6 Thirdly, this resolution seeks to impose the views and values of one group of countries on the rest of the world. To put it plainly, this resolution seeks to export a particular model of society to the rest of the world. The resolution does not acknowledge or respect the diversity of legal and criminal justice systems around the world. It takes a one-size-fits-all approach, by seeking to impose a moratorium on the rest of the international community.

123 During these debates, Singapore has regularly tabled an amendment to include an operative paragraph to reaffirm the sovereign right of all countries to develop their own legal systems, including determining appropriate legal penalties, in accordance with their international law obligations.[228] In 2022, this operative paragraph in the UNGA resolution was again adopted by the highest ever number of votes despite the resolution's proponents blatantly and arbitrarily deleting from the draft resolution the operative sovereignty paragraph. The amendment has always been adopted and incorporated into the resolution.[229] This is indicative of the continued support for the sovereign right of all countries to develop their own legal systems and that there is no international consensus on the abolition of the death penalty.

124 There is no public clamour in Singapore for the abolishment of the death penalty. Various past surveys point to support for the retention of the death penalty.[230] Public trust and confidence is healthy that the

[228] See, *eg*, *Moratorium on the use of the death penalty*, resolution 77/222, United Nations General Assembly, Seventy-seventh Sess, Agenda item 68(b), A/RES/77/222 (Adopted on 15 December 2022). Operating paragraph 1 of the resolution reads, "Reaffirms the sovereign right of all countries to develop their own legal systems, including determining appropriate legal penalties, in accordance with their international law obligations".

[229] See, *eg*, *Moratorium on the use of the death penalty*, resolution 77/222, United Nations General Assembly, Seventy-seventh Sess, Agenda item 68(b), A/RES/77/222 (Adopted on 15 December 2022).

[230] See the Ministry of Home Affairs' press release, "Findings from Recent Studies on the Death Penalty in Singapore," (19 October 2022) <https://www.mha.gov.sg/mediaroom/press-releases/findings-from-recent-studies-on-the-death-penalty-in-singapore/>. The three studies on the use of the death penalty in

death penalty regime in Singapore has the requisite deterrent effect on criminals and has sufficient safeguards.[231] Nonetheless, the authorities face the continuing imperative of demonstrating that the death penalty regime works well, has sufficient and robust safeguards, and is in accord with societal values and norms.

125 The changes to the death penalty regime in the past decade, as outlined in this article, underscore the central importance of maintaining and enhancing the legitimacy of the death penalty regime. There is no alternative to this abiding task. Beyond the legal debate, the overarching relevant question in the debate on the death penalty is whether the larger legitimate interests of society are served by having the death penalty on the statute books. Put simply, the debate for and against the death penalty does not lie solely in legal and jurisprudential considerations. Social attitudes towards the death penalty will continue to evolve and it may well be that the death penalty might be seen in a different light from today.

126 In this regard, notwithstanding the existence of the death penalty in its statute books, Singapore's administration of criminal justice must never lose sight of the value and sanctity of life. Against this is the societal priority placed on personal safety and public security. The adherence to the letter and spirit of the law that applies to persons facing capital charges must be another central tenet in the administration of criminal justice. There is also the constant challenge of calibrating the

Singapore sought to better understand the views of Singapore residents and the perceptions of residents in regional cities. The three studies are titled: (**a**) "Survey on Singapore Residents' Attitudes towards the Death Penalty**,** conducted by the MHA Research and Statistics Division in 2021; (**b**) "Study on Attitudes towards the Use of Capital Punishment, commissioned by MHA in 2019 and conducted by Dr Carol Soon and Shawn Goh, Institute of Policy Studies; and (**c**) "Perception of Residents in Regional Cities on Singapore's Crime Situation, Law and Safety," commissioned by the MHA Home Team Behavioural Sciences Centre and conducted in two phases in 2018 and 2021.

[231] Tham Yuen-C, "Parliament: Statistics, studies show death penalty deterred drug trafficking, firearms use and kidnapping, says Shanmugam", *The Straits Times* (5 October 2020). In addition, a survey conducted on 2,000 Singapore residents in 2018 found majority support (69.6%) for the death penalty as an appropriate punishment for drug traffickers who traffic a large amount of drugs: see Suet Lay Liang, "Public Perception towards Singapore's Anti-Drug Policies" (2020) *Home Team Journal* 52 at p 52–55. See also "Eight in 10 residents back death penalty: Reach survey", *The Straits Times* (7 October 2016) at p B4. *Cf* Chan Wing-Cheong, Tan Ern Ser, Jack Tsen-Ta Lee & Braema Mathi, "How Strong is Public Support for the Death Penalty in Singapore?" (2016) 11(3) *Asian Journal of Criminology* 179. See further "Capital punishment – a little more conversation on a matter of life and death," *TODAY* (Singapore) (30 November 2018) <https://www.todayonline.com/big-read/big-read-capital-punishment-little-more-conversation-matter-life-and-death> (accessed 14 February 2024).

appropriate balance of rights and responsibilities between those who commit serious crimes, the victims of serious crimes and their families, and the rest of society. This is an unenviable task but it must be done regularly without fear or favour through robust reviews on the use of the death penalty. It must be sensitive to evolving societal values and expectations in order to maintain the legitimacy of the use of the death penalty.

127 Through its robust jurisprudence, the courts have demonstrated the vital constitutional role they play ensuring that the use of the death penalty scrupulously adheres to the law, and that the rights of persons sentenced to death are respected and protected throughout the entire process from pre-trial to trial to the implementation of the capital sentence.

128 Ultimately, the protection of the rights of persons sentenced to death requires a whole-of-Government effort – the Legislature, the Executive, and the Judiciary all fully cognizant of their constitutional roles and desirous to do right in law, policy, and procedures. The role of the criminal Bar, especially pro bono lawyers, is essential in ensuring appropriate access to justice for those facing capital charges. In addition, the protection of the rights of persons sentenced to death also requires society to demand that a robust system of checks and balances is properly in place, works without fear or favour, and that the rule of law prevails. The critical importance of calibrating the appropriate balance of rights and responsibilities between those who commit serious crimes, the victims and their families, and the rest of society would then arguably have been struck. This is what the rule of law demands in Singapore's death penalty regime.

Annex A – List of offences attracting the death penalty

S/N	Nature of Offence	Act/Section	Description	Mandatory
1	**Offences Against the Person**	Penal Code 1871 s 130B	Piracy with murder or attempted murder or piracy that endangers life	√
2		Penal Code 1871 s 130E	Genocide (if offence consists of the killing of a person)	√
3		Penal Code 1871 s 300 (read with s 302)	Murder: 300(a)	√
4			Murder: 300(b) – (d)	
5		Penal Code 1871 s 305	Abetment of suicide of a child (under 18 years of age) or an insane person	
6		Penal Code 1871 s 307(2)	Attempted murder by a convict under a sentence of imprisonment for life (where hurt is caused)	
7		Penal Code 1871 s 364	Kidnapping or abducting in order to murder	
8		Penal Code 1871 s 396	Gang-robbery with murder	
9		Hostage-Taking Act 2010 s 3	Taking any person hostage in order to compel a government or an international intergovernmental organisation to do or abstain from doing any act	
10		Kidnapping Act 1961 s 3	Abduction, wrongful restraint or wrongful confinement for ransom	

11	**Drug Offences**	Misuse of Drugs Act 1973 s 5	Unauthorised trafficking of a specified controlled drug of a quantity exceeding a prescribed limit specified under the Second Schedule[232]	√ Unless certain conditions met
12		Misuse of Drugs Act 1973 s 7	Unauthorised import or export of a specified controlled drug of a quantity exceeding a prescribed limit specified under the Second Schedule	√ Unless certain conditions met
13		Misuse of Drugs Act 1973 s 6	Unauthorised manufacture of a specified controlled drug specified under the Second Schedule[233]	√
14	**Terrorism**	Terrorism (Suppression of Bombings) Act 2007 s 3(1)	Delivery, placement, discharge or detonation of an explosive or other lethal device in public or state-owned places, transportation systems or infrastructure facilities (if person had intention to caused death or serious bodily injury and death is caused).	√
15		Terrorism (Suppression of Misuse of Radioactive Material) Act 2017 s 6(2)	Using radioactive material or convention device to cause the death of an individual and death is caused.	√
16		Terrorism (Suppression of Misuse of	Using or damaging nuclear facility to cause	√

[232] Diamorphine (15g), Morphine (30g), Opium (1,200g and containing 30g of morphine), Cannabis (500g), Cannabis resin (200g), Cannabis mixture (1,000g), Cocaine (30g), Methamphetamine (250g)

[233] Diamorphine, Morphine, Cocaine, Methamphetamine.

		Radioactive Material) Act 2017 s 7(2)	the death of an individual and death is caused.	
17	**Nuclear Facilities**	Radiation Protection Act 2007 s 26DB	s 26DB(2)(a)-(b): An act directed against a nuclear facility committed with the intention of causing serious injury to any person knowing that the injury is likely to cause his death, and which results in death.	
18			s 26DB(2)(c): An act directed against a nuclear facility committed with the intention of causing death and which results in death.	√
19	**Firearms/ Explosives Offences**	Internal Security Act 1960 s 58	Possession of an unauthorised firearm, ammunition or explosive within a security area	√
20		Internal Security Act 1960 s 59	Consorting with someone who unlawfully possesses a firearm, ammunition or explosive inside a security area in a manner that endangers public security.	
21		Arms Offences Act 1973 s 4	Use or attempt to use any arm	√
22		Arms Offences Act 1973 s 4A	Use or attempt to use any arm to commit scheduled offences.	√
23		Arms Offences Act 1973	Accomplice present at scene of offence where any arm was used in	√

		s 5	committing or in attempting to commit any offence	
24		Arms Offences Act 1973 s 6	Trafficking in arms	
25	**Offences Against the State**	Penal Code 1871 s 121	Waging or attempting to wage war or abetting the waging of war against the Government	
26		Penal Code 1871 s 132	Abetment of mutiny, if mutiny is committed in consequence thereof	
27		Singapore Armed Forces Act 1972 s 15	Mutiny (only if the offence is committed in the face of the enemy or involves the use of violence)	√
28	**Other Offences**	Penal Code 1871 s 194	Giving or fabricating false evidence with intent to procure conviction of a capital offence, and if an innocent person is convicted and executed in consequence of such false evidence	
29		Singapore Armed Forces Act 1972 s 11	Misconduct in action (surrenders to enemy, abandonment)	
30		Singapore Armed Forces Act 1972 s 12	Assisting the enemy	
31		Singapore Armed	Offences by officer, etc., serving in ship involved in convoying	

		Forces Act 1972 s 39	and protection of vessel (failure to defend, abandonment)	