



PRESS RELEASE

Issuance of Correction Directions under POFMA regarding Statements by the Anti-Death Penalty Asia Network concerning the Legal Processes for Prisoners Awaiting Capital Punishment and Treatment of Anti-Death Penalty Activists

1. The Ministry of Home Affairs (MHA) is aware of falsehoods circulated by the Anti-Death Penalty Asia Network (ADPAN) on Facebook, Instagram and LinkedIn on 3 October 2024, about the legal processes for Prisoners Awaiting Capital Punishment (“PACPs”) in relation to Mohammad Azwan bin Bohari (“Azwan”), and the treatment of anti-death penalty activists.

Falsehoods

2. The Facebook, Instagram and LinkedIn posts make the following false statements:
 - a. The State carries out executions without regard for due legal process.
 - b. The Government targets, silences and harasses Transformative Justice Collective (TJC) and other individuals for speaking up against the death penalty.

Facts

Facts pertaining to Azwan’s case

3. An execution will only be scheduled when a prisoner has exhausted all rights of appeal and the clemency process in relation to his or her conviction and sentence. This was so in Azwan’s case.
4. In 2009, Azwan was convicted and sentenced to five years’ imprisonment and five strokes of the cane for trafficking methamphetamine and diamorphine. He was also convicted for consumption of methamphetamine and morphine, and possession of cannabis, cannabinol derivatives and diamorphine, on the same occasion. He was released from prison in October 2014.

5. On 17 October 2015, he was arrested for drug trafficking again, and underwent trial in the High Court (“HC”) for this new capital drug trafficking offence.
6. Azwan was accorded due legal process. At Azwan’s trial, the Prosecution called witnesses to prove the trafficking charge, and presented Azwan’s statements recorded by officers from the Central Narcotics Bureau (CNB), where he admitted during investigations that all the drugs were meant for sale. However, during the trial, while Azwan did not dispute that the drugs found in his possession belonged to him, he denied that all the drugs were for the purpose of trafficking. His defence was that he was a drug addict, and would normally set aside 50% of the drugs he obtained for his personal consumption; the other 50% would be sold to finance his drug habit.
7. Under Section 17 of the Misuse of Drugs Act 1973 (MDA), anyone who is proven to have in his possession more than certain threshold amounts of controlled drugs is presumed to have those drugs in his possession for the purpose of trafficking. Even where the Prosecution relies on this presumption, it still bears the legal burden of proving the material elements of the charge beyond a reasonable doubt, i.e., the fact of possession and knowledge (of the nature of the drugs). The use of such presumptions is only an evidential tool to prove certain elements of an offence after a predicate fact has been proven by the Prosecution. Further, this presumption can be rebutted if the accused person is able to show, on a balance of probabilities, that he or she was not trafficking in drugs.
8. Azwan attempted to rebut this presumption at trial. However, the HC found that “[n]ot only were details lacking, it was raised too belatedly to have any persuasive value”. The HC found that Azwan’s claims at trial were contradicted by his own detailed admissions in his statements to officers from the CNB.
9. The HC considered the evidence adduced at trial and the arguments put forth by the Prosecution and Azwan’s lawyers, and was “satisfied that the Prosecution had proved its case beyond a reasonable doubt against Azwan”.
10. After the trial, on 11 February 2019, Azwan was convicted and sentenced to death for possessing not less than 26.5 grammes of diamorphine (*i.e.* pure heroin) for the purpose of trafficking. Under the MDA, the unauthorised trafficking in more than 15 grammes of diamorphine would attract the death penalty. The amount trafficked by Azwan would have been sufficient to feed the addiction of about 320 abusers for a week. His appeal against his conviction and sentence was dismissed by the Court of Appeal (“CA”) on 24 October 2019.
11. Azwan’s applications for clemency were denied by the President on 23 March 2020 and 15 June 2022.

12. Since his appeal against conviction and sentence was dismissed in October 2019, Azwan has been a joint applicant with other PACPs in three legal proceedings. All these proceedings were dismissed by the HC and/or the CA as they were found to be unmeritorious. In one of these applications, the Court found that the application was an abuse of the court process.
13. On 12 April 2024, Azwan was given notice that his execution was scheduled on 19 April 2024. At that point, he was only involved in one pending court application (“LASCO application”), where he and other PACPs sought a declaration that the policy of not assigning LASCO counsel for post-appeal applications was unconstitutional. The LASCO application did not seek a stay of execution.
14. On 16 April 2024, three days before his scheduled execution, Azwan filed a Criminal Motion (“CM 14”) to the CA seeking a stay of execution on the basis that he was involved in the LASCO application. On 17 April 2024, the CA allowed CM 14 and ordered a stay of execution pending the outcome of the LASCO application. The LASCO application was struck out by the HC on 20 May 2024. The subsequent appeal of the LASCO application by Azwan and the other PACPs was dismissed by the CA on 9 September 2024.
15. On 19 September 2024, Azwan and 30 other PACPs filed an application (“OA 972”) challenging the constitutionality of certain provisions introduced under the Post-appeal Applications in Capital Cases Act 2022. OA 972 was a civil application which had no bearing on Azwan’s conviction or sentence. It also did not seek a stay of execution. On 30 September 2024, Azwan was given notice that his execution was scheduled on 4 October 2024.
16. On 1 October 2024, three days before his scheduled execution, Azwan filed another application for a stay of execution (“CM 40”). Azwan’s basis for filing CM 40 was that, amongst other reasons, OA 972 was still pending and he intended to file a “*review application*” against his conviction after OA 972 had been determined by the Court. On 3 October 2024, CM 40 was dismissed by the CA. In its judgment, the CA stated that Azwan’s “*intended review application [had] no prospect of success whatsoever and there [was] no basis for the Court to stay his execution to await the outcome in OA 972*” and that “*[n]othing [had] been raised which would call into question the correctness of the applicant’s conviction and sentence*”.
17. It is clear from the above that it is false and misleading to suggest that executions are carried out by the State without regard for due process. Azwan was afforded due legal process at all stages, and was only scheduled for execution when he had exhausted all legal processes in relation to his conviction and sentence. Azwan was scheduled for execution on 4 October 2024 because his pending civil application (OA 972) had no bearing to his conviction and sentence. The last-minute application (i.e. CM 40) to seek

a stay of execution on the basis of this pending application was dismissed by the CA, and his execution was carried out in accordance with the law.

The Government did not target, silence and harass TJC and other individuals for speaking up against the death penalty.

18. The Government does not target, silence and harass organisations and individuals simply for speaking out against the death penalty. Action is taken against organisations and individuals who spread false information about the death penalty, where it is in the public interest to do so.
19. TJC has been issued with several POFMA Correction Directions (“CDs”) in relation to its false statements about (amongst others) the purported arbitrary laws and processes relating to the death penalty and the implementation. In every one of the cases, the Government had assessed that it was in the public interest to issue the CDs as the false statements cast serious aspersions on the Government and the criminal justice system, and could undermine public confidence in public institutions.
20. The CDs issued against TJC simply required them to carry a Correction Notice on the posts containing the falsehoods. There was no requirement for the text of the original posts to be removed or altered. Readers can still read the falsehoods, and consider the Government’s clarifications alongside it. The Government does not, through the use of POFMA or otherwise, silence any organisation or individual for speaking out against the death penalty. The Government only seeks to correct falsehoods.
21. The Government takes a serious view of the deliberate communication of falsehoods. The Minister for Home Affairs has instructed the POFMA Office to issue a CD to ADPAN. ADPAN will be required to carry a Correction Notice on its Facebook, Instagram and LinkedIn posts.
22. For the facts of the case, please refer to the Factually article “Corrections regarding false statements concerning Legal Processes for Prisoners Awaiting Capital Punishment and Treatment of Anti-Death Penalty Activists” at www.gov.sg/article/factually091024.

MINISTRY OF HOME AFFAIRS
9 OCTOBER 2024