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/ 3 JUL 2012

Recipients: SPD.....

Note No. 141/12

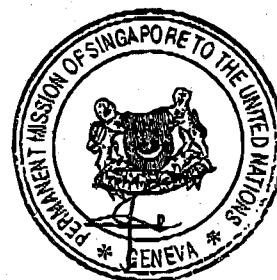
The Permanent Mission of the Republic of Singapore to the United Nations Office and other International Organisations in Geneva presents its compliments to the Office of the High Commissioner for Human Rights and has the honour to refer to the communication dated 23 April 2012 (referenced UA G/SO 214 (33-27) SGP 1/2012) from the Special Rapporteur on extrajudicial, summary or arbitrary executions, Mr Christof Heyns, to the Permanent Representative of Singapore to the United Nations, Ms Tan Yee Woan.

The Permanent Mission has the further honour to request the assistance of the Office to transmit the enclosed reply letter from Permanent Representative Tan to Mr Christof Heyns.

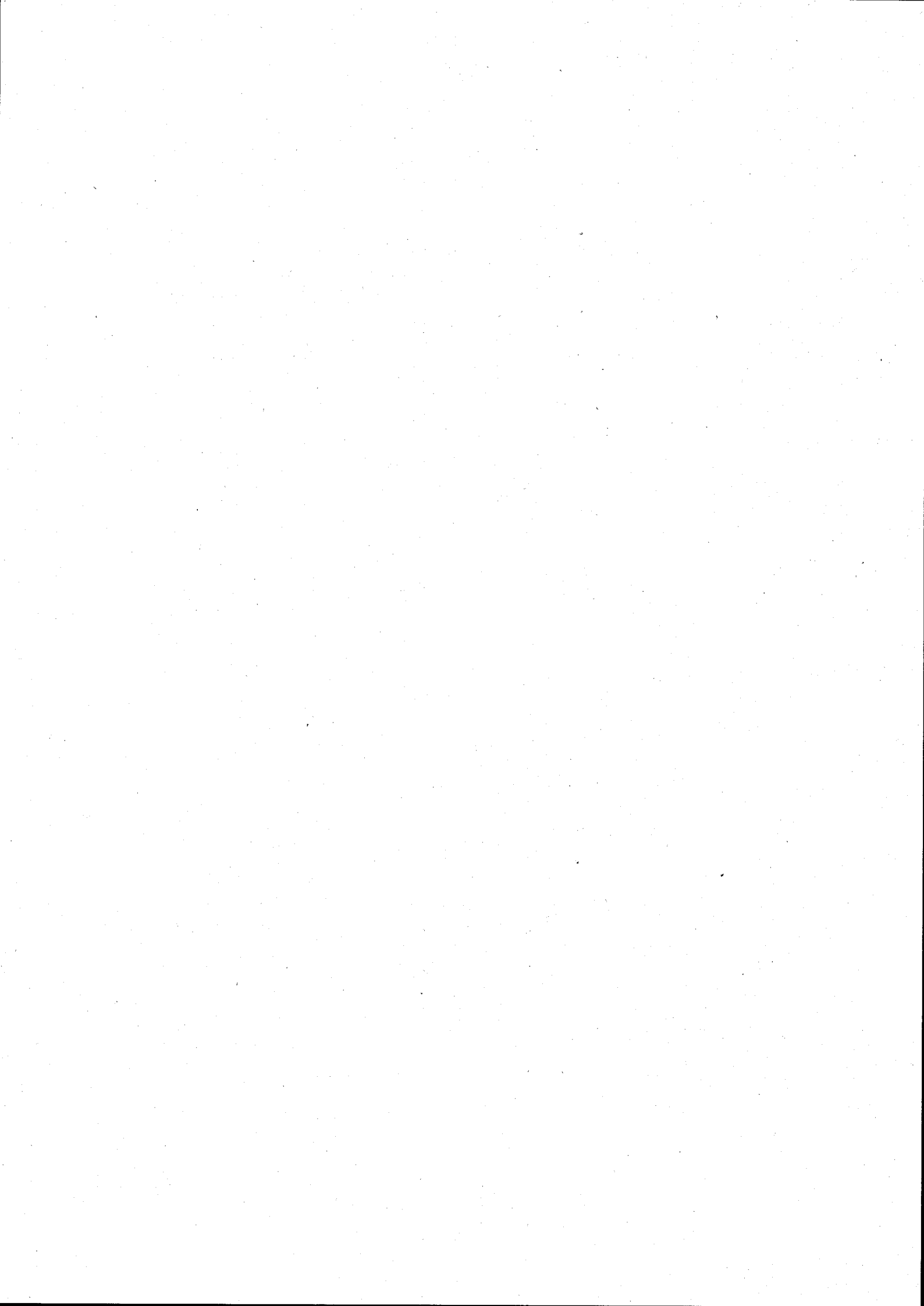
The Permanent Mission of the Republic of Singapore to the United Nations Office and other International Organisations in Geneva avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration.

GENEVA

2 July 2012



Office of the High Commissioner for Human Rights
United Nations
Geneva





PERMANENT REPRESENTATIVE
OF THE REPUBLIC OF SINGAPORE
TO THE UNITED NATIONS

2 July 2012

Mr Christof Heyns
Special Rapporteur on extrajudicial,
summary or arbitrary executions
Office of the High Commissioner for Human Rights
Palais Wilson, Rue des Pâquis 52
CH-1201 Geneva

Dear Mr Heyns

We refer to your letter [Reference: UA G/SO 214 (33-27) SGP 1/2012] dated 23 April 2012.

The death penalty in Singapore is imposed in accordance with the law, as administered by the courts. It is neither summary nor arbitrary. The Singapore Government therefore does not consider the death penalty generally, or its imposition on Mr Yong Vui Kong ("Mr Yong") specifically, to fall within the ambit of the office of the Special Rapporteur on extrajudicial, summary or arbitrary executions.

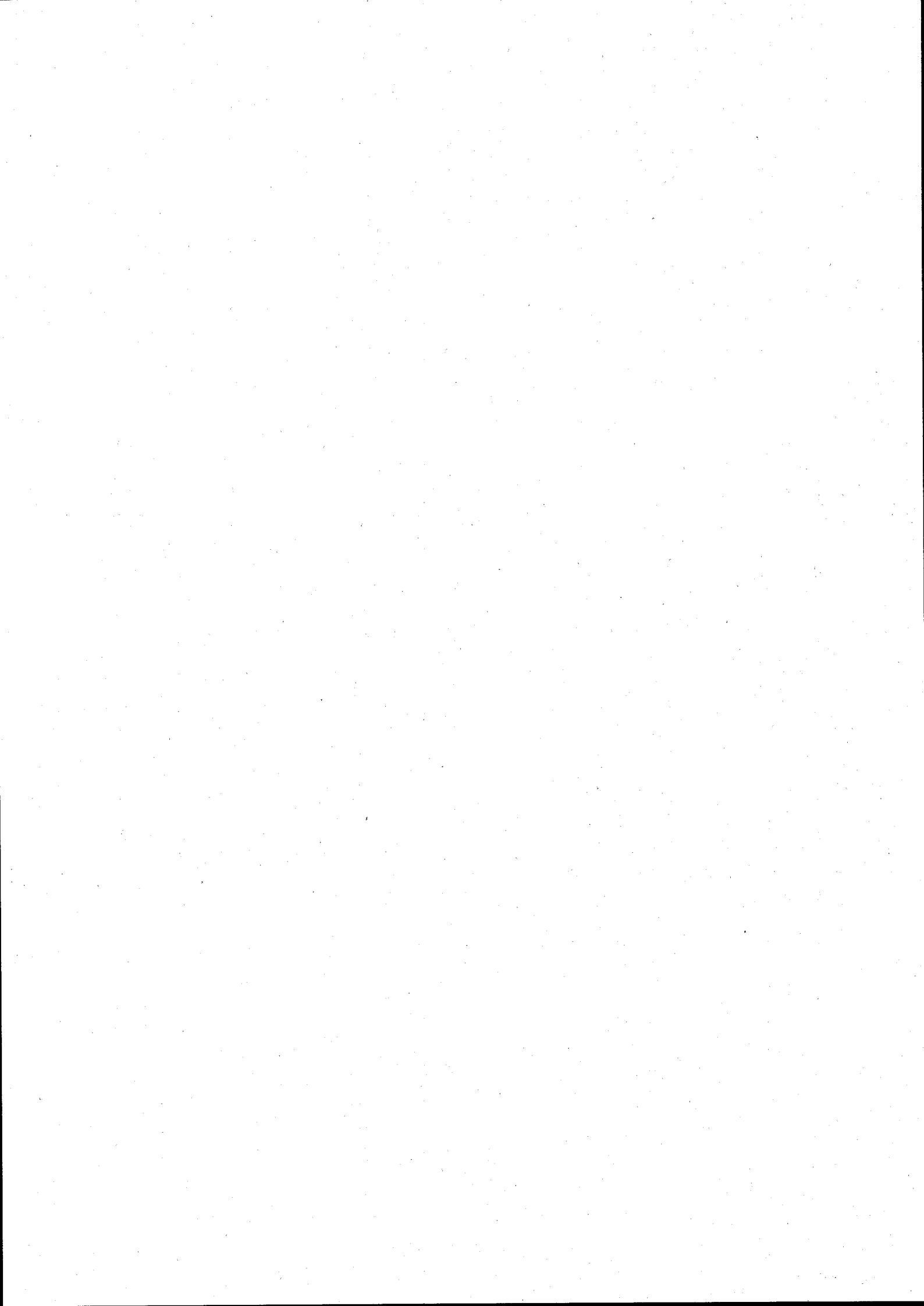
Mr Yong Vui Kong's case

Mr Yong was charged with trafficking in 47.27 grams of diamorphine, a capital offence under the Misuse of Drugs Act. He was convicted in 2008 after a full trial before the High Court of Singapore. The High Court concluded that the Prosecution had proved its case against him beyond a reasonable doubt.

Mr Yong appealed against the conviction in November 2008, but withdrew his appeal in April 2009. He instructed his counsel that, having embraced Buddhism while incarcerated, he "felt uneasy and had no peace of mind if he were to proceed with his appeal."¹ Thereafter, Mr Yong petitioned the President for clemency. This was refused, and Mr Yong was scheduled to be executed on 4 December 2009. Mr Yong initially elected not to exercise his right of appeal. He changed his mind 4 days before the date of his execution and moved to appeal his conviction out of time. The High Court granted his motion, stayed his execution and allowed his appeal to proceed. The decision of the High Court was affirmed by the Court of Appeal, the highest court in Singapore.

In 2010, the Court of Appeal heard Mr Yong's appeal, where he challenged the constitutionality of the death sentence imposed by law upon him. This was the first of three legal challenges brought by Mr Yong. Mr Yong subsequently brought a challenge against the clemency process and other related matters, and a further challenge against the exercise of prosecutorial discretion in his case. All three challenges reached the

¹ Letter by counsel for Mr Yong to the Registrar of the Supreme Court, 23 April 2009.



Court of Appeal, which dismissed them after reserving judgment. The most recent judgment of the Court of Appeal in Yong's case was delivered on 4 April 2012.

The legal challenges brought by Mr Yong are the most extensive and numerous in Singapore's history. Throughout the legal proceedings, which were held in open court, Mr Yong was represented by counsel. The proceedings were conducted in accordance with the procedure and safeguards laid down in Singapore law. The challenges brought by Mr Yong were carefully considered by the Courts of Singapore, and in every instance a reasoned decision was published. Those decisions are publicly available and we invite you to personally review them.²

In particular, we are unable to agree with the argument that the fact that charges were discontinued against Mr Chia Choon Leng ("Mr Chia") should be considered a mitigating factor relevant to Mr Yong's sentence. You may wish to note that, in the latest challenge brought by Mr Yong, the Court of Appeal found that the Attorney-General (who also serves as Public Prosecutor) had discontinued the charges against Mr Chia because of a lack of evidence. The Court ruled that this was a valid exercise of prosecutorial discretion, which in no way discriminated against Mr Yong, or undermined the decision by the Attorney-General to prefer capital charges against him.³

Issues of International Human Rights Law

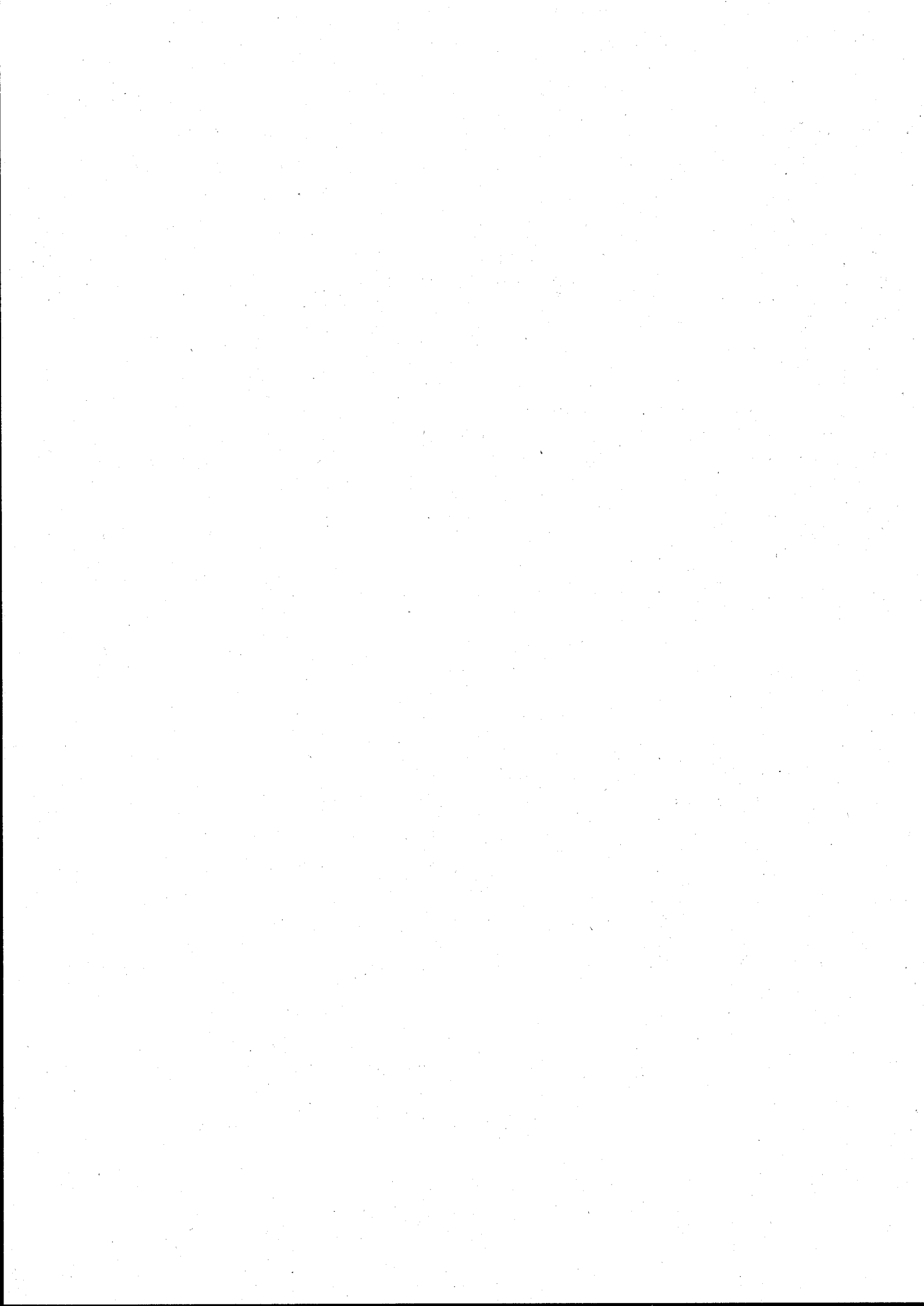
We are unable to agree with your assertion that the automatic and mandatory imposition of capital punishment is a violation of international law. It follows that we are unable to agree with your assertion that the specific offence for which Mr Yong was convicted and sentenced cannot be classified in the category of "most serious crimes" under international law. Our stance on these points is stated in our letter dated 3 January 2012 in response to your letter relating to the case of Mr Roslan bin Bakar [Reference: UA G/SO 214 (33-27) SGP 3/2011]⁴.

We should highlight that similar arguments were canvassed on behalf of Mr Yong before the Court of Appeal in the 2010 litigation, but were ultimately not accepted. After considering the relevant arguments, the Court of Appeal noted that there remains "a significant number of States" which impose mandatory capital punishment for "drug-related and other serious offences". The Court of Appeal held that the defence had not established the existence of a rule of customary international law which prohibited the imposition of mandatory capital punishment for drug trafficking. In arriving at this conclusion, the Court of Appeal relied on established international legal authority regarding proof of custom, including the jurisprudence of the International Court of Justice.⁵

² The various judgments in Mr Yong's case are reported at the following citations: [2009] SGHC 4; [2009] SGHC 274; [2010] 2 SLR 192; [2010] 3 SLR 489; [2011] 1 SLR 1; [2011] 2 SLR 1189; [2012] SGCA 23.

³ See *Yong Vui Kong v. Public Prosecutor* [2012] SGCA 23 at paras. 26-28.

⁴ See [https://spdb.ohchr.org/hrdb/19th/Singapore_03.01.2012_\(3.2011\)p.pdf](https://spdb.ohchr.org/hrdb/19th/Singapore_03.01.2012_(3.2011)p.pdf)



Singapore's stance on drugs

May I also take this opportunity to reiterate and elaborate Singapore's stance on the mandatory death penalty imposed on drug traffickers, and its policy against drugs generally.

The mandatory death penalty on drug traffickers is not imposed gratuitously. It is a sober response by Singapore to the gravity of the threat posed by drugs. A responsible analysis of the death penalty, as applied to drug traffickers, must therefore take into account how it has contributed to keeping Singapore safe from the scourge of drugs.

The scourge of drugs is well-known. It affects many countries. The drug addict loses his ability to lead a normal life, to hold down a job, and to provide for his loved ones. He is consumed by his addiction – to feed it, he will turn to his family, to his friends and, more often than not, to crime. His addiction, in turn, sustains the international crime syndicates involved in drug trafficking and other forms of organised crime.

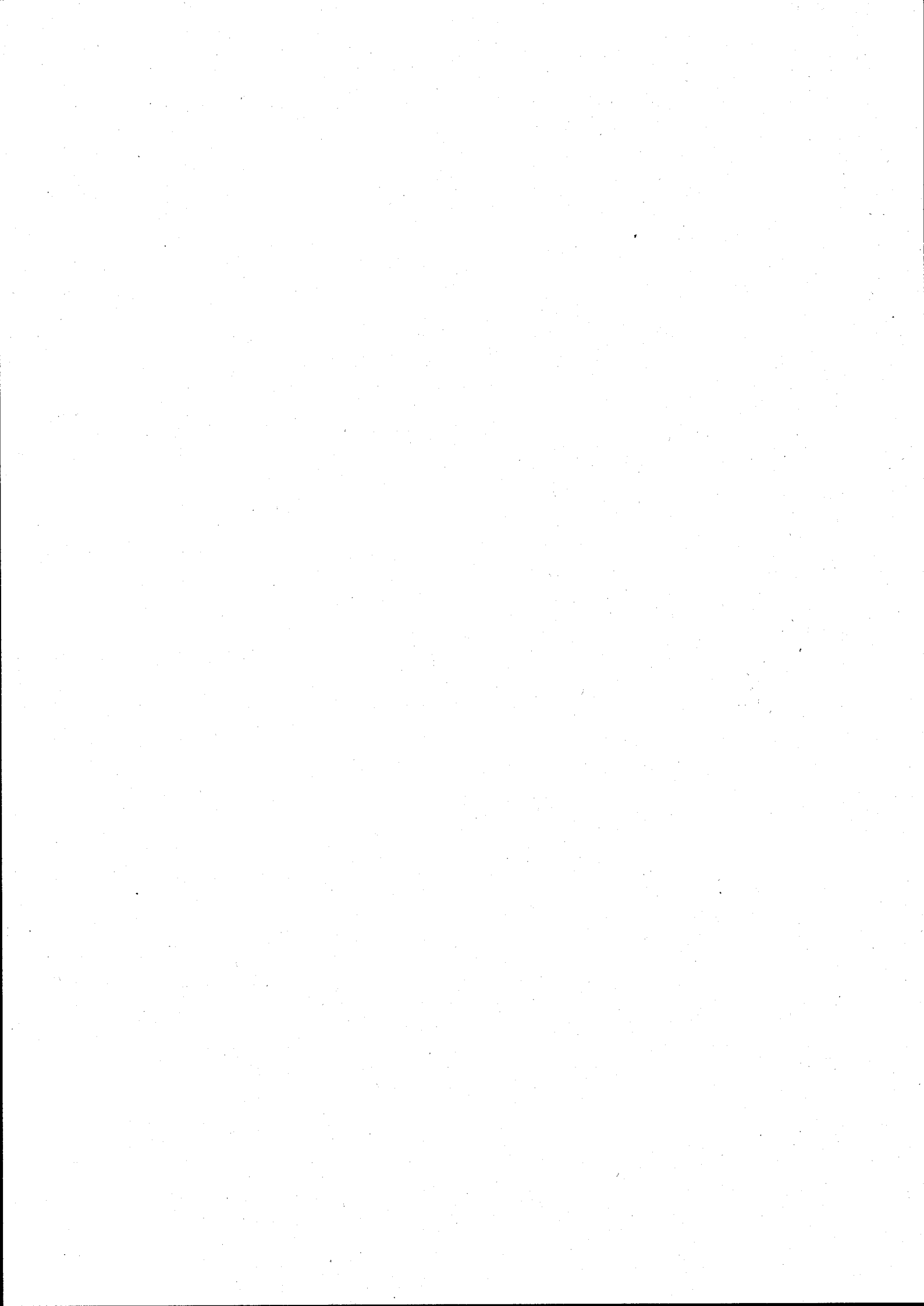
In its *World Drug Report 2011*, the United Nations Office on Drugs and Crimes states that 210 million people worldwide use illicit drugs each year, and almost 200,000 of them die from drugs. The Report also states that:

Drug trafficking, the critical link between supply and demand, is fuelling a global criminal enterprise valued in the hundreds of billions of dollars that poses a growing challenge to stability and security. Drug traffickers and organized criminals are forming transnational networks, sourcing drugs on one continent, trafficking them across another, and marketing them in a third. In some countries and regions, the value of the illicit drug trade far exceeds the size of the legitimate economy. Given the enormous amounts of money controlled by drug traffickers, they have the capacity to corrupt officials. In recent years we have seen several such cases in which ministers and heads of national law enforcement agencies have been implicated in drug-related corruption. We are also witnessing more and more acts of violence, conflicts and terrorist activities fuelled by drug trafficking and organized crime.

The Report also adds that organised crime groups made net profits of at least US\$7 billion from the opiate trade.

Many countries have tried to take on the drugs problem. Despite the actions taken by some governments, drug cartels have become more emboldened and some even have the financial and paramilitary wherewithal to openly defy the lawful government. In other countries, the talk is now of legalisation, of allowing drugs to be sold openly. In the international media, there are regular reports of drug-fuelled violent crime and deaths from drug overdose.

⁵ See *Yong Vui Kong v Public Prosecutor and another matter* [2010] 3 SLR 489 at paras. 96-98.



It is plain that drug trafficking is one of the most serious problems the world faces, and that it ought to be regarded as one of the most serious offences possible under the law. The drug trafficker is not a murderer, but he is a pedlar of death who does far greater harm to his fellow man, and to society. In this regard, we must respectfully differ from the contrary views cited by you.

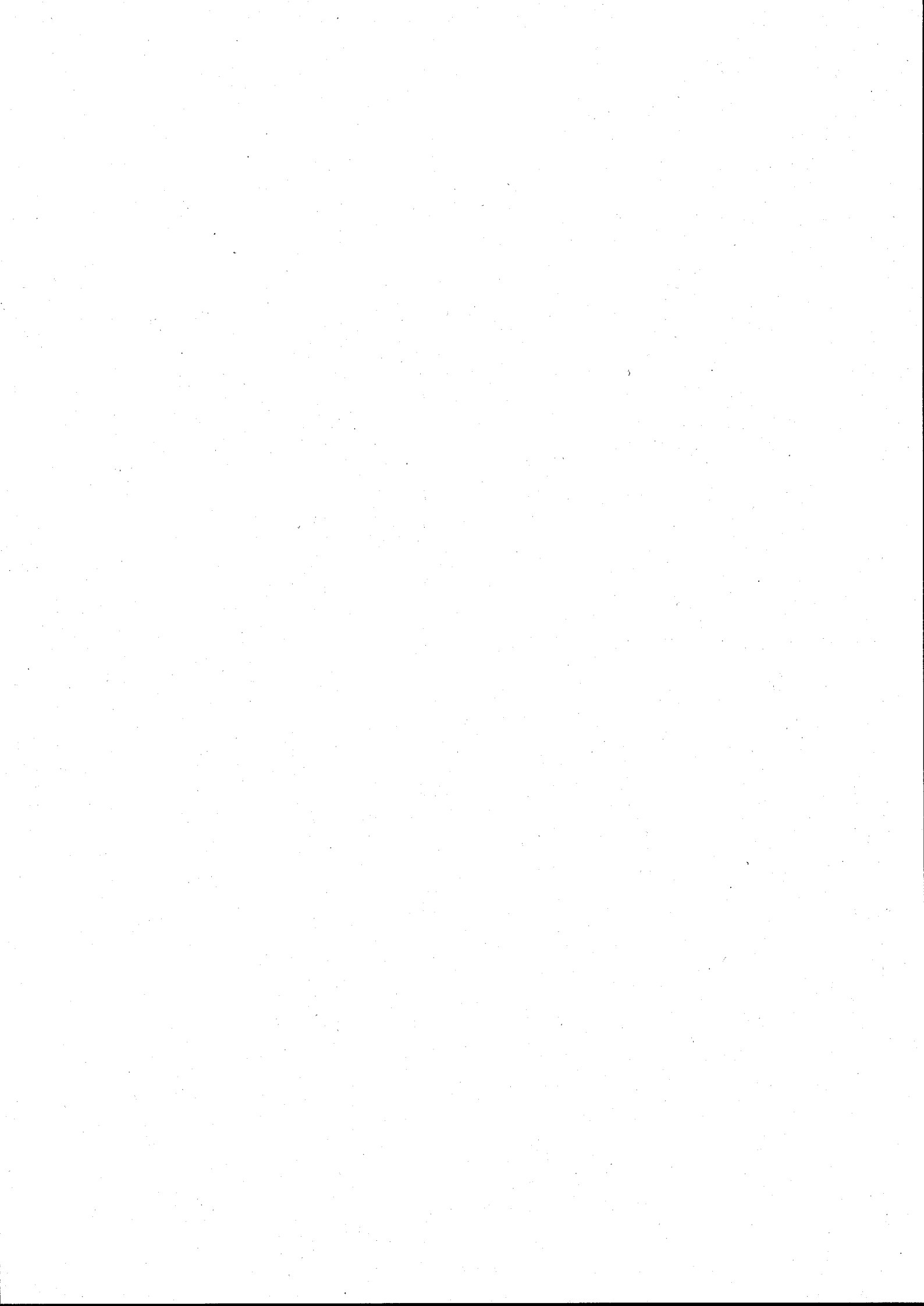
Singapore is not free from the menace of drugs. We are near the Golden Triangle, one of the leading opiate-producing areas in the world. Traffickers repeatedly test our borders. 79% of our prison population have drug antecedents and more than 95% of those in long-term imprisonment for drug consumption have criminal antecedents. Drug addiction wrecks the lives of the addict and his loved ones. For example, in November 2011, the Central Narcotics Bureau was informed by a hospital and the Ministry for Community Development, Youth and Sports that a one-month old baby had tested positive for morphine. Further checks revealed that the mother had been abusing heroin up to 5 times a day during her pregnancy. As a result, the baby was born prematurely and in poor health.

But where other countries have failed, Singapore has succeeded in keeping the menace of drugs at bay. Drug addiction is tightly contained. There are no deaths from drug overdose. There are no drug peddlers in shady street corners. There is no need for needle exchange centres. Drug syndicates have been unable to establish a foothold, and there is no drug-related violence.

This is because Singapore's policy on drugs has always been robust and comprehensive. Schoolchildren are educated on the harmful effects of drugs. At-risk groups are targeted for preventive efforts. Addicts are remanded for treatment and rehabilitation. Traffickers are punished heavily in accordance with the law, in the most severe cases by the mandatory death penalty. The application of the mandatory death penalty is supported by the majority of Singaporeans, and its constitutionality has been repeatedly affirmed by the Judiciary. It has had a clear deterrent effect on the activities of drug syndicates.

We respect the views of the States and international bodies that have taken an abolitionist stance. However, we must observe that there is no international consensus supporting an established rule of customary international law against the imposition of the death penalty. Indeed, a number of jurisdictions, like the United States and China, continue to retain the death penalty. In the premises, while we welcome the continuing dialogue with you and other *bona fide* interlocutors, we view the death penalty as primarily an issue of law and order, to be resolved by each State in accordance with its political, economic, and social circumstances.

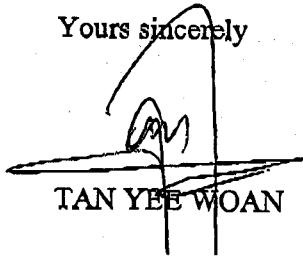
Detractors claim to sympathise with individual criminals who have been sentenced to death. But what of those who suffer, in one way or another, from the scourge of drugs? Our determination to protect our citizens from the harm caused by drugs must trump any sentiment for the trafficker who freely chose to test our well-known laws.



Conclusion

In the final analysis, the Government of Singapore owes a profound moral duty to Singaporeans to keep Singapore free from the scourge of drugs. Taken in the round, the present drugs policy, including capital punishment for the most serious cases of drug trafficking, has succeeded in this. In the absence of a credible alternative, it would be irresponsible for the Government to let down its guard, or for anyone to advocate this.

Yours sincerely



TAN YEE WOAN

