

Mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions

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Excellency,

I have the honour to address you in my capacity as Special Rapporteur on extrajudicial, summary or arbitrary executions pursuant to General Assembly resolution 60/251 and to Human Rights Council resolution 17/5.

In this connection, I would like to draw the attention of your Excellency's Government to the case of Mr. **Yong Vui Kong**, sentenced to death on drug trafficking charges.

In my previous communication sent on 6 September 2011, concerning the case of Mr. Roslan Bin Bakar, also sentenced to death on drug trafficking charges in Singapore, I shared with your Excellency's Government my concerns and the interpretation of the applicable norms and standards under international law. While acknowledging your Excellency's Government's response dated 3 January 2012, I would like to reiterate my views and concerns regarding the mandatory imposition of the death penalty for drug trafficking offences in Singapore and the fact that such offences do not meet the threshold of "most serious crimes" as prescribed in Safeguard 1 of the Safeguards guaranteeing protection of the rights of those facing the death penalty.

With respect to the case of Mr. Yong Vui Kong, the following information has been drawn to my attention:

Mr. Yong Vui Kong, a national of Malaysia, was arrested in the early hours of the morning on 13 June 2007, in Singapore, on charges of drug trafficking. At the moment of his arrest, he was only 19 years old. Mr. Yong was found in possession of 47.27 grams of diamorphine. Under the Misuse of Drugs Act in Singapore, a defendant is automatically presumed guilty of drug trafficking in cases where possession of heroin exceeds two grams. On 14 November 2008, Mr. Kong was sentenced to death pursuant to section 33 of the Misuse of Drugs Act.

Mr. Yong's last judicial complaint focused on the alleged unequal treatment before the law and unequal protection of the law. In support of the appeal, Mr. Yong's defence lawyer cited evidence that the Attorney-General's Chambers discontinued all 26 charges against Mr. Chia Choon Leng, Mr. Yong's

superior who allegedly had masterminded the crime. Mr. Kong's lawyer submitted that his death penalty sentence should be set aside and his case reviewed by the Attorney-General's Chambers.

On 4 April 2012, the Court of Appeal of Singapore dismissed Mr. Yong's appeal (Criminal Motion No. 2 of 2012/P, *Yong Vui Kong v. Public Prosecutor*). The Court considered that the appeal had "absolutely no merit on the law or on the fact." The ruling said that the appeal contained "mere assertions" and some were "contrary to evidence." In the view of the Court, there was no evidence that the Attorney-General's Chambers had acted beyond the limits of prosecutorial discretion as provided under Article 35(8) of the Constitution of Singapore. The Court reached this conclusion as there would still be the possibility to prosecute Mr. Chia Choon Leng pursuant to section 244 of the Criminal Procedure Code 2010. The Court held that Mr. Yong failed to produce any evidence to show a *prima facie* case of breach of Article 12(1) of the Constitution of Singapore regarding equality before the law and equal protection by the law.

This is the third time that Mr. Yong's appeal has been rejected. Previous appeals focused on challenging the constitutionality of the mandatory death penalty for drug trafficking and seeking judicial review of the clemency process. The only legal channel left for Mr. Yong is a clemency petition to the President of Singapore, who can grant this only on advice from the Cabinet. The fact is that the clemency for a death sentence in Singapore has only been granted six times since independence in 1965.

In view of the information received, I would like to draw your Excellency's Government's attention to two issues of direct relevance to the case of Mr. Yong.

First, I disagree with the position adopted by your Excellency's Government in response to a similar case I had communicated last year, namely that the automatic and mandatory imposition of the death penalty is in compliance with the norms and standards under international human rights law. As the United Nations Human Rights Committee has reiterated, the imposition of the death penalty "constitutes an arbitrary deprivation of life...in circumstances where the death penalty is imposed without any possibility of taking into account the defendant's personal circumstances or the circumstances of the particular offence" (United Nations Human Rights Committee, *Pagdayawon Rolando v. Philippines*, Communication No. 1110/2002, UN Doc. CCPR/C/82/D/1110/2002, 8 December 2004, para. 5.2). Given the exceptional character of the death penalty, the judiciary is expected to apply heightened standards in examining defendant's personal circumstances and the overall circumstances of the particular offence committed. The fact that all the charges were discontinued by the Attorney General against Mr. Chia Choon Leng, who had allegedly masterminded the crime committed by Mr. Yong, should be taken into consideration, at a very minimum as a mitigating factor on the sentence applicable to Mr. Yong.

The former Commission on Human Rights had "urge[d] all States that still maintain the death penalty...[t]o ensure...that the death penalty is not imposed... as a mandatory sentence" (Resolution 2005/59, para. 7(f)). As I had already pointed in my previous communication to your Excellency's Government dated 6 September 2011, the laws imposing mandatory death sentences, such as the Misuse of Drugs Act, are in violation of international human rights law. In addition to the judicial developments in India that I had referred to in support of this rationale, I could make further reference

to examples of abolition of the mandatory death penalty in the Bahamas, Guyana, Kenya, Malawi and Uganda. I therefore call on your Excellency's Government to take due note of these developments as a reflection of a widespread consensus on the matter of the mandatory death penalty and consider amending the Misuse of Drugs Act.

Second, I would like to once again emphasize that the drug trafficking offence for which Mr. Yong has been convicted and sentenced to death does not meet the threshold of "most serious crimes" as prescribed inter alia in Safeguard 1 of the Safeguards guaranteeing protection of the rights of those facing the death penalty. It provides that the scope of most serious crimes "should not go beyond intentional crimes with lethal or other extremely grave consequences" (UN ECOSOC Resolution 1984/50 of 25 May 1984). The United Nations Human Rights Committee has further clarified that "the expression 'the most serious crimes' must be read restrictively to mean that the death penalty should be quite an exceptional measure" (UN Human Rights Committee, General Comment No. 6 on article 6 of the ICCPR, adopted on 27 July 1982, para. 7). In the Committee's view, drug-related crimes do not meet the threshold (UN Doc. CCPR/CO/69/KWT, 27 July 2000, para. 8). The crime committed by Mr. Yong had no lethal or other "extremely grave consequences" as the term is understood internationally. In a previous response to my communication, your Excellency's Government mentioned that "drug trafficking is a serious crime that has a pernicious and widespread impact on society and the community at large." In my view, there are other means available to combat drug trafficking without jeopardizing international human rights law, in particular the right to life as enshrined in Article 3 of the Universal Declaration of Human Rights.

In light of the urgency of the matter, I would appreciate a response on the initial steps taken by your Excellency's Government to refrain from executing Mr. Yong and safeguard his rights in compliance with the forementioned international instruments. I call upon your Excellency's Government to take the necessary measures not to proceed with the execution and to seriously consider granting clemency to Mr. Yong.

I undertake to ensure that your Excellency's Government's response is accurately reflected in the report I will submit to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of my highest consideration.

Christof Heyns
Special Rapporteur on extrajudicial, summary or arbitrary executions