

Urgent Appeal to the Special Rapporteur on extrajudicial, summary or arbitrary executions

Joint submission by Mr. M Ravi and Harm Reduction International, 28 April 2011

I. Identity of the person concerned:

1. *Family name:*

Yong

2. *First name:*

Vui Kong

3. *Sex: _ male ___ female*

Male

4. *Birth date or age:*

19 January 1988 (23 years old)

5. *Nationalit(ies):*

Malaysian

6. *Civil status (single, married, etc.):*

Single

8. *Profession and/or activity (e.g. trade union, political, religious, humanitarian/solidarity/human rights, etc.)*

N/A

9. *Address of usual residence:*

Originally from: Sandakan Malaysia

Currently resides:

Changi Prison

11 Jalan Awan

Singapore

10. *Is there a link to other cases/ persons? Please specify:*

- Singapore: (Urgent Appeal) Death sentence of Thiru Selvam, Communication from the Special Rapporteur on extrajudicial, summary or arbitrary executions to the Government of Singapore, 18 July 2001 (E/CN.4/2002/74/Add.2)
- Singapore: (Urgent Appeal) Death sentences of Mohammed Afzal Khan and Mohammed Ali Hashim, Communication from the Special Rapporteur on extrajudicial, summary or arbitrary executions to the Government of Singapore, 8 January 2002 (E/CN.4/2003/3/Add.1)

- Singapore: (Urgent Appeal) Death Sentence of Nguyen Tuong Van, Communication from the Special Rapporteur on extrajudicial, summary or arbitrary executions to Singapore, 15 March 2005 (E/CN.4/2006/53/Add.1)
- Statement of the Special Rapporteur on extrajudicial, summary or arbitrary executions of the United Nations Human Rights Council on the Government of Singapore's planned execution of Iwuchukwu Amara Tochi, 25 January 2007 (HR/07/9)

II. Information regarding the incident:

1. Date:

On 14 November 2008 Mr. Yong was convicted by the High Court of a charge under s 5(1)(a) and punishable under s 33 of the Misuse of Drugs Act – which prescribes a mandatory death penalty for certain categories of drug offences. The accused was convicted of trafficking in 47.27 grams of diamorphine and was sentenced to death.

2. Place:

1 Supreme Court Lane
Singapore 178879

4. The nature of the incident: Please describe the circumstances of the incident, including the following categories:

X (a) death penalty, or fair trial guarantees, please detail (unfair laws or proceedings, charges, eventual appeals, execution is imminent, etc.)

(b) imminent violation of the right to life is feared (death threats, imminent expulsion or refoulement leading to a life-threatening situation, etc.), please detail.

(c) others (death in custody, death during an armed conflict, death due to excessive use of force by law enforcement officials, death due to attacks by security forces of State, paramilitary or private forces, breach of obligation to investigate, etc.):

Yong Vui Kong grew up in extreme poverty and dropped out of school at just 11-years-old. He left home at 15-years-old to begin work in Kuala Lumpur as an apprentice cook and later sold digital video discs.¹ It is alleged that shortly before his arrest he came into contact with someone who hired him to deliver goods from Malaysia to Singapore.²

Mr. Yong was arrested at the age of 19-years-old and was accused of trafficking in slightly more than 47 grams of diamorphine between 12 June 2007 and 13 June 2007. Under Singapore's Misuse of Drugs Act – which prescribes a mandatory death penalty for certain categories of drug offences – Mr. Yong was convicted on 14 November 2008 and sentenced to death.

¹ See for example: Al Jazeera (26 January 2011) 'Yong's Story: The case of a young Malaysian convicted for drug trafficking tests Singapore's capital punishment laws'; or Save Vui Kong at <http://savevuihong.blogspot.com/p/yong-vui-kongs-journey.html>

² See Yong Vui Kong. v. Public Prosecutor, Criminal Appeal 13 of 2008, Respondent's Arguments (For hearing: 15 March 2010)

Neither his age nor personal circumstances could be taken into account in his sentencing due to Singapore's mandatory death penalty policy. Such mandatory death sentences that cannot consider mitigating considerations have been criticised by the former UN Commission on Human Rights³, the UN Human Rights Committee⁴, UN Special Rapporteur on extrajudicial, summary or arbitrary executions⁵ and the Inter-American Court of Human Rights⁶ as well as numerous national courts⁷.

The Special Rapporteur on extrajudicial, summary or arbitrary executions wrote of mandatory death sentences, '*The experience of numerous judicial and quasi-judicial bodies has demonstrated that mandatory death sentences are inherently over-inclusive and unavoidably violate human rights law. The categorical distinctions that may be drawn between offences in the criminal law are not sufficient to reflect the full range of factors relevant to determining whether a death sentence would be permissible in a capital case. In such cases, individualized sentencing by the judiciary is required in order to prevent cruel, inhuman or degrading punishment and the arbitrary deprivation of life.*'⁸

Furthermore, it has long been established that drug offences do not reach the standard of 'most serious crimes' as articulated by United Nations human rights bodies.

International bodies have devoted considerable attention to limitations placed on the lawful application of the death penalty. According to decisions by human rights monitors, scholars and international jurisprudence, capital drug laws are at odds with the right to life as articulated by Article 6(2) of the International Covenant on Civil and Political Rights, which states that the death penalty may only be applied for what the treaty terms 'most serious crimes'. This has been affirmed by:

³ UN Commission on Human Rights (20 April 2005) Human Rights Resolution 2005/59, para. 6

⁴ UN Human Rights Committee (26 March 2002) Kennedy v. Trinidad and Tobago Communication No. 845/1998. CCPR/C/74/D/845/1998, para. 7.3.; UN Human Rights Committee (18 October 2000) Thompson v. Saint Vincent and the Grenadines Communication No. 806/1998. CCPR/C/70D/806/1998, para. 8; UN Human Rights Committee (1995) Lubuto v. Zambia Communication No. 390/1990.

⁵ UN Human Rights Council, *UN Human Rights Council: Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions*, 29 January 2007, A/HRC/4/20, paras. 54-59

⁶ Hilaire, Constantine, Benjamin et al. v. Trinidad and Tobago Inter-American Court of Human Rights Series C No. 94 (21 June 2002)

⁷ Privy Council Appeal No. 44 of 2005 (1) Forrester Bowe (Junior) (2) Trono Davis v. The Queen, The Court of Appeal of the Bahamas (8 March 2006) para. 29(3); Attorney General v. Susan Kigula and 417 Others No. 03 of 2006, Uganda: S. Ct (21 January 2009); Amnesty International (22 January 2009) Mandatory death penalty ruled unconstitutional in Uganda; Kafantayeni v. Attorney General, Constitutional Case No. 12 of 2005 [2007] MWHC 1; Bernard Coard and others v. The Attorney General of Grenada UKPC7 (2007).

⁸ Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Civil and Political rights, Including the Questions of Disappearances and Summary Executions, A/HRC/4/20, 29 January 2007

- UN Special Rapporteur on extrajudicial, summary or arbitrary executions⁹
- UN Office on Drugs and Crime¹⁰
- UN Human Rights Committee, the body of independent experts mandated with monitoring the implementation and interpretation of the ICCPR¹¹
- UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment¹²
- UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health¹³

Singapore is not a party to the International Covenant on Civil and Political rights yet this principle has been endorsed by UN political bodies in a 1984 resolution of the Economic and Social Council of the United Nations (ECOSOC), which upheld nine safeguards on the application of the death penalty, affirming that capital punishment should be used 'only for the most serious crimes.'¹⁴ This resolution which held that such offences were limited to those 'with lethal or other extremely grave consequences' was later endorsed by the UN General Assembly¹⁵.

The United Nations Office on Drugs and Crime has similarly affirmed, 'As an entity of the United Nations system, UNODC advocates the abolition of the death penalty and calls upon Member States to follow international standards concerning prohibition of the death penalty for offences of a drug-related or purely economic nature.'¹⁶

Furthermore, there are numerous fair trial concerns associated with presumptions of guilt that are included in the Misuse of Drugs Act. It has been pointed out on numerous occasions¹⁷ – including by the office of the Special Rapporteur on extrajudicial, summary or arbitrary executions – that this presumption 'shifts the burden of proof to the accused, does not provide sufficient guarantees for

⁹ UN Commission on Human Rights, Extrajudicial, summary or arbitrary executions: Report by the Special Rapporteur, submitted pursuant to Commission on Human Rights resolution 1996/74, 24 December 1996, E/CN.4/1997/60; UN Human Rights Council (29 January 2007) Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions. A/HRC/4/20, para. 51-52; UN Human Rights Committee (HRC), Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Addendum : Communications to and from Governments, 18 June 2010, A/HRC/14/24/Add.1, pp. 45-46.

¹⁰ UNODC (2010) Drug control, crime prevention and criminal justice: A human rights perspective. Note by the Executive Director (Commission on Narcotic Drugs, Fifty-third session, Vienna, 8–12 March), UN Doc. E/CN.7/2010/CRP.6*–E/CN.15/2010/CRP.1*.

¹¹ UN Human Rights Committee (8 July 2005), Concluding observations: Thailand. CCPR/CO/84/THA, para. 14; Human Rights Committee (29 August 2007) Concluding observations: Sudan. CCPR/C/SDN/CO/3, para. 19.

¹² UN Human Rights Council (14 January 2009) Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. A/HRC/10/44, para. 66.

¹³ UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, A/65/255 (6 August 2010) para. 17

¹⁴ ECOSOC (25 May 1984) Implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty. Resolution 1984/50.

¹⁵ UN General Assembly (14 December 1984) Human rights in the administration of justice. Resolution A/RES/39/118.

¹⁶ UNODC (2010) Drug control, crime prevention and criminal justice: A human rights perspective. Note by the Executive Director (Commission on Narcotic Drugs, Fifty-third session, Vienna, 8–12 March), UN Doc. E/CN.7/2010/CRP.6*–E/CN.15/2010/CRP.1*.

¹⁷ Amnesty International (15 January 2004) Singapore: The Death Penalty – A Hidden Toll of Executions. ASA 36/001/2004

the presumption of innocence and may lead to violations of the right to life when the crime of drug trafficking carries a mandatory death sentence.¹⁸

This presumption raises numerous concerns that procedural safeguards are not protected -- which in capital trials is 'without a doubt a norm of customary law (or a general principle of law).'¹⁹ The Human Rights Committee wrote in 1982 that the protections articulated in Article 14 of the Covenant are built into Article 6, 'including the right to a fair hearing by an independent tribunal, the presumption of innocence, the minimum guarantees for the defence, and the right to review by a higher tribunal. These rights are applicable in addition to the particular right to seek pardon or commutation of the sentence.'²⁰ In addition, Safeguard No. 5 of the General Assembly-endorsed 1984 ECOSOC resolution states:

Capital punishment may only be carried out pursuant to a final judgement rendered by a competent court after legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the International Covenant on Civil and Political Rights, including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings.²¹

These concerns have been raised by the Special Rapporteur on extrajudicial, summary or arbitrary executions in the past.²²

III. Forces believed to be responsible for the incident:

(a) if the perpetrators are believed to be State agents, please specify (military, police, persons in uniform or civilian clothes, agents of security services, unit to which they belong, rank and functions, etc.) and indicate why they are believed to be responsible; be as precise as possible:

(b) if an identification as State agents is not possible, why do you believe that Government authorities, or persons linked to them, are responsible for the incident?

(c) if there are witnesses to the incident, indicate their names. If they wish to remain anonymous, indicate if they are relatives, by-passers, etc.; if there is evidence, please specify:

This sentence was passed by the High Court and upheld by the Court of Appeals and is due to be carried out by government authorities.

¹⁸ Report of the Special Rapporteur, Mr. Bacre Waly Ndiaye, submitted pursuant to Commission on Human Rights resolution 1996/74, E/CN.4/1997/60/Add.1, para. 438

¹⁹ W Schabas, 'International law and the death penalty: reflecting or promoting change', in P Hodgkinson and W Schabas (eds), 'Capital Punishment: Strategies for Abolition', (2nd edn Cambridge University Press 2004) p. 53.

²⁰ General Comment No. 06 (Sixteenth Session): The right to life (art. 6) (30 April 1982); W Schabas, 'International law and the death penalty: reflecting or promoting change', in P Hodgkinson and W Schabas (eds), 'Capital Punishment: Strategies for Abolition', (2nd edn Cambridge University Press 2004) p. 56.

²¹ ECOSOC (25 May 1984) Implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty. Resolution 1984/50.

²² Report of the Special Rapporteur, Mr. Bacre Waly Ndiaye, submitted pursuant to Commission on Human Rights resolution 1996/74, E/CN.4/1997/60/Add.1, para. 438

IV. Steps taken by the victim or his/her family:

(a) Indicate if complaints have been filed, when, by whom, and before which organ.

(b) Other steps taken:

All domestic remedies have been exhausted.

On 14 November 2008 a mandatory death sentence was passed against Yong Vui Kong. An appeal was filed but then withdrawn. On 11 August 2009 Mr. Yong petitioned the president for clemency which was rejected on the 20 November 2009. Just four days before his sentence was to be carried out, Mr. Yong through his current attorney M Ravi, filed a criminal motion for leave to pursue his appeal at the Court of Appeal based on the argument that the sentence was unconstitutional. The application was granted on 8 December 2009 though the appeal was dismissed on 14 March 2010.²³ Shortly before the decision was made public, published comments attributed to the Law Minister defended the mandatory death penalty for drugs and warned that if drug lords are under the impression that young and vulnerable traffickers will be spared then they will be more inclined to use them as mules – adding, ‘Then you’ll get 10 more. There’ll be an unstoppable stream of such people coming through as long as we say we won’t enforce our laws.’²⁴

A final appeal was submitted based on several arguments including that by law it is the President ‘who has the power to decide whether or not to grant any fresh clemency petition which the Appellant might file’ and that ‘Law Minister’s conduct had irreversibly tainted the clemency process in respect of the Appellant with apparent bias, and the Appellant was entitled to be pardoned on account thereof or was, alternatively, entitled not to be deprived of his life’.

This appeal was rejected on 4 April 2011.

V. Steps taken by the authorities:

(a) Indicate whether or not there have been investigations by the State authorities; if so, what kind of investigations? Progress and status of these investigations; which other measures have been taken (e.g. autopsy)?

(b) in case of complaints by the victim or its family, how have the organs dealt with them? What is the outcome of those proceedings?

The government has agreed to hear several appeals on behalf of Yong Vui Kong, which have been filed on his behalf by attorney M Ravi. However, at no point has the government reconsidered its

²³ Civil Appeal No 144 of 2010 Yong Vui Kong v Attorney-General, Summary of the judgment of Chan Sek Keong CJ, 4 April 2011. For further discussion of the decision, see: Y. McDermott, ‘Yong Vui Kong v. Public Prosecutor and the Mandatory Death Penalty for Drug Offences in Singapore: A Dead End for Constitutional Challenge?’ (2010) 1 International Journal on Human Rights and Drug Policy 35

²⁴ Civil Appeal No 144 of 2010 Yong Vui Kong v Attorney-General, Summary of the judgment of Chan Sek Keong CJ, 4 April 2011.

policy of enforcing the mandatory death penalty for drugs.

VI. Identity of the person submitting the case

(Joint Submission of Harm Reduction International and M. Ravi)

Person 1:

1. Family name:

Gallahue

2. First name(s):

Patrick

3. Status: individual, group, non-governmental organization, inter-governmental agency, Government. Please specify:

Non-governmental organisation: Harm Reduction International.

4. Address (telephone, fax, e-mail):

Harm Reduction International

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Phone: +44 (0) 207 953 7650

5. Please state whether you want your identity to be kept confidential:

No

Date:

27 April 2011

Signature of author:

Patrick Gallahue

Person 2:

1. Family name:

Mr. M. Ravi

3. Status: individual, group, non-governmental organization, inter-governmental agency, Government. Please specify:

Attorney

4. Address (telephone, fax, e-mail):

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Email: mravilaw1@gmail.com
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Tel: 65- 65337433

Date:
27 April 2011

Signature of author:
M.Ravi