

HUMAN RIGHTS WATCH

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April 27, 2012

His Excellency Dr. Tony Tan Keng Yam
Office of the President of the Republic of Singapore
Orchard Road
Singapore 238823

Via facsimile: +65 67353135

Dear President Kine Tan Keng Yam,

Human Rights Watch writes to urge you to use your powers as president to commute Yong Vui Kong's death sentence. Yong, a Malaysian national, was convicted on November 14, 2008, for drug trafficking. We are concerned that if Yong's request to you for clemency is denied, he may be executed in the near future.

While Human Rights Watch opposes the death penalty in all circumstances, Yong's case raises additional human rights, humanitarian, and due process concerns. While not a party to the International Covenant on Civil and Political Rights (ICCPR), Singapore should at the very least meet the requirements for the imposition of the death penalty set out in the ICCPR as interpreted by the United Nations Human Rights Committee, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, and other UN institutions.

ICCPR article 6 sets out every human being's "inherent right to life" and limits the death penalty to "the most serious crimes." The Human Rights Committee noted in its General Comment 6 that the term "most serious crimes" means that "the death penalty should be a quite exceptional measure" and that among other procedural guarantees the presumption of innocence must be observed.

The Human Rights Committee criticized the use of the death penalty for "crimes not resulting in death, notably political crimes, crimes against property and some drug offences," and noted that the special rapporteur "has considered that the death penalty should be 'eliminated for crimes such as economic crimes and drug-related offences.'"

In his January 2007 report, Philip Alston, then special rapporteur on extrajudicial, summary or arbitrary executions, said "if it is to comply

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with the most serious crimes restriction, the death penalty can only be imposed in cases where it can be shown that there was an intention to kill which resulted in the loss of life.” Accordingly, drug trafficking would not qualify as a “most serious” crime under this standard.

In Singapore, there is no presumption of innocence for certain classes of drug offenses. According to a January 2004 Ministry of Home Affairs reply to Amnesty International, “The presumption clause in the Misuse of Drugs Act (MDA) merely presumes that the person had the drug for the purpose of trafficking. The amount prescribed in the presumption clause for trafficking is set at a reasonably high level. If the drug possessed exceeds said amount, then he is presumed to have it for the purpose of trafficking rather than for personal consumption.” During the trial, the accused can challenge the assumption that the drugs in his possession were to be trafficked.

The mandatory nature of Singapore’s drug penalty received critical comment from special rapporteur Alston. In relation to a 2005 case related to Singapore, Alston noted that such a penalty violates international legal standards because “making such a penalty mandatory—thereby eliminating the discretion of the court—makes it impossible to take into account mitigating or extenuating circumstances and eliminates any individual determination of an appropriate sentence in a particular case.” He continued, “The adoption of such a black and white approach is entirely inappropriate where the life of the accused is at stake. Once the sentence has been carried out it is irreversible.” In response to Singapore’s earlier statement that “the death penalty is primarily a question for the sovereign jurisdiction of each country,” Alston noted the commitment of Singaporean courts to the rule of law but added that “international concern is not misplaced when it comes to non-compliance with international standards related to the functioning of a criminal justice system.”

On May 10, 2010, just four days before the Court of Appeal dismissed Yong’s appeal against his sentence on constitutional grounds, the *Today* newspaper reported the reply of the minister of law, K. Shanmugam, to a question posed at a community event. In his answer, the minister, who is now also Singapore’s minister for foreign affairs, made the argument that if exceptions to the use of the death penalty were based on personal circumstances it would encourage more people to take up the drug trade, thus undermining Singapore’s anti-drug efforts. Even if these assertions were true—and Singapore declines to routinely make public drug-related statistics—it would not justify imposition of a penalty that so flagrantly violates fundamental rights over less severe penalties that would still act as a deterrent. To date, there has been little national or international evidence to support the Singapore government’s assertion, and studies of the deterrence effect of the death penalty on drug crimes in other countries is equivocal at best.

The court, while noting that it had taken into consideration Yong's personal circumstances, i.e. growing up in poverty in a broken home, lack of previous convictions, and the demonstrated possibility of rehabilitation, found that Yong had no case, merely "bare assertions" with "no factual basis." The court further noted that "no fresh evidence had been adduced to show that the conviction was a miscarriage of justice" and dismissed the motion "as it has absolutely no merit both on the law and on the facts."

A growing number of states support the UN General Assembly's resolution adopted on December 18, 2007, calling for a moratorium on executions and encouraging member states towards abolition of the death penalty. The Human Rights Committee in its general comment discusses "the desirability of the abolition of the death penalty" and "repeatedly expresses its conviction that abolition contributes to the enhancement of human dignity and to the progressive development of human rights." The UN Commission on Human Rights (now the Human Rights Council) called upon death penalty states to "restrict the number of offenses for which capital punishment may be imposed," in a resolution adopted on April 20, 2005. In a report in March 2010 the UN Office on Drugs and Crimes called for an end to the death penalty and specifically urged member states to prohibit use of the death penalty for drug-related offenses while arguing for an overall "human rights-based approach to drug and crime control."

In addition to commuting Yong's sentence, Human Rights Watch urges that Singapore immediately forego mandatory death penalties and join the increasing number of governments expressing opposition to all capital punishment by declaring a moratorium on executions with a view to complete abolition.

Sincerely,



Brad Adams
Director, Asia Division

Cc:
Prime Minister Lee Hsien Loong
K. Shanmugam, Minister of Foreign Affairs