

## **ANNEX: SUMMARY BRIEF ON MR YONG VUI KONG**

### **I. CRIMINAL PROCEEDINGS**

#### **Charge**

1. Mr Yong Vui Kong was charged with trafficking in not less than 47.27 grams of diamorphine, an offence under s.5(1)(a), and punishable under s.33, of the Misuse of Drugs Act (Cap 185). The offence carries mandatory death penalty.

#### **Key Facts**

2. Mr Yong is a 22-year old male Malaysian.
3. On 12 June 2007, Mr Yong entered Singapore in a vehicle which was driven by his friend Chai Hor Hsiang (“Chai”). Officers from the Central Narcotics Bureau (CNB) followed the pair to a street where Mr Yong delivered some drugs to a customer, and was given cash amounting to \$5,000. The pair then went on to make another delivery, where Mr Yong delivered some drugs to another customer who was in another car. As Mr Yong was returning to his own vehicle, CNB officers arrested him.
4. The contents of the two bundles discovered on top of the floor mat of the front passenger seat of Mr Yong’s vehicle were subsequently analysed to contain 47.27 grams of diamorphine.
5. Evidence at trial showed that Mr Yong had trafficked in heroin on other previous occasions, before he was arrested on 13 June 2007.
6. In his investigation statements, Mr Yong exonerated Chai, stating that he had asked Chai to drive him to Singapore as he himself did not possess a driving licence and that Chai was unaware of his intent. This corroborated Chai’s version of events, and Chai was granted a discharge not amounting to an acquittal in respect of the charges preferred against him.

#### **Criminal Proceedings against Mr Yong**

##### ***Trial Judge’s Findings***

7. Judgment was delivered on 14 November 2008 by the trial judge, Justice Choo Han Teck. The High Court found that there was no dispute that the drugs in question were in Mr Yong’s possession. Choo J did not find the evidence of Mr Yong credible. Choo J found the process of collection to delivery of the articles an elaborate one and that

there was clear evidence that Mr Yong had delivered drugs previously. Choo J found the prosecution's evidence to be reliable in proving the case against Mr Yong beyond a reasonable doubt.

### ***The First Appeal and its Subsequent Withdrawal by Mr Yong***

8. Mr Yong appealed against his conviction and sentence. However, he subsequently instructed his counsel to apply for leave to withdraw the appeal. His counsel sent a letter (dated 23 April 2009) to the Court of Appeal to withdraw Mr Yong's appeal. The letter stated that Mr Yong had "indicated his desire not to proceed with the appeal as he had while serving sentence embraced Buddhism. With his new found faith, he said he felt uneasy and had no peace of mind if he were to proceed with his appeal."

On 29 April 2009, the Court of Appeal granted leave to Mr Yong to withdraw his appeal after confirming that he did not wish to proceed with the appeal and was aware of the consequences of not appealing.

The decision of the High Court was then affirmed by the Court of Appeal, after Mr Yong withdrew his appeal.

### **Petition to the President for Clemency**

9. Mr Yong then sent a Petition to the President dated 11 August 2009 relying on compassionate grounds. Mr Yong admitted knowing that the packages contained drugs and stated that he was remorseful and contrite. Since his conviction, he has come to embrace Buddhism and has "...realised that he must not continue to lie." Mr Yong expressed his conviction that "he should have the courage to own up to what he did" He stated that he had therefore decided not to proceed with his appeal to the Court of Appeal.

### ***The President's decision***

10. Based on the advice of the Cabinet, which considered the report of the Trial Judge and the advice by the Attorney-General, the President declined Mr Yong's Clemency Petition on 20 November 2009. It was decided that the law should take its course.

### **Criminal Motion – Death Penalty challenged on Constitutional Grounds**

11. Mr M Ravi, counsel for Mr Yong, then filed a criminal motion seeking leave to pursue an appeal against Mr Yong's sentence. Essentially, the constitutionality of the mandatory capital punishment under the Misuse of Drugs Act was challenged. This

was first heard on 2 December 2009 at the High Court by Justice Woo Bih Li, who ordered that the Criminal Motion be adjourned to be heard by the Court of Appeal.

***Mr Yong's arguments on appeal***

12. In the Court of Appeal, Counsel for Mr Yong argued that the mandatory death penalty under the Misuse of Drugs Act was unconstitutional, and that customary international law prohibited the mandatory death penalty.

***Court of Appeal's decision***

13. The appeal was heard on March 2010 by the Court of Appeal, which issued its reserved judgment on 14 May 2010. The Court of Appeal found that the mandatory death penalty was not contrary to the Constitution; and that customary international law does not prohibit the penalty.

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