

UNIVERSAL PERIODIC REVIEW – SINGAPORE
SUBMISSION OF MARUAH¹ (WORKING GROUP FOR AN ASEAN HUMAN
RIGHTS MECHANISM, SINGAPORE)

A. Executive summary

1. MARUAH makes this submission on two critical aspects of the human rights situation in Singapore, viz. the death penalty and preventive detention without trial. MARUAH believes that the death penalty is inconsistent with prevailing customary international law, but accepts that Singapore and Singaporeans may not be ready to agree to a total repeal of the death penalty. However, the mandatory death penalty, especially in drug cases where possession for trafficking is presumed, clearly breaches human rights norms, and so must be immediately repealed. In addition, MARUAH calls for greater transparency and accountability in the use of preventive detention without trial, consistent with international norms in the use of such mechanisms.

B. Death Penalty

2. *The law and practice.* The death penalty has been practised in Singapore since the earliest days of British colonial rule. In 1871, the Penal Code was enacted with a handful of offences punishable by death, including murder (for which death was and remains mandatory). After Singapore attained self-government in 1959, the death penalty was introduced for several other offences: discretionary death for kidnapping for ransom (recently extended to kidnapping for a “terrorist” cause),² mandatory death for certain firearm offences,³ and most significantly, mandatory death for certain drug offences, including trafficking in certain stipulated drugs above a certain amount.⁴ It seems likely that almost all executions are for murder or drug offences.⁵ The President may grant clemency, but this is rarely done – one known example was a drug offender who already had terminal cancer.

3. *Legality of death penalty.* Article 9(1) of the Singapore Constitution provides that no person “shall be deprived of his life or personal liberty save in accordance with law.” The courts have interpreted this to mean that Parliament may constitutionally impose the death penalty, so long as it is in accordance with law, which includes the fundamental rules of natural justice.⁶ However, there is at least a very strong case for arguing that customary international law has changed such that it now prohibits the death penalty, in which case Singapore’s continued use of the death penalty would contravene such norms.

4. *Principle of proportionality.* It is likely that Article 6(2) of the ICCPR, providing for the death penalty to be imposed only for the most serious crimes, has become customary

¹ MARUAH(Working Group for an ASEAN Human Rights Mechanism, Singapore) is a group of individuals who have made a commitment to this process of facilitating for an ASEAN Human Rights Mechanism. We believe that such a process will be good for the region and for Singapore. We come from all backgrounds – professionals, students, homemakers, academics, activists, lawyers, doctors, writers – and coalesced into a group on September 14th 2007 . MARUAH means Dignity in Malay, Singapore’s national language. This group, MARUAH, is the current Singapore focal point for the Working Group for an ASEAN Human Rights Mechanism, a regional group with its secretariat based in Manila.

² Kidnapping Act, Cap.151..

³ Arms Offences Act, Cap.14.

⁴ Misuse of Drugs Act, Cap.185. For instance, death is mandatory for trafficking above 15g of heroin and above 500g of cannabis.

⁵ A government press release dated 24 July 2007 revealed that in the 5 preceding years, 138 people were executed: 110 for drug offences, and most of the remainder for murder, with a sprinkling of firearms offences.

⁶ *Ong Ah Chuan v PP* [1981] AC 648, a decision of the Privy Council on appeal from Singapore. Appeals to the Privy Council were later abolished. This position was recently affirmed by the Singapore Court of Appeal in *Yong Vui Kong v PP* [2010] SGCA 20, despite more recent rulings by the Privy Council holding that *Ong Ah Chuan* was wrongly decided.

international law. Accordingly, the continued use of the death penalty in the following types of cases, which clearly should not be considered to be “the most serious crimes”, is disproportionate and hence contravenes human rights: (a) murder under Section 300(c) of the Penal Code, where death results from an intended injury even where the person inflicting the injury did not intend to cause death;⁷ (b) constructive liability for murder, such as where there is a common intention to commit a crime, in connection with which a murder was committed by another person,⁸ or where under the provisions for abetment⁹ or robbery;¹⁰ and (c) kidnapping, firearms and drug cases, which although serious, do not involve the intentional causation of death and do not need to result in death at all.

5. *Mandatory death penalty.* All of the death penalty cases in the five years up to 2007 carried the mandatory death penalty, being drug trafficking, murder and firearms-related cases.¹¹ The judge has no sentencing discretion in such cases. This deprives an accused person of the opportunity to have the judge consider all relevant factors in sentencing, and is inconsistent with the emerging, if not established, norm in customary international law against mandatory death penalties. In March 2007, the Law Society of Singapore sent a report to the Ministry of Home Affairs, arguing for judges to be given discretion in whether to impose the death penalty.¹² However, the Singapore courts have consistently upheld the mandatory death penalty as constitutional,¹³ despite recent Privy Council decisions to the contrary.¹⁴

6. *Due process and fairness.* Given the irreversible nature of the death penalty, the criminal process in capital cases must be fair at all stages. In this regard, several features of Singapore’s criminal process, which are generally troubling, become particularly alarming in capital cases. Firstly, accused persons can be denied access to counsel for up to two weeks after arrest,¹⁵ purportedly to enable the police to conduct investigations without undue interference, despite a constitutional right to counsel. There is anecdotal evidence that counsel is routinely denied until incriminatory statements (which are admissible at trial) are successfully extracted from the accused, or at least, until exhaustive attempts have been made to do so. Secondly, Singapore law allows an accused person to be convicted based entirely on her confession recorded in the course of police interrogation. Accused persons routinely alleged that their confessions are involuntary (which would make them inadmissible), but proof is near-impossible in the absence of any independent verification or supervision of the confession.¹⁶ Thirdly, the provisions on capital firearms and drug offences include presumptions that can be difficult, if not practically impossible, to rebut. Yet, persons can and have been hanged on the basis of such presumptions.¹⁷ These presumptions violate the

⁷ See for instance the case of *Lim Poh Lye* [2005] SGCA 31, where the accused was convicted of murder for stabbing someone he was trying to rob in the leg, with the intention of preventing him from escaping. He unknowingly ruptured the femoral artery and the victim bled to death.

⁸ See the very recent case of Daniel Vijay Katherasan (2010), where the Court of Appeal found that the members of a criminal gang who had a common intention to commit a criminal act would be guilty of murder if any member commits murder in furtherance of the criminal enterprise, and it was immaterial whether or not the other gang members intended or knew that anyone would be killed.

⁹ See Sections 111 and 113 of the Penal Code, Cap.224.

¹⁰ See Section 396 of the Penal Code, Cap.224.

¹¹ See footnote 5 above.

¹² See paragraph 6.1 of the report, available at http://www.lawsociety.org.sg/feedback_pc/pdf/execSummary.aspx (accessed 27 Oct 2010).

¹³ See footnote 6 above. See also *Nguyen Tuong Van v PP* [2004] SGCA 47.

¹⁴ See for instance *Reyes v The Queen* [2002] 2 AC 235. In the recent case of *Yong Vui Kong*, the Singapore Court of Appeal found that those decisions did not apply because they were based on constitutional prohibitions against cruel and inhuman punishment in those countries, and the Singapore Constitution did not contain such a prohibition. However, it must surely now be undeniable that the right against torture and inhuman punishment is a rule of customary international law.

¹⁵ *Jasbir Singh v PP* [1994] 2 SLR (Singapore Law Reports) 18

¹⁶ Calls for audio or video recording have been consistently dismissed, and counsel is not permitted to be present.

¹⁷ For example, a person in possession of 15g of heroin is presumed to have possession for purposes of trafficking, unless she can prove otherwise, even if reasonable doubt exists as to the existence of any such intent.

fundamental presumption of innocence in the most ominous of contexts, viz. the potential of a mandatory death penalty. Finally, a recent book on the death penalty in Singapore¹⁸ has alleged that the Government makes or influences prosecution decisions such that offenders who are foreigners from rich countries do not face the death penalty, so as to avoid any adverse impact on economic and trade relations; while the author is facing contempt of court proceedings (the decision in which is pending as at the date of writing), the Government has to date not issued any official rebuttal or denial to, or any clarification on, these allegations.

7. *Effectiveness as deterrence.* The Government has consistently justified the death penalty on the basis of its purported role in ensuring the excellent law and order situation in Singapore. However, there is scant evidence for any such causative relationship between the death penalty and the law and order situation. Indeed, there is some indication that the contrary is true. Almost all murders are “crimes of passion”, which are not susceptible to deterrence. The incidence of drug offending since the introduction of the death penalty has fluctuated so much that it is impossible to ascertain any causative link. While there is also no convincing evidence that the death penalty has failed as a deterrence, MARUAH holds that the Government has to date failed to discharge its moral burden of persuasive proof that the death penalty does work.

8. *Recommendations.* MARUAH recommends that the Government review the scope of capital offences, so as to ensure that the death penalty is imposed only in the most serious of crimes; the death penalty not be used in the context of group crimes, where the accused person has not personally intended to commit murder; all instances of the mandatory death penalty be immediately repealed and replaced with a discretion to impose the appropriate sentence up to death; the criminal process be reviewed to ensure that capital cases undergo the most rigorously fair pre-trial and trial process, including access to counsel immediately upon arrest, an effective system of supervision of the extraction and recording of confessions by the police, and a repeal of the use of presumptions in capital cases; and the Government publish persuasive, objective evidence of the deterrent effect of the death penalty.

C. Preventive detention without trial

9. *Relevant legislation.* In Singapore, the power to detain a person without trial (in both cases for potentially indefinite periods) arises from two statutes, viz. the Internal Security Act (ISA) and the Criminal Law (Temporary Provisions) Act (CLTPA). The ISA is used for threats to the prevailing political system, while the CLTPA is used against organized crime. 54 persons were detained under the ISA from 1999 to 2007; as of 9 April 2007, 39 remained in detention. The number of CLTPA detainees has fallen from 1260 in 1988, to 463 in 1998, to 290 in 2008, but there seems to be 94 more CLTPA detainees in 2008 than in 2004.¹⁹ These are not insubstantial numbers, given the small population of Singapore (currently 5 million); by way of comparison, as of 17 January 2009, about 245 persons remained in detention at Guantanamo Bay (with the United States having a population of 307 million in 2009).

10. *Significant ISA cases.* Significant episodes and cases of detention under the ISA (and its legislative ancestors) included: (a) Operation Coldstore in February 1963, when at least

¹⁸ Shadrake, Alan, *Once A Jolly Hangman: Singapore Justice in the Dock* (2010, Strategic Information and Research Development Centre).

¹⁹ http://www.parliament.gov.sg/parlweb/get_highlighted_content.jsp?docID=549203&hlLevel=Terms&links=CRIMIN.LAW.TEMPORARY.PROVIS.ACT&hlWords=%20%20&hlTitle=criminal%20law%20temporary%20provisions%20act&queryOption=1&ref=http://www.parliament.gov.sg:80/reports/public/hansard/title/20090209/20090209_S0006_T0001.html#1, accessed 7 Sep 2010.

111 left-wing politicians and activists were detained;²⁰ (b) opposition Member of Parliament Chia Thye Poh;²¹ (c) Operation Spectrum in May and June 1987, when 22 Roman Catholic social activists and professionals were detained;²² and (d) alleged radicals and terrorists linked to Jemaah Islamiyah, from 2001 onwards.²³ Notably, none of these detainees were ever tried or convicted in a court of law.

11. *Questionable justification for such powers.* Situations of grave emergency could conceivably justify detention without trial, and the ISA (and its predecessor statutes) were enacted during such times, in response to a Communist armed insurgency. Similarly, the CLTPA was introduced when the organized crime situation could not be handled by an inefficient and corrupt regular police force. While both the ISA and the CLTPA are entrenched in the Singapore Constitution by way of Articles 9(6) and 149, the use of such a power in ordinary times must still be subject to careful and stringent scrutiny. The circumstances which justified the introduction and use of the ISA and the CLTPA no longer exist, yet they continue in force, now framed as a necessary tool of day-to-day government for all time, despite the serious inroads made by these statutes into the fundamental human rights guarantees of a fair trial and due process under Articles 9, 10 and 11 of the UDHR.²⁴

12. *Safeguards against abuse.* The courts' power of judicial review is a critical safeguard against abuse of the executive power of preventive detention. However, the courts may only review ISA detentions for procedural compliance and not on substantive grounds, although substantive review remains available for CLTPA detentions.²⁵ In addition, the procedural mechanisms used for both ISA and CLTPA detentions are not transparent and shrouded in secrecy, and appear to be so unfair to detainees as to contravene their human rights.²⁶

²⁰ The detainees included opposition party Barisan Sosialis secretary-general Lim Chin Siong (released in July 1969 after he renounced politics); Barisan Sosialis central executive committee member Dr Lim Hock Siew (released in September 1982, after being exiled to an island off Singapore called Pulau Tekong in 1978); Barisan Sosialis assistant secretary-general Dr Poh Soo Kai (released in 1972, re-arrested in June 1976 and then released in August 1982); and Said Zahari, chairman of opposition party Parti Rakyat Singapura (released in August 1979, after a short period of exile on an island off Singapore called Pulau Ubin).

²¹ Chia was detained under the ISA in October 1966, and was released from imprisonment in May 1989. However, he remained subject to varying degrees of restrictions until November 1998. Based on his 22 years' of continuous detention, Chia is regarded as the world's second longest serving prisoner-of-conscience, after Nelson Mandela.

²² The detainees were allegedly party to a "Marxist conspiracy" to overthrow the Government by force. The alleged leader Vincent Cheng was released in June 1990. The other detainees were released over the course of 1987, but some were re-detained in April 1988 when they repudiated their earlier "confessions" and alleged torture while in detention. Two lawyers who had represented some detainees were also themselves detained. Teo Soh Lung was released in June 1990, while the others were released in 1988 and 1989 after recanting their earlier allegations.

²³ Jemaah Islamiyah is a militant Islamic group reportedly linked to Al-Qaeda. The first and largest round of detentions occurred in 2001, for suspected complicity in a plan to bomb various targets in Singapore. There have subsequently been ongoing operations against other alleged Jemaah Islamiyah (and other similar groups such as the Moro National Liberation Front) terrorists and radicals. These detainees have been released at various times since then, usually subject to certain continuing restrictions.

²⁴ For instance, from what is publicly known, it is no convincing reason why the Operation Spectrum detainees and the alleged Jemaah Islamiyah members could not have been adequately dealt with under the normal criminal law and afforded the rights of due process and a fair trial. There were no suggestions of witness intimidation (or if there were, no reason why the police could not adequately protect them). From the Government's own press statements, there was substantial evidence, presumably admissible, of what the detainees had allegedly done. There were also criminal provisions that could have been applicable, such as under the principles of attempt and abetment which capture threats well before they materialize.

²⁵ In December 1988, the Court of Appeal (Singapore's apex court) decided, in a habeas corpus application by some of the Operation Spectrum detainees (*Chng Suan Tze v Minister for Home Affairs* [1988] SLR (Singapore Law Reports) 132), that the Singapore courts had the power of judicial review over the exercise of discretion by the government, including the exercise of powers of detention under the ISA. Soon after, in January 1989, the Government used its super-majority in Parliament to amend the Singapore Constitution and the ISA, to reverse the Court of Appeal's decision in so far as the power of ISA detention was concerned. Specifically, the courts in Singapore no longer had the power of substantive judicial review over the exercise of discretion by the executive under the ISA, although procedural review was preserved. The validity of these 1989 amendments was upheld in subsequent challenges by other Operation Spectrum detainees. However, these changes were specifically limited to the ISA, and hence the courts continue to have the power of substantive review over CLTPA detentions (*Kamaljit Singh v Minister for Home Affairs* [1993] 1 SLR (Singapore Law Reports) 24), although there has to date not been any successful challenge against a CLTPA detention.

²⁶ Both the ISA and the CLTPA require proceedings before an advisory body, where the detainee is entitled to present his or her case; however, the detaining authority may reject the advice of the advisory body, although for ISA detentions, the President and the advisory body may jointly countermand a detention. There is no requirement to disclose what happened at the proceedings or the finding of the advisory body – the Minister has full discretion over whether and what information is to be made public. The advisory body proceedings do not follow the usual requirements of due process. For example, the detainee, and his or her counsel, do not have the right to see all material

13. *Conditions of detention.* Both the ISA and the CLTPA explicitly empower the Government to detain persons, and this power must include ancillary powers to operate a detention facility safely and humanely. However, the detaining authorities seem to have assumed many other powers not connected with or strictly required for the power to detain, such as the power to put detainees in solitary confinement for extended periods; the power to interrogate; and the power to grant and remove detainees' privileges, like access to reading and writing material and very limited visitations rights. In other words, detainees are treated in the same way as convicted criminals. But the power to detain must be limited strictly to detention, and cannot be allowed to be used to break, punish or "rehabilitate" the detainee. After all, the detainee is not a convicted criminal. In addition, there has been a consistent stream of past detainees alleging psychological mistreatment and even physical violence whilst in detention.²⁷ There has never been any public inquiry into the truth of these allegations. The right not to be tortured or subject to inhuman or degrading treatment under Article 5 of the UDHR is fundamental as it is undeniable.²⁸ MARUAH also finds it deeply unsatisfactory that even if the allegations were true, any attempt to prove them will be well-nigh impossible, since the detainee would not have any means of independent verification.

14. *Recommendations.* MARUAH calls for a public review of whether the ISA and the CLTPA, in their present forms, remain relevant and appropriate to the current situation in Singapore; in particular, the ISA and the CLTPA to be amended to comply with international norms and best practices on preventive detention, including strict limitations on the maximum duration of detention as in Australia and the United Kingdom;²⁹ the reinstatement of the courts' power to review the Government's detention decisions on substantive grounds; the advisory bodies under the ISA and the CLTPA to be institutionally independent from the executive, including being manned completely by Supreme Court judges with security of tenure as members of the advisory body, being empowered to decide on substantive issues including whether the detainee in question does in fact pose the type of exceptional danger justifying preventive detention and whether there are any other satisfactory methods of dealing with the detainee besides detention without trial; compliance with the decisions of such independent advisory bodies being mandatory; the proceedings before the advisory bodies to comply with the requirements of due process and a fair trial to the maximum extent practicable, including allowing the detainee and his or her counsel to review evidence against him or her unless there is clear, objective evidence that doing so would materially compromise any person's security or safety; and the independent advisory bodies' jurisdiction and powers to be extended to include overseeing the appropriate conditions of detention for each detainee, with the objective of ensuring that no detainee is put in fear of torture, or inhuman or degrading treatment, physical or psychological, of any kind.

presented against him or her, and the detainee does not have the right to challenge adverse witnesses. The Government usually appoints a sitting Supreme Court judge to chair ISA advisory bodies, but that chairman is not exercising proper judicial powers and does not have security of tenure in that capacity. The chairman can also be outvoted by the other two members of the advisory body (who need not be judges).

²⁷ See <http://theonlinecitizen.com/2009/05/operation-spectrum-was-political-rape/>. See also the recent account of ex-detainee Teo Soh Lung, *Beyond the Blue Gate*, ISBN: 9-789675-832017, SIRD, 2010; and of alleged "mastermind" Vincent Cheng, <http://www.youtube.com/watch?v=D8ohOwc79Sc&feature=related>, and <http://www.youtube.com/watch?v=37pv4rRWD7o&feature=related>.

²⁸ It has been held that the Singapore Constitution does not prohibit inhuman punishment: see footnote 14 above. However, Article 9(1) of the Singapore Constitution provides that that no one is to be deprived of liberty save in accordance with law, and there are numerous criminal provisions which outlaw the kind of treatment that the detainees alleged they received whilst in detention.

²⁹ The maximum periods of preventive detention for Australia and the United Kingdom are 48 hours and 28 days respectively, and require a judicial order in both cases. This is in contrast to the Singapore position, where detention may be potentially indefinite by executive order.