

DIGNITY DEFINED

FROM THE PRESIDENT'S DESK

Dignity is starving. It needs attention. It needs activation. Dignity is inherent in the human condition. We all want to live every day in dignity, with dignity and hopefully also treat others with dignity. The challenge to realising dignity lies in the difficulty of conceptualising this quality.

Dignity - what does it entail, what values does it embody, what principles is it based on, and how do we hold it in the palm of our hands to own it. We at MARUAH are committed to finding some answers to visualising, conceptualising and discussing Dignity. We believe that much of what we can do to activate on Dignity comes from a rights-based approach to self and to others. As such we premise much of our work on the aspirations of the Universal Declaration of Human Rights (UDHR) on which much of Singapore's Constitution too has been founded.

Article 10 of the UDHR states that *"Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him"*.

Additionally, article 5 states that *"No one shall be subjected to torture or to cruel inhuman or degrading treatment or punishment"*.

Thus a person's dignity is tied to ensuring that each person has an opportunity to speak their case when accused of wrongdoing and that no one is treated in less than a human manner. Yet in Singapore we have the Internal Security Act (ISA) that takes away that right to an open court hearing, which can subject

detainees to varying grades of inhuman treatment.

In this inaugural issue of *Dignity Defined*, MARUAH's e-news magazine, we raise awareness on human rights, human responsibilities and social justice through discussions around Operation Spectrum.

I was a teacher when the alleged Marxist Conspiracy broke in 1987. I read the newspapers intently and watched television hawkishly as the detentions were unravelled. I unpicked and unpacked the presentations made by the government, the Catholic Church and the detainees too when they were paraded for television confessions.

I was sceptical then and today I am still unconvinced that they were a national threat.

It was an awful time. I watched the 22 detainees being ferried away, from view. I felt the silence envelope them, drowning out their voices. It was almost like nothing had happened. Perhaps it was just a blip on the screen.

It was surreal.

22 men and women were detained yet there was little public outcry. The 'blinking out' overwrote little pockets of resistance, primarily among the Catholic community. The parading of the alleged Marxist Conspirators over television struck fear as they all looked like every man and every woman – pedestrian. They were folks from all accounts who were merely helping those in need, making representations for them in court and discussing policy reform for better outcomes for the people. If that can get people into real trouble then it is better to shut down.

The very few civil societies and



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activists that were involved in advocacy-oriented activities dived to operate below the radar for many years to come. Individuals who were speaking up from non-political party podiums just shut up. The Law Society became more preoccupied with professional conduct as its wings were clipped. Schools that were more open to ideas, analysis and deconstruction withdrew into the safe and predictable.

Much changed from that year as the people sector took a back seat. This year – 2012 – as we mark the 25th anniversary of this alleged Marxist Conspiracy, we need to own the discourse on this issue. Voices on thoughts on this issue must be raised.


We are grateful to the contributors on this subject for opening up discussions on Operation Spectrum, the Internal Security Act (ISA) and sharing personal reflections.

Let the chatter begin in your heart, mind and soul as you read their pieces. Much has to change from the uncomfortable silence in 1987 to sensible chatter in 2012. This national wound must be re-examined and treated to heal.

For us Dignity Defined is about the dignity of the 22 individuals.

Please read.

Please activate Dignity.


Braema Mathi
President of MARUAH

TIME FOR COMMISSION OF INQUIRY ON ALLEGED MARXIST CONSPIRACY PETITION.

We need to call for a review of a dark episode in Singapore's history.

It has been 25 years since Operation Spectrum, when 22 persons were detained for allegedly being "Marxist Conspirators".

Even then, there were doubts about the accusations and whether these citizens should be detained without trial. 25 years later, these doubts continue to linger.

Let's call for an independent Commission of Inquiry now!

Sign MARUAH's petition to call for a Commission of Inquiry on the alleged Marxist Conspiracy at this [link](#).

MARUAH needs 350, 000 signatures and it's not going to be possible without your help! Please share this petition [link](#) on facebook, email it to your friends or even tweet about it!

For more information on this issue, please visit our website at this [link](#) or watch a [video](#) compiled by volunteers to raise awareness on the gravity of this issue.

FROM HISTORY..... OPERATION SPECTRUM & ISA

RIZWAN AHMAD

OPERATION SPECTRUM was launched on May 21, 1987 by the Internal Security Department (ISD) using the Internal Security Act (ISA). During the Operation spanning from May to June, 22 people were arrested and detained under the ISA. The first batch of detainees were:

Vincent Cheng Kim Chuan, Teo Soh Lung, Kevin de Souza, Wong Souk Yee, Tang Lay Lee, Ng Bee Leng, Jenny Chin Lai Ching, Kenneth Tsang Chi Seng, Chung Lai Mei, Mah Lee Lin, Low Yit Leng, Tan Tee Seng, Teresa Lim Li Kok, Chia Boon Tai, Tay Hong Seng and William Yap Hon Ngian. The last batch were Tang Fong Har, Chew Kheng Chuan, Chng Suan Tse, Fan Wan Peng, Ronnie Ng and Nur Effendi Sahid.

They were accused of "being members of a dangerous Marxist conspiracy bent on subverting the State Government by force, and replacing it with a Marxist state". The government named Tan Wah Piow, a former University of Singapore Students' Union president residing in England as the mastermind behind the plot and Vincent Cheng as his key assistant.

By December 1987, all the detainees had been released except for Vincent Cheng. In April 1988, nine of the released detainees issued a joint statement accusing the government of ill treatment and torture while under detention. They also denied involvement in any conspiracy and alleged that they were pressured to make the confessions. Eight of the nine were re-arrested and detained for a second time. The ninth member, Tang escaped re-arrest as she was in the United Kingdom.

They were later released on condition that they sign statutory declarations denying everything they had said in their earlier press statement. Lawyer and former Solicitor General Francis Seow, stepped in to represent one of the detainees who had sought his legal assistance. When Seow arrived at

the detention centre, he himself was detained by the ISD and was not released for more than two months. Also arrested was lawyer Patrick Seong, whom the government accused of having been a "propagandist" in providing information to foreign correspondents during the 1987 detentions. Teo Soh Lung was held until 1990. Vincent Cheng was released shortly after Teo Soh Lung.

Featured Videos



Title: Contemporarising the "Marxist Conspiracy"
Duration: 3 mins
Link: [Here](#)



Title: Teo Suh Long: 23 Years On
Duration: 10 mins
Link: [Here](#)



Title: The Price of Freedom: BBC Interview with Francis Khoo
Duration: 14 mins
Link: [Here](#)

THE INTERNAL SECURITY ACT AND THE “MARXIST CONSPIRATORS” WHY WE SHOULD CARE 25 YEARS ON

MICHAEL HOR

Anyone who teaches law in Singapore cannot avoid grappling with what has come to be known as the “Marxist Conspiracy” of 1987 – if only because it produced the seminal judicial decision on the limits of governmental power and the duty of the courts to police them. In recent years, the realization has dawned on some of us that it happened so long ago that almost all our students were born several years after the event. So what accounts for the continuing crescendo of calls to revisit it? No doubt the awakening of political and civil society activism after the GE and PE 2011 provided the space. A significant motivation must be the long held desire of those most adversely affected by it to seek vindication and closure – but that is most eloquently expressed by the former detainees themselves. There is, however, another reason why the questions are unlikely to stop.

The view is sometimes expressed that the most elemental function of the criminal law is to give notice to all within its jurisdiction the ground rules of conduct. They are the contemporary “Thou-shalt-nots” – everyone is free to live his or her life, to do or say anything as he or she chooses, so long as no provision of the criminal law has been breached. This apparently obvious principle is enshrined in article 9 of the Constitution of the Republic of Singapore – “No person shall be deprived of his [or her] personal liberty save in accordance with law”. Yet when it comes to the power to detain without trial, as the Internal Security Act famously (or infamously, depending on how one feels about it) prescribes, the ground shifts and the ground rules disappear. In the world of the Internal Security Act, behaving in a manner which violates no law is not enough, for you may fall foul of the government being “satisfied” that you need to be detained – perhaps indefinitely – for “acting in any manner prejudicial to the security of Singapore”. So radical

and subversive of article 9 this power of detention without trial is that it was necessary to legitimate its existence by a specific exception grafted onto the Constitution.

So now the injunction is not to act in any manner prejudicial to the security of Singapore. But what does it mean? It is undoubtedly vague – what does the security of Singapore mean, what does prejudice entail, and how much prejudice must be threatened? History accounts for this power of extraordinary breadth, but just reading the words of the preamble to the ISA – “whereas action has been taken by a substantial body of persons to cause a substantial number of citizens to fear organized violence” – is enough to give the ambience of a period movie. Faced with a post-World War 2 communist-inspired armed insurgency, the lawmakers turned to War time legislation in the UK to deal with the situation. The UK was to repeal this power soon after the War, and the “substantial body of persons” threatening “organized violence” in British Malaya disappeared into the mist of history. Yet the power to deal with it remained, to be used occasionally, in both controversial and less controversial circumstances.

Most will consider the use of the ISA in 1987 against the alleged “Marxist Conspirators” to have been the most controversial instance of its employment. Those who were around and sentient then were stunned, and for them the wonderment has only increased with the passage of time. Those who are hearing for the first time often come away barely being able to believe that such an event could have ever happened in Singapore. What could they have done to provoke such an extreme reaction, to cross the line between acceptable and unacceptable behaviour? It is of immense contemporary importance why we need to know, for the ISA is alive and well in 2012 and with

the advent of socio-political activism in the post GE and PE 2011 era, those who engage or who want to engage in this movement ought to know what they can or cannot do. If the criminal law no longer performs the function of being the rules of engagement, then it is incumbent on those who would assume the powers of the ISA to tell us what they are.

The central claim against those targeted in 1987 was involvement in “a Marxist conspiracy to subvert the existing social and political system in Singapore, using communist united front tactics, and with a view to establishing a Marxist state.” So they wanted change and they were willing to work for it, but that alone could not have been out of bounds. Perhaps then it was the ultimate aim of a Marxist state which offended – but what animal is that? Just what a “Marxist state” was meant to be was never entirely clear. Was it an economic system which emphasized “socialistic” elements like welfare, more even wage structures, or governmental control of large sectors of the economy? Was it a political system which stressed authoritarianism? Strewn across the various official allegations against the detainees are words and phrases like “leftist”, “communist”, “anti-establishment”, “pressure group” and “radicalize”. While it is clear enough that they were unsupportive of either the government of the day or some of its social or political policies, and were prepared to persuade others of their view, debates such as how socialistic the economic system ought to be, or how authoritarian the political system should be, looks like the very stuff of regular democratic politics and social activism. It remains unclear exactly what it was about the ultimate aim of a “Marxist State” that was considered to be intolerable. Conceivably, a sufficiently unacceptable ultimate aim might be, for example, the establishment of a social and political system which would systemically discriminate against and marginalize racial or religious minorities – but nothing of that kind was apparent for the “Marxist Conspirators”.

Perhaps then it was not so much the ultimate aim of the “Conspiracy” which was objectionable, but the manner in which it was to be brought about. In a democratic system, those who disagree with particular features of the existing social and political system are entitled to disagree, to persuade others of their views, and to organize a movement to bring about the changes which they seek. So

how was it that the “conspirators” were alleged to have crossed the line? One scours the Grounds of Detention and Allegations of Fact almost in vain. A particular allegation never fails to draw a chuckle from the modern reader – “you were involved in ... activities which included singing progressive songs and performing plays which exaggerated the plight of the poor and the inadequacies of the existing system”. The only serious candidate emerges from a certain allegation against the alleged “Mastermind” – “to build up a mass-based united front of grassroots organisations ... to oppose the government, by violent means, if necessary”. Here is certainly something we should be concerned about – but it brings us back to square one – the criminal law. For the contemplation of “violent means” necessarily renders the enterprise unlawful, for it must then be in breach of the criminal law. To conspire to commit intentional violence, for whatever reason, is a crime – and a serious one.

We return to the principal concern of this discussion – what contemporary lesson are we to draw from the use of the ISA against the “Marxist Conspirators”? Again, I leave the question of whether or not the allegations were factually justified for another day. What must civil society and other activists do, or not do, today to stay out of the range of the ISA? If my speculation is correct, it appears that the ISA will only be used where the criminal law has been breached, and even so, only if there is a strong case that the usual route of a criminal prosecution would not be a sufficient or satisfactory response. But unless those who possess the power to detain under the ISA today give a persuasive account of exactly why they think the powers were used against the “Marxist Conspirators”, its contemporary relevance for today, and some sort of assurance that such is the situation or not, as the case may be, this remains a speculation and the debate over the “Marxist Conspirators” is unlikely to die out.

THE PAST, PRESENT AND FUTURE OF THE INTERNAL SECURITY ACT

JACK TSEN-TA LEE

More than 60 years have passed since a law permitting detention without trial first took effect in Singapore. The need for the current version of this law, the Internal Security Act (ISA), has been questioned on many occasions, most recently last year when Malaysia announced that it was reviewing its own version of the Act. Each time, the Government has reaffirmed the statute's relevance. Is this statute still necessary in modern-day Singapore?

The ISA: A brief history

Preventive detention was first introduced in the Colony of Singapore in July 1948 when the Emergency Regulations Ordinance 1948 (No 17 of 1948) came into force. The Ordinance, based on analogous Malayan legislation that took effect the same month, was intended mainly to counter violence by communists in the Federation of Malaya which was becoming a threat to safety and peace. Regulations issued under the law had to be reviewed and, if necessary, reissued every few months.

In October 1955, this requirement was removed by the Preservation of Public Security Ordinance 1955 (No 25 of 1955). Chief Minister David Marshall cited the Hock Lee riots, which took place in May 1955, as a reason for the new Ordinance. Under the PPSO, the Chief Secretary could make an order directing that a person be detained for a period not exceeding two years if the Governor in Council was satisfied that the detention was necessary to prevent that person from acting in any manner prejudicial to the security of Malaya, the maintenance of public order, or the maintenance of essential services. This statutory wording is significant because it appears more or less unchanged in the present-day ISA.

Five years later, in 1960, the Federation of Malaya enacted the Internal Security Act 1960 (No 18 of 1960) ('Malayan ISA'), to replace its Emergency Regulations Ordinance 1948. Like Singapore's PPSO, the Malayan ISA empowered a person to be

detained for up to two years if the Yang di-Pertuan Agong – the Head of State of Malaya – was satisfied that such action was necessary for the Federation's security. Thus, when Singapore merged with the Federation in 1963, this Act applied to Singapore. Between 1963 and 1965, laws were passed by the Singapore legislature to replace various sections of the PPSO with provisions of the Malayan ISA. Finally, upon Singapore's independence from Malaysia on 9 August 1965, the Malayan ISA was made applicable to Singapore.

Constitutional basis

The ISA is an unusual piece of legislation as, on its face, detention without trial appears to violate a number of the fundamental liberties guaranteed by Part IV of the Constitution. These include the right not to be deprived of personal liberty and the rights to equality before the law and equal protection of the law, respectively protected by Articles 9(1) and 12(1) of the Constitution.

However, the Act is rescued from such potential invalidity by Article 149. Entitled "Legislation against subversion", the first clause of the Article states:

If an Act recites that action has been taken or threatened by any substantial body of persons, whether inside or outside Singapore —

- (a) to cause, or to cause a substantial number of citizens to fear, organised violence against persons or property;*
- (b) to excite disaffection against the President or the Government;*
- (c) to promote feelings of ill-will and hostility between different races or other classes of the population likely to cause violence;*
- (d) to procure the alteration,*

otherwise than by lawful means, of anything by law established; or (e) which is prejudicial to the security of Singapore, any provision of that law designed to stop or prevent that action... is valid notwithstanding that it is inconsistent with Article 9, 11, 12, 13 or 14, or would, apart from this Article, be outside the legislative power of Parliament.

Therefore, apart from Articles 9 and 12, the above provision immunizes the ISA from inconsistency with constitutional provisions prohibiting retrospective criminal laws and repeated criminal trials (Article 11), preventing citizens from being banished and guaranteeing them freedom of movement throughout Singapore (Article 13), and giving effect to the rights to freedom of speech, assembly and association (Article 14).

To comply with Article 149, the ISA contains the following preamble:

Whereas action has been taken by a substantial body of persons to cause a substantial number of citizens to fear organised violence against persons and property:

And Whereas action has been taken and threatened by a substantial body of persons which is prejudicial to the security of Malaya:

And Whereas Parliament considers if necessary to stop or prevent that action:

Now therefore pursuant to Article 149 of the Constitution be it enacted by the Duli Yang Maha Mulia Seri Paduka Baginda Yang di-Pertuan Agong with the advice and consent of the Dewan Negara and Dewan Ra'ayat in Parliament assembled, and by the authority of the same, as follows...

This recital seems oddly out of date, but one should recall that it dates from the Malayan ISA of 1960.

How the Act works

According to section 8(1) of the ISA, before a person may be detained without trial under the ISA, the President must be satisfied that such detention is necessary "with a view to preventing that person from acting in any manner prejudicial to the security of Singapore or any part thereof or to the maintenance of public order or essential services

therein". The President does not act in his personal discretion but must follow the Cabinet's advice on the matter. In other words, it is Cabinet that makes the call as to whether a person constitutes a security risk.

Once the President has expressed his formal satisfaction, the Minister for Home Affairs is empowered to make an order directing that the person in question be detained for a period not exceeding two years. Alternatively, instead of detaining the person, the Minister may make orders restricting the person's activities and places of residence and employment; imposing curfews; requiring the person to notify the authorities of his or her movements; and prohibiting him or her from addressing public meetings; from holding office in, taking part in the activities of, or acting as adviser to, any organization or association; from taking part in political activities; or from travelling to any part of Singapore or abroad.

Upon a detention order being issued, a detainee has the following rights under the ISA:

- *He or she must be informed of the grounds of detention as soon as possible.*
- *He or she must be informed of the factual allegations on which the detention order is based. However, the authorities need not disclose information that is against the national interest to release.*
- *He or she must be served with a copy of the detention order as soon as possible after it is made.*
- *He or she may make representations against the detention order to an advisory board, and must be informed of the right to do so within 14 days of the service of the detention order.*

As a safeguard against governmental interference, Article 151 of the Constitution provides that the President is to appoint all the members of an advisory board reviewing a person's detention. He exercises personal discretion in this regard and does not have to act on the Cabinet's advice. An advisory board is made up of a chairman who is, formerly was, or is qualified to be a Supreme Court Judge, and two other members chosen after consultation with the Chief Justice.

Within three months of the date of detention, an advisory board is required to consider the

detainee's representations and recommend to the President whether the detention order should be confirmed or not. At this point, the President exercises a special discretion that serves to protect the detainee. According to Article 151(4), if there is a difference of opinion between the Minister and the advisory board – the Minister wishes to continue detaining the person, while the advisory board recommends his or her release – the President exercises personal discretion to decide whether or not the detention should carry on.

Although a single period of detention cannot exceed two years, the President, acting on the Cabinet's advice, can direct that the detention period be extended for a further period or periods not exceeding two years at a time. If such a step is taken, at least once every 12 months an advisory board must review the detention order and decide if it is still required.

The Minister for Home Affairs has power under section 10 of the ISA to suspend a detention order upon certain conditions, such as confining the former detainee to specified parts of Singapore or disallowing him or her to leave home between certain hours of the day. Any suspension of a detention order can be revoked as the Minister thinks fit.

Can a detention order be challenged in court?

You will recall that section 8(1) of the ISA makes a person's detention dependent on whether the President (acting on the Cabinet's advice) is satisfied that person poses a risk to national security, among other things. Similarly, section 10 states that the Home Affairs Minister can revoke a suspension direction if satisfied that the person has failed to observe any condition imposed, or that it is necessary in the public interest to do so.

However, is such satisfaction subjective or objective? To put it another way, can a person apply to the High Court for judicial review of his or her detention, and ask a judge to examine if there are objective grounds for the satisfaction? Or is this a decision left entirely to the Government's subjective discretion?

In a 1971 case called *Lee Mau Seng v Minister for Home Affairs*, the High Court took the view that it could not examine whether the grounds upon which a detention order was based were sufficient or not. The judge said that the President's state of mind, when acting in accordance with the Cabinet's advice, was "a purely subjective condition".

The Internal Security Department launched Operation Spectrum in 1987, which led to the arrest

and detention of 16 people said to have "acted in a manner prejudicial to the security of Singapore by being involved in a Marxist conspiracy to subvert the existing social and political system in Singapore, using communist united front tactics, with a view to establishing a Marxist state", according to one of the statements on which a detention order was based. After a year's detention, the detainees had their detention orders suspended in September 1987. The following April, they issued a press statement denying involvement in any Marxist conspiracy. The Home Affairs Minister then revoked the suspension orders. This led to the detainees challenging their detention in court.

In December 1988, the Court of Appeal handed down a landmark decision called *Chng Suan Tze v Minister for Home Affairs*. It ruled in the detainees' favour on a narrow, technical ground: that the Minister had not shown sufficient evidence of the President's satisfaction. However, the case is better known for other important statements of law that were not strictly required for the conclusion reached by the Court. Applying numerous Commonwealth cases decided since 1971, the Court of Appeal held that Lee Mau Seng should no longer be followed. The discretion conferred by sections 8 and 10 of the ISA had to be justified objectively, and it was the duty of the courts to decide whether it had been properly exercised.

The Court of Appeal also found these sections inconsistent with various constitutional clauses. In 1988, Article 149(1) of the Constitution did not protect the ISA against inconsistency with the rights to equality and equal protection (Article 12) and the fact that judicial power may only be exercised by the courts (Article 93). The Court held that sections 8 and 10 were incompatible with these Articles unless they were interpreted to allow the courts to examine the facts on which detention orders were based, and thus prevent the executive from arbitrarily detaining people. As the Court put it: "[T]he notion of a subjective or unfettered discretion is contrary to the rule of law. All power has legal limits and the rule of law demands that the courts should be able to examine the exercise of discretionary power."

The Government disagreed strongly with the legal principles laid down in the case. Less than two weeks later, it announced that it would restore the law to its pre-Chng Suan Tze state. Bills seeking to amend the Constitution and the ISA were introduced and enacted by Parliament on an urgent basis, and they came into force on 25 January 1989. The Constitution was amended so that the ISA would not be unconstitutional even

if it is inconsistent with Articles 12 and 93. The ISA itself was amended to freeze the law relating to judicial review of any executive discretion under the Act as at 13 July 1971 – the day Lee Mau Seng was decided. A new provision, section 8B(1), now stated that "no part of the law before, on or after that date of any country in the Commonwealth relating to judicial review shall apply". Other fresh provisions severely restricted judicial review of acts done or decisions made by the President or the Minister under the ISA, and abolished appeals to the Privy Council in such cases. (Appeals to the Privy Council in all cases were eventually abolished in 1994.) Finally, retrospective effect was given to the amendments so that they applied to the Operation Spectrum detainees.

One of the detainees, Teo Soh Lung, tried to challenge the validity of these amendments to the ISA before the High Court and Court of Appeal, but was unsuccessful. The Court of Appeal held that Parliament had effectively turned back the clock to 1971, and so it could not consider whether there were objective grounds for her detention. Nonetheless, the Court left the door slightly ajar. It noted that it has a responsibility to decide whether the President or Minister's satisfaction is in fact based on matters within the scope of sections 8 and 10. Thus, if a detainee can show that he or she was not detained on security grounds but for some wholly irrelevant purpose, it would be entirely appropriate for the courts to determine that the detention order is invalid.

Future directions

Does the ISA remain relevant today? Should it be retained in its existing form, done away with altogether, or modified in some way?

The Government has consistently taken the stand that the ISA is a useful tool, though one to be used sparingly, that enables quick action to be taken against people who pose a risk to national security. Indeed, most of the detainees under the Act since the late 1980s have been members of the militant organization Jemaah Islamiyah or those sharing its ideology who were found to have been planning terror attacks. On the other hand, there is no denying that since the ISA allows people to be detained indefinitely without trial, this is a serious violation of their fundamental liberties. As the courts can only exercise very limited judicial review over detention-related decisions, a potential for abuse of the law exists.

This has led to calls for the Act to be repealed in its entirety. It is argued that terrorism can be combatted using existing criminal offences, such

as those established by the Penal Code (Chapter 224, 2008 Revised Edition) and the Terrorism (Suppression of Bombings) Act (Chapter 324A, 2008 Revised Edition). However, even though there is some evidence against a person indicating involvement in a terrorist activity, it may be insufficient to allow him or her to be put on trial. Witnesses may also feel intimidated and refuse to testify against the accused. It is also said that criminal proceedings may have undesirable effects, such as stigmatizing a particular community or becoming a platform for the accused's ideological views. Conversely, it might be said that procedures can be put in place during trials to protect the identities and safety of witnesses. Moreover, an open trial can rally communities against the extremist ideas and behaviour manifested by accused persons.

Another possibility is for the ISA to be modified to reverse the 1989 legislative changes. The objective test established by *Chng Suan Tze* can be brought back to enable the court to examine whether there is sufficient evidence for the President and Minister for Home Affairs to be satisfied that a detainee is a security risk. The Government has argued, though, that the court does not have the necessary expertise to decide such matters. Alternatively, more limited additional safeguards can be introduced into the ISA regime, such as reducing the maximum period of each detention order; and allowing advisory board hearings to be held publicly, with discretion for a closed-door hearing if sensitive information may be disclosed.

It is clear that no decision about whether the ISA should be maintained, abolished or revised will be easy to make. Ultimately, it will need much discussion and thought, and the needs of national security on the one hand, and the public interest in a legal system that is transparent, fair and respectful of people's rights on the other, will have to be carefully balanced.

FOR THE ISA



The Singapore Government has used the ISA sparingly. The ISA has only been used against individuals who have acted in a manner prejudicial to the security of Singapore or to the maintenance of public order or essential services therein. No person has ever been detained only for their political beliefs.

- [Ministry of Home Affairs](#)



It is not a practice, nor will I allow subversives to get away by insisting that I've got to prove everything against them in a court of law or (produce) evidence that will stand up to the strict rules of evidence of a court of law.

- [Prime Minister Lee Kuan Yew](#)



When the Government did move against this group in the mid-1980s, it made clear that it was not acting against genuine social activists or members of the clergy, but only those who were covertly pursuing their subversive Marxist political agenda by hiding within the church organisations. Appreciating the sensitivities involved, the Government made every effort to explain to the Church leadership that this was not targeted at the Church. The Church leaders and the Vatican itself acknowledged this publicly.

- [Minister for Home Affairs, Mr Teo Chee Hean](#)

I think what we should consider is either the personal freedom of these 15 people or the security of the whole nation, and whether we should consider either the grief of the members of the families of these 15 people or that of the interests of the whole population of Singapore. We have to choose between the two. As a responsible Government, we have to look after the interests of the absolute majority. We must have a balanced reasoning. In weighing our reasons, we should realize that until these 15 persons can show that they will cause no more harm to our society, we should not release them. This will then be a logical decision.

- [Parliamentary Secretary to the Minister for Education, Mr Tang Guan Seng](#)

NO TO ISA

Operation Spectrum was political rape. I cannot forget, nor forgive, the harsh treatment meted out to me in prison to extract information – the freezing room, the slapping and the beatings, including the blows to my abdomen. That last act which triggered my abject subjugation haunted me for a long time. To mitigate the duress, I decided to allow myself to be abused and bullied into writing tracts of self-incriminating lies and half-truths. It seemed less painful to surrender in the interrogation room, but it was more painful when I was put back into the cell.

- [Vincent Cheng](#)

What is the case against them? What evidence do you have? Although the Government has been saying, "Yes, we have evidence, otherwise we would not have arrested them." What evidence? You tell me. There is no evidence. The only evidence is their own confession. That is all. Any court of law would throw out this kind of a confession.

- [Chiam See Tong](#)

I hope that detentions under the Internal Security Act will become a thing only in our history books. Let all detentions be after a trial or otherwise not at all, please.

- [Loh K T](#)

In the midst of the accusations being hurled at me, I retorted "Now, look here..." or words to that effect. I never completed my sentence: one of the interrogators slapped me across my left cheek, not with a flick of his wrist but with the full force of his body. I fell to the ground and my glasses landed on my chest. I was completely shocked by the assault and wished that I could faint as I felt that I could not take any more. I had never felt more humiliated in my life.

- [Tang Fong Har](#)

The ISA should be abolished immediately if possible. The ISA has throughout our history been used to control and instil fear in people. Hundreds, if not thousands, of our brightest have been incarcerated, lost their freedoms and youth. Lives have been wasted.

- [Teo Soh Lung](#)

Further reading

You may find the following works useful if you wish to read more about the ISA.

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The Constitution of the Republic of Singapore (1985 Revised Edition, 1999 Reprint) and the Internal Security Act (Chapter 143, 1985 Revised Edition) are available on the Internet at [Singapore Statutes Online](#).

Michael D Barr, "Marxists in Singapore? Lee Kuan Yew's Campaign against Catholic Social Justice Activists in the 1980s" (2010) Critical Asian Studies, volume 42, issue 3, pages 335-362

Michael Hor, "Terrorism and the Criminal Law: Singapore's Solution" (2002) Singapore Journal of Legal Studies, pages 30-55

Michael Hor, "Law and Terror: Singapore Stories and Malaysian Dilemmas" in Victor V Ramraj, Michael Hor & Kent Roach, Global Anti-terrorism Law and Policy (Cambridge: Cambridge University Press, 2005), pages 273-294

Yang Ziliang, "Preventive Detention as a Counter-terrorism Strategy: They Have Stopped Using It and So Should We" (2007) Singapore Law Review, volume 25, pages 24-34

[A Singapore Safe for All](#) (Singapore: Times Books Int'l for the Ministry of Home Affairs, 2002) (archived [here](#)) – *this is a booklet containing a simple version of the Government's position on the ISA*

[Ministry of Home Affairs Press Statement on ISA](#), 16 September 2011 (archived [here](#))

MEDIA COMMENTARIES

[The Straits Times, 9 June 1987, Page 18](#)

Summary:

Letter submitted to ST deploring the Law Society because it had sought the release of Teo Soh Lung upon her arrest. The writer gave full support to the government's actions and was alarmed by the purported Marxist threat.

[The Straits Times, 17 July 1987, Page 15](#)

Summary:

Malaysian based Human Rights group release statements challenging the government's claims on Tah Wah Piow as contradictory.

[The Straits Times, 6 May 1988, Page 26](#)

Summary:

Letter written to ST urging the end of detention without trial and forced confession under the ISA used on the Marxist Conspiracy detainees. More socially acceptable and less oppressive method was recommended in replacement.

[The Straits Times, 17 May 1988, Page 18](#)

Summary:

Letter to ST calling for the non-interference of Malaysian human rights groups and rejecting the call for the abolishment of ISA. It states the constitutional right to use of ISA and its effectiveness dealing with the Marxist Conspiracy and other threats.

[The Straits Times, 6 May 1988, Page 26](#)

Summary:

Letter to ST expressing concern over the re-arrest of the 8 detainees. The writer seek clarification from the authorities over allegations of inducing confessions for early release. Invoking the relevant legal ramifications of such actions, the writer also advised the poor effectiveness of torture.

[The Straits Times, 4 July 1987, Page 22](#)

Summary:

Washington Post had release a report on the arrests of the alleged Marxist Conspiracy members as a violation of human rights and the stamping down of dissent against the Lee Kuan Yew led PAP rule of Singapore. Alleged reports of torture and mistreatment was emphasized.

PARLIAMMENTARY DISCUSSIONS

HANSARD ([link](#)):

Summary:

Various Malaysian CSOs criticised the arrests of the alleged conspirators in MC, Prof Jayakumar, then Minister of Home Affairs dismissed their criticisms as conveniently selective, double standard and a veiled attempt to undermine Singapore's interests. "Sir, it is obvious that these organizations have double standards and have some ulterior motive in making Singapore as their whipping boy. And some have axes to grind. For they cannot believe that their protests can bring about results in Singapore." - Prof Jayakumar

HANSARD ([link](#)):

Summary:

A fierce debate between the lone Opposition member against the House on the arrest of the 15 persons allegedly involved in a Marxist Conspiracy. Questioning the veracity of the accounts given by the government to justify and give credence to an actual marxist threat which could pose an existential threat to the status quo. Alleged torture and lack of evidence gave weight to skepticism.

"What is the case against them? What evidence do you have? Although the Government has been saying, "Yes, we have evidence, otherwise we would not have arrested them." What evidence? You tell me. There is no evidence. The only evidence is their own confession. That is all. Any court of law would throw out this kind of a confession. You arrested them at 3 or 4 o'clock in the morning, hauled them roughly to their offices, searched them, treated them very roughly and brought them to the Internal Security Department, not allowing them to contact anyone. No lawyers and no relatives were allowed to talk to them, at least for the first initial stage. They were interrogated, continuous interrogation. The Government says there is no torture. But this is a form of torture. Continuous interrogation is a form of torture." - Mr Chiam See Tong (Potong Pasir)

"The Member for Potong Pasir also tried to make

light work of the evidence that was collected by the Government. I think this evidence was reviewed by none other than the Archbishop and a number of other people who were satisfied that the Government, in fact, had a case. He has also questioned the validity of the open confessions made by the detainees of their complicity. I think it is quite clear that the Government has shown that there was no question of torture and therefore the confessions must be taken at face value as valid." - Mr Chng Hee Kok

"What is their real crime? To my mind, their real crime is that they are against the Party in power. Because, as I say, in the case of Lim Chin Siong, he was with the PAP at that time. Although he was a known Communist, yet he was released. A Communist, but who cooperated with the Party, was released. I would not say that these people have been broken down. They are ineffective as Communists and yet they are still being detained. They are punished because they wanted to go against the ruling Party." - Mr Chiam See Tong

"I search my mind as to what valid reason can there be for this group of well-educated, perhaps well-meaning people, to have emerged from among our midst. Is there really so much extreme poverty, so much deprivation and exploitation in Singapore that one needs to resort to revolutionary means to change the system altogether? Have we not achieved economic progress, and have the basic needs of Singaporeans not been met within the last 20 years? It would appear that at least some of this group of people, being young and idealistic, have been hopelessly misguided in their thinking. They have been manipulated by others behind the scene for their own political motives." - Dr. Aline Wong (Changkat)

"You have got powers of detention without trial. You say you want security. But there are also other important considerations for our country. We have to ask the question: What sort of Singapore do you really want? You have to tell the people. Do we want a Singapore where only because of a slight dissent against the Government, people are arrested? Do you want a country that has a

widespread fear, apathy? Do you want to continue with your authoritarian rule? Is this the Singapore you want?" - Mr Chiam See Tong

"They do not understand our situation. How can they, when they are so far away and have never experienced the threats posed by such people to our society? Should the Government bow down to all these pressures from outside? Of course, not. The critics abroad only consider "human rights, rights of the individual". They view the world and they view society through their eyes, their set of values and their history. That is well and good for them but that is not for us." - Mr Ng Kah Ting (Punggol)

"Singapore's Opposition Leader expressed concern about this detention and said that these things are unbelievable and that such people could not be Communist! By the time these people have come to realize it, it is already too late, foregone and foreclosed beyond redemption and regret. By that time, the people of Singapore would have lost their freedom and democracy. Then to whom can they ask for accountability?" - Mr Ong Teng Cheong (Second Deputy Prime Minister)

"When ISD recommended the detention of Vincent Cheng and the others, we did not just take their word for it. We asked many questions. We wanted to be very sure that the conspiratorial activities of the 16 were indeed prejudicial to the security of Singapore. This is the first time that the younger Ministers have to take a tough decision. This is the first time that we have to use the ISA to deal with a security threat. It is a big decision and because it is a big decision I asked the Minister for Home Affairs to discuss the subject with our other younger colleagues. So all members of the younger leadership were involved in deliberating this case. Each one of us gave our view as to what we should do with the 16 who have been discovered by the ISD for plotting, on a long-term basis, to subvert the stability of Singapore. All of us were satisfied that the 16 were indeed involved in some nefarious activities, as reported by the ISD." - Mr Goh Chok Tong (First Deputy Prime Minister)

"Mr Deputy Speaker, Sir, the Member for Potong Pasir as well as a few other Members have asked me about all these allegations of torture. I have already publicly given a comprehensive statement. Just to reiterate the points that I have made, there is no truth in these allegations. First of all, we do not do these things and you cannot expect to do these things and get away with it in Singapore. Secondly, we do not do it not only because it is wrong but because it is unnecessary. Because each time we act under the ISA, we do so only after we have information, evidence, grounds, which we confront persons whom we arrest. Thirdly, Sir, Members will realize that no relative and no lawyer for the detainees has made any complaint of ill treatment.

Fourthly, during interrogations, doctors are available to attend to the needs of detainees to see if they are fit to proceed. Indeed, interrogation of one detainee was stopped on medical advice on account of a flu." - Prof. Jayakumar (Minister for Home Affairs)

"The Government says they have got a vision for Singapore. What kind of vision? How can people of Singapore believe the Government when you say you want to have a vision and you want to have high standards of living? Can we really achieve such a vision? I really do not think so. Every now and then there will be arrests under your system. On the average, maybe every 10 years, there will be arrests. Every 10 years, it occurs. Why? Because you are not establishing a democratic society. As you say, there will be rapists. There will be murderers. There will be this kind of people coming forward. So what do you do? You have to immunize the society so that they can come and have different opinions and yet it would not shake the fundamentals of society. You can educate them, as I have advocated, on democracy. Teach our school children what this system is all about. What are the dangers? Why do we not allow this Communist and Marxist to come forward? You teach them. The difference between a Marxist society and our society is freedom. If you have got no freedom, there is no difference between the two societies." - Mr Chiam See Thong

"When he asks that whether the PAP has a vision for the people and if it has, then should it have the ISA to suppress or detain people unnecessarily? Of course, the PAP has a vision. And for that reason we are in power for the last 28 years. Without that kind of vision, if we just move from election to election, from year to year, or being pushed from pillar to post by all kinds of unpopular issues, we would not be here that long. We will continue to remain here for a long time because we have a vision. Our vision, of course, is that we must have a stable society that stresses on economic growth, that will provide job opportunities for our people, freedom for them to do what they want to satisfy themselves, to fulfill themselves in materialistic and non-materialistic ways. But the underpinning of this freedom to do all these things is that we must be free from threats, both internally and externally. And one of these instruments that will allow us to continue to live freely is the Internal Security Act. We have found it necessary to use it on this occasion to nip the problem in the bud. Of course, the Member for Potong Pasir would have us release or not detain any of such people at all costs, as he said. But I do not think Singaporeans will agree that we should allow a security situation to threaten us until we are overwhelmed, until we are consumed by riots and havoc. We want to continue to live peacefully." - Mr Wong Kan Seng (Leader of the House)

HANSARD ([link](#))

Summary: Minister for Home Affairs outlined Father Edgar D'Souza's role and involvement in the Marxist Conspiracy and questioned his character.

HANSARD ([link](#))

Summary: Mr Chiam (Potong Pasir) addressed the letter of protest and criticism by the American Congressmen on the detention of the "Marxist conspirators" and seek their release mutatis mutandis

"But we need not put ourselves in a position where we will attract bad international press or bad international public opinion in relation to our treatment of the human rights issue. We may not like it. But the 15 detained are treated by people abroad as a human rights issue. The detainees are viewed as mere dissenters who opposed the ruling Party because the Singapore Government's case claiming that they are Marxist subversives are not believed." - Mr Chiam See Thong (Potong Pasir)

HANSARD ([link](#))

Summary: Agenda for Action debate which highlights the national issues facing the nation and how the government intends to tackle them. The Marxist Conspiracy hindered the government's credibility and created an apathetic professional class who are averse to any meaningful criticism. Pari passu the intolerance for any oppositional criticism undermines the agenda's purpose.

HANSARD ([link](#))

Summary: The Hendrickson Affair was discussed and possibility of links to the Marxist Conspiracy was raised. Particularly the ex-detainees Joint Statement was deemed to be politically motivated and issued under the direction of a foreign power to subvert the government. "The ISA has proved to be the most effective weapon against subversive activities. So, it is not strange for such elements to want to get rid of ISA, which is a stumbling block to them." - Mr Goh Choon Kang (Braddell Heights)

INTERN/VOLUNTEER WITH MARUAH

Wanted: Independent interns/volunteers interested in Human Rights

If you are an independent worker passionate about Human Rights, MARUAH wants you. We are a five year old Human Rights organisation (officially registered three years ago), also the focal point for the Regional Working Group for an ASEAN Human Rights Mechanism and a member of the Southeast Asian Women's Caucus and the International Council on Social Welfare.

Interning or volunteering with MARUAH will be enriching, enticing and exciting. There is much to do, and we will need all the expertise we can get. Currently, interns/volunteers take on specific projects, where they conduct research, interviews and produce a final report. Interns/volunteers may also help out on the programmes end; by organising advocacy campaigns and working on raising awareness of issues.

Most importantly, MARUAH interns should be individuals who are motivated to work in the Human Rights field, already pursuing an undergraduate degree with an established institution and show commitment to advancing the causes we support. Interns are guaranteed a steep but vital learning experience, which will come in useful in their future careers.

MARUAH welcomes anyone to volunteer with us as long as you have the motivation to see through a project within your interest area.

Intern or volunteer with us now!
Visit our website for more information at www.maruah.org or email maruahsg@gmail.com.



THE LAW OF SUSPENDED LAWS

NORVIN CHAN

The Purpose of Preventive Detention

Preventive detention, also known as detention without trial, can be ordered by the Minister of Home Affairs via two statutes¹, namely, the Internal Security Act ("ISA") and the Criminal Law (Temporary Provisions) Act ("CLTPA"). The latter is less well-known, for it is used against secret society members and criminal masterminds. The former is more controversial, for it allows people "threatening national security" – a notoriously vague term – to be detained without trial.

Any serious discussion of the laws should include the virtues of the ISA and CLTPA. Rebecca West's condemnation of pacifists' taking the moral high horse comes to mind:

*"They want to be right, not to do right"*²

The truth is that taking a simple moral stand is much easier than trying to do good in the complicated world we are in.

Internal Security Act

The ISA has seen success as an effective instrument for fighting terrorism. As only the Minister of Home Affairs' opinion is needed for a valid order to be issued (with the president's assent during reviews), the government is able to act first on less evidence, before investigating further. Considering the tragedies caused by terrorism, the lowering of the bar appears justifiable when it comes to fighting terrorism.

An interesting point can also be made that the lack of a public court trial might help terrorists in the long run -- as detained radicals are given spiritual counselling to guide them towards reintegration into society, putting them through court and exposing them to the public eye might in fact hinder reintegration. According to the government, around 40 or two-thirds of terrorist detainees have already been reformed, which would make Singapore spectacularly successful in terrorist rehabilitation³.

Criminal Law (Temporary Provisions) Act

The CLTPA has largely been used strictly against suspected secret society members and criminal masterminds. The public finds this uncontroversial and the law was crucial in restoring order to the streets during the early years of independence.

The law can even be said to enjoy implicit public support in the present age. This can be seen in the detention of Chia Choon Leng (the alleged drug lord behind Yong Vui Kong), which has not been criticised.

In such a situation, the public will have to choose between the damned situation of a suspected criminal mastermind getting away scot-free while his underling dies, or the equally damnable situation of someone detained indefinitely by the police on allegations that cannot be proven in a court of law. The present mood appears to favour detention as opposed to the potentially greater injustice that a guilty person might go scot-free. Since the climate does not favour activism against the CLTPA, I will not consider this law further.

The Case Against Preventive Detention - Its Potential for Abuse

To affirm the benefits but deny the dangers would be as deceitful as to deny the benefits and affirm the dangers.

Preventive detention has already shown itself to be manifestly wrong in other countries. In Guantanamo Bay, based on data in the public domain, a staggering 55% of 517 detainees were deemed not to have committed any hostile action against the United States and its allies⁴, and 440 of the detainees were captured by non-American bounty hunters incentivised by a \$5,000 reward⁵.

The entire demographic group of 110,000 Japanese-Americans was also interned during WWII, following anti-Japanese hysteria. During the same war, Britain detained Robert Liversidge on the threadbare grounds that he had associated "from time to time with Germans and with those associated with the German Secret Service⁶". The resulting court case prompted Lord Atkin to declare in a dissenting opinion:

*"Amidst the clash of arms, the laws are not silent. They may be changed, but they speak the same language in war as in peace."*⁷

Lord Atkin was arguing that the rule of law exists even in times of grave and serious threats to national security. The fine point of law was whether the Home Minister had the right to detain anyone "if he thinks he has" reasonable grounds to do so, or whether the Home Minister had the right to detain

anyone only if "he has" reasonable grounds. In the first formulation, the Minister's decisions are not reviewable in a court of law; in the latter, the court will decide if the reasonable grounds truly existed.

Regrettably, Lord Atkin was the only dissenting judge, and the court ruled in favor of the former formulation. Effectively, the court ruling gave the British government an almost unlimited right to order detentions. This was however acknowledged to be a wrong decision by subsequent court rulings⁸.

Such an unchecked power can lead to cases of abuse. In 1988, the Malaysian Inspector-General detained a Tan Sri Raja Khalid on the quaint grounds that the banking scandal he was involved in might cause some depositors who were members of the armed forces to protest violently, threatening national security. He was released after the courts ruled that the reasons provided for detention were not adequate and the link "incredible"⁹.

For Singapore, some suspect that cases of over-reaching may have occurred as well. In 1987, the Government alleged the existence of a "Marxist Conspiracy" and accordingly detained 22 members of the Roman Catholic Church, student groups, social workers and Law Society members, with little evidence being given to the public.

The scant evidence presented in newspapers included limited clippings of letters¹⁰, guilt by association¹¹, and the circumstantial evidence of some members having had contact with Tamil extremists¹². The public confessions after weeks of sleep deprivation and interrogation techniques¹³, and made under the carrot of release, did not convince the public. That nine of the detainees subsequently recanted their confessions at the risk of their liberty further stretched credulity; they paid the price by being re-arrested after issuing a public statement explaining that they were never Marxists.

The public might have been convinced of a causal link, but it was difficult to imagine that the threat (if any) was indeed grave enough to justify the exceptional power of preventive detention. Given that there was no immediate violent action planned – the conspirators were supposedly in the early stage of preparing the ground for the return of their alleged leader Tan Wah Piow – the question of why the police did not wait for more evidence that might be admissible in court is a troubling one.

The Cost of Preventive Detention

The esteemed former Prime Minister Lee Kuan Yew once quipped that the phrase "law and order" ought to be inverted, for the rule of law can only happen when order exists first. This pragmatic wisdom is true and is key to understanding why many third world nations fail. Yet, there is evil in all extremes, and if order is over-emphasized, it might occur at the cost of rule of law. For it is a pragmatic truth that order can exist even under a harsh and oppressive regime where law does not.

In Singapore, the ISA greatly tilts the balance towards order; the power of preventive detention is capable of sidestepping the normal criminal

process required to incarcerate someone. The cost we face is that the concentration of powers in the hands of the executive opens up the possibility of abuse and breeds suspicion.

We have already witnessed the suspicion. According to Emeritus Senior Minister Goh Chok Tong, Mr S Dhanabalan resigned from cabinet as he disagreed with the government's handling of the so-called "Marxist Conspiracy"¹⁴. Deputy Prime Minister Tharman Shanmugaratnam himself has stated that "although [he] had no access to state intelligence, from what [he] knew of them, most were social activists but not out to subvert the system."¹⁵ The trust of the public has been severely tested.

The Recent Past

We will need to look to the past for guidance, to see whether the balance between "law and order" has been struck well.

On 13th July 1971, in the case of Lee Mau Seng v. Minister for Home Affairs, where the editor of Nanyang Siang Pau was detained, the court stated these chilling words:

*Even if the Home Minister had "arrived at his satisfaction without exercising care, caution and a sense of responsibility and in a casual and cavalier manner or on vague, irrelevant or incorrect grounds or facts", it is not a "justifiable issue" that the court can rule on*¹⁶.

Such a judgment effectively gave the Home Minister a carte-blache for ordering the detention even if the decision is clearly and obviously wrong; the only check was the need for Presidential consent.

Fortunately, the judiciary valiantly overturned this precedent on 8th December 1988, when one of the detainees of the Marxist Conspiracy filed for the right to a trial. In Chng Suan Tze v. Minister of Home Affairs, the Court of Appeal stated:

*"[The] notion of a subjective or unfettered discretion is contrary to the rule of law. All power has legal limits and the rule of law demands that the courts should be able to examine the exercise of discretionary power*¹⁷."

After the Court of Appeal issued this opinion that overturned previous precedents, and ruled in Chng Suan Tze's favor on a technicality (that Presidential approval for the detentions, though implicit, had not been explicitly given), the detainees were freed in the afternoon of the same day. Waiting Internal Security Department officers immediately rearrested them outside the detention center. They were this time, armed with detention orders signed by the President.

To prevent the courts from reviewing the decisions of the Minister of Home Affairs, Parliament hastily enacted an amendment to the ISA on 25th January 1989.

The amendment read:

"... the law governing the judicial review of any decision made or act done in pursuance of any power conferred upon the President or

the Minister by the provisions of this Act shall be the same as was applicable and declared in Singapore on the 13th day of July 1971; and no part of the law before, on or after that date in any other country in the Commonwealth relating to judicial review shall apply.

"There shall be no judicial review in any court of any act done or decision made by the President or the Minister under the provisions of this Act save in regard to any question relating to compliance with any procedural requirement of this Act governing such act or decision.¹⁸"

What this amendment did, was to prevent the courts from reviewing the decisions of the Home Minister and the President in ordering detentions. It returned Singapore law to the position in the 1971 case of Lee Mau Seng, where even obviously wrong and unfair detentions by the Home Minister cannot be reviewed by the courts.

On 3rd April 1990, the Court of Appeal ruled in the case of Teo Soh Lung v. Minister for Home Affairs that the amendment was constitutional and did prevent the courts from reviewing the decision to detain by the Minister for Home Affairs. The executive power of detention was now beyond the reach of the courts, except on purely procedural grounds. The balance between law and order had been struck and tilted heavily to the latter.

Though I do not wish to compare the Singapore which I believe in to the dystopias of George Orwell, I cannot help but remember the following passage from Animal Farm, when Clover returned to look at the constitution of the farm:

"My sight is failing," she said finally. "Even when I was young I could not have read what was written there. But it appears to me that that wall looks different. Are the Seven Commandments the same as they used to be, Benjamin?"

For once Benjamin consented to break his rule, and he read out to her what was written on the wall. There was nothing there now except a single Commandment. It ran:

ALL ANIMALS ARE EQUAL

BUT SOME ANIMALS ARE MORE EQUAL THAN OTHERS

The animals in the farm had just awoken to the fact that the steady amendments to the writing on the wall had whittled their rights away to nothing.

While we in Singapore are assuredly still individuals equal under the rule of law, the sad truth is that we all face the equal peril of being unjustly detained. That is the reason why we need to pay attention to the changes in our laws, the lines drawn on the sand, and the balance between law and order in society: lest we awake one day to find that we are in an unjust society.

MARUAH IS HIRING A PART-TIME OFFICE ADMINISTRATOR!

MARUAH, an NGO working on human rights in Singapore and in ASEAN, is looking for a part-time Executive Officer.

This organisation is managed by a team of executive committee members and members who are all volunteers.

It is a five-year-old organisation that was formally registered three years ago. It has tremendous potential and we need an administrator to help us in our growth. The direct reporting line will be the President of the Society, together with key office bearers.

Job description:

- Office coordination in terms of internal and external communications
- Write up press releases, statements, letters to forum, event reports
- Events planning for community service projects and ad-hoc hot-button issue forums
- Volunteer and projects management
- Coordinate research and advocacy campaigns
- Plan fund raising possibilities
- Establish consistent brand management for MARUAH

What's in it for you?

- monthly stipend
- Flexible work hours and environment*
- Opportunities to attend meetings/workshops in the region**
- Networking opportunities through events planning/attending events

*Other organisational/work commitments need to be made known upon signing of contract

**Subject to knowledge expertise required

We want YOU if you are:

- Passionate about human rights, local or regional issues
- Proficient with MS Office – Word, Excel, Powerpoint
- (Added advantage if you know photoshop, and website development skills)
- Want to learn and practice various human rights instruments and approaches to a spectrum of issues
- Have strong organisational, interpersonal and time management skills
- Seek to gain on-the-ground experience with seasoned civil society members
- Able to multi-task
- Enjoy working independently on a virtual office basis (i.e. from home)
- An enthusiastic individual and a team player
- Are willing to help MARUAH grow

REFLECTIONS

NORVIN CHAN

Growing up can be described as an unending stream of disillusion. Some are of the trivial sort, like the oft-repeated line of Santa not existing. Others are significant and come about at the moment of maturity; as a child my most profound realisation was that parents are not the all-capable people of imagination, but frail individuals doing the best job they could.

These disillusion aside, a special class lies distinct from the rest -- the kind which has you tottering and peering at the edge of truth, not wishing for it to be true. For if it is, you know that you can never view your own country through the same eyes again:

Who does not want to believe in the ideal of Singapore? The country whose shores received the poor of the world who in making their fortunes, made a nation; where a population invests its trust in an enlightened government that selflessly fights against the odds of survival; when an age has arrived that justice is assured of all members of society?

Yet, the entire debacle of the "Marxist Conspiracy" of 1987 taints the ideal of such a Singapore. Knowing about the entire regime of physical abuse, psychological pressure, sleep-deprivation, solitary confinement, intimidation, coercion, and trickery that climaxed in orchestrated televised confessions beggars one's store of naiveté. Much as I wish to believe otherwise and protect the cherished conception of my own country, I am forced to the personal conclusion that a grave injustice had been committed.

The "Marxist Conspiracy" stirs up, as it rightly should, a deep sense of outrage within everyone who knows about it. The reason is because it is not about an academic argument about the inalienable right of due process, the primacy of the government

over the rights of an individual, the proportionality principle in the context of national security, or any one of the many grand intellectual frameworks the hideous issue can be recast in.

It is instead about the deeply intuitive sense of right and wrong; of people who forsook a lucrative career in law to become social workers being rewarded with arrests; of them being forced to swallow their dignity and sign confessions they knew were false; of a farcical scene where release ordered by the highest court of the land was promptly met with re-arrest at the blue gates of Whitley.

All these have led to a wound now. In the hearts of Singaporeans, dark doubts are raised about the best intentions of the government, the fundamental values that underpin us, and if this country is even worth believing in. A young generation will be growing up now, and will approach the deeds of the past with curiosity and then leave with cynicism.

This is what will be, if nothing is done and the past continues to take its toll on the future. It need not come to the regrettable scenario where we say the government is Machiavellian without remorse, or that we concede to the taunts that Singapore is a society where values don't matter.

For, we as a society have come to the mature understanding that governance can never be perfect, and we recognise that mistakes will be made in an enterprise as complex as nation building. What follows from here can be an inquiry into the mistakes of the past and a review of what can be done. Perhaps, it can be thought of as a collective disillusionment: One that ends not in pain but maturity.

ABOUT THE AUTHORS & THE EDITORIAL TEAM



Michael Hor is a Professor at the Faculty of Law, National University of Singapore. He studied law in Singapore, Oxford and Chicago and worked in the Singapore Legal Service before joining academia. For the next 25 years, he has taught and written about criminal and constitutional law in Singapore. He has held visiting positions in Toronto and Hong Kong, and enjoys traveling, eating, facebooking and getting to know all kinds of people, not in order of priority.



Norvin Chan is twenty years of age and is soon starting his studies in law. Wanting to find out about the history of his own country, he read in passing about the Marxist Conspiracy. Only later after more and more research did he trace the sheer scale of the incident, and has since felt disquiet and troubled.



Jack Tsen-Ta Lee is an Assistant Professor of Law at the [School of Law](#) of the Singapore Management University (SMU), where he teaches and researches constitutional and administrative law. He graduated with an LLB (Hons) from NUS in 1995 and qualified as an advocate and solicitor the following year. After working for about six years as a litigator, Jack obtained an LLM at University College London on a British Chevening Scholarship in 2003. He completed his PhD in Law at the Birmingham Law School, University of Birmingham, in 2012, where he was also a visiting lecturer and postgraduate teaching assistant for three years. He was the holder of a Lee Foundation Fellowship for Research Excellence in 2009–2010, and received SMU School of Law's Most Promising Teacher Award for 2010–2011. He has been a member of the Law Society of Singapore's Public and International Law Committee since 2012. He enjoys films, travel and editing Wikipedia.

[Click here](#) for information on Jack's academic writings, and follow him on Twitter at [@smuconlaw](#).



Rizwan Ahmad is 24 and has volunteered with MARUAH for less than a year. He is currently an undergrad in Economics and considers Philosophy and History among his interests. At its core MARUAH is all about Human Rights first and it jives with his personal philosophy of advocating human rights in Singapore which is sadly under-developed. He is repulsed by the tragic incidents of the Marxist Conspiracy and other abuses of the ISA. MARUAH has challenged and widened his horizons. He hopes human rights can flourish here.

The Editorial Team

Braema Mathi
Nuruljannah Md Amin
Siew Kum Hong
Dilpreet Kaur

ABOUT MARUAH

MARUAH is a human rights non-governmental organisation based in Singapore. MARUAH in Malay, Singapore's national language, means 'Dignity'. We believe human dignity can be achieved through championing causes from a rights-based perspective. MARUAH first started in 2007, and became registered under the Societies Act on November 4th, 2010. However, we were also gazetted under the Political Donations Act. As such, we can only source for funds from Singaporeans or Singaporean-owned institutions.

We are a group of diverse individuals who are committed to raising awareness on human rights and issues of social justice. Currently, we have 18 members, and about 1,200 individuals and organisations on our mailing list. We are also the Singapore focal point of the Working Group for an ASEAN Human Rights Mechanism. We are also a member of the International Council on Social Welfare.

When we began, we worked on several ASEAN-related initiatives relating to the setting up of the regional human rights body. From 2009 onwards, we also focused on local issues such as constitutional law, the Universal Periodic Review, disability issues and homelessness in Singapore.

Research & Advocacy

MARUAH conducts research to improve its advocacy efforts. Human rights is fundamentally about maintaining, restoring and reclaiming one's dignity. The Universal Declaration of Human Rights and international human rights treaties are used as a framework and a starting point for many of our research projects, in the areas of civil liberties, economic rights and social/cultural justice.

In the past year, we have conducted research in the field of disabilities in view of the upcoming ratification of the Convention on the Rights of Persons with Disabilities (CRPD) by the Singapore government. We have also produced a research report on the implementation of the Convention on the Rights of the Child (CRC) in Singapore since its ratification in 1995. Our volunteers are also working on a position paper on the Death

Penalty and the Internal Security Act. Beyond local efforts in advocacy, MARUAH also attended the 18th session of the Human Rights Council in Geneva, where Singapore's human rights record was reviewed under the Universal Periodic Review process. This participation was assisted by Article 19, an international human rights organisation.

Public Education

MARUAH organises Community Service Projects to raise awareness of various human rights issues among members of the public. Many of these forums are free and open to all. For example, one of our public forums in 2011 – "What do you Mr President?" – was aimed at clarifying the constitutional role of the Elected President as there seemed to be much confusion amongst the electorate.

A key aim of such talks is to provide education on various issues affecting our society. The invited speakers, being knowledge experts, are expected to use a evidence-based approach to share information, thus promoting objectivity. Participants are encouraged to view issues from a rights-based perspective and to discuss and question the views presented.

Partnerships

MARUAH has had the privilege of working with many organisations on various initiatives. Namely, varsity institutions such as the National University of Singapore (NUS), Singapore Management University (SMU); non-governmental organisations like UNIFEM Singapore, Disabled People's Association and the Association for Women for Action and Research (AWARE); think-tanks like the Singapore Institute of International Affairs (SIIA), and other organisations based in Singapore.

DONATE TO MARUAH and support its research, campaigns and advocacy work to protect human rights in Singapore and ASEAN!*

*MARUAH can only accept donations from Singaporeans and Singapore-controlled companies.

THE LAW OF SUSPENDED LAWS

END NOTES

¹Preventive detention under the Misuse of Drugs Act is aimed at the rehabilitation of drug addicts and will not be discussed in this article.

²Rebecca West, *Black Lamb and Grey Falcon: A Journey Through Yugoslavia*, (NY: Penguin Classics, 1995).

³"Two-thirds of terrorist detainees released after rehab." The Business Times, February 25 2009, . (accessed March 13, 2012).

⁴Mark, Denbeaux, and Joshua Denbeaux. Seton Hall University School of Law, "Report on Guantanamo Detainees: A Profile of 517 Detainees through Analysis of Department of Defense Data." Last modified February 08, 2006. Accessed March 6, 2012.

⁵Ibid

⁶Simpson, Brian. *In the Highest Degree Odious: Detention without Trial in Wartime Britain*. London: Clarendon Press, 1994.

⁷*Liversidge v. Anderson* [1942] AC 206.

⁸Lord Diplock later wrote that "the time has come to acknowledge openly that the majority of this House in *Liversidge v Anderson* were expediently and, at that time, perhaps, excusably, wrong and the dissenting speech of Lord Atkin was right". *I.R.C. v Rossminster Ltd* [1980] AC 952

⁹Michael Hor, *Global Anti-Terrorism Law and Policy*, (Cambridge: Cambridge University Press, 2005), 11.

¹⁰"Wah Piow letters tell of plans." The Straits Times, May 28, 1987. (accessed March 6, 2012).

¹¹"Those who were arrested." The Straits Times, May 27, 1987. (accessed March 6, 2012).

¹²"In action, at camp of terrorists." The Straits Times, May 30, 1987. (accessed March 6, 2012).

¹³The Online Citizen, "Teo Soh Lung – In her own words (Part Two)." Last modified May 22 2009. Accessed March 6, 2012.

¹⁴Loh, Andrew. Publichouse, "3 senior govt officers doubted the "Marxist conspiracy"." Last modified October 10 2011. Accessed March 6, 2012.

¹⁵Hong Lysa, Huang Jianli, *The scripting of a national history: Singapore and its past* (Hong Kong: Hong Kong University Press, 2008), 145.

¹⁶Michael Hor, *Global Anti-Terrorism Law and Policy*, (Cambridge: Cambridge University Press, 2005), 11.

¹⁷Ibid

¹⁸Internal Security Act, Cap.143.