MARUAH[1] submission for Universal Periodic Review

21st June 2015

[1] MARUAH Singapore is a human rights NGO [www.maruah.org] with ECOSOC consultative status, and is a society registered under the Registry of Societies [T10SS0147E]

Executive Summary

1. MARUAH has tendered a joint submission[2] for the Universal Periodic Review and is now submitting a separate report focusing on three issues – Electoral systems, Death penalty, and Preventive detention without trial – with great impact on Singaporeans.

Electoral Systems

2. Members of Parliament are predominantly[3] elected in a mixture of Single-Member Constituencies (SMCs) and multi-member or Group Representation Constituencies (GRC). While there is no evidence of electoral irregularities in Singapore, there are grounds for concern as to the fairness of electoral procedures and regulations. The right to vote in Singapore is not explicitly stated. But Articles 65 and 66 set out requirements for the prorogation and dissolution of Parliament and the holding of general elections. However there are issues[4] that impinge on free and fair elections, as follows.

3. *Independent Elections Commission* - Elections are administered by the Elections Department (ELD)[5], under the Prime Minister's Office. Election officials are appointed from the civil service. This creates a perception of conflict of interest as civil servants report ultimately to Ministers, who are themselves running for election.

4. *Ballot secrecy* - A survey conducted after the 2011 General Election by the Institute of Policy Studies found that 9% of respondents did not agree that they "felt free to vote the way I wanted to"; 12% of respondents in an online survey conducted by MARUAH did not feel that their vote had been cast in secret. This suggests that electoral practices, such as serialised ballot papers, design of polling booths and decentralised ballot counting continue to cause a "climate of fear" among a section of the electorate and may influence their vote. This becomes more pertinent as the voting difference is around 10 per cent.

5. *The Group Representation Constituency (GRC) system* - 75 out of 99 elected MPs are returned from GRCs, which are multi-member constituencies with between four to six members, at least one of whom must be from a minority race. While the GRC system is

[2] A Collective of Singapore NGOs (COSINGO) submission for Universal Periodic Review
[3] 87 out of 99 MPs were elected while another 12 are appointed as Non-Constituency Members of Parliament (NCMPs) or Nominated Members of Parliament (NMPs).
[4] MARUAH has done research on the electoral system in five areas: - ballot secrecy, Group Representation Constituency (GRC) system, electoral boundaries, Mayors and the Community Development Councils (CDC)
[5] http://www.eld.gov.sg/about.html

positioned as a means of ensuring minority representation in parliament, it also entrenches racialism in Singapore politics. Prior to the introduction of GRCs in 1988, ethnic minority MPs constituted 20-30% of parliament, which was roughly proportionate to that of Singapore as a whole. With widespread public acceptance of multi-racialism, it is unlikely that the GRC system is required to ensure minority representation. In addition the GRC system offers a Minister to be teamed up with new candidates through this system of 'one vote for many election candidates', which is not democratic.

6. *Electoral Boundary Delimitation* - Electoral boundaries are drawn in a non-transparent manner with the Government having complete discretion on the timing of revisions to electoral boundaries and with no requirement for public consultation. The government also has broad discretion on the size of GRCs and the minority group which must be represented in the slate of candidates for a particular GRC. Major changes in constituency boundaries have been announced as late as one day before the calling of a General Election. Some constituencies have experienced frequent boundary changes without any public explanation. The GRC system and the opaque redistricting process weaken the link between constituents and their elected representatives and breed cynicism towards the political process.

7. *Elections of the Mayor* – The Mayor is a political party candidate whose main role is oriented towards the community. Most of the activities take place through an institution called the Community Development Councils which are part of the People's Association[6], which looks into building a cohesive society. These activities are governed by the Mayor who also oversees that the activities are done with the elected candidates of the ruling party, which means that elected MPs from the opposition are excluded, when most of the expenses are paid for with public funds.

Recommendations

8. MARUAH suggests that an Independent Elections Commission be created and that members of the public be appointed to serve as election officials, similar to the practice in other countries such as Canada and the United Kingdom.[7]

[6] http://www.pa.gov.sg/about-us.html
[7] For example, see http://www.elections.ca/content.aspx?section=emp&dir=pos&document=index&lang=e and http://www.bristol.gov.uk/page/council-and-democracy/i-want-work-elections

9. MARUAH recommends that the practice of serialising ballot papers be abandoned (watermarks can be printed on ballot papers) and that designs of the voting booths be changed to ensure greater security of privacy.

10. MARUAH recommends a return to Single Member Constituencies for all districts.

11. MARUAH recommends that boundary delimitation be undertaken by an independent body such as the Independent Elections Commission proposed above and that the boundary delimitation authority be required to hold public consultations and give a minimum period of advance notice before revising electoral boundaries.

12. Mayor elections should be held separately from the National Elections and candidates should be non-partisan, i.e. not representatives of any political party.

Death Penalty

13. *The law and practice*. There are 25 offences for which the death penalty can be imposed under Singapore law.[8] For some of these offences, the death penalty is discretionary while in others, it is mandatory. From 1991 to 2014,[9] a total of 458 persons were executed comprising 71.6 percent for drug trafficking, 26.4 percent for murder, and 2.0 percent for firearms offences.[10] Although clemency may be granted by the President for those sentenced to death, it has rarely been done – there have only been 6 cases of death sentences commuted to imprisonment for 20 years since Singapore's independence in 1965.[11] The last time a death sentence was commuted was in 1998.

14. *Legality of the death penalty.* The courts have repeatedly upheld the constitutionality of the mandatory death penalty in Singapore.[12] In the latest challenge, it was argued that the mandatory death penalty is a form of inhuman punishment and that it was discriminatory to impose the death penalty solely on the basis of the amount of drugs trafficked. The Singapore Court of Appeal dismissed the arguments, reasoning that there was no provision expressly prohibiting inhuman punishment in the Singapore Constitution. Furthermore, imposing the death penalty on those who trafficked above a certain quantity of drug bore a "rational relation" to the object of the law which was to "prevent the growth of drug addiction in Singapore by stamping out the illicit drug trade". Ultimately, it was a matter for the Legislature, and not the courts, to decide.

15. *Principle of proportionality*. As Singapore's laws impose the death penalty for crimes which do not involve the intentional causing of death, such as drug offences, kidnapping and firearms offences (even where no one is injured), they do not comply with international norms under Article 6(2) of the ICCPR and the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty.

16. *Mandatory death penalty*. The mandatory death penalty prevents a judge from considering all relevant factors, which can cause grave injustice. The Singapore Court of Appeal has held

[8] One of these offences, s 26DB of the Radiation Protection Act (Cap 262), is not yet in force. This number does not include general provisions relating to attempt, abetment and criminal conspiracy to commit a capital offence, as well as joint liability for a capital offence committed by the principal offender. Such offenders may also be subject to the death penalty. See for example s 12 of the Misuse of Drugs Act (Cap 185), and s 34, 109, 120B and 149 of the Penal Code (Cap 224).

[9] Official data before 1991 is not available. The data also does not give details such as the nationality and socio-economic backgrounds of those executed.

[10] Wing-Cheong Chan, "The Death Penalty in Singapore: In Decline But Still Too Soon For Optimism" (forthcoming).

[11] Associated Press, "A list of death row inmates in Singapore who were granted clemency", *The Straits* Times, 2 December 2005. The President's duty in this respect is ceremonial in nature and he acts "on the advice of the Cabinet". Information on the Cabinet discussion is not publicly available and even the inmate has no right to ask for the reports made in the clemency process: *Yong Vui Kong v Attorney-General* [2011] 2 SLR 1189.

[12] *Ong Ah Chuan v PP* [1981] 1 AC 648; *Nguyen Tuong Van v PP* [2005] 1 SLR(R) 103; and *Yong Vui Kong v PP* [2010] 3 SLR 489.

that it does not have discretion to reduce a sentence to life imprisonment even if the appellant was entrapped into committing drug trafficking.[13] The same court held in two other cases that having a low intellect, being "simple minded" or "easily susceptible to manipulation by others" were irrelevant considerations to the charge of drug trafficking.[14] The mandatory death penalty was imposed in all three cases.[15] Even after the 2012 amendments to the law on sentencing for murder and for certain drug offences, the discretion given to the court is extremely narrow.

17. *2012 amendments*. Changes were made in 2012 to the sentencing scheme for those convicted for murder and certain drug offences who would have been sentenced to the mandatory death penalty before.[16] These changes were retrospective such that all those on death row were eligible for re-sentencing under the new law.

18. From 1 January 2013, the mandatory death penalty for murder is only applicable to intentional murder only. In the other three forms of murder,[17] the court is given discretion to impose death or life imprisonment with caning.[18] In a recent case, the Court of Appeal held that the "rarest of the rare" approach used in India and similar approaches in other countries were inappropriate in deciding when the death penalty would be used in Singapore.[19] The accused was sentenced to death even though he was not convicted of intentional murder.[20]

19. Also from 1 January 2013, the mandatory death penalty does not apply to an offender convicted of drug trafficking or drug importation/exportation in two situations. In the first situation, the offender must show that he is only a drug "courier" and the Public Prosecutor certifies that he has "substantively assisted the Central Narcotics Bureau…".[21] The judge may

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[13] *Amran bin Eusuff v PP* [2002] SGCA 20.
[14] *PP v Rozman bin Jusoh* [1995] 2 SLR(R) 879; *Chou Kooi Pang v PP* [1998] 3 SLR(R) 205.
[15] The latter two cases may receive life imprisonment instead of death under the new sentencing scheme in s 33B of the Misuse of Drugs Act (Cap 185), but the point remains that there may be other extenuating circumstances not covered but merit consideration by the court.
[16] Penal Code (Amendment) Act 2012 (Act No. 32 of 2012); Misuse of Drugs (Amendment) Act 2012 (Act No. 30 of 2012).
[17] Under s 300 of the Penal Code, the offence of murder in Singapore may be committed in four different ways with respect to the offender's state of mind (or *mens rea*):
(a) with the intention of causing death;
(b) with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person whom the harm is caused;
(c) with the intention of causing bodily injury to any person, and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death;
(d) with knowledge that the act is so imminently dangerous that it must in all probability cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury.
[18] Life imprisonment in Singapore presently means for the duration of the natural life of the inmate, although he or she can be considered for release after serving at least 20 years of the sentence (s 50P of the Prisons Act (Cap 247).
[19] *PP v Kho Jabing* [2015] SGCA 01.
[20] All five judges in that case agreed with the test to be used in deciding whether to impose the death penalty, namely, whether there was "blatant disregard for human life". However, two of the judges disagreed with whether this threshold was crossed based on the findings made.
[21] The term "courier" is not found in the Misuse of Drugs Act (Cap 185). The legislation requires the offender's activities to be "restricted" to the following only:
(i) to transporting, sending or delivering a controlled drug;
(ii) to offering to transport, send or deliver a controlled drug;
(iii) to doing or offering to do any act preparatory to or for the purpose of his transporting, sending or delivering a controlled drug; or

sentence such an offender to death or life imprisonment, and if the offender is sentenced to life imprisonment, the court is also required to impose a mandatory minimum sentence of 15 strokes of the cane. In the second situation, the offender proves that he is only a drug "courier" and that he was suffering from "diminished responsibility".[22] In the latter situation, the offender is sentenced to life imprisonment and no caning will be imposed.

20. The Court of Appeal has confirmed that the new sentencing scheme does not apply to a person who does anything other than transporting, sending or delivering the drugs, for example, selling or packing the drugs.[23] Unfortunately, this approach draws a very artificial line in terms of individual culpability. Those who transport drugs and have occasionally helped to pack the drugs may not hold a senior rank in the drug syndicate. There are also concerns that the threshold for "diminished responsibility" is set too high and that the court is unable to use its sentencing discretion in deserving cases.

21. *Due process and fairness*. There are several features in Singapore's criminal process which cause grave concern, particularly in capital cases. First, accused persons can be denied access to counsel for a period of time after arrest,[24] purportedly to enable the police to conduct investigations without undue interference, despite a constitutional right to counsel.[25] Under the current law, access to counsel need not be granted immediately so long as it is within a "reasonable time".[26] There is a danger of incriminating statements (which are admissible at trial) being extracted from an accused during this time.[27] Secondly, Singapore law allows an accused person to be convicted based entirely on his confession recorded in the course of police interrogation. Accused persons routinely allege that their confessions are involuntary (which would make them inadmissible), but proof is near-impossible in the absence of any independent verification.[28] Thirdly, the provisions on capital firearms and drug offences include presumptions that can be difficult, if not practically impossible to rebut.[29]

(iv) to any combination of activities in sub-paragraphs (i), (ii) and (iii) .

[22] The term "diminished responsibility" is not found in the Misuse of Drugs Act (Cap 185) but is used as a short-form since the condition is exactly the same as the one known by that name in the Penal Code which lowers the offence from murder to culpable homicide not amounting to murder. This condition requires the person to be:

> …suffering from such abnormality of mind (whether arising from a condition of arrested or retarded development of mind or any inherent causes or induced by disease or injury) as substantially impaired his mental responsibility for his acts and omissions ….

[23] *PP v Chum Tat Suan* [2015] 1 SLR 834.

[24] *PP v Leong Siew Chor* [2006] 3 SLR(R) 290 (access denied for 19 days).

[25] Article 9(3) of the Singapore Constitution states: "Where a person is arrested, he … shall be allowed to consult and be defended by a legal practitioner of his choice".

[26] *James Raj s/o Arokiasamy v PP* [2014] 3 SLR 750.

[27] On the other hand, if the accused fails to raise material aspects of his defence in his cautioned statements, an adverse inference may be made against him at trial: *Yap Giau Beng Terence v PP* [1998] 2 SLR(R) 855. It is unrealistic to expect accused persons to know what defences are available without the assistance of counsel.

[28] Calls for audio or video recording of police interrogations have not been successful so far and counsel is also not permitted to be present during these sessions.

[29] For example, the presumption of trafficking applies to a person found in possession of 2g of diamorphine (s 17 Misuse of Drugs Act (Cap 185)) unless the presumption is rebutted by the accused on a balance of probabilities. This means that the presumption applies even if there is reasonable doubt in favour of the accused.

22. One outcome of the changes is a focus on obtaining a certificate of cooperation from the Public Prosecutor. Court challenges against the Public Prosecutor's refusal to grant the certificate have been unsuccessful so far.[30] The legislation provides that no proceedings lie against the Public Prosecutor except for acting in bad faith or malice.[31] This is a burden which is near impossible to discharge for two reasons: first, the Singapore courts operate on a presumption that prosecutorial decisions are made in conformity of the law; and secondly, there is no legal obligation for the prosecution to disclose the reasons for any decisions made.[32]

23. Another outcome is that it forces accused persons caught with drugs in their possession to incriminate themselves by admitting to being a drug courier in the hope that they will escape the gallows.

24. *Effectiveness as deterrence*. The Government has consistently justified the death penalty on its deterrent value. However, there is scant evidence presented of a causative relationship between the death penalty and crime rates.[33] The increase in the number of drug abusers arrested, the consistently high number of new drug abusers under 30 years-old arrested and the amount of drugs seized also do not show any causative link between the death penalty and the drug problem in Singapore.[34]

Recommendations

25. MARUAH recommends that the Government reviews the scope of capital offences, to ensure that the death penalty is imposed only for "intentional crimes with lethal consequences".

26. We ask for all instances of mandatory death penalty be immediately repealed and replaced with a discretion given to the court to impose an appropriate sentence up to death.

27. We ask for Courts to determine the charges and status of a drug courier who has substantively cooperated in providing assistance to the authorities.

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[30] See for example *Cheong Chun Yin v Attorney General* [2014] 3 SLR 1141; *Muhammad Ridzuan bin Mohd Ali v Attorney General* [2014] 4 SLR 773.
[31] Section 33B(4) of the Misuse of Drugs Act (Cap 185).
[32] *Ramalingam Ravinthran v Attorney-General* [2012] 2 SLR 49.
[33] On the contrary, see Franklin E Zimring, Jeffrey Fagan, David T Johnson, "Executions, Deterrence and Homicide: A Tale of Two Cities" (2010) 7 Journal of Empirical Legal Studies 1.
[34] See the Drug Situation Report of various years available on the website of the Central Narcotics Bureau (http://www.cnb.gov.sg).

28. We ask for the criminal process to be reviewed to ensure that capital cases undergo the most rigorously 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 repeal of the use of presumptions in capital cases.

29. We ask for a good team of interpreters, to ensure that accused persons fully understand the court process.

30. We ask the Government to publish objective evidence of the deterrent effect of the death penalty.

31. Lastly we contend that abolishing the death penalty ought to be the final outcome for Singapore.

Preventive detention without trial

32. *Relevant legislation* - In Singapore, the power to detain a person without trial (for potentially indefinite periods) arises from two statutes, the Internal Security Act (ISA) and the Criminal Law (Temporary Provisions) Act (CLTPA). The ISA is used for threats to national security, while the CLTPA is used against organised crime. 54 persons were detained under ISA from 1999 to 2007; as of 9 April 2007, 39 remained in detention. The number of CLTPA detainees has fallen from 1,260 in 1988, to 463 in 1998, to 290 in 2008, but there seems to be 94 more CLTPA detainees in 2008 than in 2004.[35] .Significant ISA cases occurred in our history and presently.[36]

33. *Questionable justification for such powers* - The ISA (and its predecessor statutes) was enacted in response to a Communist armed insurgency. The CLTPA was introduced when the organised crime situation could not be handled by the police. Both the ISA and the CLTPA are entrenched in the Singapore Constitution by way of Articles 9(6) and 149. MARUAH questions the relevance of the 2 laws in their current application. Today, the ISA and CLTPA are framed as necessary tools to guard against terrorism and security breaches. However, a fair trial and due process is amiss when these laws are applied.[37]

34. *Safeguards against abuse* - The courts' power of judicial review is a critical safeguard against abuse 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.[38] In addition, the procedural mechanisms used for both ISA

[35] http://www.parliament.gov.sg/parlweb/get_highlighted_content.jsp?docID=549203&hlLevel=Terms&links=CRIMIN,LAW,TEMPORARI,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.

[36] (a) Operation Coldstore in February 1963, when at least 111 left-wing politicians and activists were detained;[36] (b) opposition Member of Parliament Chia Thye Poh;[36] (c) Operation Spectrum in May and June 1987, when 22 Roman Catholic social activists and professionals were detained;[36] (d) alleged radicals and terrorists linked to Jemaah Islamiyah, from 2001 onwards,[36]and most recently(e) …. Notably, none of these detainees were ever tried or convicted in a court of law

[37] 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.

[38] 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 (*Kamal Jit 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.

and CLTPA detentions are not transparent and shrouded in secrecy, and appear to be so unfair to detainees as to contravene their human rights.[39]

35. *Conditions of detention* - Both the ISA and the CLTPA explicitly empower the Government to detain persons. However, the detaining authorities seem to have assumed many other powers 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, e.g. access to reading and writing material and limited visitation rights. In other words, detainees are treated in the same way as convicted criminals, when the detainee is not a convicted criminal. In addition, there has been a consistent stream of past and present detainees alleging psychological mistreatment and even physical violence whilst in detention.[40] There has never been any public inquiry regarding these allegations. The right not to be tortured or subject to inhuman or degrading treatment under UDHR Article 5 is a fundamental and undeniable right.[41] 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.

Recommendations

36. MARUAH calls for a public review on whether the ISA and CLTPA remain relevant and appropriate to the current situation in Singapore. We ask for 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;[42] the reinstatement of the courts' power to review 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.

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[39] 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 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).

[40] 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.

[41] It has been held that the Singapore Constitution does not prohibit inhuman punishment: see footnote **Error! Bookmark not defined.** 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 s criminal provisions which outlaw the kind of treatment that the detainees alleged they received whilst in detention.

[42] 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.

37. We also ask for compliance with the decisions of such independent advisories bodies and that the proceedings of advisory bodies to comply with the requirements of due process and a fair trial to the maximum extent practicable.

38. We ask for detention cases to be reviewed in court, and that all detainees have a fair trial in court, open or closed system.

39. We ask that access to legal counsel be given to all detainees.