

NOTES & COMMENTS

Singapore and the Universal Periodic Review: An Unprecedented Human Rights Assessment

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Singapore will soon submit a national report to and subsequently appear before the UN Human Rights Council for a universal periodic review of its human rights laws and practices. This review will elicit a rare and unprecedented expression of whether and how Singapore feels it has adhered to international human rights law, and ways in which it may further refine or calibrate its domestic practices. This article seeks to identify Singapore's human rights achievements; highlight challenges it should be prepared to address; and recommend measures it should adopt to promote human rights.

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1. Introduction

The Universal Periodic Review ("UPR") is a unique process which involves a review of

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the human rights records of all 192 UN member States once every four years. The UPR is a significant innovation of the Human Rights Council which is based on equal treatment for all countries. It provides an opportunity for all States to declare what actions they have taken to improve the human rights situations in their countries and to overcome challenges to the enjoyment of human rights. The UPR also includes a sharing of best human rights practices around the globe. It was established when the UN Human Rights Council was created on March 15, 2006 by the UN General Assembly through resolution 60/251.¹

This resolution mandated the Council to “undertake a universal periodic review, based on objective and reliable information, of the fulfillment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States.”² On June 18, 2007, one year after its first meeting, members of the new Council agreed to its institution-building package providing a road map guiding the future work of the Council. One of the key elements of this package was the new UPR.

The reviews are conducted by the UPR Working Group which consists of the 47 members of the Council; however any UN member State can take part in the discussion with the reviewed States. Each State review is assisted by groups of three States, known as ‘troikas,’ who serve as rapporteurs. The selection of the troikas for each State review is done through a drawing of lots prior for each Working Group session. Based on an analysis of a ‘national report’ from the State, information from civil society and other local stakeholders, and information from independent experts and UN bodies, reviews take place through an interactive discussion between the State under review and other UN member States.³

This takes place during a meeting of the UPR Working Group. During this discussion any UN member State can pose questions, comments and/or make recommendations to the States under review. The troikas may group issues or questions to be shared with the State under review to ensure that the interactive dialogue takes place in a smooth and orderly manner. The duration of the review will be three hours for each country in the Working Group.

Singapore will be reviewed at the eleventh session of the Working Group on the UPR in Geneva on May 2-13, 2011, and soon be submitting its national report. While Singapore has produced reports in the past for UN treaty-based bodies on its human

¹ G.A. Res. 60/251, U.N. Doc. A/RES/60/251 (Apr. 3, 2006), available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N05/502/66/PDF/N0550266.pdf?OpenElement> (last visited on Oct. 15, 2010).

² *Id.* at 3.

³ See Office of the High Commissioner for Human Rights, *Basic Facts about the UPR*, available at <http://www.ohchr.org/en/hrbodies/upr/pages/BasicFacts.aspx> (last visited on Oct. 15, 2010).

rights record on specific issues, such as its reports to the UN Committee on the Rights of the Child, the upcoming UPR will be the first national report addressing upon a wide-range of human rights obligations under international law. The national report will thus be a rare and unprecedented expression of whether and how Singapore feels it has adhered to international human rights law, and ways in which it may further refine of calibrate its domestic laws and practices. Singapore's UPR comes at a time where a few hot-button issues, both old and new, are on the minds of the international community.

The UPR Working Group is likely to raise traditional bugbears which have garnered some attention, such as the legality of Singapore's mandatory death penalty for drug-related offences, and its regulation of speech disseminated through new media. It may also raise matters which are relatively new, such as the recent allegation by the US State Department that Singapore failed to prevent women from being forced into trafficking for the purposes of prostitution.⁴ Early in 2010, the UN Special Rapporteur for Racism noted that Singapore's security and racial harmony laws might be "detrimental to human rights," such as the freedom of assembly.⁵

The tone which Singapore's national report sets for its UPR review process is crucial. Rather than show signs of being defensive about potential adverse assessment, Singapore's stand should be candid, responsive and measured. This will help Singapore obtain recognition for its achievements in the human rights arena, and not be remembered merely for its flaws.

This article seeks to identify these achievements; point out those challenges Singapore should be prepared to address; and recommend measures Singapore should adopt to promote human rights.

2. Not a "Dark Corner of the World"

The UPR has been described as having "great potential to promote and protect human rights in the darkest corners of the world." Singapore is not, by any stretch of imagination, a "dark corner of the world." Singapore is a party to important international conventions prohibiting genocide, discrimination against women; as well as those providing for economic, social and cultural human rights, and preserving the

⁴ U.S. Department of State, Trafficking in Persons Report ("TIP") of June 2010, available at <http://www.state.gov/g/tip/rls/tiprpt/2010> (last visited on Oct. 15, 2010).

⁵ Office of the High Commissioner for Human Rights, *UN Special Rapporteur on Racism/Xenophobia Concludes Visit to Singapore*, available at <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10001&LangID=E> (last visited on Oct. 15, 2010).

best interests of children.⁶ By many accounts, Singapore has done well in promoting good governance, the rule of law, and preventing and combating corruption.⁷ Its laws and regulations also guarantee basic economic and social rights, such as affordable education, public housing and a high standard of medical care for all its citizens.⁸

Moreover, Singapore is accountable to a regional framework of human rights mechanisms established under the auspices of the Association of South East Asian Nations ("ASEAN"). Notably, Singapore helped draft and is now a party to the 2007 ASEAN Charter which states, *inter alia*, that member nations should adhere to "principles of democracy, the rule of law and good governance, respect for and protection of human rights and fundamental freedoms."⁹ The Charter has also created an ASEAN Inter-Governmental Commission of Human Rights ("AICHR") designed to "promote and protect human rights and the fundamental freedoms of the peoples of ASEAN."¹⁰ Singapore appointed its first commissioner to AICHR in 2009 and 2010. In addition, the law schools at the National University of Singapore and the Singapore Management University became partner institutions to the Human Rights Resource Centre for ASEAN ("HRRCA"), which supports AICHR's mandate, and provides research, education and training on human rights issues in ASEAN.¹¹

3. Challenges and Constraints

However, there is considerable room for improvement. Singapore does not fare particularly well in respect of its adherence to and reception of internationally

⁶ Convention on the Prevention and Punishment of the Crime of Genocide (Jan. 12, 1951), International Covenant on Economic, Social and Cultural Rights ("ICESCR") (Mar. 23, 1976), Convention on the Elimination of all forms of Discrimination Against Women (Sept. 3, 1981), and Convention on the Rights of the Child (Sept. 2, 1990).

⁷ Denmark, Singapore and New Zealand formed a three-way tie as the least corrupt countries in the 2010 Transparency International Corruption Perception Index, *available at* <http://www.transparency.org> (last visited on Oct. 15, 2010).

⁸ The Economist's Intelligence Unit in its "Quality of Life index" ranks Singapore as having the best quality of life in Asia, *available at* http://www.economist.com/media/pdf/QUALITY_OF_LIFE.pdf (last visited on Oct. 15, 2010).

⁹ ASEAN Charter art. 1(7), *available at* <http://www.aseansec.org/21069.pdf> (last visited on Oct. 15, 2010).

¹⁰ See ASEAN Charter arts. 1(7) & 14. See also Terms of Reference of AICHR art 1, *available at* <http://www.aseansec.org/DOC-TOR-AHRB.pdf> (last visited on Oct. 15, 2010). In April 2010, ASEAN also established a Commission on the Promotion and Protection of the Rights of Women and Children ("ACWC"), to augment AICHR. The ACWC aims to, *inter alia*, develop policies, programs and innovative strategies *vis-à-vis* the rights of women and children in the region, see ACWC Terms of Reference, *available at* <http://www.aseansec.org/documents/TOR-ACWC.pdf> (last visited on Oct. 15, 2010).

¹¹ The Human Rights Resource Centre for ASEAN ("HRRCA"), *available at* <http://www.hrrca.org> (last visited on Oct. 15, 2010).

recognized civil, political and minority human rights. It is not party to several major international human rights instruments – including the International Covenant of Civil and Political Rights (“ICCPR”) – which guarantee, inter alia, freedom from torture and cruel, inhuman or degrading treatment or punishment;¹² liberty and security of the person, in the form of freedom from arbitrary arrest and detention and the right to *habeas corpus* in all circumstances;¹³ procedural fairness in law, in the form of rights to due process;¹⁴ rights for transient workers and their families;¹⁵ and rights for persons with disabilities.¹⁶ Even though some of these rights have acquired the status of customary international law, Singapore courts have held that custom will only become part of Singapore law where it does not conflict with domestic statute, Singapore’s state practice, and the express wording and history of the Singapore Constitution.¹⁷

As a result, although Part IV of the Constitution enshrines fundamental liberties *de jure*, the *de facto* application of these liberties is currently constrained, and should be re-examined by the State.

A. Limits on Fundamental Rights and Procedural Fairness

Notwithstanding Article 14(1)(b) of the Constitution which guarantees the right to peaceful assembly to all Singapore citizens, Article 14(2) enables the Parliament to impose such restrictions that it considers necessary or expedient in the interests of security, public order, or morality.¹⁸ Under the recently enacted Public Order Act (“POA”), a permit from the Commissioner of Police is generally required to hold a peaceful public assembly (including talks, lectures and debates), a public demonstration (including a demonstration by one person alone), and a public procession (of just two or more persons), even if they are entirely peaceful.¹⁹

Singapore’s laws and procedure which guard against the arbitrary deprivation of liberty are also subject to significant exceptions.²⁰ Persons accused of offences which are deemed to be prejudicial to Singapore’s security or the maintenance of public order may

¹² Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment (June 26, 1987); see also ICCPR, arts. 6, 7 & 8.

¹³ ICCPR, arts. 9-11.

¹⁴ ICCPR, arts. 14, 15 & 16.

¹⁵ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (July 1, 2003).

¹⁶ Convention on the Rights of Persons with Disabilities (May 3, 2008).

¹⁷ LIM CHIN LENG & MAHDEV MOHAN, SINGAPORE & INTERNATIONAL LAW (forthcoming 2010).

¹⁸ Constitution of the Republic of Singapore (“Constitution”), S.I. 1963, No. 1493 (G.N. Sp. No. S 1/63), as amended, Section 14(2).

¹⁹ Act 15 of 2009.

²⁰ See Chan Sek Keong, *The Criminal Process: The Singapore Model*, 17 SING. L. REV. 431 (1996).

be arrested and administratively detained without warrant or trial under the Internal Security Act ("ISA").²¹ Further, the Criminal Law (Temporary Provisions) Act ("CLTPA")²² enables the Minister of Home Affairs to indefinitely detain any person "associated with activities of a criminal nature" if the Minister is satisfied that the detention is necessary for "public safety, peace and good order."²³

Even though the Singapore Court of Appeal ruled in 1988 that the Minister's discretion was subject to "legal limits and the rule of law demands that the courts should be able to examine the exercise of discretionary power,"²⁴ this ruling has since been legislatively overruled by amendments to the Constitution and the ISA, placing such discretion beyond judicial review.²⁵

Further, the right to freedom of expression under Article 14(1)(a) of the Constitution is similarly limited, especially in the realm of the new internet media (*e.g.* blogs, websites, social networks) which may be considered objectionable by the authorities. Such limits are broadly construed and take the form of traditional sanction-based regulation as opposed to more nuanced forms of calibrated internet filtering, leading one commentator to rightly conclude:

Singapore uses ... non-technological measures to prevent online posting of and access to certain material... The threats of extremely high fines or even criminal prosecution as a result of [sedition, criminal defamation and related charges], imprisonment without judicial approval under the ISA, and police monitoring of computer use may deter users in Singapore from creating or obtaining access to potentially objectionable material. Thus, Singapore's filtering regime for political, religious, and ethnic material is primarily low-tech, yet nonetheless potentially effective.²⁶

While the POA, ISA and CLTPA are meant to be employed sparingly to deter and combat serious criminal activities, there is a not insignificant likelihood that they could be arbitrarily invoked to infringe the fundamental rights of liberty and security of the person, and procedural fairness in law; and the attendant rights of access to counsel, judicial recourse and a fair trial.²⁷

²¹ Ch.143. See ISA, Section 8(1), read with Constitution, art. 9(6).

²² Ch. 67.

²³ CLTPA, pt. V.

²⁴ Singapore Court of Appeal, *Chng Suan Tze v. Minister of Home Affairs* [1989] 1 MLJ 69 at 82EF.

²⁵ See Parliamentary Acts No. 1 & 2 of 1989. The new Section 8 B(2), ISA states "[t]here 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 in this Act governing such act or decision."

²⁶ OpenNet Initiative, *Internet Filtering in Singapore in 2004-2005: A Country Study*, available at <http://opennet.net/studies/singapore#toc4a> (last visited on Oct. 15, 2010).

²⁷ Michael Hor, *Singapore's Innovations to Due Process*, 12 CRIM. L. F. (Netherlands) 25-40 (2001).

B. Impediments to Access to Justice and Awareness of Human Rights Law

In theory, persons seeking legal advice and representation, and therefore access to the Singapore justice system, may approach two entities for such legal aid. The Legal Aid Bureau provides *pro bono* legal advice on civil matters to individuals who satisfy a financial eligibility test.²⁸ In criminal proceedings, the Singapore Law Society's Criminal Legal Aid Scheme provides *pro bono* legal representation to accused persons who are unable to afford a lawyer.²⁹

However, in practice, only persons who fall well below the poverty line may qualify for these *pro bono* schemes. Significantly, those who do not qualify but are nonetheless unable to afford adequate legal representation have little access to these *pro bono* schemes and will not, save in capital cases, be assigned a competent lawyer or 'public defender' by the court. In such an event, these persons will have to appear in court as litigants or defendants in person, as Singapore law does not currently recognize an independent right of access to justice.³⁰

In addition, there is a paucity of empirical research and data on the existence and effect of administrative obstacles to equal and effective access to the courts or justice. This includes how often crime victims obtain consent or fiat from the public prosecutor to commence a private prosecution; how many persons appear before the Singapore courts and administrative tribunals in person because they cannot afford legal representation; and how often litigants or defendants in person are assisted by a 'McKenzie Friend,' i.e. a lay assistant with some legal knowledge (such as a paralegals or a law student) who attends hearings to advise litigants or defendants in person on non-legal issues and helps them with administrative tasks.³¹

Similarly, there is a dearth of systematic human rights legal and policy research conducted in Singapore. Instead, there appears to be a tendency for authorities to view human rights as an abstract or foreign concept bandied about by 'fanatics.'³² The UPR is testament to the fact that certain fundamental human rights norms constitute a

²⁸ This financial eligibility test is called the 'means test,' and determines an individual's financial eligibility for the legal aid scheme based on the value of his/her annual household earnings and capital assets. See Legal Aid Bureau, *A Guide to the Legal Aid Scheme*, available at <http://app2.lab.gov.sg/LinkClick.aspx?fileticket=3i7gsS3FfFA%3D&tabid=345> (last visited on Oct. 15, 2010).

²⁹ The Law Society of Singapore, *Eligibility*, available at <http://www.lawsociety.org.sg/probono/CLAS/eligibility.aspx> (last visited on Oct. 15, 2010).

³⁰ Gary KY Chan, *The Right of Access to Justice: Judicial Discourse in Singapore and Malaysia*, 2 ASIAN J. COMP. L. 6 (2007).

³¹ Derrick A Paulo, *Michael Hwang: Where are the statistics?*, TODAY, January 17, 2009. Senior Counsel Michael Hwang (then President of the Law Society) was reported as writing that the government "has not published detailed statistics of crime and punishment so that social scientists can undertake adequate research on the causes of crime and the effects of current penal policies on prisoners, especially repeat offenders."

³² *Attorney-General cautions against human rights becoming a 'religion' with fanatics*, STRAITS TIMES, May 31, 2008.

discrete area of international law which Singapore and other UN member States must protect. Next year marks the first of many more reviews to come. It is high time that Singapore grooms a new generation of lawyers and inter-disciplinary scholars who understand human rights law in its local and regional contexts and are able help Singapore work toward meeting its outstanding obligations.

C. Mandatory Death Penalty for Drug Trafficking

Under the Misuse of Drugs Act (“MDA”), a person who is convicted for trafficking in a controlled drug – or is in possession of more than a certain quantity of a controlled drug and therefore presumed to possess that drug for the purpose of trafficking – will be subject to the mandatory death penalty.³³

Despite criticism that this law is ‘draconian’³⁴ and growing global acceptance that the mandatory punishment of death by hanging for drug offences is disproportionate and violates the customary international law prohibition of cruel, inhuman or degrading treatment,³⁵ the legality of the MDA has been judicially upheld by the Singapore Court of Appeal.³⁶ The Court has ruled that there is neither such a prohibition under custom nor is it contained within Article 9 of the Constitution which protects the right to life; therefore the mandatory death penalty is not unconstitutional, even if it does constitute inhuman punishment.³⁷

The Court has further added that that any developments in customary international law or foreign constitutions and human rights laws would have no effect upon Article 9, affirming that legality of the mandatory death penalty is a matter for the Parliament to decide, not for the Court.³⁸ In arriving at this conclusion, the Court held that in order for Singapore courts to “give full effect to international human rights norms,” the Parliament must first enact new laws or amend the Constitution to provide rights which have not as yet been incorporated into domestic law.³⁹ The Court noted that both of these measures are “well within the prerogative of a sovereign State.”⁴⁰

The Court’s observation should be read as a call to the Executive and the Parliament,

³³ Ch. 185; Sections 17 & 33.

³⁴ This is how Lord Diplock (UK) described the penalties for drug trafficking under MDA, in an appeal to the Privy Council from Singapore: *Ong Ah Chuan v. Public Prosecutor* [1980-1981] SLR 48. Such recourse is no longer available.

³⁵ International Bar Association, *The Death Penalty under International Law: A Background Paper to the IBAHRI Resolution on the Abolition of the Death Penalty*, (May 2008), available at http://www.ibanet.org/Human_Rights_Institute/About_the_HRI/HRI_Activities/death_penalty_resolution.aspx (last visited on Oct. 15, 2010).

³⁶ *Nguyen Tuong Van v. Public Prosecutor* [2005] 1 SLR 103 (“Nguyen”); *Yong Vui Kong v. Public Prosecutor* [2010] 3 SLR 489 (“Yong”).

³⁷ *Id.*

³⁸ Yong, *supra* note 36, paras. 78-85.

³⁹ *Id.* para. 59.

⁴⁰ *Id.*

as the case may be, to re-examine Singapore's reception of the international human rights norms against the mandatory death penalty; to amend the MDA in accordance with these norms; and to grant courts greater judicial discretion in respect of the ultimate punishment in Singapore's penal system – death by hanging. Such human rights norms constitute a discrete area of international human rights law which Singapore and other UN member States are obliged to protect.

D. No Disability Rights Legislation

Despite its aging population, Singapore does not have comprehensive disability legislation aimed at moving away from viewing persons with disabilities as 'objects' of charity, medical treatment and social protection towards viewing persons with disabilities as 'subjects' with rights, who are capable of claiming those rights and making decisions for their lives based on their free and informed consent as well as being active members of society.

4. Recommendations

Recommendations made by the UPR Working Group are not binding on the State. Singapore can decide to accept or refuse them in Geneva next year. It is therefore difficult to predict the impact of the UPR review on Singapore's domestic law and policy toward human rights.

However, since the 'outcome report' which Singapore will adopt at the end of the review will be subject to a great deal of local and international scrutiny, Singapore would do well to make a voluntary commitment to reassess certain laws and practices based on consultations with key local stakeholders and in keeping with the development of customary international law.

In this regard and in view of the above, the author would recommend that Singapore consider the following actions:

- a. Singapore accede to the instruments mentioned in paragraph 11 above and adopt all appropriate legislative, administrative and other measures for the implementation of the rights and obligations in these instruments; including modifying or departing from the existing laws, regulations, customs and governmental practices including (but not limited to) those identified above where they are inconsistent with these rights and obligations;

- b. Singapore establish a National Human Rights Centre to act as a focal point for discussion, research, analysis, training and capacity building; for promotion of human rights law and practice issues; and to liaise with HRRCA and provide input to AICHR as well as other ASEAN or UN related human rights mechanisms and agencies; and
- c. Singapore support the creation of a network of lawyers and scholars engaged in undertaking legal and policy-oriented studies of human rights in Singapore and the region, and provide these researchers with an opportunity to assist with UPRs in the future.

Candid acknowledgement that more can be done to improve its adherence to human rights law and build relevant local capacity and expertise will stand Singapore in good stead in Geneva next year.