

A. EXECUTIVE SUMMARY

1. This report is submitted by the SIIA as a ‘relevant stakeholder’ pursuant to paragraph 15(c) of the UN Human Rights Council resolution 5/1 of 18 June 2007. The report was prepared by SIIA Associate Fellow Mahdev Mohan, SIIA Council Member Reuben Wong, SIIA Chairman Simon Tay, and SIIA Manager May-Ann Lim.
2. Our report identifies Singapore’s key human rights achievements; highlights four challenges it should be prepared to address in Geneva next year; and recommends three measures it should subsequently adopt to promote human rights. These four challenges are as follows: (1) *Limits on Fundamental Rights & Due Process* (2) *Impediments to Access to Justice & Awareness of Human Rights Law*, (3) *‘Draconian’ Mandatory Death Penalty for Drug Trafficking*, and (4) *Inadequate Disability Rights Legislation* (see sub-headings in bold & italics below). The challenges identified and recommendations offered are meant to serve as starting points for the interactive dialogue at next year’s UPR and are by no means exhaustive.

B. BEST PRACTICES

3. 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’. By many accounts, Singapore has done well in promoting good governance, the rule of law, and preventing and combating corruption¹. Its laws also guarantee basic economic and social rights, such as affordable education, public housing and a high standard of medical care for all its citizens.² Singapore is a party to several important international conventions prohibiting genocide, eliminating discrimination against women, and preserving the best interests of children.³ Upon reviewing its human rights practices, treaty bodies established by CEDAW and ROC have repeatedly commended Singapore. The ROC Committee has applauded the “high standard of living of children [in Singapore], and considerable efforts to implement the economic, social and cultural rights of children, in particular through the wide availability of high-quality health and education services and housing”.⁴
4. 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”.⁵ 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”.⁶ Singapore appointed its first

1 Denmark, Singapore and New Zealand formed a three-way tie as the least corrupt countries in the 2010 Transparency International Corruption Perception Index, retrieved on 28 October 2010 from <http://www.transparency.org/>

2 The Economist’s Intelligence Unit in its “Quality of Life index” “ranks Singapore as having the best quality of life in Asia, retrieved on 28 October 2010 from http://www.economist.com/media/pdf/QUALITY_OF_LIFE.pdf

3 Convention on the Prevention and Punishment of the Crime of Genocide (in force 12 January 1951) Convention on the Elimination of all forms of Discrimination Against Women (“CEDAW”) (in force 3 September 1981), Convention on the Rights of the Child (“ROC”) (in force 2 September 1990), International Labour Organisation (ILO) Minimum Age Convention (in force 19 June 1976), and Hague Convention on the Civil Aspects of International Child Abduction (in force 1 December 1983), and Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (in force 25 May 2000).

4 ROC Committee, CRC/C/15/Add.220, Concluding Observations, 34th Session, 27 October 2003, p 3.

5 Art. 1(7), ASEAN Charter, retrieved on 28 October 2010 from <http://www.aseansec.org/21069.pdf>

6 See Arts 1(7) & 14, ASEAN Charter. Also see Art 1, Terms of Reference of AICHR, retrieved on 28 October 2010 from

<http://www.aseansec.org/DOC-TOR-AHRB.pdf>. 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,

commissioner to AICHR in 2009, and in 2010, the country's two 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.⁷

C. CHALLENGES & CONSTRAINTS

5. But there is room for improvement. Singapore does not fare particularly well in respect of its reception of internationally recognized civil, political and minority human rights. It is not party to major international human rights instruments which guarantee freedom from torture and cruel, inhuman or degrading treatment or punishment;⁸ liberty and security of the person, in the form of freedom from arbitrary arrest and detention and the right to *habeas corpus* in all circumstances⁹; procedural fairness in law, in the form of rights to due process;¹⁰ rights for transient workers and their families;¹¹ and rights for persons with disabilities.¹²

I. Limits on Fundamental Rights & Due Process

6. Notwithstanding Art. 14(1)(b) of the Constitution which guarantees the right to peaceful assembly to all Singapore citizens, Art. 14(2) enables Parliament to impose such restrictions that it considers necessary or expedient in the interests of security, public order, or morality.¹³ 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.¹⁴
7. Singapore's laws and procedure which guard against the arbitrary deprivation of liberty are also subject to significant exceptions.¹⁵ Persons accused of offences which are deemed to be prejudicial to Singapore's security or the maintenance of public order may be arrested and administratively detained without warrant or trial under the *Internal Security Act* ("ISA").¹⁶ Further, the *Criminal Law (Temporary Provisions) Act*¹⁷ ("CLTPA") 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".¹⁸

programs and innovative strategies vis-à-vis the rights of women and children in the region, see ACWC Terms of Reference, retrieved on 28 October 2010 from <http://www.aseansec.org/documents/TOR-ACWC.pdf>

7 See <http://www.hrrca.org/>

8 See Convention Against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment (in force 26 June 1987); also see International Covenant on Civil and Political Rights ("ICCPR") (in force 23 March 1976), Arts. 6, 7, and 8)

9 ICCPR, Arts. 9 – 11.

10 ICCPR, Arts. 14, 15, and 16

11 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (in force 1 July 2003)

12 Convention on the Rights of Persons with Disabilities (in force 3 May 2008).

13 *Constitution of the Republic of Singapore* ("Constitution"), S.I. 1963, No. 1493 (G.N. Sp. No. S 1/63), as amended, s. 14(2).

14 Act 15 of 2009

15 See (then) Attorney-General of Singapore, Mr. Chan Sek Keong, "The Criminal Process – The Singapore Model" (1996) 17 *Singapore Law Review* 431.

16 (Cap.143). See S. 8(1), ISA read with Art. 9(6), Constitution.

17 (Cap 67).

18 Part V, CLTPA.

8. Although 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",¹⁹ this ruling has since been legislatively overruled by amendments to the Constitution and the ISA, placing such discretion beyond judicial review.²⁰
9. Further, the right to freedom of expression under Art. 14(1)(a) of the Constitution is similarly limited, especially in the realm of the Internet and new 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. Singapore's filtering regime for political, religious, and ethnic material is primarily low-tech, yet nonetheless potentially effective. Threats of criminal prosecution for sedition, criminal defamation and related charges; imprisonment without judicial approval under the ISA; and police monitoring of computer use deters users in Singapore from creating or obtaining access to potentially objectionable material.²¹
10. While the POA, ISA and CLTPA are meant to be employed sparingly to deter and combat serious criminal activity, 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.²² 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.

II. Impediments to Access to Justice & Awareness of Human Rights Law

11. 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.²³ 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.²⁴
12. 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

19 *Chng Suan Tze v Minister of Home Affairs* [1989] 1 MLJ 69 at 82E-F.

20 See Parliamentary Acts No. 1 & 2 of 1989. The new s. 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."

21 OpenNet Initiative Internet Filtering in Singapore in 2004-2005: A Country Study, available at <http://opennet.net/studies/singapore#toc4a>

22 See Michael Hor, "Singapore's Innovations to Due Process", (2001) 12 *Criminal Law Forum* (Netherlands) 25-40.

23 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", retrieved on 22 October 2010 from <http://app2.lab.gov.sg/LinkClick.aspx?fileticket=3i7gsS3FfFA%3D&tabid=345>.

24 The Law Society of Singapore, "Eligibility", retrieved on 22 October 2010 from <http://www.lawsociety.org.sg/probono/CLAS/eligibility.aspx>.

person, as Singapore law does not currently recognize an independent right of access to justice.²⁵

13. 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 *fiats* from the Public Prosecutor to commence a private prosecution; how many persons appear before 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.²⁶
14. 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”.²⁷ The UPR is testament to the fact that certain fundamental human rights norms constitute a 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 and practice in their proper local context and are able help Singapore work toward meeting its outstanding obligations.

III. ‘Draconian’ Mandatory Death Penalty for Drug Trafficking

15. 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.²⁸
16. Despite criticism that this law is “draconian”²⁹ 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,³⁰ the legality of the MDA has been upheld by the Singapore Court of Appeal.³¹ The Court has ruled that there is no such prohibition under custom nor is it contained within Art. 9 of the Constitution which protects the right to life, and therefore the mandatory death penalty is not unconstitutional, regardless of whether or not it constitutes inhuman punishment.³²
17. The Court has further added that that any developments in customary international law or

25 See Gary KY Chan, (2007) "The Right of Access to Justice: Judicial Discourse in Singapore and Malaysia," *Asian Journal of Comparative Law*: Vol. 2: Iss. 1, Article 2, p. 6.

26 ‘Michael Hwang: Where are the statistics?’ [2009] 17 January 2009, *TODAY*. 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”.

27 ‘Attorney-General cautions against human rights becoming a ‘religion’ with fanatics’, *Straits Times*, 31 May 2008.

28 (Cap. 185). Ss 17 & 33.

29 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.

30 See 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

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

32 See generally *Nguyen, Yong*.

foreign constitutions and human rights laws would have no effect upon Art.9, affirming that legality of the mandatory death penalty is a matter for Parliament, and not the Court, to decide.³³ In arriving at this conclusion, the Court held that in order for Singapore courts to “give full effect to international human rights norms”, Parliament must first enact new laws or amend the Constitution to provide rights which have not as yet been incorporated into domestic law.³⁴ The Court noted that both of these measures are “well within the prerogative of a sovereign State”.³⁵

18. The Court’s observation is a clarion call to the Executive and Parliament, 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 they can mete out – death by hanging.

IV. Inadequate Disability Rights Legislation

19. Singapore does not provide medical coverage for those with congenital disabilities as the state-sponsored health insurance plan or ‘Medishield’ specifically excludes such coverage.³⁶ Moreover, Singapore does not have comprehensive disability legislation aimed at moving away from viewing persons with disabilities as “objects” of charity and towards viewing them as “subjects” with rights, who are capable of claiming those rights and making decisions based on their free and informed consent, as well as being active members of society. The time is ripe for Singapore to accede to and ensure the implementation of the 2006 Convention on the Rights of Persons with Disabilities, and its attendant Optional Protocol.

D. RECOMMENDATIONS

20. In view of the above, we recommend that Singapore consider the following courses of action, which the SIIA stands ready to lead, advise on and/or facilitate should its assistance be requested:
- a. Singapore consider acceding to the instruments mentioned in paragraph 5 above and adopting appropriate legislative, administrative and other measures for the implementation of the rights and obligations in these instruments; including modifying existing laws, regulations, customs and governmental practices including (but not limited to) those identified above, which 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.
 - c. Singapore support the creation of a local network of experts (scholars and practitioners) engaged in undertaking inter-disciplinary study in the field of human rights in Singapore and the region, and provide them with an opportunity to assist Singapore implement UPR commitments.

³³ *Yong*, paras 78-85.

³⁴ *Ibid*, para 59.

³⁵ *Ibid*, para 59.

³⁶ See The Medishield Scheme, pp.18-20 for exclusions on CPF website mycpf.cpf.gov.sg/NR/rdonlyres/D083E278-EB14.../mshnew.pdf.