

**SINGAPORE**

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# SINGAPORE

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## Part 1: Overview of Singapore

### A. Country Background

Singapore Facts <sup>1,2</sup>	
Geographical size	719.1 sq km
Population	5,535,000
Ethnic breakdown <sup>3</sup>	Main ethnic groups: Chinese (76.2%) Malay (15.0%) Indian (7.4%) Other (1.4%)
Official language(s)	English (working language) Malay (national language) Chinese Tamil
Literacy rate (aged 15 and above)	96.8%
Life expectancy	82.8
GDP (at current market prices in SG\$)	SG\$101,989 million (per capita SG\$72,711)
Government	Republic with a unicameral Westminster parliamentary system of government, but with no clear demarcation between the executive and legislative branches.
Political and social situation	'Soft authoritarian' form of governance which marginalised rights protection in early years although elections have been held regularly in Singapore since 1948 with voting made compulsory in 1959. The People's Action Party (PAP) won the 1959 election by a landslide as it has won every general election ever since. While PAP's political hegemony appeared to be threatened in 2011 when it suffered its worst results since independence, in the 2015 election, it captured nearly 70% of the votes and won 83 out of 89 seats.

<sup>1</sup> Figures relate to 2015 unless otherwise stated.

<sup>2</sup> 'Latest data' Department of Statistics Singapore, available at <http://www.singstat.gov.sg/statistics/latest-data>, accessed on 20 April 2016.

<sup>3</sup> 'Population in brief 2015' National Population and Talent Division, Prime Minister's Office, September 2015, available at <https://www.strategygroup.gov.sg/docs/default-source/Population/population-in-brief-2015.pdf>, accessed on 20 April 2016.

### *System of governance*

Singapore is a parliamentary republic with a unicameral Westminster system of governance, based on the 'first-past-the-post' system. The government is divided into three branches, with parliament serving as the legislature, executive power residing with the cabinet, and courts exercising judicial power. However, there is no clear demarcation of powers between the executive and legislative branches.<sup>4</sup>

Singapore's system of governance has often been described as "soft authoritarian."<sup>5</sup> Its early years saw the marginalisation of rights protection, with the use of a rather instrumentalist and 'thin' rule of law emphasising Fullerian procedural requirements, to the detriment of substantive values which are rights-oriented. A framework that had as its focus, developmentalist priorities, such as economic growth, was strongly supported in turn by official state adherence to pragmatism and communitarianism, which elevated statist interests over those of the individual.<sup>6</sup>

That the electorate supports concrete 'performance legitimacy'<sup>7</sup> and eschews political abstractions like 'democracy' or 'human rights,' is evident in how the ruling People Action's Party (PAP) has wielded political hegemony since 1959.<sup>8</sup> It continues to do so today, winning 69.9% of the vote, and securing 83 out of 89 parliamentary seats in the recent General Election of 2015.<sup>9</sup> Such continued one-party dominance in parliament also means the Constitution can be easily amended, especially since the ruling party will always be able to meet the two-thirds supermajority requirement under Art 5(2)<sup>10</sup> to effect constitutional amendments, thus, entrenching the legislature's dominance over other branches of government.

### *Political and social situation*

Singapore has seen advancements in the field of civil-political rights in recent years, with the government seemingly beginning to relax the rigid rules under which civil society operates, whilst also allowing political space to open up to embrace a wider

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<sup>4</sup> 'The Singapore legal system' Singapore Academy of Law, available at <https://web.archive.org/web/20110603225639/http://www.singaporelaw.sg:80/content/LegalSyst1.html#Section6>, accessed on 15 April 2016.

<sup>5</sup> Means, G, 'Soft authoritarianism in Malaysia and Singapore' *Journal of Democracy*, 1996, Vol 7, No 4, pp 103-117.

<sup>6</sup> Thio, L, *A Treatise on Singapore Constitutional Law*, Academy Publishing, 2012, at 109 and 121.

<sup>7</sup> Means (see note 5 above).

<sup>8</sup> Chua, BH, *Communitarian Ideology and Democracy in Singapore*, Routledge, 1995, at 1.

<sup>9</sup> Tan, S, 'GE2015: PAP vote share increases to 69.9%, party wins 83 out of 89 seats including WP-held Punggol East' *The Straits Times*, 12 September 2015, available at <http://www.straitstimes.com/politics/ge2015-pap-vote-share-increases-to-699-party-wins-83-of-89-seats-including-wp-held-punggol>, accessed on 20 April 2016.

<sup>10</sup> Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint), Art 5(2).

plurality of views and alternative voices.<sup>11</sup> This chapter will survey recent trends in rights protection in Singapore and point out some particularly problematic areas.

The absence of a strong rights culture may perhaps be attributed to Singapore's early constitutional history when its supreme law was a mere modification of the pre-existing state constitution dating back to the time Singapore was still part of the Malaysian Federation, and no constituent assembly was convened.<sup>12</sup> Therefore, at its very beginning, citizens had no opportunity to "shape the basic law," breeding an "affective detachment from the fundamental law."<sup>13</sup>

Despite its colonial heritage, autochthonous institutions independent of the Westminster system have been developed. The first is the 1984 Non-Constituency Member of Parliament (NCMP) Scheme which ensures minimum opposition representation of up to nine parliamentary seats,<sup>14</sup> with candidates chosen from among the "best losers" of the opposition candidates.<sup>15</sup> This was followed by the 1988 Group Representation Constituency (GRC) scheme, which mandates that at least one individual within a 3-6 person team must be a member of a minority community.<sup>16</sup> Third, the 1990 Nominated Member of Parliament (NMP) scheme provides for independent and non-partisan views in parliament, gleaned from diverse sectors like business, arts and culture, and the labour movement.<sup>17</sup> Last, the office of Elected Presidency (EP) was introduced in 1991.<sup>18</sup> The President, who serves as head of state, exercises limited veto powers over issues such as key civil service appointments,<sup>19</sup> and safeguarding the country's past financial reserves.<sup>20</sup>

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<sup>11</sup> Shahannaz Habib, 'Signs of political maturity' (Interview with Dr Gillian Koh), *The Star*, 1 May 2011, available at [http://lkyspp.nus.edu.sg/ips/wp-content/uploads/sites/2/2013/04/Star\\_Signs-of-political-maturity\\_010511.pdf](http://lkyspp.nus.edu.sg/ips/wp-content/uploads/sites/2/2013/04/Star_Signs-of-political-maturity_010511.pdf), accessed on 20 April 2016.

<sup>12</sup> Thio, L, 'In search of the Singapore Constitution: Retrospect and prospect' in Thio, L, and Tan, K (eds), *Evolution of a Revolution: Forty Years of the Singapore Constitution*, Routledge-Cavendish, 2009, at 325.

<sup>13</sup> Thio (see note 12 above).

<sup>14</sup> Thio (see note 6 above), at 281.

<sup>15</sup> 'Glossary' Parliament of Singapore, available at [https://www.parliament.gov.sg/parliamentary-business/glossary/Details/non-constituency-member-of-parliament-\(ncmp\)/Non-Constituency%20Member%20of%20Parliament%20\(NCMP\)](https://www.parliament.gov.sg/parliamentary-business/glossary/Details/non-constituency-member-of-parliament-(ncmp)/Non-Constituency%20Member%20of%20Parliament%20(NCMP)), accessed on 20 April 2016.

<sup>16</sup> 'Glossary' Parliament of Singapore, available at [https://www.parliament.gov.sg/parliamentary-business/glossary/Details/group-representation-constituency-\(grc\)/Group%20Representation%20Constituency%20\(GRC\)](https://www.parliament.gov.sg/parliamentary-business/glossary/Details/group-representation-constituency-(grc)/Group%20Representation%20Constituency%20(GRC)), accessed on 20 April 2016.

<sup>17</sup> 'Glossary' Parliament of Singapore, available at [https://www.parliament.gov.sg/parliamentary-business/glossary/Details/nominated-member-of-parliament-\(nmp\)/Nominated%20Member%20of%20Parliament%20\(NMP\)](https://www.parliament.gov.sg/parliamentary-business/glossary/Details/nominated-member-of-parliament-(nmp)/Nominated%20Member%20of%20Parliament%20(NMP)), accessed on 20 April 2016.

<sup>18</sup> Thio (see note 6 above), at 280.

<sup>19</sup> Constitution of the Republic of Singapore, Art 22(1).

<sup>20</sup> Constitution of the Republic of Singapore, Art 148A.

### ***B. International Human Rights Commitments and Obligations***

Of the major international human rights treaties, Singapore has only acceded to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Rights of the Child (CRC), and the Convention on the Rights of Persons with Disabilities (CPRD), as can be seen in Table 1 below.

**Table 1: Ratification Status of International Instruments – Singapore<sup>21</sup>**

Treaty	Signature Date	Ratification Date, Accession (a), Succession (d) Date
Convention against Torture and Other Cruel Inhuman or Degrading Punishment (CAT)		
Optional Protocol of the Convention against Torture		
International Covenant on Civil and Political Rights (ICCPR)		
Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolition of the death penalty		
Convention for the Protection of All Persons from Enforced Disappearance (CED)		
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)		5 Oct 1995 (a)
International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)	19 Oct 2015	
International Covenant on Economic, Social and Cultural Rights (ICESCR)		
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW)		
Convention on the Rights of the Child (CRC)		5 Oct 1995 (a)
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict	7 Sep 2000	11 Dec 2008
Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography		
Convention on the Rights of Persons with Disabilities (CRPD)		18 Jul 2013

<sup>21</sup> 'Ratification status for Singapore' United Nations Human Rights Office of the High Commissioner, available at [http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Treaty.aspx](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx), accessed on 7 October 2017.

However, the country also often attaches extensive reservations, attracting objections from other states on grounds of incompatibility with the objects and purposes of the conventions.<sup>22</sup> Notably, the government has not ratified the International Convention for the Protection of Migrant Workers and Members of their Families, the International Labour Organization's Domestic Workers Convention,<sup>23</sup> the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights.<sup>24</sup>

Singapore judges have espoused an adherence to dualism,<sup>25</sup> hence preserving the bifurcation between the separate legal orders of municipal and international law. Further, Singapore contends it only accedes to international agreements when it has the intention of ratifying them, and when it possesses the confidence that full compliance with all requirements and obligations can be achieved.<sup>26</sup>

### *Developments in 2015*

*CEDAW*: Singapore's Ministry of Social and Family Development and the Singapore Council of Women's Organisations jointly consulted women's groups and women parliamentarians before submitting its Fifth Periodic Report in October 2015.<sup>27</sup> The report covered key initiatives undertaken to facilitate the progress of women, such as the increase in paternity leave in 2015 to two weeks, which was introduced to encourage greater shared parental responsibility, and to enhance work-life support.<sup>28</sup> In addition, the government announced that it intended to withdraw its reservation to Art 11(1) of *CEDAW*. While this reservation was originally entered into to "safeguard the welfare of women and their unborn children from certain hazardous occupations," the government considered it was no longer necessary as national workforce and human

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<sup>22</sup> See, Linton, S, 'ASEAN states, their reservations to human rights treaties and the proposed ASEAN Commission on Women and Children' *Human Rights Quarterly*, 2008, Vol 30, No 2, at 476. For a fuller exposition of reservations and interpretive declarations to these conventions, see, Chang, Ya Lan's chapter on Singapore in the 2015 edition of this Outlook.

<sup>23</sup> 'Majority of migrant workers are happy, says Singapore in its 2nd UPR Review. HOME responds ...' Independent, 29 January 2016, available at <http://www.theindependent.sg/majority-of-migrant-workers-are-happy-says-singapore-in-its-2nd-upr-review-home-responds/>, accessed on 16 April 2016.

<sup>24</sup> 'Human Rights Day 2015 - MARUAH statement' MARUAH (Working Group for an ASEAN Human Rights Mechanism, Singapore), 10 December 2015, available at <https://maruah.org/2015/12/10/human-rights-day-2015-maruah-statement/>, accessed on 16 April 2016.

<sup>25</sup> See, e.g. the judgment of Chief Justice Menon in *Yong Vui Kong v Public Prosecutor* [2015] 2 SLR 1129; [2015] SGCA 11 at [29], where it was stated that "it is clear from our jurisprudence that Singapore, like most other common law jurisdictions, subscribes to the dualist school of thought." This case is further examined below.

<sup>26</sup> Tan, E, and Lim, E, *The Effect of Treaties in Singapore's Domestic Law*, unpublished, 2013, at 17.

<sup>27</sup> 'International obligations: Convention on the Elimination of All Forms of Discrimination Against Women' Ministry of Social and Family Development, available at <https://www.msf.gov.sg/policies/Women-Celebrating-Women/International-Obligations/Pages/default.aspx>, accessed on 10 April 2016.

<sup>28</sup> Ministry of Social and Family Development (see note 27 above).

resource policies had “progressed to flexibly accommodate and support people’s life-cycle needs.”<sup>29</sup>

*ICERD*: Singapore has also illustrated a greater willingness to be held up to international standards in the areas of racial discrimination and human trafficking. On 19 October 2015, it signed the ICERD with a view to ratification in 2017.<sup>30</sup> The Ministry of Culture, Community, and Youth has also pledged to join with stakeholders in fulfilling obligations under this pact.<sup>31</sup>

Finally, on 28 September 2015, Singapore also acceded to the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, which supplements the UN Convention against Transnational Organized Crime.<sup>32</sup>

### ***C. National Laws Affecting Human Rights***

#### *Fundamental liberties*

Fundamental liberties are guaranteed under Part IV of the Constitution.<sup>33</sup> However, it is noteworthy that while most fundamental liberties apply to all persons, specific rights are only available to Singapore citizens. These include the rights to freedom of speech, expression, assembly, and to form associations,<sup>34</sup> non-banishment and freedom of movement,<sup>35</sup> and non-discrimination on the grounds of religion, race, descent, or place of birth.<sup>36</sup> Local commentators have also observed that although the Constitution passes the Diceyan criteria for supremacy in form, vestiges of parliamentary supremacy predominate in practice,<sup>37</sup> especially given the fact that the judiciary is strongly deferential to the legislature, and often expresses the sentiment that the latter is better placed to “decide what is best for Singapore society.”<sup>38</sup> Some of the more contentious articles will now be considered.

<sup>29</sup> ‘Singapore’s Fifth Periodic Report to the UN Committee for the Convention on the Elimination of All Forms of Discrimination Against Women’ Ministry of Social and Family Development, Republic of Singapore, 2015, at 45.

<sup>30</sup> Sim, W, ‘Singapore signs pact against racial discrimination’ *The Straits Times*, 21 October 2015, available at <http://www.straitstimes.com/singapore/singapore-signs-pact-against-racial-discrimination>, accessed on 20 April 2016.

<sup>31</sup> Sim (see note 30 above).

<sup>32</sup> Mohandas, V, ‘Singapore accedes to UN Trafficking in Persons Protocol’ *Channel NewsAsia*, 29 September 2015, available at <http://www.channelnewsasia.com/news/singapore/singapore-accedes-to-un/2157570.html>, accessed on 20 April 2016.

<sup>33</sup> Constitution of the Republic of Singapore, Part IV.

<sup>34</sup> Constitution of the Republic of Singapore, Art 14.

<sup>35</sup> Constitution of the Republic of Singapore, Art 13.

<sup>36</sup> Constitution of the Republic of Singapore, Art 12(2).

<sup>37</sup> Neo, J, and Lee, Y, ‘Constitutional supremacy: Still a little dicey’ in Thio, L, and Tan, K (eds), *Evolution of a Revolution: Forty Years of the Singapore Constitution*, Routledge-Cavendish, 2009, at 155.

<sup>38</sup> Tsen-Ta Lee, J, ‘According to the spirit and not to the letter: Proportionality and the Singapore Constitution’ *Vienna Journal on International Constitutional Law*, 2014, Vol 8, at 282.

*Article 9* (liberty of the person): Article 9(1) states that “no person shall be deprived of his life or personal liberty save in accordance with law.”<sup>39</sup> Although Singapore’s highest court has called the right to life “the most basic of human rights,”<sup>40</sup> the term has eluded expansive judicial definition, the right having been narrowed instead to freedom from unlawful incarceration or detention.<sup>41</sup> While Art 9(3) allows for an arrested person to “consult and be defended by a legal practitioner of his choice,”<sup>42</sup> such right to counsel may be delayed within a reasonable time,<sup>43</sup> and further, there is currently no right to be informed of one’s right to counsel.<sup>44</sup>

*Article 12* (equal protection): Article 12(1) states that “all persons are equal before the law and entitled to the equal protection of the law.”<sup>45</sup> In determining the constitutionality of the impugned legislation, Singapore courts have utilised a “reasonable classification” test, which requires the fulfilment of an “intelligible differentia which [bears] a rational relation to the object sought to be derived by the legislation.”<sup>46</sup> Such differentia underlying a piece of legislation just has to be “broadly effective” to achieve the legislation’s object, and a court will only intervene where the differentia was not “broadly proportionate” to the object.<sup>47</sup>

*Article 14* (freedom of speech, assembly, and association): While Art 14<sup>48</sup> guarantees freedom of speech, assembly, and association, Art 14(2)<sup>49</sup> serves as a limitation, according parliament a wide remit, since it confers the power to impose restrictions

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<sup>39</sup> Constitution of the Republic of Singapore, Art 9(1).

<sup>40</sup> *Yong Vui Kong v Public Prosecutor* [2010] 3 SLR 489 at [84].

<sup>41</sup> *Lo Pui Sang v Mamata Kapildev Dave* [2008] 4 SLR (R) 754 at [6]. For an exemplar of judicial reluctance to read Art 9 broadly, consider, *Public Prosecutor v Mazlan bin Maidun* [1992] 3 SLR (R) 968 at [15], where the Court of Appeal refused to read into Art 9 the right to silence as a constitutional right. It reasoned that since such a right was not explicitly provided for in the Constitution, elevating it would have required “a degree of adventurous extrapolation which we do not consider justified.”

<sup>42</sup> Constitution of the Republic of Singapore, Art 9(3). Section 236 of the Criminal Procedure Code (No 15 of 2010) similarly provides for the right to counsel. Of note is the recent case of 14 year old schoolboy, Benjamin Lim, who committed suicide after being questioned by police over allegations of outrage of modesty. This led to public debates over accused persons’ rights to early access to counsel in general, and in particular, whether minors should be accompanied by parents or guardians when interviewed by the police. This also prompted comments by Singapore Law Society President, Thio Shen Yi SC, that the police should have taken a “less intimidating way” of approaching the investigation: Koh, V, “Less intimidating approach’ should have been taken in Benjamin Lim case: Law Society President’ Today Online, 17 February 2016, available at <http://www.todayonline.com/singapore/less-intimidating-approach-should-have-been-taken-investigation-yishun-teen-law-society>, accessed on 25 April 2016.

<sup>43</sup> The Court of Appeal in *Jasbir Singh v Public Prosecutor* [1994] 1 SLR (R) 782 at [49], held that on the facts of the case, it was reasonable to deny the appellant this right for up to two weeks from the time of his arrest.

<sup>44</sup> *Rajeevan Edakalavan v Public Prosecutor* [1998] 1 SLR (R) 10 at [19].

<sup>45</sup> Constitution of the Republic of Singapore, Art 12(1).

<sup>46</sup> *Lim Meng Suang and another v Attorney-General* [2013] SGHC 73 at [45]-[46].

<sup>47</sup> *Lim Meng Suang* at [95].

<sup>48</sup> Constitution of the Republic of Singapore, Art 14.

<sup>49</sup> Constitution of the Republic of Singapore, Art 14(2).

that it considers “necessary and expedient” in the interests of security, public order, or morality.<sup>50</sup>

*Article 15 (freedom of religion):* Article 15(1) provides for the right of every person to profess and practice his religion and to propagate it.<sup>51</sup> However, it does not authorise acts contrary to any general law relating to public order, public health, or morality.<sup>52</sup>

Although Singapore’s model is one of “accommodative secularism,” where constitutional protection of religious freedom is “premised on removing restrictions to one’s choice of religious belief,”<sup>53</sup> courts have sidestepped a judicious balancing approach in favour of a categorical approach that prioritises statist considerations<sup>54</sup> which will be further explored in Part 2 below.

### *Workplace discrimination laws*

In countering workplace discrimination, Singapore relies on a set of guiding principles<sup>55</sup> formulated by the Tripartite Alliance for Fair and Progressive Employment Practices (TAFEP). TAFEP works in partnership with employer organisations, unions, and the government, and helps promote awareness by educating the public on fair employment practices.<sup>56</sup> In 2015, the government revealed that complaints over discrimination based on race, language, or religion have remained fairly stable, with only nine companies taken to task by the Ministry of Manpower in 2014.<sup>57</sup> Instead, discrimination towards foreign workers has manifested itself as the key issue. The Manpower Minister recently announced plans to give the watchdog more “teeth” to tackle companies lacking a strong Singaporean core by suspending work pass privileges, thus affecting the number

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<sup>50</sup> Courts have read this as providing parliament “an extremely wide discretionary power and remit that permits a multifarious and multifaceted approach towards achieving any of the purposes specified in (the clause).” See, *Chee Siok Chin v Minister for Home Affairs* [2005] SGHC 216 at [49].

<sup>51</sup> Constitution of the Republic of Singapore, Art 15(1).

<sup>52</sup> Constitution of the Republic of Singapore, Art 15(4).

<sup>53</sup> *Nappalli Peter Williams v Institute of Technical Education* [1992] 2 SLR 569 at [28G].

<sup>54</sup> Thio, L, ‘Courting religion: The judge between Caesar and God in Asian courts’ *Singapore Journal of Legal Studies*, 2009, at 74.

<sup>55</sup> Known as the Tripartite Guidelines on Fair Employment Practices, they include: (1) Recruiting and selecting employees on the basis of merit (such as skills, experience, or ability to perform the job), regardless of age, race, gender, religion, marital status, family responsibilities, or disability; (2) Treating employees fairly and with respect and implementing progressive human resource management systems; (3) Providing employees with equal opportunities for training and development based on their strengths and needs to help them achieve their full potential; (4) Rewarding employees fairly based on their ability, performance, contribution, and experience; and (5) Abiding by labour laws and adopting Tripartite Guidelines to promote fair employment practices. Available at <https://www.tafep.sg/publication/tripartite-guidelines-fair-employment-practices>, accessed on 27 April 2016.

<sup>56</sup> ‘About us’ TAFEP, available at <https://www.tafep.sg/about-us>, accessed on 27 April 2016.

<sup>57</sup> Seow, J, ‘Parliament: Complaints of discrimination over race, language or religion ‘fairly stable’ The Straits Times, 17 August 2015, available at <http://www.straitstimes.com/singapore/parliament-complaints-of-discrimination-over-race-language-or-religion-fairly-stable>, accessed on 20 April 2016.

of foreign workers such companies will be able to hire.<sup>58</sup> However, Singapore continues to lack dedicated legislation against workplace discrimination.<sup>59</sup>

### *Human trafficking laws*

Singapore's parliament passed the Prevention of Human Trafficking Act in November 2014, which came into force on 1 March 2015,<sup>60</sup> bringing it closer in line with international standards. The Act provides harsh punishments, including maximum fines of up to SG\$100,000, jail terms of up to 10 years, as well as a maximum of six strokes of the cane.<sup>61</sup> Crucially, Part 4 provides for victim protection and assistance, which encompasses the protection of victims' privacy,<sup>62</sup> and the provision of temporary shelter and counselling services.<sup>63</sup>

### *Foreign worker legislation*

While Singapore has no dedicated legislation protecting the rights of foreign migrant workers, improvements were made in 2015 when it passed the Foreign Employee Dormitories Act<sup>64</sup> which aims to ensure minimum accommodation standards are observed. It also promotes the sustainability and continuous improvement of such services as the provision of dormitories under a licencing regime.<sup>65</sup> However, the often cramped and squalid living conditions of these dormitories continues to be an issue, and is often regularly highlighted in the media.<sup>66</sup>

Separately, Singapore's Employment Act<sup>67</sup> was amended in 2015 to require employers to issue itemised payslips and key employment terms to minimise disputes between employers and employees, thus, preventing the exploitation of foreign workers. These changes have been in force since 1 April 2016.<sup>68</sup>

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<sup>58</sup> 'Singapore parliamentary debates: Official report' 8 April 2016, Committee of Supply – Head S (Ministry of Manpower), Vol 94, at Col 1128 (Lim Swee Say, Minister for Manpower).

<sup>59</sup> Ostensibly because the experience of other countries with such legislation has shown that it is "difficult for victims to prove discrimination," and that such legislation may "introduce market rigidity due to protracted disputes between employers and employees." See, 'Singapore parliamentary debates: Official report' 7 March 2014, Committee of Supply – Head S (Ministry of Manpower), Vol 91, at Col 1256 (Hawazi Daipi, Senior Parliamentary Secretary to the Acting Minister for Manpower).

<sup>60</sup> 'Prevention of Human Trafficking Act to take effect from 1 March 2015' Ministry of Home Affairs, Republic of Singapore, available at <https://www.mha.gov.sg/Newsroom/press-releases/Pages/Prevention-of-Human-Trafficking-Act-to-take-effect-from-1-March-2015.aspx>, accessed on 18 April 2016.

<sup>61</sup> Section 4(1)(a). See, Prevention of Human Trafficking Bill (No 39/2014), available at <https://www.parliament.gov.sg/docs/default-source/Bills-Introduced/prevention-of-human-trafficking-bill-39-2014.pdf>, accessed on 18 April 2016.

<sup>62</sup> Prevention of Human Trafficking Bill, Art 18.

<sup>63</sup> Prevention of Human Trafficking Bill, Art 19.

<sup>64</sup> Foreign Employees Dormitory Act (No 3 of 2015).

<sup>65</sup> Foreign Employees Dormitory Act, Art 4.

<sup>66</sup> See, e.g. Aw, CW, 'ST reporter's taste of life in an 'HDB-style' dorm for workers' The Straits Times, 27 March 2016, available at <http://www.straitstimes.com/singapore/st-reporters-taste-of-life-in-an-hdb-style-dorm-for-workers>, accessed on 20 April 2016.

<sup>67</sup> Employment Act (Cap 91, 2009 Rev Ed Sing).

<sup>68</sup> 'Amendments to Employment Act' Ministry of Manpower, Republic of Singapore, available at <http://www.mom.gov.sg/employment-practices/employment-act/amendments-to-the-act>, accessed on 29 April 2016.

## *D. National Laws Threatening Human Rights*

### *National security*

The Internal Security Act<sup>69</sup> and the Criminal Law (Temporary Provisions) Act<sup>70</sup> continue to be in force, and both allow for detention without trial. Of particular significance is a 1988 decision wherein the Court of Appeal asserted its judicial powers by holding that detention orders issued pursuant to the Internal Security Act were subject to judicial review.<sup>71</sup> This was swiftly followed by a series of constitutional amendments a year later which limited such judicial review.<sup>72</sup>

### *Penalties and the presumption of innocence*

The Misuse of Drugs Act<sup>73</sup> creates certain presumptions. For instance, persons found to be in possession of a certain amount of drugs are deemed to have them for the purposes of trafficking,<sup>74</sup> a death penalty offence.<sup>75</sup> Other offences such as repeated drug consumption attracts caning.<sup>76</sup>

Revisions to the Penal Code and the Misuse of Drugs Act were made by parliament in 2012<sup>77</sup> abolishing the mandatory death penalty for certain cases of murder where there is no intention to kill,<sup>78</sup> and drug offences respectively. As regards drug offences, the death

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<sup>69</sup> Internal Security Act (Cap 143, 1985 Rev Ed Sing). In the last two months of 2015, the Act was used to detain 27 Bangladeshi construction workers in Singapore. Allegedly a terror cell which had supported the ideologies of Al-Qaeda and the Islamic State in Iraq and Syria, the group had planned to wage armed jihad overseas. See, Lee, MK, '27 radicalised Bangladeshis arrested in Singapore under Internal Security Act: MHA' The Straits Times, 20 January 2016, available at <http://www.straitstimes.com/singapore/courts-crime/27-radicalised-bangladeshis-arrested-in-singapore-under-internal-security-act>, accessed on 7 October 2017.

<sup>70</sup> Criminal Law (Temporary Provisions) Act (Cap 67, 1985 Rev Ed Sing).

<sup>71</sup> *Chng Suan Tze v Minister of Home Affairs* [1988] 2 SLR (R) 525. The court here promulgated the application of an objective test. Further, at 156E, it held that the "accountability of Parliament" was not an "alternative safeguard."

<sup>72</sup> Such review was truncated and limited "only to issues of non-compliance with statutory procedure." See, Thio (note 6 above), at 674.

<sup>73</sup> Misuse of Drugs Act (Cap 185, 2001 Rev Ed Sing).

<sup>74</sup> Misuse of Drugs Act, s.17. See also, ss.18 to 22.

<sup>75</sup> Recently, Singapore's Home Affairs and Law Minister, K Shanmugam SC, defended the continued use of the death penalty as a good deterrent which has kept Singapore safe. Speaking at a special session of the United Nations General Assembly, he explained how this was important for Singapore, given the number of visitors through its borders every year, and its proximity to the 'Golden Triangle' which is the second largest heroin production centre in Asia. He further disputed claims there was a medical basis for cannabis use, and explained Singapore's "calibrated approach" to young abusers, which includes counselling and rehabilitation. See, Cheong, D, 'Drug situation is under control. Why should we legalise drugs? K Shanmugam' The Straits Times, 1 May 2016, available at <http://www.straitstimes.com/singapore/drug-situation-is-under-control-why-should-we-legalise-drugs>, accessed on 2 May 2016.

<sup>76</sup> Misuse of Drugs Act, ss.33 and 33A.

<sup>77</sup> Penal Code (Amendment) Act 2012 (No 32 of 2013) and Misuse of Drugs (Amendment) Act 2012 (No 30 of 2012).

<sup>78</sup> Singapore executed convicted murderer, Muhammad bin Kadar, on 17 April 2015 by hanging. He had stabbed a 69 year old woman in 2005 while robbing her. See, 'Convicted murderer, who stabbed victim more than 110 times, executed' Channel NewsAsia, 17 April 2015, available at <http://www.channelnewsasia.com/news/singapore/convicted-murderer-who/1790984.html>, accessed on 10 April 2016.

penalty is no longer automatically imposed on ‘drug mules’ merely playing the role of a courier if that person was not involved in the distribution or dealing of drugs. He or she must also have cooperated with the Central Narcotics Bureau in a substantive way, or have a mental disability substantially impairing his or her appreciation of the gravity of the act.<sup>79</sup> Yet, evidential problems remain. For instance, it would not be realistic to expect drug mules to have information on kingpins, and further, what constitutes “substantial assistance” is left solely to the discretion of the Public Prosecutor, whose decision can only be judicially reviewed on the grounds of bad faith or malice.<sup>80</sup>

### *Equality*

Courts have upheld the constitutionality of s.377A of the Penal Code,<sup>81</sup> criminalising homosexual sex between men, despite challenges to the legislation on the grounds that it infringes the constitutional right to equality.<sup>82</sup>

### *Protection from harassment*

Singapore’s Protection from Harassment Act<sup>83</sup> came into force in November 2014. While intended primarily to protect individuals, the government sought to invoke the Act in 2015 against five administrators of a socio-political blog,<sup>84</sup> for publishing an interview with an individual who had allegedly made false statements of fact against a government ministry. The Attorney-General thus sought a court order that the statement in question should not be published unless accompanied by a notification bringing attention to the falsehood and the true facts.<sup>85</sup> While the High Court held that the Act does not apply to the government,<sup>86</sup> the case is currently pending before the Court of Appeal.<sup>87</sup>

### *Freedom of expression and assembly*

Freedom of expression and assembly continue to be some of the most regulated

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<sup>79</sup> See, Misuse of Drugs (Amendment) Act 2012, s.33B.

<sup>80</sup> Misuse of Drugs (Amendment) Act 2012, s.33B(4). For a more in-depth examination of the legislative amendments, see, Hong, RN, ‘The death penalty in Singapore: Revisions and alternatives’ SGCrimLaw Articles, 5 January 2015, available at <http://nuslawclub.com/CLWP/the-death-penalty-in-singapore-revisions-and-alternatives/>, accessed on 10 April 2016.

<sup>81</sup> Penal Code (Cap 224, 2008 Rev Ed Sing). Section 377A reads: “Any male person who, in public or private, commits, or abets the commission of, or procures or attempts to procure the commission by any male person of, any act of gross indecency with another male person, shall be punished with imprisonment for a term which may extend to 2 years.”

<sup>82</sup> See, *Lim Meng Suang* (note 46 above).

<sup>83</sup> Protection from Harassment Act (Cap 256A, 2015 Rev Ed Sing).

<sup>84</sup> *Attorney-General v Lee Kwai Hou Howard, Xu Yuen Chen, Loh Hong Puey Andrew, Choo Zheng Xi, Lee Song Kwang, and Ting Choon Meng* [2015] SGDC 114.

<sup>85</sup> Such court orders can be made under s.15(2) (see note 83 above).

<sup>86</sup> See, *Ting Choon Meng v Attorney-General and another appeal* [2016] 1 SLR 1248; [2015] SGHC 315, from [31] to [43].

<sup>87</sup> ‘Anti-Harassment appeal: A-G Chambers gets court’s nod’ The Straits Times, 11 February 2016, available at <http://www.straitstimes.com/singapore/courts-crime/anti-harassment-appeal-a-g-chambers-gets-courts-nod>, accessed on 30 April 2016.

fundamental freedoms in Singapore. In its earliest years, political discussions were influenced by governmental ‘out of bounds’ or ‘OB’ markers which delineated the boundaries of acceptable political discourse, with the then Minister for Information and the Arts explaining that these could not be defined with exact precision or in advance. Instead, the government exhorted those wanting to engage in political discourse to first join a political party.<sup>88</sup> Political space has progressively opened up over the years, particularly in the wake of the 2011 General Election in which PAP saw its worst electoral result since 1965 in terms of the popular vote, and in which the government lost a GRC to the opposition for the first time.<sup>89</sup> Consequently, the Prime Minister pledged to allow an “inclusive dialogue on making policies and governing Singapore,”<sup>90</sup> and a ground-up, year-long national dialogue between the government and the people. As such, he initiated the “Our Singapore Conversation.”<sup>91</sup>

Nevertheless, free speech continues to be restrained by a multiplicity of laws. For instance, the Sedition Act criminalises acts, speech, words, or publications which, *inter alia*, promote “feelings of ill-will and hostility between different races or classes of the population of Singapore.”<sup>92</sup> The threshold for the offence is low as such seditious speech is based solely on anticipated potential harm; no actual harm is required.<sup>93</sup> Second, the government does not believe in the notion of the press as the ‘Fourth Estate,’ and indeed, the press continues to be subject to the Newspaper and Printing Presses Act,<sup>94</sup> under which publications require a ministerial permit.<sup>95</sup> Third, PAP politicians commonly avail themselves of defamation lawsuits against their political opponents and because local case law accords higher damages to senior government officials and prominent public figures, this has often resulted in the bankruptcy of opposition politicians.<sup>96</sup>

<sup>88</sup> ‘Minister Yeo on OB markers and internet’ Singapore Window, 26 May 1999, available at <http://www.singapore-window.org/sw99/90526st.htm>, accessed on 30 April 2016.

<sup>89</sup> Banyan, ‘Singapore’s election: A win-win election?’ The Economist, 8 May 2011, available at [http://www.economist.com/blogs/banyan/2011/05/singapores\\_election](http://www.economist.com/blogs/banyan/2011/05/singapores_election), accessed on 10 April 2016.

<sup>90</sup> ‘Speech by Prime Minister, Lee Hsien Loong, at the swearing-in ceremony held in the State Room, Istana, on 21 May 2011’ Prime Minister’s Office, Singapore, available at <http://www.pmo.gov.sg/mediacentre/speech-prime-minister-lee-hsien-loong-swearing-ceremony-held-state-room-istana-21-may>, at para 11, accessed on 20 April 2016.

<sup>91</sup> See, ‘Our Singapore conversations survey findings’ Our SG Conversations, available at <https://www.reach.gov.sg/oursgconversation>, accessed on 7 October 2017.

<sup>92</sup> Sedition Act (Cap 290, 1985 Rev Ed Sing), s.3(1)(e). This subsection has been the most commonly used: see, *Public Prosecutor v Koh Song Huat Benjamin* [2005] SGDC 272; and *Public Prosecutor v Ong Kian Cheong* [2009] SGDC 163. Other grounds included in s.3(1) include: (a) to bring into hatred or contempt or to excite disaffection against the government; (b) to excite the citizens or residents of Singapore to attempt to procure in Singapore, the alteration, otherwise than by lawful means, of any matter as by law established; (c) to bring into hatred or contempt or to excite disaffection against the administration of justice in Singapore; (d) to raise discontent or disaffection amongst the citizens or residents of Singapore.

<sup>93</sup> Thio (see note 6 above), at 789.

<sup>94</sup> Newspaper and Printing Presses Act (Cap 206, 2002 Rev Ed Sing).

<sup>95</sup> Newspaper and Printing Presses Act, s.21.

<sup>96</sup> For example, in *Goh Chok Tong v Chee Soon Juan* (No 2) [2005] 1 SLR 573; [2005] SGHC 3; and *Lee Kuan Yew v Chee Soon Juan* (No 2) [2005] 2 SLR 552; [2005] SGHC 2, the plaintiffs were awarded SG\$300,000 and SG\$200,000 in damages respectively. Chee, an opposition politician and Secretary-General of the Singapore Democratic Party, was subsequently declared bankrupt by the High Court in 2006 after failing to pay the damages.

In addition, the government sought to regulate the new wave of socio-political websites in 2013. Under the Broadcasting Act,<sup>97</sup> internet content providers and service providers are licenced by the Media Development Authority of Singapore, and must comply with the Class Licence Conditions and the Internet Code of Practice. In revisions made in 2013, the Act now subjects online sites attracting at least 50,000 unique monthly visitors on average, over any period of two consecutive months, and containing at least one Singapore news programme per week on average,<sup>98</sup> to the same licencing regime. To qualify for a licence, such sites are required to fork out a SG\$50,000 bond and agree to remove prohibited content within 24 hours of notification from the authorities.<sup>99</sup>

Similarly, freedom of assembly continues to be restricted by the Public Entertainments and Meeting Act, which makes it an offence to give a public talk, lecture, address or discussion without a licence.<sup>100</sup> While the government introduced a Speakers' Corner in 2000 as a limited geographical space for the exercise of free speech, this is subject to obtaining a police permit, and is further limited by three different sets of regulations.<sup>101</sup> Likewise, the Miscellaneous Offences (Public Order and Nuisance) Act<sup>102</sup> has been used against peaceful protestors conducting a silent protest.<sup>103</sup>

### *Freedom of religion and association*

The government can ban religious publications under the Undesirable Publications Act,<sup>104</sup> and can de-register religious associations under the Societies Act.<sup>105</sup> These have been applied to Jehovah's Witnesses, a group deemed to be a threat to public order due to their opposition to compulsory national service.<sup>106</sup> Other de-registered groups include the Christian Conference of Asia and the Unification Church.<sup>107</sup>

Moreover, religious free speech rights are implicated under the Maintenance of Religious Harmony Act,<sup>108</sup> as the government can issue renewable, pre-emptive 'restraining orders' for up to two years, against irresponsible proselytisation. This

<sup>97</sup> Broadcasting Act (Cap 28, 2012 Rev Ed Sing).

<sup>98</sup> Broadcasting (Class Licence)(Amendment) Notification 2013, s.3A.

<sup>99</sup> 'Fact sheet – Online news sites to be placed on a more consistent licensing framework as traditional news platforms' Media Development Authority, 28 May 2013, available at <http://www.mda.gov.sg/AboutMDA/NewsReleasesSpeechesAndAnnouncements/Pages/NewsDetail.aspx?news=4>, accessed on 20 April 2016.

<sup>100</sup> Public Entertainments and Meeting Act (Cap 257, 2001 Rev Ed Sing).

<sup>101</sup> These are the Public Entertainments and Meetings (Speakers' Corner) (Exemption) Order 2008 (S 426/2008), the Public Order (Unrestricted Area) Order 2009 (S 491/2009), and the Parks and Trees Regulations (Cap 216, Rg 1, 2006 Rev Ed Sing). Permits for assemblies or processions are also required under the Public Order Act 2009 (Act 15 of 2009), and the police can prohibit or disperse assemblies seriously disturbing or seriously threatening public order under the Public Order (Preservation) Act (Cap 259, 1985 Rev Ed Sing).

<sup>102</sup> Miscellaneous Offences (Public Order and Nuisance) Act (Cap 184, 1997 Rev Ed Sing).

<sup>103</sup> *Chee Siok Chin v Minister for Home Affairs* [2006] 1 SLR (R) 582.

<sup>104</sup> Undesirable Publications Act (Cap 338, 1998 Rev Ed Sing).

<sup>105</sup> Societies Act (Cap 311, 1985 Rev Ed Sing).

<sup>106</sup> Thio (see note 6 above), at 915. The Jehovah's Witnesses were de-registered as a society in 1972.

<sup>107</sup> Thio (see note 6 above), at 915-916.

<sup>108</sup> Maintenance of Religious Harmony Act (Cap 167A, 2001 Rev Ed Sing).

includes fomenting hatred between different religious groups, and the mixing of politics and religion – broad terms which afford the government significant discretion since it is the final arbiter of what constitutes these categories,<sup>109</sup> and judicial review is effectively precluded.<sup>110</sup>

### ***E. Recent Court Cases Relating to Human Rights***

#### ***Yong Vui Kong v Public Prosecutor***<sup>111</sup>

The appellant in this case was sentenced to life imprisonment and 15 strokes of the cane for drug trafficking. The Court of Appeal upheld the constitutionality of caning as Singapore was held to be a ‘dualist’ jurisdiction which requires enabling legislation to give effect to international law norms. Based on this, the court reasoned that caning would not be unconstitutional even if it were torture and prohibited by a peremptory international law norm of *jus cogens*.<sup>112</sup> Further, it held that caning was an exception to the Art 9 right to life and personal liberty,<sup>113</sup> and in any event, caning did not amount to torture.<sup>114</sup>

#### ***Attorney-General v Au Wai Pang***

Alex Au, a local blogger with a following in the gay community, was convicted by the High Court on 21 January 2015 for contempt of court and fined SG\$8000. Au had published an article online which was held to have posed “a real risk of undermining public confidence in the administration of justice in Singapore.”<sup>115</sup> The article had imputed partiality on the part of the Chief Justice,<sup>116</sup> and alleged improper manipulation of the Supreme Court’s hearing calendar and the composition of the bench, with regard to cases concerning the constitutionality of s.377A of the Penal Code.<sup>117</sup> The Court of Appeal dismissed the appellant’s appeal against his conviction on 30 November 2015.<sup>118</sup>

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<sup>109</sup> Maintenance of Religious Harmony Act, ss.8-9. Four grounds are specified under Art 8: (1) causing feelings of enmity, hatred, ill-will, or hostility between different religious groups; (2) carrying out activities to promote a political cause, or a cause of any political party while, or under the guise of, propagating or practicing any religious belief; (3) carrying out subversive activities under the guise of propagating or practicing any religious belief; or (4) exciting disaffection against the President or the government while, or under the guise of, propagating or practicing any religious belief. See also, Thio (note 6 above), at 916.

<sup>110</sup> Maintenance of Religious Harmony Act, s.18. Such judicial review was precluded as the point was raised in parliament that it would be “explosive” for “a secular court [to decide] on religious disputes.” See, ‘Singapore parliamentary debates: Official report’ 22 February 1990, Maintenance of Religious Harmony Bill, Vol 54, at Col 1128 (John Chen, Member of Parliament (Hong Kah GRC)).

<sup>111</sup> *Yong Vui Kong v Public Prosecutor* [2015] SGCA 11; [2015] 2 SLR 1129.

<sup>112</sup> *Yong Vui Kong*, at [26] to [38].

<sup>113</sup> *Yong Vui Kong*, at [16] to [23].

<sup>114</sup> *Yong Vui Kong*, at [83] to [99].

<sup>115</sup> *Attorney-General v Au Wai Pang* [2015] SGHC 16; [2015] 2 SLR 352.

<sup>116</sup> *Attorney-General v Au Wai Pang*, at [84].

<sup>117</sup> *Attorney-General v Au Wai Pang*, at [76]. Section 377A of the Penal Code criminalises homosexual sex between men.

<sup>118</sup> *Au Wai Pang v Attorney-General* [2015] SGCA 61; [2016] 1 SLR 992.

*Lee Hsien Loong v Ngerng Yi Ling Roy*<sup>119</sup>

The defendant in this case was sued by the Prime Minister for defamation. Ngerng had written a blog post which suggested that the Prime Minister was guilty of misappropriating monies paid by Singaporeans to the Central Provident Fund (Singapore's state-administered pension fund). The High Court held that the mode of publication (i.e. the internet) was particularly aggravating given the "potential for vast and rapid spread and the risk of future damage."<sup>120</sup> Substantial damages of SG\$100,000 in general damages and SG\$50,000 in aggravated damages were awarded to the Prime Minister.

*Quek Hock Lye v Public Prosecutor*<sup>121</sup>

The applicant, who had been sentenced to death for criminal conspiracy to traffic drugs, brought a constitutional challenge against recent amendments to the Misuse of Drugs Act – a first since the amendments were only finalised in 2012. He contended that the amendments were inconsistent with the Art 12 constitutional right to equality as it retroactively placed some drug traffickers in a better position by allowing them to avail themselves of exceptions to the mandatory death penalty. The Court of Appeal dismissed the application, finding the amendments satisfied the "reasonable classification" test – the differentia related to the requirements the offender had to prove; either that he was a mere courier, suffering from substantial impairment of mind, or that he had received a certificate of co-operation.<sup>122</sup> Further, these intelligible differentia bore a rational relation to the social object of the Act, which was to prevent the spread of drug addiction in Singapore by rooting out the illegal drug trade.<sup>123</sup>

*Tan Seet Eng v Attorney-General and another matter*<sup>124</sup>

The appellant had been detained without trial under the Criminal Law (Temporary Provisions) Act (CLTPA) since September 2013, for allegedly playing a substantial role in international football match-fixing activities. Tan contended that his detention was illegal. The Court of Appeal agreed and ordered he be freed. In a decision widely regarded as "groundbreaking,"<sup>125</sup> the court reasoned that since the allegedly fixed matches all took place beyond Singapore's boundaries and had little connection to the country, there was little risk to the "public safety, peace and good order" of Singapore itself.<sup>126</sup>

<sup>119</sup> *Lee Hsien Loong v Ngerng Yi Ling Roy* [2015] SGHC 320; [2016] 1 SLR 1321.

<sup>120</sup> *Lee Hsien Loong*, at [49].

<sup>121</sup> *Quek Hock Lye v Public Prosecutor* [2015] SGCA 7; [2015] 2 SLR 563.

<sup>122</sup> *Quek Hock Lye*, at [29] to [31].

<sup>123</sup> *Quek Hock Lye*, at [32] to [38].

<sup>124</sup> *Tan Seet Eng v Attorney-General and another matter* [2015] SGCA 59; [2016] 1 SLR 779.

<sup>125</sup> Ng, H, 'Dan Tan case: 'Ground-breaking' judgment raises question about Act' *The Straits Times*, 27 November 2015, available at <http://www.straitstimes.com/singapore/courts-crime/dan-tan-case-groundbreaking-judgment-raises-question-about-act>, accessed on 20 April 2016.

<sup>126</sup> *Tan Seet Eng* (note 124 above), at [146].

Significantly, the court prefaced its judgment<sup>127</sup> with a reiteration of principles from the earlier case of *Chng Suan Tze v Minister of Home Affairs*<sup>128</sup> where the same court held that “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.” Yet, just as strong assertions of judicial power were curtailed by constitutional amendments in the wake of *Chng*<sup>129</sup> in 1988, the government moved swiftly to defend its use of CLTPA. Tan was subsequently re-arrested less than a week after his release. However, the Minister for Law clarified that the decision of the court would be respected, and any further detention orders would be laid out in full and comply with the court decision.<sup>130</sup>

## Part 2: Outstanding Human Rights Issues

### A. Freedom of Speech

Freedom of speech continues to remain an issue in Singapore, with watchdog, Reporters Without Borders, ranking the city-state 153 out of 180 countries in its 2015 World Press Freedom Index – a decline in three places from its 2014 ranking.<sup>131</sup>

In April 2015, Singapore’s Media Development Authority (MDA) ordered the shutdown of The Real Singapore (TRS), an alternative socio-political news site, for allegedly contravening the Internet Code of Practice by fabricating articles, spreading falsehoods, and for committing plagiarism. Its former editors were charged with sedition, with one sentenced to 10 months’ imprisonment in March 2016;<sup>132</sup> the second trial is still underway. More prominently, 16 year old teen blogger Amos Yee was charged under the Penal Code<sup>133</sup> for wounding religious feelings and obscenity. Yee uploaded a video in March 2015 criticising Singapore’s founding Prime Minister, Lee Kuan Yew, in the wake of Lee’s death, comparing him unfavourably to Jesus. Yee also uploaded a caricature of Lee and Margaret Thatcher engaging in sexual intercourse. Yee was subsequently sentenced to a four-week backdated jail term, after having already

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<sup>127</sup> *Tan Seet Eng* (note 124 above) at [2].

<sup>128</sup> *Chng Suan Tze* (note 71 above).

<sup>129</sup> In its wake, the government amended the Constitution such that judicial review would be limited to procedural issues; the appellants were subsequently re-arrested.

<sup>130</sup> Lum, S, ‘Grounds to be set out in full if Dan Tan is detained: Shanmugam’ *The Straits Times*, 2 December 2015, available at <http://www.straitstimes.com/singapore/courts-crime/grounds-to-be-set-out-in-full-if-dan-tan-is-detained-shanmugam>, accessed on 20 April 2016.

<sup>131</sup> ‘Latest World Press Freedom Index shows ‘drastic decline;’ Singapore ranked at No 153’ *The Straits Times*, 12 February 2015, available at <http://www.straitstimes.com/world/africa/latest-world-press-freedom-index-shows-drastic-decline-singapore-ranked-at-no-153>, accessed on 7 October 2017.

<sup>132</sup> ‘Ai Takagi sentenced to 10 months’ jail for sedition’ *Today Online*, 23 March 2016, available at <http://www.todayonline.com/singapore/ai-takagi-sentenced-10-months-jail-sedition>, accessed on 7 October 2017.

<sup>133</sup> Penal Code, s.298, which makes “uttering words with deliberate intent to wound the religious or racial feelings of any person” to be an offence punishable by three years’ imprisonment and a fine; and s.292(1)(a), which refers to the offence of “transmitting obscene materials.”

spent about 50 days in remand at a mental health institute.<sup>134</sup> This drew condemnation from groups like Amnesty International, which, in a public statement, declared Yee a prisoner of conscience, calling for his immediate and unconditional release.<sup>135</sup>

The MDA also moved to effectively ban a 15-second pre-event promotional advertisement for Pink Dot, an annual gay-pride event. The video was submitted on 12 May 2015 and was intended to be screened in cinemas in the weeks leading up to the event. However, the MDA held it was not in the “public interest to allow cinema halls to carry advertising on LGBT issues.”<sup>136</sup> Despite such decisions, progress has been made. For example, civil society expressed surprise at the MDA’s decision in November 2015 to allow the screening of a documentary on detainees arrested for an alleged Marxist plot against the Singapore government in 1987, albeit with an R21 rating, doubtless for featuring interviews with political exiles and ex-detainees.<sup>137</sup> Separately, the National Arts Council withdrew a SG\$8,000 publishing grant awarded to a graphic novel entitled, *The Art of Charlie Chan Hock Chye*, over some “sensitive content” deemed to have potentially undermined the authority or legitimacy of the Singapore government.<sup>138</sup> The novel covered controversial chapters in Singapore’s history, including the aforementioned Marxist conspiracy.<sup>139</sup>

Further examples of censorship include the MDA’s ban on a song and music video by a Taiwanese star<sup>140</sup> which contained lyrics on homosexuality and featured the singer and another actress sharing a kiss in a wedding setting. Both the song and video were withdrawn from broadcast on television and radio as they were deemed in breach of

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<sup>134</sup> Feng, Z, ‘Amos Yee’s long remand was lawful, says his lawyer’ *The Straits Times*, 16 August 2015, available at <http://www.straitstimes.com/singapore/courts-crime/amos-yees-long-remand-was-lawful-says-his-lawyer>, accessed on 25 May 2016.

<sup>135</sup> See, ‘Singapore: Free 16-year-old prisoner of conscience Amos Yee’ Amnesty International, 3 July 2015, available at <https://www.amnesty.org/en/documents/asa36/2014/2015/en/>, accessed on 20 May 2016. Amnesty International also called for the Singaporean authorities to ensure Yee was safe from any security threats, ill-treatment, and torture, and invoked the Convention on the Rights of the Child. For a fuller treatment of Amos Yee’s case, see Chang Ya Lan’s chapter on Singapore in the 2015 edition of this Outlook.

<sup>136</sup> Manjur, R, ‘MDA bans Pink Dot SG ad’ *Marketing*, 15 June 2015, available at <http://www.marketing-interactive.com/mda-bans-pink-dot-sg-ad/>, accessed on 20 May 2016.

<sup>137</sup> The government had detained 22 people in 1987 under the Internal Security Act under a crackdown known as ‘Operation Spectrum.’ See, Nur Asyiqin Mohamad Salleh, ‘Documentary on Marxist conspiracy detainees given R21 rating’ *The Straits Times*, 14 November 2015, available at <http://www.straitstimes.com/lifestyle/documentary-on-marxist-conspiracy-detainees-given-r21-rating>, accessed on 25 May 2016.

<sup>138</sup> Yong, C, ‘NAC pulled grant from comic as it ‘potentially undermines the authority of the government’ *The Straits Times*, 3 June 2015, available at <http://www.straitstimes.com/singapore/nac-pulled-grant-from-comic-as-it-potentially-undermines-the-authority-of-the-government>, accessed on 26 May 2016.

<sup>139</sup> ‘NAC withdraws grant for graphic novel publisher due to ‘sensitive content’ *Today*, 29 May 2015, available at <http://www.todayonline.com/singapore/national-arts-council-revokes-grant-for-graphic-novel-Sonny-Liew>, accessed on 7 October 2017.

<sup>140</sup> Taiwanese singer, Jolin Tsai’s song was entitled, *We’re all different, yet the same*. However, it should be noted that the ban did not extend to sales of the song in Singapore. The decision was reached after consultation with MDA’s Publications Consultative Panel, which ostensibly comprises Singaporeans from a “wide cross-section of society.” See, Ng, G, ‘Jolin Tsai’s same-sex marriage music video and song banned on TV and radio, MDA clarifies’ *The Straits Times*, 26 May 2015, available at <http://www.straitstimes.com/lifestyle/entertainment/jolin-tsais-same-sex-marriage-music-video-and-song-banned-on-tv-and-radio>, accessed on 25 May 2016.

the MDA's Free-to-Air Television and Radio Programme Codes. In another instance, the MDA moved to classify a video released by an opposition party as part of its online campaign during the 2015 General Election as a "party political film" as defined in the Films Act.<sup>141</sup> The video, entitled, 'Pappy Washing Powder,' featured a fictional brand of washing powder which alluded to the ruling PAP, and showed a woman using the powder to 'whitewash' transparency, accountability, and democracy. While party political films are no longer subject to a blanket ban,<sup>142</sup> the Films Act renders it an offence to import, make, reproduce, distribute, or exhibit a "party political film,"<sup>143</sup> broadly defined in s.2(1) as a film made by any person and directed towards any "political end in Singapore (my emphasis),"<sup>144</sup> which is in turn defined as a film "intended or likely to affect voting in any election or national referendum"<sup>145</sup> or which contains, wholly or partly, references or comments on any political matter which are "partisan and biased."<sup>146</sup> Insofar as these are vague, broad, and open-ended terms, this provides great scope for the suppression of free speech. Moreover, the responsibility and discretion for determining whether these criteria are met lies solely with the Board of Film Censors,<sup>147</sup> potentially excluding judicial review.

Away from the world of virtual media, restrictions concerning physical demonstrations and protests continue to be strictly enforced. For instance, an application for a 14 February rally at Speakers' Corner which intended to campaign for making Thaipusam (a Hindu festival) a public holiday in Singapore, was rejected by police in 2015 on the grounds that the event ran "a significant risk of public disorder and could incite feelings of hostility between different racial and religious groups in Singapore."<sup>148</sup> Thus, given the sensitivities inherent in a multiracial society like Singapore, freedom of speech is likely to remain curtailed.

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<sup>141</sup> Films Act (Cap 107, 1998 Rev Ed Sing). The MDA stated that it had consulted the Political Films Consultative Committee in so classifying the video. The classification drew protests from the opposition party in question (the Singapore Democratic Party) with its Secretary-General, Chee Soon Juan, describing the move as a "naked attempt to stop the SDP's effective use of social media to communicate our message to the people." Beyond the classification, however, the MDA did not take further action, but instead issued a reminder to all political parties to ensure adherence to the Films Act. It also extended an invitation to parties to freely consult the MDA should there be any doubts over the regulations. See, 'MDA strongly disagrees with SDP over 'Pappy Washing Powder' video' Channel NewsAsia, 20 August 2015, available at <http://www.channelnewsasia.com/news/singapore/mda-strongly-disagrees/2063338.html>, accessed on 18 May 2016.

<sup>142</sup> This was lifted in 2009, with amendments to the Films Act. See also, the legislative debates on the 'Singapore parliamentary debates: Official report' 23 March 2009, Films (Amendment) Bill, Vol 85, at Col 3363ff.

<sup>143</sup> Films Act, s.33. Anyone convicted under this section is potentially liable to a fine not exceeding SG\$100,000 or imprisonment for a term not exceeding two years.

<sup>144</sup> Films Act, s.2(1).

<sup>145</sup> Films Act, s.2(2)(a).

<sup>146</sup> Films Act, s.2(2)(b).

<sup>147</sup> See, Films Act, s.2(2).

<sup>148</sup> 'Police reject activist Gilbert Goh's application for Speakers' Corner permit' The Straits Times, 13 February 2015, available at <http://www.straitstimes.com/singapore/police-reject-activist-gilbert-gohs-application-for-speakers-corner-permit>, accessed on 15 May 2016.

Similarly, in October 2015, a group of blogger-activists were charged for public nuisance and for organising demonstrations without approval. The group had organised the protest to demand transparency and accountability over the government's management of the Central Provident Fund, Singapore's compulsory social security savings scheme. During the demonstration, the group disrupted a community event being held in the vicinity, by shouting, chanting slogans, waving flags, holding placards, blowing whistles, and beating drums.<sup>149</sup> In another case, prominent local activist, Jolovan Wham, a member of non-governmental group, Community Action Network, and executive director of HOME, a migrant workers advocacy group, was issued a police warning in lieu of prosecution for an offence under the Public Order (Unrestricted Area) Order 2013.<sup>150</sup> Wham had organised a candle light vigil in October 2014 to support protestors in Hong Kong challenging election restrictions, and had inadvertently breached conditions stipulating that organisers of demonstrations had to ensure foreigners and permanent residents would not participate in the vigil without a permit.<sup>151</sup> Wham's 2015 judicial review application sought to quash the warning failed, and he was subsequently ordered by the High Court to pay SG\$6,063 in costs to the Attorney-General.<sup>152</sup>

### ***B. Human Rights Policy and Institutions***

Singapore submitted its second national report to the United Nations under the Universal Periodic Review (UPR) in December 2015, having already earlier participated in the first cycle of the UPR in May 2011.<sup>153</sup> In its second report,<sup>154</sup> Singapore noted it takes a practical and not an ideological approach to the realisation of human rights, and reinforced its views on relativism, stating that "human rights exist in specific cultural, social, economic, and historical contexts."<sup>155</sup>

Singapore's defence of its decision to uphold s.377A of the Penal Code<sup>156</sup> at the 24th session of the Periodic Review in Geneva drew some controversy and sparked debates. Ambassador-at-large, Professor Chan Heng Chee, who presented Singapore's views on the matter, explained the law's retention in view of its conservative society and its

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<sup>149</sup> The trial continues for accused, Han Hui Hui, although some of her co-accused have already pleaded guilty. See, Chelvan, VP, 'Han Hui Hui and 3 others go on trial over Hong Lim Park protest' Channel NewsAsia, 13 October 2015, available at <http://www.channelnewsasia.com/news/singapore/han-hui-hui-and-3-others/2187202.html/>, accessed on 15 May 2016.

<sup>150</sup> Public Order (Unrestricted Area) Order 2013 (S 30/2013).

<sup>151</sup> Public Order (Unrestricted Area) Order 2013, para 4(1)(b). Paragraph 4(2) of the same provides that contravention of para 4(1)(b) will result in an offence.

<sup>152</sup> *Wham Kwok Han Jolovan v Attorney-General* [2015] SGHC 324; [2016] 1 SLR 1370.

<sup>153</sup> 'Singapore Universal Periodic Review' Ministry of Foreign Affairs Singapore, available at [http://www.mfa.gov.sg/content/mfa/media\\_centre/special\\_events/upr.html](http://www.mfa.gov.sg/content/mfa/media_centre/special_events/upr.html), accessed on 26 April 2016.

<sup>154</sup> 'Singapore UPR National Report' available at: [http://www.mfa.gov.sg/content/dam/mfa/images/media\\_center/special\\_events/upr/Singapore%20UPR%20National%20Report%20\(2015\).pdf](http://www.mfa.gov.sg/content/dam/mfa/images/media_center/special_events/upr/Singapore%20UPR%20National%20Report%20(2015).pdf), accessed on 7 October 2017.

<sup>155</sup> Singapore UPR National Report, at para 4.

<sup>156</sup> Penal Code, s.377A.

stance of not proactively enforcing the law, faced calls by some Yale-NUS students to relinquish her position on the school's governing board, while another student group issued a statement of concern.<sup>157</sup>

Singapore has also rejected calls to institutionalise rights protection through the establishment of an Ombudsman, an Equal Opportunities Board, or a Women's Rights Ministry.<sup>158</sup> Notably, unlike some of its ASEAN counterparts, the city-state still lacks a national human rights commission.<sup>159</sup>

### ***C. Judicial Doctrine and Freedom of Religion***

Judicial review in Singapore remains almost truncated given prevailing judicial attitudes, which is one of strong deference towards the legislature.<sup>160</sup> Instead of strong rights protection, courts utilise weaker forms of review and deference doctrines<sup>161</sup> such as the test of a mere connection or nexus, in which a government measure will be held valid so long as there exists a “nexus between the object of the impugned law and one of the permissible subjects stipulated in [the Constitution],”<sup>162</sup> and also the “Wednesbury reasonableness” test, which subjects judicial review to an exceedingly high threshold in order for an applicant's constitutional challenge to succeed.<sup>163</sup>

Early decisions in Singaporean jurisprudence were antithetical to rights since they evinced a judicial reluctance to engage in any form of balancing in rights adjudication under the Constitution. Indeed, rather than follow the Dworkian concept of rights as trumps,<sup>164</sup> courts have traditionally found in favour of public order considerations instead, particularly in cases concerning freedom of religion. For instance, in a 1995 case concerning the rights of possession of Jehovah's Witnesses over their religious tracts, to which a blanket ban applied, the Chief Justice, while noting that religious

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<sup>157</sup> Professor Chan was responding to delegates from countries like France and Norway, who had proposed that Singapore repeal s.377A. See Qi, X, 'Yale-NUS admin speech sparks debate' Yale News, 5 February 2016, available at <http://yaledailynews.com/blog/2016/02/05/yale-nus-admin-speech-sparks-debate/>, accessed on 7 October 2017.

<sup>158</sup> Thio (see note 6 above), at 591.

<sup>159</sup> For more on human rights and ASEAN, see, Thio, L, 'Implementing human rights in ASEAN countries: 'Promises to keep and miles to go before I sleep' *Yale Human Rights and Development Journal*, 1999, Vol 2, No 1.

<sup>160</sup> Judges do not see themselves as defenders of fundamental liberties. For instance, in *Jabar bin Kadermastan v Public Prosecutor* [1995] 1 SLR (R) at [52], the court rejected judicial review as being based on the standards of whether laws were “fair, just and reasonable,” holding instead that “any law ... is valid and binding so long as it is validly passed by Parliament.” In *Chee Siok Chin* (see note 50 above), the High Court held that “the court's sole task, when a constitutional challenge is advanced, is to ascertain whether an impugned law is within the purview of any of the permissible [constitutional] restrictions” (my emphasis).

<sup>161</sup> See, Sweet, AS, and Mathews, J, 'Proportionality balancing and global constitutionalism' *Columbia Journal of Transnational Law*, 2008, Vol 47, at 78.

<sup>162</sup> See, *Chee Siok Chin* (note 50 above).

<sup>163</sup> An applicant will only be successful in his constitutional challenge of an authority's decision if the decision was “so unreasonable that no reasonable authority could ever have come to it.” See, *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1948] 1 KB 223, at 234.

<sup>164</sup> Dworkin, R, *Taking Rights Seriously*, Harvard University Press, 1977, at 157.

beliefs deserve “proper protection,” nonetheless went on to hold that the “sovereignty, integrity and unity of Singapore are undoubtedly the paramount mandate of the Constitution” (my emphasis), and that all else running counter to these objectives must be restrained.<sup>165</sup> Statist priorities were therefore held as determinative trumps, and balancing did not figure in the adjudicative exercise.

However, a modicum of improvement is discernible, with courts now giving individual rights a greater measure of due consideration. In the 2015 case of *Vijaya v Public Prosecutor*,<sup>166</sup> the applicants alleged that the government’s 42-year-old music ban<sup>167</sup> on a traditional Hindu Thaipusam foot procession hindered their religious practice, which was constitutionally protected under Art 15. Though the court applied the deference doctrine of *Wednesbury* reasonableness,<sup>168</sup> it also struck an eminently fair balance: that the court accepted the playing of musical instruments was an “essential part”<sup>169</sup> of the Thaipusam procession, showed it gave proper recognition to the rights of the applicants whilst acknowledging the importance of culture. This is enough to differentiate *Vijaya* from prior cases which did not consider rights favourably. Moreover, in balancing freedom of religion rights against public order considerations (a legitimate restriction under Art 15(4) of the Constitution<sup>170</sup>), the court carefully weighed the three factors of scale, duration, and the religious element of the procession, which raised the potential for public order issues, especially since the event was spread over three kilometres and “lasted some 26 hours at the fringe of the city centre.”<sup>171</sup>

In addition, the court gave greater effect to religious rights by placing emphasis on the fact that the police measures did not prohibit music altogether but merely confined the extent to which music could be used.<sup>172</sup> Moreover, the court held that the police had shown due regard for the applicants’ rights by adopting a calibrated approach in response to dialogue with the Hindu community: from a blanket ban in 1973, religious hymns were allowed to be sung in 2011, a public audio system for the transmission of music was set up in 2012, and in 2015, the police allowed a third music point, which could transmit hymns for more than 12 hours each day.<sup>173</sup> Such a judicial

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<sup>165</sup> *Chan Hiang Leng Colin and others v Public Prosecutor* [1994] 3 SLR (R) 209; [1994] SGHC 207, at [64]. Note also the similarity in language used in the decision of *Nappalli Peter Williams v Institute of Technical Education* [1999] 2 SLR 569, which also implicated the freedom of religion rights of the Jehovah’s Witnesses under Art 15 of the Singapore Constitution. Here, the same Chief Justice noted that Art 15, read as a whole, “demonstrates that the paramount concern of the Constitution is a statement of the citizen’s rights framed in a wider social context of maintaining unity as a nation” (my emphasis).

<sup>166</sup> *Vijaya Kumar s/o Rajendran and others v Attorney-General* [2015] SGHC 244.

<sup>167</sup> The ban was implemented over fears of communal disturbance.

<sup>168</sup> *Vijaya Kumar* (note 166 above), at [42].

<sup>169</sup> *Vijaya Kumar* (note 166 above), at [19].

<sup>170</sup> Constitution of the Republic of Singapore, Art 15(4).

<sup>171</sup> *Vijaya Kumar* (note 166 above), at [35].

<sup>172</sup> *Vijaya Kumar* (note 166 above), at [38].

<sup>173</sup> *Vijaya Kumar* (note 166 above), at [38].

examination suggests a tailoring of government measures, thus maximising enjoyment of fundamental rights and liberties.

#### ***D. Subaltern Singapore: The Rights of Sex Workers***

Certain aspects of sex work such as soliciting in a public place,<sup>174</sup> pimping and running a brothel,<sup>175</sup> and the use of migrant sex workers<sup>176</sup> are criminalised in Singapore. Most sex workers also contravene Singapore's employment laws when they partake in commercial sex work, as they often visit the country on short-term visit passes, not entitling them to work.<sup>177</sup> It has been noted that treating these workers as immigration offenders makes it difficult for them to return home, or to seek gainful and legal employment while police investigations are ongoing, which only serves to incentivise a return to the sex trade.<sup>178</sup> Such measures may also be unduly harsh on workers who may themselves be victims of human trafficking.

According to advocacy group, Project X,<sup>179</sup> when law enforcement is unable to utilise the aforementioned legislation against sex workers, recourse is sometimes made to Penal Code offences such as committing obscene acts in public places<sup>180</sup> or outrages to decency.<sup>181</sup> Further, the police conduct frequent bag searches on the streets, often deeming condoms found in the course of these searches as evidence of soliciting.<sup>182</sup> This results in a fear amongst sex workers of carrying condoms, exposing them to the dangers of unprotected sex.

<sup>174</sup> Miscellaneous Offences (Public Order and Nuisance) Act, s.19.

<sup>175</sup> Women's Charter (Cap 353, 2009 Rev Ed Sing), ss.146 and 148. See also, the relatively new s.146A of the Charter, which makes it an offence for a person in Singapore who, in the course of business, operates or maintains in Singapore a remote communication service that "offers or facilitates the provision by a woman or girl to another person of sexual services in return for payment or reward," or "organises, manages or supervises the provision of sexual services." Available at <http://statutes.agc.gov.sg/aol/search/display/view.w3p;page=0;query=DocId%3A%22f0897dd7-1f3a-45a9-b1e7-ba30fef2dbba%22%20Status%3Ainforce%20Depth%3A0;rec=0;whole=yes>, accessed on 30 May 2016.

<sup>176</sup> Immigration Act (Cap 133, 2008 Rev Ed Sing), ss.8(3)(e)-(f).

<sup>177</sup> Tan, SB, and Gill, A, 'Containing commercial sex to designated red light areas: An idea past its prime?' Lee Kuan Yew School of Public Policy, 2013, available at <http://lkyspp.nus.edu.sg/wp-content/uploads/2014/04/Containing-Commercial-Sex-to-Designated-Red-Light-Areas.pdf>, accessed on 26 May 2016, at 4.

<sup>178</sup> This can be contrasted to visa systems in other countries, such as Australia's witness protection visa, which allows victims of sex trafficking to remain in the country to find work. See, Toh, YC, and Tai, J, 'Study sheds light on sex trafficking in Singapore' The Jakarta Post, 10 February 2014, available at <http://www.thejakartapost.com/news/2014/02/10/study-sheds-light-sex-trafficking-singapore.html>, accessed on 20 May 2016.

<sup>179</sup> Ho, V, 'The right to sexual health: A case of streetwalkers in Singapore' Project X, available at <http://theprojectx.org/wp-content/uploads/2015/02/The-Right-to-Sexual-Health-full-article.pdf>, accessed on 20 April 2016.

<sup>180</sup> Penal Code, s.294(a), which is invoked against sex workers caught in a sexual act.

<sup>181</sup> Penal Code, s.377A, which criminalises homosexual sex between males. This has also been used against pre-operative transgender sex workers.

<sup>182</sup> Ho (see note 179 above), at 4.

However, a ‘yellow card’ system for sex workers in brothels serves as a *de facto* licence to work in the sex industry.<sup>183</sup> This system also mandates regular medical checks and provides immunity against the police.<sup>184</sup> Nevertheless, possession of such a card also means a loss of income, and potentially subjects workers to discrimination since their history of sex work would be on record.<sup>185</sup>

### **Part 3: Conclusion**

The death of Singapore’s founding father, Lee Kuan Yew, in 2015 represented a turning point in Singapore’s history, and marked the end of an era which some associate with authoritarianism. While improvements in rights protection is discernible, much more can be done in relation to the problematic areas highlighted in this chapter.

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<sup>183</sup> Leong, WTL, ‘Decoding sexual policy in Singapore’ in Lian, KF, and Tong, CK (eds), *Social Policy in Post-Industrial Singapore*, Netherlands: Koninklijke Brill NV, 2008, at 300-301.

<sup>184</sup> Ho (see note 179 above), at 2.

<sup>185</sup> Ho (see note 179 above).