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Rule of Law for Human Rights in the Asean Region: A Base-line Study



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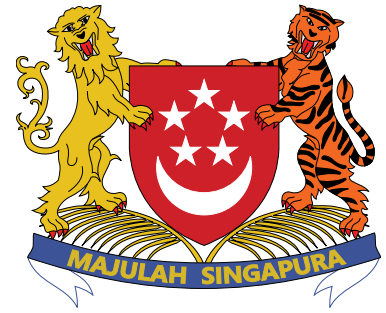
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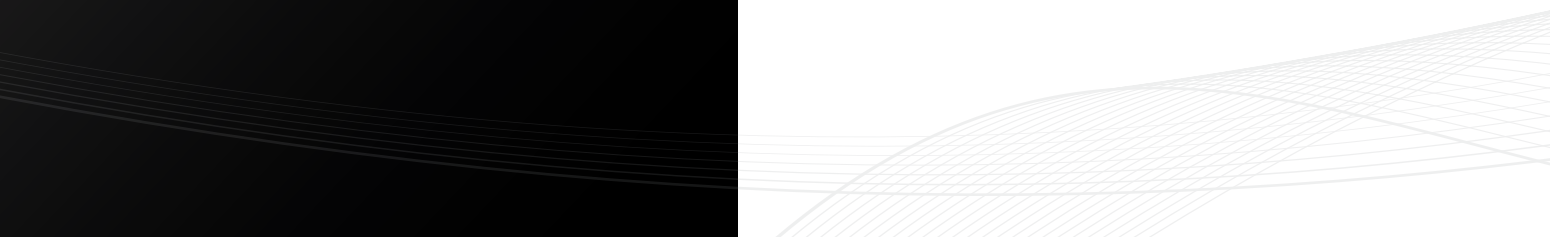


The Republic of Singapore



Singapore

Cheah Wui Ling



Snapshot Box

Country Name	Singapore
Independence	1965
Historical Background	see below
Size	712.4 sq km
Land Boundaries	
Population	5076700
Demography	> 15 yrs – 654400; 15-64 yrs - 2,778900; 65 yrs & over 2 - 338400
Ethnic Groups	Chinese (74.1%), Malays (13.4%), Indians (9.2%), Others (3.3%).
Languages	English (official language), Mandarin, Malay, Tamil, other dialects.
Religion	Buddhism/Taoism (44.2%), Christianity (18.3%), Islam (14.7%), Hinduism (5.1%), Other Religions (0.7%), No Religion (17.0%).
Education and Literacy	95.9%
Welfare	Singapore maintains a social security system that is structured on “self-reliance”. As described by the Singapore authorities in its Universal Periodic Review Report, this system comprises of (1) housing, (2) universal healthcare coverage, (3) retirement savings (4) Workfare, and (5) the Government’s Community Care Endowment Fund (Comcare Fund). The first three components are secured through the Central Provident Fund, a “mandatory, defined contribution social security scheme that helps Singaporeans save for housing, medical and retirement needs.” The CPF also contributes to Workfare. (Singapore Universal Periodic Review Report, paras. 59-60)
Gross Domestic Product (GDP)	(\$m) 303,652.2 at current market price see Ministry of Trade and Industry website (http://app.mti.gov.sg/default.asp?id=725)
Membership in International Organizations and Human Rights Human Rights Treaties ratified & incorporated by local legislation	(see below)
	Human rights treaties (as listed by the UN Office of High Commissioner for Human Rights) ⁱ Convention on the Rights of the Child Optional Protocol on the Involvement of Children in Armed Conflict Convention on the Elimination of All Forms of Discrimination against Women International initiatives/organizations (see Ministry of Foreign Affairs Website http://app.mfa.gov.sg/2006/idx_fp.asp?web_id=9) AMED APEC ASEAN ASEM FEALAC G77 & NAM The Commonwealth UN UNSC WTO

1. History

Singapore was “founded” by Sir Stamford Raffles in 1819 and became a British Crown Colony in 1867. As a result of constitutional negotiations, the British Parliament passed the State of Singapore Act on 1 August 1958. This granted Singapore internal self-governance. The newly elected Singapore government decided on a merger with the Federation of Malaya to achieve complete political independence and to guarantee Singapore’s economic survival. However, due to disintegrating political relations between the leaders of Singapore and the Federation, Singapore left the Federation of Malaysia on 9 August 1965.

2. State Institutions

The Singapore Constitution sets out the basic structure of Parliament, the Executive, and the Judiciary. Article 23 of the Constitution expressly recognises “executive authority” to be vested in the President. This power is to be exercised in line with the Constitution by the President, the Cabinet, or any Minister authorized by the Cabinet. Article 17 of the Singapore Constitution recognises the President as the “Head of State” whose “powers and functions” are set out in the Constitution and any other written law. Prior to 1991, the Singapore President was a constitutional Head of State with very limited powers in line with the Westminster tradition which Singapore inherited from the British. In 1991, the Constitution was amended to make this an elected office and to give the President additional powers. The President has the right to refuse to give assent on certain public service appointments and topics that are considered particularly important, such as that relating to the use of governmental reserves and preventive detention authorized by Part XII of the Constitution. These powers have been described as “negative” or reactive in nature, as the President does not have the power to initiate decision-making processes.

Article 24 (2) of the Singapore Constitution empowers the Cabinet to have “general direction and control of the Government.” It also requires Cabinet to be “collectively responsible” to Parliament. The Prime Minister is appointed in accordance with Article 25 (1) of the Constitution which requires the President to appoint a Member of Parliament who in his judgment is likely to command the confidence

of the majority of the Members of Parliament. In line with the Westminster tradition, the leader of the ruling majority political party is appointed as Prime Minister as he is deemed to command such “confidence” by virtue of being the leader of the dominant party in Parliament. Once appointed, the Prime Minister and his Cabinet holds office for the duration of the elected government and until the dissolution of Parliament for election purposes. The Cabinet is composed of the Prime Minister and his Ministers. Article 28 (1) of the Constitution empowers the Prime Minister to appoint Ministers and Article 30 of the Constitution gives him the power to direct, revoke, or vary the responsibility of the Minister. In brief, the Prime Minister is empowered to select and replace his ministers.

Article 38 of Singapore’s Constitution vests “legislative power” in the Legislature, which is to be composed of the President and Parliament. The Constitution provides for different types of Members of Parliament (MPs) – elected, non-constituency, and nominated members. Elected members represent either Single Member or Group Representation Constituencies (GRCs). The concept of GRCs was initially established to ensure multi-racial representation in Singapore. They refer to electoral areas represented by teams of 4-6 MPs. Each team must have a member from a minority race. Elected MPs are elected into Parliament during General Elections on a first-past-the-post basis. Non-constituency MPs refer to members from opposition political parties who were not voted in by the first-past-the-post system. Nominated MPs are appointed by the Singapore President on the recommendation of a Special Select Committee of Parliament. They are appointed for two and a half years and are intended to be independent and non-partisan.

Article 93 of the Singapore Constitution vests “judicial power” in the “Supreme Court” and “such subordinate courts as may be provided by any written law for the time being in force.” Article 94 (1) of the Constitution expressly recognises the “Supreme Court” composed of the “Court of Appeal” and the “High Court”. The Court of Appeal functions as Singapore’s final court of appeal. It also recognises that the “jurisdiction” and “powers” of the Supreme Court is as set out in the Constitution or “any written law”. Further details of the Supreme Court’s role and relationship with the Subordinate Courts are set out in the Supreme Court of Judicature Act. Supreme Court

judges are composed of the Chief Justice, the Judges of Appeal, Judges, and Judicial Commissioners. The structure and powers of the Subordinate Courts of Singapore are set out in the Subordinate Courts Act. It is composed of the District Courts, Magistrate Courts, the Juvenile Court, the Coroner's Court and the Small Claims Tribunals. Some District Courts and Magistrate Courts function as specialist courts such as the Community Court and the Family Court. Section 9 (1) and 10 (1) of the Subordinate Courts Act authorizes the President to appoint District Judges and Magistrates on the recommendation of the Chief Justice. These judges hold concurrent appointments as Deputy Registrars, Coroners, and Referees of the Small Claims

Tribunals. The Subordinate Courts deal with a significant caseload. In 2009, it heard altogether 19 636 cases.

The Singapore Constitution also establishes a variety of institutions that play an advisory role in various subject matters, such as the Advisory Board that makes recommendations on preventive detention issues and the Presidential Council for Minority Rights which considers and reports on "matters affecting persons of any racial or religious community in Singapore as may be referred to the Council by Parliament or the Government" and reviews legislative bills and subsidiary legislation for any "differentiating measure" (Articles 76 & 77, Singapore Constitution).

Administration of Justice Grid

No. of judges in country	75 Subordinate Court judges (as listed in Singapore govt directory – 1 April 2010); 18 Supreme Court Judges (http://app.supremecourt.gov.sg/default.aspx?pgID=40)
No. of lawyers in country	3800
Annual bar intake? Costs / fees	200 Ordinary members: If more than 12 years have elapsed from the date of admission as an advocate and solicitor or appointment as a legal officer, whichever is the earlier date: \$374.50 If not less than 7 years but not more than 12 years have elapsed from the date of admission as an advocate and solicitor or appointment as a legal officer, whichever is the earlier date: \$288.90 If less than 7 years have elapsed from the date of admission as an advocate and solicitor or appointment as a legal officer; whichever is the earlier date: 128.40 (http://www.sal.org.sg/content/LL_mbrshp_OM.aspx)
Standard length of time for training/qualification	Preparatory Course and Singapore Bar Examinations - 18 teaching weeks, 2 examination preparation weeks and 2 examination weeks; Training period – 6 months (http://www.sile.org.sg/adm_prep_course_part_b.html ; http://www.sile.org.sg/adm_process_practice_training_period.html)
Availability of post-qualification training	Yes. Continuing Professional Development.
Average length of time from arrest to trial (criminal)	
Average length of trials (from opening to judgment)	N/A
Accessibility of individual rulings to public	Yes. Full court decisions available on Lawnet. Recent judgments are available to the general public by link on the public websites of the Supreme Court and the Subordinate Court as well as Singapore Law Watch's public website.
Appeals structure	See below for general court structure as well as court processes.
Cases before national human rights commission or other independent commissions (if applicable)	N/A
Complaints filed against police, judiciary or other state institutions (per year)? How many resolved?	N/A. The CPIB annual report provides figures related to corruption (see main report).

Court Structure

A. Supreme Court

(<http://app.supremecourt.gov.sg/default.aspx?pgID=43>)

Court of Appeal

High Court

SUBORDINATE COURTS (from 2009 Subordinate Courts Annual Report, p14)

Civil Justice Division

Civil Justice Division

- Civil Trial Courts
- Bailiffs Section
- Primary Dispute
- Resolution Centre
- Small Claims
- Tribunals
- Civil Registry

Family & Juvenile Justice Division

Family and Juvenile Justice Division

- Family Trial Courts
- Juvenile Court
- Counselling & Psychological Services
- Family Resolutions Chambers
- Maintenance Mediation Chambers
- Family Registry

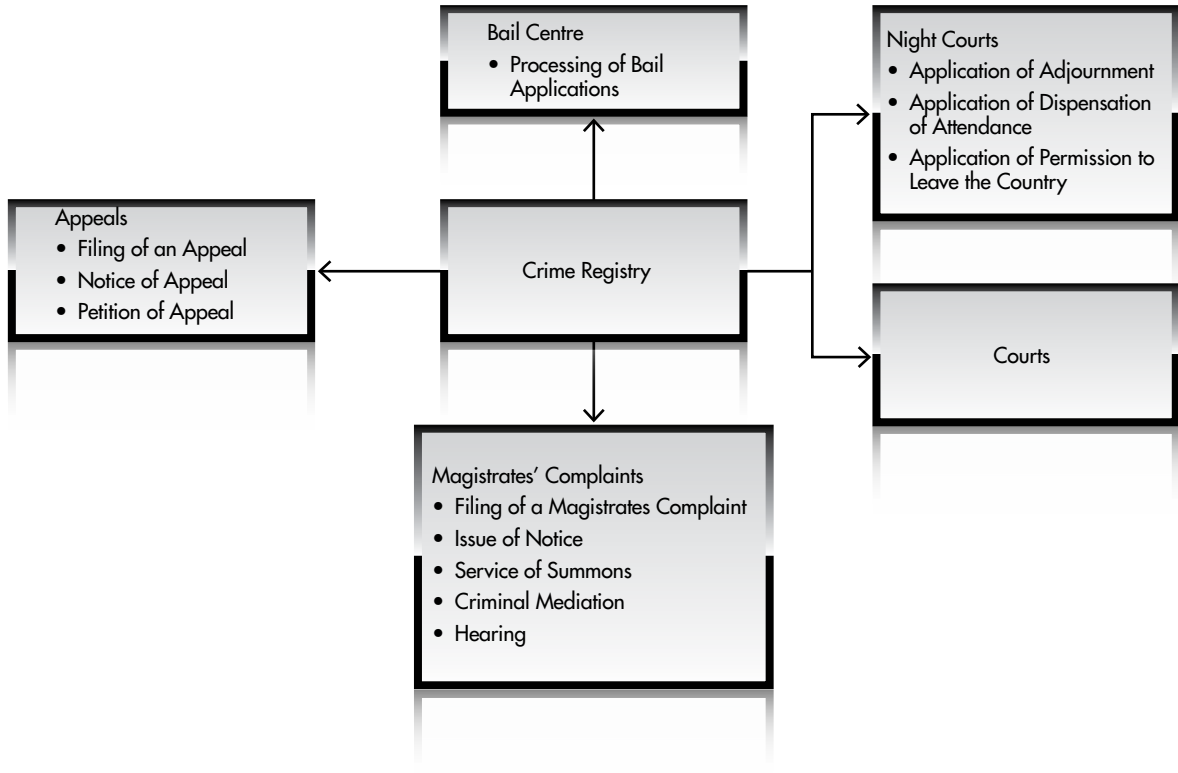
Criminal Justice Division

Criminal Justice Division

- Criminal Trial Courts
- Specialist Courts
 - Bail Court
 - Centralised Pre-Trial Conference Court
 - Community Court
 - Coroner's Court
 - Criminal Mentions Courts-NeighbourhoodCourt
 - Night Courts
 - Traffic Court
- Crime Registry

Criminal Justice Process Chart

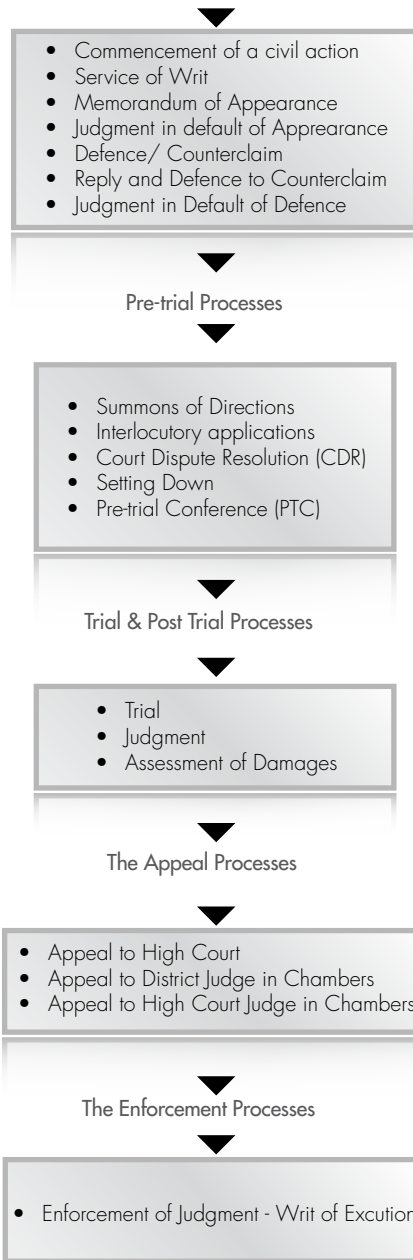
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Civil Justice Workflow Chart

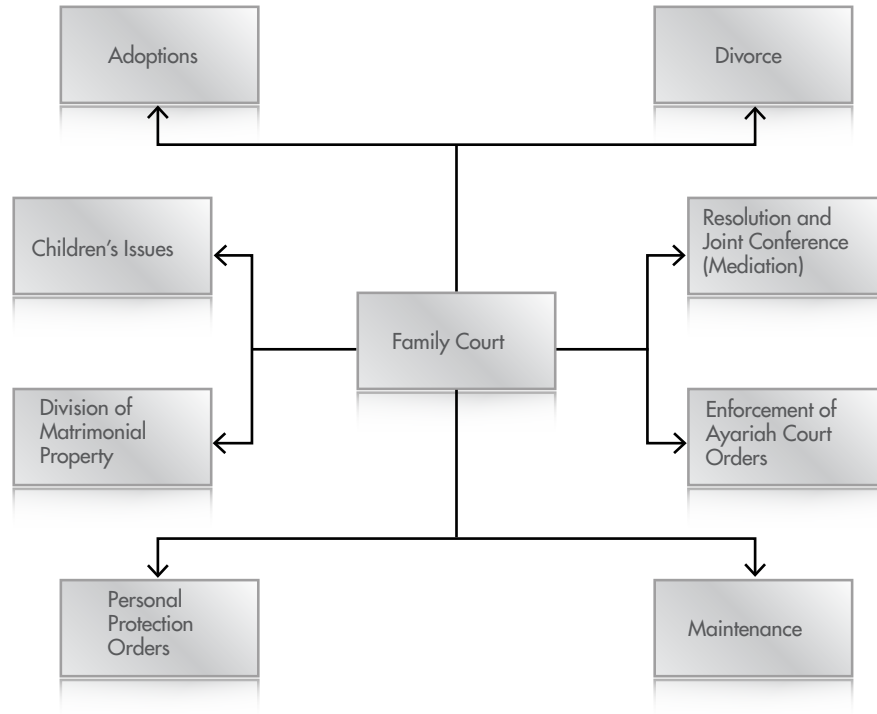
(<http://app.subcourts.gov.sg/civil/index.aspx>)

Commencement and Default Judgment Processes



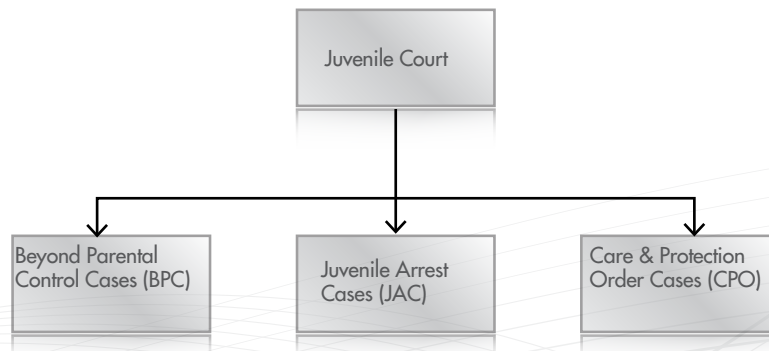
Civil Justice Workflow Chart

(<http://app.subcourts.gov.sg/civil/index.aspx>)



Juvenile Justice Process Flowchart

(<http://app.subcourts.gov.sg/juvenile/index.aspx>)



Overview

This section describes how the Rule of Law is presented and discussed within Singapore's public arena, focusing in particular on recent developments. State officials continue to subscribe to a relatively "thin" version of the Rule of Law that emphasizes adherence to formal procedure and equal implementation of the law as opposed to a "thick" version of the Rule of Law that may include human rights standards or other substantive principles. In 2009, the Chief Justice emphasised that the "Rule of Law simply means supremacy of the law, without reference to whether the law is just or unjust. The law must apply to all and be above all."ⁱⁱ In contrast, opposition members and local organisations in Singapore advocate a "thicker" version of the Rule of Law which includes human rights standards and other substantive ideals.

The "thin" Rule of Law version, as subscribed to by state officials, is nevertheless associated with certain substantive ideas, such as good governance, honest administration, fair if firm treatment of the individual, and a responsive approach to changing societal needs. The Rule of Law requires state officials to be bound by the law and strictly observe the law. As further explained below, the Singapore authorities take corrupt practices seriously and the public service is required to comply with high standards of conduct. Priority is given to ensuring society's uniform and consistent adherence to the law's letter, and this explains the Government's deterrent approach towards crime. During parliamentary debates on amendments to the Corruption, Drug Trafficking and other Serious Crimes (Confiscation of Benefits) Act, the Government highlighted that "money laundering can undermine the Rule of Law and legal systems, erode financial markets' integrity and damage countries' reputation."ⁱⁱⁱ

The executive is afforded a significant amount of discretion under a number of laws in Singapore. This enables the executive to take quick responses that are tailored to individual cases. Anticipating criticism on the discretion afforded to the executive under the Public Order Act (POA) during its 2009 parliamentary debate, the Government emphasised that these discretionary powers do "not mean rule by man as opposed to rule in accordance with the law. But it means striking the balance in such a way that quick, effective, efficient action is possible to

take our country forward." For example, during a 2007 parliamentary debate on amendments to the Employment of Foreign Workers Act, questions and concerns were raised regarding the need for work permit decisions to be subject to administrative principles of decision-making and judicial review.^{iv} In response, the Government justified its decision to exclude certain permit decisions of the Minister and Controller from judicial review on grounds of national security.

Local organisations and MPs have called for greater accountability of executive discretion. For example, during parliamentary debates on permit and licensing schemes established under the Public Order Act and Employment of Foreign Workers Act, MPs emphasised the need for permit and licensing decisions to be subject to judicial review in line with the Rule of Law.^v State officials themselves recognise that the Rule of Law requires executive discretion to be subject to checks and balances. The Chief Justice emphasised how the Rule of Law "implies that all powers of the state have limits."^{vi} This idea of limited power in turn highlights the important role to be played by the judiciary in serving as a check on executive and legislative power. The former Attorney-General Walter Woon noted that "the Rule of Law in Singapore depends on three things: firstly, the independence of the judiciary; secondly, the incorruptibility of the enforcement authorities; and thirdly, the integrity and competence of the Legal Service."^{vii}

The Rule of Law is viewed as an important guarantee of stability in the context of Singapore's multi-racial society. The Government has observed that in "a multi-religious society, the primacy of the secular law is especially vital. If we are to have maximum space to pursue our interests with equal basic protection, we must also observe equal basic liability and obligations. Not everyone likes this or that law. But everyone must abide by the law and respect its authority. Civil disobedience cannot be acceptable. In fact, more than even the political interest groups, the religious individual may lay greater claim to a moral basis to choose to disobey laws which are not in accord with his beliefs. If we allow this, our society will be torn apart."^{viii}

While the Singapore authorities generally promote a “thin” version of the Rule of Law, it has nevertheless recognised a number of substantive principles as falling within the scope of this “thin” version. In 2007 the Government confirmed that it “is absolutely committed to upholding the presumption of innocence, as a core principle in our commitment to the Rule of Law.”^x Singapore courts have repeatedly confirmed that the Constitution’s reference to “law” includes principles of natural justice. The Rule of Law is viewed the responsibility of society. During a 2007 parliamentary debate, when discussing the duty of certain private individuals to report suspicious financial transactions, the Government observed that “everyone has a role in upholding and maintaining the rule of law and the reputation and integrity of Singapore’s financial sector.”

The Singapore Government takes a flexible and responsive approach towards legal change. Laws are frequently revisited and amended to keep up with local and global developments. When the case at hand involves significant legal changes, the Government has undertaken significant public consultations. For example, consultations were undertaken with respect to the 2010 Criminal Procedure Code (CPC) and the 2011 amendments of the Employment Agencies Act. When introducing the CPC in Parliament, the Singapore Minister of Law affirmed the Government’s commitment to the common objective of ensuring a “fair criminal justice system,” recognising this as a “continuing exercise” by which it would “continue to look at best practices, make changes where necessary, and seek to ensure that the system is fair and robust.”^x Consultations were also undertaken in preparing for Singapore’s Universal Periodic Review.^{xi} Such consultations have been welcomed by civil society actors, who have indicated their desire for more “interaction” during these exercises.^{xii}

A. Rule of Law Indicators

1. The Government and its officials and agents are accountable under the law.

- a. Are the powers of the government are defined and limited by a constitution or other fundamental law?

As explained in the Introduction (Snapshot) to this report, the Singapore Constitution sets out the functions of the Executive, Parliament, and the Judiciary. Part IV of the Constitution sets out a list of individual liberties: the liberty of the person (Article 9); the prohibition on slavery and forced labour (Article 10); the protection against retrospective criminal laws and repeated trials (Article 11); equal protection (Article 12); the prohibition of banishment and freedom of movement (Article 13); freedom of speech, assembly and association (Article 14); freedom of religion (Article 15); and rights in respect of education (Article 16). Some of these liberties apply only to Singapore citizens: the prohibition of banishment and freedom of movement (Article 13); freedom of speech, assembly and association (Article 14); freedom of religion (Article 15); and rights in respect of education (Article 16). Other liberties are stated as generally applying to “every person”.

Article 4 states that the Constitution is to be the “supreme law” of Singapore. Any law “inconsistent” with the Constitution is therefore to be considered void to the extent of its inconsistency. Ordinary laws and legal amendments need to be supported by a simple parliamentary majority, but Article 5 (1) of the Constitution requires a constitutional amendment bill to be “supported on the Second and Third Readings by votes of not less than two-thirds of the total number of the elected Members of Parliament”.

In its 1966 report the Wee Chong Jin Constitutional Commission recommended that Part IV’s guarantees of fundamental freedoms be subject to a more stringent amendment procedure.^{xiii} The Commission proposed that any amendment of Part IV be subject to a two-thirds parliamentary vote and a two-thirds national referendum vote.^{xiv} This recommendation was not adopted. Given the

realities of Singapore's political landscape and the ruling party's over-whelming majority in Parliament, it is relatively easy to pass a constitutional amendment by two-thirds parliamentary vote.

- b. Can the fundamental law may be amended or suspended only in accordance with the rules and procedures set forth in the fundamental law?

Part XI expressly authorises Parliament and the Executive to act contrary to certain parts of the Constitution in situations of subversion or emergency. This part of the Constitution was originally designed to counter the communist insurgency that Singapore faced during her early years of independence.^{xv} Article 149 gives Parliament the power to pass legislative acts that may contravene certain constitutional provisions if the act expressly recite that "action has been taken or threatened by any substantial body of persons, whether inside or outside Singapore — (a) to cause, or to cause a substantial number of citizens to fear, organised violence against persons or property; (b) to excite disaffection against the President or the Government; (c) to promote feelings of ill-will and hostility between different races or other classes of the population likely to cause violence; (d) to procure the alteration, otherwise than by lawful means, of anything by law established; or (e) which is prejudicial to the security of Singapore to address certain subversive situations." Laws passed pursuant to Article 149 are considered valid even if they are inconsistent with certain provisions of the Constitution, namely, Article 5, Article 9, Article 11, Article 12, Article 13, or Article 14.^{xvi} Such laws are also valid even if they fall outside the legislative powers of Parliament.^{xvii} In addition, questions on the validity of executive decisions or acts taken pursuant to a law passed under Article 149 are to be determined solely by the same law.^{xviii} These laws are also not to be considered in contravention of Article 93's vesting of "judicial powers" in the Judiciary, regardless of the extent to which they restrict or exclude judicial review.^{xix}

Article 150 addresses situations of "grave emergency" in which "the security or economic life of Singapore is threatened."^{xx} When the President is "satisfied" that such a situation exists, he may issue a Proclamation of Emergency which sets into motion a number of exceptional consequences.^{xxi} If the President's Proclamation is issued

while Parliament was not sitting, the President should summon Parliament as soon as practicable.^{xxii} Until Parliament convenes, the President may promulgate ordinances which have the force of law if he is "satisfied that immediate action is required."^{xxiii} Once Parliament convenes, the Proclamation and any ordinance that was promulgated should be presented to Parliament which may decide to annul it by resolution.^{xxiv} During the emergency period, Parliament may pass laws inconsistent with any part of the Constitution - except for a number of specifically identified provisions (Articles 22E, 22H, 144(2) and 148A) - as long as it "appears to Parliament that the law is required by reason of the emergency."^{xxv} Constitutional provisions which continue to apply generally relate to the President's discretion, religion, citizenship, or language.^{xxvi}

Article 149 and Article 150 in effect authorises the executive to "suspend" constitutional provisions by permitting the executive to take action and decisions contrary to constitutional provisions in certain circumstances. Article 151 puts in place minimum protective standards that are to be observed when the preventive detention of individuals is undertaken under Articles 149 and Articles 150. Article 151 (1) (a) requires the detaining authority to inform any detainee "as soon as may be" of detention grounds and allegations of fact. This obligation is, however, subject to considerations of national security.^{xxvii} The detainee should also be given the opportunity to make representations against the preventive detention order.^{xxviii} Article 151 (3) requires the establishment of an Advisory Board. This Board is to be composed of a chairman, who shall be appointed by the President and who shall be or have been, or be qualified to be, a Judge of the Supreme Court; and two other members, who shall be appointed by the President after consultation with the Chief Justice. The Board is to be "constituted for the purposes of" Article 151; it hears the representations of detainees and makes recommendations on their release or continued detention. Singapore citizens may not be preventively detained for more than 3 months unless the Advisory Board has considered their representations and made recommendations to the President.^{xxix} If the Board has recommended the detainee's release but the Executive disagrees, the detainee should be released unless the President authorizes the detainee's continued detention.^{xxx}

- c. Are government officials and agents, including police and judicial officers, accountable under the law for official misconduct, including abuse of office for private gain, acts that exceed their authority, and violations of fundamental rights?

State officials who have transgressed the law may face criminal or administrative proceedings. In 2009 Singapore ratified the United Nations Convention against Corruption (UNCAC).^{xxxix} According to the 2010 Transparency International's Corruption Perception Index, Singapore was jointly ranked with Denmark and New Zealand as the least corrupt of countries within a list of 178 countries.^{xxxix} The Prevention of Corruption Act (PCA) empowers officers from the Corrupt Practices Investigation Bureau (CPIB) to investigate and arrest individuals involved in corruption. Section 5 of the PCA adopts a broad definition of corruption or "gratification". "Gratification" includes: "(a) money or any gift, loan, fee, reward, commission, valuable security or other property or interest in property of any description, whether movable or immovable; (b) any office, employment or contract; (c) any payment, release, discharge of liquidation of any loan, obligation or other liability whatsoever, whether in whole or in part; (d) any other service, favour, advantage of any description whatsoever, including protection from any penalty or disability incurred or apprehended or from any action or proceedings of a disciplinary or penal nature, whether or not already instituted, and including the exercise or the forbearance from the exercise of any right or any official power or duty; and (e) any offer, undertaking or promise of any gratification within the meaning of paragraphs a, b, c and d."

The PCA takes a serious view of corruption involving government officials. Section 8 states that in cases where "gratification has been paid or given to or received by a person in the employment of the Government or any department thereof or of a public body by or from a person or agent of a person who has or seeks to have any dealing with the Government or any department thereof or any public body", there is to be presumption that such "gratification" was "paid or given and received corruptly as an inducement or reward." In other words, the accused has the burden of proving that the "gratification" was not undertaken "corruptly as an inducement or reward." PCA offences attract significant levels of punishment. For

example, anyone found guilty of soliciting or receiving gratification may be convicted of a fine of up to \$100 000 or to imprisonment for up to five years or both.^{xxxix}

According to its 2009/2010 report, the CPIB received a total of 921 complaints in 2009, out of which 66% were corruption cases.^{xxxix} Individuals made these complaints to the CPIB through mail, fax, the CPIB's 24-hour toll-free line, personal visits to the CPIB, and the CPIB's internet website. Complaints may be made on an anonymous basis, and all complaints are subject to a preliminary examination by the CPIB's Complaints Evaluation Committee that decides whether an investigation should be opened. Out of the 921 complaints received in 2009, a total of 234 cases were registered for investigations. Out of these registered cases, 71% concerned the private sector. 229 of these cases went to court and resulted in 179 convictions, 4 acquittals, and 5 withdrawals of charges. A public perception survey conducted by the CPIB indicates general public confidence in the CPIB's work.^{xxxix} 85% of those surveyed rated corruption control in Singapore as excellent, very good, or good. 90% strongly agreed or agreed that the CPIB is effective in maintaining low corruption levels in Singapore. 87% strongly agreed or agreed that the CPIB has done well in solving corruption offences.

The Government has emphasised the fact that the Singapore Public Service prioritizes maintaining a "track record of clean and effective governance."^{xxxix} During a 2010 parliamentary debate, the Government described the internal procedures put in place by the Civil Service to facilitate the report of wrongful practices by its officers.^{xxxix} Reports on abusive or corrupt practices may be made by Civil Service Officers to their supervisors, the Human Resources department, or the Permanent Secretary or the Head of Civil Service. Matters involving discipline may be reported to the Public Service Commission. To prevent fraudulent practices, all 64 of Singapore's statutory boards are required to establish internal audit committees and undergo internal and external auditing. The Auditor General's Office provides a second check by focusing on selective areas of internal audit in each audit cycle, and receives about 50 cases of possible wrongdoings every year. These auditing practices are revisited on a regular basis. In 2010, a high-profile

fraud by civil servants prompted the Ministry of Finance to launch a review of public sector procurement rules.^{xxxviii} The individuals involved were criminally charged, and the agencies concerned undertook internal investigations. The Government also set up independent Internal Review Panels to identify how the fraud took place and to prevent future similar occurrences. When questioned on this case in Parliament, the Government explained that it has tried to “strike a balance between adding more layers of checks and the resultant reduction in operational efficiency.”^{xxxix}

2. Laws and procedure for arrest, detention and punishment are publicly available, lawful and not arbitrary; and preserve the fundamental rights to physical integrity, liberty and security of persons, and procedural fairness in law.

- a. Are the criminal laws and procedures, including administrative rules that provide for preventative detention or otherwise have penal effect, published and widely accessible in a form that is up to date and available in all official languages?

All laws passed by Parliament are available free-of-charge on the Attorney-General Chamber’s website.^{xl} These are made available in the English language. Currently, copies of subsidiary legislation are not available on this public website. However, the Attorney-General’s Chambers plans to launch, sometime in 2011, a new database that is expected to allow the public free access to subsidiary legislation.^{xli} Important subsidiary legislations are currently made available on the public websites of the respective ministries or government agencies.^{xlii}

- b. Are these laws accessible, understandable, non-retroactive, applied in a consistent and predictable way to everyone equally, including the government authorities, and consistent with the other applicable law?

As mentioned above, Singapore officials emphasise the equal application of laws consistent with the Rule of Law. For certain vulnerable groups, additional steps may be required to ensure substantive access to, and protection of, the law. Migrant workers are a particularly vulnerable group in Singapore. This section deals with access and implementation problems faced by migrant workers who

are unfamiliar with Singapore’s legal system. The Ministry of Manpower has sought to increase awareness among foreign workers by publishing information kits in foreign languages, running a hotline, and requiring compulsory attendance of a safety awareness course for newly arrived foreign domestic workers. Though channels for complaints exist, practical problems stand in the way of their full utilisation. Migrant workers often do not have access to the documentary evidence that is needed to prove their claims against their employers.^{xliii} As noted by local organisations working with migrant workers, employers may withhold employment records from migrant workers. Employers may also unilaterally cancel their workers’ work permit and repatriate them once they learn that they are facing a complaint. There is also a more direct problem of ensuring that employers obey existing laws. As pointed out by local organisations, the Employment of Foreign Manpower Act and the Passports Act prohibit employers from retaining their worker’s identity documents. In practice many employers continue to retain the identity documents of their employees.^{xliv}

With respect to the consistent and predictable application of laws in Singapore, local organisations and opposition members have made critical observations regarding the exercise of discretionary executive powers, particularly in the case of permit schemes governing public processions and assemblies.^{xlv} Public processions and assemblies are currently governed by the 2009 Public Order Act (POA). Section 5 of the POA prohibits the organisation of public assemblies and processions unless the Commissioner is notified and a permit granted. Such public assemblies and processions are broadly defined in the POA. Assembly is defined as “a gathering or meeting (whether or not comprising any lecture, talk, address, debate or discussion) of persons the purpose (or one of the purposes) of which is (a) to demonstrate support for or opposition to the views or actions of any person, group of persons or any government; (b) to publicise a cause or campaign; or (c) to mark or commemorate any event.”^{xlvi} This includes “a demonstration by a person alone for any such purpose referred to in paragraph (a), (b) or (c).” A procession is defined as “a march, parade or other procession (whether or not involving the use of vehicles or other conveyances) (a) comprising 2 or more persons gathered at a place of assembly to move from that place substantially as a body of persons in succession proceeding by a common route

or routes; and (b) the purpose (or one of the purposes) of which is (i) to demonstrate support for or opposition to the views or actions of any person, group of persons or any government; (ii) to publicise a cause or campaign; or (iii) to mark or commemorate any event.^{xlvii} It “includes any assembly held in conjunction with such procession, and a march by a person alone for any such purpose referred to in paragraph (b) (i), (ii) or (iii).”

The POA sets out grounds upon which the Commissioner may decide to refuse granting a permit. Section 7 (2) states that permits may be refused if the Commissioner has “reasonable ground for apprehending that” the said assembly or procession may “(a) occasion public disorder, or damage to public or private property; (b) create a public nuisance; (c) give rise to an obstruction in any public road; (d) place the safety of any person in jeopardy; (e) cause feelings of enmity, hatred, ill-will or hostility between different groups in Singapore; (f) glorify the commission or preparation (whether in the past, in the future or generally) of acts of terrorism or any offence or otherwise have the effect of directly or indirectly encouraging or otherwise inducing members of the public to commit, prepare or instigate acts of terrorism or such an offence; or (g) be held within or enter a prohibited area, or an area to which an order or a notification under section 13 applies.” The Commissioner’s decision may be appealed to the Minister whose decision “shall be final”.^{xlviii} During the POA’s debate in Parliament, an MP questioned if the Minister’s decision is subject to judicial review.^{xlix} The Minister of Law confirmed that the POA “does not preclude judicial review.”

The POA’s conditions upon which permits may be denied are relatively broad, and this may give rise to impressions of uneven implementation. More importantly, the POA’s broad conditions do not provide adequate guidance to those seeking a permit. For example, in 2010 the well-established local migrant worker organisation HOME requested a permit to organise a procession to commemorate the 20th anniversary of the UN International Convention for the Protection of Migrant Workers and Members of their Families.^l Among the activities proposed were the distribution of flyers by 20 volunteers and the driving of a lorry along select routes to highlight the dangers faced by migrant workers transported on the open deck of lorries, which is a common practice in Singapore.

HOME’s permit application was refused. In an open letter appealing the permit’s denial to the Minister, HOME highlighted events organised by other organisations on a larger scale but which had nevertheless been permitted, explaining that it was not clear why their own “modest activity” had been prohibited.

- c. Do these laws authorize administrative/preventative detention without charge or trial during or outside a genuine state of emergency?

As mentioned above, Part IX of the Constitution foresees the possibility of preventive detention when dealing with situations of subversion or grave emergency pursuant to Article 149 and Article 150. Passed pursuant to Article 149, the Internal Security Act (ISA) is subject to the minimal protective measures set out in Article 151. ISA detentions fall under the mandate of the Internal Security Department whose powers are largely set out in the Criminal Procedure Code, the Internal Security Act, and the Maintenance of Religious Harmony Act. In its 2011 Universal Periodic Review report, the Singapore state authorities explained that the ISA is used “to pre-emptively neutralise threats to national security such as racial and religious extremists, espionage and subversion.”^{li} It emphasised that preventive detention of JI members under the ISA “have effectively neutralised the group in Singapore.”^{lii}

According to its public website, the ISD commits itself “working towards greater transparency in the dissemination of information connected to its work.”^{liii} In 2002, it established the ISD Heritage Centre. Educational tours to the centre may be organised.^{liv} ISD officers have met with over 53 000 people to talk about their work. The ISD website publishes the details of certain cases: the communist insurgency from the late 1940s to the 1980s; race riots in 1950; religious extremism aimed at causing communal unrest in the 1980s; terrorist threats, the most recent of which were crack-downs against Jemaah Islamiyah in the 2000s; and espionage cases. Some statistics are also made publicly available. For example, the ISD website reports that there are currently 37 individuals being detained for terrorism-related activities in support of the JI and or the MILF. Information on select individual cases is also provided to the public via press releases. For example, the Government released information on ISA arrests made in the wake of September

11.^{lv} These press releases are generally brief; among details included are the names of detained individuals, the grounds for their arrest, the length of their detention, and their release if applicable. During a 2007 parliamentary session, the Government explained that it is not possible to publicise all ISA detention cases as this may compromise on-going operations or seriously harm national interests.^{lvi} As of 2007, a total of 54 individuals have been detained under the ISA and 39 remain detained since 1999.^{lvii}

The Criminal Law (Temporary Provisions) Act (CLTPA) was enacted in 1955, and was originally intended to counter the threat of communist insurgency.^{lviii} Today, it is primarily used against secret society members, drug traffickers, and individuals involved in organised crime, such as loansharking.^{lix} Article 30 of the CLTPA notes that when the Minister “is satisfied” that an individual “has been associated with activities of a criminal nature”, the Minister may, with the consent of the Public Prosecutor, detain the individual for a period not exceeding twelve months if he is “satisfied” that such detention is “necessary” for “public safety, peace and good order”. The CLTPA needs to be renewed every five years by Parliament, and it last came up for parliamentary renewal in 2010. As an alternative to detention under the CLTPA, the Minister may order an individual to be subject to police supervision for a period not exceeding three years if he is “satisfied” that this is “necessary”.

Every order is to be submitted by the Minister to an advisory committee together with a written statement of the grounds on which the order is based. This committee is to then submit a written report and recommendations to the President who will consider the report and decide on the order’s cancellation, confirmation, or amendment. According to Article 39 of the CLTPA, these advisory committees are appointed by the Minister and compose of at least two people who are “prominent private citizens, who are also respected senior lawyers.” During the 2010 parliamentary debate on the CLTPA’s renewal, the Government described the review procedure applicable to CLTPA detentions.^{lx} As of 2010, six advisory committees have been appointed under the CLTPA. Four of these committees are responsible for considering fresh orders. Another advisory committee, named the Review Committee, considers all detention orders on an annual basis. A different advisory committee, named the Review

Board, considers cases of detention extending beyond ten years. All these committees are composed of different members. Since 1999, 60 to 80 detention orders were issued each year. In 2008, 64 detention orders and six police supervision orders were issued.

In its 2011 Universal Periodic Review report, the Government emphasised that detainees are “not held in secret”, have their detention “reviewed regularly”, are “treated humanely”, and “allowed to have regular family visits.”^{lxi} In addition independent boards composed of “50 Justices of the Peace and community leaders” undertake unannounced visits to detention centres.^{lxii} Local organisations have criticised the ISA’s historical use in cases of “political detentions”.^{lxiii} However, they note that “[s]ince the detentions of the alleged “Marxist conspiracy” in 1987, there have been no known political detentions under the ISA” and “ISA detentions have been in connection with alleged terrorist-related activities and alleged radicals.”^{lxiv} Some local organisations have called for “the amendment of the ISA and the CLTPA, to comply with international norms pertaining to transparency and natural justice in cases of preventive detention.”^{lxv} Others have taken a stronger stand against preventive detention and called for the ISA and CLTPA’s abolishment and replacement.^{lxvi}

- d. Do these laws protect accused persons from arbitrary or extra-legal treatment or punishment, including inhumane treatment, torture, arbitrary arrest, detention without charge or trial and extra-judicial killing by the State? Is the right to habeas corpus limited in any circumstance?

Article 9 (1) of the Singapore Constitution expressly prohibits a person to be “deprived of his life or personal liberty save in accordance with law.” Article 9 (2) of the Constitution states that where “a complaint is made to the High Court or any Judge thereof that a person is being unlawfully detained, the Court shall inquire into the complaint and, unless satisfied that the detention is lawful, shall order him to be produced before the Court and release him.” This power of the High Court is expressly recognised in the Supreme Court of Judicature Act as the power to issue an “order for review of detention”.^{lxvii} It should be noted that this order was formerly known as the writ of habeas corpus.

Article 9 (4) of the Constitution requires that where “a person is arrested and not released, he shall, without unreasonable delay, and in any case within 48 hours (excluding the time of any necessary journey), be produced before a Magistrate, in person or by way of video-conferencing link (or other similar technology) in accordance with law, and shall not be further detained in custody without the Magistrate’s authority.” It should be noted that Article 9 was amended in 2009 to allow an individual to be produced before a Magistrate “by way of video-conferencing link (or any similar technology).” This amendment was proposed by the Government in light of advancements in technology and its potential to save manpower resources. Though Parliament eventually adopted this amendment, concerns raised during its debate because the accused person’s actual physical presence was seen as crucial to ensuring that the Magistrate is able to accurately determine if the accused has been subject to coercion or abuse.^{lxviii}

Once probable cause is shown by the individual, Singapore courts have no discretion to refuse an order for review of detention.^{lxix} The order only applies to detentions that are “unlawful” in nature. This has been interpreted by Singapore courts as excluding previous procedural irregularities. In the preventive detention case of *Lee Mau Seng v Minister for Home Affairs*, the Singapore High Court found that detainee had been wrongfully denied access to counsel.^{lxx} However, it held that this by itself did not make his detention “unlawful”. The individual could seek other remedies for this illegality but the writ of habeas corpus, as the order for review of detention was formerly known as, was not applicable. Since then, the same principle has been applied in an ordinary criminal law case. In *Son Kaewsua & Ors v Superintendent of Changi Prison & Anor*, the Singapore High Court confirmed that “the court is not concerned with past illegality unless such illegality subsists and vitiates the present detention.”^{lxxi} In that case, the individuals concerned had been held in custody on the basis of several remand orders, a number of which were ultra vires.

Defendants charged with drug trafficking offences pursuant to the Misuse of Drugs Act (MDA) and facing the mandatory death penalty (MDP) have argued that the MDP is “arbitrary” in nature as it prevents judges from differentiating between cases which fall within the

category of cases for which the MDP is required by law, and this situation contravenes the right to equal treatment as guaranteed under Article 12 of the Singapore Constitution.^{lxxii} Local organisations have called for change to the MDP. In 2009, the Law Society recommended “a provision to empower the sentencing court to deviate from the mandatory death penalty and impose life imprisonment in any other circumstance deemed appropriate and necessary by the court.”^{lxxiii} The MDP’s constitutionality has been challenged in several local cases, and was most recently considered by the Singapore Court of Appeal in the 2010 case of *Yong Vui Kong v Public Prosecutor*.^{lxxiv} The Court of Appeal held that Singapore’s Constitution did not expressly or implicitly prohibit the MDP. While it acknowledged that the Constitution should as far as possible be interpreted in line with Singapore’s international legal obligations, including customary international law, it affirmed the court’s earlier position that a domestic statute would prevail over CIL in the event of any conflict. It emphasised: “If any change in relation to the MDP (or the death penalty generally) is to be effected, that has to be done by Parliament and not by the courts under the guise of constitutional interpretation.”^{lxxv} In its Universal Periodic Review report, the Singapore Government explained that “Singapore considers capital punishment as a criminal justice issue, rather than a human rights issue, that remains legal under international law.”^{lxxvi} It highlighted that capital punishment applies “only for the most serious crimes”, “sends a strong signal to would-be offenders”, and has a “detering” effect.^{lxxvii}

While Singapore continues to maintain a tough approach towards crimes such as drug trafficking, it has further developed a rehabilitative approach towards less serious offences. In its Universal Periodic Review report, the Singapore state referred to comprehensive rehabilitative programmes established by the Singapore Prison Service, affirming that it “believes strongly in the rehabilitation and reintegration of prisoners.”^{lxxviii} Such a rehabilitative approach has resulted in a reduction in recidivism rates from 44.4% in 2000 to 25.1% in 2008.^{lxxix} More information on the efficacy of certain programmes, such as Reformatory Training Centres (RTC), has been requested by local organisations. Specifically, the Association of Criminal Lawyers in Singapore has highlighted stories of abuse among inmates in RTCs and have suggested that an “in depth study” of RTCs be undertaken to “test the veracity

of this hearsay.¹⁰⁰⁰ The new Criminal Procedure Code introduces a number of new community-based sentences (CBS) as alternatives to traditional forms of punishment. The Association for Criminal Lawyers in Singapore referred to these developments as “excellent” and reflective of “a paradigm shift towards a more enlightened sentencing philosophy.”¹⁰⁰¹ CBS applies to offences with rehabilitative potential, such as regulatory offences, offences involving younger offenders, and offenders with specific and minor mental conditions. The new CPC recognises five types of CBS orders: (a) a mandatory treatment order (MTO); (b) a day reporting order (DRO); (c) a community work order (CWO); (d) a community service order (CSO); and (e) a short detention order (SDO). A court may pass a CBS order that comprises of one or more of these orders.

e. Do these laws provide for the presumption of innocence?

The Constitution does not expressly recognise the presumption of innocence. However, Article 9 (1) guarantees that “[n]o person shall be deprived of his life or personal liberty saves in accordance with law.” The phrase “in accordance with law” has been judicially interpreted to include principles of natural justice. In the case of *Haw Tua Tau v Public Prosecutor*, the Privy Council held that a “fundamental” natural justice rule in the area of criminal law is that one should not be punished for an offence “unless it has been established to the satisfaction of an independent and unbiased tribunal” that the individual had committed it.¹⁰⁰² The Government has confirmed its commitment to the principle of proof beyond reasonable doubt as part of the Rule of Law.¹⁰⁰³

A number of Singapore’s criminal laws reverse the burden of proof. Upon the establishment of certain facts by the prosecutor, the burden of proof then shifts to the accused person. For example, the Misuse of Drugs Act provides that upon establishing that the accused person possesses a certain amount of drugs, it is then for the accused person to show on a balance of probabilities that he was not engaged in drug trafficking.¹⁰⁰⁴ In the 1981 case of *Ong Ah Chuan v PP*, the Privy Council held that such reversals of the burden of proof are not contrary to Article 9 as such “[p]resumptions of this kind are a common feature of modern legislation concerning the possession and use of things that present danger to society like addictive drugs, explosives, armed and ammunition.”¹⁰⁰⁵

f. Do all accused persons have prompt and regular access to legal counsel of their choosing and the right to be represented by such counsel at each significant stage of the proceedings, with the court assigning competent representation for accused persons who cannot afford to pay? Are accused persons informed, if they do not have legal assistance, of these rights?

This section deals with how the individual’s right to counsel, as stated in Article 9 (3) of the Constitution, has been interpreted and implemented in practice. The framework addressing legal representation for indigent persons will be addressed below in section D.4. Article 9 (3) of the Singapore Constitution guarantees an individual’s right to counsel upon his arrest, recognising that “[w]here a person is arrested, he shall be informed as soon as may be of the grounds of his arrest and shall be allowed to consult and be defended by a legal practitioner of his choice.” The text of the Constitution does not state when the accused has access to counsel. Singapore courts have held that the individual’s right to counsel is not “immediate”. Instead, it is to be exercised in “reasonable time” in light of investigative needs. In the 1994 case of *Jasbir Singh v PP* the Singapore High Court held that access to counsel may be denied for two weeks consistent with an accused person’s right to counsel.¹⁰⁰⁶ In the 2006 case of *Leong Siew Chor v Public Prosecutor* the Singapore Court of Appeal held that the denial of counsel for 19 days after arrest was “justifiable in the circumstances” and was a “question of balancing an accused person’s rights against the public interest that crime be effectively investigated.”¹⁰⁰⁷ The court noted the statement concerned had been taken five days after the accused person’s arrest.

The Singapore Government most recently defended this position in Parliament, arguing that it “strikes a balance between the rights of the accused and the public interest in ensuring thorough and objective investigations.”¹⁰⁰⁸ It also cited a recent police study that showed that more than 90% of arrested persons are released within 48 hours to prevent unnecessary remand. Since 2007, the police have implemented an “access to counsel” scheme that grants the accused access to counsel before the remand period ends. The Government has argued that affording immediate access to counsel may result in, at least some cases, the individual being advised not to

cooperate with the police. In deciding when counsel should be afforded, there needs to be consideration of law enforcement interests as well as the “public interest in making sure that the statements taken are taken in a process with integrity and the statements represent the truth.”^{lxvix} Singapore lawyers have consistently argued that there is a need to ensure that accused persons’ have earlier access to counsel. The Law Society has suggested that a literal reading of Article 9 (3) requires access to be granted “as soon as may be” and that while public interest may at times require access to be reasonably denied, this should be an exception rather than the rule.^{xc} It has suggested that when the accused states that he or she wishes to exercise his right to counsel, he or she should be given up to two hours to contact a lawyer during office hours. Investigative authorities should only start interviewing the accused after the accused has consulted with counsel.^{xcii}

The text of Article 9 (3) does not expressly require that the accused be informed that he has a right to counsel. In the 1998 case of *Rajeevan Edakalavan v PP* the Singapore High Court held that the constitutional right to counsel is “a negative right” because the Constitution’s text states that an accused “shall be allowed” access to counsel but does not require the accused to be informed of his right to counsel.^{xciii} The court refused to find a positive obligation to inform the accused of this right, noting that to do so would “be tantamount to judicial legislation.” In proposing that that this right be expressly included into the new CPC, the Law Society has suggested that it is “counterintuitive to have a right to counsel without also clearly stipulating when the accused is to be informed of his right to consult a lawyer, and how he can go about contacting a lawyer.”^{xciii} It has suggested that arresting officers be required to verbally inform the accused of this right or show this information to the accused in writing.^{xciv}

In *Rajeevan* the Singapore High Court held that the constitutional right to counsel involves “the right to a counsel of one’s choice.”^{xcv} This means that the accused has the “constitutional right to select a legal practitioner who he can consult and who can defend him.” This right is, however, not absolute in nature. According to the Singapore High Court in the 1996 case of *Balasundram v PP*, the sole fact that counsel had failed to turn up or was not willing or able to act does not automatically mean

that the accused’s right to counsel has been violated.^{xcvi} To determine whether such a violation has taken place, the court will examine whether there has been a “miscarriage of justice”. The High Court observed that the accused did in fact have access to a lawyer who was “willing and able” to conduct the case though she was not of his choice, he had displayed a “plainly unreasonable” attitude, and the trial judge had also proceeded “very carefully” with the trial. Upon considering all this, the High Court concluded that there had been “no failure of justice” and that the accused’s right to counsel had not been violated.

Singapore courts have also considered the scope of the individual’s right to counsel in the trial context. In the 2008 case of *Tan Chor Jin v PP*, the accused had first elected to be unrepresented but subsequently changed his mind before closing submissions.^{xcvii} The Singapore Court of Appeal noted that the constitutional right to counsel “cannot be said to be untrammelled or enduring and/or unwaivable right.” A denial of counsel would “[p]rima facie” and “almost invariably be considered to be unduly prejudicial to the accused and, quite plainly, unconstitutional.” But much would depend on the facts of the case, and it was “necessary to balance the rights of and prejudice to the accused, on the one hand, and to the other parties involved in the proceedings, on the other.” In deciding whether an accused has “waived” his right to counsel, a nuanced and “holistic approach” was to be adopted in considering “the competing interests (if any) of other concerned parties” and “whether any undue unfairness or prejudice” was caused to the accused. Importantly, the Court of Appeal noted that this presupposes “that the accused has already been given an opportunity to avail himself or his right to counsel.” The Law Society has observed that these principles should equally apply to pre-trial proceedings and that steps should be taken to ensure that the accused understands the consequences of waiving any right to counsel before or during police interrogations.^{xcviii} Specifically, the Law Society proposed that “a standard form be prepared wherein all necessary information on the right to counsel be set out (this form could also serve the purpose of informing arrested persons of their right to counsel) and that arrested persons who wish to waive their right to counsel be made to sign an acknowledgement that they are making an informed decision to do so and have done so of their own accord.”^{xcix}

- g. Do these laws guarantee accused persons the right to be informed of the precise charges against them in a timely manner, adequate time to prepare their defence and communicate with their legal counsel?

Article 9 (3) sets out the rights of an arrested individual to be informed “as soon as may be” of the grounds of his or her arrest. Apart from the grounds of his or her arrest, an accused person should be given access to adequate information that will enable him or her to conduct a defence. The new CPC provides the accused with wider access to evidence that is in the prosecutor’s possession. In Singapore’s Universal Periodic Review report, these changes were presented as intended to “enhance the rights of accused persons by structuring and formalising the pre-trial discovery of the evidence to be used at trial.”^c Specifically, the defence is to have access to statements made by the accused and recorded by law enforcement officers “in relation to the charge of charges which the prosecution intends to proceed with at the trial.”^{ci} This discovery framework applies to all cases in the High Court and the majority of cases in the District Court. On questioned why this right of discovery does not apply to all cases, the Government noted that the Subordinate Courts deal with around 250000 charges a year.^{cii} In Parliament, questions were raised as to why prosecutorial witness statements are not covered by the discovery process. The Government explained that this exclusion was necessary for public policy reasons as witnesses may be unwilling to come forward if they are aware that their statements are supplied to the accused and witnesses may themselves be threatened by the accused.^{ciii}

- h. Do these laws guarantee accused persons the right to be tried without undue delay, tried in their presence, and to defend themselves in person and examine, or have their counsel examine, the witnesses and evidence against them?

The right to a speedy trial is not expressly recognised by the Singapore Constitution. In cases of undue delay resulting in an injustice to the accused, the High Court may exercise its powers of revision and order a retrial. In the case of *Yunani bin Abdul Hamid v PP*, it was more than a decade before the accused was charged, pled guilty, and was convicted.^{civ} The Singapore High Court held that

this lapse of time affected the accused person’s ability to conduct his defence and contributed to pressurizing him to pleading guilty. As a result, the High Court exercised its powers of criminal revision and sent the case back to the lower courts for a retrial. Singapore courts have also dismissed overly delayed prosecutorial appeals. In *PP v Saroop Singh*, the High Court dismissed an appeal by the prosecutor because 17 years had passed since the offence.^{cv} In deciding whether to exercise its discretion, the High Court considered who was responsible for the delay and whether a fair trial was possible.

The CPC sets out the procedure according to which criminal trials are to be conducted and recognises the accused person’s ability to present evidence and question witnesses. Part XII of the CPC sets out the procedure to be followed during trial. Section 230 (e) recognises that upon the prosecutor examining his witnesses, “each of them may in turn be cross-examined by the accused and every co-accused, after which the prosecutor may re-examine them.” Section 230 (j) states that upon considering the prosecution’s case, if “the court is of the view that there is some evidence which is not inherently incredible and which satisfies each and every element of the charge as framed by the prosecutor or as altered or framed by the court, the court must call on the accused to give his defence”. Section 230 (n) recognises that the accused may then decide to plead guilty or give his defence. Section 230 (p) states that the accused may give evidence in his own defence and sets out the relevant sequence of events, including his or her cross-examination by any other co-accused. This is to be followed “by any witness for the defence of the accused shall give evidence and they may in turn be cross-examined first by the other co-accused (if any) and then by the prosecutor after which he may be re-examined.”

- i. Do these laws adequately provide for the right to appeal against conviction and/or sentence to a higher court according to law?

The Constitution does not expressly recognise a convicted person’s right to appeal. The procedure for undertaking such an appeal is set out in applicable laws and the rules of court. In order to understand the appeal system, it should be noted that the judiciary in Singapore comprises of the Supreme Court, which is composed of the High

Court and the Court of Appeal, and the Subordinate Courts. In general, the High Court exercises original jurisdiction in "more serious offences" such as "murder, culpable homicide not amounting to murder, drug trafficking, arms offences, kidnapping, rape and carnal intercourse."^{cv} For cases in which the High Court exercises original jurisdiction, an appeal may be made to the Court of Appeal. If original jurisdiction is exercised by the Subordinate Courts, an appeal may be made to the High Court.

The procedure for criminal appeals is set out in the CPC. According to Section 374 of the CPC, an appeal "may lie on a question of fact or a question of law or on a question of mixed fact and law." A convicted person may make an appeal "against his conviction, the sentence imposed on him or an order of the trial court."^{cvi} However, it does limit the right to appeal if the convicted person pled guilty before the trial court. Section 375 states that "an accused who has pleaded guilty and has been convicted on that plea in accordance with this Code may appeal only against the extent or legality of the sentence." The CPC sets out in detail the procedure for such appeal. For example, Section 377 requires a notice for appeal to be lodged by the appellant within 14 days with the Registrar of the original trial court.

In addition to its appellate powers, the High Court is empowered to exercise powers of revision in criminal matters. Section 23 and Section 26 of the Supreme Court of Judicature Act recognises that the High Court may "exercise powers of revision in respect of criminal proceedings and matters in subordinate courts" and "call for and examine the record of any criminal proceeding before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed and as to the regularity of any proceedings of that subordinate court.". Section 400 of the CPC elaborates on the procedure for such revision. The Singapore High Court has emphasised that the criminal revision process is not intended to act as a "backdoor appeal", and is to be used "sparingly" and instances of "serious injustice".^{cvi}

- j. Do these laws prohibit the use of coerced confessions as a form of evidence and do they guarantee the accused person's right to remain silent?

Section 258 of the CPC renders inadmissible statements which are caused by "any inducement, threat or promise having reference to the charge against the accused, proceeding from a person in authority and sufficient, in the opinion of the court, to give the accused grounds which would appear to him reasonable for supposing that by making the statement he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him." Prior to the new CPC, the inadmissibility test only applied to statements made by the accused to a police officer and not other enforcement personnel. Explanation 2 to Section 258 of the CPC sets out a number of circumstances which do not automatically render a statement inadmissible. For example, the fact that the statement was obtained "under a promise of secrecy, or in consequence of a deception practised on the accused for the purpose of obtaining it" would not in itself render a statement inadmissible. The fact that the accused was intoxicated does not render a statement inadmissible per se. Concerns were raised during parliamentary debates on potential unfairness of these provisions to the accused person.^{cix}

The Singapore Constitution does not expressly state that an accused has the right to silence. Section 22 (2) of the CPC states that a person questioned by the police "shall be bound to state truly what he knows of the facts and circumstances of the case, except that he need not say anything that might expose him to a criminal charge, penalty or forfeiture." The CPC recognises that an adverse inference may be drawn if the accused elects not to give evidence in certain circumstances. Section 291 (3) of the CPC states that when the court calls on an accused to give evidence and the accused "refuses to be sworn or affirmed" or "having been sworn or affirmed, without good cause refuses to answer any question", the court "may draw such inferences from the refusal as appear proper." The CPC also requires the court to explain to the accused the consequences of his or her choosing not to give evidence or answer any question. It notes that this inference "does not compel the accused to give evidence on his own behalf" and that the accused "will not be guilty

of contempt of court” if he chooses not to give evidence. Section 291 (6) states that the power to draw an inference will not apply “if it appears to the court that his physical or mental condition makes it undesirable for him to be called on to give evidence.”

The court’s ability to draw an inference from the accused person’s refusal to give evidence was first introduced into the CPC in 1979. Its constitutionality was challenged in *Haw Tua Tau v Public Prosecutor* on the basis that such an inference is contrary to Article 9 of the Constitution which guarantees that “life” and “personal liberty” can only be taken away “in accordance with law”.^{cx} The accused argued that this inference went against principles of natural justice included in Article 9’s reference to “law”. In response, the Privy Council found that this inference did not create a “compulsion” at law but only provided the accused with a “strong inducement” to give evidence. More recently, in the 2005 case of *Took Leng How v Public Prosecutor* the Singapore Court of Appeal emphasised that such an adverse inference is “only to be drawn in appropriate circumstances” and that it would be a “grave error” if an inference is drawn and used “solely to bolster a weak case”.^{cxii}

- k. Do these laws prohibit persons from being tried or punished again for an offence for which they have already been finally convicted or acquitted?

Article 11 (2) of the Singapore Constitution states that no person who has been acquitted or convicted of an offence may be tried again for the same offence except where the conviction has been quashed and a retrial ordered by a court superior to that by which he was acquitted or convicted. Based on Singapore case law, the bar against double jeopardy only applies when one is faced with “two sets of the same sort of proceedings”. In the 1998 case of *Lim Keng Chia v PP*, the accused was detained in a drug rehabilitation centre pursuant to section 37 (2) of the MDA.^{cxiii} Upon his release, he was charged with drug consumption as an offence under section 8 (b) of the MDA based on the same facts for which he had been sent to the drug rehabilitation centre. The accused argued that his conviction contravened Article 11 (2), but the Singapore High Court distinguished between his

detention proceedings and subsequent trial proceedings which employed different standards of proof. The court also observed that Parliament must have intended the MDA’s detention provisions to “complement” its penal sanctions.

The doctrine of double jeopardy was recently considered by the Singapore High Court in the context of sentencing. In *PP v NF*, the court emphasised that care needs to be taken when considering the relevance of prior criminal records in sentencing as “it would be wrong to penalize someone again for his past misdeeds, particularly if he has already served his sentence for them. To do so would be tantamount to a violation of the constitutional safeguard eschewing double jeopardy.”^{cxii} Sentences should not be “mechanically” enhanced simply because the accused has a criminal record. However, this record could be relevant for other sentencing purposes such as drawing “inferences about the accused’s character, attitude and likelihood of rehabilitation.”

- l. Do these laws provide for the right to seek a timely and effective remedy before a competent court for violations of fundamental rights?

With respect to criminal proceedings, the violation of an individual’s rights may result from the abuse of a constitutional power or a statute-based power. An example of the former is the Attorney-General’s exercise of prosecutorial powers. This question was raised in the 1998 case of *Law Society of Singapore v Tan Guat Neo Phyllis*.^{cxiv} There, the Court of Appeal drew a strict distinction between the court’s constitutional powers and the Attorney-General’s constitutional powers. Article 35 (8) of the Singapore Constitution provides that the Attorney-General “shall have power, exercisable at his discretion, to institute, conduct or discontinue any proceedings for any offence.” Given this, it was held that courts do not have the power to intervene, over-ride, or prevent the Attorney-General’s exercise of powers. However, the Court of Appeal emphasised that the Attorney-General’s discretionary power is not absolute in nature and is subject to judicial review. In exercising judicial review, a court may declare a prosecution to be unconstitutional or an infringement of constitutional rights.

The exercise of statute-based discretionary powers is generally subject to judicial review by the Supreme Court. Public law remedies may be sought and prerogative writs referred to in the Supreme Court of Judicature Act applied for (e.g. a mandatory order, a prohibiting order, a quashing order, or an order for review of detention).^{cxv} The application procedure is set out in Order 53 of the SCJA Rules of Court. Private law remedies of damages, injunctions, and declarations may also be pursued. These are to be sought via originating summons as set out in Order 28 of the SCJA Rules of Court. In undertaking judicial review, courts scrutinize the exercise of discretionary powers to ensure their compliance with administrative law principles. In the 2006 case of *Chee Siok Chin and others v Minister for Home Affairs and another*, the Singapore High Court considered the applicants' complaint that the police had wrongfully exercised its discretionary powers of arrest.^{cxvi} The High Court affirmed that police actions are subject to judicial review, and that it would "intervene in a decision and/or the implementation of a decision on the basis that it is *ultra vires* the statute and/or where there is illegality, irrationality or procedural impropriety in the manner in which a decision is made or implemented." However, the court's review is "limited to the decision-making process and does not extend to a review of the merits." A decision may be quashed if "it is so outrageously defiant of logic and propriety that it can be plainly seen that no reasonable person would or could come to that decision."

Alternatively an individual may commence a private action under the Government Proceedings Act. Section 5 states that "the Government shall be liable for any wrongful act done or any neglect or default committed by any public officer in the same manner and to the same extent as that in which a principal, being a private person, is liable for any wrongful act done, or any neglect or default committed by his agent." It goes on to note that "any public officer acting or purporting in good faith to be acting in pursuance of a duty imposed by law shall be deemed to be the agent of and to be acting under the instructions of the Government." The same Act sets certain limits on the Government's liability. Section 6 (4) notes that no proceedings should lie "unless that officer was at the material time employed by the Government and paid in respect of his duties as an officer of the Government wholly out of the revenues of the Government, or any

fund certified by the Minister responsible for finance for the purposes of this subsection or was at the material time holding an office in respect of which the Minister responsible for finance certifies that the holder thereof would normally be so paid."

3. The process by which the laws are enacted and enforced is accessible, fair, efficient, and equally applied.

- a. Are legislative proceedings held with timely notice and are open to the public?

The dates and times of upcoming parliamentary sessions are announced by the Singapore Parliament on its public website.^{cxvii} These are open to the public, including foreigners. The website also lists the agenda for the day before the parliamentary sitting. Bills introduced in parliament and Special Select Committee Reports are also made available on the website.

After a bill is read for the second time, Parliament may decide to send the bill to a Select Committee that is composed of selected MPs. The Select Committee may invite the public to make representations on the bill. Additionally the Government has conducted public consultations prior to the bill's debate in Parliament. With respect to the new CPC, the Government formed a working group composed of representatives from several agencies, the Singapore Law Society, the Association of Criminal Lawyers in Singapore and universities. The Working Group examined proposals received as a result of public consultations and made recommendations to the Ministry of Law. The Ministry then took these recommendations into account before the bill was debated in parliament in 2010. It should be noted that a number of individuals and local organisations have called for wider use of the Select Committee procedure.^{cxviii}

- b. Are official drafts of laws and transcripts or minutes of legislative proceedings made available to the public on a timely basis?

The Singapore Parliament makes available an "Official Report" of a particular Parliament Sitting on its public website 10 days after the sitting. All transcripts may be accessed directly through Hansard. The website also

makes available copies of bills introduced into parliament on a prompt basis. Special Committee Reports from 19 January 2004 onwards are also made available on the same official website. Public consultations have been conducted for certain bills which deal with important social or legal issues. During such consultations, draft bills are provided and feedback requested from the public.

- c. Are the thresholds for legal standing before courts clearly specified, not discriminatory and not unduly restrictive?

On the issue of standing in seeking remedies for violations of constitutional rights, the Singapore Court of Appeal in *Chan Hiang Leng Colin and others v Minister for Information and the Arts* articulated a broad standing rule for individuals seeking remedies from the court with respect to constitutional violations. Specifically, the court held that an applicant only needs to show "sufficient interest."^{cxix}

- d. Are judicial hearings and decisions public and made readily available to affected parties?

As noted by the Subordinate Courts Act and the Supreme Court of Judicature Act, judicial hearings and decisions are to be open and generally accessible by the public. The court may make exceptions for "the interests of justice, public security or propriety, or for other sufficient reason [s]."^{cx} Lists of hearings are published on the courts' official websites.^{cxii}

- e. All persons are equal before the law and are entitled without any discrimination to the equal protection of the law?

Article 12 of Singapore's Constitution states that "all persons are equal before the law and entitled to the equal protection of the law." Article 12 (2), which only applies to citizens, explicitly prohibits any discrimination on the basis of religion, race, descent, or place of birth unless this is provided for by the constitution itself. The Constitution also recognises the interests of racial and religious groups and the special position of Malays in light of their indigenous status.^{cxiii} Article 12 (3) notes that Article 12 does not invalidate or prohibit "any provision regulating personal law" or "any provision or practice restricting office or employment connected with the affairs of any religion,

or of an institution managed by a group professing any religion, to persons professing that religion." Article 153 of the Constitution requires that Parliament "shall by law make provision for regulating Muslim religious affairs and for constituting a Council to advise the President in matters relating to the Muslim religion." Parliament has enacted the Administration of Muslim Law Act (AMLA) and establishes the Islamic Religious Council of Singapore (MUIS), the Registry of Muslim Marriages, and the Syariah Court. As explained in Singapore's Universal Periodic Review, while AMLA governs Muslim marriages and the Women's Charter governs other civil marriages, "Muslim women are not denied the protection of the Women's Charter, for Syariah Court orders are enforced by the Family Court."^{cxiiii} When Singapore became a party to CEDAW, it attached certain reservations to the convention explaining that these were necessary to respect "the freedom of minorities in the practice of their personal and religious laws."^{cxv}

Low-skilled migrant workers in Singapore are particularly vulnerable to discriminatory and abusive treatment. The number of migrant workers in Singapore numbers 1.05 million as of December 2009.^{cxvi} In its Universal Periodic Review report, the authorities explained that Singapore's small size has required it to "carefully manage the inflow and stay of low-skilled and unskilled foreign workers."^{cxvii} Singapore's migrant worker laws and policies have been criticised by international and local organisations, but these same organisations have also recognised that the Singapore Government takes the criminal abuse of workers seriously and has taken steps of late to increase migrant worker protection.^{cxviii} For example, in 2011, the Employment Agencies Act was amended to increase governmental regulation of employment agencies. Penalties imposed on the running of illegal employment agencies have been significantly increased. Local organisations have called for further steps to be taken, such as the enactment of specific minimum wage and a weekly day off for domestic workers.^{cxix}

- f. Do persons have equal and effective access to judicial institutions without being subjected to unreasonable fees or arbitrary administrative obstacles?

In the Chief Justice's 2010 keynote address on the Subordinate Courts' 2010 Workplan, he noted that

accused persons represent themselves in about one-third of criminal cases. In addition more than 90% of the parties in maintenance and family violence cases represent themselves.^{cxxx} The Chief Justice has pledged that the courts remain committed to being “litigant-friendly so that parties who cannot afford the services of lawyers to comfort and protect them will not feel lost having to appear in court.”^{cxxx} In line with this, the Subordinate Courts has established the HELP Centre (“Helping to Empower Litigants-in-Person”) which provides resources and assistance to litigants-in-person on court procedures and practices. This does not extend to the giving of legal advice.

Hearing fees are set out in the SCJA Rules of Court (Rule 90A) and subject-specific legislation such as the new CPC. In 2010, there was a significant fee increase - from \$5 to \$50 – in the fees that an individual has to pay when appealing his or her case. A number of local lawyers noted this fee increase with concern.^{cxxxi} Fees regarding family matters are set out in the second schedule of the Women’s Charter. For example, a writ for divorce costs \$42, a statement of claim costs \$7, a statement of particulars costs \$7, and entering any judgment or order costs \$35. The Registrar has the power to vary these fees or direct that they be borne by specific parties. For example, in addressing the \$5 - \$50 fee increase, the Subordinate Courts confirmed that: “There will be no change to the current practice of waiving the fee for accused persons who are unrepresented and serving sentence at the time the fee is payable. We will also continue to waive the fees for pro bono cases.”^{cxxxii} In general, court fees continue to remain reasonably accessible.^{cxxxiii}

- g. Are the laws effectively, fairly and equally enforced? Are persons seeking access to justice provided proper assistance?

The Singapore Judiciary is internationally praised for its efficient processing of cases. In 2010, the World Bank’s Doing Business Report ranked Singapore the 3rd most efficient judicial system in Asia with respect to contract enforcement. For the year 2009 – 2010, the World Economic Forum Global Competitiveness Report ranked Singapore as the first of the 133 countries assessed for having an efficient legal framework in settling disputes. The Judiciary has continued to stress the need to maintain this efficiency while adopting a more people-centred

approach which ensures accessible justice for ordinary persons. In the Subordinate Courts’ 2009 Annual Report, the Chief District Judge of the Subordinate Courts stated that there is a move from a “court-centric culture”, which enabled “effective case management that cleared our backlog of cases”, to a “service-centric one”, which aims “to serve our court users better” and improve “service standards, physical infrastructure and processes with the court users’ needs in mind.”¹³⁴ Recognising the economic downturn’s impact on ordinary individuals, the Chief Justice in 2009 stated that “it is the duty of the courts not to unfairly or unnecessarily increase their legal burdens, as far as we can, within the limits and limitations of the law.”^{cxxxv} He went on to note that justice as “one of the ultimate human goods” but that “it means nothing if there is no practical access to it.”^{cxxxvi}

The Subordinate Courts have established a number of initiatives aimed at meeting the needs of ordinary litigants in a practical and effective way. The Small Claims Tribunals deal with claims below \$10000 or up to \$20000 with the consent of both parties.^{cxxxvii} These tribunals hear a variety of civil disputes commonly faced by the ordinary person, such as contractual disputes over the sale of goods. Parties are not represented and procedure aims to be both informal and accessible. The Subordinate Courts has published a “Small Claims Tribunal DIY kit” on its public website.^{cxxxviii} In 2006 the Community Court was founded within the Subordinates Court. It applies a practical, community-based, and rehabilitative approach as opposed to a punitive approach. Cases dealt with include those involving offenders aged 16 -18 years, cases of attempted suicide, family violence, and race relations. A Neighbourhood Court has also been established to work alongside the Community Mediation Centre (CMC). The latter provides mediation services and deals with social, community or family disputes that do not involve a seizable offence. As of 2010, three CMCs have been established across Singapore. These are supported by 139 volunteer mediators who have conducted 750 mediations with a settlement rate of 70% in the year of 2009-2010.

- h. Do the laws provide for adequate, effective and prompt reparation to victims of crime or human rights violations for harm suffered? Do these victims have access to relevant information concerning violations and reparation mechanism?

The new CPC requires courts to consider directing a convicted individual to compensate victims. This power to order victim compensation existed prior to the new CPC, but it was underutilised.^{xxxix} Section 359 (1) of the new CPC states that courts “shall, after the conviction, consider whether or not to make an order for the payment by that person of a sum to be fixed by the court by way of compensation to the person injured, or his representative.” In addition, the CPC provides that such compensation “shall not affect any right to a civil remedy for the recovery of any property or for the recovery of damages beyond the amount of compensation paid under the order.” Any claim made for civil damages for the same injury “shall be deemed to have been satisfied to the extent of the amount paid to him under an order for compensation.” Section 228 (2) of the CPC states that when addressing the court on sentence, the prosecutor may refer to any victim impact statement. Section 228 (7) defines a victim impact statement as “any statement relating to any harm suffered by any person as a direct result of an offence, which includes physical bodily harm or psychological or psychiatric harm.” Upon being queried in Parliament, the Government clarified that the level of victim compensation is to be based on such victim impact statements.

Apart from direct victims of crime, there are those indirectly victimised by crime, such as the dependant families of a convicted offender. The Subordinate Court has put in place an early-referral scheme by which it works together with the Ministry of Community Development, Youth and Sports and the Family Resource Centre of the Singapore Prisons Service to identify needy families and refer them to welfare agencies.^{cd} These programs aim to ensure that dependants and families are able to get access to support as soon as possible.

- i. Do the laws provide for and do prosecutors, judges and judicial officers take measures to minimize the inconvenience to witnesses and victims (and their representatives), protect against unlawful interference with their privacy as appropriate and ensure their safety from intimidation and retaliation, as well as that of their families and witnesses, before, during and after judicial, administrative, or other proceedings that affect their interests?

To minimize trauma and inconvenience to vulnerable witnesses and victims, courts may require evidence to be taken through video or television links if certain conditions are fulfilled, such as if the witness is below 16 years of age or if the court is satisfied that it is in the public interest to do so.^{cdi} The CPC also allows courts to pass a number of orders to protect witnesses, such as by ordering the witness be accompanied or by ordering certain persons be kept away while the witness is giving evidence.^{cdii} The Children and Young Persons Act places certain restrictions on the type of information that may be published regarding court proceedings involving children and young persons. For example, section 35 (1) (a) places a general prohibition on the publication or broadcast of information related to court proceedings that may lead to the identification of children and young persons involved in the proceedings.^{cdiii}

The Subordinate Courts works with the Singapore Children’s Society to administer a vulnerable witness programme for young witnesses and victims involved in court proceedings.^{cdiv} This programme benefits witnesses below the age of 16 who are victims to a crime or witnesses to a crime and who are required to give evidence in court. Those who are over 16 years of age but have a mental age of 16 may also benefit from this programme. The SCS assigns a Volunteer Support Officer to the said vulnerable witness. The VSO will take steps such as meeting with the witness and his or her family before the trial, briefing them on the trial procedure, assisting with stress management, and arranging for a familiarisation visit to the court before the trial itself. The VSO will accompany the child to court and will provide follow-up support after the trial proceedings.

4. Justice is administered by competent, impartial and independent judiciary and justice institutions.

- a. Are prosecutors, judges and judicial officers appointed, re-appointed, promoted, assigned, disciplined and dismissed in a manner that fosters both independence and accountability?

Article 95 of the Singapore Constitution charges the President with appointing the Chief Justice, Judges of Appeal, and Judges of the High Court. This is done in concurrence with the Prime Minister's advice. In turn, the Prime Minister confers with the Chief Justice before advising the President on the appointment of the Judges of Appeal and Judges of the High Court. Article 94 (3) also provides for the appointment of Judicial Commissioners who have the powers of a Judge of the Supreme Court and are appointed for such period or periods as the President deems fit. The decisions of Judicial Commissioners carry "the same validity and effect" as a Supreme Court Judge's decision. Section 9 and 10 of the Subordinate Courts Act provides for the appointment of judges at the Subordinate Courts level. The President appoints District Judges and Magistrates on the advice of the Chief Justice.

Article 98 of the Constitution states that Supreme Court Judges are guaranteed tenure till the age of 65, but they may remain in office up to 6 months thereafter if the President approves. Article 98 (6) requires Parliament to by law provide for the remuneration of Supreme Court Judge which "shall be charged on the Consolidated Fund". While in office, their remuneration cannot be reduced. The Singapore Constitution sets out the procedure for the discipline and dismissal of Supreme Court Judges. Article 98 (3) states that where the Prime Minister or the Chief Justice after "consulting" the Prime Minister informs the President that a Supreme Court Judge should no longer hold office on the basis of inappropriate conduct or incapacity from "infirmity of body or mind or any other cause", the President must appoint a Tribunal and refer the matter to it, and can act on the Tribunal's advice to remove the said Judge. According to Article 98 (4), this Tribunal is to be composed of at least five members who are current or former Supreme Court Judges. However, if the President believes that it is "expedient" to do so, he or she may decide to appoint to the tribunal members who hold or have held the equivalent position anywhere in the Commonwealth.

The Legal Service Commission is responsible for the appointment, promotion, transfer, discipline and dismissal of Legal Service Officers.^{cdv} The Commission comprises of the Chief Justice "as President", the Attorney-General, the Chairman of the Public Service Commission, and "at least 3 but not more than 6 other members"^{cdvi}. The last category of members are to comprise of "(a) at least one but not more than 2 persons nominated by the Chief Justice; (b) at least one but not more than 2 persons nominated by the Chairman of the Public Service Commission; and (c) at least one but not more than 2 persons nominated by the Prime Minister."^{cdvii}

The judiciary of the Subordinate Courts is composed of District Judges and Magistrates who concurrently hold office as Registrars, Deputy Registrars, Coroners and Referees of Small Claims Tribunals. They are appointed by the Chief Justice to their concurrent positions as Registrars and Deputy Registrars. In other words, judges of the Subordinate Courts both members of the Judicial Branch and of the Singapore Legal Service. This system has been justified by the Government as a necessary and beneficial feature.^{cdviii} The holding of concurrent positions facilitates the rotation of legal officers to different branches of the legal service and enables them to gain experience in different areas of work. Opposition members in Parliament have argued that this possibility of rotation undermines judicial independence.^{cdix}

The Chief District Judge, who in turn is answerable to the Chief Justice, oversees the management of judicial officers in the Subordinate Courts. Standards of conduct are set out in the Subordinate Court Act. Section 67 (1) states that if a Subordinate Court Officer is accused of "extortion" or "misconduct", the Chief District Judge may appoint a District Judge to look into the case in a "summary manner." According to Section 67 (3), the appointed District Judge may issue an Order for the return of the money "extorted", payment of the money required, or impose a fine on the offending Subordinate Court officer capped at \$100 for each charge. If the appointed District Judge holds that the accused officer "has wilfully and corruptly exacted or accepted any fee or reward", that officer will be ordered to repay the money and can no longer serve as Subordinate Court officer.^d The officer concerned may appeal to the Chief

Justice, and this is to be his or her final avenue of redress.^{cl} Generally, the salaries of Legal Service Officers are comparable to that of their peers in the private sector.^{clii}

- b. Do prosecutors, judges and judicial officers receive adequate training, resources, and compensation commensurate with their institutional responsibilities? What percentage of the State's budget is allocated for the judiciary and other principal justice institutions, such as the courts?

The Government Administration Sector is composed of the Ministry of Finance, the Ministry of Law, the Prime Minister's Office, and the Organs of State. Funding for Organs of State, which includes the Judicature and the Attorney-General's Chambers, has been fairly consistent over the years. This funding has stood at 0.1% of GDP from 2001 – 2010.^{cliii}

The Annual Reports of the Subordinate Courts and the Attorney-General's Chambers reflect a commitment to the training and upgrading of legal knowledge, technological developments, and people skills. Within the Subordinate Courts, the Strategic Planning and Training Division is responsible for developing existing judicial education programmes and the training of personnel.^{cliv} In 2009, a Service Relations Unit was established within the Subordinate Courts to build "a culture of service excellence".^{clv} Among others, the new unit is to "set standards concerning service" and "supervise service-related activities". The Centre for Research and Statistic (CReST) within the Subordinate Courts conducts community and internal users' surveys with the aim of enhancing court services and standards.^{clvi} Topic-specific reports and statistics are published on the Subordinate Courts' public website.

As for the Attorney-General's Chambers, it has an active policy of promoting training and continuing education. In 2009, the Human Resource Development Unit of the Attorney General's Chambers "processed 500 training applications for local courses", "managed 160 travel arrangements", and "organised 40 in-house programmes for AGC officers".^{clvii} The Attorney-General's Chambers also conducts training for public officers. For example, the Attorney-General's Chambers (Civil Division)

organizes a training session on "The Legal Liability of the Government" which explains the different bases on which the Government may be sued by ordinary members of the public.^{clviii} The Attorney-General's Chambers co-organizes with the Civil Service College and the Institute of Public Administration and Management the Public Officers' Law Seminar which covers, among others, the legal basis for government, the contrast between public law and private law, and judicial review.^{clix} A basic international law course is also offered.^{clx} Members of the Judiciary and Attorney-General's Chambers regularly attend regional and international conferences.

- c. Are judicial proceedings conducted in an impartial manner and free of improper influence by public officials or private corporations?

The Singapore Subordinate Courts conducted public perception surveys in 1997, 1998, 1999, 2001, and 2006.^{clxi} These surveys are conducted by independent research bodies. The 2006 survey showed that 95% of respondents were of the opinion that "there was trust and confidence in the fair administration of justice in Singapore." 96% of respondents "agreed that the courts administered justice fairly to all regardless of actions by or against individuals, companies or the government." 97% of respondents "agreed that the courts administered justice fairly to all regardless of language, religion, race or social class."

A number of local and international organisations have critically commented on the Singapore Judiciary's independence.^{clxii} These criticisms are generally based on the Judiciary's decisions in cases of defamation, public order, and contempt of court cases involving members of the political opposition and others critical of the Government or the Judiciary. Singapore state officials consider judicial independence as a crucial aspect of the Rule of Law, and this is reflected in how seriously the Attorney-General's Chambers and the Judiciary treat cases involving contempt of court. Article 14(2) (a) of the Constitution expressly authorizes Parliament to provide against contempt of court.^{clxiii} Parliament has passed the Supreme Court of Judicature Act which authorizes the High Court and the Court of Appeal to punish for contempt.^{clxiv}

In 2009 the former Attorney-General emphasised judicial independence as one of the three pillars of the Rule of Law, the others being incorruptibility of the enforcement authorities and the integrity and competence of the legal service.^{ckv}

A recent contempt of court case that has attracted local and international attention is the case of Alan Shadrake, a British author who had written a book alleging that the Singapore Judiciary was biased in its application of the death penalty. In the 2010 case the Singapore High Court revisited the rationale for contempt of court: "It is in the public interest that the public confidence in the courts to administer justice in accordance with law does not falter. On this the cases speak with one voice. It is therefore an axiom of the common law that justice should not only be done, but should manifestly and undoubtedly be seen to be done. It is similarly imperative that the public continues to maintain an active interest and trust in the administration of justice."^{ckvi} The Singapore High Court did recognise the importance of public debate, and emphasised that an individual charged with contempt may claim the defence of fair criticism. In order for the defence to succeed, the criticism should have "some objective basis" that "must be stated together with the criticism".^{ckvii} It should also be made in good faith. Though it does not need to be phrased in "refined language," "abusive, intemperate or outrageous language" should be avoided. There are no limits on the substantive type of criticisms that may be made as long as other conditions of fair criticism are met.

- d. Are lawyers or representatives provided by the court to accused persons, witnesses and victims competent, adequately trained, and of sufficient number?

Earlier this year, Singapore's Chief Justice emphasised that there is a need to encourage younger lawyers to get involved in criminal practice, which does not pay as well as commercial work, and to promote pro bono criminal legal work.^{ckviii} The Legal Aid Bureau, which is part of the Ministry of Law, provides pro bono legal advice on civil matters to individuals who satisfy a financial eligibility test. In general, the Legal Aid and Advice Act provides that only those with a disposable income of not more

than \$10,000 a year and a disposable capital of not more than \$10,000 a year satisfies this means test. The Director is given discretion under the Legal Aid and Advice Act to provide certain deductions if the applicant is facing "hardship". However, it should also be noted that section 8 (3) of the Legal Aid and Advice Act authorizes the Director to "refuse legal aid if it appears to him unreasonable that the applicant should receive it in the particular circumstances of the case." As of 2010, the LAB has about 200 active volunteer lawyers.

The Supreme Court has established a Legal Assistance Scheme for Capital Offences (LASCO).^{ckix} Under this scheme, all defendants who face the death penalty in the High Court are automatically entitled to legal representation by volunteer lawyers on LASCO's Register of Counsel. Defendants who face serious "non-capital" charges pursuant to the Corruption, Drug-trafficking and Other Serious Crimes (Confiscation of Benefits) Act are also entitled to legal representation under this scheme. Defendants do not need to meet a Means or Merits tests. Under the LASCO scheme, defendants are represented by two counsels: one lead and one assisting counsel. Volunteer lawyers who do not have sufficient years in practice or who have not had enough experience in criminal trials may seek permission from the Supreme Court Registrar to appear as Junior Assisting Counsel. Community legal aid clinics have been established as a joint initiative of the Law Society and other government departments.^{ckx} Needy Singaporeans and Permanent Residents are able to obtain free basic legal advice from qualified volunteer lawyers. However, such advice is not intended to substitute substantive legal advice and those seeking advice are required to sign an Indemnity Form indicating that he or she will not seek any damages or claim for the advice given at the legal clinic.

Those facing criminal proceedings but not falling within LASCO may seek legal aid from the Law Society's Criminal Legal Aid Scheme (CLAS) or the Association of Criminal Lawyers in Singapore (ACLS), both of which are not state entities. CLAS maintains a means test while ACLS currently does not have a means test. Criminal defendants not falling within LASCO or who are unable to get onto the CLAS or ACLS scheme will not be assigned lawyers by

the court. These defendants will have to appear in court as litigants or defendants in person.^{clxxi} It is noteworthy that the Chief Justice, in his 2009, noted that the judiciary would be consulting the Law Society on the feasibility of reviving the “dock brief” system where the court may appoint any lawyer who is available and who happens to be in court to represent an indigent.^{clxxii}

- e. Do legal procedures and courthouses ensure adequate access, safety and security for accused persons, prosecutors, judges and judicial officers before, during and after judicial, administrative, or other proceedings? Do they ensure the same for the public and all affected parties during the proceedings?

Safety issues are taken seriously in the Subordinate Courts and the Supreme Court of Singapore. All those entering the court are subject to scans of their persons and their belongings to ensure that no dangerous or prohibited materials are brought into the building. Police officers are stationed in the building to ensure safety and non-violence. For example, in early 2011, a man was arrested at the Subordinate Courts for hitting a glass wall located on the second floor of the building.^{clxxiii} It has been reported that since 2003, the police have enhanced the lock-up’s security by “adding security grilles” and “enhancing the CCTV system.” In 2008 two detainees attempted an escape at the Subordinate Courts. In response, investigations were undertaken and a number of additional security measures were implemented.^{clxxiv}

Endnotes

- i. Note that in Singapore's 2011 UPR, the government highlighted a number of other international instruments that Singapore is party to in addition to the main human rights treaties listed here. These include the 1949 Geneva Conventions, the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, the 2005 UN Convention Against Corruption, the 1980 Hague Convention on Civil Aspects of International Child Abduction, the 1930 ILO Forced Labour Convention, the 1949 ILO The Right to Organise and Collective Bargaining Convention, the 1951 ILO The Equal Remuneration Convention, the 1973 ILO The Minimum Age Convention, the 1999 ILO The Worst Forms of Child Labour Convention, and the 1976 ILO The Tripartite Consultation (International Labour Standards) Convention, paras. 29-30.
- ii. Chief Justice Chan Sek Keong, Keynote Address, New York State Bar Association Seasonal Meeting, October 27, 2009, 7, accessed April 4, 2011, http://app.supremecourt.gov.sg/data/doc/ManagePage/3021/CJ%20Keynote%20Address%20at%20NYSBA%20International%20Seasonal%20Meeting_27%20Oct%202009.pdf. CJ Chan was the first Asian to receive an award from the International Council of Jurists, Nov 26, 2009, accessed April 5, 2011, http://app.mfa.gov.sg/pr/read_content.asp?View,14140.
- iii. Corruption, Drug Trafficking and other Serious Crimes Act, Singapore Parliamentary Debates, vol. 83 at col. 1965 (19 September 2009).
- iv. Employment of Foreign Workers Act, Singapore Parliamentary Debates, vol. 83 at col. 928 (22 May 2007).
- v. Public Order Act, Singapore Parliamentary Debates, vol. 85 at col. 3656 (14 April 2009); Employment of Foreign Workers Act debate, *ibid*.
- vi. Chief Justice Chan Sek Keong, Keynote Address, para 15.
- vii. Singapore Attorney General's Chambers Annual Report 2009, 2, accessed April 4, 2011, http://www.google.com/url?sa=t&source=web&cd=1&ved=OCBQQFjAA&url=http%3A%2F%2Fwww.agc.gov.sg%2Faboutus%2Fdocs%2FAGC_Annual_Report_2009.pdf&ei=dOmbTYXKPIPqrQf8_dGLCg&usq=AFQjCNFqnGrrAkWYhOH1k8YPQCxXfryXGQ
- viii. Multi-racial Society, Singapore., Parliamentary Debates, vol. 84 at col. 1125 (28 August 2008).
- ix. Presumption of Innocence, Singapore., Parliamentary Debates, vol. 84 at col. 2981 (25 August 2008).
- x. Criminal Procedure Code, Singapore., Parliamentary Debates, vol. 87 at col. 407 (18 May 2010).
- xi. National Report, Singapore Universal Periodic Review, <http://www.mfa.gov.sg/upr/process.html>, para. 2
- xii. Imelda Saad, "Singapore's Human Rights Record under UN Scrutiny", Channel News Asia, February 25, 2011. Accessed April 4, 2011. <http://www.channelnewsasia.com/stories/singaporelocalnews/view/1113004/1/.html>
- xiii. For an overview of the Commission's recommendations, see Kevin YL Tan "A Short Legal and Constitutional History of Singapore", in *Essays in Singapore Legal History*, ed. Kevin YL Tan (Marshall Cavendish, 2005), excerpted in Kevin YL Tan and Thio Li-ann, *Constitutional Law in Malaysia & Singapore* (3rd ed., LexisNexis, 2010), 69-79.
- xiv. *Idem* 75.
- xv. *Idem* 180.
- xvi. Constitution of the Republic of Singapore ("Singapore Constitution"), Article 149 (1) (e), accessed April 4, 2011. http://statutes.agc.gov.sg/non_version/cgi-bin/cgi_retrieve.pl?actno=REVED-CONST&doctitle=CONSTITUTION%20OF%20THE%20REPUBLIC%20OF%20SINGAPORE%0A&date=latest&method=part
- xvii. Singapore Constitution, Article 149 (1) (e).
- xviii. Singapore Constitution, Article 149 (3).
- xix. *Ibid*.

- xx. Singapore Constitution, Article 150.
- xxi. Singapore Constitution, Article 150 (1).
- xxii. Singapore Constitution, Article 150 (2).
- xxiii. *Ibid.*
- xxiv. Singapore Constitution, Article 150 (3). Article 150 (3) notes that such annulment is “but without prejudice to anything previously done by virtue thereof or to the power of the President to issue a new Proclamation under clause (1) or promulgate any ordinance under clause (2)”.
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- lxxi. *Son Kaewsua & Ors v Superintendent of Changi Prison & Anor* [1992] 1 SLR 276.
- lxxii. *Ong Ah Chuan v PP* [1981] 1 MLJ 64. The defence argued that the mandatory nature of MDP was arbitrary because "it debarred the court in punishing offenders from discriminating between them according to their individual blameworthiness." This arbitrariness was argued to be not "in accordance with law" as required by Article 9 (1) of the Constitution and "against the principle of equality before the law entrenched in the Constitution by article 12 (1), since it compels the court to condemn to the highest penalty of death an addict who had gratuitously supplied an addict friend with 15 grammes of heroin from his own private store, and to inflict a lesser punishment upon a professional dealer caught selling for distribution to many addicts a total of 14.99 grammes." These arguments were rejected by the Privy Council.
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