Update on the Rule of Law for Human Rights in ASEAN: The Path to Integration
The Republic of Singapore
SINGAPORE

TABLE 1
SNAPSHOT*

<table>
<thead>
<tr>
<th>Formal Name</th>
<th>Republic of Singapore</th>
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<tbody>
<tr>
<td>Capital City</td>
<td>Singapore</td>
</tr>
<tr>
<td>Independence</td>
<td>1965</td>
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<tr>
<td>Historical Background</td>
<td>Discovered by Sir Stamford Raffles in 1819; became a British Crown Colony in 1867; attained internal self-governance in 1959; merged with Malaya to form the Federation of Malaysia in 1963; and left the Federation of Malaysia and achieved independence in 1965.</td>
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<tr>
<td>Size</td>
<td>719.1 km²</td>
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<td>Land Boundaries</td>
<td>None</td>
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<tr>
<td>Population</td>
<td>5,535,000</td>
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<td>Demography</td>
<td>Below 20 years: 845,300; 20-64 years: 2,597,700; 65 years and over: 459,700</td>
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<tr>
<td>Ethnic Groups</td>
<td>Chinese – 74%; Malays – 13.3%; Indians – 9.1%; Others – 3.3%</td>
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<tr>
<td>Languages</td>
<td>English (official language), Mandarin, Malay, Tamil and other dialects</td>
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<tr>
<td>Religion</td>
<td>Buddhism – 33.2%; Taoism – 10.9%; Christianity – 18.3%; Islam – 14.7%; Hinduism – 5.1%; Other religions – 0.7%; No Religion – 17.0%</td>
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<tr>
<td>Adult Literacy</td>
<td>96.7%</td>
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<tr>
<td>Gross Domestic Product</td>
<td>101,989.0 (S$m) (Q4 of 2015)</td>
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<tr>
<td>Government Overview</td>
<td>The People’s Action Party (PAP) has ruled Singapore since 1965</td>
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<tr>
<th>Human Rights Issues</th>
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<td>The top human rights issues are:</td>
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<td>1. Restrictions on freedom of expression, peaceful assembly and association:</td>
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<td>examples include the Media Development Authority’s banning of the film “To</td>
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<td>Singapore, With Love” which features interviews with political exiles on the</td>
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<td>basis that it undermines national security; the Public Order Act 2009 which</td>
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<td>requires a police permit for cause-related assemblies; and the use of criminal</td>
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<td>and civil defamation lawsuits against government critics.</td>
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<td>2. Continued use of preventive detention laws, i.e. the Internal Security Act</td>
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<td>3. Use of the death penalty and caning.</td>
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<td>4. Sexual orientation and gender identity: the Court of Appeal’s ruling that the</td>
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<td>ban on gay sex is constitutional; and censorship by the National Library Board</td>
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<td>of children’s books with alleged LGBT themes.</td>
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<tr>
<td>5. Rights of migrant workers and labour exploitation.</td>
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<tr>
<td>(Source: Human Rights Watch World Report 2015: Singapore)</td>
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<tr>
<th>Membership in International Organizations</th>
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<tbody>
<tr>
<td>Asia-Middle East Dialogue (AMED)</td>
</tr>
<tr>
<td>Asia-Pacific Economic Cooperation (APEC)</td>
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<tr>
<td>The Group of Twenty (G20)</td>
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<tr>
<td>Association of Southeast Asian Nations (ASEAN)</td>
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<tr>
<td>Asia-Europe Meeting (ASEM)</td>
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<tr>
<td>Forum for East Asia-Latin America Cooperation (FEALAC)</td>
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<tr>
<td>Group of 77 and Non-Aligned Movement (G77 and NAM)</td>
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<tr>
<td>The Commonwealth</td>
</tr>
<tr>
<td>United Nations (UN)</td>
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<tr>
<td>United Nations Security Council (UNSC)</td>
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<tr>
<td>World Trade Organisation (WTO)</td>
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<td>(Source: Ministry of Foreign Affairs.)</td>
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I. INTRODUCTION

Singapore's commitment to the rule of law has been variously lauded and decried. In the World Justice Project's 2015 Rule of Law Index, which provides and ranks data on how the rule of law is experienced in a particular country, Singapore was ranked 9th globally and 2nd in the East Asia & Pacific Region (which includes all ten ASEAN states), just behind New Zealand.

Singapore's relatively high ranking seems to substantiate the Singapore government's commitment to the rule of law. In short, the rule of law is a “fundamental principle,” the “foundation on which [Singapore] was built, and provides the framework for its proper functioning.” The rule of law requires that no power be exercised unchecked, and so the courts’ exercise of judicial review is the “cornerstone” of the rule of law: “The Judiciary has the duty to check all unlawful legislative or executive acts, but it also has the responsibility not to interfere with or obstruct the policies of an elected government.” Above all else, the rule of law mandates that “[no] person should be above the law. That should apply in equal measure to the Government and officials as much as it does to everyone else.”

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8 Ibid, 231.
Critics nevertheless question and criticize the government's commitment to the rule of law. Prominent local socio-political blogger, Alex Au, lamented the “narrow conception of the rule of law” adopted in Singapore, a concept so “debased” that the “institutions that are charged with delivering justice fail us.”10 In his speech at the International Bar Association’s Rule of Law Symposium in Tokyo in October 2014, opposition politician Dr. Chee Soon Juan of the Singapore Democratic Party pointed out the “double standards” in the rule of law in Singapore and asserted that the law is used “to undermine justice and thwart democratic freedoms.”11 Both Au and Chee referred to, inter alia, various controversial laws (such as the Internal Security Act, which provides for preventive detention without trial) and the government’s use of defamation lawsuits against opposition politicians and dissenters to make their argument.12

Evidently, there is an ideological clash between the conception of the rule of law to which the government is committed, and the conception that these critics prefer. The contention that Singapore is not governed by the rule of law in a meaningful sense is premised upon substantive conceptions of the rule of law, such as Ronald Dworkin’s “rights conception,” which is “the ideal of rule by an accurate public conception of individual rights,” requiring that “the rules in the book capture and enforce moral rights.”13 This is a conception that Chee clearly prefers; in a separate letter to the Chief Justice, the Law Minister and the Attorney-General, he described Singapore’s rule of law as “a system where laws—unjust laws, laws that run contrary to our Constitution, and laws that contravene the Universal Declaration of Human Rights—are used to suppress the rule of law in Singapore.”14 For him, the rule of law encompasses such rights as “the right [of] citizens to conduct peaceful protests.”15

Such a thick conception of the rule of law is not one to which the Singapore government adheres. Indeed, the Singapore government and judiciary espouse a commitment to a thin conception of the rule of law, with the judiciary demonstrating a positivistic understanding of “law” in its decisions. Singapore's conception of the rule of law is thus more in line with Joseph Raz’s formulation: the rule of law is an “inherent virtue of the law,” and law’s virtue is “the virtue of efficiency.”16 This means that the rule of law “fulfills essentially a subservient role”: “Conformity to it makes the law a good instrument for achieving certain goals, but conformity to the rule of law is not itself an ultimate goal.”17 Likewise, in Singapore, the rule of law is not only an ideal in itself to be exalted, but a means to an end—that is, the “[production] of order and justice in the relationships between man and man and between man and the State.”18 If the goal of the law is to secure order and justice in a society, then the rule of law “must be approached and applied in a way which

10 Alex Au, “‘Rule of law’ in Singapore is so thin, it holds no more meaning’ 19 September 2013. <https://yawningbread.wordpress.com/2013/09/19/rule-of-law-in-singapore-is-so-thin-it-holds-no-more-meaning/> accessed 23 February 2016.
12 In Chee's own words: “I have the dubious honour of having been sued repeatedly by three prime ministers of Singapore, both former and present, and ordered by the courts to pay more than a million dollars in damages which I could not afford to do, and hence my bankruptcy.”(Ibid.)
15 Ibid.
17 Ibid, 299.
recognizes practical realities, to achieve good governance and to promote general welfare.\footnote{19}

The rule of law in Singapore, then, enforces accountability of state officials, observes procedural fairness, places checks and balances on state power, and is enforced by an independent judiciary. In this regard, Singapore has had a consistently good record in adhering to the thin, Razian conception of the rule of law, which has played a significant role in Singapore’s development and economic success. Considering Singapore’s preference for pragmatic approaches that produce results, it is perhaps unsurprising that the government and the judiciary’s thin conception of the rule of law has not changed significantly since 2011. Although there have been significant changes such as a change in the mandatory death penalty regime and Singapore’s ratification of the Convention on the Rights of Persons with Disabilities, these changes are hardly seismic shifts in Singapore’s overall thin approach to the rule of law. ASEAN integration, too, has played a supporting role in Singapore’s development and practice of the rule of law. All in all, as the report will demonstrate, Singapore does not adhere to grand rights-based rule of law theories, but focuses on practical realities and solutions that improve access to justice on the ground.

\begin{table}[h]
\centering
\begin{tabular}{|c|c|}
\hline
\textbf{Indicator} & \textbf{Figure} \\
\hline
No. of judges in country & 74 State Courts judges (as listed in Singapore government directory); 12 International Judges;\footnote{20} 19 Supreme Court judges (including Senior Judges, 2 Judges of Appeal and 1 Chief Justice).\footnote{21} \\
\hline
No. of lawyers in country & 4,834 practitioners in 2015.\footnote{22} \\
\hline
Annual bar intake (including costs and fees) & 662 admitted as advocates and solicitors in 2015.\footnote{23} \\
\hline
Standard length of time for training/qualification & All lawyers, prosecutors and judges follow the same qualification route. \\
& 1. Preparatory Course leading to Part B of the Singapore Bar Examinations: commences in July and ends in early December\footnote{24} \\
& 2. Practice Training period: 6 months\footnote{25} \\
\hline
\end{tabular}
\caption{ADMINISTRATION OF JUSTICE GRID}
\end{table}

\footnote{19} Ibid, 357.
### Availability of post-qualification training

Yes – Continuing Professional Development is mandatory for lawyers. See report for other examples of training programs.

### Average length of time from arrest to trial (criminal cases)

Information not available.

### Average length of trials (from opening to judgment)

6 weeks from the date of the final Criminal Case Disclosure Conference or Pre-trial conference before trial (whichever is later).\(^\text{26}\)

### Accessibility of individual rulings to public

Full court decisions and judgments are available on Singapore Law Watch and singaporelaw.sg.

### Appeal structure

The State Courts are the first instance courts and comprise the District Courts and Magistrate Courts, both of which oversee criminal and civil matters, as well as the specialized Family, Juvenile and Coroner’s Courts, and the Small Claims Tribunal.

Appeals may be brought to the High Court. From the High Court, parties may appeal to the apex court, the Court of Appeal, unless the claims are prohibited from appeal under the law. The High Court and Court of Appeal form the Supreme Court.\(^\text{27}\)

### Cases before the National Human Rights Institution

There is no National Human Rights Institution in Singapore.

### Complaints filed against the police, the military, lawyers, judges/justices, prosecutors or other institutions (per year)

**Complaints against lawyers**

- 1 September 2014 to 31 August 2015: 66 complaints received\(^\text{28}\)
- 1 September 2013 to 31 August 2014: 71 complaints received\(^\text{29}\)
- 1 September 2012 to 31 August 2013: 82 complaints received\(^\text{30}\)
- 1 September 2011 to 31 August 2012: 84 complaints received\(^\text{31}\)

Other information not available.

### Complaints filed against other public officers and employees

Information not available.

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\(^{28}\) Supra note 23.


II. COUNTRY PRACTICE
IN APPLYING THE CENTRAL PRINCIPLES OF RULE OF LAW FOR HUMAN RIGHTS

A. On Central Principle 1
(Government and its officials and agents are accountable under the law)

Definition and Limitation of the Powers of Government in the Fundamental Law

The Supremacy of the Constitution

The Constitution of Singapore is the “supreme law” of the country, as proclaimed in Article 4. Any law that is “inconsistent” with the Constitution is therefore void to the extent of its inconsistency. In principle, Singapore operates under a system of constitutional supremacy. In the absence of express ouster clauses, the courts can exercise judicial review of legislations and executive and administrative actions. As the Court of Appeal stated in Public Prosecutor v Taw Cheng Kong:32 “Questions on the constitutionality of our laws and whether they have been enacted ultra vires the powers of the legislature are matters of grave concern for our nation as a whole. The courts, in upholding the rule of law in Singapore, will no doubt readily invalidate laws that derogate from the Constitution which is the supreme law of our land.”33

The Constitution establishes and delimits the powers of the three branches of government (i.e. the Executive, the Legislature and the Judiciary), and this structure has remained mostly unchanged since 2011.34

(i) Fundamental Liberties

Part IV of the Constitution sets out a list of fundamental liberties, namely: liberty of the person (Article 9); prohibition against slavery and forced labour (Article 10); protection against retrospective criminal laws and repeated trials (Article 11); equal protection (Article 12); 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). These Articles have not been amended since 2011.

(ii) Recent Constitutional Amendments

In 2014, the Constitution was amended to introduce, inter alia, the appointment of International Judges and Senior Judges; a gratuity plan for judicial and statutory appointment holders; and the office of Deputy Attorney-General. The office of the International Judge was introduced alongside the establishment of the Singapore International Commercial Court (SICC). The SICC is a division of the High Court and it serves to further Singapore’s “vision [of becoming] the leading dispute resolution hub in the region.”35 It is “an international court with specialist jurists hearing international commercial disputes.”36 Pursuant to Article

32 [1998] 2 SLR(R) 489.
33 Taw Cheng Kong at [89].
35 Speech in Parliament by the Minister for Law, Second reading of the amendment bill. 4 November 2014.
36 Ibid.
95(5) of the Constitution, International Judges are appointed by the President either to hear a specific case only, or to be appointed for a specified period. International Judges may only hear cases in the SICC; as such, this particular amendment has little effect on the application of domestic law.

The office of Senior Judge was created to allow the Supreme Court to tap into the expertise of retired judges. As is the case with the International Judge, the Senior Judge hears either a specific case only, or is appointed by the President for a specified period. They are empowered to hear cases in the High Court, including the SICC, or the Court of Appeal. The purpose of this amendment is also to “ease the hearing load of the Supreme Court” which may have a positive impact of the rule of law generally if it results in an increase in the timeliness with which cases are heard.

The office of the Deputy Attorney-General (DAG) was created to assist the Attorney-General (AG) in the discharge of his duties: the DAG will discharge such duties as the AG may assign. The rationale behind the introduction of this post was to ease the AG’s increasing workload, which includes a “fourfold increase in requests for attendance in international negotiations and dispute resolution, and a threefold increase in mutual legal assistance requests.” The DAG's duties may include overseeing the day-to-day administration of criminal justice. As such, the creation of the post of the DAG may have a positive impact on the rule of law if it leads to a more efficient administration of justice.

Finally, a Constitutional Commission was recently appointed, on 27 January 2016, by Prime Minister Lee Hsien Loong to review the office of the Elected Presidency. The Commission will review and make recommendations relating to: 1) the qualifying process for Presidential candidates and whether the eligibility criteria for the candidates should be updated; 2) the framework governing the exercise of the President's custodial powers; and 3) ensuring that minorities have the chance to be periodically elected to Presidential office.

Amendment or Suspension of the Fundamental Law

Derogation from Fundamental Liberties

Fundamental liberties are not absolute, and the Constitution contains provisions that allow some of these rights to be derogated from in times of subversion and emergency. These Articles have not been amended since 2011. In short, Part XII of the Constitution contains the provisions on “special powers against subversion and emergency powers” that the Executive and Parliament can exercise. Article 149(1) retrospectively authorizes legislations against subversion that contravene most of the fundamental liberties under Part IV (except Article 10 and Article 15) and even when such legislation would be “outside the legislative power of Parliament.” Article 149(1) defines subversion as action or threat of action by “any substantial body of persons, whether inside or outside Singapore:

37 Factsheet on Constitution of the Republic of Singapore (Amendment) Bill 2014 [URL].
38 Supra note 35. IV 73.
40 Constitution of the Republic of Singapore (“Singapore Constitution”), Part XII.
41 Article 149(1).
“(a) to cause, or to cause a substantial number of citizens to fear, organized 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.”

Pursuant to Article 149(3), the validity of any decision or act taken pursuant to the subversion legislation is only reviewable in the context of the legislation itself; further, judicial review of any such decision or act is expressly precluded.

Article 150 sets out the procedure for the President to issue a Proclamation of Emergency when he is “satisfied that a grave emergency exists whereby the security or economic life of Singapore is threatened.”

Article 151 puts in place minimum protective standards to be observed when individuals are preventively detained under Articles 149 and 150.

Amending the Constitution

The amendment process has not changed since 2011. Article 5(1) of the Constitution requires a constitutional amendment bill to be supported by a two-thirds majority of the total number of elected Members of Parliament. Given the ruling party’s overwhelming majority of 83 of 89 seats in Parliament, a two-thirds majority is not difficult to achieve.

Laws Holding Public Officers and Employees Accountable

Holding Public Officials Accountable

Singapore’s commitment to the rule of law meaningfully encompasses the principle of accountability. Nowhere is this more evident than in the Prevention of Corruption Act (PCA), Singapore’s principal anti-corruption legislation. While it applies to private citizens and public officials alike, it holds public officials to a higher standard. Section 8 of the PCA reverses the burden of proof in cases involving public officers: where it has been proved that a public officer has paid or received gratification from someone who has dealings with the government or any public body, the gratification will be presumed to have been given or received corruptly as an inducement or reward. The accused then bears the burden of proving that the gratification was not corruptly given or received. The punishment for corruption is a fine not exceeding SGD$100,000 or a jail term not exceeding five years, or both; in cases involving corruption pursuant to a contract or proposal for a contract with the government or any public body, the maximum penalty is a fine not exceeding SGD$100,000 or a jail term not exceeding seven years, or both.

The PCA has not been significantly amended since 2011. In addition, there are no dedicated courts and prosecutors that handle cases against public officials; prosecutions of public officials are conducted in the usual judicial process.

42 Article 150(1).
43 Section 5, PCA.
44 Section 7, PCA.
The Singapore government takes corruption very seriously. Since 2011, there has been one high profile PCA prosecution of a public official. In 2013, the former Singapore Civil Defence Force (SCDF) chief Peter Lim Sin Pang was found guilty of obtaining sexual favours from a private sector employee in exchange for furthering the business interests of her employer. Lim initiated a sexual relationship with the employee, and subsequently contravened procurement rules by tipping her off about the SCDF's need for a product that the employer produced. Lim was eventually sentenced to six months' imprisonment. In her judgment, the District Judge noted that an “uncompromising stance” must be taken against all corruption offenders, and that a deterrent imprisonment sentence was warranted in this case to reflect the “severity of corruption committed.”

In addition to the Peter Lim case, there have also been a few other prosecutions of high-ranking public officials who abused their position of power for private gains. In February 2014, the Assistant Director of the Corrupt Practices Investigation Bureau (CPIB), Edwin Yeo, was sentenced to 10 years’ imprisonment for misappropriating S$1.76 million from the CPIB to finance his gambling habit. Also in February 2014, the protocol chief of the Ministry of Foreign Affairs (MFA), Lim Cheng Hoe, was sentenced to 15 months’ imprisonment for pilfering SGD$88,997 of taxpayers’ money by claiming to have purchased some pineapple tarts that were in fact never bought. These prosecutions demonstrate the government’s commitment to upholding the rule of law by holding public officials accountable for their transgressions.

**Judicial Review of Administrative Actions**

As mentioned previously, Article 4 of the Constitution proclaims the Constitution to be the supreme law of Singapore; as such, the courts are empowered to review the legality of administrative actions and violations of fundamental rights. Singapore’s practice of judicial review has its roots in English administrative law and generally falls under three heads: illegality, irrationality and procedural impropriety. Illegality relates to whether the public authority was actually empowered to make the decision that it made, and/or whether the authority exercised its discretion properly. The concept of irrationality stems from the seminal English case of *Associated Provincial Picture Houses v Wednesbury Corporation*, and an irrational decision by a public authority is one that is “so absurd that no sensible person could ever dream that it lay within the powers of the authority.” Finally, a public official commits a procedural impropriety if he does not comply with legislative procedures, or fails to follow the rules or natural justice, or acts in a procedurally unfair manner towards a person who will be affected by the decision. An administrative action that is found to be illegal, irrational or procedurally improper will be quashed by the courts.

Judicial review is a crucially important manner in which the rule of law is upheld in Singapore. In a highly significant decision regarding the legality of the preventive detention of Tan Seet Eng, an alleged football match-fixer, under the Criminal Law (Temporary Provisions) Act (CLTPA), the Court of Appeal (CA) spelled out the following general principles:


48 [1948] 1 KB 223.

49 *Associated Provincial Picture Houses v Wednesbury Corporation* [1948] 1 KB 223, pg. 229.
“The rule of law is the bedrock on which our society was founded and on which it has thrived. The term, the rule of law, is not one that admits of a fixed or precise definition. However, one of its core ideas is the notion that the power of the State is vested in the various arms of government and that such power is subject to legal limits. But it would be meaningless to speak of power being limited were there no recourse to determine whether, how, and in what circumstances those limits had been exceeded. Under our system of government, which is based on the Westminster model, that task falls upon the Judiciary. Judges are entrusted with the task of ensuring that any exercise of state power is done within legal limits.”

In *Tan Seet Eng*, Tan was arrested on 16 September 2013 for his alleged involvement in global football match-fixing activities. On 2 October 2013, the Minister for Home Affairs issued a detention order for Tan to be detained pursuant to section 30 of the CLTPA, which allows for the preventive detention of those suspected of criminal activities such as loan-sharking and other organized crimes. Section 30 authorizes the Minister to make an order for the preventive detention of any person with respect to whom he is satisfied that the person “has been associated with activities of a criminal nature,” and that “the person [should] be detained in the interests of public safety, peace and good order.”

Tan sought an Order for Review of his detention which was dismissed by the High Court. When the case reached the CA, however, the CA held that Tan’s detention was illegal. The CA powerfully asserted, “Unfettered discretion is contrary to the rule of law. All power has legal limits and it is within the province of the courts to determine whether those limits have been exceeded.” Where discretion is vested in the Executive by the Legislature, it is for the courts to decide the boundaries of that power, and whether the Executive has exceeded the ambit of that jurisdiction or power. As Article 93 of the Constitution vests judicial power in the courts, it is therefore up to the courts to determine the lawfulness of government actions.

With respect to Tan’s detention, the CA found that “there is nothing to indicate that [Tan] did engage in any activities of so serious a nature…that brought his actions within the contemplated…remit of the CLTPA” and that Tan’s “slew of corrupt [and reprehensible] practices” did not “rise to the level of gravity that they would have to in order to come within the scope of the Minister’s power to act.” The CA also found that there was nothing to suggest whether, or how, Tan’s activities “could be thought to have a bearing on the public society, peace and good order within Singapore.” Accordingly, the CA held that Tan’s detention was unlawful and that the Minister had acted beyond the scope of his powers.

The significance of this case lies in the CA’s categorical assertion of the proper delimitation of power between the Executive, the Legislature and the Judiciary. This is especially crucial in a one party-dominant state such as Singapore, where Parliament is overwhelmingly dominated by a single party. By upholding its constitutionally-conferred power to review the lawfulness of government action, the CA in this case has demonstrated a principled adherence to the rule of law, which includes the principle that all actions taken

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51 Section 30(a), Criminal Law (Temporary Provisions) Act.
52 *Tan Seet Eng* at [98].
53 Ibid.
54 Ibid at [139].
55 Ibid.
56 Ibid at [146].
by the government and public authorities have to be lawful.  

B. On Central Principle 2
(Laws and procedures for arrest, detention and punishment are publicly available, lawful, and not arbitrary)

Publication of and Access to Criminal Laws and Procedures

All laws passed by Parliament, including subsidiary legislations, are available for free on the Attorney-General Chamber’s (AGC) website, Singapore Statutes Online. Anyone can access this website. The AGC’s plan to launch a new portal that includes subsidiary legislations as mentioned in the 2011 Baseline Study has since been implemented. These statutes and subsidiary legislations are only available in English.

Accessibility, Intelligibility, Non-reactivity, Consistency, and Predictability of Criminal Laws

All legislation – civil and criminal – are available on the AGC’s website. There has been a recent move to use plain English in Singapore’s statutes, such as using “must” instead of “shall” to highlight obligations. The purpose of the reform is to increase the intelligibility of the laws so that they are easier for Singaporeans to understand. This is an important reform to increase accessibility of the laws, and it was initiated in response to statistics showing that more and more Singaporeans are accessing the AGC’s Singapore Statutes website: in 2013, the website was accessed about 3 million times, which was three times more than the figure for 2012. Singapore Statutes is thus an important database, and one way to improve access to justice is to use plain English in the law; the AGC’s efforts are thus laudable.

Further, as part of the general aim to improve understanding of the legal process, the AGC has published on its website some articles to “offer general information on the legal process,” including glossaries of commonly used terms in criminal proceedings in English and one of the non-English official languages (i.e. English and Chinese; English and Malay; and English and Tamil).

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57 It should be noted, however, that despite being released after the CA released its judgment, Tan was re-arrested a week later: see, for example, ‘Alleged match-fixing mastermind Dan Tan re-arrested in Singapore’ The Guardian, 2 December 2015. <http://www.theguardian.com/football/2015/dec/02/alleged-match-fixing-mastermind-dan-tan-rearrested> accessed 22 February 2016. On 5 December 2015, the MHA issued a press release on Tan’s detention, stating in general terms that the new Detention Order “expressly sets out” Tan’s “criminal activities over many years, their impact on public safety…and the fact that he has intimidated witnesses to the extent that they continue to be unwilling to testify against him for fear of reprisal.” See ‘MHA Statement on Detention of Dan Tan Seet Eng’, Ministry of Home Affairs, 5 December 2015. <https://www.mha.gov.sg/Newsroom/press-releases/Pages/MHA-Statement-on-Detention-of-Dan-Tan-Seet-Eng.aspx> accessed 23 February 2016.


60 Ibid.

Article 11(1) of the Constitution provides protection against retrospective criminal laws.

Detention Without Charge Outside an Emergency

Such preventive detention can be made pursuant to the Internal Security Act (ISA), and the CLTPA, briefly discussed above. These measures have all been constitutionally-authorized: the ISA is sanctioned by Article 149, and the CLTPA by Article 9(6)(a). There have been no changes to the ISA since 2011, and the CLTPA was renewed once again for another five years in 2015.

(i) The ISA

Since 2011, the government has continued to use the ISA to detain individuals suspected of being involved in terrorism-related activities. In 2011, when Malaysia repealed its own ISA, the Ministry of Home Affairs (MHA) addressed Singapore’s continued use of the ISA by stating, “The Singapore Government has used the ISA sparingly. The ISA has only been used against individuals who have acted in a manner prejudicial to the security of Singapore or to the maintenance of public order or essential services therein. No person has ever been detained only for their political beliefs.”

The MHA continues to issue the occasional press release of detentions and releases under the ISA. For instance, 27 male Bangladeshi workers were arrested and detained under the ISA for suspected jihadism, and two self-radicalized Singaporeans were similarly detained before they could travel to Syria to join the Islamic State. An update on ISA cases released on 9 January 2014 stated that one person was detained, two imposed with restriction orders, one released, and two restriction orders were allowed to lapse. There is thus some degree of transparency in the ISA detentions, albeit more specific statistics remain hard to come by. However, the ISA remains a hallmark of the repressive side of Singapore’s legal system. Interestingly, the Law Minister, K Shanmugam, appears to have accepted that the ISA is an exception to the rule of law. In his paper on the rule of law in Singapore, he discusses the ISA as an exception to due process, which he named as an important aspect of the rule of law. Such exceptions “call for explanation and justification” because “exceptions to the Rule of Law must be closely scrutinised and strictly justified.”

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66 K Shanmugam, supra note 6, page 363.
(ii) The CLTPA

The provisions of the CLTPA have not been changed since 2011. It continues to be used by the MHA (such as its detention of Tan Seet Eng), which also issues press releases on CLTPA detentions.

Rights of the Accused

*Freedom from Arbitrary or Extra-legal Treatment or Punishment, and Extra-Judicial Killing*

*Extra-Judicial Killing, Torture, and Inhumane Treatment*

There are no instances of extra-judicial killings by the State. However, Singapore continues to mete out caning and the death penalty as forms of punishment.

In 2015, the constitutionality of caning was unsuccessfully challenged in the courts in the case of *Yong Vui Kong v Public Prosecutor*. The appellant argued that caning violated Article 9(1) of the Constitution. Although Singapore law does not prohibit torture, the appellant's case was that the prohibition of torture was nevertheless imported into domestic law in two ways: through the *jus cogens* norm of the prohibition of torture, and through the prohibition of torture at the level of the common law. As such, caning violated Article 9(1) which requires life or personal liberty to be deprived of only “in accordance with law.”

The CA held, however, that caning does not violate Article 9(1) because caning as a form of punishment is properly executed “in accordance with law.” The lack of an express prohibition on torture in Singapore law means that the *jus cogens* status of the prohibition of torture cannot override a domestic statute that mandates caning as a form of punishment: “The fact that peremptory norms admit of no derogation in the international sphere where relations between states are concerned, says nothing about what the position should be in the domestic sphere.” As such, even if caning did amount to torture, the courts are nevertheless “bound to implement laws that have been validly passed by Parliament unless these are inconsistent with the Constitution.” The CA’s reasoning here reveals the thin conception of the rule of law briefly discussed in the introduction: a law is valid and thus binding on the courts if it has been validly discussed in the introduction: a law is valid and thus binding on the courts if it has been validly passed by Parliament, even if the content of the law may be suspect. A more substantive account of the law and the rule of law would hold that a morally suspect law, such as one that authorizes torture, should be interpreted by the courts in a manner that cures the law of its moral defect.

In any event, the CA decided in this case that caning did not violate Article 9(1) because caning as a form of punishment is properly executed “in accordance with law.” The lack of an express prohibition on torture in Singapore law means that the *jus cogens* status of the prohibition of torture cannot override a domestic statute that mandates caning as a form of punishment: “The fact that peremptory norms admit of no derogation in the international sphere where relations between states are concerned, says nothing about what the position should be in the domestic sphere.” As such, even if caning did amount to torture, the courts are nevertheless “bound to implement laws that have been validly passed by Parliament unless these are inconsistent with the Constitution.” The CA’s reasoning here reveals the thin conception of the rule of law briefly discussed in the introduction: a law is valid and thus binding on the courts if it has been validly passed by Parliament, even if the content of the law may be suspect. A more substantive account of the law and the rule of law would hold that a morally suspect law, such as one that authorizes torture, should be interpreted by the courts in a manner that cures the law of its moral defect.

In any event, the CA decided in this case that caning did not amount to torture. That still leaves open the issue of whether it amounts to inhumane treatment, but since this issue was not litigated, the CA did not comment on it, though international human rights organizations have characterized caning as inhumane treatment.

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68  [2015] 2 SLR 1129 (“Yong Vui Kong”).
69  Ibid, para. 35.
70  Ibid, para. 38.
With respect to the death penalty, there has been significant changes in the death penalty regime since 2011. Whereas the death penalty was imposed as a mandatory sentence once an accused is found guilty of drug trafficking under the Misuse of Drugs Act (MDA), a 2012 amendment to the MDA replaced the mandatory death sentence with a discretionary one. In other words, the courts no longer have to impose the death penalty on convicted drug traffickers. The courts’ sentencing discretion, however, is not an automatic one; it arises only when two conditions have been met. The accused first has to prove that, on a balance of probabilities, he acted merely as a drug courier,72 and subsequently, the Public Prosecutor has to certify that he rendered substantive assistance to police investigations.73 If the accused proves that he acted merely as a drug courier on a balance of probabilities and also proves that he suffered from abnormality of mind when he committed the offence, such that his mental responsibility was diminished, then the courts must not impose the death penalty and must impose life imprisonment instead.74

The courts’ scope for discretion is thus quite narrow. Further, the Public Prosecutor has a wide discretion to determine whether or not an accused person has rendered substantive assistance. Not only does section 33B(4) of the MDA provide that the determination of the Public Prosecutor in this regard is not open to judicial review “unless it is proved to the court that the determination was done in bad faith or with malice,”75 the CA has also held that the grant of such a certificate was not justiciable by the courts.76

**Right to habeas corpus**

The right to habeas corpus (now known as the order for review of detention) is enshrined in Article 9(2) of the Constitution, which provides that where a complaint of an unlawful detention is made, “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.” Although this right is not limited in any circumstance, the courts’ review of the lawfulness of detention is restricted only to the procedural requirements of the detention.

**Presumption of Innocence**

In his paper on the rule of law in Singapore, Law Minister K Shanmugam stated that the presumption of innocence forms part of the rule of law.77 Although the presumption of innocence is not constitutionally protected, the standard of proof in criminal cases is that of beyond a reasonable doubt. Hence, the presumption of innocence generally applies except when the statute reverses the burden of proof. For instance, the MDA provides that upon establishing that the accused possesses a certain amount of drugs, it is then for the accused to show, on a balance of probabilities, that he was not engaged in drug trafficking.78 Another example is the reversed burden of proof for government and public officials in the PCA as discussed above. There has been no change to these provisions since 2011.

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72 MDA, section 33B(2)(a).
73 MDA, section 33B(2)(b).
74 MDA, section 33B(3).
75 MDA, section 33B(4); emphasis added.
77 Supra note 6.
78 MDA, section 17.
Legal Counsel and Assistance

Right to Counsel, and the Right to be Informed of the Right to Counsel

Article 9(3) of the Constitution provides that “[where] a person is arrested, he shall...be allowed to consult and be defended by a legal practitioner of his choice.” Similarly, section 236 of the Criminal Procedure Code provides that “[every] accused person before any court may of right be defended by an advocate.”

Article 9(3) is silent on when the right arises. As stated in the 2011 Baseline Study, the courts have held that the right does not arise immediately, and that a reasonable time can elapse before the accused is given access to counsel. What has been deemed reasonable by the courts has ranged from two weeks to 19 days. More recently, the CA in James Raj v Public Prosecutor reiterated that the right to counsel does not arise immediately but only within a reasonable time. What constitutes a “reasonable time” is not an axiomatic matter, but is rather “inherently a question of fact” that “calls for a factual inquiry of all the relevant considerations.”

As stated in the previous report, the Singapore courts have held that the right to counsel does not come with a corresponding right to be informed of the right to counsel. Despite the Law Society’s proposal that a standard form be given to accused persons to fill in which sets out the necessary information relating to the right to counsel, this proposal has not been accepted. There are no known studies on the effectiveness of the right to counsel.

Legal Aid

This issue will be dealt with below.

Knowing the Nature and Cause of the Accusation

Article 9(3) of the Constitution stipulates that upon arrest, a person “shall be informed as soon as may be of the grounds of his arrest.” In order to conduct a proper defence, the accused person also needs to have access to information about the Prosecution’s case against him. As noted in the previous report, the Criminal Procedure Code (CPC) went through a significant amendment process in 2010 which sought to improve the rights of accused persons in the criminal process. One such amendment introduced the Criminal Case Disclosure Conference (CCDC) regime, set out in section 160 of the CPC. The Prosecution and the accused will be directed by the courts to attend a CCDC, during which they are to settle the following matters: (a) the filing of the Case for the Prosecution and the Case for the Defence; (b) any issues of fact or law which are to be tried by the trial judge; (c) the list of witnesses to be called by the parties to the trial; (d) the statements, documents or exhibits which are intended by parties to be admitted at the trial; and (e) the trial date. The CCDC is applicable to all cases tried before the High Court, the majority of offences tried in the District Court and cases tried in the Magistrates’ Courts.

79 Jasbir Singh v Public Prosecutor [1994] 1 SLR(R) 782.
80 Leong Siew Chor v Public Prosecutor [2006] SGCA 38.
82 Ibid [36].
83 Ibid [39].
84 Criminal Procedure Code, section 160(1).
The purpose of the CCDC is to “introduce greater transparency and consistency to the pre-trial process” by “obliging the Prosecution and Defence to exchange relevant information about their respective cases before trial.”85 Prior to the enactment of the CCDC regime, there was no formal discovery obligation imposed on the Prosecution save for criminal trials conducted in the High Court. The lack of a comprehensive discovery framework (or a discovery framework at all) invariably led to an imbalance of information between the Prosecution and the Defence, and a common problem faced by defence counsel was the Prosecution’s refusal to furnish the Defence with the accused person’s own statement recorded during police investigations of the alleged crime.86

The CCDC is therefore a highly significant improvement to the criminal justice system in Singapore; not only is the Prosecution now required by section 162(e) of the CPC to furnish the Defence with statements made by the accused, there is now a formal framework setting out the discovery obligations of both parties. In *Public Prosecutor v Li Weiming*,87 the CA observed that the “[timely] disclosure of information facilitates the efficient dispensation of criminal justice as both the Prosecution and accused are in a position to evaluate the merits of their respective cases….This creates a balanced and fair procedure that provides a system for arriving at the truth…and precludes resort to ambush tactics….From the perspective of the accused, an early disclosure of the Prosecution’s case enables him to make preparations for his defence [and] ensures that relevant facts are not concealed from the trial judge.”88 The CCDC is therefore a laudable improvement to the criminal justice system in Singapore which demonstrates Singapore’s commitment to fairness in criminal justice and, accordingly, the rule of law.

**Guarantees during Trial**

The 2011 Baseline Study sets out the CPC procedure according to which criminal trials are to be conducted, which is contained in section 230 of the CPC. There have been no changes to the procedure since 2011. Specifically, the CPC provides that the charge must be read and explained to the accused and his plea taken at the commencement of the trial;89 that the accused may cross-examine witnesses of the Prosecution;90 and that the court, if it is of the view that there is some evidence which satisfies each and every element of the charge, must call on the accused to give his defence and inform him of the effect of his refusal to give evidence in his own defence.91 Additionally, an accused may apply to the court to issue process for compelling the attendance of any witness for the purpose of examination or cross-examination or to produce any exhibit in court.92

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88 Ibid [26] (emphasis added).
89 Criminal Procedure Code, section 230(a).
90 Ibid, section 230(e).
91 Ibid, section 230(j) and (m).
92 Ibid, section 230(q).
Appeal

Although the right to appeal is not constitutionally protected, other statutory provisions provide for the right to appeal against conviction and/or sentence. The relevant provisions set out in the 2011 Baseline Study have not been amended since 2011. Briefly, section 374 of the CPC states that an appeal “may lie on a question of fact or a question of law or on a question of mixed fact and law.” Sections 23 and 26 of the Supreme Court of Judicature Act\(^{93}\) recognize the High Court’s powers of revision for criminal proceedings. In such cases, the High Court, on its own motion or on the application of a Subordinate Court, the Public Prosecutor or the accused, “[calls] for and [examines] the record of any criminal proceeding before any Subordinate Court to satisfy itself as to the correctness, legality or propriety of any judgment, sentence or order recorded or passed and as to the regularity of those proceedings.”\(^{94}\)

Freedom from Double Jeopardy

Article 11(2) of the Constitution provides 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 superior court. The rule against double jeopardy is also set out in section 244 of the CPC. However, the explanation to section 244 states that the dismissal of a complaint or the discharge of the accused is not an acquittal for the purposes of the section. There has been no significant update to the law since 2011.

Remedy before a Court for Violations of Fundamental Rights

Generally, judicial review is available to address alleged violations of fundamental rights. In the criminal context, constitutional challenges have been brought against the Attorney-General’s use of his prosecutorial discretion under Article 35(8) of the Constitution in which the applicants alleged that the Attorney-General’s exercise of prosecutorial discretion violated their Article 12 right to equal protection. Article 35(8) provides that the Attorney-General, as the Public Prosecutor, “shall have the power, exercisable at his discretion, to institute, conduct or discontinue any proceedings for any offence.” The scope of the Article 35(8) prosecutorial discretion was recently comprehensively mapped out by the CA and it merits closer attention.

In Ramalingam Ravinthran v Attorney-General,\(^{95}\) the applicant and another individual, Sundar, were arrested for attempting to sell 5,560.1g of cannabis and 2,078.3g of cannabis mixture. Sundar was charged under the MDA with trafficking a smaller amount of drugs, a charge that did not attract the death penalty. The applicant, on the other hand, was charged with trafficking the actual amount of drugs, a charge that attracted the death penalty and for which he was convicted. He subsequently filed a criminal motion for an order that the capital charges against him be amended to a non-capital one on the basis that the Attorney-General’s exercise of prosecutorial discretion violated the applicant’s Article 12(1) right to equal protection.\(^{96}\)

The CA dismissed the motion and held that Article 12(1) was not violated. The scope of the prosecutorial discretion is a wide one, and there is a presumption that the Attorney-General’s exercise of the discretion is constitutional; further, the doctrine of separation of powers requires that the courts not interfere with the

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\(^{93}\) Supreme Court of Judicature Act, Cap. 322.
\(^{94}\) Criminal Procedure Code, section 400(1).
\(^{95}\) [2012] 2 SLR 49 (“Ramalingam”).
\(^{96}\) Article 12(1) states: “All persons are equal before the law and entitled to the equal protection of the law.”

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Attorney-General’s exercise of prosecutorial discretion unless it has been exercised unlawfully.\(^{97}\) However, there is an “inherent limitation” on his discretion, which is that “it may not be exercised arbitrarily, and may only be used for the purpose for which it was granted and not for any extraneous purpose.”\(^{98}\) In addition, the CA also stated strongly that “an exercise of an executive decision-making power, even one with a constitutional status, cannot be allowed to override a fundamental liberty enshrined in the Constitution.”\(^{99}\) Accordingly, the prosecutorial discretion is also constitutionally limited and subject to, inter alia, Article 12.

The CA went on to analyse the interplay between the prosecutorial discretion and Article 12. Article 12 concerns equality before the law and equal protection of the law, and so requires that like should be compared with like. Similarly, the Attorney-General is “obliged to compare like with like in deciding whether or not to differentiate between the charges against different offenders involved in the same criminal transaction.”\(^{100}\) In deciding what charges to bring against the offenders, the Attorney-General “must not unlawfully discriminate against one offender as compared to another” and “may take into account a myriad of factors, including whether there is sufficient evidence against a particular offender, whether the offender is willing to co-operate…”\(^{101}\) On the facts of the case, the CA concluded that the applicant had not produced evidence to prove a *prima facie* case of an Article 12 violation, and even if it could be said that the applicant and Sundar were equally culpable, this, in itself, is not sufficient to rebut the presumption of constitutionality inherent in the Attorney-General’s exercise of discretion.\(^{102}\) The CA concluded by remarking that the Attorney-General has no obligation to disclose the reasons for his prosecutorial decisions.\(^{103}\)

The above analysis demonstrates that the courts give a wide leeway to the Attorney-General in his prosecutorial decisions. The difficulty with the CA’s decision, however, lies in the relatively high hurdle that an accused person must overcome in order to prove a *prima facie* violation of Article 12. In particular, the CA’s position that equal culpability between co-offenders is insufficient to prove such a *prima facie* case is rather troubling. As a Singaporean academic has pointed out, “if both co-offenders were equally culpable, the differential charging decision of the Prosecution would, all other things being equal, raise a *prima facie* case of unconstitutionality that demands an explanation from the Prosecution. Otherwise, the odds would be heavily stacked against the accused person seeking to challenge a prosecutorial discretion.”\(^{104}\) Such difficulties should be cautioned against especially in instances where the life of the accused person is at stake. Further, the Attorney-General should be required to provide reasons for his prosecutorial decisions under some circumstances.\(^{105}\)

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97 Ramalingam[44].
98 Ibid [51].
99 Ibid [41].
100 Ibid [61].
101 Ibid [52].
102 Ibid [73].
103 Ibid [74].
105 For an in-depth discussion of this issue, see ibid.
C. On Central Principle 3:
(The process by which the laws are enacted and enforced is accessible, fair, efficient and equally applied)

Law Enactment

**Openness and Timeliness of Release of Record of Legislative Proceedings**

As mentioned in the 2011 Baseline Study, the dates and times of upcoming parliamentary sessions are announced by the Singapore Parliament on its website. Such information is up to date. Parliamentary sessions are open to all members of the public, including foreigners. Bills introduced in parliament and Special Select Committee Reports are also made available on the website.

**Timeliness of Release and Availability of Legislative Materials**

All Parliamentary Reports from 1955 to the present day are made publicly available on the Singapore Parliament’s website. These reports provide transcripts of debates in full. Reports are made available seven to ten working days after the adjournment of a sitting. Minutes of parliamentary debates are not available.

**Equality before the Law**

Article 12 of the Constitution provides that “[a]ll persons are equal before the law and entitled to the equal protection of the law.” The potency of Article 12’s protection was recently tested in the CA in *Lim Meng Suang and Another v Attorney-General and Another Appeal and Another Matter* when a gay couple and a gay man mounted two separate constitutional challenges to section 377A of the Penal Code, a colonial-era law that exclusively criminalises sex between men. There is no equivalent provision for sex between women.

In holding that section 377A does not violate Article 12, the CA’s judgment reveals a positivist approach to law and an adherence to a thin conception of the rule of law. The CA first analysed section 377A in light of the doctrinal test used by the courts to adjudicate Article 12 cases, the “reasonable classification test.” This test consists of two limbs: (a) whether the classification prescribed by statute is based on an intelligible differentia; and (b) whether the differentia bears a rational relation to the purpose of the statute. The CA then held that section 377A satisfies the reasonable classification test: The classification prescribed by section 377A of “men who have sex with other men” is based on a logical and coherent distinguishing characteristic “inasmuch as there was little difficulty in determining who fell within and without the provision.” There is therefore a “complete coincidence” in the relation between the differentia and the purpose of section 377A, which is to criminalize sexual conduct between men.

108 377A reads: “Any male person who, in public or private, commits, or abets the commission of, or procures or attempts to procure the commission by any male person of, any act of gross indecency with another male person, shall be punished with imprisonment for a term which may extend to 2 years.”
109 Ibid [60].
110 Ibid [110]-[111].
111 Ibid [153].
The reasonable classification analysis is essentially the entirety of the CA’s reasoning in deciding that section 377A does not violate Article 12. However, the test is not without some deficiencies. Limb (a) requires only intelligibility, which sets a rather low standard for a test that is used to determine a statute’s constitutionality. Furthermore, there seems to be a lack of clear guidelines for ascertaining the purpose of the statute, and so the test has been criticized for being open to manipulation: the test can be sustained or rejected depending on how broadly or narrowly the courts frame the statutory purpose. It is thus arguable that the reasonable classification test is not stringent enough to determine whether a statute violates the right to equality.

Additionally, although the High Court in the decision below took the view that the courts can examine the legitimacy of the purpose of a statute, the CA rejected this view and stated that such questions are beyond the courts’ jurisdiction because “there are no legal standards [to ascertain] whether the object of that statute is illegitimate.” Thus, a law is constitutional so long as there is a rational connection between limb (a) and limb (b), even if it has a questionable purpose. This suggests a formalistic conception of law and an adherence to a thin rule of law.

Reparation for Crimes and Human Rights Violations’ Victims/Survivors

As discussed in the 2011 Baseline Study, the new CPC makes it compulsory for the courts to consider making an order for victim compensation in criminal proceedings after an accused has been convicted. The purpose of this change is to “make the criminal justice process more meaningful to victims of crime.” This idea is similarly reflected in the courts’ attitude towards the victim compensation regime. In Public Prosecutor v AOB, the High Court opined, “Compensation orders are particularly suitable and appropriate for victims who may have no financial means or have other difficulties in commencing civil proceedings for damages against the offender. Although a custodial sentence or a heavy fine may be appropriate as punishment for the offender, such punishments are cold comfort to a victim who has experienced pain and suffering as a result of the offenders actions and who, as a result, has to bear the burden of medical bills, lost wages and other expenses.” Hence, the power to make compensation orders should be exercised in “appropriate cases,” which “include those where the offender has caused the victim physical injury in respect of which the victim would be entitled to claim damages in a civil action.”

The victim compensation regime has proved rather successful. In 2012, the courts made 43 compensation orders; and in 2013, the courts made 46 compensation orders. More than 70 per cent of these orders were made in relation to cases involving hurt, mischief and theft. The remaining cases involved other offences.

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113 Lim Meng Suang and another v Attorney-General [2013] 3 SLR 118 [114].
114 Ibid [85].
115 Although the CA attempted to introduce, at [67] and [86], a substantive element to limb (a) by adding that a differentia capable of being apprehended by intellect can nevertheless be unintelligible if it is extremely illogical and/or incoherent, this qualification does very little work. It requires a differentia of such illogcality and incoherence that it is implausible that a law would be passed on this basis in Singapore.
117 [2011] 2 SLR 793.
118 Ibid [23]
119 Ibid.
including cheating. In 70 per cent of all instances where compensation orders were made, the compensation amounts were less than S$2,000. In 20 per cent of these cases, the compensation amounts were between S$2,000 and S$10,000. The remaining 10 per cent were above S$10,000 with the highest being S$63,716.\textsuperscript{120}

Law Enforcement

*Effective, Fair and Equal Enforcement of Laws*

Singapore’s legal system enjoys a good reputation for being efficient and fair. Criminal laws are, for the most part, strictly, fairly and equally enforced. However, when deciding to retain section 377A during the 2007 Parliamentary debates on amendments to the Penal Code, the government has said that it will not actively enforce section 377A, and that the decision to retain it was a pragmatic one to maintain harmony in Singapore and not further divide society over a polarizing issue.\textsuperscript{121} However, this may be problematic for the rule of law. The most obvious implication is that the non-enforcement of a specific criminal law while other criminal laws are enforced points to an unequal application of the law, which is inconsistent with the rule of law. It is suggested that a law which the government does not wish to enforce should not remain on the books in order to maintain consistency and uphold the rule of law.

From an institutional perspective, Singapore constantly employs new measures to improve the effective, fair and equal enforcement of the laws. The 2011 Baseline Study mentioned that there has been a move in the Singapore judiciary from a “court-centric culture” to a “service-centric one.” In this spirit, the State Courts launched the new Community Justice and Tribunals Division (CJTD) on 24 April 2015.\textsuperscript{122} The CJTD is unique in that it will deal with cases with both civil and criminal components, which was not the norm before the CJTD was launched. The CJTD is made up of the Small Claims Tribunals and the Community Disputes Resolution Tribunals. The purpose of the CJTD is to encourage parties to resolve their differences in an amicable manner, with adjudication being the last resort if attempts at conciliatory resolutions fail.

\textbf{D. On Central Principle 4:}

*(Justice is administered by competent, impartial, and independent judiciary and justice institutions)*

Appointment and Other Personnel Actions in the Judiciary and among Prosecutors

The process of appointing and promoting judges and judicial officers was comprehensively set out in the previous report, and this process has remained largely unchanged since 2011. As mentioned above, a recent constitutional amendment introduced the new posts of International Judge and Senior Judge. The appointment process for these judges is the same as the other judges, i.e. the President makes the appointment


\textsuperscript{121} Singapore Parliamentary Debates 23 October 2007, vol 83, col 2405-2407.


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on the advice of the Prime Minister, who would have conferred with the Chief Justice before rendering his advice.

The procedure for dismissing and disciplining judges has remained unchanged since 2011. The procedure for dismissing and disciplining judges is set out in the Constitution. Article 98(3) states that where the Prime Minister or the Chief Justice in consultation with the Prime Minister, informs the President that a Supreme Court judge should no longer hold office on the basis of inappropriate conduct or incapacity, the President must appoint a Tribunal and refer the matter to it. The President can remove the Judge on the Tribunal’s advice. Article 98(4) states that the Tribunal is to be composed of at least five members who are current or former Supreme Court judges.

Standards of conduct for judicial officers are set out in the State Courts Act. Section 67(1) states that if a State Court officer is charged with extortion or misconduct, the Presiding Judge of the State Courts can nominate a District Judge to inquire into the matter in a summary manner. A judicial officer found guilty of corruptly accepting any fee or reward will be liable for damages and will be dismissed.

Training, Resources, and Compensation

There are numerous training schemes for judges and judicial officers. In 2015, the Supreme Court established the Singapore Judicial College (SJC) dedicated to the training of judges and judicial officers. The SJC consists of a local wing that oversees the needs of the Singapore Judiciary such as continuing education and developmental programs; an international wing that builds on Singapore’s well-reputed legal system to offer Singapore as a forum for judicial training; and the empirical judicial research laboratory which serves as a test bed for innovation in judicial studies and practices with the aim of allowing new or existing practices in the courts to be tested and validated. Local training programs include workshops organized around the themes of bench skills, legal development, judicial ethics and social awareness. As part of its international training program, the SJC conducts workshops on court excellence in other ASEAN countries in conjunction with the Ministry of Foreign Affair’s Initiative for ASEAN Integration.

The Attorney-General’s Chambers (AGC) has also set up training schemes for its officers. In 2014, the AGC Academy was set up “[to] help make AGC an institution that is continually learning and improving.” The Academy is “in charge of the training, education, quality control and auditing skills of the entire AGC,” and a Prosecution School was formed to “provide a more systematic development of our prosecutors.” The Academy also develops other skills and areas of law, such as advocacy; advisory, transactions and civil litigation; international law; legislation drafting, policy and law making process; prosecution; knowledge management; and critical thinking, performance management and soft skills.
State’s Budget Allocation for the Judiciary and Other Principal Justice Institutions

In 2014, 1.05 per cent of Singapore’s budget was allocated for the Ministry of Law (which falls under Government Administration). In 2015, the figure was 0.73 per cent.129 The Judicature, which is grouped with seven other government bodies as Organs of State under the budget for Government Administration,130 received an allocation of 0.35 per cent in 2014 and 0.38 per cent in 2015.131

Impartiality and Independence of Judicial Proceedings

The State Courts continued to conduct public perception surveys and the results of the surveys were published in its Annual Report 2014.132 The surveys were conducted by an independent marketing research firm, Nexus Link Pte Ltd, and a total of 1,006 Singaporeans and permanent residents aged 17 and above were surveyed from December 2013 to January 2014. The survey showed that 97 per cent of the respondents were of the opinion that the State Courts administered justice fairly and effectively. Ninety-nine per cent of the respondents were of the view that the State Courts had integrity, independence and impartiality. If these survey results are generally indicative of public perception of the administration of justice in Singapore, then it would suggest that Singaporeans generally have a positive view of the rule of law in Singapore.

As noted in the 2011 Baseline Study, however, there have been some criticisms of the judiciary’s independence and impartiality. In its 2013 Human Rights Report on Singapore, the US State Department noted, “(i)ndependent observers viewed the judiciary as generally impartial and independent, except in a small number of cases involving direct challenges to the government or the ruling party.”133 In a 2014 report on judicial independence published by the International Bar Association’s Human Rights Institute, the writer observed that “[i]t may be a coincidence that the best paid judges in the world, those in Singapore who receive US$1m a year, rarely rule against the government and never against its ministers when they sue their critics for defamation.”134 It should be noted, however, that defamation is a constitutionally-accepted limitation to free speech as provided in Article 14(2)(a) of the Constitution, and that the courts have generally applied the established law on defamation in the relevant cases. Further, in Review Publishing Co Ltd v Lee Hsien Loong,135 the CA stated that balance between freedom of speech and the protection of reputation is appropriately struck in the Constitution because the courts have consistently held that defamation laws are not inconsistent with free speech.136 Regardless of the outcome of the defamation suits, the courts have adhered to the rule of law by applying the appropriate laws in an impartial manner.


136 Ibid [273].
It is suggested that the appearance of judicial bias towards the government is due to the courts’ non-adoption of the public figure doctrine. An example of an expression of this doctrine can be found in the European Court of Human Rights case of Lingens v Austria in which the court held that “[t]he limits of acceptable criticism are…wider as regards a politician as such than as regards a private individual.” This doctrine has not been accepted in Singapore where politicians are conceived of as “public men” who are “equally entitled to have their reputations protected as those of any other persons” because public men, “in the discharge of their official duties, are laying themselves open to public scrutiny both in respect of their deeds and their words.” Hence, allegations of judicial bias fail to distinguish between a judicial adherence to the established case law and what can arguably be termed a culturally different conception of political leaders. Criticisms of the Singapore judiciary’s defamation decisions should bear this difference in mind, and should rather be directed at whether the “public men” doctrine and the high award of damages to the winning plaintiff have an unjustifiable chilling effect on free speech, instead of suggesting bias on the part of the courts.

As stated in the previous report, Singapore’s state officials take judicial independence very seriously; as such, the Attorney-General’s Chambers does not hesitate to take action against individuals for contempt of court. For instance, in 2015, a prominent Singaporean socio-political blogger, Alex Au, was convicted for contempt of court and fined $88,000 for an article that he published on his blog titled “377 wheels come off Supreme Court’s best laid plans” in which he implied the partiality of the Chief Justice, Sundaresh Menon, in relation to his hearing of the two section 377A constitutional challenges. Essentially, Au alleged that the Supreme Court had scheduled the hearings of the two appeals (before they were consolidated) so that CJ Menon could hear one of the appeals, ostensibly because he had a vested interest in the outcome of the case. In upholding his conviction, the CA reaffirmed the law on scandalizing contempt in Singapore. A statement is liable for scandalizing contempt if: (a) the statement in question poses a real risk of undermining public confidence in the administration of justice; (b) the accused had intended to publish the statement in question; and (c) the accused had not done so pursuant to fair criticism. In its judgment, the CA asserted that issues of judicial independence and impartiality were “foundational ones: “…without judicial independence and impartiality, the concept of a judiciary in general and the office of a judge in particular become nothing more than empty shells, shorn of any meaning whatsoever.”

Due to the important role that the judiciary plays in the upholding of the rule of law, Singapore state officials take seriously attempts to undermine public confidence in the administration of justice. The seriousness of the issue was further underscored by a press release issued by the AGC after Au was charged with contempt in which the AGC reiterated that the law of contempt exists to protect public confidence in the administration of justice; and because judges are unable to respond to allegations of bias, the administration of justice needs to be protected from such allegations by the law of contempt. Undoubtedly, the judiciary is the foundational pillar of the rule of law, and in this respect, Singapore's stance on contempt laws is sensible. Nevertheless, the tension between the offence of scandalizing contempt and freedom of expression should always be borne in mind.

138 Ibid [42].
140 See section 7 of the Supreme Court of Adjudicature Act (Cap 322).
141 Au Wai Pang v Attorney-General [2015] SGCA 61 at [18].
142 Ibid [33].
143 Ibid [37].
mind when deciding whether or not to prosecute an individual for scandalizing contempt, and so only the most egregious cases should be prosecuted. This would also ensure that the judiciary is not shielded from legitimate criticisms, which would in turn ensure that the judiciary remains faithful to the rule of law.

**Provision of Lawyers or Representatives by the Court to Witnesses and Victims/Survivors**

Lawyers in Singapore are generally adequately trained. Qualification and admission as an advocate and solicitor to the Singapore bar is governed by section 12 of the Legal Profession Act, and the criteria for admission (good character, passing of the requisite bar examinations, and completion of the requisite legal training period) are strictly observed.

**Safety and Security of the Judiciary, Prosecutors, Litigants, Witnesses, and Affected Public**

As stated in the 2011 Baseline Study, security issues are taken seriously in the State Courts and Supreme Court of Singapore: all those entering the court are subject to scans of their persons and their belongings to ensure that no prohibited materials are bought into the building. Police officers are stationed in the building to ensure safety and non-violence.\(^{145}\) This has not changed significantly since 2011.

**Specific, Non-Discriminatory, and Unduly Restrictive Thresholds for Legal Standing**

The general principle to determine legal standing for seeking judicial remedies for constitutional rights violations and/or breaches of public duty is that “individuals must have sufficient stakes.”\(^{146}\) The various thresholds for legal standing were summarized by the CA in *Kenneth Jeyaretnam*.\(^{147}\) An applicant can only have legal standing when there has been a breach of a public duty.\(^{148}\) There are three main categories of standing: first, when the public duty generates a correlative private (constitutional) right; second, when the public duty generates a public right; and third, when the breach of the duty does not generate a breach of any rights, but the breach is “of a sufficient gravity such that it would be in the public interest for the courts to hear the case.”\(^{149}\)

**When the Public Duty Generates a Correlative Private (Constitutional) Right**

The first category was considered and established by the CA in *Tan Eng Hong v Attorney-General*.\(^{150}\) The appellant Tan brought a constitutional challenge to section 377A of the Penal Code after he was arrested and charged under the law for engaging in oral sex with another man in a public toilet. Tan’s charge was

\(^{145}\) Singapore 2011 Report, pg. 246.

\(^{146}\) *Jeyaretnam Kenneth Andrew v Attorney-General* [2014] 1 SLR 345 [63] (‘Kenneth Jeyaretnam’).

\(^{147}\) [2014] 1 SLR 345.

\(^{148}\) Ibid [64].

\(^{149}\) Ibid.

\(^{150}\) [2012] 4 SLR 476.
subsequently amended by the Public Prosecutor to that of committing an obscene act in a public place under section 294(a), and on that basis, the Attorney-General successfully applied to have Tan’s application struck out. Tan appealed the striking out of his application, and one of the issues before the CA was whether Tan had *locus standi* to bring the constitutional challenge.

The CA answered the question in the affirmative and clarified the position on legal standing in seeking remedies for constitutional violations. The test for *locus standi* consists of three elements: (a) whether the applicant has a real interest in bringing the action; (b) whether there exists a real controversy between the parties concerned; and (c) whether there is a violation of a personal right. The existence of a “real interest” is established as soon as the applicant demonstrates a “a violation of his constitutional rights.”151 A violation of a constitutional right is therefore the “crux”152 of the standing requirement. The CA then went on to consider what constitutes a violation of a constitutional right and held that prosecution under an allegedly unconstitutional law should *not* be a necessary requirement for standing.153

Turning to the question of whether the very existence of an allegedly unconstitutional law suffices to show a violation of constitutional rights, the CA chose to leave this question open and declined to lay down a general rule to this effect, stating that “[each] case must turn on its own facts.”154 An instance where an applicant will be granted standing to seek remedies for a constitutional violation is when he is able to show that he faces “a real and credible threat of prosecution under an allegedly unconstitutional law.”155 With respect to Tan’s case, the CA held that Tan had standing to bring the constitutional challenge: “It is uncontroverted that s 377A is a law which specifically targets sexually-active male homosexuals…Tan professes to be a member of the targeted group…Therefore, since we have found that s 377A arguably violates the Art 12(1) rights of its target group, as a member of that group, Tan’s rights have arguably been violated by the mere existence of s 377A…We also accept that there is a real and credible threat of prosecution under s 377A.”156

The threshold for standing, then, seeks to strike a balance between granting greater access to justice and preventing an increase in unmeritorious cases, which may delay access to justice for other claimants.157 The threshold laid down by the CA has struck a fair balance between the two concerns.

**When the Public Duty Generates a Correlative Public Right**

A public right is distinct from a private (constitutional) right. This was considered in *Vellama d/o Marie Muthu v Attorney-General*.158 The applicant was a resident of a single member constituency (SMC) that was vacated after the elected Member of Parliament was expelled from his political party. The applicant sought judicial review for a mandatory order that the Prime Minister advised the President to issue a writ of election for the SMC within three months from the date of vacancy or a reasonable period that the court deemed fit. The applicant also sought a declaration on the proper construction of Article 49 of the Constitution, which deals with the filling of such vacancies.

151 Ibid [82], emphasis in original.
152 Ibid [84].
153 Ibid [89].
154 Ibid [110].
155 Ibid [114].
156 Ibid [126].
157 Ibid [109].
The CA considered a public right to be “shared in common with other citizens” as opposed to a private constitutional right, which accrues to the applicant personally. In respect of a public right, the applicant has standing only if he can show “special damage” that establishes “a nexus between the applicant and the desired remedy,” such that his claim can be distinguished from other potential litigants in the same class. The applicant has to show that “his personal interests are directly and practically affected over and above the general class of persons who hold that right, but need not go so far as to show that he is the only person affected.” In this case, the CA held that the applicant did not have the requisite standing because the applicant was unable to point to any damage she had suffered and so did not establish special damage.

Much like the test for standing established in *Tan Eng Hong*, the CA’s concern here is with striking a balance between vindicating the applicant’s rights and safeguarding good administration. The “special interest” requirement is necessary to prevent the courts from being “inundated by a multiplicity of actions, some raised by mere busybodies...to the detriment of good public administration.” The special damage requirement appears to have struck the right balance between the two competing concerns.

### When the Breach of Public Duty is Sufficiently Grave

The CA in *Kenneth Jeyaretnam* considered cases when an applicant can bring proceedings against a breach of public duty even when the public duty generates no correlative rights. Extending the “special damage” requirement in *Vellama*, the CA opined that “special damage” might also possibly encompass those rare and exceptional situations where a public body has breached its public duties in such an egregious manner that the courts are satisfied that it would be in the public interest to hear it.” Hence, this third category of legal standing goes beyond mere illegality, and is satisfied only in “extremely exceptional instances of very grave and serious breaches of legality.” The high threshold for this category is necessary to prevent “a surge of public interest litigation.” This is in line with the judiciary’s “ethos of judicial review focused on vindicating personal rights...through adjudication rather than determining public policy through exposition.” As such, the courts are concerned with the legality of the acts or omissions of public bodies, not the merits of these acts or omissions.

### Publication of and Access to Judicial Hearings and Decisions

As stated in the previous report, judicial hearings are to be open and generally accessible by the public. There has been no changes to this practice since 2011: hearing lists continue to be made available on the courts’ official websites, and the Singapore Academy of Law makes certain High Court and Court of Appeal judgments freely available on its website, SingaporeLaw.sg. These are cases from 2000 onwards and there are also some cases from 1970.

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159 Ibid[33].
160 Ibid.
161 Ibid[43].
162 Ibid[33].
163 Vellama [62].
164 Ibid.
165 Ibid.
166 Vellama [34].
167 Kenneth Jeyaretnam [59]-[60].
Reasonable Fees and Non-arbitrary Administrative Obstacles to Judicial Institutions

Hearing fees for matters heard by the Court of Appeal and before a High Court Judge are set out in Order 90A of the Rules of Court. The information is also available in simplified version on the Supreme Court's website.\(^{168}\) Similarly, the State Courts have also made information regarding hearing and court fees available on its website.\(^{169}\) There appears to have been no significant fee increases since 2011.

Assistance for Persons Seeking Access to Justice

Access to justice may be undermined if aggrieved parties choose not to seek legal redress due to the high cost of litigation. As such, in 2014, the Community Justice Centre (more details below), in collaboration with the State Courts, the Law Society and other justice stakeholders, set up the Primary Justice Project (PJP), which aims to provide “paid, basic legal services at a fixed fee and is geared towards helping parties to resolve their disputes, and at much lower costs, through the use of alternative dispute resolution services at the pre-filing stage.”\(^{170}\) PJP services are available for divorce matters and small value civil claims of less than S$60,000 and which fall outside of the Small Claims Tribunals’ jurisdiction.\(^{171}\) Such initiatives are geared towards reducing the financial cost of access to courts for the ordinary man on the street and, if successful, will strengthen the rule of law in Singapore.

Access to justice may also be hindered if a litigant or accused person is unable to afford legal representation. As discussed below, legal aid is available in Singapore. Apart from that, the courts’ websites also publish basic information for litigants who wish to represent themselves in court.\(^{172}\) In 2012, the Community Justice Centre (CJC) was established to ensure that litigants in person “have access to justice through community partnership.” The CJC was set up in response to statistics showing that the number of litigants in person had risen over the years. The CJC aims to “help to simplify court processes so that [litigants in person] will not be disadvantaged in not being able to effectively participate in court proceedings.”\(^{173}\)

Other sources of assistance include the Law Society of Singapore’s community legal clinics where volunteer lawyers provide free legal advice to Singaporeans who need legal advice on personal matters,\(^{174}\) and a free legal forum where members of the public can post their legal questions which will then be answered by volunteer lawyers.\(^{175}\)

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173 http://probono.lawsociety.org.sg/Help-for-Public/personal-legal-issue/CommunityLegalClinic/
Measures to Minimize Inconvenience to Litigants and Witnesses, and their Families, Protect their Privacy, and Ensure Safety from Intimidation/Retaliation

Apart from the measures explained in the 2011 Baseline Study, Singapore has put new measures in place to help witnesses. In 2014, the State Courts, together with the Singapore Children's Society, set up the Witness Support Programme (WSP) to support vulnerable witnesses who have to give evidence against accused persons in criminal proceedings. Vulnerable witnesses are children below 18 years old; adults who have a mental capacity below 18 years old; adults who were victims or eye-witnesses of potentially traumatizing violence-related or sexual offences; or elderly victims above 65 years old. The WSP is managed by the State Courts, and is free of charge. It is run by volunteers who are recruited by the State Courts and Children's Society and given training. Witnesses will be given emotional support and familiarization with court procedures before the witness is due to give evidence in court.

Available and Fair Legal Aid to All Entitled

There are three forms of legal aid available in Singapore: legal aid for civil cases administered by the Legal Aid Bureau (LAB), a department of the Ministry of Law; the Legal Assistance Scheme for Capital Offences (LASCO) provided by the State through the Supreme Court; and the Criminal Legal Aid Scheme (CLAS) provided by the Law Society of Singapore. Information relating to the various legal aid options in Singapore is publicly available on the organizations’ respective websites. LAB and the Law Society also produce brochures that set out all the necessary information on how to apply for legal aid.

LAB

Legal aid is available to Singapore citizens and permanent residents who are in Singapore, and citizens or residents of contracting states who are involved in applications under the Hague Convention on the Civil Aspects of International Child Abduction. LAB handles a wide range of civil matters including divorce, adoption, and custody of children, estate matters and claim for compensation in injury or medical negligence cases. LAB provides oral advice on questions of Singapore law, representations in civil proceedings, and legal assistance in the drafting of legal documents including deeds of separation and deeds of severance of cohabitation.

However, legal aid is not free: most receivers of legal aid are required to pay a contribution towards the costs of work done which usually does not exceed S$1,000. In addition to the contribution amount, receivers also have to pay for the preparation of various essential documents such as medical reports and expert opinions,

and fees incurred in the service of court documents to the opposing party.\footnote{181}{Ministry of Law, ‘Is legal aid free?’ \url{https://www.mlaw.gov.sg/content/lab/en/what-we-do/is-legal-aid-free.html} accessed 15 March 2016.}

To qualify for legal aid, applicants must pass the means test and the merits test.

**The Means Test\footnote{182}{Ministry of Law, ‘What is the means test?’ \url{https://www.mlaw.gov.sg/content/lab/en/eligibility/what-is-the-means-test.html} accessed 15 March 2016.}**

The mean test determines the applicant’s financial eligibility for legal aid by assessing the applicant’s disposal income and disposable capital. Namely, the applicant’s disposal income cannot exceed S$10,000 a year, and his disposal capital similarly cannot exceed S$10,000 a year. The applicant will be required to swear a Statutory Declaration before a Commissioner for Oaths as to his means if he passes the preliminary assessment during the registration of his case.

If an applicant does not satisfy the means test and is facing financial hardship, he can inform the Director of Legal Aid about the hardship that he is facing. The Director has discretion under the Legal Aid and Advice Act to grant further deductions in exceptional circumstances.

**The Merits Test\footnote{183}{Ministry of Law, ‘What is the merits test?’ \url{https://www.mlaw.gov.sg/content/lab/en/eligibility/what-is-the-merits-test.html} accessed 15 March 2016.}**

The merits test simply means that the applicant must show a good reason to bring or defend his case under the law. This is to prevent awarding legal aid to frivolous or vexatious claims.

There are between 9,000 and 10,000 cases registered with the LAB from 2011 to 2014. At least 50 per cent of these cases are matrimonial disputes, and half of the applicants have been educated only to secondary school level.\footnote{184}{‘Statistics,’ Legal Aid Bureau, accessed 26 February 2016, \url{https://www.mlaw.gov.sg/content/lab/en/about-us/statistics.html}.} As can be seen, the LAB provides an essential service to the ordinary person to whom access to justice may be hindered without such apparatus to help them navigate the legal process.

**LASCO\footnote{185}{Supreme Court of Singapore, ‘Legal assistance for capital offences’ \url{http://www.supremecourt.gov.sg/services/self-help-services/legal-assistance-for-capital-offences} accessed 15 March 2016.}**

Once a person is charged with a capital offence, he is assigned free legal counsel under the LASCO. There is no means test to pass or eligibility criteria to satisfy. Legal representation is provided at trial and on appeal, and there are usually two counsel assigned (one lead counsel and one assisting counsel).
The CLAS was set up by the Law Society of Singapore in 1985 with the purpose of “[providing] criminal legal assistance to the poor and needy in non-capital charges.” CLAS is available to “[anyone] who is in Singapore and has been charged in Court for an offence” under, for example, the Penal Code. Applicants are required to pass a means test and a merits test, which are the same as that administered by the LAB.

CLAS is provided by volunteer lawyers who take on these cases on a pro bono basis. Receivers of CLAS are generally not charged the lawyer’s professional fees, but he may be required to pay out of pocket expenses and a co-payment amount, depending on the results of the means test.

General Public Awareness of Pro Bono Initiatives and Legal Aid or Assistance

Information relating to the various legal aid options in Singapore is publicly available on the organizations’ respective websites. LAB and the Law Society also produce brochures that set out all the necessary information on how to apply for legal aid.187

In addition, the Law Society runs a handful of initiatives and projects to raise public awareness of the law, such as its biennial Law Awareness Project188 and its Know the Law booklet.189

III. INTEGRATING INTO A RULES-BASED ASEAN

Progress towards Achieving a Rules-Based ASEAN Community

In general, the Singapore government tends to accede to or ratify treaties which obligations are already in line with Singapore’s domestic laws, and embed treaty obligations into existing legislations.190 For instance, after enacting the Prevention of Human Trafficking Act on 1 March 2015, Singapore went on to accede to the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children on 28 September 2015, and then ratified the ASEAN Convention against Trafficking in Persons, Especially Women and Children on 25 January 2016.191 As such, Singapore’s regional or international treaty commitments do not influence its domestic legislation as much as its domestic legislations forms the basis on which Singapore chooses which treaties to ratify.

The implication of the above is that ASEAN integration has had relatively little impact on the strengthening of the rule of law and state institutions in Singapore. The fact that Singapore does not rely on regional and international treaty obligations to implement domestic laws attests to the healthy state of the rule of law in Singapore and the strength of its state institutions. In other words, Singapore has been the leader amongst ASEAN states in terms of compliance with the rule of law, and the objectives of ASEAN integration merely reflect what Singapore already practices, for the most part.

Owing to its strength in the region, Singapore has launched initiatives and programs for mutual support and assistance to develop the rule of law and judiciary systems and legal infrastructure in ASEAN. In November 2000, Singapore launched the “Initiative for ASEAN Integration”\(^\text{192}\) (IAI) at the 4th ASEAN Informal Summit held in Singapore. The IAI conducts training for government officials from Cambodia, Myanmar, Lao PDR and Vietnam and has set up training centers in those countries. Training programs include English Language, Trade, Information Technology and Tourism. In 2011, Singapore pledged a further contribution of S$50 million from 2012 to 2015 to the IAI. Further, the SJC conducts training programs in these four countries as part of the IAI. The course that the SJC will conduct in 2016 is called the “International Framework for Court Excellence.”\(^\text{193}\) Similar workshops were also conducted in 2015.\(^\text{194}\)

In terms of preventing and combating transnational crime, Singapore signed and ratified the Treaty on Mutual Legal Assistance in Criminal Matters among Like-Minded ASEAN Member Countries in 2005. In financial year 2012, the AGC had 131 mutual legal assistance requests and extradition hearings; and in financial year 2013, the figure was 139.\(^\text{195}\) The nature of these cases and the countries involved are not stated.

Singapore also actively works with other ASEAN states to combat the trafficking of persons in the region through platforms such as the ASEAN Ministerial Meeting on Transnational Crime, the ASEAN Senior Officials Meeting on Transnational Crime and its Working Group on Trafficking in Persons.\(^\text{196}\)

**Prospects and Challenges**

This report has shown that Singapore has a robust and effective comment to a thin conception of the rule of law. Laws are enacted according to established procedures; public officials are held accountable for breaches of the law; the government does not carry out arbitrary killings or detentions that are not authorized by the law; laws are clearly promulgated and predictable enough to effectively guide citizens’ behaviour; and the judiciary applies and enforces these laws in a manner that is generally impartial and fair. It is suggested that this conception of the rule of law can be expanded to include some notions of fundamental rights. For instance, a more substantive rule of law would preclude the use of the death penalty and caning, and the continued operation of the ISA and CLTPA. Such a conception would recognize that fundamental rights


\(^{196}\) ‘Second Reading of the Prevention of Human Trafficking Bill – Speech by Mr Masagos Zulkifli, Senior Minister of State for Home Affairs and Foreign Affairs’ Ministry of Home Affairs, 4 November 2014.
(such as the right to life and liberty, and the prohibition of cruel and inhumane punishment) are an integral part of the rule of law, which would be offended by these practices.

Commitments and Plans/Initiatives in relation to ASEAN-wide Commitments and Declarations on Human Rights

As mentioned above, Singapore generally ratifies treaties only when its domestic legislations already reflect the terms of those treaties. As the Minister for Law stated, Singapore’s focus is on the “full and effective implementation of treaty obligations.”

Singapore’s ratification of the ASEAN Convention Against Trafficking in Persons thus demonstrates its full commitment to tackling the problem of human trafficking in Singapore and the ASEAN region, especially in light of the extra-territorial effect of the Prevention of Human Trafficking Act.


198 Section 3(1) of the Act provides that the exploitation of an individual, whether in Singapore or elsewhere, constitutes an offence under the Act. Section 3(4) states that for the purposes of the trafficking offences that are caught under the Act, “it does not matter whether the act of trafficking in persons…is done partly in and partly outside Singapore provided that the act, if done wholly in Singapore, would constitute an offence [under the Act].”
IV. CONCLUSION

Nexus of the Changes to the Overall State of the Rule of Law for Human Rights

There have been both steps forward and backward for the rule of law in Singapore since 2011. The most significant change over the last five years is the modification of the death penalty regime. It is laudable that the courts now have some discretion when sentencing convicted drug traffickers, even if this discretion is too limited and narrow. The CA's decision in *Tan Seet Eng* is also highly significant and laudable: it demonstrates the judiciary's commitment to the rule of law and serves as a powerful rebuttal to its critics that accuse it of being deferential to Parliament.

At an operational level, the various changes to the criminal and civil justice process are to be commended. The improvements to the CPC, especially the new CCDC regime, address and correct the inequality of arms between the Prosecution and the Defence that plagued Singapore's criminal justice system before the changes were introduced by obliging the Prosecution to provide vital documents and information to the Defence. This puts the Defence on a more even keel with the Prosecution which, in turn, strengthens the rule of law by improving the criminal justice process and making it fairer. The initiatives launched by the State Courts to help ordinary Singaporeans attain justice in the courts are also to be commended. One of the most obvious and sometimes insurmountable barrier to justice is the cost of litigation; and so initiatives like the Community Justice Centre help to alleviate the financial burden of litigation for ordinary Singaporeans and improve their access to justice.

The Singapore government has also continued to be committed to the rule of law and good governance by holding accountable public officials who have abused their public position. The prosecutions of Peter Lim, Edwin Yeo and Lim Cheng Hoe demonstrate a key rule of law principle, which is that of accountability. This is undoubtedly a positive factor for the rule of law in Singapore.

Singapore's rule of law standards can be improved by embracing a more substantive conception of it. This is not to say that Singapore has to emulate the practices of liberal democratic countries, but only to say that a more substantive conception of the rule of law that encompasses fundamental rights would strike a more calibrated balance between protecting the individual and safeguarding the public interest. Such a conception would recognize, for instance, that the reasonable classification test includes a test for whether the purpose of the impugned statute is legitimate so that the courts can ensure that statutes based on arbitrary discriminations do not pass constitutional muster. A more substantive conception of the rule of law would also be slow to use the criminal law to punish critics of the government and the judiciary.

Role of the ASEAN Declaration on Human Rights in Strengthening Rule of Law for Human Rights

With regard to ASEAN integration, it is perhaps fair to say that ASEAN integration plays more of a supporting role in the development of the rule of law in Singapore. This is due to the fact that Singapore already has state and judicial institutions that are transparent, non-corrput and which adhere to the law. The ASEAN Human Rights Declaration has had little impact on human rights in Singapore, principally because the aspirations and standards set out in the Declaration are already more or less in line with Singapore's practices and interpretation of human rights. In particular, paragraph 8 of the ASEAN Human Rights Declaration states that human rights and fundamental freedoms must be exercised with “due regard to the human rights and
fundamental freedoms of others” and that these rights are subject to “limitations as are determined by law...to meet the just requirements of national security, public order...public morality...” Such language can also be found in Article 14(2) of the Singapore Constitution which allows Parliament to restrict the right to freedom of speech, assembly and association—restrictions that it considers necessary in the interest of the security of Singapore, public order or morality. Hence, the ASEAN Human Rights Declaration broadly reflects the practice in Singapore, and so the Declaration has had little impact in Singapore.

In conclusion, ASEAN integration is a positive development in the region for promoting the rule of law in the different ASEAN countries. As a rule of law leader in ASEAN, Singapore has an important role to play in helping its ASEAN neighbours strengthen the rule of law and state institutions in their countries; as such, Singapore should continue to contribute to the IAI and launch other programs for mutual support and assistance. At the same time, Singapore should seek to maintain its strong commitment to the thin rule of law and seek to adopt a more substantive conception of the rule of law, one that equally protects the rights of all Singaporeans.
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