

January 31, 2018

Re: Criminal Law (Temporary Provisions) (Amendment) Bill

HRW.org

Dear Member of the Parliament of Singapore,

Human Rights Watch is a nongovernmental organization that monitors and reports on human rights in over 90 countries around the world. We have monitored the human rights situation, documented rights violations, and advocated for the promotion and protection of human rights in Singapore for nearly 30 years.

We write to you to express our serious concerns about the proposed Criminal Law (Temporary Provisions) (Amendment) Bill, which was tabled during the last sitting of the Parliament of Singapore and is due to be discussed during the upcoming parliamentary session.

Legislative Background

The Criminal Law (Temporary Provisions) Act (CLTPA) was first enacted in 1955 to deal with the threat posed by an ongoing communist insurgency.¹ As Chief Secretary William A. C. Goode said at the time:

All are measures which we hope and believe will only be required for a limited period, a period during which we hope that the citizens of Singapore will learn by experience to distinguish between liberty and licence, between good leaders and bad leaders, and will learn to see the dangers into which the Malayan Communist Party and those who compromise with them are likely to lead this country.²

Detention without trial and supervision orders were added to the CLTPA in 1958, a few months before the first extension of the law, to tackle a wave of crime by gangs and secret societies. The abrogation of the protection of the courts was justified as necessary because those who might provide

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¹ Singapore Parliamentary Debates, Official Report, September 21, 1955, https://sprs.parl.gov.sg/search/topic.jsp?currentTopicID=00047238-ZZ¤tPubID=00068865-ZZ&topicKey=00068865-ZZ.00047238-ZZ_1%2Bid015_19550921_S0004_T00061-bill%2B.

² Singapore Parliamentary Debates, Official Report, September 21, 1955, https://sprs.parl.gov.sg/search/topic.jsp?currentTopicID=00047238-ZZ¤tPubID=00068865-ZZ&topicKey=00068865-ZZ.00047238-ZZ_1%2Bid015_19550921_S0004_T00061-bill%2B.

evidence against criminal defendants at trial were too afraid to do so.³ Edgeworth B. David, then chief secretary, stated:

I should like to reiterate that it is only the exceptional gravity of the present state of gang lawlessness which compels the Government to seek these exceptional powers for immediate use. No democratic government will lightly curtail the liberty of any individual by executive action, nor would it wish to curtail that liberty for a moment longer than is absolutely necessary.⁴

Despite the many assertions that the law was to be temporary, the CLTPA has been repeatedly extended and, more than 60 years later, remains law in Singapore. The bill currently pending before parliament would mark the 14th time the law has been extended.

Detention Without Trial

Under section 30 of the CLTPA, an individual may be detained for up to 12 months if the minister is satisfied that the person “has been associated with activities of a criminal nature,” and “that it is necessary that the person be detained in the interests of public safety, peace and good order.”⁵ Detention may be extended by the president for periods of up to 12 months. There appears to be no limit to the number of times detention can be extended or to the length of time an individual may be detained without trial.

Detention without trial is an extreme measure that can rarely be justified under international law. In the exceptional circumstances in which the government can demonstrate that an individual poses a direct threat that cannot be addressed by alternative measures, prompt and regular review by a court or other independent tribunal is essential to prevent arbitrary detention.⁶

The United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by the UN General Assembly in 1988, provides that no one shall be kept in detention without being given an effective opportunity to be heard

³ Singapore Parliamentary Debates, Official Report, August 13, 1958, https://sprs.parl.gov.sg/search/topic.jsp?currentTopicID=00048963-ZZ¤tPubID=00068937-ZZ&topicKey=00068937-ZZ.00048963-ZZ_1%2Bido28_1958o813_S0003_To0041-bill%2B.

⁴ Singapore Parliamentary Debates, Official Report, August 13, 1958, https://sprs.parl.gov.sg/search/topic.jsp?currentTopicID=00048963-ZZ¤tPubID=00068937-ZZ&topicKey=00068937-ZZ.00048963-ZZ_1%2Bido28_1958o813_S0003_To0041-bill%2B.

⁵ The minister may also order that the person be subject to supervision, which can entail serious restrictions of the right to freedom of movement and freedom of association. Criminal Law (Temporary Provisions) Act, secs. 30(b) and 33.

⁶ UN Human Rights Committee, General Comment No. 35, Liberty and Security of Person, U.N. Doc. CCPR/C/G/35 (2014), para. 15. Article 9(4) of the International Covenant on Civil and Political Rights provides that “anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.”

promptly by a “judicial or other authority,” defined as one “whose status and tenure should afford the strongest possible guarantees of competence, impartiality and independence.”⁷

The CLTPA does not provide for judicial review, and the bill currently pending before parliament would eliminate the already very limited judicial review of detention orders that currently exists under Singapore law. Under the act, the only “review” of the minister’s decision comes from a government-appointed advisory committee, to which the minister’s decision must be referred within 28 days. The advisory committee has no power to reverse the minister’s decision. Rather, it makes recommendations to the president, who can cancel or confirm the order. Such executive branch “review” is not sufficiently independent to replace review by the judiciary.

In the case of *Tan Seet Eng v. Attorney-General*, the Court of Appeal held that the courts may review an order of detention under the CLTPA for “irrationality, illegality or procedural impropriety.”⁸ The current draft of the Criminal Law (Temporary Provisions) (Amendment) Bill would effectively abrogate that decision by adding a new section 3(2) providing that the minister’s decision “is final.”

Permitting government officials to order indefinite detention without the need to sustain evidence in court or to prove criminal responsibility is an open invitation to serious abuse of power. If there is credible evidence that detainees committed crimes, they should be prosecuted in the Singapore courts, not held indefinitely based on the word of government officials. If such evidence is lacking, detainees should be released. Holding them indefinitely without charge violates many of the fundamental rights enshrined in the Universal Declaration of Human Rights, including the right to a fair and public trial, the right to be presumed innocent until proven guilty according to law, the right to be permitted to answer the charges against you, and the right not to be arbitrarily detained.⁹ Such detention is also unjust and inhumane. As a country that holds itself up as modern, internationally minded, and committed to the rule of law, retaining such powers is arbitrary and draconian, and a stain on Singapore’s international reputation.

⁷ Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Body of Principles), adopted December 9, 1988, G.A. Res. 43/173, annex, 43 U.N. GAOR Supp. (No. 49) at 298, U.N. Doc. A/43/49 (1988), princ. 11.

⁸ *Tan Seet Eng v. Attorney-General*, Court of Appeal, Civil Appeal No. 201 of 2014 and Summons No. 263 of 2015, November 25, 2015, <http://www.singaporelaw.sg/sglaw/laws-of-singapore/case-law/free-law/court-of-appeal-judgments/18218-tan-seet-eng-v-attorney-general-and-another-matter-2015-sgca-59>. The court ruled the detention of the defendant, who was alleged to be involved in an international match-fixing syndicate, unlawful because there was no allegation that his actions threatened public safety, peace, or good order in Singapore.

⁹ Universal Declaration of Human Rights (UDHR), adopted December 10, 1948, G.A. Res. 217A(III), U.N. Doc. A/810 at 71 (1948), arts. 9-11.

“Activities of a Criminal Nature”

The Criminal Law (Temporary Provisions) (Amendment) Bill also seeks to insert a new Fourth Schedule defining the “activities of a criminal nature” that can warrant detention without trial. While in theory, defining that previously unlimited phrase could be a positive step, the range of offenses listed in the proposed Fourth Schedule demonstrates that the law now sweeps more broadly than its original intention, and far more broadly than can possibly be justified under international law.

The proposed Fourth Schedule includes cases of persons involved in organized crime and secret societies, drug trafficking, money laundering, human trafficking, robbery with firearms, murder, gang rape, and kidnapping. While it could be argued that witnesses may be fearful of testifying in many of the types of cases listed, that is true in every country around the world and for many types of crimes, yet those countries do not make such a wide-ranging grant of potentially arbitrary and unaccountable power to detain persons without evidence or trial. The rationale of fearful witnesses is not a suitable or appropriate justification for entirely circumventing the criminal justice process by detaining suspects without trial. If an individual is involved in such offenses, the government should prosecute them under existing laws such as the Penal Code. However, if the government cannot prove their involvement, then the police should undertake more efforts to gather evidence until the charges can be proved. It is surprising that Singapore has yet to recognize that detention without trial has no place in a modern rights-respecting country, and that by resorting to this shortcut, Singapore undermines its claim to be a nation to be emulated by others.

Recommendation

Human Rights Watch strongly urges all members of the Parliament of Singapore to reject the Criminal Law (Temporary Provisions) (Amendment) Bill and to refuse to support any efforts to further extend the CLTPA when it next expires in October 2019.

Sincerely,

Brad Adams
Asia Director
Human Rights Watch