

# Singapore’s Legislative Response to the COVID-19 “Emergency”

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By Darius Lee \*

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“COVID-19 is the gravest public health crisis that mankind is facing in this century,” stated the Singapore Prime Minister Lee Hsien Loong at a Special Summit of the Association of Southeast Asian Nations.<sup>1</sup> Within the short span of a few months since the World Health Organization (“WHO”) declared COVID-19 a Public Health Emergency of International Concern<sup>2</sup> and a global pandemic,<sup>3</sup> the coronavirus has dramatically changed the world, affecting not only public health, but also social and economic life.

Governments have responded to the pandemic by shutting borders and taking extraordinary measures, including through the invocation of emergency powers to confer wide-ranging executive powers in order to respond to the unprecedented public health crisis. The use of emergency or emergency-like powers and drastic public health measures – including surveillance, closures of workplaces and restrictions on movements and gatherings – has raised concerns about their effects on the legal and constitutional order, as well as on human rights such as the right to privacy and freedom of movement, assembly and religion.

Like many other countries, Singapore has taken similar measures in response to COVID-19. Nevertheless, Singapore did not – and indeed refused – to declare a state of emergency. Instead, it employed what Ferejohn and Pasquino have identified as the legislative model whereby emergencies are handled through ordinary legislation delegating “*special and*

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\* Junior research assistant, Centre for Asian Legal Studies, National University of Singapore. LL.M. in International Law and Human Rights, Hebrew University of Jerusalem; LL.B. (Hons.), National University of Singapore. This paper develops ideas earlier expressed by Dr. Jaclyn Neo and the author in “Singapore’s Legislative Approach to the COVID-19 Public Health ‘Emergency’” on *Verfassungsblog*. I would like to thank Dr. Neo for her comments on this paper. All errors remain mine alone.

<sup>1</sup> Prime Minister Lee Hsien Loong, “PM Lee Hsien Loong at the Special ASEAN Summit on COVID-19” (14 April 2020).

<sup>2</sup> World Health Organization, “Statement on the second meeting of the International Health Regulations (2005) Emergency Committee regarding the outbreak of novel coronavirus (2019-nCoV)” (30 January 2020); World Health Organization, *International Health Regulations (2005)*, 2<sup>nd</sup> ed., art. 12.

<sup>3</sup> World Health Organization, “WHO Director-General’s opening remarks at the media briefing on COVID-19” (11 March 2020).

*temporary powers to the executive*”,<sup>4</sup> most notably through the passage of the COVID-19 (Temporary Measures) Act 2020 (“CTMA”).<sup>5</sup>

This paper explores Singapore’s legislative response to COVID-19. Part I discusses the emergency provisions under the Singapore Constitution, including the substantive and procedural requirements therein, as well as previous states of emergency prior to Singapore’s independence. Part II discusses Singapore’s response to COVID-19, including the passage of CTMA, while Part III analyses safeguards against the abuse of legislative emergency powers. Finally, Part IV concludes with some remarks.

## I. EMERGENCIES UNDER THE SINGAPORE CONSTITUTION

The invocation of emergency powers presumes that the existence of exigent circumstances which threaten the state or regime. The delegation of extraordinary powers to issue decrees and suspend legal processes and rights are theoretically justified for the purposes of resolving the threat to the system and restoring it to its previous constitutional state. At the same time, emergency powers implicate serious constitutional issues, including whether they are properly invoked, whether the suspension – or, in the case of “legislative emergencies”, limitation – of rights is justified, and whether this will lead to a slide into a more authoritarian world.<sup>6</sup>

### A. *Emergency Provisions of the Singapore Constitution*

There are two provisions under the Singapore Constitution which govern such exceptional circumstances, and thereby allow for suspensions of “normal” procedures and protections under the Constitution.

The first is Article 149, which empowers Parliament to enact legislation against subversion, if “*action has been taken or threatened by any substantial body of persons, whether inside or outside Singapore*”. Such legislation is valid notwithstanding any inconsistencies with rights to liberty (Article 9), protection against retrospective criminal laws and repeated trials (Article 11), equal protection (Article 12), prohibition of banishment and freedom of

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<sup>4</sup> John Ferejohn and Pasquale Pasquino, “The Law of the Exception: A Typology of Emergency Powers” (2004) 2(2) Int’l. J. Const. L. 210 at 217 (“*Law of the Exception*”).

<sup>5</sup> *COVID-19 (Temporary Measures) Act 2020*, No. 14 of 2020 (“CTMA”).

<sup>6</sup> See Jaclyn Neo and Darius Lee, “Singapore’s Legislative Approach to the COVID-19 Public Health ‘Emergency’” *Verfassungsblog* (18 April 2020), online: <<https://verfassungsblog.de/singapores-legislative-approach-to-the-covid-19-public-health-emergency/>>.

movement (Article 13) or freedom of speech, assembly and association (Article 14), or would, apart from Article 149, be outside the legislative power of Parliament.<sup>7</sup>

Pursuant to Article 149, Singapore has maintained the Internal Security Act (“ISA”),<sup>8</sup> which originally began as an Act in the Federation of Malaya that was extended to Singapore on 16 September 1963 when Singapore became part of the Federation of Malaysia. The ISA empowers the Minister to make orders for preventive detention if the President is satisfied that it is necessary prevent a person “*from acting in any manner prejudicial to the security of Singapore or any part thereof or to the maintenance of public order or essential services therein*”.<sup>9</sup> The government has retained the ISA to this day and has continued to use it to detain individuals for involvement in “*terrorism-related conduct*”.<sup>10</sup>

The second provision is Article 150(1) of the Constitution, which states that “[i]f the President is satisfied that a grave emergency exists whereby the security or economic life of Singapore is threatened, he may issue a Proclamation of Emergency.” If the Proclamation is issued at a time when Parliament is not sitting, Article 150(2) requires the President to “*summon Parliament as soon as practicable*”.

In the meantime, the President is empowered to promulgate ordinances having the force of law only if he is “*satisfied that immediate action is required*”.<sup>11</sup> The Constitution vests a significant amount of oversight over the President’s use of emergency powers, since both the Proclamation of Emergency and the ordinances promulgated by the President will need to be presented to Parliament once it convenes. Parliament has the power under Article 150(3) to annul the Proclamation and any ordinance, though without prejudice to anything previously done under them. Under Singapore’s Westminster system of parliamentary government, the President’s powers are limited, and it is well-established that the President’s discretion under this Article is to be exercised in accordance with the advice of the Cabinet.<sup>12</sup>

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<sup>7</sup> *Constitution of the Republic of Singapore*, informal consolidation in force from 1 April 2017, art. 149(1) (“*Singapore Constitution*”).

<sup>8</sup> *Internal Security Act* (1985 Rev. Ed.) (“ISA”).

<sup>9</sup> ISA, s. 8(1).

<sup>10</sup> See, for example, Ministry of Home Affairs, Singapore, “Update on Actions Taken Under the Internal Security Act” (25 June 2019).

<sup>11</sup> *Singapore Constitution*, art. 150(2).

<sup>12</sup> *Singapore Constitution*, art. 21(1); S. Jayakumar, “Emergency Powers in Malaysia: Can the Yang Di-Pertuan Agong Act in His Personal Discretion and Capacity?” (1976) 18 Mal. L.R. 149; see also *Yong Vui Kong v Attorney-General* [2011] 2 Sing. L.R. 1189 at [19] and [178] to [180].

While the Proclamation of Emergency is in force, Parliament's powers to make laws are almost unlimited. Parliament may "*make laws with respect to any matter*" if it appears to be "*required by reason of the emergency*" without presidential assent, which is ordinarily required in respect of legislation. The only provisions that still require presidential assent are those relating specifically to the Central Provident Fund (Singapore's compulsory retirements fund) (Article 22E), laws circumventing or curtailing the President's discretionary powers (Article 22H), and the drawing down of past reserves for loans and guarantees (Article 144(2) and Supply Bills (Article 148A). Apart from these, constitutional rights are largely suspended except those "*relating to religion, citizenship, or language*".<sup>13</sup>

A Proclamation of Emergency has a six-months validity period, and ceases to be in force after that period. Any ordinance promulgated in pursuance of the Proclamation would also cease to have effect unless it was a law that could have been validly made apart from the Proclamation of Emergency.<sup>14</sup>

### B. *Previous States of Emergency*

Singapore has never issued any Proclamation of Emergency since its Independence on 9 August 1965. However, prior to Independence, two states of emergency applied to Singapore.

Singapore underwent its first state of emergency in 1948 when it was still a British colony. Communist factions had tried to exploit labour woes by organising strikes and rallies in Singapore. When they failed, they focused their efforts on Malaya where they resorted to armed violence in May and June 1948. Communist guerrillas were well-coordinated, numbering an estimated 4,000 or more. They carried out at least nineteen cases of attempted murder, three cases of arson, and killed three European planters by the middle of June 1948.<sup>15</sup>

In response, the British Colonial Secretary approved the use of emergency powers in Malaya in June 1948,<sup>16</sup> which was extended to Singapore on 24 June 1948. As a result of the emergency, the United Kingdom ("UK") derogated from its obligations under the European Convention on Human Rights in relation to Singapore, shortly after it had extended the

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<sup>13</sup> *Singapore Constitution*, arts. 150(4) and 150(5).

<sup>14</sup> *Singapore Constitution*, art. 150(6).

<sup>15</sup> *Regina (Keyu and others) v Secretary of State for Foreign and Commonwealth Affairs and another* [2014] 3 W.L.R. 948 at [15]; T.N. Harper, *The End of Empire and the Making of Malaya* (United Kingdom: Cambridge University Press, 2001) at 145 to 148.

<sup>16</sup> *British Military Administration (Essential Regulations) Proclamation*, 18 June 1948.

application of the Convention.<sup>17</sup> This “Malayan Emergency” ended in 1960, three years after Malaya gained independence as the Federation of Malaya.

The second state of emergency took place in 1964 when Singapore was part of the Federation of Malaysia, along with North Borneo (later known as Sabah) and Sarawak, pursuant to with the Malaysia Agreement 1963.<sup>18</sup> Indonesia had been opposed to the creation of the Federation of Malaysia and, notwithstanding international efforts to resolve the dispute, mounted a campaign of armed confrontation (*Konfrontasi*) against the Federation.<sup>19</sup> Singapore, as part of the Federation then, had been a target of several attacks during *Konfrontasi*.<sup>20</sup>

In response, the Yang di-Pertuan Agong – the Malaysian head of state, equivalent of the President – issued a Proclamation of Emergency under Article 150 of the Malaysian Federal Constitution,<sup>21</sup> *in pari materia* with Article 150 of the Singapore Constitution today. Pursuant to the Proclamation, Yang di-Pertuan Agong issued the Emergency (Essential Powers) Ordinance 1964, permitting the making of “*essential regulations*” which “*he considers desirable or expedient for securing the public safety, the defence of the Federation, the maintenance of public order and of supplies and services essential to the life of the community.*”<sup>22</sup>

After Singapore attained independence and despite not being under a state of emergency, Singapore has retained as part of its laws the Emergency (Essential Powers) Act and the essential regulations issued thereunder, with modifications in light of Independence.<sup>23</sup> In fact, in 1972, an editor of a newspaper was prosecuted under emergency regulations originally emanating from the 1964 Proclamation of Emergency.<sup>24</sup>

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<sup>17</sup> United Kingdom, *Declaration contained in a letter from the Permanent Representative*, 23 October 1953, registered at the Secretariat General on 23 October 1953; United Kingdom, *Derogation contained in a Note verbale from the Permanent Representation of the United Kingdom*, 24 May 1954, registered at the Secretariat General on 24 May 1954; see also *Yong Vui Kong v. Public Prosecutor* [2010] 3 Sing. L.R. 489 at [61].

<sup>18</sup> *Agreement Relating to Malaysia*, 9 July 1963, as amended by agreement signed at Singapore on 28 August 1963, 750 U.N.T.S. 10760.

<sup>19</sup> See Kevin Y.L. Tan, “International Law, History & Policy: Singapore in the Early Years” in Kevin Y.L. Tan (ed.), *Singapore and International Law: The Early Years Essays in Memory of S Tiwari* (Singapore: Centre for International Law, 2011) 1.

<sup>20</sup> See *Osman and another v. Public Prosecutor* [1968-1970] Sing. L.R.(R.) 117; *Osman and another v. Public Prosecutor* [1965-1967] Sing. L.R.(R.) 402; *Krofan Stanislaus and another v. Public Prosecutor* [1965-1967] Sing. L.R.(R.) 411.

<sup>21</sup> *Proclamation of Emergency*, L.N. 271/64; see also Kevin Y.L. Tan, “From Myanmar to Manila: a brief study of emergency powers in Southeast Asia” in Victor V. Ramraj and Arun K. Thiruvengadam, eds., *Emergency Powers in Asia: Exploring the Limits of Legality* (New York: Cambridge University Press, 2010) 149.

<sup>22</sup> *Emergency (Essential Powers) Ordinance 1964*, No. 30 of 1964.

<sup>23</sup> *Emergency (Essential Powers) Act* (1985 Rev. Ed.).

<sup>24</sup> *Public Prosecutor v. Goh Seow Poh* [1971-1973] Sing. L.R.(R.) 710.

## II. SINGAPORE'S LEGISLATIVE RESPONSE

Analysing the typology of emergency powers, Ferejohn and Pasquino identified a new model of emergency powers, which they refer to as the “*legislative model*”. Under this model, emergencies are handled not through the invocation of emergency provisions under the constitution. Instead, the legislature enacts ordinary statutes that delegate special and temporary powers to the executive, without suspension of the “normal” constitutional order, including constitutional rights. Such powers are, in principle, temporary and exceptional to the ordinary operation of the legal system, thereby allowing close legislative supervision of the exercise of powers by the executive and sets a timely ending to that delegation.<sup>25</sup> A number of jurisdictions have adopted this model in response to COVID-19, most notably the UK<sup>26</sup> and other former British colonies Malaysia<sup>27</sup> and India.<sup>28</sup>

Various factors have contributed to the ability of the Singapore government to respond through ordinary legislation without the declaration of emergency and explicit suspension of rights. For one, Singapore adopts a Westminster system of government, including the system’s “*efficient secret*” of a near-complete fusion between the legislature and executive in the form of the Cabinet,<sup>29</sup> which is formed from members of the ruling party. The ruling People’s Action Party has been in power since Independence and presently holds an overwhelming majority of seats in Parliament, with 82 out of 89 elected Members of Parliament belonging to the party,<sup>30</sup> making it easy for the government to pass new laws without significant opposition.

Furthermore, Singapore’s dominant political and social culture is based on communitarian principles which prioritise society above the individual and embraces the notion of government by “*honourable men*” who have a duty to do right and enjoy the trust of the people.<sup>31</sup> The government has had the benefit of some degree of social capital and trust

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<sup>25</sup> *Law of the Exception* at 217.

<sup>26</sup> *Public Health (Control of Disease Act) 1984*, 1984, c. 22; *Health Protection (Coronavirus, Restrictions) (England) Regulations 2020*, S.I. 350/2020; *Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020*, S.I. 353/2020 (W. 80).

<sup>27</sup> *Prevention and Control of Infectious Diseases Act 1988*, Act No. 342 of 1988; *Prevention and Control of Infectious Diseases (Measures within the Infected Local Areas) Regulations 2020*, P.U. (A) 91 of 2020.

<sup>28</sup> *Disaster Management Act, 2005*, Act No. 53 of 2005; National Disaster Management Authority, India, *Order No. 40-3/2020-DM-I(A)* (24 March 2020).

<sup>29</sup> Walter Bagehot, *The English Constitution*, 2<sup>nd</sup> ed. (Boston: Little, Brown and Company, 1873) at 76.

<sup>30</sup> One of the then-Members of Parliament, Madam Halimah Yacob, vacated her seat in the Marsiling-Yew Tee Group Representation Constituency when she resigned in order to contest in the 2017 presidential election. She is currently the President of Singapore.

<sup>31</sup> Parliament of Singapore, White Paper, *Shared Values* (Paper Cmd. No. 1 of 1991) at [41] and [52].

accumulated prior to the COVID-19 pandemic and, for the most part, there is public consensus or at least public trust in the necessity of measures to respond to the crisis.<sup>32</sup>

Bearing in mind the unique features of the Singapore constitutional culture, this part of the paper will analyse Singapore's legislative response to COVID-19. It will provide a brief background to Singapore's response to COVID-19 in the earlier phases, an examination of the legal tools used, and the developments leading up to the enactment of CTMA and the COVID-19 (Temporary Measures) (Control Order) Regulations 2020 (the "**Control Order Regulations**").

### A. *Background to Singapore's Response to COVID-19*

As early as 3 January 2020, Singapore began implementing temperature screening at Changi Airport for inbound travellers arriving on flights from Wuhan,<sup>33</sup> which was expanded to all inbound travellers from China on 22 January.<sup>34</sup> These were similar to measures first applied during the SARS (Severe Acute Respiratory Syndrome) epidemic in 2003.<sup>35</sup>

On 28 January, Singapore began to quarantine "*higher risk*" travellers from Hubei, closing its borders the next day to new visitors with recent travel history to Hubei and those with Chinese passports issued in Hubei.<sup>36</sup> The travel ban was extended to mainland China as of 2359 hours on 1 February.<sup>37</sup> As the situation intensified worldwide in March, Singapore progressively extended the bans beyond South Korea, Iran and northern Italy to other countries.<sup>38</sup> As of 2359 hours on 23 March, Singapore closed its borders to all short-term visitors worldwide.<sup>39</sup>

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<sup>32</sup> See "PM Lee interview with The Australian full transcript" *Mothership* (20 March 2020); Blackbox, "Most countries' COVID-19 responses rated poorly by own citizens in first-of-its-kind global survey" (6 May 2020); Blackbox, "Government Satisfaction Index" *Every+One* (April 2020).

<sup>33</sup> Ministry of Health, Singapore, "Precautionary Measures in Response to Severe Pneumonia Cases in Wuhan, China" (2 January 2020).

<sup>34</sup> Ministry of Health, Singapore, "Additional Precautionary Measures in Response to Novel Coronavirus Pneumonia in China" (2 January 2020).

<sup>35</sup> "Singapore looks for SARS hot-heads" *CNN* (17 April 2003); Ministry of Health, Singapore, "Cessation of Temperature Screening at Border Checkpoints and Termination of 993 Ambulance Services" (8 June 2004).

<sup>36</sup> Ministry of Health, Singapore, "Additional Precautionary Measures to Minimise Risk of Community Spread in Singapore" (28 January 2020).

<sup>37</sup> Ministry of Health, Singapore, "Extension of Precautionary Measures to Minimise Risk of Community Spread in Singapore" (31 January 2020).

<sup>38</sup> Ministry of Health, Singapore, "Additional Precautionary Measures in Response to Escalating Global Situation" (3 March 2020); Ministry of Health, Singapore, "Additional Precautionary Measures to Prevent Further Importation of COVID-19 Cases" (15 March 2020).

<sup>39</sup> Ministry of Health, Singapore, "Additional Border Control Measures to Reduce Further Importation of COVID-19 Cases" (22 March 2020).

Before Singapore announced its first confirmed case of COVID-19 on 23 January, the government established the Multi-Ministry Taskforce (“**MTF**”), co-chaired by the Ministers for Health and National Development and staffed by various Cabinet Ministers, as part of its whole-of-government approach.<sup>40</sup> Singapore raised its DORSCON (Disease Outbreak Response System Condition) level to Orange on 7 February 2020, at a time when there were 33 confirmed cases of infection.<sup>41</sup>

Introduced in 2006, DORSCON is a colour-coded system, ranging from green to red reflecting increasing levels of public health impact, meant to guide a whole-of-government response to disease outbreaks. Level Orange meant that the disease was severe and spread easily from person to person, but had not spread widely in Singapore and was being contained.<sup>42</sup> In response to the ensuing wave of panic buying that followed the DORSCON announcement, the Prime Minister delivered his first national address on COVID-19, calling for calm and assuring that the government was “*not locking down the city or confining everybody to stay at home*”;<sup>43</sup> this inadvertent association of a “lockdown” with a state of panic possibly accounted in part for the government’s later reluctance to use the term when imposing such drastic measures.

At the same time, the government took incremental steps to slow the spread of COVID-19, strengthening the number of tools at its disposal. Originally, returnees from overseas were put on leaves-of-absence (“**LOAs**”) as precautionary measures against the spread, but the government strengthened the measure by implementing the new Stay-Home-Notice (“**SHN**”) on 17 February.<sup>44</sup> LOAs are precautionary measures requiring individuals to remain in their place of residence and minimise contact, but they may leave home briefly to attend to matters. On the other hand, SHNs are stricter and do not permit the individual to leave home. Like

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<sup>40</sup> Ministry of Health, Singapore, “Multi-Ministry Taskforce on Wuhan Coronavirus: Terms of Reference and Composition” (27 January 2020). The Multi-Ministry Taskforce was established before Singapore confirmed its first imported case of COVID-19 on 23 January 2020 (“Confirmed Imported Case of Novel Coronavirus Infection in Singapore; Multi-Ministry Taskforce Ramps Up Precautionary Measures” (23 January 2020)).

<sup>41</sup> Ministry of Health, Singapore, “Risk Assessment Raised to DORSCON Orange” (7 February 2020).

<sup>42</sup> Ministry of Health, Singapore, “MOH Pandemic Readiness and Response Plan for Influenza and Other Acute Respiratory Diseases” (Revised April 2014).

<sup>43</sup> Prime Minister’s Office, Singapore, “PM Lee Hsien Loong on the COVID-19 situation in Singapore on 8 February 2020” (8 February 2020).

<sup>44</sup> Ministry of Health, Singapore, “Implementation of New Stay-at-Home Notice” (17 February 2020).

quarantine orders (“**QO**”),<sup>45</sup> SHNs are issued under the IDA and carry criminal penalties for non-compliance.

Severe penalties have been imposed for non-compliance with both LOAs and SHNs. Although breaches of LOAs do not carry criminal penalties, consequences include revocations of work passes for (foreign) work pass holders and of work pass privileges for their employers in relation to breaches of LOAs.<sup>46</sup> Violators of SHNs have been sentenced to imprisonment or subject to fines,<sup>47</sup> and other consequences may include cancellation of permanent resident (“**PR**”) status<sup>48</sup> and cancellation of a Singapore citizen’s passport in at least one case.<sup>49</sup>

In taking the above measures, the government initially relied on powers provided under the Infectious Diseases Act (“**IDA**”),<sup>50</sup> which had been strengthened during the global SARS outbreak in 2002/2003.<sup>51</sup> This was coupled with border control powers under the Immigration Act, which delegated powers to the Minister of Home Affairs to impose regulate or restrict cross-border travel.<sup>52</sup>

### B. *Enactment of the COVID-19 (Temporary Measures) Act*

Up till late March 2020, Singapore’s response to the COVID-19 pandemic was the envy of many nations. Its strategy of early testing, rapid contact tracing, and isolating cases and close contacts was praised for its effectiveness. Indeed, for some time, Singapore seemed to be successfully “*flattening the curve*”.<sup>53</sup> And to top it off, the Singapore government managed to contain the spread of the disease while keeping workplaces, businesses, and schools open.

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<sup>45</sup> IDA, ss. 15(b) and 65; Ministry of Health, Singapore, “Man Charged in Court for Breaching Quarantine Order” (24 April 2020).

<sup>46</sup> Ministry of Manpower, Singapore, “More workers and employers taken to task for breaching leave of absence requirements” (24 February 2020).

<sup>47</sup> “Jail for man who breached stay-home notice to eat bak kut teh at hawker centre, run errands” *Channel NewsAsia* (23 April 2020); “22-year-old fined S\$1,500 for breaching Covid-19 quarantine order half an hour before it ended; lawyer says he misread it” *TODAYonline* (29 April 2020).

<sup>48</sup> Immigration and Checkpoints Authority, Singapore, “Singapore Permanent Resident Breached Stay-Home Notice Requirements; Loses Singapore Permanent Residence Status And Will Be Barred From Re-entering Singapore” (26 February 2020).

<sup>49</sup> Immigration and Checkpoints Authority, Singapore, “Singapore Citizen’s Passport Cancelled, Investigated For Possible Offences For Breaching Stay-Home Notice Requirements” (29 March 2020).

<sup>50</sup> *Infectious Diseases Act* (2003 Rev. Ed.).

<sup>51</sup> *Infectious Diseases (Amendment) Act 2003*, Act No. 5 of 2003; *Infectious Diseases (Amendment No. 2) Act 2003*, Act No. 7 of 2003.

<sup>52</sup> *Immigration Act* (2008 Rev. Ed.).

<sup>53</sup> See, for example, Audrey Wilson, “The Countries That Are Succeeding at Flattening the Curve” *Foreign Policy* (2 April 2020).

This all, however, changed when a sudden spike in cases occurred in the latter half of March. The sudden increase was initially due to imported cases as citizens and long-term residents returning to the country as the government recalled citizens and students on overseas exchange and internship were advised to return to Singapore.<sup>54</sup> However, when the numbers kept increasing and the proportion of cases arising from community spread rose in the last few days of March and into the first few days of April,<sup>55</sup> it was clear that stricter measures were necessary.

On 3 April 2020, the Prime Minister gave a national address announcing more stringent “circuit breaker” measures involving the closure of non-essential businesses, workplaces, and schools for one month.<sup>56</sup> This is a significant step up from the previous round of measures, which had required employers to provide for telecommuting for employees and for public schools to implement one day of home-based learning per week.<sup>57</sup>

According to the Prime Minister, the ramped-up measures were necessary and signified a shift from an incremental approach to a more decisive pre-emptive move.<sup>58</sup> This meant that previous legislation, which were tailored specifically to deal with outbreaks of infectious diseases and had served the government well in their initial response to COVID-19, were no longer adequate. New legislation had to be passed and this took the form of CTMA.

On 7 April 2020, the COVID-19 (Temporary Measures) Bill was expedited through Parliament on a Certificate of Urgency and passed within a single day. The new CTMA grants the executive greater powers to issue control orders to prevent the spread of COVID-19. The Act identifies two cumulative requirements for the Minister of Health to pass a control order: first, the Minister must be satisfied that *“the incidence and transmission of COVID-19 in the community in Singapore constitutes a serious threat to public health”* and, secondly, that the *“control order is necessary or expedient to supplement the Infectious Diseases Act and any*

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<sup>54</sup> Ministry of Foreign Affairs, Singapore, “Advisory for Singaporean Students Studying Overseas” (17 March 2020).

<sup>55</sup> Ministry of Health, Singapore, “12 More Cases Discharged; 47 New Cases of COVID-19 Infection Confirmed” (31 March 2020); Ministry of Health, Singapore, “Five More Cases Discharged; 74 New Cases of COVID-19 Infection Confirmed” (1 April 2020).

<sup>56</sup> Prime Minister’s Office, Singapore, “PM Lee Hsien Loong on the COVID-19 situation in Singapore on 3 April 2020” (3 April 2020).

<sup>57</sup> *Infectious Diseases (Workplace Measures to Prevent Spread of COVID-19) Regulations*, No. S 235 of 2020; Ministry of Education, Singapore, “Schools to Implement One Day of Home-Based Learning a Week” (27 March 2020).

<sup>58</sup> Prime Minister’s Office, Singapore, “PM Lee Hsien Loong on the COVID-19 situation in Singapore on 3 April 2020” (3 April 2020).

*other written law.*”<sup>59</sup> Both these requirements, by using the words “satisfied” and “necessary or expedient”, grant wide discretion to the Minister.

Control orders may entail requiring people to stay at or in, and not leave, a specified place; restrict movement of or contact between people; require premises or facilities to be closed or be subject to limited access; restrict the time, manner, or extent for the carrying out of any business, undertaking or work; and prohibit or restrict the conduct of or participation in any event or gathering.<sup>60</sup> Pursuant to the powers granted by CTMA, the Health Minister issued the Control Order Regulations just before midnight the very same day, putting into effect the “circuit breaker”.<sup>61</sup>

### C. *The COVID-19 (Temporary Measures) (Control Order) Regulations*

Despite being effectively a lockdown or partial lockdown, the government declined to refer to the “circuit breaker” measures as such. Faced with a question at a press conference, co-chair of the Multi-Ministry Taskforce Lawrence Wong considered that the term “lockdown” “*means different things to different people*”, instead preferring to focus on the specific measures in question.<sup>62</sup> Nevertheless, during the course of the “circuit breaker”, Prime Minister Lee Hsien Loong compared Singapore’s measures to the lockdowns imposed by New Zealand and certain other countries in a televised address.<sup>63</sup> The “circuit breaker” began for an initial period from 7 April to 4 May 2020 (both dates inclusive), but was extended by four weeks when there was an unexpected outbreak in the migrant worker dormitories.<sup>64</sup>

Under the Control Order Regulations, every individual must stay at or in, and not leave, his or her ordinary place of residence in Singapore unless to the extent necessary for some specified purposes. These include to work in an essential service and to purchase essentials. One is also allowed to exercise but only alone or with any other individual living in the same place of residence.<sup>65</sup>

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<sup>59</sup> CTMA, s. 34(1).

<sup>60</sup> CTMA, s. 34(2).

<sup>61</sup> *COVID-19 (Temporary Measures) (Control Order) Regulations*, No. S 254 of 2020 (“**Control Order Regulations**”).

<sup>62</sup> “COVID-19: Do the enhanced measures in Singapore constitute a lockdown?” *Channel NewsAsia* (3 April 2020), online: Youtube <<https://www.youtube.com/watch?v=DrhineV40rU>>.

<sup>63</sup> Prime Minister’s Office, Singapore, “PM Lee Hsien Loong on the COVID-19 situation in Singapore on 10 April 2020” (10 April 2020).

<sup>64</sup> Prime Minister’s Office, Singapore, “PM Lee Hsien Loong on the COVID-19 situation in Singapore on 21 April 2020” (21 April 2020).

<sup>65</sup> Control Order Regulations, reg. 4.

Other exceptions include travelling to assist an individual with a physical or mental disability, or individuals who are 12 years and below or 60 years and above to help with their daily needs.<sup>66</sup> This exception was later narrowed on 10 April, along with other amendments to the Regulations, so that travelling to assist these vulnerable individuals is only permitted “where there is no other assistance available to the individual”.<sup>67</sup> The Regulations prohibit persons meeting with another individual not living in the same place of residence for any social purpose. This includes family members, unless it is a family member unable to manage his or her daily needs.<sup>68</sup>

The movement control regulations are similar to what is in place in many countries, though the exemptions do provide for significant room for individuals to continue to leave the home, especially to exercise alone or with any other individual living with them. However, the Regulations also ambitiously legislate a requirement for individuals to keep a safe distance of at least one metre from any other individual in any public place or common property of any subdivided building. The only exceptions are in motor vehicles, and on public transport.<sup>69</sup>

The Control Order Regulations also provide for closures of premises and business, save for essential services.<sup>70</sup> Those who are not involved in such essential services may only work from home.<sup>71</sup> The list of selected services and activities that were allowed to operate were adjusted over time closing additional workplaces on 14 and 21 April,<sup>72</sup> and expanding the list of permitted services and activities in later stages.<sup>73</sup>

Over time, the government also tightened or relaxed the measures by passing amendments to the Control Order Regulations. For example, the wearing of face masks outside of home was made mandatory by amendments published on 15 April 2020, during the “circuit breaker”.<sup>74</sup>

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<sup>66</sup> Control Order Regulations, reg. 4(3)(f).

<sup>67</sup> *COVID-19 (Temporary Measures) (Control Order) (Amendment No. 2) Regulations 2020*, No. S 262 of 2020.

<sup>68</sup> Control Order Regulations, regs. 4(3)(f) and 6.

<sup>69</sup> Control Order Regulations, reg. 7(1).

<sup>70</sup> Control Order Regulations, regs. 9 and 10.

<sup>71</sup> Control Order Regulations, reg. 11.

<sup>72</sup> Ministry of Health, Singapore, “Continued Stringent Implementation and Enforcement of Circuit Breaker Measures” (14 April 2020); Ministry of Health, Singapore, “Strong National Push to Stem Spread of COVID-19” (21 April 2020).

<sup>73</sup> Ministry of Health, Singapore, “Easing the Tighter Circuit Breaker Measures, Preparing for Gradual Resumption of Activity After 1 June” (2 May 2020).

<sup>74</sup> *COVID-19 (Temporary Measures) (Control Order) (Amendment No. 3) Regulations 2020*, No. S 273 of 2020.

The punishment for contravening the control measures are set out in the primary legislation. Under section 34(7) of the CTMA, a person who, without reasonable excuse, contravenes a control order commits an offence and shall be liable on conviction to a fine not exceeding \$10,000 and/or imprisonment for a term not exceeding 6 months. Repeat offenders could be fined up to \$20,000 and/or see their jail term doubled to 12 months. Similar penalties apply to refusal or failure to comply with directions of enforcement officers, pursuant to section 35(11).

### III. SAFEGUARDS AGAINST THE ABUSE OF POWER?

Ramraj discerns three models of checks on emergency power developed by liberal democratic theorists: constraint through courts (legality), *ex ante* procedural checks (neo-Roman) and political checks (extra-legal measures).<sup>75</sup> However, as Ramraj pointed out, these models rest on assumptions about the stability of public institutions and the presence of particular social and political cultures that may not exist in other contexts, such as Singapore.<sup>76</sup>

As a relatively young country that emerged out of tumultuous circumstances prior to Independence, pragmatism and effectiveness have been embedded as key features of Singapore's constitutional culture. In the words of the first Prime Minister Lee Kuan Yew in December 1965, "*The main thing about the Constitution is that it must work.*" The Constitution was to have a foremost focus on "*the continuance of good and orderly government*", apart from "*a fair spread of the powers of Executive authority*" and "*checks and balances for a proper account of the use of these powers*".<sup>77</sup>

While Ramraj's three checks on emergency powers were discussed in the context of states of emergency, these rest on certain core rule of law principles that remain equally (if not more) applicable to the use of emergency-like powers in a non-emergency framework. As CTMA was enacted within the "normal" constitutional framework in Singapore, all three types of checks on the use of emergency-like powers remain available under the Singapore Constitution.

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<sup>75</sup> Victor V. Ramraj, "Emergency Powers and Constitutional Theory" (2011) 41 Hong Kong L.J. 165 at 167 to 175.

<sup>76</sup> *Ibid* at 175.

<sup>77</sup> Sing., *Parliamentary Debates*, vol. 24, col. 430 at 448 to 449 (22 December 1965) (Lee Kuan Yew); see also Sundares Menon, "Executive Power: Rethinking the Modalities of Control", *Annual Bernstein Lecture in Comparative Law at Duke University School of Law* (1 November 2018) at [13] to [14].

In this part of the paper, we will consider the *ex ante* procedural requirements within CTMA, judicial review in the courts, and finally political checks against the abuse of powers. This paper will make the case that political checks at the ballot box appear to be, from a practical perspective, the strongest safeguard in the context of Singapore’s response to COVID-19.

### A. Safeguards within the Act

During his speech in Parliament introducing the Bill, the Health Minister pointed out that, even as CTMA conferred powers, it also provided “*safeguards*”.<sup>78</sup>

Firstly, control orders and amendments thereof must be published in the *Government Gazette* as a means bringing it to the knowledge of the public, in accordance with the basic rule of law principle that a person’s liberty should not be curtailed by unknown or inaccessible laws and regulations.<sup>79</sup> This is pursuant to the general rule laid down in section 23(1) of the Interpretation Act requiring all subsidiary legislation to be published in the *Gazette*, upon which it shall take effect and come into operation, unless otherwise expressly provided.<sup>80</sup>

Even though emergency powers under Article 150 of the Singapore Constitution were not invoked, the safeguards under CTMA closely mirror the framework thereunder. Under section 34(4) of CTMA, a control order and any amendment thereof must be presented to Parliament as soon as possible after publication in the *Gazette*. If a resolution is passed by Parliament annulling a control order or any part of it, or any amendment thereof, as from a specified date, the control order or that part or amendment of it ceases to have effect as from that date, but without affecting anything previously done under that control order or part.<sup>81</sup> This is similar to the supervisory role played by Parliament over a Proclamation of Emergency and ordinances promulgated by the President under Articles 150(2) and (3) of the Constitution.

The final safeguard within CTMA is apparently based on the tacit recognition that members of the public generally do not read government documents such as the *Gazette*. Thus, pursuant to section 34(6) of CTMA, the Minister must additionally cause to be published every

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<sup>78</sup> Sing., *Parliamentary Debates*, vol. 94 (7 April 2020) (Gan Kim Yong).

<sup>79</sup> *Cheong Seok Leng v. Public Prosecutor* [1988] 1 SLR(R) 530 at [59] to [63]; *Lim Chin Aik v. The Queen* [1963] 1 A.C. 160 at 171.

<sup>80</sup> *Interpretation Act* (2002 Rev. Ed.), s. 23(1).

<sup>81</sup> CTMA, s. 34(5).

control order, and any amendment thereof, so as to bring it to the notice of all persons who may be affected by the control order.<sup>82</sup>

In furtherance thereof, the Health Ministry has posted the full text of the Control Order Regulations and amendments thereto on its website through press releases, and maintained a webpage containing the various amendments over time.<sup>83</sup> This is consistent with the Ministry's existing practice of consolidating all relevant COVID-19 press releases, briefings and advisories from different government departments on its website, rendering all such information easily accessible from a single source.<sup>84</sup> These have also been complemented by regular press briefings by the MTF on the COVID-19 situation and measures.

### B. *Judicial Review*

Since CTMA has been enacted within the "normal" (non-emergency) constitutional framework, it may be subject to constitutional review like any other ordinary legislation, and its subsidiary legislation can be reviewed by the courts under administrative law.

In principle, constitutional rights such as freedom of movement (Article 13), freedom of speech, assembly and association (Article 14) and freedom of religion (Article 15) have not been suspended, and courts may still review CTMA's consistency with those rights. However, the legislation would likely be justified in the interests of the permissible restrictions thereunder. Public health is a permissible ground of restriction in relation to freedom of movement and religion under Articles 13(2) and 15(4) respectively. Although no public health exception exists explicitly under Article 14, freedom of speech, assembly and association are subject to security of Singapore or public order,<sup>85</sup> under which CTMA will likely be justified.

Administrative law provides another layer of judicial review of control orders or any other subsidiary legislation issued under CTMA. Yet, the words "*satisfied*" and "*necessary or expedient*" under section 34 grant wide discretion to the Minister to not only assess the relevant

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<sup>82</sup> CTMA, s. 34(6).

<sup>83</sup> Ministry of Health, Singapore, "COVID-19 (Temporary Measures) (Control Orders) Regulations 2020", online: <[https://www.moh.gov.sg/policies-and-legislation/covid-19-\(temporary-measures\)-\(control-order\)-regulations](https://www.moh.gov.sg/policies-and-legislation/covid-19-(temporary-measures)-(control-order)-regulations)>.

<sup>84</sup> See Ministry of Health, Singapore, "Past Updates on COVID-19 Local Situation", online: <<https://www.moh.gov.sg/covid-19/past-updates>>.

<sup>85</sup> *Chee Siok Chin and others v. Minister for Home Affairs and another* [2006] 1 Sing. L.R.(R.) 582 at [49] ("*Chee Siok Chin*").

risks of COVID-19 but also the particular that may be adopted under such orders, thereby limiting the scope of the court’s review.<sup>86</sup>

While proportionality may provide a more exacting standard of review with regard to legislative or administrative discretion, and may “[require] the court to substitute its own judgment for that of the proper authority” in some cases,<sup>87</sup> the doctrine of proportionality has not been accepted as part of Singapore constitutional or administrative law.<sup>88</sup> The result is that courts are unlikely to enter into a robust assessment of the minutiae of the measures adopted by the executive in response to COVID-19, rendering the scope of judicial review relatively limited.

Practically, the rapidly-changing circumstances and the relatively short time periods of the relevant regulations and orders (for example, the 14-day period of the SHN issued to returnees from overseas) further diminish the effectiveness of judicial review as a means of control. This is despite the fact that the courts have made arrangements to facilitate judicial review of COVID-19 measures even during the “circuit breaker”, classifying applications for such judicial reviews as “essential and urgent”.<sup>89</sup> As a result, it is doubtful that constitutional or administrative review by the courts would constitute an effective means of control in relation to government action under CTMA.

### C. Ballot Box

Whether by sheer coincidence or design, the 1-year validity of CTMA would expire in or about April 2021, whereas the next general elections must be held by 14 April 2021. This is pursuant to Article 66 of the Constitution, which requires elections to be held within three months from the dissolution of Parliament.

At the same time, the government rejected a suggestion to delay the next elections beyond the constitutionally-permitted timeframe. Speaking on the matter in Parliament, Senior Minister Teo Chee Hean characterised as “misleading and unhelpful” a suggestion to delay

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<sup>86</sup> *Tan Seet Eng v. Attorney-General and another matter* [2016] 1 Sing. L.R. 779 at [98] to [106].

<sup>87</sup> *Chee Siok Chin* at [87].

<sup>88</sup> *Ong Ming Johnson v. Attorney-General* [2020] SGHC 63 at [237]; *Mohammad Faizal bin Sabtu v. Public Prosecutor* [2012] 4 SLR 947 at [60]; *Chan Hiang Leng Colin and others v. Minister for Information and the Arts* [1996] 1 Sing. L.R.(R.) 294 at [38]; *Chee Siok Chin* at [87].

<sup>89</sup> See Supreme Court of the Republic of Singapore, *Registrar’s Circular No. 4 of 2020* (5 April 2020).

the next elections beyond the constitutionally-permitted timeframe, since the only way to do so is to declare a state of emergency, an option he did not accept.<sup>90</sup>

The Senior Minister pointed to the fact that a “*caretaker government*” under such an emergency would be “*hobbled by the fact that it lacks the explicit mandate of voters and would therefore not be in a position to take major decisions on behalf of Singaporeans*”. Instead, he preferred to have a government in which the people have expressed confidence, “*to take us through this unprecedented health crisis, stabilise the economy and safeguard our people's lives and livelihood*”.<sup>91</sup>

Throughout the crisis, Parliament has continued to sit as usual while implementing safe distancing protocols.<sup>92</sup> To facilitate the continued functioning of Parliament, the Constitution was amended to permit Parliament to sit, meet and despatch business with Members of Parliament seated in more than one location.<sup>93</sup> The Parliamentary Elections (COVID-19 Special Arrangements) Act was also passed in order to facilitate the safe conduct of elections.<sup>94</sup>

Thus, there is a real prospect of electoral accountability in relation to the government’s handling of the COVID-19 pandemic. As a Member of Parliament put it in the debates over the Parliamentary Elections (COVID-19 Special Arrangements) Bill, “[*with*] or without COVID-19..., voters must have the capacity to hold the ruling party accountable for their actions should they fail to live up to the mandate given”.<sup>95</sup>

#### IV. APPLICATION OF THE RULES IN PRACTICE

Under the Singapore Constitution, the executive branch of government has discretion in relation to the enforcement of laws, though it may consider general governmental policy in such exercise.<sup>96</sup> Notwithstanding the severe penalties prescribed under CTMA and the wide-ranging nature of the restrictions, the Control Order Regulations have generally been applied with a carefully calibrated touch with a degree of sensitivity towards public perceptions. In

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<sup>90</sup> Sing., *Parliamentary Debates*, vol. 94 (25 March 2020) (Teo Chee Hean).

<sup>91</sup> *Ibid.*

<sup>92</sup> Office of the Clerk of Parliament, Singapore, “Stepped Up Precautionary Measures Against COVID-19 in Parliament” (25 March 2020).

<sup>93</sup> *Constitution of the Republic of Singapore (Amendment) Act 2020*, Act No. 22 of 2020.

<sup>94</sup> *Parliamentary Elections (COVID-19 Special Arrangements) Act*, Act No. 21 of 2020.

<sup>95</sup> Sing., *Parliamentary Debates*, vol. 94 (4 May 2020) (Zainal Sapari).

<sup>96</sup> *Tan Eng Hong v. Attorney-General* [2012] 4 Sing. L.R. 476 at [180] to [182] (“*Tan Eng Hong*”).

practice, the government’s approach has been characterised by a mixture of “hard” and “soft” methods, coupled with a degree of flexibility exercised through executive discretion.

On the day that CTMA was passed and even before the Control Order Regulations were published in the *Gazette*, the Ministry of the Environment and Water Resources (“MEWR”) had already deployed its officers and issued more than 7,000 written advisories for failure to keep safe distancing by 8pm that evening.<sup>97</sup> Subsequently, enforcement officers proceeded to issue stern warnings,<sup>98</sup> which are a way of informing the individual who is warned that if he or she continues to engage in the type of conduct, leniency may no longer be forthcoming in future and the individual may be prosecuted if found engaging in such conduct in the future.<sup>99</sup>

After having given the public a few days to understand and comply with the rules, enforcement officers began issuing fines for non-compliance.<sup>100</sup> Nevertheless, this was not before the government had gazetted an amendment to the Control Order Regulations providing for composition of offences up to the sum of \$2,000,<sup>101</sup> an amount far less than the maximum penalties permitted under CTMA. MEWR subsequently made clear that from 12 April 2020, first-time offenders face a composition fine of \$300, and repeat offenders would face higher fines, or prosecution in court for egregious cases.<sup>102</sup>

Both CTMA and IDA continue to apply concurrently, and thus the Control Order Regulations complement other pre-existing health control measures including SHNs and QOs. Those in breach of the “circuit breaker” measures issued pursuant to the Regulations have been subject to similar consequences such as revocations of work passes, fines and jail terms.<sup>103</sup>

Coupled with the “hard” action of enforcement are also much “softer” appeals through moral suasion, particularly towards the elderly who have a heightened vulnerability to COVID-

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<sup>97</sup> Ministry of the Environment and Water Resources, “Press Release on Penalties and Enforcement Actions against Breaches of Elevated Safe Distancing Measures in Public Spaces in HDB Estates” (7 April 2020).

<sup>98</sup> Ministry of the Environment and Water Resources, Singapore, “Three Written Stern Warnings and 10,000 Written Advisories Issued for Failure to Comply with Safe Distancing Measures, Closure of Public Spaces to Prevent Congregations” (8 April 2020); Ministry of the Environment and Water Resources, Singapore, “153 Stern Warnings Issued as Enforcement on Circuit Breaker Measures Tightens” (9 April 2020).

<sup>99</sup> *Tan Eng Hong* at [183].

<sup>100</sup> Ministry of the Environment and Water Resources, Singapore, “More than 2,900 Stern Warnings and 40 Fines Issued for Failure to Comply with Elevated Safe Distancing Measures” (10 April 2020).

<sup>101</sup> *COVID-19 (Temporary Measures) (Control Order) (Amendment) Regulations 2020*, No. S 261 of 2020.

<sup>102</sup> Ministry of the Environment and Water Resources, Singapore, “Stiffer Penalties for Breach of Safe Distancing Measures from 12 April 2020” (12 April 2020).

<sup>103</sup> Ministry of Manpower, Singapore, “Work Pass Revoked and Fines Issued for Breaching Circuit Breaker Measures” (12 April 2020); Singapore Tourism Board, “Hostel fined for breach of COVID-19 (Temporary Measures) Act” (17 April 2020); “Six convicted over various offences related to Covid-19” *Straits Times* (21 May 2020).

19. The government was apparently mindful of public perceptions of its enforcement methods, following an event on the first day of the “circuit breaker” when footage was circulated on social media of police arresting a 71-year-old man at the void deck of an apartment block and prompted some public consternation.<sup>104</sup> Mindful of the high numbers of non-compliance among the elderly, the Prime Minister gave a televised address before the first weekend of the “circuit breaker” period, identifying himself with the seniors and making a “*special appeal*” to them to stay home.<sup>105</sup>

A communitarian approach to the stringent measures was evident in the Prime Minister’s announcement of the “circuit breaker”, where he was careful to couch the measures as part of a collective effort by the entire society to join healthcare staff and others “*on the frontline*”.<sup>106</sup> Speaking periodically over televised addresses over the course of time, the Prime Minister also thanked Singapore citizens and residents for their cooperation in complying with the measures being taken by the government.<sup>107</sup> He also gave special thanks to migrant workers and workers in essential services, such as healthcare, in his annual May Day message.<sup>108</sup>

Similarly, the police have also exercised a notable amount of discretion and refrained from proactive enforcement of some measures under the Control Order Regulations, openly declaring as such.<sup>109</sup> While the Regulations extend to the private sphere and prohibit gatherings within homes,<sup>110</sup> the police have at least twice debunked rumours that they were conducting checks at residential units to enforce the elevated safe distancing measures in an effort to stem public panic. Instead, the Singapore Police Force clarified that it will take enforcement action if they come across anyone flouting the measures when attending to other types of incidents at residential units reported by the public.<sup>111</sup> Similarly, the police have clarified that they do not stop or fine motorists at road blocks not complying with the measures.<sup>112</sup>

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<sup>104</sup> “Coronavirus: Elderly man who wanted to eat in void deck arrested after refusing to go home, shouting at police” *Straits Times* (8 April 2020).

<sup>105</sup> Prime Minister’s Office, Singapore, “PM Lee Hsien Loong on the COVID-19 situation in Singapore on 10 April 2020” (10 April 2020).

<sup>106</sup> Prime Minister’s Office, Singapore, “PM Lee Hsien Loong on the COVID-19 situation in Singapore on 3 April 2020” (3 April 2020).

<sup>107</sup> Prime Minister’s Office, Singapore, “PM Lee Hsien Loong on the COVID-19 situation in Singapore on 10 April 2020” (10 April 2020); Prime Minister’s Office, Singapore, “PM Lee Hsien Loong on the COVID-19 situation in Singapore on 21 April 2020” (21 April 2020).

<sup>108</sup> Prime Minister’s Office, Singapore, “May Day Message 2020” (30 April 2020).

<sup>109</sup> See the discussion of “proactive” enforcement in *Tan Eng Hong* at [180] to [182].

<sup>110</sup> Control Order Regulations, reg. 6.

<sup>111</sup> Singapore Police Force, *Facebook post at 16:45* (14 April 2020); Singapore Police Force, *Facebook post at 13:55* (10 May 2020).

<sup>112</sup> Singapore Police Force, *Facebook post at 21:35* (13 April 2020).

## V. CONCLUSION

The WHO has said that COVID-19 “*may never go away*”,<sup>113</sup> a disturbing prospect given the enormous public health and socio-economic implications that are already evident worldwide. In light of the constant threat of COVID-19, it is foreseeable that governments would be inclined to seek “permanent” emergency or emergency-like powers to deal with an ever-present threat. Ferejohn and Pasquino have warned that legislative emergency powers may end up embedding permanent changes in the legal system.<sup>114</sup>

The legislative model employed by Singapore has authorised restrictions that affect various constitutional rights, but are meant to be temporary with clear provisions of the period during which these measures are in place. However, as Singapore has shown, temporary provisions have been extended by Parliament. For example, Singapore has a permanent “temporary” law – the Criminal Law (Temporary Provisions) Act (“CLTPA”) – which has been continuously renewed by Parliament since its original promulgation in 1955. The justification for the constant renewal of the CLTPA, which empowers the executive to detain without trial, is that criminal syndicates and the likes continue to pose threats to public order.<sup>115</sup>

At the moment, Singapore looks set to exit its “circuit breaker”, with plans to lift the partial lockdown progressively in three phases.<sup>116</sup> The government further appears keen to proceed with elections as soon as possible under stringent precautions, as a rallying point to deal with the challenges and uncertainties ahead.<sup>117</sup> This implies that the elections are likely to function as a *de facto* validation or otherwise of the government’s measures in addressing COVID-19 and the conferral of a mandate to navigate the country into a post-pandemic world.

Yet, in light of Singapore’s experience with regard to other emergency-like powers such as the ISA and CLTPA, it is foreseeable that the electorate will assess government responses to COVID-19 on the threshold of effectiveness (in ensuring that daily life goes on as normally as possible) and performance legitimacy rather than classical notions of rule of law or human rights *per se*. Although CTMA is slated to expire in or about April 2020, it remains to be seen if it will be renewed in whole or in part, or if the IDA will be amended to expand the powers

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<sup>113</sup> “Coronavirus may never go away: WHO” *Channel NewsAsia* (14 May 2020).

<sup>114</sup> *Law of the Exception* at 219.

<sup>115</sup> Sing., *Parliamentary Debates* (6 February 2018) (K. Shanmugam).

<sup>116</sup> Ministry of Health, Singapore, “End of Circuit Breaker, Phased Approach to Resuming Activities Safely” (19 May 2020).

<sup>117</sup> “The sooner the General Election is held, the sooner Singaporeans can tackle challenges ahead: DPM Heng” *Channel NewsAsia* (27 May 2020).

of the Health Minister on terms similar to those under CTMA, to deal with a public health threat that may resurge at any time. Thus, there is a real possibility that COVID-19 will not only transform the daily lives of people in society, but the legal and constitutional transformations arising from government responses will likewise become part of the “new normal”.