



PERMANENT MISSION OF THE REPUBLIC OF SINGAPORE
UNITED NATIONS | GENEVA

PERMANENT REPRESENTATIVE

1 December 2020

Mr Clement Nyaletsossi Voule

Special Rapporteur on the rights to freedom of peaceful assembly
and of association

Ms Irene Khan

Special Rapporteur on the promotion and protection of the right to freedom of
opinion and expression

Ms Mary Lawlor

Special Rapporteur on the situation of human rights defenders

Dear Mr Voule, Ms Khan, and Ms Lawlor,

I refer to the joint communication dated 12 October 2020 [Ref: AL SGP 3/2020]. I would like to respond to your allegations regarding the criminal prosecution and sentencing of Mr Jolovan Wham. From the outset, allow me to state that Singapore's legislation and law enforcement measures are in full conformity with our international law obligations, and applied equally to all individuals and groups. Cases before the courts are adjudicated upon by an independent judiciary.

Freedom of Speech, Expression, Peaceful Assembly and Association

Singapore fully respects the fundamental human rights enshrined in the United Nations Charter and the Universal Declaration of Human Rights. Singapore's Constitution protects the rights to freedom of speech and expression, freedom of peaceful assembly, and to form associations. We welcome vibrant and responsible public discourse because it encourages greater civic participation. In recent years, we have seen vigorous debate on policies and politics on various platforms in Singapore, including on social media. Numerous peaceful demonstrations have been organised at the Speakers' Corner in Singapore in the past five years.

As your letter acknowledges, the rights to freedom of speech, expression, peaceful assembly, and association are not unqualified, even under international human rights law. These rights carry with them special duties and responsibilities, and may be subject to certain restrictions as provided by law and are necessary. In this regard, and in accordance with our obligations under international human rights law, Singapore holds the view that these rights must be exercised responsibly in accordance with the rule of law, taking into account competing rights and interests, including the maintenance of public order, and the public interest in the administration of justice.

Public Order Act

There are proper avenues for Singaporeans to express their views in public. The Public Order Act (“POA”) ensures that individuals are able to exercise their right of political expression, whilst preserving public order in our delicately balanced multiracial, multireligious, and densely populated city state. Organising or participating in a public assembly without a permit from the Police is an offence under the POA.

On 26 November 2016, Mr Wham organised a public assembly involving a foreign speaker without a Police permit. Although the Police explicitly advised Mr Wham prior to the event that a Police permit was required under the POA (the “permit requirement”), he proceeded to hold the event without applying for the permit. As such, he was charged for an offence under the POA (the “POA charge”).

During the Police investigations into the offence, Mr Wham refused to sign his statement to the Police when he was required to do so under the Criminal Procedure Code. As such, he was charged for an offence under the Penal Code (the “Penal Code charge”).

Mr Wham was convicted of these charges on 3 January 2019 after a full trial. He was sentenced on 21 February 2019 to a fine of S\$2,000 (in default, ten days’ imprisonment) for the POA charge and a fine of S\$1,200 (in default, six days’ imprisonment) for the Penal Code charge. He then appealed against his convictions and sentences. The High Court, however, dismissed his appeals on 25 October 2019. Mr Wham subsequently obtained leave to refer the constitutionality of the permit requirement to the Court of Appeal. The Court of Appeal upheld the constitutionality of the permit requirement and therefore found no reason to set aside Mr Wham’s conviction on the POA charge.

Mr Wham paid the S\$1,200 fine for the Penal Code charge and chose to serve the ten-day imprisonment term in default of the S\$2,000 fine for the POA charge.

Administration of Justice (Protection) Act 2016

The Administration of Justice (Protection) Act 2016 (“AJPA”) provides individuals with greater clarity as to what contempt of court is, by codifying the long-existing common law principle of contempt of court into statute. More certainty is provided, for instance, by setting out the various defences to contempt of court, and imposing limits on the maximum punishment.

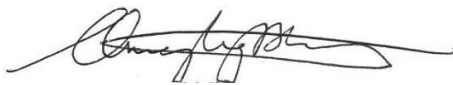
The AJPA does not prohibit individuals from expressing fair criticism of the judiciary and its decisions as fair criticism does not amount to contempt by scandalising the court. Judicial decisions continue to be routinely criticised without falling afoul of the AJPA. Therefore, the AJPA allows individuals to exercise their rights responsibly in accordance with the rule of law and international human rights law. The common law position that fair criticism of a court does not amount to contempt by scandalising the court is codified in the AJPA. In convicting Mr Wham for the offence of scandalising the court under the AJPA, the High Court held that his social media post was not fair criticism but a bare statement impugning the integrity and impartiality of Singapore’s judges without basis. Mr Wham’s conviction was affirmed by the Court of Appeal.

I would like to take the opportunity to address two inaccuracies in the joint communication dated 12 October 2020 regarding Mr Wham’s conviction under the AJPA. First, the joint communication states that it was the High Court that initiated proceedings against Mr Wham. This is inaccurate. It was the Attorney-General that filed the summons in the High Court for Mr Wham to be punished for scandalising contempt. Second, the joint communication states that Mr Wham’s “hearing was first set for 7 November 2018 and postponed several times”. Mr Wham was convicted of scandalising contempt on 9 October 2018. Therefore, his hearing could not have been “first set” after that date.

Left unchecked, contempt of court can obstruct the court’s function and erode public respect for and trust in judicial institutions. This would harm the public interest in the administration of justice. Singapore views confidence in our judiciary and its high standing as the bedrock of the rule of law. Unfounded and irresponsible attacks on the judiciary that call into question its independence and integrity undermine the rule of law and must be robustly countered.

Every state has the sovereign right to determine for itself the laws most suitable for its national circumstances in accordance with its international obligations. The measures we have put in place to protect public order and the integrity of our judiciary have contributed to ensuring that social harmony and respect is maintained in our diverse and democratic society. The reputation of our judiciary has been hard earned over years and we will defend it vigorously. Our laws accommodate the competing interests of freedom of expression and maintaining proper administration of justice.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Umej Bhatia', with a stylized, flowing script.

UMEJ BHATIA

Ambassador and Permanent Representative