

Mandates of the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and the Special Rapporteur on the situation of human rights defenders

REFERENCE:
AL SGP 3/2020

12 October 2020

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 41/12, 43/4 and 43/16.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the criminal prosecution and sentences concerning **Mr. Jolovan Wham** in relation to the exercise of the right to freedom of peaceful assembly and association, and to freedom of expression in Singapore, and the reported increasingly shrinking space for civil society in the country.

Mr. Jolovan Wham is a human rights defender, a social worker and a long-time civil activist. In 2011, he received the Promising Social Worker Award, conferred by the President of the Republic of Singapore. He is well-known for defending LGBTI rights, migrant workers' rights and has worked with other members of civil society to highlight issues related to freedom of expression and freedom of assembly.

Concerns regarding Mr. Jolovan Wham were raised in a previous communication (SGP 4/2017) and we thank your Excellency's Government for the reply of 7 March 2018.

Additionally, concerns about amendments to the Public Order Act severely restricting civic space were raised in a previous communication by Special Procedures on 11 July 2017 (SGP 3/2017). We thank your Excellency's Government for the reply of 8 September 2017, yet remain concerned at the continued use of the Public Order Act's provision for the prosecution of the legitimate exercise of the right to freedom of peaceful assembly and association and to freedom of expression.

According to the information received:

Civil disobedience and social movements case:

On 26 November 2016, Mr. Wham organized an event entitled "Civil Disobedience and Social Movements" for approximately 50 participants in an indoor public assembly venue. The event featured participation via Skype of Mr. Joshua Wong, a human rights defender from Hong Kong, who spoke about civil disobedience and social movements.

According to the police, Mr. Wham lacked a permit for organising an indoor public assembly and for inviting Mr. Wong to the event as he is not a citizen of Singapore.

On 21 February 2019, Mr. Wham was accused of violating section 16(1) of the Public Order Act (POA) for “organising an illegal assembly without a police permit” and sentenced to a fine of S\$2,000 Singapore dollars or ten days imprisonment by the District Court.

On 20 August 2020, Mr. Wham’s first appeal against the High Court decision was dismissed again by Singapore’s apex Court of Appeal. Mr. Wham then opted for the default jail term instead of paying the fine and started his 10-day sentence the next day.

Scandalizing the court case:

On 27 April 2018, Mr. Wham published a post on his Facebook profile containing the following statement: “Malaysia’s judges are more independent than Singapore’s for cases with political implications. Will be interesting to see what happens to this challenge.” This post also included a link to an online article titled “Malaysiakini mounts constitutional challenge against Anti-Fake News Act”.

The Attorney General’s Chamber (AGC) initiated contempt of court action against him on grounds that the post “did not constitute fair criticism of the court” and that it “posed a risk that public confidence in the administration of justice would be undermined”.

On 11 May 2018, the High Court initiated proceedings against Mr. Wham. He was charged with scandalising contempt under Article 3(1)(a) of the Administration of Justice (Protection) Act 2016 (AJPA).

On 9 October 2018, the Singapore High Court convicted Mr. Wham of scandalising the court. Mr. Wham’s hearing was first set for 7 November 2018 and postponed several times. This was the first conviction under the said offence stipulated in the 2016 AJPA.

On 20 March 2019, the prosecution sought a fine of between S\$10,000 and S\$15,000 for Mr. Wham. The prosecution also urged the High Court to order Mr. Wham to publish an apology and remove his social media post. Mr. Wham told the Court that he would not take down the Facebook post until he has appealed against the case.

On 29 April 2019, the High Court sentenced Mr. Wham to a fine of S\$5,000- or one-week’s imprisonment in default. Mr. Wham appealed this decision in front of Singapore’s Court of Appeal.

On 16 March 2020, Singapore’s Court of Appeal dismissed Mr. Wham’s appeal. In addition, the Court of Appeal ordered him to remove the abovementioned Facebook post. Mr. Wham opted for the default jail term

instead of paying the fine. According to Mr. Wham, the decision not to pay the fine is based on his belief that the judicial system of Singapore does not respect the right to freedom of expression, and he did not wish to validate it by paying a fine.

From 31 March 2020, Mr. Wham served the one-week prison sentence. He is the first person to be found guilty since the enactment of the AJPA.

Without prejudice to the abovementioned allegations, we express serious concern about the judicial proceedings against Mr. Wham on the basis of provisions in the POA and the AJPA. These charges appear to target the legitimate exercise of the rights to freedom of expression and freedom of peaceful assembly, and the defense of human rights.

In addition, the judgment in this case seems neither necessary nor proportionate considering the abovementioned facts, and the lawfulness of such restrictions to freedom of expression and to freedom of peaceful assembly under international human rights law should be reevaluated. We express further concern that the criminal prosecution of Mr. Wham falls into a broader pattern of restrictions of civic space in Singapore sustained in the POA which has expanded in its scope of application to cover even private discussions. Furthermore, this restriction of civic space is concerning for the adverse impact it will undoubtedly have on the ability of human rights defenders to carry out their work safely and effectively, and without fear of retribution.

Without prejudging the above allegations, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee Mr. Wham's right to freedom of peaceful assembly and association and to freedom of expression in accordance to international human rights law.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and comments which you may have on the above mentioned allegations.
2. Please provide information about how section 16(1) of the Public Order Act and Article 3 (1) (a) of the 2016 Administration of Justice (Protection) Act comply with permissible restrictions to the right to freedom of expression, as guaranteed under international human rights standards.

4. Please provide information about measures taken to ensure that the trial of Mr. Wham respects the standards of due process and fair trial as guaranteed under international human rights standards.
5. Please provide information on what steps your Excellency's Government has taken to protect civic space in Singapore including measures taken to ensure that human rights defenders in Singapore are able to carry out their legitimate work in an enabling environment without fear of retaliation, intimidation or harassment.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Please accept, Excellency, the assurances of our highest consideration.

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

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

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above. In particular, we would like to remind you of the right to freedom of expression, and freedom of peaceful assembly in accordance with articles 19 and 20 of the Universal Declaration of Human Rights.

In this regard, we would like to refer to the principle enunciated in Human Rights Council Resolution 12/16, which calls on States to refrain from imposing restrictions which are not consistent with the criteria established by international human rights standards. Under these standards, limitations must be determined by law and must conform to the strict test of necessity and proportionality.

The right to peaceful assembly has been reaffirmed by a number of Human Rights Council resolutions as well, including resolutions 15/21, 21/16 and 24/5. Furthermore, in its resolution 24/5, the Human Rights Council reminded States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote those rights. This has been reaffirmed in the report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association in 2014 (A/HRC/26/29, para 22).

While the right to freedom of peaceful assembly is not an absolute right under international human rights law, and it 'can be subject to certain restrictions, which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others' (Human Rights Council resolution 15/21, OP 4); these restrictions should be the exception and not the rule.

Furthermore, we wish to call the attention of your Excellency's Government to the provisions contained in the Declaration on Human Rights Defenders, adopted by the General Assembly in its resolution 53/144, which in its article 5 declares that, '[f]or the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels: (a) To meet or assemble peacefully'. We also wish to refer to article 6 points (b) and (c), which provides for the right to freely publish, impart or disseminate information and knowledge on all human rights and fundamental freedoms, and to study, discuss and hold opinions on the observance of these rights.

While Singapore is not a party to the International Covenant on Civil and Political Rights, the language of the right to freedom of expression established under the Declaration – and the Universal Declaration of Human Rights, which provides global standards in human rights for all States – is materially similar to Article 19 of the Covenant. Article 19(1) of the Covenant states that "[e]veryone shall have the

right to hold opinions without interference.” Article 19(2) establishes State Parties’ obligations to respect and ensure “the right to freedom of expression,” which includes the “freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.” Accordingly, the jurisprudence of Article 19 (and particularly its criteria for valid limitations on freedom of expression) provides persuasive guidance on the scope of Singapore’s obligations to respect and ensure the right to freedom of opinion and expression.

Article 19(3) of the Covenant provides that restrictions on the right to freedom of expression must be “provided by law”, and necessary “for respect of the rights or reputations of others” or “for the protection of national security or of public order (ordre public), or of public health and morals.” The General Assembly and the Human Rights Council have affirmed that permissible restrictions online are the same as those offline. (A/HRC/17/27)

Article 19(3) establishes a three-part test for permissible restrictions on freedom of expression:

- a) *Restrictions must be provided by law.* Any restriction “must be made accessible to the public” and “formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly.” (CCPR/C/GC/34) Moreover, it “must not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution.” *Id.*
- b) *Restrictions must protect legitimate aims,* which are limited to those specified under article 19(3). The term “rights...of other under article 19(3)(a) includes “human rights as recognized in the Covenant and more generally in international human rights law.” *Id.*
- c) *Restrictions must be necessary to protect legitimate aims.* The requirement of necessity implies an assessment of the proportionality of restrictions, with the aim of ensuring that restrictions “target a specific objective and do not unduly intrude upon the rights of targeted persons.” *Id.* The ensuing interference with third parties’ rights must also be limited and justified in the interest supported by the intrusion. Finally, the restriction must be “the least intrusive instrument among those which might achieve the desired result.” *Id.*

Additionally, we would like to refer to recommendations addressed to your Excellency’s Government in the context of the review of Singapore during the Universal Periodic Review of the Human Rights Council, which had been accepted by your Excellency’s government. Accepted relevant recommendations included the one proposed by Mexico on behalf of GRULAC, OAS) to ‘[c]onsider the necessary legislations and policies to effectively guarantee the protection and promotion of freedoms of expression, peaceful assembly and association’; and by France to ‘[e]nsure freedom of assembly and association, freedom of opinion and expression, including on the Internet, and protect freedom of the press’.