

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

REFERENCE:
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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; and Special Rapporteur on the right to privacy, pursuant to Human Rights Council resolutions 43/4, 41/12 and 46/16.

In this connection, we would like to submit the following **comments on the Foreign Interference (Countermeasures) Act**, which was passed by Parliament on 4 October 2021 and published on the Official Gazette on 26 November 2021.

We are concerned that the Act may afford a wide range of powers to the government, in particular the Ministry of Home Affairs, which may well contravene international norms and standards related to freedom of opinion and expression, freedom of association and of peaceful assembly and the right to privacy. We are especially concerned that the Act could be used to target journalists, human rights defenders or any individuals speaking publicly about political, economic, cultural and social issues but deemed to be “politically significant”, per the Law, notwithstanding the heightened protection afforded to political speech under international law.

General observations

In its preamble, the Foreign Interference (Countermeasures) Act specifies that its objective is “to protect the public interest by counteracting acts of foreign interference.” According to Article 9 of the Act: “For the purposes of this Act, a person undertakes an activity or engages in conduct for the purpose of influencing or seeking to influence a Singapore governmental decision if any purpose of the activity or conduct is to influence one or more of the following: (a) a process in respect of a Singapore governmental decision; (b) the public in relation to any aspect of a process mentioned in paragraph (a)”.

Among others, the Act provides the Ministry of Home Affairs with the authority to issue directions to various entities, such as social media platforms, internet service providers or relevant electronic and communication services – including messaging apps and search engines – and owners of websites, blogs, and social media.

Electronic communications sent “on behalf of a foreign principal”, which is defined as an entity that “is constituted or organised under a law of a foreign country, even if registered under any written law; or has its principal place of business in a foreign country, even if incorporated under any written law”, will be banned where “it is or is likely to be” “prejudicial” to e.g. security, public health, public or tranquillity, or diminish public confidence, or is “directed towards a political end” in Singapore

(Article 17). Similarly, electronic communications on behalf of a foreign principal will not be permitted where the foreign principal is “concealed or undisclosed” and the information “will influence another person” to engage in certain activities or conduct (Article 18).

Further, the Act stipulates that individuals and groups directly involved in Singapore’s political processes will be designated as “politically significant persons” (PSPs) who will be subject to certain measures to mitigate the risk of foreign interference. According to the Act, “PSPs” include political parties, politicians, election candidates and their election agents (Article 14). An authority appointed by the Ministry of Home Affairs would also have discretion to designate individuals and entities as “politically significant”, for activities “directed in part towards a political end in Singapore”, or where it is in the “public interest” (Article 47).

The expansive and vaguely worded definition of a “foreign principal” may disproportionately impact members of civil society, independent journalists, academics, researchers, artists, writers and other individuals who express opinions, share information and collaborate or advocate on socio-political issues and matters of public interest. We also seriously worry that such a vague definition may cover nearly all forms of cross-border collaboration or engagement with foreign actors, including the United Nations, its representatives and mechanisms in the field of human rights.

In addition, the Act imposes substantial new obligations on social media and Internet providers, including must-carry obligations to transmit certain messages. Conversely, directions may be issued to block online access, restrict accounts, or remove apps (Article 29).

An independent Reviewing Tribunal, chaired by a sitting High Court Judge and comprised of two other persons outside of the Government, will be set up to hear appeals of directions issued by the Minister, with the scope of judicial review being limited to procedural violations (Article 92).

Violations could result in up to 14 years imprisonment and fines of up to S\$100,000 (US\$74,000), depending on the offence (see e.g. Article 18(3)).

International standards

Before providing our comments on the legislative amendment itself, we would like to highlight several relevant international standards, and in particular the provisions of Articles 19 and 20 of the Universal Declaration of Human Rights (UDHR), which protects the right to freedom of expression and of association. While Singapore is not a party to the International Covenant on Civil and Political Rights (ICCPR), the language of the right to freedom of expression and of association established under the Declaration is materially similar to Articles 19 and 22 of the ICCPR.

In particular, we would like to recall that under article 19 of the ICCPR, the right to freedom of expression is defined broadly, and 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” (emphasis added).

Furthermore, article 19 (2) of the ICCPR promotes a right to information of all kinds. As a result, “States bear the burden of justifying any withholding of information as an exception to that right” (A/70/361, para. 8). The United Nations Human Rights Committee, the body charged with monitoring implementation of the Covenant, has also emphasized that limitations should be applied strictly so that they do “not put in jeopardy the right itself” (General Comment No. 34, para. 21).

Under article 19 (3) of the ICCPR, restrictions to the freedom of expression are permissible only when “provided by law”, and necessary for “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 Human Rights Committee emphasised that, before resorting to restrictions, States “must demonstrate in specific and individualized fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat” (General Comment No. 34, para. 35).

Article 22 (1) and (2) of the ICCPR guarantees the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests, while noting that no restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Concerning the power granted to the authorities to obtain data from internet service providers, we recall that the right to privacy is protected by Article 12 of the UDHR and Article 17 of the ICCPR. Article 17 of the ICCPR specifies that limitations to the right to privacy should only be permitted when provided by law, proportionate, and necessary for the protection of a legitimate interest. We underscore that the right to privacy and freedom of expression are interlinked (A/HRC/23/40 and Corr.1) as the right to privacy often acts as a gateway to the enjoyment of freedom of opinion and expression (A/73/348).

We would also like to draw the attention of your Excellency’s Government to the following paragraph from UN resolution A/HRC/RES/34/7 of the Human Rights Council of March 2017: “Recognizing that the right to privacy can enable the enjoyment of other rights and the free development of an individual’s personality and identity, and an individual’s ability to participate in political, economic, social and cultural life, and noting with concern that violations or abuses of the right to privacy might affect the enjoyment of other human rights, including the right to freedom of expression and to hold opinions without interference, and the right to freedom of peaceful assembly and association”.

The UN Human Rights Council has further emphasised that States have the obligation to respect and fully protect these rights online as well as offline (A/HRC/RES/38/7).

Furthermore, we would like to refer to Human Rights Council resolutions 12/2, 24/24, 36/21, and 42/28 reaffirming the right of everyone, individually or in association with other, to unhindered access to and communication with international bodies, in

particular the United Nations, its representatives and mechanisms in the field of human rights. The Human Rights Council urges States to refrain from all acts of intimidation or reprisals, to take all appropriate measures to prevent the occurrence of such acts. This includes the adoption and implementation of specific legislation and policies in order to promote a safe and enabling environment for engagement with the United Nations on human rights, and to effectively protect those who cooperate with the United Nations.

Requirement of legality

The Act provides for a wide range of restrictions to freedom of expression and association on vague terms related to the prevention, detection and disruption of foreign interference. In this context, we underscore that any limitations to freedom of expression and association must have a legitimate aim, which must be limited to those specified under articles 19 (3) and 22 (2) of the ICCPR, namely the “respect of the rights or reputations of others [or] the protection of national security or of public order (ordre public), or of public health or morals” and restrictions “which are necessary in a democratic society or [for the] protection of the rights and the freedom of others”. As such, under international human rights law, the prohibition of information in the name of countering foreign interference, or even protecting national sovereignty, is not in itself a legitimate ground to restrict freedom of expression and of association. As a result, any limitation to freedom of expression and of association that is guided by national sovereignty reasons must establish a close and concrete connection to the protection of one of the legitimate aims stated in Article 19 (3) or Article 20 ICCPR in order to be lawful. Such a direct relationship seems absent in the Act. In this context, we are concerned that adopting such a sweeping definition broadens the scope of the Act while conferring excessive discretion to the authorities that may lead to arbitrary implementation.

We are concerned that the lack of precision contained in the Act may violate the principles of clarity and predictability required by international human rights law. According to the Human Rights Committee, the requirement of legality entails that a “norm, to be characterized as a “law”, must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly and it must be made accessible to the public. A law may not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution.” (General Comment No. 34, para 25). As a result, we express concern that restrictions to freedom of expression contained in the Act, in particular its Article 17, does not appear to serve a legitimate purpose and may well be arbitrarily implemented to censor, punish or restrict the dissemination of information.

Requirement of necessity

The Bill clarified that it does not apply to “foreign government, a foreign public enterprise or a foreign political organisation”. We are concerned that one important caveat that had been inserted in one of the first versions of the Bill seems absent from the final text (“The Bill will not apply to Singaporeans expressing political views unless they were agents of a foreign entity. Neither would it apply to foreign individuals or foreign publications reporting or commenting on Singapore politics, in an open, transparent and attributable way, even if critical of Singapore or its government). As

such, the Act may limit a wide range of legitimate expressions, including news reporting, criticism of the government, political leaders and other public figures, as well as the expression of unpopular and minority opinions. The Human Rights Committee has made clear that Article 19 (3) of the ICCPR “may never be invoked as a justification for the muzzling of any advocacy of multi-party democracy, democratic tenets and human rights.” (General Comment No. 34, para. 23). This is particularly important for media freedom since “a free, uncensored and unhindered press or other media is essential in any society [...] It constitutes one of the cornerstones of a democratic society” (Ibid. para. 13). In this context, we fear the Act may have adverse impact on the media and discussions between individuals online, thereby stifling important debates on matters of public interest.

Requirement of proportionality

Referring to the principle of proportionality, the Human Rights Committee previously recalled that “restrictive measures must be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might achieve their protective function; they must be proportionate to the interest to be protected” (General Comment No. 27, para. 34). The principle of proportionality requires States to avoid adopting measures that are excessively punitive.

In this context, we worry that the severe penalties foreseen by the law not only risk undermining the right to privacy, but increase the risk of individuals self-censoring and deliberately deciding not to participate in or engage with cross-border networks or actors, including the UN in the field of human rights, to avoid potentially falling within the scope of this new legislation.

In his report on online content regulation (A/HRC/38/35), the former Special Rapporteur on freedom of opinion and expression noted that “States should only seek to restrict content pursuant to an order by an independent and impartial judicial authority, and in accordance with due process and standards of legality, necessity and legitimacy” (para. 66). The Special Rapporteur called upon States to refrain from adopting models of regulation “where government agencies, rather than judicial authorities, become the arbiters of lawful expression.” (Ibid. para. 68).

The Special Rapporteur on the freedom of peaceful assembly and of association has recognized in previous reports that digital technology is integral to the exercise of the rights of peaceful assembly and association (A/HRC/20/27 and A/HRC/38/34). Technology serves both as a means to facilitate the exercise of the rights of assembly and association offline, and as virtual spaces where the rights themselves can be actively exercised (A/HRC/29/25/Add.1, para. 53). The mandate holder has further called upon States to ensure that everyone can access and use the Internet to exercise these rights, and that online associations (A/HRC/20/27, para. 52) are facilitated in accordance with international human rights standards, and that the general norm should be to permit the open and free use of the Internet and other digital tools (A/HRC/23/39, para. 76).

In the context of treason and espionage laws, the Human Rights Committee further stated that States parties must take “[e]xtreme care” to ensure that they comply with the strict requirements of Article 19(3) (General Comment No. 34, para. 30). In particular, “[i]t is not compatible with paragraph 3 ... to invoke such laws to suppress

or withhold from the public information of legitimate public interest that does not harm national security or to prosecute journalists, researchers, environmental activists, human rights defenders, or others, for having disseminated such information” (General Comment No. 34, para. 30).

Final observations

We are seriously concerned that the Act was adopted by the Parliament after only a few hours debate in the House. In light of the various comments made in our letter, we echo the concerns raised by some Members of Parliament who regretted that the Act had been adopted without open and thorough public consultations.

Singapore, which is globally recognised for its financial hub’s success, benefits from investments coming from every part of the world, which make numerous provisions of the Foreign Interference (Countermeasures) Act particularly troubling. Singapore is characterised by a multi-ethnic population with widespread Internet access, where the free and diverse flow of information is an integral part of Singapore’s distinct feature. In this context, we would respectfully urge your Excellency’s Government to undertake a thorough review of the language contained in the Act with a view to bringing it into line with international human rights law.

We are also concerned that this new legislation comes two years after the passing of Singapore’s anti-fake news laws, which allowed the government to direct service providers to block online content under vaguely worded provisions. Bearing in mind the concerns about the impact of the anti-fake news legislation on the enjoyment of Articles 19 and 22 of the ICCPR, which were raised in our communication OL SGP 3/2019, we are alarmed that this new law may further restrict the enjoyment of freedom of expression, and of association, in a way that do not conform with international standards, in particular the principles of legality, necessity and proportionality.

In light of the foregoing, we would like to respectfully urge your Excellency’s Government to halt the adoption, and implementation of this legislation. We stand ready to provide your Excellency’s Government with any technical assistance required.

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/or comment(s) you may have on the issues mentioned above.
2. Please indicate how the Foreign Interference (Countermeasures) Act is consistent with your Excellency’s Government’s obligations under international human rights law, especially the requirements of legality, necessity and proportionality under Article 19 of the UDHR and ICCPR.
3. Please clarify whether the communication and cooperation with the UN, its representatives and mechanisms in the field of human rights would fall under the remit of the Foreign Interference (Countermeasures) Act. What measures are there in place to ensure that individuals and groups

can safely and freely engage with the UN by sharing testimonies, information and/ or by participating in UN events and processes?

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting [website](#) after 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

In light of the concerns on the potential impact of the legislation on the ability and willingness of individuals and groups to cooperate with the United Nations in the field of human rights, we reserve the right to share this communication – and any response received from Your Excellency's Government - with other United Nations bodies or representatives addressing intimidation and reprisals for cooperation with the United Nations in the field of human rights, in particular the senior United Nations official designated by the Secretary General to lead the efforts within the United Nations system to address this issue.

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

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