Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on freedom of religion or belief

REFERENCE: UA SGP 4/2016:

20 June 2016

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on freedom of religion or belief, pursuant to Human Rights Council resolutions 25/2, 25/18, and 22/20.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the trial of [redacted], a 17 year old blogger. [redacted] was the subject of a previous communication sent to your Excellency's Government on 7 July 2015 (UA SGP 1/2015). We acknowledge the receipt of the replies from your Excellency's Government of 23 December 2015 and 24 March 2016. We regret that our concerns have not been adequately addressed.

According to the new information received:

In November 2015, [redacted] published a post on his private *Facebook* page where he criticized Islam. On 14 December 2015, [redacted] was invited to the police station for questioning about the *Facebook* post. He fled the country and remained abroad until 20 April 2016. Upon his return to Singapore, he was again asked in for questioning by the police scheduled for 10 May 2016. On 9 May 2016, [redacted] attempted to leave the country again, but was stopped at immigration at the airport.

On 11 May 2016, eight plain-clothed police searched the house of [redacted] mother and his grandparents' house and confiscated his laptop, his mother's laptop and hard disk, his camera and mobile phone. [redacted] was subsequently arrested by the police for "failure to attend a session as ordered by public servant" and for "uttering words with intent to wound religious and racial feelings" and was brought to the Jurong Police Station. He was released on bail (5000 Singaporean Dollars, equal to approximately 3,700 USD) the same day, on the condition that he would report to the police station every other Wednesday.

On 26 May 2016, [redacted] was informed in court that he faces eight charges, including for allegedly wounding the religious feelings of Muslims and

Christians. If convicted, he faces up to three-year imprisonment and a fine. He also faces up to one month's imprisonment and a fine of up to 1,500 Singaporean Dollars (equal to approximately 1,100 USD) for failing to report to the Jurong Police Division despite an order on two occasions.

[redacted] has allegedly faced difficulties in finding a lawyer willing to defend him, and is therefore intending to represent himself in court. The pre-trial conference, to decide whether the case is ready for trial, is set for 16 June 2016. Furthermore, [redacted] has been banned from *Facebook* for 30 days for breaking their community guidelines.

We express grave concern regarding the criminal prosecution of [redacted] and the charges brought against him, which represent limitations to his right to freedom of opinion and expression that are incompatible with international human rights standards, as enshrined in article 19 of the Universal Declaration of Human Rights (UDHR) and article 13 of the UN Convention of the Rights of the Child (CRC), ratified by Singapore on 5 October 1995. [redacted] is 17 years old, and hence a child under international human rights law, which heightens our grave concerns.

We continue to express concern that the criminal prosecution aims not only at silencing [redacted], but will also have a deterrent effect on the exercise of the right to freedom of opinion and expression.

In this regard, we would like to address some of the issues that arise from your Excellency's Government's reply dated 23 December 2015. In that reply, your Excellency's Government states that Singapore's limitations on the right to freedom of expression are in compliance with its obligations under international human rights law. Moreover, the reply highlights the importance of legislation that protects racial and religious harmony in Singapore's multi-racial and multi-religious society.

We acknowledge the responsibility of every government to prevent violence and hatred. However, we express concern about the ways in which this is sought to be achieved in Singapore, in particular about the use of criminal legislation that limits the right to freedom of expression and has a chilling effect on the activities of civil society in the country.

The right to freedom of opinion and expression is essential to creating an environment conducive to critical discussions of religious and racial issues and also to promoting understanding and tolerance by deconstructing negative stereotypes. The previous Special Rapporteur has emphasized that for the right to freedom of thought, conscience and religion to be fully realized, robust examination and criticism of religious doctrines and practices, even in a harsh manner, must also be allowed (A/67/357). In this regard, the limitations under the criminal law of Singapore establish a lower threshold

than what follows from international human rights standards. The right to freedom of expression can be limited where it presents a serious danger for others and for their enjoyment of human rights, but not if it merely represents harsh criticism. With respect to speech that amounts to hate speech, the report of the Special Rapporteur underlines that only serious and extreme incitement to hatred, which crosses the strict conditions of international human rights law, should be criminalized. We express concern that the charges brought against [redacted] are based on legislation that does not meet this standard.

Moreover, it is important to distinguish between offensive speech and incitement. The report of the Special Rapporteur notes that while some types of expression may raise concerns in terms of respect for others and tolerance, there are instances in which neither criminal nor civil sanctions are justified. Freedom of expression includes forms of expression that are offensive, disturbing and shocking. Not all types of inflammatory, hateful or offensive speech amount to incitement, and the two should not be conflated. Domestic legislation purporting to combat hate speech but that in fact is used to suppress expression is not compatible with international human rights standards (A/67/357).

Moreover, the right to freedom of religion does not bestow a right for believers to have their religion itself protected from all adverse comment. Criminalizing "defamation of religions" as such can be counterproductive and may have adverse consequences for members of religious minorities, dissenting believers, atheists, artists and academics. The right to freedom of expression includes the right to scrutinize, debate openly, make statements that offend, shock and disturb, and criticize belief systems, opinions and institutions, including religious ones.

We wish to reiterate that penal codes alone rarely provide the solution to the challenges of incitement to hatred in society. As stated by the Special Rapporteur on the right to freedom of expression, a more effective toolbox containing positive measures is necessary to tackle the root causes. To this end, strengthening the promotion and protection of the right to freedom of expression is essential.

Finally, we would like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders, in particular articles 1, 2 and 6.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned person in compliance with international instruments.

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 comments you may have on the above-mentioned allegations.

2. Please provide detailed information about the charges brought against [redacted] In particular, please explain how these charges are compatible with international human rights standards, hereunder article 19 of the UDHR.

3. Please provide information about the legal basis for entering into the home of [redacted] mother and that of his grandparents. Please also provide information about the legal basis for confiscating the items mentioned above and explain how this measure is compatible with international human rights standards.

4. Please provide information about the legal grounds for the demand of harsh penalty against a child, indicating how this is compatible with international human rights norms and standards.

5. Please provide information on the measures taken towards the implementation of the recommendations of the Committee on the Rights of the Child, in relation to the right to freedom of expression.

6. Please provide information on measures taken towards the ratification of the International Covenant on Civil and Political Rights (ICCPR).

7. Please provide information about the measures taken or to be taken to ensure that the legislation of Singapore is in conformity with international human rights norms and standards, including in relation to the legislative provisions relative to limitations to the right to freedom of expression.

While awaiting a reply, and in view of the seriousness of the matter, we urge your Excellency's Government to reconsider the pre-trial case against [redacted]

We intend to publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

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

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

Michel Forst
Special Rapporteur on the situation of human rights defenders

Heiner Bielefeldt
Special Rapporteur on freedom of religion or belief