

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 the right to privacy

REFERENCE: AL SGP 5/2016:

30 June 2016

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 situation of human rights defenders; and Special Rapporteur on the right to privacy, pursuant to Human Rights Council resolutions 25/2, 25/18, and 28/16.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **Ms. Teo Soh Lung**, a human rights lawyer, a former political prisoner and the Director of Function 8 Limited, and **Mr. Roy Ngerng**, a human rights lawyer and blogger who writes on issues of government transparency and accountability. Mr. Ngerng was the subject of a communication by various Special Procedures mandate holders on 7 July 2015 and 9 June 2016 (SGP 1/2015 and SGP 2/2016). We acknowledge the receipt of the replies from your Excellency's Government on 23 December 2015, 24 March 2016 and 17 June 2016.

In these replies your Excellency's Government offers the assurance that Singapore takes all necessary steps to ensure conformity with international law. The replies also state that the right to freedom of expression is not an unqualified right and that Singapore's limitations on the right to freedom of expression are in compliance with its international obligations. We welcome the express statement that Singapore takes all necessary steps to ensure conformity of its legislation with obligations under international law. However, we cannot agree, for reasons previously presented, that the limitations to the right to freedom of expression that were the subject of the previous communications were in compliance with international human rights law. The subject of the present communication is different from those of the previous communications and contains allegations about additional limitations to the right to freedom of expression that we would like to bring to the attention of your Excellency's Government.

According to the new information received:

On 27 May 2016, the Election Department of the Prime Minister's Office filed police reports against the news site "The Independent Singapore" (TISG), Ms. Teo Soh Lung and Mr. Roy Ngerng, for allegedly breaching election advertising regulations under the Parliamentary Elections Act. They have been accused of violating the Act in relation to comments made on the Bukit Batok by-election on 6 May 2016, the eve of the Polling Day. Under the Act, the eve of the Polling Day is designated as "Cooling-Off Day" and all election campaigning is prohibited on this day. The purpose of the 24 hour silence period is to give voters time to reflect rationally on issues raised during the election campaign before going to the polls.

Under section 78 B(1) of the Act, any person convicted of posting election advertising on Cooling-Off Day and Polling Day may be fined up to \$ 1000 (check USD equivalent) and/or imprisoned up to 12 months. However, there is an exemption to the law, which allows “the telephonic or electronic transmission by an individual to another individual of the first-mentioned individual’s own political views, on a non-commercial basis”.

On 31 May 2016, Ms. Teo Soh Lung and Mr. Ngerng presented themselves at the Cantonment Police Complex for questioning by the police. Mr. Ngerng did not have any legal representation and requested to speak to Ms. Teo Soh Lung’s lawyer, but his request was denied. Mr. Teo Soh Lung and Mr. Ngerng were questioned regarding specific posts made on their personal Facebook pages, including whether the posts were private or public, how many “likes” they received, whether they felt their posts would influence voters’ decisions and if they thought that they had put the opposition candidate running in Bukit Batok in a good light.

After the questioning, they were informed that their homes would be raided. It is reported that seven police officers went to Ms. Teo Soh Lung’s home and confiscated her desktop, laptop and mobile phone. Ms. Teo Soh Lung initially refused to hand over her mobile phone, but was threatened with arrest. The police also allegedly stated that no search warrant or warrant to seize was necessary as the search was part of the investigation process. The police subsequently searched Mr. Ngerng’s home and confiscated his two laptops, two hard drives, mobile phone and memory cards.

After the search of Mr. Ngerng’s home, he was brought back to Cantonment Police for further questioning. He was requested to access his Facebook account and hand over his passwords to his phone, laptop, Facebook and WordPress accounts. The police subsequently downloaded his Facebook archive and activity log. He was released after eight hours. To date, neither Ms. Teo Soh Lung nor Mr. Ngerng has been informed of any charges against them.

This is reportedly the first time that private individuals and an independent media source are being investigated for comments made on social media in connection with the Polling Day and Cooling-Off Day. The regulations prohibiting election advertisement is usually targeted at political parties and candidates. Furthermore, mainstream media are allegedly allowed to publish articles on the elections on these two days.

We express concern at the use of the Parliamentary Elections Act to limit the right to freedom of expression in this case. The use of the Parliamentary Elections Act to limit the expression of opinions on social media falls outside of the law’s own purpose and is incompatible with the exemption clause of the Act itself. It is also incompatible with international human rights standards, such as article 19 of the Universal Declaration of Human Rights (UDHR). The enforcement of article 78 B of the act on the kind of

exercise of the right to freedom of expression that falls outside of the laws purpose has the character of silencing expression that is deemed critical and dissenting. This way of enforcing the act is incompatible with article 19 of the UDHR. We express equal concern at the raiding of Mr. Ngerng and Ms. Teo Soh Lung's homes and the confiscation of their belongings without warrant, including the request for Mr. Ngerng's personal passwords. We express concern that all these measures took place without Ms. Teo Soh Lung and Mr. Ngerng being informed about the charges against them.

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

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 comment you may have on the above-mentioned concerns.
2. Please provide information about the justification for using the Parliamentary Elections Act on the online statements made by Mr. Ngerng and Ms. Teo Soh Lung, and explain how this is compatible with article 19 of the UDHR. Please also explain the justification for not applying the exemption rule of the Parliamentary Elections Act in the case of Mr. Ngerng and Ms. Teo Soh Lung.
3. Please provide information about the precise charges brought against Mr. Ngerng and Ms. Teo Soh Lung.
4. Please provide information about the legal basis for raiding the homes of Mr. Ngerng and Ms. Teo Soh Lung, and for confiscating their belongings, and explain how these measures are compatible with international human rights standards.

We would appreciate receiving a response within 60 days.

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 persons responsible for the alleged violations.

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

Joseph Cannataci
Special Rapporteur on the right to privacy

Annex

Reference to international human rights law

We appeal to your Excellency's Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the Universal Declaration of Human Rights, which provides that "Everyone has the right to freedom of opinion and expression, this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

We would like to also reiterate 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 and 2 the Declaration state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels, and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms. Furthermore we would like to recall article 6 (a) of the same declaration which provides for the right to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, as well as for the right to freely publish, impart or disseminate that information and knowledge; and article 8, paragraph 1, which provides for the right to effective and non-discriminatory access to participation in public affairs.