

INTERNATIONAL BAR ASSOCIATION HUMAN RIGHTS INSTITUTE
REPUBLIC OF SINGAPORE
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1. INTRODUCTION

The International Bar Association Human Rights Institute (IBAHRI) makes this submission under sections B, C and D as set out in the General Guidelines for the Preparation of Information under the Universal Periodic Review¹.

In section B, the IBAHRI raises concern over gaps in legislation concerning freedom of expression, freedom of assembly and impartiality of the judiciary. Section C highlights the IBAHRI's concerns over restrictions on freedoms of expression and assembly and the independence of the judiciary and fair trials. The IBAHRI makes recommendations for action by the government in Section D.

2. METHODOLOGY

The IBAHRI conducted a review into human rights, democracy and the rule of law in Singapore in 2007, in preparation for the IBA's Annual Conference in Singapore in October 2007. The resulting report was shared with the Singapore Government and Law Society². This report has been updated for the purposes of this submission and the conclusions have drawn on the most recent information available.

3. SECTION B: THE LEGISLATIVE FRAMEWORK

Singapore is not a signatory to the International Convention on Civil and Political Rights. However, the country is bound by the principles set out by the Universal Declaration of Human Rights which have been recognised as customary international law³ and by the UN Charter. Singapore is also a member of the Commonwealth.

3.1 *Freedom of Expression*

Section 14(1) of the Singapore Constitution⁴ provides for freedom of speech and expression. However, Section 14(2) states that Parliament may 'impose [...] such restrictions as it considers necessary or expedient in the interest of the security of Singapore or any part thereof, friendly relations with other countries, public order or morality and restrictions designed to protect the privileges of Parliament or to provide against contempt of court, defamation or incitement to any offence⁵'. The legislation adopted under these powers includes civil (the Defamation Act 1957⁶) and criminal (Penal Code, s. 499⁷) defamation and contempt of court (the Subordinate Courts Act, s 8⁸).

¹ Contained in Human Rights Council Decision 6/102, Follow-up to Human Rights Council resolution 5/1, section I adopted 27 September 2007, viewed at: http://ap.ohchr.org/documents/E/HRC/decisions/A_HRC_DEC_6_102.pdf

² IBAHRI, 'Prosperity versus individual rights? Human rights, democracy and the rule of law in Singapore an International Bar Association Human Rights Institute Report', July 2008
Available at: http://www.ibanet.org/Human_Rights_Institute/HRI_Publications/Country_reports.aspx

³ See, for example, Mary Robinson, 'Statement by the High Commissioner for Human Rights at the European Colloquy Organised by the Council of Europe' held in Strasbourg on 2 September 1998, available at: www.unhcr.ch/hurricane/hurricane.nsf/0/8C062FE8D843A200802566740050E0E8?opendocument

⁴ Singapore Constitution of 16 September 1963, available at: http://www.adh-geneva.ch/RULAC/pdf_state/Constitution-of-16-September-1963.pdf

⁵ *Ibid.*

⁶ Act 20 of 1957, as amended, available at: http://statutes.agc.gov.sg/non_version/cgi-bin/cgi_retrieve.pl?actno=REVED-75&doctitle=DEFAMATION%20ACT%0a&date=latest&method=part&sl=1

⁷ As amended, available at: http://statutes.agc.gov.sg/non_version/cgi-bin/cgi_retrieve.pl?actno=REVED-224&doctitle=PENAL%20CODE&date=latest&method=part

Article 45 of the Singapore Constitution is also relevant which provides that members of Parliament can be disqualified, in particular, for i) being an undischarged bankrupt or ii) having been convicted of a criminal offence. These two grounds run for five years unless they are discharged by the President⁹.

The Newspaper and Printing Presses Act¹⁰ (NPPA) grants the Minister the power to declare any newspaper printed outside Singapore to be 'engaged in the domestic politics in Singapore' which cannot be sold or distributed without the Minister's approval. Breach of the NPPA is a criminal offence. This particular provision is punishable by a fine of S\$50,000 and/or two years' imprisonment

The Commonwealth Affirmation of Commonwealth Values and Principles of 29 November 2009 includes the freedom of expression as a core value of the Commonwealth¹¹.

3.2 *Freedom of Assembly*

Article 14(1)(b) of the Singapore Constitution provides the right to freedom of assembly. However, Parliament has the power to impose restrictions 'it considers necessary or expedient in the interest of security, public order or morality.'¹² The legislation on protests, demonstrations and public gatherings is the Public Entertainments and Meetings Act (PEMA). All outdoor protests and marches must obtain a permit under the PEMA¹³. The licensing officer has discretion as to whether a permit can be refused¹⁴ and whether to impose conditions on the meeting¹⁵. The Miscellaneous Offences (Public Order and Nuisance) Act¹⁶ (MOA) grants the police discretionary powers to deal with situations 'intentionally causing harassment, alarm or distress' or with 'conduct likely to cause harassment, alarm or distress' is also used to control public gatherings¹⁷.

3.3 *Impartiality of the Judiciary*

Article 111 of the Singapore Constitution creates the Legal Service Commission (LSC) which has the power to appoint, confirm, transfer, dismiss and discipline all officers of the Singapore Legal Service, that is, judges. The LSC which is headed by the Chief Justice and the Attorney General.

Judges have no security of tenure and are rotated to positions within the Legal Service by the LSC. For High Court judges chosen as Judicial Commissioners, the Government may review their decisions during a two year probationary period.

The view held by the Singapore Government regarding the Attorney General is that 'he is a Minister, a lawyer in the governing party takes over the job. And he decides who to prosecute, who not to prosecute. But not in accordance with

⁸ Act 19 of 1970, as amended, available at: http://statutes.agc.gov.sg/non_version/cgi-bin/cgi_retrieve.pl?actno=REVED-321&doctitle=SUBORDINATE%20COURTS%20ACT%0a&date=latest&method=part

⁹ *Supra* n^o. 4.

¹⁰ Act 12 of 1974, as amended, available at:

http://statutes.agc.gov.sg/non_version/cgi-bin/cgi_retrieve.pl?actno=REVED-206&doctitle=NEWSPAPER%20AND%20PRINTING%20PRESSES%20ACT%0a&date=latest&method=part&sl=1

¹¹ Affirmation of Commonwealth Values and Principles, 29 November 2009, Port of Spain, available at: [http://www.thecommonwealth.org/files/216908/FileName/Affirmation of Commonwealth Values and Principles\[1\].pdf](http://www.thecommonwealth.org/files/216908/FileName/Affirmation%20of%20Commonwealth%20Values%20and%20Principles[1].pdf)

¹² *Supra* n^o. 4, Article 14(2).

¹³ S.3 Public Entertainments and Meetings Act, available at:

http://agcvldb4.agc.gov.sg/non_version/cgi-bin/cgi_getdata.pl?actno=2001-REVED-257&doctitle=PUBLIC%20ENTERTAINMENTS%20AND%20MEETINGS%20ACT%0A&d

¹⁴ S.13(1) Public Entertainments and Meetings Act, *ibid*.

¹⁵ S.10 Public Entertainments and Meetings Act, *supra* n^o. 13.

¹⁶ Act 12 of 1906, as amended, available at:

http://statutes.agc.gov.sg/non_version/cgi-bin/cgi_retrieve.pl?actno=REVED-184&doctitle=MISCELLANEOUS%20OFFENCES%20%28PUBLIC%20ORDER%20AND%20NUISANCE%29%20ACT%0a&date=latest&method=part&sl=1

¹⁷ *Ibid*, ss. 13A & 13B.

party affiliation' and is not a member of the Executive¹⁸. Both the Attorney General and Supreme Court judges enjoy security of tenure until 65 years age. After this point, they hold office at the will of the President¹⁹.

The Commonwealth Affirmation of Commonwealth Values and Principles of 29 November 2009 includes the rule of law as a core value of the Commonwealth²⁰. The Latimer House Principles on the Accountability of and Relationship Between the Three Branches of Government²¹ provide for an independent judiciary with security of tenure.

4. SECTION C: PROTECTION AND PROMOTION OF HUMAN RIGHTS ON THE GROUND

4.1 Freedom of Expression

The IBAHRI is concerned that members of the ruling People's Action Party (PAP) use laws on civil and criminal defamation and contempt of court to stifle political opposition and expression. Examples include that of Mr. Jeyaretnam in 2001 (Workers' Party), Mr. Tang Liang Hong in 1998 (Workers' Party) & Dr. Chee Soon Juan in 2006 (Singapore Democratic Party) all of whom faced libel suits undertaken by PAP members, or organisations linked to or headed by PAP members. Large damages awards were made against them and, when unable to pay, they were declared bankrupt thus being disqualified from Parliament under Article 45 of the Singapore Constitution. In 2009, Tan Liang Joo John, Isrizal bin Mohamed Isa and Muhammad Shafi'ie Syahmi bin Sariman were all found guilty of contempt of court ('scandalising the judiciary') and imprisoned for wearing t-shirts showing a palm-sized picture of a kangaroo dressed in a judge's gown in and near the Supreme Court on the day, in 2006, of the damages hearing against Dr. Chee Soon Juan²². Dr Chee Soon Juan himself was found guilty and sentenced to a term of eight days for scandalising the court for statements made during bankruptcy proceedings against him²³.

The IBAHRI has concerns over restrictions on the freedom of the press. The Government has taken major international and Asian newspapers (International Herald Tribune in 1994 and 2008) and weeklies to court (Far Eastern Economic Review in 1987 and 2009 and The Economist in 2004) over defamation claims and, for some, has restricted their circulation in Singapore. In October 2004, FinanceAsia avoided a lawsuit over claimed links between the government and a Singaporean investment company by apology and paying significant compensation. In October 2007, the Financial Times avoided a lawsuit over claims of nepotism by paying unspecified damages and publishing an apology. Aggravated damages are often awarded for any criticism of the government even when that criticism does not directly refer to Singapore: the International Herald Tribune, for example, was held in contempt of court for describing 'an intolerant regime' in Asia that suppressed opponents 'by relying upon a compliant judiciary to bankrupt opposition politicians.'

The IBAHRI is also concerned regarding the issue of government control over the media: the Government has the power to appoint and dismiss all members of staff and directors of the main newspaper publisher in Singapore (Singapore Press Holdings). The Government also has the power to approve and remove all shareholders.

Time and the Economist have both had their circulation restricted under the NPPA. The Asian Wall Street Journal was declared to be engaging in domestic politics in 1987 and had its circulation restricted as a result. The newspaper applied to the High Court to quash the decision but this was rejected. On appeal, also rejected, the court said that the Minister did not need to be satisfied of any condition before restricting a newspaper's circulation. It also held that 'engaging in' meant 'interfering' or 'meddling' but this need not be in the interest of any political or non-political group in Singapore²⁴. In 2008, the Asian Wall Street Journal was fined S\$25,000 for contempt of court for publishing two

¹⁸ Singapore Hansard 29-30 July 1986.

¹⁹ Article 35 Singapore Constitution for the Attorney-General and Article 98 Singapore Constitution for Supreme Court Judges, *supra* n^o. 4.

²⁰ *Supra* n^o. 11.

²¹ Commonwealth (Latimer House) Principles on the Accountability of and Relationship Between the Three Branches of Government, 2003, Abuja, available at: http://www.thecommonwealth.org/shared_asp_files/uploadedfiles/%7BACC9270A-E929-4AE0-AEF9-4AAFE68479C%7D_Latimer%20House%20Booklet%20130504.pdf

²² *Attorney-General v Tan Liang Joo John and Others* [2009] SGHC 41, available at: <http://www.worldlii.org/sg/cases/SGHC/2009/41.html>

²³ *Attorney-General v Chee Soon Juan* [2006] SGHC 54, available at: <http://www.worldlii.org/sg/cases/SGHC/2006/54.html>

²⁴ *Dow Jones Publishing Co (Asia) Inc v The Attorney-General of Singapore* [1989] 1 S.L.R 70, § 43, available at: [http://www.ipsofactoj.com/archive/1989/Part05/arc1989\(5\)-005.htm](http://www.ipsofactoj.com/archive/1989/Part05/arc1989(5)-005.htm).

editorials and a letter by an opposition leader which questioned the Singapore judicial system²⁵. In 2009, the Court of Appeal affirmed a judgment against the Far Eastern Economic Review finding defamation against the Prime Minister, Mr. Lee Hsien Loong, and his father²⁶.

The Singapore government controls the content of the internet via the Media Development Agency (MDA) which grants or withholds website licences. It also requires all local users to route their internet connections via a licensed ISP. The MDA Code of Practice provides that material 'objectionable on the grounds of [...] national harmony or is otherwise prohibited by applicable Singapore laws' is forbidden²⁷. The MDA may impose fines and an order to cease the conduct in question. Failure to comply is an offence. It is also possible to sue for defamation for material published on the internet. An example is Sintercom (the Singapore Internet Community) which the MDA's predecessor designated as a political site. This meant Sintercom had to be responsible for everything posted on the site, including comments by other people. It decided to close down as the grounds for objection were too large and vague for the site owners to be able to assess their liability.

4.2 Freedom of Assembly

The Asian Human Rights Commission has claimed that the PEMA is often used to convict and imprison those 'who attempt to voice their opinions or criticism of the government's handling of social and political issues.'²⁸ Protests stopped by police for creating a 'public nuisance' have been found not infringe the right to freedom of assembly²⁹.

Public meetings of five or more people, including political meetings, require police approval in many cases. It has been reported that opposition applicants for permits are often denied, for example, Mr. Jeyaretnam has been refused a permit at least three times and Dr. Chee at least twice.

4.3 Impartiality of the Judiciary

It would seem that, according to the Singapore Government's analysis of the Attorney General's role, he is a member of both the Executive and the Judiciary. The LSC, the supervisory body of judges, is thus an overlap between the executive and judicial powers.

The IBAHRI is concerned over widespread reports of judicial compliance with the Government's wishes, particularly in defamation cases. Defamation defences are often struck out, damage awards are high³⁰ and the actual words under examination are given very wide meanings. For example, in the 1989 case commenced by the then-Prime Minister (Lee Kuan Yew) against the Far Eastern Economic Review, the judge found that the words ('A member of the Church delegation said that it was hard to believe this was not an attack against the Church. The real target seemed not to be the 16 [detainees] who were merely scapegoats, but rather the four priests.') were defamatory as they imputed dishonourable and discreditable conduct on Mr. Lee 'which lowered him in the estimation of right thinking people'. The judge found that the libel was against Mr. Lee both as a man and as the Prime Minister. In 1997, Rajendran J found in favour of the PAP plaintiff, Prime Minister Mr. Goh, former Prime Minister, Mr. Lee, and other PAP members that Mr. Jeyaretnam had defamed them when, during a campaign rally, he had informed his audience that

²⁵ *Attorney-General v Hertzberg Daniel and Others* [2008] SGHC 218, available at:

<http://www.worldlii.org/sg/cases/SGHC/2008/218.html>

And see: <http://en.rsf.org/singapore-wall-street-journal-asia-unjustly-26-11-2008,29428.html>

²⁶ *Lee Hsien Loong v. Review Publishing Co. Ltd.* [2009] 1 S.L.R. 177, H.C. available at:

<http://xiiiaogengenx.blogspot.com/2009/11/review-publishing-co-ltd-and-another-v.html>

²⁷ S.4, MDA Internet Code of Practice 1997, available at:

http://www.mda.gov.sg/Documents/PDF/Policies/PoliciesandContentGuidelines_Internet_InterneCodeOfPractice.pdf

²⁸ ASIAN HUMAN RIGHTS COMMISSION, URGENT ACTION 24 OCTOBER 2002 'SINGAPORE: *Oppositionist fined and imprisoned for defending his right to freedom of assembly in defiance of police warning not to hold the rally for workers' rights.*' Available at: <http://www.ahrchk.net/ua/mainfile.php/2002/313/>.

²⁹ *Chee Siok Chin and Others v Minister for Home Affairs and Another* [2005] SGHC 216, available at:

<http://www.worldlii.org/sg/cases/SGHC/2005/216.html>

³⁰ In cases where PAP members are a party to the proceedings, damage awards are significantly higher than otherwise: between 1959 when the PAP came to power and 1997, PAP plaintiffs have won an average of S\$570,000 while non-PAP plaintiffs, including professionals and companies accused of fraud, dishonesty, incompetence have won an average of only S\$45,000, see Stuart Littlemore QC, *Report to the International Commission of Jurists, Geneva, Switzerland on a Defamation Trial in the High Court of Singapore Goh Chok Tong v J B Jeyaretnam*, available at: <http://www.singapore-window.org/icjibrep.htm>.

Mr. Tang (fellow opposition candidate) had filed police complaints against Mr. Goh and other PAP members for defamation. Mr. Jeyaretnam's exact words were 'Mr. Tang Liang Hong has just placed before me two reports he has made against, you know, Mr. Goh Chok Tong and his people.' The judge found that the words were not defamatory but found a 'lesser defamatory meaning' in the words, not argued by Mr. Goh, that Mr. Goh 'may have conducted himself in such a manner that it is possible he will be investigated or some offence or other' and 'carry the suggestion that the [Mr. Goh] may, in making those allegations against Mr Tang have done something wrong.'³¹ In a 2008 case commenced by the Prime Minister against the Singapore Democratic Party and Dr. Chee Soon Juan, the Court found that an article defamatory which suggested a similarity between the PAP Government and a famous fraud case in terms of 'lack of transparency and lack of accountability'³² which indicated corruption on the part of the Prime Minister. In the 2009 judgment against the FEER, the Court of Appeal decided that '[t]he question then is, how many other libel suits have Singapore's great and good wrongly won, resulting in the cover-up of real misdeeds? And are libel suits deliberately used as a tool to suppress questioning voices?' when following what the court found to be, an inference that the Prime Minister and his father 'had [...] made use of defamation suits to cover up his misdeeds (ie, his corruption) and had "wrongly won" (per para 13 of the Article) such suits, [...]'³³

5. SECTION D: RECOMMENDATIONS

The IBAHRI makes the following recommendations:

1. Singapore should ratify the ICCPR without reservations and implement its provisions at the earliest opportunity.
2. Singapore should immediately bring its restrictions on free expression in line with recognised international customary law.
3. Singapore should immediately abolish defamation as a criminal offence, or in the alternative and should abolish heavy sanctions for defamation offences; prohibit public officials from instituting criminal defamation; and review the existing defences to ensure they are in line with international standards.
4. The Singapore Government should introduce legislative limits on civil defamation pay-outs and certainly on cases initiated by government officials.
5. A defence of qualified privilege for comments made about government officials should be made available and enforced by the courts in appropriate cases.
6. The Singapore Government should take steps to encourage opposition participation and debate.
7. Singapore Government officials should stop initiating defamation claims for criticisms made in the course of political debate.
8. The Singapore Government should increase the freedom of the press – both domestic and foreign – to report on political issues impacting on the people of Singapore.
9. The Newspaper and Printing Presses Act should be amended so as to ensure that there are checks and balances on the decision to restrict the circulation of publications under the Act.
10. The Newspaper and Printing Presses Act should be amended to allow reasonable comment on the domestic politics of Singapore by foreign publications.
11. Singapore should remove personal responsibility for internet hosts for information published on their hosted sites or should clarify the limitations on material that may not be posted.
12. Steps should be taken to ensure that internet bloggers are free to make reasonable statements in the public interest.
13. The situations in which demonstrations may take place should be expanded to include all peaceful assemblies.
14. Limitations on penalties for peaceful assembly should be introduced as a matter of urgency.
15. Security of tenure should be granted to all judges.
16. Transfer of judges between executive and judicial roles should be abolished.

³¹ *Ibid.*

³² *Lee Hsien Loong v. Singapore Democratic Party* [2007] 1 S.L.R. 675, [2009] 1 S.L.R. 642, H.C., § 61, referred to in *supra* n^o. 26, § 68.

³³ *Supra* n^o. 26, §§ 86 & 87.