

Universal Periodic Review: Singapore, 2016

Joint submission by Community Action Network¹ (CAN)
and Reporters Without Borders (RSF), 20 June 2015

1. Introduction

- 1.01 This paper focusses on freedom of expression, freedom of the press and freedom of information in Singapore. It consists of information collected by CAN and Reporters Without Borders, during the period relevant to this submission.
- 1.02 The Community Action Network (CAN) is a Non-Governmental Organisation (NGO) based in Singapore which is concerned about freedom of expression, and civil and political rights. Started as an informal group, CAN comprises established civil society activists in Singapore, in their respective fields of expertise. CAN's website can be found here :
<http://singaporecan.wordpress.com/about/>
- 1.03 A series of State actions targetting activists and bloggers in Singapore over the past several years raised concerns about the chilling effect on freedom of expression has in Singapore, and has led to the formation of CAN.
- 1.04 CAN issued its first statement in April 2015 after the Singapore government moved to prosecute Amos Yee, a 16-year-old child, who has now been unofficially

¹ Community Action Network comprises civil society actors concerned about fundamental civil and political rights.

recognised by the Amnesty International² as the world's youngest prisoner of conscience.

- 1.05 CAN aims to advance its advocacy to stop the miscarriage of justice and to bring about a democratic society where the freedom of expression as well as the civil and political rights of Singaporeans are enshrined and respected.
- 1.06 Reporters Without Borders (RSF) is a non-profit organisation (founded 1985, registered in France since 1995) has researchers organised by geographical area, with one team focussing on the internet and new media and another providing support to journalists. Their English language website is <http://en.rsf.org/>
- 1.07 On freedom of expression, there has been no progress on this front since the last review of 2011; instead there have been many instances pointing to greater restrictions. Ranked 153th out of 180 countries in the 2015 World Press Freedom Index of Reporters Without Borders (RSF), Singapore has fallen to its lowest-ever position. Some of the main reasons for this aggravation was the adoption in 2013 by the Media Development Authority of Singapore of a new set of rules covering online expression, as well as the rise in prosecutions (and threatened prosecutions) of bloggers and netizens.
- 1.08 In an interview with the press in April 2014, the Prime Minister, responding to a question "What is your Government doing to get into a better position in the ranking of Reporters Without Borders?" answered: " I have given up that. I do not take them seriously. They put us somewhere around Zimbabwe; I said, so be it. I mean, they find it useful, I just ignore that. We manage our press, our media and our freedom of information in a way that makes sense for Singapore. Information flows freely on the Internet, you can get data instantly from anywhere in the world. (...) And I really don't know and don't mind where the next ranking comes out for journalists." This reply suggests disdain for press freedom.

² As reported by Kenneth Jeyaretnam following his correspondence with Amnesty International. See <http://sonofadud.com/2015/06/12/breaking-news-amos-yee-is-the-worlds-youngest-prisoner-of-conscience-to-be-recognised-by-amnesty-international/>, accessed 18 June 2015.

- 1.09 Examples cited below illustrate eight main ways by which the government restricts the right to freedom of expression, as enshrined in Article 19 UDHR. Restrictions on freedom of expression often operate in tandem with restrictions on peaceful assembly and association (Article 20); or rely on the practical reality that victims of such restrictions have limited access to effective remedy by competent tribunals (Article 8) due to high financial costs.
- 1.10 The examples in this paper, besides affecting the parties directly involved, also create a climate of fear of speaking out, and induce self-censorship. The negotiation with the authorities over licences and excisions, and with venue operators who are often afraid to displease the government by permitting 'bold' works and activities, implant in the minds of citizens and artists the notion that such oversight and censorship is normal; and that they have no right to their own autonomy of expression.

2. Laws

- 2.01 The main laws constraining the freedom of expression are:
- (a) Broadcasting Act, particularly its provisions for licensing;
 - (b) Media Development Authority Act, particularly its provisions for enforceable Codes of Practice;
 - (c) Films Act, which provides for prohibition, censorship and government-controlled classification of films;
 - (d) Public Entertainments and Meetings Act, which requires licences for shows, arts events and meetings, and provides for the government to impose conditions;
 - (e) Sedition Act, which criminalises any attempt to "excite disaffection" against the government, the administration of justice, or amongst citizens and residents of Singapore;

- (f) Penal Code, particularly Section 268 on "public nuisance", Section 292 on obscenity, and Sections 298 and 298A criminalising speech "promoting enmity" and "wounding the religious and racial feelings of any person";
- (g) Public Order Act, which restricts the freedom to organise demonstrations and processions, where even a one-person protest is considered a demonstration, and two persons a procession.

2.02 Additionally, examples in this paper also show these other laws have been used to constrain freedom of expression:

- (a) Parks and Trees Act, used against a demonstration held in a public park;
- (b) Protection from Harassment Act, which, while intended to regulate "abusive or insulting words... perceived by any person" where "person" has been signalled as a human person, has recently been used to encompass criticism of a government ministry.

2.03 There have also been several instances of the use or threatened use of defamation suits by political office-holders and government agencies against critics, and contempt of court action against a blogger and a cartoonist. Unlike the laws listed in 2.01 and 2.02, defamation and contempt of court are not codified laws.

2.04 While some laws are starkly intrusive and restrictive compared to other democracies, other laws are textually comparable to analogous laws elsewhere. For example, many countries require licences for processions too, or have laws regulating obscenity. But whereas other national authorities may be liberal and impartial about issuing licences, Singapore is not. Licences related to speech and expression are virtually impossible to obtain or come with onerous conditions that either modify the speech or restrict its distribution or access by members of the public. The government often uses the term "light touch" to describe its approach, but in practice is heavy-handed as can be seen from the examples below.

- 2.05 Moreover, Singapore sometimes write laws with broad sweep and "catch-all" language, which can restrain speech in unexpected ways. The uncertainty this produces hobbles freedom of expression.
- 2.06 In the cases that have been tried, the judiciary has shown itself deferential to the government's interpretation of these broad-sweep laws, which narrows the remedial role that the justice system might otherwise play.
- 2.07 The eight main ways restricting freedom of expression of information and press freedom are discussed in Sections 3 to 10:

3. Outright bans

- 3.01 In September 2014, the Media Development Authority (MDA), refused the film 'To Singapore, With Love' an official rating thus obstructing its distribution and public screening. The government accused the film of "undermin(ing) national security" on the basis that it contained interviews with political exiles, whose accounts, the government said, were "distorted and untruthful". This principle being asserted by the government is inimical to freedom of expression, positioning the government as the final arbiter of truth.
- 3.02 In April 2015, MDA ordered the shutdown of The Real Singapore (TRS), a website with controversial content and one of the top 100 "alternative" news websites. Two persons said to be behind TRS were charged with criminal offences.³

³ In April 2015, Singaporean Yang Kaiheng and Japanese-Australia national Ai Takagi, who were said to be behind the TRS website were charged with seven counts of sedition and one for not producing documents to a police investigator, for a total of eight charges. The couple can each be jailed for up to a total of 21 years and/or fined up to \$35,000 under the Sedition Act. They can also be jailed up to one month and/or fined up to S\$1,500 for the charge under the Penal Code. Their hearing is still pending. In May 2015, the Media Development Authority (MDA) demanded that Yang and Ai shut down TRS, on the grounds that they have contravened the Internet Code of Practice (ICOP) and published material deemed objectionable on the grounds of public interest, public order and national harmony. They were also told not to resume operations under any other name and to provide information relating to the site's operations. It is understood that TRS is not registered in Singapore. However, the MDA claimed to have suspended the statutory class licence of Yang and Ai. MDA reasoned that previously, Yang and Ai were out of the jurisdiction of the Broadcasting Act as they were running their operations from outside Singapore. However, when

- 3.03 On 12 June 2015, the MDA banned the screening in cinemas of a promotional video for Pink Dot, a gay-pride event. The video had been submitted on 12 May 2015 to MDA, and was intended to be screened in the weeks leading up to the event scheduled for 13 June. MDA's response was not given till the day before the event.⁴

4. Criminal charges

- 4.01 In September 2014, Han Hui Hui, an activist-blogger, organised a protest to demand transparency and accountability from the government in the management of the Central Provident Fund, a state-run pension fund. Sixteen protesters were called up for police investigations⁵; Han, Roy Ngerng and four others⁶ were charged for public nuisance, while Han and Ngerng were also charged with holding a demonstration without a permit under the Parks and Trees Act⁷. One participant⁸ pleaded guilty and was fined \$300. The others' cases are ongoing, scheduled for August 2015. The six have been banned from using Hong Lim Park (the only place in Singapore where events do not need express permission by the authorities) until their case is over.⁹
- 4.02 On 28 January 2015, the Attorney General's Chambers sent a letter of demand to TheOnlineCitizen (TOC), a local socio-political website alleging that it had

they came back to Singapore, the MDA unilaterally brought them under the jurisdiction of the Broadcasting Act, based on the fact that they were operating from Singapore.

⁴ As reported in <http://mothership.sg/2015/06/mda-took-2-months-to-decide-they-are-not-going-to-rate-this-pink-dot-promo-video-meant-for-cinema-screens/>, accessed 18 June 2015.

⁵ Han was among the sixteen investigated. She was interrogated for eight hours and had her belongings snatched by the police.

⁶ Chua Siew Leng, Goh Aik Huat, Ivan Koh Yew Beng and Janet Low Wai Choo.

⁷ Han and Ngerng face a total fine of up to S\$6,000 each.

⁸ Chua Siew Leng pleaded guilty in March 2015.

⁹ It was later found that the police report was made as the protest was ongoing, allegedly by a man who was waiting for his girlfriend at a bus stop near the park and who felt affected. However, even though there were plainclothes policemen at the scene, no arrests were made until three weeks later.

published false news about the Ministry of Defence infringing on the intellectual property rights of Ting Choon Meng, of MobileStats Technologies. The Ministry of Defence demanded TOC take down the article in question or issue a clarification. Because it did not comply with the Ministry's directive, an application was made in court under Section 15 of the Protection from Harassment Act to obtain a court order to restrain further publication of the said article. See 2.02(b) above.

- 4.03 Amos Yee, aged 16, was charged under the Penal Code for wounding religious feelings after he uploaded a video in March 2015 that accused former prime minister Lee Kuan Yew of being power-hungry and compared him with Christianity. Yee was also charged for obscenity because one still in the video had a caricature of Lee and Margaret Thatcher having sex. Amos Yee uploaded his video onto YouTube days after Lee Kuan Yew passed away. Yee faced three charges, the first with the intention of wounding the religious feelings of Christians, and also for uploading an obscene image of Lee and Margaret Thatcher. The third charge, under the Protection From Harassment Act, was over remarks in the video about Lee alleged to have offended people who viewed it. This third charge was later stood down. Yee was given bail of an amount of S\$20,000 but with the stringent conditions that he would not post, upload or otherwise distribute any comment or content, whether directly or indirectly, to any social media or online service or website, while the case was ongoing. He eventually posted things on his Facebook pages and he was remanded because he broke bail. He went to High Court to challenge the bail conditions and bail amount which was later raised to S\$30,000 but his challenge was dismissed by the High Court. In May 2015, Yee was found guilty on the two charges and acquitted on the charge that was stood down. Yee is currently remanded to assess whether he is suitable to serve reformatory training. The case has been adjourned until June 23.

5. Defamation suits & Contempt of Court charges

- 5.01 The use of defamation suits by political leaders has a long history in Singapore. Previous cases have set the bar extremely low, and unlike the guiding principle in other democracies that public personalities should have a high tolerance for critical speech, in Singapore the courts have accepted the opposite principle that the very fact that a political office-holder has name recognition augments the injury he suffers from defamation and thus deserves higher damages.
- 5.02 Singapore has inherited the English offence of "Contempt of Court (Scandalising the Judiciary)". Whereas in many democracies with a similar tradition, this offence has become obsolescent from disuse or repealed altogether, Singapore uses it regularly against persons criticising the judiciary. Contempt of Court can lead to fines, imprisonment and the Prosecution may recover hefty costs from those it charges.
- 5.03 In April 2013 the police arrested and interrogated Leslie Chew, a cartoonist, over two days for publishing works which the authorities deemed seditious and which the government said "scandalises our Courts through allegations and imputations that are scurrilous and false". Chew's cartoon strips, 'Demoncratic Singapore', are often critical of Singapore laws, policies, and the ruling People's Action Party. The threatened contempt of court charges were only withdrawn after Chew made a public apology and deleted four cartoons.¹⁰
- 5.04 In April 2013, Singaporeans took to Internet websites and Facebook pages to criticize a verdict by a Singapore Court, prompting the Attorney-General's Chambers (AGC) to issue letters to netizens asking for an apology and that the postings be taken down, arguing that attacks on the judiciary would undermine public confidence in the institution.

¹⁰ <https://sg.news.yahoo.com/singapore-sues-political-cartoonist-leslie-chew-for-contempt-of-court-102538645.html>, accessed 8 June 2015.

- 5.05 In November 2013, the Attorney-General commenced contempt of court proceedings against Alex Au, a blogger writing frequently on politics and society, over two articles. One was regarding the two cases, then-ongoing, challenging the constitutionality of the law criminalising homosexuality; the article contained remarks about timings, procedures and the composition of the bench hearing the cases. In January 2015, Au was found guilty of contempt of court over one of the two blogposts in question - the one about timings and procedures - and fined \$8,000. He was acquitted over the other blogpost. He is appealing, but in doing so runs the risk of an enhanced penalty as well as liability for the State's costs if he loses. This case chills discussion of judicial processes, effectively putting this important aspect of State functioning off-limits to public scrutiny.
- 5.06 Filmmaker Lynn Lee was documenting the first strike in Singapore in 26 years involving a group of bus drivers from China who were working for the Singapore Mass Rapid Transit (SMRT). The strike was deemed illegal and five men were charged for instigating it. During Lee's interviews with them, two of them alleged police brutality while in custody. Lee released the two short videos describing the assault on her blog in January 2013. A week later, the police took her in for questioning and confiscated her mobile phone, laptop, iMac and hard drive. On 13 June 2013, the Attorney General's Chamber gave her a letter of warning for contempt of court.
- 5.07 In May 2014, Prime Minister Lee Hsien Loong sued Roy Ngerng, a socio-political activist for defamation over an article he wrote comparing the government's management of public pension funds (Central Provident Fund) with how a church used its funds. That church is currently facing charges of criminal misappropriation. In September 2014, Lee obtained summary judgment from the High Court. Damages will be assessed in a hearing scheduled for July 2015. In January 2015, Ngerng was asked to pay S\$29,000 in costs and filing fees to the prime minister over the summary judgement. The next hearing will be held from 1 to 3 July to determine how much Ngerng would have to pay the Prime

Minister in damages. The High Court oversees cases of above S\$250,000 which is what Ngerng may have to pay.

6. Unreasonable licensing restrictions

- 6.01 Even when no ban is imposed, the government regularly constrains speech through licensing. Licences can come with conditions.
- 6.02 In May 2013, the MDA imposed a new licensing regime that required all online news sites to secure a license should they reach 50,000 unique views per month over a two-month period. The two key conditions of the license are a \$50,000 bond and a readiness to comply within 24 hours with MDA's directions to remove content that MDA declares to be in breach of Singapore's content standards. However, these 'standards' are not properly defined. Vague and arbitrary, the license conditions create a culture of self-censorship. Making website owners deposit a 'performance' bond will probably also lead to self-censorship, especially by sites that do not charge and whose income barely covers their operating costs. While it is understandable that radio and TV stations should be licensed because of the limited number of broadcast channels and the need to regulate frequencies, imposing a licensing system on news websites is utterly absurd and cannot be justified by a need for a 'more consistent regulatory framework,' as the MDA has suggested.¹¹
- 6.03 Theatre group DramaBox brings important issues to the community through forum theatre. To be effective, they stage performances in public squares. On several occasions, they have been denied a licence to do so on the ground that the themes were controversial, and that the performances could only be allowed if there was controlled entry. This defeats the aim of forum theatre which is to confront the public with issues they might otherwise prefer to avoid. DramaBox

¹¹ <http://www.mda.gov.sg/AboutMDA/NewsReleasesSpeechesAndAnnouncements/Pages/NewsDetail.aspx?news=4>, accessed 18 June 2015.

has also suffered from severe censorship demands, including the excision of a first act of a 2013 production. Plays in which DramaBox have suffered licensing restrictions include one touching on terrorism, race and religion, and another touching on sexuality -- it had to be withdrawn altogether and replaced with another script about divorce. In 2013, a production touching on migrant worker issues suffered when the government insisted on the excision of the entire first act and the removal of newspaper cuttings originally intended to be projected on the backdrop.

- 6.04 The MDA vets scripts closely before issuing performance licences. Deviation from scripts submitted can trigger penalties. Arts groups Theatre Practice was recently issued a warning letter by MDA for making two changes in the final performance of Legends of the Southern Arch. This close monitoring destroys the spontaneity and vitality of the arts and denies autonomy to artists.

7. Job denial

- 7.01 Several outspoken persons have been denied jobs in education or other government-controlled organisations. They were left in no doubt that their speech and actions were the triggers.
- 7.02 In February 2014, Chng Suan Tze was verbally informed that she was successful in her application for a part-time teaching position in Nanyang Technological University (NTU), but after waiting four months, the paperwork did not come through. No official reason was given to her but she heard from inside sources that the Ministry of Education vetoed her appointment. Chng had been the director of a play Square Moon, about detention without trial, and in the lead-up to the staging of the show late 2013, had known that the Internal Security Department was unhappy with the play.
- 7.03 Journalism academic Cherian George was denied tenure for a second time at NTU in early 2014, which meant that his contract could not be renewed. In his blogposts he described how he had been assessed to have met the university's

academic criteria for promotion, but "only political and no academic grounds were ever cited by the university" for denying him tenure.¹²

- 7.04 Ngerng (see 5.07 above) was fired from his job with a public hospital two weeks after he was sued. The employer and the Ministry of Health issued a press statement accusing him of "conduct incompatible with the values and standards expected of employees, and for misusing working time, hospital computers and facilities for personal pursuits". The hospital also said employees "cannot defame someone else", expressing "grave concern" citing the defamation suit.
- 7.05 Community Action Network is aware of more cases of persons denied employment for their outspokenness, but they did not want to be named in this paper. This itself underlines the fear-inducing effect of job insecurity.

8. Inhibitory actions

- 8.01 Inhibitory actions by the government or non-state actors constrain the freedom of expression and information largely through inducing self-censorship. This is often achieved by creating uncertainties in the minds of the speakers or artists. Uncertainty about whether a licence can be obtained – and an opaque process is part of the method – is one route. There have been cases of licences issued only a day or two before the season began and last minute demands for script changes. Another form of inhibitory action is mediated through uncertain funding, or funding withdrawn at the last minute, potentially damaging the commercial viability of the project, and serving as a warning to others. A third form of inhibitory action is much more insidious. It involves delegating the censorship function to private gatekeepers, such as venue owners; discussed further below. There was also an attempt to hold artists responsible for classifying (in effect censoring) their own work, discussed in 8.05.

¹² <https://cheriangeorge.wordpress.com/a-clarification/>, accessed 8 June 2015. It contains a link to an earlier blogpost from 2014.

- 8.02 In May 2015, theatre company Wild Rice produced a play 'Geylang' looking at the underbelly of a notorious redlight district. The play did not get its performing licence till one day before its 13 May opening show.
- 8.03 Also in 2015, arts group Theatre Practice had to wait six months before being issued a licence for their upcoming production Chronology Of Death.
- 8.04 In May 2015, the National Arts Council announced that it was withdrawing its \$8,000 grant awarded for a graphic arts novel 'The Art of Charlie Chan Hock Chye' while the publication was coming off the press just days before its launch. Author Sonny Liew touches on Singapore history, censorship and socio-political issues that the government alleged undermined the authority or legitimacy of the government – a stance that is completely illegitimate as a basis for regulation and can have far-reaching effects.
- 8.05 In 2014, the MDA proposed to roll out a 'term licence' category wherein arts groups could self-classify performances in line with the MDA's ratings system. Coming with provisions for penalties, artists felt that such a system would prompt self-censorship. The proposal was withdrawn in August 2014.¹³

9. Venue hurdles

- 9.01 Many civil society groups report difficulties getting venues for forums especially when the subject being discussed is controversial.
- 9.02 Human rights advocacy group Maruah's planned forum on 'Foreign workers, justice and fairness', December 2013, had its paid-up booking cancelled by the venue owner almost on the eve of the event. The latter said the police called them

¹³ Straits Times, 22 Aug 2014, 'MDA removes Arts Term Licensing from proposed amendments to act' <http://www.straitstimes.com/news/singapore/more-singapore-stories/story/mda-removes-arts-term-licensing-proposed-amendments-bill>

though what transpired in the conversation is not known. Maruah sought an explanation from the police but did not get a clear reply.

9.03 DramaBox also reports increasing difficulty in getting permission to use public squares for their works. Agencies in charge of public squares are not free from political pressure.

9.04 The number of such incidents suggests a pattern of pressure being put on venue owners to deny civil society groups the space to conduct their dialogues. This kind of dissuasive action is particularly insidious because the government maintains deniability.

10. Limitations on access to information

10.01 The MDA requires Internet Service Providers to block access to a list of websites. The MDA says 100 sites are on the list, but this cannot be verified since the list itself is not publicised.

10.02 Books and films continue to be summarily access-restricted based on socially-conservative views of some religious groups. Following a series of quasi-form letters, the National Library Board (an arm of the government) removed three books 'And Tango Makes Three', 'The White Swan Express', and 'Who's In My Family?' from the Children's Section of the National Library on the ground that they were "against social norms", coded language meaning that they were affirmative of non-traditional sexual orientation. While two of the books were reinstated after an outcry, the initial rash act to censor signals that certain viewpoints should be fenced off. The film 'The Kids are Alright', about two teenagers growing up in a two-mother family searching out their father, was given an R21 rating restricting it to adults at least 21 years old even though there were no explicit sex scenes. Furthermore, despite a lengthy consultation with a review committee that was meant to represent views of the public, the government imposed an unprecedented condition that only one print of this film could be allowed in the whole of Singapore. This action effectively limited access

of the cinema-going public to the film. Inside information was that the review committee had not been consulted about this one-print-only restriction, which in turn suggests that the government's claims of community input into censorship and classification decisions mean less than they appear.

11. Recommendations

- 11.01 Dismantle the onerous licensing regime for online and offline media, arts events and films. Allow bloggers, artists and film-makers to self-classify without external penalties.
- 11.02 Abolish the offence of Contempt of Court (Scandalising the Judiciary) and the Seditious Act.
- 11.03 Defamation suits brought by public personalities and holders of political office must meet higher thresholds of admissibility in order to safeguard free speech. Eminent individuals who enjoy easier access to the media (especially through their official positions) than the layman to remedy falsehoods should also be entitled to lower damages than that awarded to ordinary persons for the same injury.
- 11.04 Liberalise regulation of public assemblies and processions with no licence required for static demonstrations involving 50 or fewer persons; and less stringent licensing requirements for larger gatherings.
- 11.05 Protection from Harassment Act should be tightened to exclude government and corporate bodies from the meaning of 'victims', and only apply to harassment of individuals.
- 11.06 Hurt feelings (over race, religion or other grounds) should not be subject to criminal prosecution. Offences should be narrowly tailored to words and acts mobilising and inciting others to cause injury or harm within an immediate period.

11.07 The Civil Service, statutory boards and universities should hire only on merit, be free from political manipulation, and be transparent about any attempted political meddling.