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12 April 2019

Your Excellencies,

RE: Protection from Online Falsehoods and Manipulation Bill 2019

I write on behalf of the International Commission of Jurists (ICJ), an international organization composed of 60 distinguished judges and lawyers from all regions of the world, working to safeguard and advance the rule of law and legal protection of human rights.

The ICJ has significant concerns about the Protection from Online Falsehoods and Manipulation Bill 2019 ('Online Falsehoods Bill'), tabled in the Singapore Parliament on 1 April 2019.

In the **attached** legal briefing, we have detailed our concerns with reference to relevant provisions of the Online Falsehoods Bill.

We request that you take steps to ensure that the bill is not adopted, at least not in its present form.

We would like to recall that in October 2018, the United Nations Special Rapporteur on the right to freedom of opinion and expression highlighted, in his statement to the UN General Assembly, the growing prevalence of misinformation online and potential threats posed by the spread of false information to the protection of fundamental rights and freedoms globally.¹

In March 2017, the Special Rapporteur, along with representatives from the Organization for Security and Co-operation in Europe (OSCE), the Organization of American States (OAS) and the African Commission on Human and Peoples' Rights (ACHPR), also noted that "disinformation and propaganda are often designed and implemented so as to mislead a population, as well as to interfere with the public's right to know and the right of individuals to seek and receive, as well as to impart, information and ideas of all kinds" and that "some forms of disinformation and propaganda may harm individual reputations and privacy, or incite to violence, discrimination or hostility against identifiable groups in society".²

It is in this context that the ICJ recognizes the efforts of Singapore's government to implement counteractive measures to reduce potential infringements on the human rights and fundamental freedoms of people in Singapore which may emerge from the spread of misinformation within the country.

We express deep concern, however, that the Online Falsehoods Bill may, contrary to the object and purpose of its introduction, result in far-reaching limitations on the rights to freedom of expression, opinion and information. Its provisions present a real risk that it can be wielded in an arbitrary manner to curtail important discussion of matters of public interest in the public sphere, including content critical of the government.

Critical dissent, free exchange and development of opinions, and free access to information are necessary to maintain an informed society and ensure transparency, accountability and informed debate on crucial matters of public interest.

Thus, in April 2018, the Special Rapporteur recommended that State regulation of information online should entail "smart regulation, not heavy-handed viewpoint-based regulation, ... focused on ensuring company transparency and remediation to enable the public to make choices about how and whether to engage in online forums." He added that restriction of content by States should only be made "pursuant to an order by an independent and impartial judicial authority, and in accordance with due process and standards of legality, necessity and legitimacy" and "not impose disproportionate sanctions, whether heavy fines or imprisonment... given their significant chilling effect on freedom of expression."³

Under international law and standards, any restrictions limiting freedom of expression and opinion must be clearly provided in law and may only be those strictly necessary and proportionate for a narrow range of purposes, such as protection of national security and public order or the rights or reputation of others. This bill falls short in a variety of respects, including in respect of legality and the failure of the restrictions to meet the requirements of necessity, proportionality and legitimate purpose.

¹ Statement by David Kaye, Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, UN General Assembly, Third Committee, Item 69 (b & c), 22 October 2018. Available at: <https://www.ohchr.org/en/issues/freedomofopinion/pages/annual.aspx>

² United Nations Special Rapporteur on Freedom Of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information, 'Joint Declaration on Freedom of Expression and "Fake News", Disinformation and Propaganda', 3 March 2017. Available at: <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=21287&LangID=E>

³ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/HRC/38/35, 6 April 2018. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/096/72/PDF/G1809672.pdf?OpenElement>

Even as we welcome the Ministry of Law's clarification that criticism, opinions, satire and parody will not be covered under the scope of this law, this is not specifically addressed in the bill, which makes it vulnerable to misuse to clamp down on precisely these forms of expression.

The ICJ's key concerns include:

- *Vague, overbroad provisions:* Provisions fail to define fundamental terms pertaining to the implementation of the law, including 'false statement of fact' and 'public interest', preventing precise understanding of the law so that individuals are able to regulate their conduct accordingly. They also open the law up to a real risk of misuse by ministers and government authorities charged with its implementation;
- *Unfettered discretion to ministers and government authorities:* Powers granted to ministers and government authorities under the bill fail to include sufficient judicial oversight measures to protect against the risk of arbitrary and abusive implementation. Notably, the first stage of recourse available to an aggrieved party is ministerial review of a direction or order made under the bill, which is not an independent or impartial mechanism, negatively impacting on the right of aggrieved parties to prompt and effective remedy, including judicial remedy;
- *Non-compliance with 'least restrictive means' principle:* Provisions impose a range of imprisonment terms and hefty fines as penalties for not only makers of an alleged false statement of fact – which is a category that can in itself potentially be interpreted in an overbroad manner to, for example, include individuals or non-individuals who 'like', 'share' or 'comment' on such information on social media – but also of intermediaries facilitating communication of such statement. This can result in a chilling effect on the free communication of opinions or information, especially in the context of discussions about matters of public interest and concern;
- *Absence of clear protections for freedom of expression, opinion and information:* Provisions fail to provide clear protections for the right to freedom of expression, opinion or information, or include exceptions or defences that would guarantee the same. Defences of public interest, honest mistake, parody and artistic merit are also not provided for under the bill. There is no recourse available for a direction or order made under the bill to be quashed on judicial review grounds of illegality, irrationality and procedural impropriety;
- *Designation of alternate authority for election or specified periods:* Provisions fail to provide clear oversight mechanisms to limit the exercise of unfettered executive discretion during election or other such sensitive periods precisely when such discretion needs to be limited to ensure open debate, discussion and free flow of information in the public realm;
- *Scope of jurisdiction:* Provisions allow for extraterritorial application, providing that penalties can be imposed on individuals or non-individuals 'whether in or outside of Singapore'. This is inconsistent with obligations to protect the rights to communicate expression, opinions and information "regardless of frontiers" and can violate the rights of persons not only in Singapore but also outside of Singapore, for example, where a subject statement is ordered to be removed off a platform that is also accessed by persons outside of the country.

We thus urge the Singapore Parliament not to pass into law the Online Falsehoods Bill, at the very least without substantial amendments to address the deficiencies described above.

Please do not hesitate to contact us if you have any comments or questions.

We appreciate your urgent attention to this matter.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Ian D. Seiderman', with a long horizontal flourish extending to the right.

Ian Seiderman
Legal and Policy Director
International Commission of Jurists

Cc.
H.E. Mr. Tan Chuan-Jin
Speaker of Parliament
Parliament House
Singapore

Members of Parliament of Singapore *via email*