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**SUBMISSION OF THE INTERNATIONAL COMMISSION OF JURISTS TO THE  
UNIVERSAL PERIODIC REVIEW OF SINGAPORE**

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*Composed of 60 eminent judges and lawyers from all regions of the world, the International Commission of Jurists (ICJ) promotes and protects human rights through the Rule of Law, by using its unique legal expertise to develop and strengthen national and international justice systems. Established in 1952, in consultative status with the Economic and Social Council since 1957, and active on five continents, the ICJ aims to ensure the progressive development and effective implementation of international human rights and international humanitarian law; secure the realization of civil, cultural, economic, political and social rights; safeguard the separation of powers; and guarantee the independence of the judiciary and legal profession.*

## **SUBMISSION OF THE INTERNATIONAL COMMISSION OF JURISTS TO THE UNIVERSAL PERIODIC REVIEW OF SINGAPORE**

### **Introduction**

1. The International Commission of Jurists (ICJ) welcomes this opportunity to contribute to the Human Rights Council's (HRC) Universal Periodic Review (UPR) of Singapore.
2. The ICJ wishes to draw the attention of the HRC and the Working Group on the UPR to concerns relating to:
  - (i) Freedom of expression online;
  - (ii) Death penalty;
  - (iii) Corporal punishment; and
  - (iv) International human rights instruments.

### **Freedom of expression online**

3. Following its Second Review in 2016, Singapore accepted four recommendations to promote human rights principles through domestic legislation, including two calling for legal measures to ensure protection of freedom of expression.<sup>1</sup> It further accepted two recommendations to protect freedom of expression and freedom of the press on "online public platforms" and "on the internet".<sup>2</sup>
4. In contrast, since then, the Government of Singapore ("Government") has abused laws in apparent attempts to harass and silence members of the political opposition, independent media, civil society organizations, human rights defenders and ordinary individuals.<sup>3</sup>
5. Recent cases targeting speech on online news and social media platforms disclose a trend whereby the State has expanded its infringement of the rights to freedom of expression, opinion and information to the online sphere in contravention of its commitment to protect free expression "on the internet".<sup>4</sup>

### **Protection from Online Falsehoods and Manipulation Act 2019 (POFMA)**

6. In October 2019, POFMA came into effect,<sup>5</sup> despite technological companies, media professionals, journalists, lawyers, independent publishers, arts organizations, academics, politicians and human rights organizations expressing concern that it could result in highly excessive government control and unduly restrict expression online.<sup>6</sup>
7. The law's stated purpose was to "prevent the electronic communication in Singapore of false statements of fact [...] counteract the effects of such communication, safeguard against the use of online accounts for such communication and for information manipulation [...] enhance transparency of online political advertisements, and for related matters."<sup>7</sup>
8. Prior to its passage, in April 2019, the ICJ addressed a letter to Parliament urging it to reject the then-bill in light of its draft provisions undermining the principles of legality, necessity and proportionality.<sup>8</sup> They included: vague and overbroad provisions whose enforcement would prevent precise understanding and implementation of the law; wide discretion conferred on the authorities to enforce the Act; absence of independent oversight measures to protect against arbitrary

or abusive implementation; and severe penalties, including imprisonment terms and hefty fines for an alleged “false statement of fact”.<sup>9</sup>

9. As of July 2020, the law has been used in 72 instances, the majority of which concerned “correction directions”<sup>10</sup> issued against communications on Facebook.<sup>11</sup> In the lead-up to and following the general elections in July 2020, the “correction directions” targeted free expression on the online platform by members of the political opposition, journalists, independent news outlets and ordinary individuals who had voiced dissent vis-a-vis the Government.
10. For example, in November 2019, POFMA was first used to issue a “correction direction” against a Facebook post by opposition politician Brad Bowyer questioning the independence of State-owned investment companies.<sup>12</sup> In December 2019, three “correction directions” were issued against the opposition Singapore Democratic Party (SDP) for an online article providing allegedly false statistics on unemployment in Singapore, and two Facebook posts promoting the article.<sup>13</sup>
11. In January 2020, “correction directions” were issued against the online news platform “The Online Citizen” (TOC) and against journalist Kirsten Han – for reporting on its site and Facebook, respectively – on a non-governmental organization’s claims regarding hanging procedures in Singapore’s prisons.<sup>14</sup>
12. In February and May 2020, three Facebook pages belonging to Australia-based Alex Tan were declared as online locations with a history of communicating allegedly false information after Tan refused to comply with multiple “correction directions”.<sup>15</sup>
13. In May 2020, regional online news platform, New Naratif, was issued a “correction direction” under POFMA for a YouTube video titled “*How bad laws are created and abused in Singapore (A POFMA case study)*”. New Naratif complied, displaying “correction notices” on YouTube, Facebook and its website.<sup>16</sup>

#### Abuse of other laws to curtail free expression online

##### *Election-related laws*

14. On 21 September 2020, PJ Thum, managing director of New Naratif, reported to the police, following a complaint against the online news platform lodged by the Elections Department (ELD). He was questioned for more than four hours and had his phone and laptop seized by the police. The ELD lodged a complaint against New Naratif following three notices it had issued to Facebook in July 2020 to remove five alleged paid advertisements by New Naratif on the platform deemed to violate the Parliamentary Elections Act.<sup>17</sup> PJ Thum has asserted the investigation is “politically motivated” and “an abuse of the law to harass activists and independent media”.<sup>18</sup>

##### *Defamation*

15. In December 2018, Terry Xu, the editor of TOC, and Daniel De Costa – the author of an article that had alleged corruption within the Government – were charged with criminal defamation for the posting of the article on the TOC’s website.<sup>19</sup> Charges under sections 499 and 500 of the Penal Code were brought against both for criminal defamation.<sup>20</sup> If found guilty, both face up to two years’ imprisonment, or a fine, or both.<sup>21</sup> The case is currently before the courts, and their trial is scheduled to take place from 26 to 30 October 2020.
16. In September 2019, the Prime Minister (PM) commenced civil defamation proceedings against Terry Xu for publishing an article on the TOC’s website reporting on a public feud between members of the PM’s family.<sup>22</sup> Prior to being

sued for defamation, Xu was ordered to remove the above-mentioned article and a Facebook post including a link to the article, and publish "a full and unconditional apology, plus an undertaking not to publish any similar allegations, prominently on (his) website (or) Facebook timeline".<sup>23</sup> The case is currently before the courts.

17. On 6 October 2020, a trial to hear a defamation lawsuit launched by the PM against blogger Leong Sze Hian began before the High Court<sup>24</sup>, after Leong was sued in December 2018 in relation to an article alleging a link between the PM and a scandal surrounding Malaysian State fund 1Malaysia Development Berhad (1MDB). Leong had merely "shared" the article on his Facebook account in November 2018, without any comments. Afterwards, he complied with a notice from the Infocomm Media Development Authority (IMDA) to take down the post.<sup>25</sup>

#### *Contempt of court*

18. In October 2017, the Administration of Justice (Protection) Act 2016 (AJPA)<sup>26</sup> came into force, despite well founded concerns raised by multiple organizations that its vague provisions could be interpreted and implemented in an abusive manner given existing trends of use of contempt of court under common law<sup>27</sup> to limit freedom of expression.<sup>28</sup>
19. The ICJ noted that the AJPA lowered the threshold for "scandalizing the Court", expanding judicial powers to punish such contempt, while increasing the maximum penalty to three years' imprisonment and/or a fine of S\$100,000 (approx. USD 72,051), when under common law, a six-week imprisonment term and S\$20,000 (approx. USD 14,410) fine had been deemed appropriate.<sup>29</sup>
20. In October 2018, activist Jolovan Wham and opposition politician John Tan were convicted under the AJPA. Wham was convicted for a Facebook post stating that "*Malaysia's judges are more independent than Singapore's for cases with political implications*". Tan was convicted for a Facebook post stating, "*By charging Jolovan for scandalising the judiciary, the AGC only confirms what he said was true*". In April 2019, both men were fined S\$5,000 (approx. USD 3,685). Wham and Tan were further ordered to pay the Attorney-General's Chambers (AGC) S\$7,298 (approx. USD 5,378) and S\$6,966 (approx. USD 5,133), respectively, in legal costs and disbursements.<sup>30</sup>
21. Prior to the coming into force of the AJPA, in August 2017, lawyer Eugene Thuraisingam was fined S\$6,000 (approx. USD 4,423) for posting a poem about capital punishment on Facebook. The fine was imposed after he had deleted the post and posted a public apology.<sup>31</sup>
22. In October 2017, contempt proceedings were commenced against academic Li Shengwu for a Facebook post that alleged that "the Singapore government is very litigious and has a pliant court system. This constrains what the international media can usually report."<sup>32</sup> In July 2020, Li was found guilty, fined S\$15,000 (approx. USD 11,000) and further ordered to pay S\$16,570 (approx. USD 12,151) for legal costs and disbursements.<sup>33</sup>

#### **Death penalty**

23. Following its First Review in 2011, Singapore accepted the recommendation of the Working Group on the UPR to make available statistics and other factual information on the use of the death penalty.<sup>34</sup> Despite this commitment, the Government has failed to provide statistics and data pertaining to death penalty cases to the public. For example, as of October 2020, the ICJ and local partners note that public information on death row inmates or regarding their cases is not available, including with respect to an estimated more than 50 inmates currently

on death row.<sup>35</sup>

24. Following its Second Review, Singapore simply noted fourteen recommendations calling for measures to bring the country closer to abolition of the death penalty.<sup>36</sup> Since 2016, Singapore has not taken any steps towards abolition of capital punishment.
25. In addition, Singapore continues to hinder lawyers' and civil society's access to information, including statistics and other data, as they seek to assist death row inmates and bring to light information regarding State practices in relation to the death penalty. The authorities continue to give very little notice of execution to death row inmates and their families – about five days to a week's notice – undermining the right of inmates to exercise their right to appeal.<sup>37</sup>
26. Furthermore, in the case of Syed Suhail bin Syed Zin ('Syed'), the ICJ highlighted that a breach of lawyer-client confidentiality in the case gave rise to serious concern about procedural impropriety and fair trial violations and the possibility that similar breaches may have occurred, and may continue to take place in similar cases.<sup>38</sup> Syed would have been executed on 18 September 2020 if it were not for an urgent intervention by his lawyer, acting pro bono, which resulted in a stay on his execution. A similar urgent intervention was filed by the same lawyer for Moad Fadzir bin Mostaffa, whose execution due 24 September 2020 was stayed following a respite order granted by the President. The ICJ has called for both temporary stays to be made permanent.<sup>39</sup>
27. On 22 January 2020, a "correction direction" was issued against Lawyers for Liberty (Lfl), a Malaysian legal organization, under POFMA following Lfl's statements on its website alleging "brutal" procedures that prison officers in Singapore followed in cases of hanging.<sup>40</sup> "Correction directions" were similarly issued against TOC and journalist Kirsten Han for reproducing the claims in their reporting online. On 23 January, the Ministry for Communications and Information ordered the IMDA to issue access blocking orders for Lfl's website, and by 24 January, the website was no longer accessible in Singapore.<sup>41</sup>
28. The ICJ has called consistently for the abolition of the death penalty in any circumstance in Singapore as a violation of the right to life and the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment.<sup>42</sup>

### **Corporal punishment**

29. Following its Second Review, Singapore simply noted six recommendations calling for the abolition of corporal punishment, in particular caning, as a "legal penalty" for criminal offences.<sup>43</sup> Since 2016, Singapore has not taken any steps towards the abolition of corporal punishment, notwithstanding the fact that the practice amounts to a violation of the absolute prohibition of torture and cruel, inhuman or degrading punishment in contravention of international law.<sup>44</sup>
30. Following a 2015 judgment by the Court of Appeal that failed to declare caning was unlawful, and which was highlighted in the ICJ's submission prior to Singapore's Second Review,<sup>45</sup> caning has continued to be enforced in multiple cases as punishment for individuals convicted of criminal offences.<sup>46</sup> On 19 August 2020, Yuen Ye Ming was administered 24 strokes of the cane in one session.<sup>47</sup> 24 strokes is the maximum legal limit of strokes any adult person may receive; any sentence of caning must be executed in one single session.<sup>48</sup>

### **International human rights instruments**

31. Following its Second Review, Singapore accepted nine recommendations pertaining to the ratification of international human rights instruments, including three urging ratification of the International Covenant on Economic, Social and Cultural Rights (ICESCR).<sup>49</sup> However, since then, Singapore is yet to become party to the ICESCR. In addition, it has not become a party to International Covenant on Civil and Political Rights (ICCPR); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW); and the International Convention for the Protection of all Persons from Enforced Disappearance (CED).
32. In November 2017, Singapore ratified the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).<sup>50</sup>
33. Requests for visits by four Special Procedures: the Special Rapporteurs on the sale and sexual exploitation of children; human rights and the environment; the promotion and protection of freedom of opinion and expression; and on contemporary forms of slavery remain pending with the authorities.<sup>51</sup> Visits by the latter two Special Rapporteurs were postponed by the State.<sup>52</sup>

### **Recommendations**

34. In light of the above-mentioned concerns, the ICJ calls upon the HRC and the Working Group on the UPR to recommend that the Government of Singapore:

*Re: Freedom of expression online*

35. Enforce in law and in practice commitments Singapore made during the Second Review to ensure freedom of expression, opinion, assembly and freedom of the press on the internet and for individuals and organizations communicating via online public platforms;
36. Repeal the Protection from Online Falsehoods and Manipulation Act 2019 (POFMA), or otherwise significantly amend its provisions to ensure the law is consistent with international human rights law;
37. Revoke or otherwise reverse administrative decisions on content moderation promulgated under the law – including “correction directions” and access blocking orders – which contravene the right to freedom of expression;
38. Review and amend election-related, defamation and contempt of court provisions in domestic law – including under the Parliamentary Elections Act, the Penal Code and the Administration of Justice (Protection) Act 2016 (AJPA) – to bring them in line with international human rights law;
39. Repeal all legal provisions criminalizing defamation, including sections 499 to 502 of the Penal Code;
40. Halt all ongoing investigations of individuals and revoke or otherwise reverse civil and/or criminal penalties imposed on individuals for merely exercising their right to freedom of expression and, in the cases of journalists and independent news outlets, freedom of the press.

*Re: Death penalty*

41. Halt all impending executions of individuals, in particular the imminent executions of Syed Suhail bin Syed Zin and Moad Fadzir bin Mostaffa;

42. Impose an immediate moratorium on the use of the death penalty, with a view to abolishing capital punishment;<sup>53</sup>
43. Review laws and policies on the use of the death penalty, including the practice of mandatory death penalty sentencing, with a view to its abolition in law<sup>54</sup>;
44. Enforce in law and in practice the commitment Singapore made during the First Review to publicly provide statistics and other factual information on the use of the death penalty;
45. Take steps to ensure that procedural and fair trial concerns relating to death penalty cases are adequately addressed and information on such measures is accordingly provided to the public;
46. Cease harassment of individuals, journalists and non-governmental organizations seeking to bring to light violations of the right to life and the absolute prohibition against of cruel, inhuman or degrading treatment or punishment.

*Re: Corporal punishment*

47. Impose an immediate moratorium on the practice of caning as a judicially imposed punishment, with a view to its abolition in law;<sup>55</sup>
48. Implement domestic legal provisions to uphold Singapore's commitment, under international law to uphold the prohibition of torture and cruel, inhuman or degrading treatment or punishment;<sup>56</sup>
49. Refrain from enforcement in practice of impending sentences of caning imposed on individuals.

*Re: International human rights mechanisms*

50. In line with its stated commitment to do so during the Second Review, become a party to core international human rights instruments and their Optional Protocols – including the ICESCR, ICCPR, CAT, CMW and CED,<sup>57</sup> the Optional Protocol of the Convention against Torture, the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolition of the death penalty, and the Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography;
51. Accept outstanding country visit requests from the Special Rapporteurs on the sale and sexual exploitation of children and human rights and the environment; and refrain from further postponement of the requests of the Special Rapporteurs on the promotion and protection of freedom of opinion and expression and on contemporary forms of slavery.

## ENDNOTES

<sup>1</sup> Responses in UN Doc. A/HRC/32/17/Add.1. Accepted recommendations: 166.58 Continue to improve its legal instruments in the field of human rights and social protection (Tajikistan); 166.59 Further implement international human rights norms into the national legislation (Uzbekistan); 166.89 Adopt legislative measures to permit the realization of peaceful demonstrations and promote freedom of expression (Costa Rica); 166.91 Consider the necessary legislations and policies to effectively guarantee the protection and promotion of freedoms of expression, peaceful assembly and association (Mexico).

<sup>2</sup> Accepted recommendations: 166.201 Ensure freedom of assembly and association, freedom of opinion and expression, including on the Internet, and protect freedom of the press (France); 166.202 Ensure that freedom of opinion and expression are encouraged and protected, including for individuals and organizations communicating via online public platforms (New Zealand). See UN Doc. A/HRC/32/17/Add.1.

<sup>3</sup> See ICJ, CIVICUS and Forum-Asia, 'Singapore: In lead up to elections, all political parties and parliamentary candidates urged to commit to respecting and protecting human rights', 3 July 2020, Available at: <https://www.icj.org/singapore-in-lead-up-to-elections-all-political-parties-and-parliamentary-candidates-urged-to-commit-to-respecting-and-protecting-human-rights/>

<sup>4</sup> In a 2019 ICJ report on freedom of expression and information online across Southeast Asia, the ICJ highlighted how, in Singapore, laws had been wielded by the State to curtail free speech and access to information online by targeting critical dissent of the regime by human rights defenders, lawyers, independent media outlets and members of the political opposition. The report detailed problematic provisions in the laws and selected case studies detailing this trend. See ICJ, 'Dictating the Internet: Curtailing Free Expression, Opinion and Information Online in Southeast Asia', 11 December 2019, Available at: <https://www.icj.org/southeast-asia-icj-launches-report-on-increasing-restrictions-on-online-speech/>

<sup>5</sup> It was brought into force with four subsidiary legislation supplements, detailing selected exemptions for certain services provided by tech companies, including Baidu, Google, Twitter, WeChat and Facebook, Available at: <https://sso.agc.gov.sg/SL-Supp/S664-2019/Published/20191001?DocDate=20191001>; <https://sso.agc.gov.sg/SL-Supp/S663-2019/Published/20191001?DocDate=20191001>; <https://sso.agc.gov.sg/SL-Supp/S662-2019/Published/20191001?DocDate=20191001>; <https://sso.agc.gov.sg/SL-Supp/S661-2019/Published/20191001?DocDate=20191001>.

<sup>6</sup> ICJ, 'Singapore: Parliament must reject internet regulation bill that threatens freedom of expression', 4 April 2019, Available at: <https://www.icj.org/singapore-parliament-must-reject-internet-regulation-bill-that-threatens-freedom-of-expression/>; Thum Ping Tjin, Kirsten Han, 'Singapore's "Fake News" Bill: The FAQ', *New Naratif*, 9 April 2019, Available at: <https://newnaratif.com/research/singapores-fake-news-bill-the-faq/>; Asia Internet Coalition, 'Statement on the Singapore Protection from Online Falsehoods and Manipulation Bill', 1 April 2019, Available at: <https://aicasia.org/2019/04/01/aic-statement-on-the-singapore-protection-from-online-falsehoods-and-manipulation-bill-1-april-2019/>; Yahoo News Singapore, 'Singapore media practitioners voice concerns over proposed fake news law', 18 April 2019, Available at: <https://sg.news.yahoo.com/singapore-media-practitioners-voice-concerns-proposed-fake-news-law-030735076.html>; 'Journalists Call for Withdrawal of Singapore's "Fake News" Bill', 24 April 2019, Available at: <https://docs.google.com/document/d/16pVee1fGx9cU6qADARrgfTtcV60-tVfPm46UGF1-j0o/edit>; Harpreet Singh Nehal SC, 'Strengthening the Online Falsehoods Bill: Some Practical Suggestions', April 2019, Available at: [https://www.singaporelawwatch.sg/Portals/0/1904-02%20Online%20Falsehoods%20Bill.pdf?fbclid=IwAR3\\_mN8yJRpaYLnK38U2eWO78Z1qim7-1N6ahOIMxnM9KAKRfHeIMb4x6KY](https://www.singaporelawwatch.sg/Portals/0/1904-02%20Online%20Falsehoods%20Bill.pdf?fbclid=IwAR3_mN8yJRpaYLnK38U2eWO78Z1qim7-1N6ahOIMxnM9KAKRfHeIMb4x6KY); 'Joint statement regarding the Protection from Online Falsehoods and Manipulation Bill', Available at: [https://docs.google.com/document/d/1yNCUHVJBokZG\\_WbNt1W\\_8BAxzHKIjIBK1EJbMLu9Rr8/e dit?fbclid=IwAR0uND0exPTHnzvqWiuxHhL75qccbUaCBU-7ZO44IZS8EVMtwydsurxSic#heading=h.gjdqxs](https://docs.google.com/document/d/1yNCUHVJBokZG_WbNt1W_8BAxzHKIjIBK1EJbMLu9Rr8/e dit?fbclid=IwAR0uND0exPTHnzvqWiuxHhL75qccbUaCBU-7ZO44IZS8EVMtwydsurxSic#heading=h.gjdqxs); Adrian Lim, 'NMPs suggest 4 amendments to fake news Bill, including having independent council to review Govt decisions', *The Straits Times*, 30 April 2019, Available at: <https://www.straitstimes.com/politics/nmps-suggest-four-amendments-to-draft-fake-news-law-including-having-independent-council-to?fbclid=IwAR1T15yxVd4XLqbyjMpWYcWZITdnxxJPgGuZss83TRw5IRr36yYuwrMPvs>; Johannes Tjendro, 'Academics raise concerns on proposed online falsehoods laws; MOE assures research unaffected', *Channel News Asia*, Available at: <https://www.channelnewsasia.com/news/singapore/academics-raise-concerns-on-proposed-online-falsehoods-laws-moe-11446818>

<sup>7</sup> Protection from Online Falsehoods and Manipulation Act 2019, Available at: <https://sso.agc.gov.sg/Act/POFMA2019?TransactionDate=20191001235959>



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<sup>8</sup> ICJ, 'Singapore: ICJ calls on government not to adopt online regulation bill in current form', 12 April 2019, Available at: <https://www.icj.org/singapore-icj-calls-on-government-not-to-adopt-online-regulation-bill-in-current-form/>; See also ICJ, 'Singapore: Parliament must reject internet regulation bill that threatens freedom of expression', 4 April 2019, Available at: <https://www.icj.org/singapore-parliament-must-reject-internet-regulation-bill-that-threatens-freedom-of-expression/>

<sup>9</sup> Ibid.

<sup>10</sup> Section 11 of POFMA notes that: "(1) A Correction Direction is one issued to a person who communicated the subject statement in Singapore, requiring the person to communicate in Singapore in the specified form and manner, to a specified person or description of persons (if any), and by the specified time, a notice (called in this Part a correction notice) that contains one or both of the following: (a) a statement, in such terms as may be specified, that the subject statement is false, or that the specified material contains a false statement of fact; (b) a specified statement of fact, or a reference to a specified location where the specified statement of fact may be found, or both;

(2) A Correction Direction may require the person to whom it is issued to communicate in Singapore a correction notice in a specified online location;

(3) A Correction Direction may also require the person to whom it is issued to do one or both of the following: (a) to communicate in Singapore the correction notice by placing it in the specified proximity to every copy of the following that is communicated by the person in Singapore: (i) the false statement of fact; (ii) a substantially similar statement; (b) to publish the correction notice in the specified manner in a specified newspaper or other printed publication of Singapore;

(4) A person who communicated a false statement of fact in Singapore may be issued a Correction Direction even if the person does not know or has no reason to believe that the statement is false".

<sup>11</sup> POFMA'ed, 'POFMA'ed v2020.07.11', 11 July 2020, Available at: <https://pofmaed.com/pofmaed-v2020-07-11/>

<sup>12</sup> A correction direction orders the person it targets to insert a note on his or her post, stating that the post "contains false statements of fact", with a link to a State-run website, 'Factually', which provides clarification on the alleged false statements. Channel News Asia, 'POFMA Office directs Brad Bowyer to correct Facebook post in first use of 'fake news' law', 25 November 2019, Available at: <https://www.channelnewsasia.com/news/singapore/brad-bowyer-facebook-post-falsehood-pofma-fake-news-12122952>; On Factually, see <https://www.gov.sg/factually>

<sup>13</sup> On recent development in the appeal before Singapore's Court of Appeal by the SDP on correction directions, see Rei Kurohi, 'Pofma curtails constitutional right to free speech, SDP argues in apex court appeal', *Straits Times*, 18 September 2020, Available at: <https://www.straitstimes.com/politics/pofma-curtails-constitutional-right-to-free-speech-sdp-argues-in-apex-court-appeal>

<sup>14</sup> ICJ communications with partners. On recent development in the appeal before Singapore's Court of Appeal by The Online Citizen on its correction order, see Tham Yuen-C, 'Apex court examines issue of reporting on allegations in The Online Citizen's appeal', *Straits Times*, 18 September 2020, Available at: <https://www.straitstimes.com/politics/apex-court-examines-issue-of-reporting-on-allegations-in-the-online-citizens-appeal>; See also para 27 of this Submission.

<sup>15</sup> These included the 'States Times Review' and 'Singapore States Times' Facebook pages, and Tan's personal Facebook page. Australia-based Singaporean citizen Alex Tan can be fined up to \$40,000 or jailed for up to three years, or both, if he fails to insert a notice on his pages stating that they are designated 'Declared Online Locations', warning that the pages have a history of communicating false information. It is also a criminal offence for any person to provide financial support to the pages for the purpose of communicating false information. Melissa Heng, 'Singapore States Times and Alex Tan's Facebook pages named Declared Online Locations under Pofma', *Straits Times*, 7 May 2020, Available at: <https://www.straitstimes.com/politics/singapore-states-times-and-alex-tans-facebook-pages-named-declared-online-locations-under>

<sup>16</sup> New Naratif complied, noting "failure to comply with this Direction without reasonable excuse is an offence... We will be contesting the directive through the appropriate channels." New Naratif, 'New Naratif's Response to the POFMA Correction Direction', 14 May 2020, Available at: <https://newnaratif.com/journalism/new-naratifs-response-to-the-pofma-correction-direction/>; Channel News Asia, 'Correction direction issued to New Naratif and Thum Ping Tjin over video about POFMA', 13 May 2020, Available at: <https://www.channelnewsasia.com/news/singapore/correction-direction-pofma-new-naratif-thum-ping-tjin-12728088>

<sup>17</sup> Press Release by Elections Department, 18 September 2020, Available at: [https://www.eld.gov.sg/press/2020/Press\\_Release\\_-\\_Police\\_reports\\_filed\\_against\\_New\\_Naratif\\_for\\_breach\\_of\\_Parliamentary\\_Elections\\_Act.pdf](https://www.eld.gov.sg/press/2020/Press_Release_-_Police_reports_filed_against_New_Naratif_for_breach_of_Parliamentary_Elections_Act.pdf)

<sup>18</sup> Jason Fan, 'New Naratif's PJ Thum says police took his phone & laptop, calls on ELD to drop police report', *Mothership*, 21 September 2020, Available at: <https://mothership.sg/2020/09/pj->

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[thum-police-phone-laptop/](#); Andrew Koay, 'S'porean socio-political site New Naratif condemns police report filed for elections breach, says it's PAP taking 'revenge', *Mothership*, 19 September 2020, Available at: <https://mothership.sg/2020/09/new-naratif-condemns-police-report/>; It remains unclear for what particular posts New Naratif or PJ Thum are being investigated. ICJ communications with partners.

<sup>19</sup> The article was written by Daniel De Costa, but posted under a pseudonym and sent to TOC using the email address of another person without his consent. De Costa was therefore also charged for alleged violation of the Computer Misuse Act. Lydia Lam, 'Judge dismisses defence's bid to refer TOC article criminal defamation case to High Court', *Channel News Asia*, 27 November 2019, Available at: <https://www.channelnewsasia.com/news/singapore/toc-terry-xu-daniel-de-costa-defamation-case-high-court-12130612>

<sup>20</sup> ICJ Dictating the Internet report, p. 60; The case is currently before the Singapore courts. Latest updates available at: Low Youjin, 'High Court judge rejects third constitutional challenge by The Online Citizen writer accused of criminal defamation', *Today*, 2 June 2020, Available at: <https://www.todayonline.com/singapore/high-court-judge-rejects-third-constitutional-challenge-online-citizen-writer-accused>; Lydia Lim, 'Judge dismisses defence's bid to refer TOC article criminal defamation case to High Court', *Channel News Asia*, 27 November 2019, Available at: <https://www.channelnewsasia.com/news/singapore/toc-terry-xu-daniel-de-costa-defamation-case-high-court-12130612>

<sup>21</sup> Singapore Penal Code, Available at: <https://sso.agc.gov.sg/Act/PC1871#pr500->

<sup>22</sup> ICJ, 'Dictating the Internet: Curtailing Free Expression, Opinion and Information Online in Southeast Asia', December 2019 ('ICJ Dictating the Internet report'), p. 61, Available at: <https://www.ici.org/southeast-asia-icj-launches-report-on-increasing-restrictions-on-online-speech/>; The letter further argued that action by the Prime Minister was required to "rebut and deal publicly with such scurrilous attacks on his integrity and character, if necessary through legal action". Kenneth Cheng, 'PM Lee demands The Online Citizen take down allegedly defamatory article or face legal action', *Today*, 1 September 2019, Available at: <https://www.todayonline.com/singapore/pm-lee-demands-editor-online-citizen-remove-defamatory-article-or-face-legal-action>

<sup>23</sup> Ibid. The request was made in a letter from the PM's Press Secretary to Xu dated 1 September 2019.

<sup>24</sup> The trial which had been scheduled to be heard for four days, ended two days early on 7 October 2020, and has been adjourned until 30 November, when the court will hear further oral submissions. Rei Kurohi, 'PM Lee's libel suit adjourned after Leong Sze Hian decides not to take the witness stand', *Straits Times*, 7 October 2020, Available at: <https://www.straitstimes.com/singapore/politics/pm-lees-libel-suit-adjourned-after-leong-sze-hian-decides-not-to-take-the-witness>

<sup>25</sup> In 2019, counterclaims filed by Leong arguing that the defamation suit was an abuse of court process were dismissed by the High Court and the apex Court of Appeal, following which he was ordered to pay the PM costs amounting to S\$20,000 (approx. USD 14, 712). Linette Lai, 'PM Lee Hsien Loong in High Court for start of four-day defamation hearing against blogger Leong Sze Hian', *Straits Times*, 6 October 2020, Available at: <https://www.straitstimes.com/singapore/pm-lee-hsien-loong-in-high-court-for-start-of-four-day-defamation-hearing-against-blogger>; Lydia Lam, 'Trial opens for Lee Hsien Loong's defamation suit against Leong Sze Hian', *Channel News Asia*, 6 October 2020, Available at: <https://www.channelnewsasia.com/news/singapore/trial-defamation-suit-against-leong-sze-hian-lee-hsien-loong-13203704>

<sup>26</sup> Administration of Justice (Protection) Act 2016 (No. 19 of 2016), Available at: <https://sso.agc.gov.sg/Act/AJPA2016#legis>

<sup>27</sup> Prior to the coming into force of the AJPA, contempt of court cases could be brought under common law.

<sup>28</sup> FORUM Asia, Think Centre, 'Singapore: New Contempt of Court Law Further Curtails Limited Freedom of Expression', 20 August 2016, Available at: <https://www.forum-asia.org/?p=21369>; AWARE, 'AWARE statement on the Administration of Justice (Protection) Bill', 10 August 2016, Available at: <https://www.aware.org.sg/2016/08/aware-statement-on-the-administration-of-justice-protection-bill/>; Human Rights Watch, 'Singapore: Reject Overly Broad Contempt Law', 8 August 2016, Available at: <https://www.hrw.org/news/2016/08/08/singapore-reject-overly-broad-contempt-law>; Amnesty International, 'Singapore: Contempt of court bill is a threat to freedom of expression', 16 August 2016, Available at: <https://www.amnesty.org/en/latest/news/2016/08/singapore-contempt-of-court-law/>

<sup>29</sup> ICJ Dictating the Internet report, pp. 97 to 98; Referring to Associate Professor David Tan, 'Any Risk Will Do – The New Law on Scandalising Contempt in Singapore', *Singapore Law Gazette*, September 2016; In analyzing cases relating to scandalizing contempt that had been brought before Singapore courts prior to the passage of the AJPA, Assoc. Prof. Tan from the National University of Singapore noted that courts had consistently acknowledged that contempt of court had to be balanced with the right to freedom of speech protected under article 14 of the Singapore Constitution, and highlighted tellingly that it was "ironic that the judiciary permits a wider latitude of criticism of itself than Parliament would otherwise tolerate (under the AJPA)".

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<sup>30</sup> ICJ Dictating the Internet report, p. 100.

<sup>31</sup> ICJ Dictating the Internet report, p. 99.

<sup>32</sup> ICJ Dictating the Internet report, p. 99. The post had been set on a "Friends Only" privacy setting.

<sup>33</sup> Lydia Lam, 'Li Shengwu found guilty of contempt of court, fined S\$15,000 or a week's jail if he does not pay', *Channel News Asia*, 29 July 2020, Available at: <https://www.channelnewsasia.com/news/singapore/li-shengwu-fined-15000-default-week-jail-contempt-of-court-12971994>

<sup>34</sup> UN Doc. No. A/HRC/18/11, para. 95.15; See also Report of the Secretary-General, 'Moratorium on the use of the death penalty', 3 August 2012, UN Doc. No. A/67/226, para 44.

<sup>35</sup> ICJ communications with partners.

<sup>36</sup> Noted recommendations: 166.20 Ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty (Montenegro); 166.21 Establish a formal moratorium on the death penalty, with a view to ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights (Australia); 166.157 Re-establish a moratorium on executions, with a view to the complete abolition of the death penalty, and prohibit the imposition of the death penalty against persons with mental and intellectual disabilities (South Africa); Prohibit the execution of persons with mental and intellectual disabilities (Spain); 166.158 Establish a moratorium on executions with a view to abolishing the death penalty (Norway); Establish a moratorium on executions with a view to formally abolishing the death penalty (Portugal); Establish a moratorium on the death penalty (Switzerland); Establish a moratorium on executions, with a view to abolishing the death penalty (France); Establish a moratorium of capital executions with a view to fully abolish the death penalty (Italy); Establish as soon as possible a moratorium on the death penalty with a view to its complete abolition (Mexico); 166.159 Enhance its efforts to abolish the death penalty (Panama); 166.160 Consider establishing a formal moratorium on executions of those sentenced to death (Argentina); 166.161 Eliminate the mandatory character of the death penalty with a view to abolishing capital punishment altogether. In the meantime, establish a moratorium on executions (Germany); 166.162 Advance towards the definitive abolition of the death penalty, adopting during this process a general moratorium on its application (Chile); 166.163 Take further action so as to completely abolish the death penalty after lifting in 2014 its de facto moratorium imposed in 2011 (Greece); 166.164 Introduce further measures to restrict the use of the death penalty and consider the re-establishment of the moratorium on executions as first steps towards eventual abolition of the death penalty (Ireland); 166.165 Consider taking steps to eliminate all mandatory death penalty sentences, and impose a moratorium on the application of the death penalty with the view of abolishing it (Namibia); 166.166 Modify domestic law with a view to abolishing the mandatory death penalty and, during this process, establish a general moratorium on already existing death sentences (Uruguay); 166.167 Abolish the death penalty (Paraguay); 166.168 Go further and abolish the death penalty in practice and in law (New Zealand); See UN Doc. A/HRC/32/17/Add.1.

<sup>37</sup> ICJ, 'Singapore must be transparent in implementation of executions', 18 November 2016 ('ICJ, 18 November 2016'), Available at: <https://www.icj.org/singapore-must-be-transparent-in-implementation-of-executions/>

<sup>38</sup> Information had emerged that the Singapore Prison Service had, in 2018, forwarded a private letter written by Syed to his then-defence lawyer to the Attorney-General's Chambers, the body in charge of prosecuting his case, in the midst of his appeal to the Court of Appeal against his conviction. ICJ, 18 November 2016.

<sup>39</sup> The temporary stay of execution placed initially by the High Court on Syed was extended following a Court of Appeal hearing on 22 September. On 23 September, the President granted Fadzir a Respite Order putting on hold his execution. In accordance with section 313(h) of the Criminal Procedure Code, "the President may, at any time before the warrant (of execution) is carried out, order a respite of the execution of the warrant and afterwards appoint some other time or other place for its execution". ICJ, 18 November 2016. Relevant section of the Criminal Procedure Code available at: <https://sso.agc.gov.sg/Act/CPC2010#pr313->

<sup>40</sup> LfL refused to comply with the correction direction and filed a civil suit challenging the direction at the Kuala Lumpur High Court. Miren Gonzalez, 'Malaysia's Lawyers for Liberty will not comply with correction notice by POFMA', *Independent SG*, 24 January 2020, Available at: <https://theindependent.sg/malysias-lawyers-for-liberty-will-not-comply-with-correction-notice-by-pofma/>; D Kanyakumari, 'Malaysian rights group Lawyers for Liberty files motion in KL High Court against Shanmugam over correction direction', *Channel News Asia*, 24 January 2020, Available at: <https://www.channelnewsasia.com/news/asia/pofma-singapore-malaysia-lawyers-for-liberty-shanmugam-execution-12322456>

<sup>41</sup> Belmont Lay, 'S'pore govt orders blocking of M'sia-based Lawyers for Liberty's website' *Mothership*, 24 January 2020, Available at: <https://mothership.sg/2020/01/lawyers-for-liberty-website-blocked-singapore/>; See also para 11 of this Submission.

<sup>42</sup> ICJ, 'Submission of the International Commission of Jurists to the Universal Periodic Review of Singapore', 19 June 2015 ('ICJ UPR Submission, 19 June 2015'), Available at:

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<https://www.icj.org/32369/>; ICJ, 18 November 2016; ICJ, 'Singapore: halt impending execution of Hishamrudin bin Mohd, 15 March 2018', Available at: <https://www.icj.org/singapore-halt-impending-execution-of-hishamrudin-bin-mohd/>; ICJ, 'Singapore: UN statement on death penalty, freedom of expression', 24 June 2016, Available at: <https://www.icj.org/singapore-un-statement-on-death-penalty-freedom-of-expression/>; ICJ, 'Imminent executions in Singapore and Indonesia must be halted', 13 May 2016, Available at: <https://www.icj.org/imminent-executions-in-singapore-and-indonesia-must-be-halted/>; ICJ, 'Singapore: Court of Appeal decision upholding Kho Jabing's death sentence a serious blow to human rights', 5 April 2016, Available at: <https://www.icj.org/singapore-court-of-appeal-decision-upholding-kho-jabings-death-sentence-a-serious-blow-to-human-rights/>; ICJ, 'Singapore: ICJ analysis brief on death penalty', 5 February 2016, Available at: <https://www.icj.org/singapore-icj-analysis-brief-on-death-penalty/>

<sup>43</sup> Noted recommendations: 166.33 Take concrete steps towards the abolition of the death penalty and corporal punishment, including ratifying the Convention against Torture and its Optional Protocol (Sweden); 166.80 Abolish corporal punishment as a legal penalty, in particular caning (Switzerland); Eliminate the mandatory character of caning as a first step with a view to abolishing this practice altogether (Germany); 166.170 Put an end to the practice of corporal punishment (France); 166.171 Cease the use of caning as a form of punishment (New Zealand); 166.172 Abolish the punishment of caning, particularly those who have exceeded the period stated in the Visa or the residency (Lebanon); See UN Doc. A/HRC/32/17/Add.1.

<sup>44</sup> ICJ UPR Submission, 19 June 2015; ICJ, 6 March 2015.

<sup>45</sup> ICJ UPR Submission, 19 June 2015; See also ICJ, 'Singapore: Court of Appeal judgment upholding caning flouts international law prohibiting ill-treatment, 6 March 2015 ('ICJ, 6 March 2015'), Available at: <https://www.icj.org/singapore-court-of-appeal-judgment-upholding-caning-flouts-international-law-prohibiting-ill-treatment/>

<sup>46</sup> See for example, recent cases in 2020 where individuals were caned for rape and sexual assault; physical assault; and the offence of overstaying on one's visa. Lydia Lim, 'Man who defecated in court gets jail and caning for raping two 14-year-old girls', *Channel News Asia*, 5 February 2020, Available at: <https://www.channelnewsasia.com/news/singapore/man-who-defecated-in-court-gets-jail-and-caning-for-raping-two-12396360>; Shaffiq Alkhatib, 'Jail, caning for ex-restaurant boss who planned knife attack on rival', *Straits Times*, 12 May 2020, Available at: <https://www.straitstimes.com/singapore/courts-crime/jail-caning-for-ex-restaurant-boss-who-planned-knife-attack-on-rival>; Channel News Asia, 'Foreign inmate diagnosed with COVID-19 had arrived on Jan 10, sentenced to jail and caning on Jun 12 for overstaying', 20 June 2020, Available at: <https://www.channelnewsasia.com/news/singapore/covid-19-changi-prison-inmate-overstaying-jail-12854542>

<sup>47</sup> Belmont Lay, 'S'pore caned British DJ-drug trafficker 24 times at one go in Changi Prison, his family anguished: Daily Mail', *MotherShip*, 21 August 2020, Available at: <https://mothership.sg/2020/08/daily-mail-caning-dj/>

<sup>48</sup> Criminal Procedure Code, sections 325 to 332, Available at: <https://sso.agc.gov.sg/Act/CPC2010?ProvIds=P1XVI-#pr328->

<sup>49</sup> Accepted recommendations: 166.1 Consider the ratification of the international human rights instruments, to which it is not yet a party (Nicaragua); 166.2 Continue its accession to the core international human rights instruments (Azerbaijan); 166.5 Sign and ratify the human rights instruments already accepted in the previous review (Uruguay); 166.22 Consider ratifying the International Covenant on Economic, Social and Cultural Rights (Ghana); 166.35 Complete the process of accession to the Optional Protocol to the Convention on the Rights of the Child on the sale of children (Kyrgyzstan); 166.38 Accede to the Optional Protocol to the Convention on the Rights of the Child on the sale of children (Ecuador); Ratify the Optional Protocol to the Convention on the Rights of the Child on the sale of children (Australia) (Paraguay); 166.39 Consider accession to the Optional Protocol to the Convention on the Rights of the Child on the sale of children (Albania); 166.40 Continue to work towards completion of necessary internal processes so that it may accede to the Optional Protocol to the Convention on the Rights of the Child on the sale of children (Bahamas); 166.41 Speed up the consideration of accession to the Optional Protocol to the Convention on the Rights of the Child on the sale of children (Belarus); See UN Doc. A/HRC/32/17/Add.1.

<sup>50</sup> Channel News Asia, 'Singapore ratifies international convention against racial discrimination', 30 November 2017, Available at: <https://www.channelnewsasia.com/news/singapore/singapore-ratifies-international-convention-against-racial-9454008>

<sup>51</sup> Information on pending requests available at: <https://spinternet.ohchr.org/ViewCountryvisits.aspx?visitType=pending&lang=en>

<sup>52</sup> Ibid.

<sup>53</sup> ICJ UPR Submission, 19 June 2015.

<sup>54</sup> Ibid.

<sup>55</sup> Ibid.

<sup>56</sup> Ibid.

<sup>57</sup> Ibid.