24 May 2024

Cherian George
Hong Kong Baptist University
Hong Kong

To: Ministry of Home Affairs

MAINTENANCE OF RACIAL HARMONY BILL & RELATED MEASURES

1. I thank the Ministry for seeking feedback on its proposed Bill. I write as a concerned citizen who wants our society to protect people's freedom and equality regardless of race, and as a scholar of intolerance and hate.[1]

2. I note that the Government wishes to update Penal Code offences and introduce softer powers to be used in lieu of criminal prosecution to deal with various perceived threats. I agree with these broad directions and hope that the Bill's drafters will consider the following points.

A. Porting over of Penal Code's relevant provisions

3. The Government proposes to widen incitement laws to cover, for example, "a racial supremacist urging violence against people with disabilities — even members of their own race — on the grounds of 'racial purity'". This recognises some of the complexities of incitement to hatred. The wording of the Bill may need to be refined. The phrase "other groups or their members" could be read as referring to "other groups, collectively or as individuals", rather than to members of the speaker's own group, which I think is the intended meaning.

4. More importantly, the offence may still be drawn too narrowly. Foreseeable situations include caste-based incitement by ethnic Indians claiming that Indian Singaporeans of lower caste have lost touch with Indian civilisation, and hyper-nationalistic incitement among Chinese nationals saying that Singaporeans who support Taiwan are not true Chinese. Whether such

[1] My forthcoming/recent publications on this subject: "Hate Speech Regulation in Asia", in *Oxford Handbook of Hate Speech,* T. Herrenberg et al. (eds), Oxford University Press, 2025, forthcoming; "Hate Propaganda", in *The Routledge Companion to Media Disinformation and Populism,* H. Tumber and S. Waisbord (eds.), Routledge, 2021; "The Scourge of Disinformation-Assisted Hate Propaganda", in *Fake News: Understanding Media and Misinformation in the Digital Age,* M. Zimdars and K. McLeod (eds.), MIT Press, 2020; *Hate Spin: The Manufacture of Religious Offence and its Threat to Democracy*, MIT Press, 2016.

incitement would be covered by the wording “on the grounds of race” may be hard to establish.

5. At the same time, the wording should not be too broad. It should not enable people to weaponise offence and insult laws against ideological or cultural opponents, or to elevate their own profile in culture wars. These tactics are facilitated by Section 298’s overbreadth in criminalising the “wounding the racial feelings of any person”. Such subjective wording invites complainants to perform offendedness and trigger police intervention. This is a serious problem in India where the law originated, and also seems to be happening in Singapore: people file police reports for a mix of reasons.

6. Fortunately, unlike in many other jurisdictions where the state has been captured by racial or religious majorities, the police and prosecutors in Singapore usually exercise discretion and do not become unthinking instruments of bad faith actors. However, the Government should not be complacent. In addition to introducing alternative remedies, it should simultaneously narrow the scope of the powers currently contained in Sections 298 and 298A.

7. These inherited colonial instruments are ill suited to a sovereign, self-governing, multi-cultural democracy. Sections 298 and 298A, derived from the Indian Penal Code, were not originally devised to build a cohesive nation out of diverse ethnic communities. They were imposed by imperialists who wanted to divide and rule while also maintaining enough order to continue exploiting their colony’s resources and peoples. Their goal was never a “united nation regardless of race” in the sense Singaporeans understand it today.

8. Colonial-era provisions are also blind to the differential vulnerabilities of groups to speech harms. Law should protect the weak, not unfairly empower the strong. Note how “men’s rights” groups have emerged in various countries to perpetuate misogyny and patriarchy. They play the victim and use social media platforms’ complaint mechanisms (and in the case of China, state law) to punish feminist and #metoo activism. White nationalists use similar tactics in Europe and North America, claiming to be victimised by racial justice movements. Such tactics are facilitated by regulation that protects people’s feelings even in the absence of objective harms. The law should instead focus on the likely harm to targeted groups in the form of intimidation, discrimination, or violence,.

9. Singapore should move toward the modern human rights approach, recognising the concept of "protected groups" to cover identity groups that are vulnerable to hate speech on account of their minority status or historical disadvantages. Law should not treat impassioned outbursts against misogyny or racism on the same plane as similar-sounding speech uttered by members of dominant groups against weaker groups. Modern hate speech regulation also takes into account the likely impact of the speech, which depends a great deal on who the target community is as well as who the speaker is. Section 298 does not draw these important distinctions.

10. A related problem with Section 298 is its lack of a public interest exception, which the old Sedition Act had. Speech intended to point out and provoke action against racial injustice should not be criminalised by conflating it with incitement of enmity and hatred. Citizens should be given some latitude when speaking up against existing racism, which the Government says will always exist. Their speech will of course offend and upset Singaporeans who prefer an unfair status quo and who may invoke the value of "harmony" to silence socially valuable speech that sounds discordant to their ears. Indeed, the term "harmony" is so prone to this perverse reading that I would recommend removing it from the proposed Bill.

11. Instead of tinkering around the edges of these fundamentally flawed inherited laws, the Government should take this opportunity to abandon them and write new, purpose-built provisions into the proposed Bill.

12. Some believe that since Singapore has maintained race relations quite successfully thus far, it should err on the side of conservatism when reforming laws. This underestimates the variety and strength of the pillars holding up healthy race relations in Singapore. Furthermore, it is not as if writing new provisions from scratch would be a leap in the dark. Singapore is not alone in dealing with the challenges of building a multicultural democracy. Lawmakers can draw on the jurisprudence of many other countries, as well as best practices consistent with the International Convention on the Elimination of All Forms of Racial Discrimination, which Singapore ratified in 2017, and the Rabat Plan of Action.[2] We need not hold on to a law written by people who never believed natives could build a united nation — nor even wanted them to.

2. "Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence", submitted to the United Nations Human Rights Council, 11 January 213. Available at United Nations Human Rights: Office of the High Commissioner, https://www.ohchr.org/en/documents/outcome-documents/rabat-plan-action

Safeguards against foreign influence

13. The Government proposes to impose transparency requirements on designated "race-based organisations" to guard against harmful influence by foreign entities. Drafters should consider automatic inclusion of all news organisations above a certain size (including all national news media) as designated entities under the law. Although Lianhe Zaobao, Shin Min, Berita Harian, Tamil Murasu, and Mediacorp's equivalent services are not technically "race-based", they in practice serve their respective language groups, and by extension, racial groups. English-language media also set the tone for race relations, and their journalism should not be considered immune from occasional racial prejudices or racial insensitivity.

14. While foreign funding at the corporate level is not really an issue for Singapore's government-funded mainstream media, there is a risk that foreign connections may affect the judgments of the editors and columnists who create content for these outlets. Restricting their contributions based on their citizenship would be xenophobic and too onerous an interference in newsroom's editorial independence. However, major news organisations should be expected to provide greater transparency in their staffing. Many leading news outlets around the world make biographies of their key journalists publicly available. This is good professional practice that improves media accountability. To comply with relevant provisions in the proposed law, media should disclose past and recent affiliations of editors with key roles in content selection, and of regular opinion writers, both full-time and freelance.

15. The aforementioned national news outlets are highly influential in public discussions on race. Indeed, they are more influential than most race-based associations. Members of the public take these outlets' cues to sense the boundaries of civil discussion of sensitive issues. When deciding whom to cover or quote in their stories, media make decisions about which newsmakers speak for different communities, whose views are reasonable, and who should be excluded. Columnists set the tone for public discourse.

16. Readers and viewers assume that the points of view carried in national media are thoughtfully vetted by experienced Singaporean editors with the public interest in mind. But today's unforgiving new cycle, with a greater volume of content published around the clock, means that publishing decisions are made by a larger number of staff with less thorough checks. Transparency about journalists' affiliations would help audiences consume media content with more discernment. Since the goal is to promote media literacy, the information should be made public and not just disclosed to the authorities.

17. This category of organisation should be automatically covered as a class because an ad hoc approach would be highly contentious and potentially unfair to media. The discretionary decision to place an outlet on the list may tarnish the entire organisation, sending the message that MHA has found something suspicious in its operations. Designating the entire class at the outset within the Act would be fairer and less alarmist.

Reparative measures

18. Introducing a wider range of official but less punitive remedies would be a good move. When people's speech and actions are deemed harmful, the public interest can often be served without recourse to criminal sanctions. However, much depends on definitions of harm and the public interest, as well as on implementation, which is bound to be more subjective when it is entrusted to administrators, bypassing courts of law.

19. The concerns I expressed earlier about conflating offendedness with harm would apply equally to the any parallel system of reparative measures. The system could have the unintended consequence of encouraging people to shoot off complaints to the authorities whenever they feel offended, instead of doing their own part to communicate and reinforce social norms. It would be naïve to think that all complainants would act in the public interest. Wherever states legislate against offence and insult, such laws are hijacked by some complainants to fix opponents or to score points with their supporters.

20. The idea of referring cases to "community partners" can backfire if these partners are chosen specifically to represent different racial communities. The consultation document states that we "do not want to have politics organised by race in Singapore", but community partnerships institutionalised along CMIO lines may have precisely this effect.

21. A partner consulted in its capacity as a representative of the Chinese community, for example, may believe that its job is to protect the feelings of the most sensitive Chinese community members. Designated Malay and Indian partners may be similarly inclined. Race-based community partners may be reluctant to advise that a complaint from a member of their community is over-the-top, and that we should trust Singapore society to respond the right way without state intervention — even if the representative

feels this privately.[3] Then, it will be politically difficult for the authorities to do anything other than bow to the partner's worst-case scenario recommendation.

22. Thus, the dynamics of such consultations are likely to produce overreactions pandering to complainants. This would be harmful for Singapore's multiculturalism. It would promote a culture of complaint and official reaction without necessarily building social resilience. It would also stifle good-faith public discussions of racial issues that require an airing.

23. The consultative mechanism should instead comprise a standing committee or tribunal, headed by someone like a retired judge. This body must multiracial, with members who bring to the table knowledge of and respect for their own communities. But each member should be expected to represent the public interest, not the interests of his or her racial group. A standing body can develop deep expertise and hone its judgment over time. It can be given the resources to commission research. It should publish annual reports to ensure that its wisdom is transferred to the wider public.

Conclusion

24. The system the Government puts in place should nudge Singapore toward greater resilience, such that most challenges to our multiracial social norms can be moderated by society (including political leaders using their influential voices) without recourse to the law.

25. Criminal sanctions should be reserved for expression that intimidates or that incites discrimination or violence. Drafters of new regulations should not simply adopt the logic of Section 298, whose flaws I have explained above.

26. Mediation and deliberation is needed in lieu of prosecution when Singaporeans speak up strongly against racial discrimination using expression that sounds extreme to members of communities that do not have the same lived experience. The regulatory framework should not too hastily side with complainants. A speaker who offends some listeners does not have to be treated as an "offender" under law. As the Government has already observed, a growing number of Singaporeans of all races, especially the

3. Legal experts have expressed concern about such dynamics in other consultative committees. See "Film censorship: was Porn Masala really too hot to handle?", FreedomFromThePress blog, 13 April 2013, https://blog.freedomfromthepress.info/2013/04/20/film-censorship-was-porn-masala-really-too-hot-to-handle/

young, feel passionately about racial justice.[4] They cannot all be expected to have the experience or skill to couch their expression in sober, bureaucratic language. Even if they have that ability, there is also a time and place to express outrage from the heart. Imposing a "harmony" threshold, whereby limits on speech are dictated by Singaporeans least open to progress in race relations, will retard society's evolution toward deeper multiculturalism.

27. Drafters of the Bill and accompanying regulations have the opportunity to provide a framework more in keeping with Singapore's needs at this stage in our nation-building. I hope it does just that.

28. Thank you for your kind attention.

Cherian George

[4] "GE2020: Different generations have different takes on race, religion and Raeesah Khan case", says PM Lee", Today, 9 July 2020, https://www.todayonline.com/singapore/ge2020-different-generations-have-different-takes-race-religion-and-raeesah-khan-case-says-pm-lee; "In full: Lawrence Wong's speech at the IPS-RSIS forum on race and racism in Singapore", CNA, 25 June 2021, https://www.channelnewsasia.com/singapore/lawrence-wong-racism-speech-ips-rsis-forum-1941591.