

Opinion No. 10/2010 (Singapore)

Communication addressed to the Government on 11 January 2010

Concerning: Dr. Chee Siok Chin

The State has not ratified the International Covenant on Civil and Political Rights.

1. (Same text as paragraph 1 of Opinion No. 18/2009)
2. According to its Methods of Work, the Working Group forwarded a communication to the Government on 11 January 2010. The Working Group conveys its appreciation to the Government for having replied within the 90-days deadline.
3. (Same text as paragraph 3 of Opinion No. 18/2009)
4. The case was reported by the source to the Working Group on Arbitrary Detention as follows:
5. Dr. Chee Siok Chin, born on 5 February 1966, citizen of Singapore; a human rights defender, pro-democracy activist and a leader of Singapore Democratic Party (SDP); usually residing at 2A Jalan Gelenggang, Singapore 578187; was arrested on 10 September 2006 in the vicinity of Suntec City in downtown Singapore, at or near the entrance of the City Hall MRT Station outside Raffles City Shopping Centre, North Bridge Road, and near the venue for the World Bank-International Monetary Fund (WB-IMF) meeting, which was held between 14 and 20 September 2006. She was arrested together with five other flyer distributors, namely Mr. Gandhi Ambalam, Dr. Chee Soon Juan, Mr. Jeffrey George, Ms. Hakirat Kaur and Mr. Charles Tan.
6. The flyers announced the “Empower Singaporeans March and Rally” that was to be held the following week on 16 September 2006. The forces carrying out the arrest were officers of the Singapore Police Force. They did not show Dr. Chee Siok Chin and the five other flyer distributors the arrest warrant or decision to arrest that had been issued by unknown authorities at the Command Post of the Singapore Police Force.
7. At trial, arresting officers denied knowledge of what offence Dr. Chee Siok Chin and the other flyer distributors were committing at the time of their arrest. Dr. Chee Siok Chin was detained on 4 January 2010 under the orders of Singapore District Judge Ch’ng Lye Beng. She was detained at the Changi Women’s Prison, 10 Tanah Merah Besar Road, Singapore 498834.
8. It is stated by the source that the District Judge found Dr. Chee Siok Chin, together with Mr. Gandhi Ambalam and Dr. Chee Soon Juan, guilty of distributing pamphlets criticizing the Government of Singapore led by the People’s Action Party (PAP) without a permit and fined the three Singapore Democratic Party (SDP) leaders the maximum amount of S\$ 1,000 each or one week's jail in default. The other three people arrested, Mr. George, Ms. Kaur and Mr. Tan, had earlier pleaded guilty and paid S\$ 1,000 fines.
9. The case of Dr. Chee Siok Chin was heard in the District of Court of Singapore, starting on 7 January 2009 and concluding on 18 December 2009. The verdict has been appealed, but Dr. Chee Siok Chin is serving her sentence because she cannot afford to pay

the S\$ 1,000 fine, due to the fact that she is bankrupt, and also can point to no precedent established by the Singapore Courts that has ever overturned a verdict against a political dissident for exercising his or her right to challenge policies of the Government. Her appeal was filed simply with the intention to render the Judge to publicly state his reasons for the verdict, as he had declined to advance them after finding the defendants guilty as charged. He did, however, note that most of the evidence presented in the case was irrelevant.

10. At trial, Deputy Public Prosecutor Anandan Bala claimed that the defendants had demonstrated “opposition to the actions of the Government” and were therefore in violation of the law. Prosecutors in Dr. Chee Siok Chin’s case took exception with the political wording of the flyer inviting citizens of Singapore to the rally. It read, in pertinent part:

“Tired of being a voiceless 2nd class citizen in your own country without any rights?
Sick of the Ministers paying themselves millions of dollars while they tell you to keep making sacrifices for Singapore?”

11. The Prosecution, according to the source, also claimed that defendant Dr. Chee Siok Chin did not possess a permit to engage in such activity and that they “ought reasonably to have known” that a permit was required. According to Dr. Chee Siok Chin and the other defendants, “[t]he police state that permits are not required for distribution of flyers by 5 or more persons only if the assembly is for ‘commercial causes’ ”.

12. The Charging Document, signed by Mark Chua, Senior Investigation Officer, Central Police Division, on 29 December 2008, inter alia, stated:

“You are charged that you, on the 10th day of September 2006 at about 12:15 pm, in the vicinity of Raffles City Shopping Centre, North Bridge Road, Singapore, which is a public place, together with 5 persons did participate in an assembly intended to demonstrate opposition to the actions of the Government, which assembly you ought reasonably to have known was held without a permit under the Miscellaneous Offences (Public Order & Nuisance) (Assemblies & Processions) Rules, and you have thereby committed an offence punishable under Rule 5 of the said Rules.”

13. In the Charging Document reference was made to the Singapore Miscellaneous Offences (Public Order and Nuisance) Act (Chapter 184, section 5 (1)) and the Miscellaneous Offences (Public Order & Nuisance) (Assemblies & Processions) Rules. Rule 5 of the Miscellaneous Offences Rules provides:

“Any person who participates in any assembly or processions in any public road, public place or place of public resort shall, if he knows or ought reasonably to have known that the assembly or processions is held without a permit, or in contravention of any term or condition of a permit, be guilty of an offence and shall be liable on conviction to a fine not exceeding S\$ 1,000.”

14. Under the subsidiary legislation of the Miscellaneous Offences Rules a group of five or more persons intending to demonstrate support or opposition to the views of the Government would require a permit:

“2. - (1) Subject to paragraph (2), these Rules shall apply to any assembly or procession of 5 or more persons in any public road, public place or place of public resort intended -

- (a) to demonstrate support for or opposition to the views or actions of any person;
- (b) to publicise a cause or campaign; or
- (c) to mark or commemorate any event.”

15. Dr. Chee Siok Chin was distributing flyers in public to inform citizens of Singapore of a rally to be held by members of the Singapore Democratic Party (SDP) in Hong Lim Park during the forthcoming World Bank-International Monetary Fund meeting.

16. At trial, several arresting officers admitted being uncertain what laws, if any, the flyer distributors had violated at the time of their arrest. During his cross-examination, one of the arresting officers testified that when police confronted the activists and warned them that they were committing an offence, the officers did not know what that offence was. His trial testimony was: "But after checking my law book, I realised that there could be an offence under the Miscellaneous Offences Act But I'm not sure". When asked whether the contents of the flyer he had seized constituted an offence, Sgt. Oh again testified that he was "unsure". When asked if by using the word "unsure" he meant that he did not know what the offence was, Sgt. Oh said, "Yes". And when asked whether he was still uncertain, even at trial, about what offence had been committed on the day of the arrest, he answered, "Yes".

17. Under cross-examination by Dr. Chee Siok Chin, one of Sgt. Oh's fellow officers at the scene of the arrest failed to identify what offence was being committed by any of the flyer distributors when he confronted Ms. Hakirat Kaur. When asked by Dr. Chee Siok Chin under cross-examination why Ms. Kaur was being accused of committing an offence, he answered, "I was under instructions".

18. Even a commissioned officer assigned to be on guard for signs of "public disorder incidents", testified that he was unaware what law he was being called to enforce on 10 September 2006. In fact, he told the court that the accused had not committed any offence. During cross-examination, Prosecutor Anandan Bala asked him, "From your observation of the defendants distributing flyers, they have not breached the peace?" He responded, "Correct". The prosecutor then asked, "As far as you're concerned, they have not committed a crime?" - "Based on my personal opinion, they are not committing an offence," he answered.

19. Dr. Chee Siok Chin maintains that she cannot reasonably be expected to know that a permit for distributing flyers was required by law when the arresting officers testified in court that they did not even know what offence she and others had committed, even while performing the arrests. The officers also testified to the fact that the distribution of flyers of various kinds and varieties was completely normal and considered lawful in Singapore. The police witnesses repeatedly testified at trial that when Dr. Chee Siok Chin and others were distributing flyers, they were orderly and did not pose any threat of any kind to public order. The source finally reports that, in 2003, the Singapore Minister for Home Affairs publicly stated, "The Government does not authorize protests and demonstrations of any nature".

20. The source argues that the arrest of Dr. Chee Siok Chin, Mr. Gandhi Ambalam, Dr. Chee Soon Juan, Mr. Jeffrey George, Ms. Hakirat Kaur and Mr. Charles Tan, was arbitrary, and that the detention of Dr. Chee Siok Chin, Mr. Gandhi Ambalam, and Dr. Chee Soon Juan, is arbitrary. It is in contravention of the right to equality before the law and equal protection of the law without any discrimination, the right to freedom of opinion and expression, and the right to freedom of peaceful assembly and association as guaranteed by articles 7, 19 and 20 of the Universal Declaration of Human Rights, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and article 14 of the Singapore Constitution, which states in relevant part that "(a) every citizen of Singapore has the right to freedom of speech and expression; b) all citizens of Singapore have the right to assemble peaceably and without arms".

21. The only limitation placed on the rights of freedom of speech and expression under article 14 (a) of the Constitution grants Parliament the authority to impose by law "such

restrictions as it considers necessary or expedient in the interest of the security of Singapore or any part thereof [and] public order or morality". The lone restriction placed on the rights to assemble peaceably and without arms under article 14 (b) of the Constitution grants Parliament the authority to curtail freedom of assembly "as it considers necessary or expedient in the interest of the security of Singapore or any part thereof or public order". Neither requirement has been met in the present case. The source further submits that a declination of these rights is inconsistent with article 4 of the Singapore Constitution according to which no law may be enforced, including an administrative act, which is "inconsistent with this Constitution" and "shall, to the extent of the inconsistency, be void." Consequently, the powers exercised by the Singapore Police Force were ultra vires of the Miscellaneous Offences Act, and therefore unconstitutional.

22. The source further argues that the Miscellaneous Offences Rules do not expressly forbid or restrict criticism of the Government of Singapore or its policies; neither does it draw a distinction between "commercial" and "political" causes, an issue raised during the trial: under cross-examination, Officer SI Yeo conceded that nowhere in Rule 2 did it expressly draw a distinction between "commercial" activities and a "march" or "rally". "The rule does not say," he finally admitted during the trial. Moreover, according to the source, the case at hand illustrates a practice of discrimination against political dissidents by both the Singapore police and courts, giving the appearance that their actions are unmoored from the Singapore Constitution.

23. The source finally submits that Dr. Chee Siok Chin has also been denied the right to leave Singapore in violation of article 13, paragraph 2, of the Universal Declaration of Human Rights, which asserts that "[e]veryone has the right to leave any country, including his own, and to return to his country." She has been declared a bankrupt by the Court as a result of her conviction on libel charges brought against her and her brother, Dr. Chee Soon Juan, by Lee Kwan Yew, based on an article "implying corruption in Singapore's Government that was published in a newsletter in 2006." The fine was S\$ 416,000. The Government has since refused her permission to leave Singapore, even for academic purposes.

The Government's response

24. The Government provided the Working Group with a timely detailed response with attachment of the excerpts from the relevant Singapore law and trial transcripts. It maintains that neither Ms. Chee Siok Chin nor any of the other two persons in her group were arrested or detained on 10 September 2006. They were charged for illegally assembly according to Rule 5 of the Miscellaneous Offences (Public Order and Nuisance; Assemblies and Processions) Rules (MOR). They were not charged for criticizing the Government or for the act of distributing flyers, both of which are not offences in Singapore. They were convicted by the Subordinate Court for illegal assembly and fined with S\$ 1,000 (approximately US \$ 715). Rather to pay the fine, the defendants chose instead on their own accord to serve a one-week term of imprisonment. Subsequently, they voluntarily surrendered themselves to the Court.

25. The Government states that, according to Article 14 of the Constitution, the right to freedom of speech and expression; the right to assembly peacefully and without arms, and the right to form associations, are guaranteed to all citizens, subject to restrictions imposed by Parliament in interest of the security or of public order. This is consistent with article 29 (2) of the Universal Declaration of Human Rights and with resolution 1997/50 of the former Commission on Human Rights.

26. Domestic law provides for certain situations where a person will not be allowed to travel, even if she or he has a valid passport. One of these situations is when the person is

an undischarged bankrupt. Under the Bankruptcy Act, Ms. Chee made 13 applications to travel overseas, of which six were approved.

The source's comments on the Government's response.

27. The source does not challenge the fact that these persons were convicted in accordance with domestic law. Rather, it contests the constitutionality of the Miscellaneous Offences Rules (MOR). According to the source, the Parliament cannot by law impose restrictions on the rights of freedom of speech and expression, and the right of freedom of assembly. Consequently, the source rejects the Deliberation of the Singapore High Court in that sense.

28. The source confirmed that these persons were living at liberty.

Disposition

29. The Working Group recalls that paragraph 15 of resolution 1997/50 of the former Commission on Human Rights requires conformity of a domestic judicial decision with the relevant international standards. The mere conformity with domestic law itself cannot be used to justify a detention of an individual.

30. Taking in consideration that these persons are living at liberty and in conformity with paragraph 17 (a) of its Methods of Work, the Working Group decides to file the case.

Adopted on 7 May 2010