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## SINGAPORE

### J B Jeyaretnam - the use of defamation suits for political purposes

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Following the recent award of libel damages against opposition Workers' Party leader J B Jeyaretnam Amnesty International is increasingly concerned about the Singapore leadership's use of civil defamation suits for political purposes.

Amnesty International believes the Singapore leadership's decision to launch defamation actions against Jeyaretnam in order to '*defend their reputations and maintain the respect of the electorate*' is both unreasonable and unnecessary. The leadership's action, and the decision of the court, place restrictions on freedom of expression that cannot be justified under international standards. Outside of Singapore, in a society respectful of these standards, Jeyaretnam's allegedly defamatory words would not have excited comment - let alone prompted actions of this kind.

Amnesty International questions why Jeyaretnam's case was ever brought to court. The organisation believes that Singapore's leaders are in fact resorting to defamation suits as a politically-motivated tactic to silence critical views and curb opposition activity.

The case originated in a few innocuous words spoken by Jeyaretnam at the end of an election rally in January 1997. Interrupted during his speech by fellow parliamentary candidate Tang Liang Hong placing documents on the podium in front of him Jeyaretnam briefly stated, “*And finally, Mr Tang Liang Hong has just placed before me two reports he has made to police against, you know, Mr Goh Chok Tong and his people*”.

The Prime Minister chose to impute a defamatory meaning to these words, and demanded S\$200,000 damages for alleged grave injuries to his ‘*reputation, moral authority and leadership standing both locally and internationally*’. However during the subsequent court hearings the Prime Minister affirmed that his integrity and political standing had not in fact been injured. Asked if his standing as leader had been injured in the world, the Prime Minister replied “*No*”.

The Prime Minister also chose to release to the press the previously unpublicised contents of the police reports - in which Tang had claimed Goh criminally defamed him by labelling him an ‘*anti-Christian Chinese chauvinist*’ - thereby ensuring the wide dissemination of both the reports and Jeyaretnam’s allegedly defamatory words. In his claim for damages the Prime Minister did not mention that he had effected the publication of the reports.

What then was the reason in bringing the action? The ruling People’s Action Party (PAP) government, which has been in office since 1959 and continues to enjoy an overwhelming parliamentary majority, argues that such defamation suits are a legitimate and necessary means to uphold the integrity of its leaders - on which they claim their ability to govern depends. The government asserts also that the potential fragility of Singapore’s multi-racial, multi-religious society makes it necessary to curb the individual rights of political opponents and others with dissenting opinions through civil defamation actions and through restrictive legislation - including the Internal Security Act (ISA) allowing indefinite detention without charge or trial.

Amnesty International believes that civil defamation suits are being misused by the Executive to intimidate and deter those Singaporeans holding dissenting views. The suits have a ‘chilling’ effect on Singapore’s political life and place unreasonable and unacceptable restrictions on the right of Singaporeans to freely hold and peacefully express their opinions.

Whereas imprisonment of political opponents under the ISA has declined, the Executive’s use of civil defamation suits to bankrupt opponents through the courts - and so prevent their participation in public life - constitutes an emerging pattern. In such cases the Singapore Judiciary has not moved to check the Executive’s misuse of the law in this way.

In fact the government’s resort to civil defamation suits to intimidate and deter those Singaporeans seeking to dissenting views may well have a more subtle and insidious effect than the ISA, in that such suits are not so likely to provoke domestic and international protest.

## **The Judgement**

Within this overall context Amnesty International is concerned about some specific aspects of the court Judgement made against Jeyaretnam:

The Judge considered the plain and ordinary meaning of Jeyaretnam's words and rejected Goh's claim that Jeyaretnam was liable for defamation. Nevertheless the Judge went on to find Jeyaretnam liable on the grounds of a lesser defamatory meaning. The fact that the Judge provided the argument of a lesser defamatory meaning offends the concept of natural justice which requires that a defendant must know **in advance** of a trial the case he has to meet. The defendant was not given the opportunity to defend himself against an argument which was developed almost entirely by the Judge.

The fact that the Judge ruled that the Prime Minister had 'overstated' his case, and awarded a relatively low total of S\$20,000 (US\$13,000) in damages (as compared to S\$1.4 million earlier awarded to Goh and against Tang Liang Hong) does not remove the threat that Jeyaretnam may still face bankruptcy and subsequently be expelled from parliament.

Jeyaretnam was ordered to pay 60% of costs - and the multiplier effect of the awards and costs of seven related cases brought by other senior PAP members may in the end prove financially crippling. The Judge himself questioned why Goh and the seven other PAP plaintiffs chose not to consolidate their cases into one and so reduce costs. In addition, the Prime Minister's decision to appeal the Judgement raises concerns that the financial burdens on Jeyaretnam may be increased still further.

The award against Jeyaretnam consisted of S\$10, 000 'compensatory' damages, and S\$10,000 'aggravated' damages. The 'compensatory' damages were awarded despite the fact that the Prime Minister accepted that his reputation had remained intact. The Judge found that the Prime Minister did not need to prove actual injury to his reputation. Amnesty International believes it would have been preferable for the Judge to base his conclusion on some evidence of actual damage to reputation. The absence of any criteria against which the award can be measured may open the way for the Singapore Courts to consider rumours and speculation in assessing damages.

There are also concerns that the award for 'aggravated' damages was not sound in law. The Judgement stated that the 'aggravated' damages should be awarded because the defendant was unable to prove his argument that the suit had been motivated by political considerations. The plaintiff's subsequent hurt feelings during the trial therefore justified an award for 'aggravated' damages. Penalizing the defendant for not proving that the trial was politically motivated shifts the burden of proof from the plaintiff to the defendant, which flies in the face of natural justice.

Amnesty International sent observers to Jeyaretnam's trial in August and to Tang Liang Hong's appeal in September. The observers' findings will form part of a broader report - to be issued after the Court of Appeal rules on the Tang case - examining in more detail the government's real intent in filing such defamation suits, the Judgements, and the wider effects such actions have on freedom of expression and peaceful democratic discourse in Singapore.

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