Singapore: Withdraw Foreign Interference (Countermeasures) Bill

October 13, 2021 – **Today, ten undersigned organizations called on the Government of Singapore to withdraw the Foreign Interference (Countermeasures) Bill ('FICA'). FICA's provisions contravene international legal and human rights principles – including the rights to freedom of expression, association, participation in public affairs, and privacy – and will further curtail civic space, both online and offline.**

On October 4, 2021, the Parliament of Singapore passed FICA, three weeks after it was tabled on September 13 by the Ministry of Home Affairs purportedly to "prevent, detect and disrupt foreign interference in (…) domestic politics". This was despite serious concerns that the law could undermine civic freedoms – raised by members of the public, civil society, legal fraternity, independent media, political opposition, academia and industry in Singapore. The bill went through both its second and third readings in one parliament sitting and FICA was passed without significant amendments to address key concerns.

While the protection of national security may be a legitimate aim, FICA contravenes the rule of law and the principles of legality, necessity and proportionality under international human rights law. Overbroad and ambiguous provisions draw within its scope a wide range of conduct, activities and communications *"directed towards a political end in Singapore".* As a result, almost any form of expression and association relating to politics, social justice or other matters of public interest in Singapore may be ensnarled within the ambit of the legislation – making it difficult, in turn, for the average individual to reasonably predict with precision what conduct may fall foul of the law. Vague provisions also allow for unfettered executive discretion in interpretation and implementation of the law. Unlimited executive discretion – together with severe penalties under the law – can result in executive overreach into what it deems permissible as civic discussion and public debate. FICA also provides no mechanism for independent judicial oversight or provision of remedy where human rights violations occur as a result of the enforcement of its provisions. The law thus fails to provide for the least intrusive mechanisms to achieve its stated aim of protecting national security while greatly enhancing the risk of executive abuse.

FICA empowers the Minister for Home Affairs to order the removal or disabling of online content – undermining the right to freedom of expression. The Minister is, for example, empowered to order publication of mandatory messages drafted by the authorities, ban apps from being downloadable in Singapore, and order disclosure of private communications and information, when the Minister *"suspects or believes"* that someone is undertaking or planning to undertake online communications activity *"on behalf of a foreign principal",* and that it is in the *"public interest"* to act. The law makes it a criminal offence to undertake *"clandestine"* electronic communications on behalf of a foreign principal under certain circumstances, including when that activity *"diminishes or is likely to diminish public confidence in (...) the Government or a public authority"* or *"is likely to be directed towards a political end in Singapore".* Activity *"directed towards a public end"* includes conduct influencing or seeking to influence government decisions or public opinion on matters of *"public controversy"* or *"political debate"* in Singapore. The

government can also designate individuals as *"politically significant persons"* after which they can be required to follow strict limits on sources of funding and disclose all links with foreigners or foreign entities.

FICA's provisions can also facilitate violations of the rights to freedom of association and participation in public affairs. *"Conduct"* committed in connection with a *"foreign principal"* and *"directed towards a political end in Singapore"* is criminalized where this involves *"covert"* communication or *"deception"* – which is defined as including any *"deliberate"* use of *"encrypted communication platforms"*. The expansive and vaguely worded definition of activities *"directed towards a political end"* can cover a broad range of activities – including social justice advocacy, artistic commentary, academic research, social enterprise or journalistic reporting – carried out by, among others, members of civil society, academia, media, the arts and industry. Meanwhile, the overbroad configuration of connection with a *"foreign principal"* as *"arrangements"* with any *"foreigner"* or "*non-Singapore registered entity"* that can be *"written or unwritten"* brings within the law's remit nearly all forms of cross-border collaboration or engagement. Use of *"encrypted platforms"* as a reflection of *"covert"* communications also allows for criminal intent to be inferred from a wide range of modes of communications via modern electronic devices and platforms – including through encrypted messaging and email services; and the use of online platforms through secure connection services, such as virtual private networks (VPNs).

FICA will disproportionately impact members of civil society, independent journalists, academics, researchers, artists, writers and other individuals who express opinions, share information and collaborate to advocate on socio-political issues and matters of public interest. As their work can involve critical opinions and is often underpinned and supported by cross-border collaboration, research and funding, they are exposed to increased scrutiny and sanctions under FICA. The issues on which they work will also come under increased State oversight and control. Executive oversight and control can, in turn, infringe not only their rights to freedom of expression and association but the rights of other individuals in Singapore who rely on their work to participate in public affairs, which includes conduct of citizens to "exert influence through public debate and dialogue with their representatives or through their capacity to organize".

Severe penalties under FICA are disproportionate. In addition, many of those penalties may be imposed without adequate independent oversight or remedy in case of human rights violations, which can result in a chilling effect on civic space and discussion. Directions can be issued by the authorities to censor, restrict or block access to online content, accounts, services, apps or locations deemed to violate the law. The law also allows for the authorities to designate *"politically significant"* individuals and entities and order them to *"disclose foreign affiliations"* and *"arrangements"* or to end *"reportable arrangements"*. However, there is a lack of independent oversight over these restrictions and designations. These directions may only be appealed to a Reviewing Tribunal appointed by the President on advice of the Cabinet, and decisions made by this Tribunal cannot be appealed to the High Court except for non-compliance with procedural requirements. Further, individuals can face criminal sanctions under the law for "clandestine foreign interference by electronic communications activity" and non-compliance with

directions, which may result in steep fines and imprisonment terms. These criminal offences are arrestable and non-bailable.

These penalties and restrictions not only risk undermining the right to privacy, but increase the risk of individuals self-censoring and deliberately deciding not to participate in or engage with cross-border networks to avoid potentially falling foul of the law. Their negative impacts can be particularly severe on independent online platforms, which can be banned from receiving funding or other financial support from foreign individuals or entities, and on journalists, political commentators, civil society members and community researchers who often nurture public opinion and debate through information, opinions and advocacy shared online.

In light of these significant concerns, we request that the Government of Singapore withdraw FICA. The law risks imminently and substantially narrowing already limited civic space in the country – particularly where this space is significantly restricted through abuse of other existing laws such as defamation and contempt of court provisions; the Protection Against Online Falsehoods and Manipulation Act (POFMA), the Public Order Act and the Administration of Justice (Protection) Act. **The imminent enactment and future enforcement of FICA will significantly undermine the Government of Singapore's obligations under international law to protect, promote and fulfil human rights – instead allowing for the State to expand curtailment of civic freedoms to the detriment of its people.**

Signatories:

Access Now
Amnesty International
ARTICLE 19
ASEAN Parliamentarians for Human Rights
Asian Forum for Human Rights and Development (FORUM-ASIA)
CIVICUS: World Alliance for Citizen Participation
Digital Defenders Partnership
Human Rights Watch
International Commission of Jurists
Lawyers' Rights Watch Canada

Summary Legal Analysis

International legal principles are clear that even as the protection of national security is a legitimate purpose for the restriction of certain rights, restrictions must be narrowly defined, strictly necessary and proportionate to this aim. The UN Human Rights Committee has clarified that this three-part test of legality, necessity and proportionality applies to freedom of expression. Limitations on this right must "conform to the strict tests of necessity and proportionality" and be "directly related to the specific need on which they are predicated". Restrictions on the right to freedom of expression also negatively impact upon the rights to association and participation in public affairs as freedom of expression underpins the "free communication of information and ideas about public and political issues between citizens, candidates and elected representatives". Meanwhile, the UN High Commissioner for Human Rights has noted that the three-part test also applies to the right to privacy in the digital age – noting that any interference with privacy must be "necessary and in proportion to" a legitimate aim, "be the least intrusive option available," and "not render the essence of the right meaningless".

Overbroad and ambiguous provisions

FICA's overbroad and ambiguous provisions allow for abusive interpretation and implementation by the authorities, while failing to provide clarity to the public on what conduct would fall foul of the legislation. Its potential to encompass a wide range of conduct fails to ensure compliance with the principle of legality and confers overbroad discretion in interpretation and implementation upon those charged with enforcement of the law.

FICA applies to *"conduct"* engaged on behalf of a *"foreign principal"* directed *"towards a political end in Singapore". (ss 4; 8)* This includes *"arrangements"* with any *"foreigner"* or *"non-Singapore registered entity"* that can be *"written or unwritten"* to *"influence or seek to influence" "public opinion"* on matters of *"public controversy"* or *"to promote or oppose political views, or public conduct relating to activities that have become the subject of a political debate". (ss 4; 5; 8(f); 8(g))*

Criminal penalties apply where a person *"undertakes electronic communications activity on behalf of a foreign principal"* in a ***"covert"*** or other manner that ***"involves deception"*** which results in the publication in Singapore of *"information or material"* which *"is likely to be prejudicial"* to *"public tranquillity"* or *"public order"*; *"likely to diminish public confidence in the Government"* or is *"likely to be directed towards a political end." (ss 17-19)*

The expansive and vaguely worded definition of activities ***"directed towards a political end"*** encompasses a broad range of activities – including social justice advocacy, artistic commentary, academic research, social enterprise or journalistic reporting relating to a *"political"* issue – of civil society, academia, media, the arts and industry, amongst others. Individuals and organizations are therefore unable to accurately define what conduct can risk violating the law. Engagement ***"on behalf of a foreign principal"***, for example, can

also cover collaboration with foreign actors to conduct and share research; receive funding to hold events or implement projects; and cross-border training and education.

Matters of ***"public controversy"*** and ***"political debate"*** can also overbroadly apply to pertinent issues of public interest on which individuals engage – potentially limiting their rights to freedom of expression, association and participation in public affairs. This risks impacting particularly on civil society engaging in research and advocacy – whose purpose is specifically to nurture and direct *"political debate"* on matters of public interest, including *"controversy",* and to oversee and check powers of the executive. There is a risk that the authorities may bring within FICA's remit civil society's cross-border engagement and information-sharing, both of which are fundamental to policy and advocacy work, thereby negatively affecting collaboration among civil society actors in Singapore and organizations based outside the country, such as the organizations that are signatories to this statement.

"Public tranquillity" and matters which ***"likely diminish public confidence in the Government"*** also allow for an overly broad interpretation to target critical commentary on government policy even in the absence of any legitimate reason to limit freedom of expression. *"Covert"* conduct includes *"deliberately moving onto encrypted communication platforms" (p. 205),* which can apply to the use of most modern electronic devices and be relied on to infer criminal intent from a broad range of potential communications – including through encrypted messaging and email services; and the use of online platforms through secure connection services, such as virtual private networks (VPNs).

Unfettered executive discretion

FICA allows for unfettered executive discretion to censure expression and association deemed impermissible by the State. In fact, it provides for wide potential for the authorities to encroach on the rights to free expression, association, participation in public affairs, and privacy, even in circumstances when such encroachment is not strictly necessary to achieve the purported aim of protecting national security.

FICA allows authorities to designate individuals and entities as ***"politically significant"*** if their activities are *"directed in part towards a political end"* and if *"it is in the* ***public interest****". (ss 47, 48)* This can result in any individual being potentially targeted under the law for expression or advocacy on issues relating to politics or public interest in Singapore. It can also apply to any individual currently working on these issues for a foreign organization or in collaboration with foreign actors – either through academic, civil society or other modes of arrangement.

Designated *"politically significant"* individuals and entities can be ordered to *"disclose foreign affiliations"* and *"arrangements"* through reports to the authorities on their activities, even where they are *"not directed towards a political end in Singapore". (ss 76, 78)* The authorities can also direct these *"reportable arrangements"* to end. *(s 84)* This can result in **infringements of the rights to privacy and association of designated individuals** working on issues of social concern in Singapore – particularly journalists, academics and researchers who may be required to reveal information and communications with foreign

actors in contravention of professional ethics. Designated *"politically significant"* journalists and independent media outlets can also be issued a *"transparency directive"* – requiring them to disclose any *"political matter with a foreign link"* published in Singapore and identify the author's name and nationality and any links to a *"foreign principal"*. *(s 81)*

FICA also prohibits *"politically significant"* individuals and entities from accepting *"donations"* from *"impermissible donors"* who are not Singaporean individuals or companies *(ss 55, 56)*; caps anonymous donations at S$5,000 a year *(ss 57, 58)*; and bans foreigners from provision of *"voluntary labour"* to such individuals and entities*. (ss 55, 56)* These provisions risk being abused to muzzle social justice initiatives, civil society organizations and independent media outlets that rely on independent funding and potential support of individuals who are not Singaporeans to volunteer work or research time.

Notably, FICA empowers the authorities to order any person to *"provide any document or any information or material"* on activities *"directed towards a political end in Singapore"* where it is deemed *"necessary"* for the exercise of powers under FICA. *(s 108)* This potentially violates the rights to privacy and association of any individual in connection with any individual or entity in relation to any matter under FICA – with a penalty of a fine of up to S$5,000 (approx. US$3,685) and continuing fines of up to S$500 (approx. US$368) for *"every day or part of a day"* of non-compliance. *(s 108)*

Severe penalties

Severe penalties can result in a chilling effect on the free exercise of the rights to expression, association, and participation in public affairs. Directions can be issued by the authorities under *Part 3* of the law to *"stop", "disable"* or *"block access to"* online content; and *"restrict accounts or services"* and *"remove apps"* for apparent violations. An online location which is deemed a *"proscribed online location"* by the Minister *(s 24)* on a *Part 3* direction can then be prohibited from *"soliciting or procuring" "any expenditure to operate"* or for *"services"* provided for the platform. *(s 39)* **Non-compliance with these restrictions amounts to a criminal offence, which is arrestable and non-bailable.** Individuals can be slapped with severe criminal sanctions for alleged *"clandestine foreign interference by electronic communications activity"* – they can be fined up to S$100,000 (approx. US$74,000) and/or imprisoned for up to fourteen years. *(ss 17 – 19)*

The UN Human Rights Committee has noted that criminal sanctions constitute severe interference with the right to freedom of expression and are disproportionate responses in all but the most egregious cases. These severe penalties are likely to exert a chilling effect on everyone, and particularly on journalists, political commentators, civil society members, academics and community researchers, who often publish information and opinions online.

Lack of independent judicial oversight

FICA does not provide for any independent oversight or remedial mechanism to address potential human rights violations. Appeals against Part 3 directions and Part 4

designations are provided for under the law – however, they are to first be made to the Minister in charge of issuing the order in the first place *(ss 92, 93)* and/or to a *"Reviewing Tribunal"* chaired by a Supreme Court Judge but consisting of three individuals closely linked to the government, *"each of whom is appointed by the President on the advice of the Cabinet"*. *(s 94)* The rules for such Tribunal's proceedings are to, in turn, be determined by the Minister for Home Affairs. *(s 99)*

Independent judicial review is severely limited as any appeal decision made by the Reviewing Tribunal, Minister or other authorities is *"final"* and *"not to be challenged, appealed against, reviewed, quashed or called in question in any court"* – except where the requested review of the Tribunal's or Minister's decision refers to procedural requirements, that will not analyze substantive questions relating to executive implementation of the law. *(s 104)* This limitation on the judiciary's review powers undermines the rule of law, which requires judicial oversight as a check and balance against the executive's exercise of discretionary power. **Lack of oversight accentuates risks of violations perpetuated by severe penalties and the law's stipulation that non-compliance with any order is an offence with penalties incurred from the time of alleged offending, regardless of any appeal.**