



*Permanent Representative of Malaysia
Geneva*

OHCHR REGISTRY

- 5 JUN 2012

Date: 4th June 2012

Recipients : *Lina Tabata (SPD)*
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Mr. Frank La Rue

Special Rapporteur on the promotion and protection
of the right to freedom of opinion and expression

Mr. Heiner Bielefeldt

Special Rapporteur on freedom of religion or belief

Mr. Christof Heyns

Special Rapporteur on extrajudicial, summary or arbitrary executions

Dear Sirs,

I wish to refer to the Joint Letter of Allegation ref: **AL G/SO 214(67-17) G/SO 214 (56-23) G/SO 214 (33-27) MYS 2/2012** dated 2 March 2012 (hereinafter known as "the Communication") concerning the deportation of Mr. Hamza Kashgari.

2. Without prejudging the accuracy or otherwise of the allegation summarized in the Communication, I wish to present herewith the response to the Joint Communication by the Government of Malaysia.

Observations by the Government

(i) Whether the information alleged in the Communication are accurate

3. The Government of Malaysia notes with regret that the information which has been outlined by the Experts in the Communication was not entirely accurate. The full facts relating to the matter are as follows:

- 3.1 Mr. Hamza Mohammad Najeeb A. Kashgari, a 23 year-old journalist from the Kingdom of Saudi Arabia entered Malaysia via the Kuala Lumpur International Airport (KLIA) on 7 February 2012. He was granted a 90-day social visit pass (No. B6/465) to remain in Malaysia until 6 May 2012;

- 3.2 On 9 February 2012 at 0940, Mr. Kashgari was arrested by senior officers of the Royal Malaysia Police (RMP), Operations and Counter-Terrorism Special Task Force (the STF) at KLIA. Mr. Kashgari was leaving Malaysia for Auckland, New Zealand. The arrest was made by the RMP following the request of their Saudi Arabian counterparts as Mr. Kashgari was believed to be involved in militant activities in Saudi Arabia. The arrest was made pursuant to subsection 73(1) of the Internal Security Act 1960 [Act 82];¹
- 3.3 Following the arrest, a police report (Report No. 1283/12) was lodged at the Sepang Police Station. Mr. Kashgari was thereafter detained at the Police Headquarters in Bukit Aman for questioning;
- 3.4 On 11 February 2012, upon the conclusion of police investigations, the Director of the STF recommended to the Director-General of Immigration for Mr. Kashgari's Social Visit Pass No.B6/465 to be cancelled and for him to be declared a prohibited immigrant;
- 3.5 On 12 February 2012, the Director-General of Immigration cancelled Mr. Kashgari's Social Visit Pass No.B6/465 in accordance with powers granted under sub-regulation 19(2) of the Immigration Regulations 1963 [L.N. 228/1693] and Mr. Kashgari was declared a prohibited immigrant under subsection 8(3)(k) of the Immigration Acts 1959/63 [Act 155] which states that:

"8(3) The following persons are members of the prohibited classes:

...

(k) any person who, in consequence of information received from any source deemed by the Minister to be reliable, or from any government, through official or diplomatic channels is deemed by the Minister to be an undesirable immigrant;"

- 3.6 On the same day, Mr. Kashgari was served with the notice of cancellation of his social visit pass in accordance with sub-regulation 19(3) of the Immigration Regulations 1963. On 12 February 2012 at 1040, Mr. Kashgari was delivered by senior officers of the RMP to immigration officials at KLIA. Immigration officials proceeded to detain Mr. Kashgari under section 35 of Act 155 for removal action;
- 3.7 At this juncture, the Government of Malaysia would highlight that as soon as Mr. Kashgari's social visit pass was cancelled, he became liable to be removed under subsection 56(2) of Act 155 which provides that –

"56(2) Any person who is not a citizen unlawfully entering or reentering or attempting unlawfully to enter or re-enter

¹ The Internal Security Act 1960 [Act 82] is currently being repealed by the Malaysian Parliament.

Malaysia or unlawfully remaining in Malaysia shall whether or not any proceedings are taken against him in respect of the offence be liable to be removed from Malaysia by order of the Director General."

- 3.8 On 12 February 2012 at 1145, Mr. Kashgari was handed over to Saudi Arabian authorities at KLIA and departed Malaysia on flight HZA4 at 1210;
- 3.9 On 12 February at 1515, the RMP received an interim order signed by the Honourable Justice Datuk Rohana binti Yusuf ordering the suspension of any and all actions to deport Mr. Kashgari until 14 February 2012 or until a hearing on Mr. Kashgari's application for habeas corpus has been concluded; and
- 3.10 It is clear from the above facts that the removal action on Mr. Kashgari had already been effected and he had departed Malaysia approximately three (3) hours BEFORE the RMP received the Court's interim order.

(ii) Whether the deportation of Hamza Kashgari is compatible with international norms and standards

4. The Government of Malaysia notes Principle 5 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Execution as highlighted by the Experts states that no person shall be involuntarily returned to a country where there are substantial grounds for believing that he may become a victim of extra-legal, arbitrary or summary execution in that country.

5. In the present case, the Government of Malaysia had no cause to believe that Mr. Kashgari would be a victim of extra-legal, arbitrary or summary execution in his country of origin. In this regard, the Government of Malaysia was informed by the Saudi authority that Article 3 of the Law of Criminal Procedure of the Kingdom of Saudi Arabia [Royal Decree No. (M/39)] provides that no penal punishment shall be imposed on any person except in connection with a forbidden and punishable act, whether under Shari'ah principles or under statutory laws, and after the person has been convicted pursuant to a final judgment rendered after a trial conducted in accordance with Shari'ah provisions. The Government of Malaysia had been further informed by the Saudi authority that the provisions and principles of law as enunciated above makes it clear that no one would be a victim of extra-legal, arbitrary or summary execution in the Kingdom of Saudi Arabia as all penal punishment is only imposed after a final judgment is rendered.

6. Upon the request of the Government of the Kingdom of Saudi Arabia, the Government of Malaysia detained Mr. Kashgari for his involvement in militant activities in the Kingdom of Saudi Arabia. Mr. Kashgari was subsequently removed from Malaysia in accordance with subsections 8(3)(k) and 56(2) of Act 155.

7. Malaysia's constitutional and legislative framework conforms to the underlying principles of the UDHR. The Experts have highlighted that Article 18 of the UDHR ensures the right of freedom of religion or belief and Article 19 of the UDHR guarantees everyone the right to freedom of opinion and expression which includes the right to hold opinions without interference. These rights are reflected in Articles 10(1)(a) and 11 of the Federal Constitution which guarantee the rights to freedom of speech and expression, and the right to profess and practice religion.

8. The Government of Malaysia would reiterate for the attention of the Experts that Mr. Kashgari was not arrested or removed from Malaysia pursuant to the lawful exercise of his rights. He was arrested and removed from Malaysia for his alleged involvement in militant activities in the Kingdom of Saudi Arabia, an action which was in full conformity with the UN Security Council resolution 1373 (2001). This resolution, inter alia, mandatorily requests all States to deny safe haven to those who finance, plan, support, or commit terrorist acts; ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice and afford one another the greatest measure of assistance in connection with criminal investigations or criminal proceedings relating to the financing or support of terrorist acts.

9. Additionally, in September 2005 the UN Security Council adopted resolution 1624 (2005) on incitement to commit acts of terrorism, calling on States to, inter alia, deny safe haven to anyone "with respect to whom there is credible and relevant information giving serious reasons for considering that they have been guilty of such conduct." While acting pursuant to its international obligations under UN Security Council resolutions, the Government of Malaysia is nonetheless aware that any action taken to combat terrorism must also take into consideration the human rights of the alleged terrorist.

10. The actions of the Government of Malaysia were in full compliance with domestic law, Malaysia's international obligations and void of any irrelevant consideration or improper motive. The Government of Malaysia was acting in full compliant with the obligations contained in UN Security Council resolutions 1373 (2001) and 1624 (2005).

11. In relation to United Nations General Assembly resolution 64/164 which urges States to step up their efforts to protect and promote freedom of thought, conscience and religion or belief, the Government of Malaysia notes that operative paragraph 3 of the same resolution provides for restrictions on the freedom to manifest one's religion or belief if such limitations are prescribed by law, are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others. In this regard, the Government of Malaysia maintains that at no time were Mr. Kashgari's rights to freedom of thought and religion breached while he was on Malaysian soil.

- (iii) Please specify how the risk of imposition of a death sentence on Mr. Kashgari in Saudi Arabia was taken into consideration within the process of deciding on his extradition

12. The Government of Malaysia would stress that Mr. Kashgari was removed from Malaysia pursuant to his classification as a prohibited immigrant under subsection 8(3)(k) of Act 155. The said classification was made only after the RMP concluded investigations into his involvement in militant activities in the Kingdom of Saudi Arabia.

13. As the Malaysian Government was not privy to the charges the Government of the Kingdom of Saudi Arabia intended to frame against Mr. Kashgari, the Government of Malaysia had no knowledge of the kind of punishment that would be meted out against Mr. Kashgari.

14. Additionally, the Government of Malaysia would also highlight that it has not breached its customary obligation on *non-refoulement* as Mr. Kashgari was sought by the Government of the Kingdom of Saudi Arabia for crimes which he allegedly committed. The Government had no reason to believe that he would be subjected to persecution.

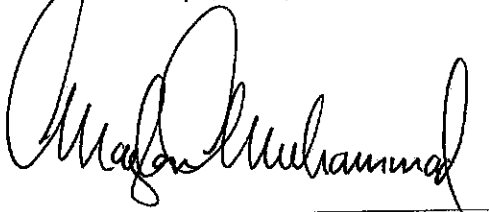
Conclusion

15. The Government of Malaysia submits that the information contained in the Communication is not accurate. The Government urges the Experts to be guided instead by the facts provided by the Government in this Response, particularly as enumerated in paragraphs 3.1-3.10; 5; 6; 8; 12; 13; and 14 of this Response.

16. Mr. Kashgari was arrested and removed from Malaysia for his alleged involvement in militant activities in the Kingdom of Saudi Arabia. The actions taken by the Government of Malaysia for Mr. Kashgari's alleged involvement in militant activities in the Kingdom of Saudi Arabia were in full conformity with the UN Security Council resolutions 1373 (2001) and 1624 (2005).

17. The actions of the Government were in full compliance with domestic law and Malaysia's international obligations and void of any irrelevant consideration or improper motive.

Please accept, Sirs, the assurances of my highest consideration.



MAZLAN MUHAMMAD

(Ambassador and Permanent Representative)

Copy to: **Ms. Jane Connors**
Chief of Special Procedures Branch
Office of the High Commissioner for Human Rights (OHCHR)