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Ref: SR(375)826/8/10/2 (a)
5 February 2016

Mr. John Knox
Special Rapporteur on human rights and the environment

Mr. Maina Kiai
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Mr. Michel Forst
Special Rapporteur on the situation of human rights defenders

Mr. Baskut Tuncak
Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes

Dear Sirs,

I wish to refer to the Joint Letter of Allegation ref: AL MYS5/2014 dated 18 August 2014 (hereinafter known as the "Joint Communication") from the Special Rapporteur on human rights and the environment; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders and Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes (hereinafter known as the "Mandate Holders") concerning issues related to 16 environmental and human rights defenders in relation to their participation in a protest against Lynas Corporation in June 2014.

2. We note that the said Joint Letter of Allegation was based on information received by the Mandate Holders regarding the alleged excessive use of force by the police against the protesters and their subsequent arrest and detention. In addition, it expressed concern about

the Court injunctions prohibiting the protesters from discussing their case on social media and ordering them to report to the police on a monthly basis.

3. In order to provide a clear explanation of all the allegations contained in the Joint Letter of Allegation, I hereby wish to present the Mandate Holders with the response from the Government of Malaysia to the issues and allegations mentioned.

The application of Sections 145,147 and 353 of the Malaysian Penal Code

4. According to the report by the Royal Malaysia Police, about 400 people had gathered in front of the Lynas Advanced Materials Plant in Gebeng, Kuantan from 1pm, on 22 June 2014 to protest against Lynas Corporation. Subsequently, the gathering had turned into a riot which led to 15 anti-Lynas activists being charged under three separate charges of allegedly participating in an unlawful assembly and rioting. 14 activists were charged under Section 145 of the Penal Code, which carries a jail term of up to two years, a fine or both, if convicted. They were said to have committed the offence despite the directive by Kuantan District Police Chief Assistant Commissioner to disperse. The other activist was charged under Section 147 and Section 353 of the Penal Code for allegedly using force to breach a police barricade at the entrance of the refinery and for allegedly using criminal force to deter a public servant from discharging his duty. The offence carries a maximum jail term of two years, fine or both, upon conviction.

5. The legal framework in respect of the right to freedom of assembly in Malaysia is compatible with international human rights norms and standards. Article 20(1) of the 1948 Universal Declaration of Human Rights (UDHR), provides that everyone has the right to freedom of peaceful assembly and association. Concurrently, Article 29(2) provides that, in the exercise of rights and freedoms, everyone shall be subject only to limitations as determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting a just requirement of morality, public order and general welfare in a democratic society.

6. In Malaysia the Peaceful Assembly Act 2012 (PAA 2012) is a law which reaffirms the right of citizens to organize assemblies and participate in assemblies peaceably without arms subject only to restrictions deemed necessary or expedient in the interest of the security of the Federation or any part thereof or public order, including the protection of the rights and freedoms of other persons. In the exercise of this right, citizens are expected to comply with

the conditions set forth in the Act which was drafted in line with Article 10(2) (b) of the Federal Constitution. An organizer is required to notify the Officer in Charge of the Police District (OCPD) of a proposed assembly 10 days prior to the date of the assembly. The OCPD may impose restriction and conditions for the purpose of security or public order.

7. Under this Act, the Police shall maintain public order and security, public tranquility, facilitate the holding of peaceable assembly, whilst taking into consideration the rights and freedoms of other persons. On the other hand, the organiser shall ensure that an assembly is in compliance with the Act, accordance with Part III (Responsibilities of Organizers, Participants and Police) by:

- 7.1. cooperating with public authorities;
- 7.2. ensuring that the assembly does not promote feeling of ill-will or hostility among the public at large;
- 7.3. preventing damage to property or environment or endanger health; and
- 7.4. ensuring that the assembly will not cost significant inconvenience to the public.

Grounds for decision granting bail

8. All accused in this case were prosecuted for a non-bailable offence in accordance with Section 388 (1) and Section 389 of the Criminal Procedure Code. Section 388 (1) states that when any person accused of any non-bailable offence is arrested or detained without a warrant by a police officer or appears or is brought before a Court, he may be released on bail by the officer in charge of the police district or by the Court, but he shall not be released if there appears reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life. The Section also provides the circumstances where a police officer or the Court may exercise its discretion to release on bail any person accused of a non-bailable offence.

9. Section 389 mentioned that the amount of every bond executed shall be fixed with due regard to the circumstances of the case as being sufficient to secure the attendance of the person arrested, but shall not be excessive, and the Judge may, in any case, whether there be an appeal on conviction or not, direct that any person be admitted to bail or that the bail required by a police or Court be reduced or increased. The law relating to bail is set out in Chapter XXXV of the Criminal Procedure Code. Section 387 sets out the rights of an accused or arrested person to bail in a bailable offence. Under Section 497(5) of the Criminal

Procedure Code, the Court has an option to grant bail or to refuse bail and has also the power of causing persons so released to be arrested and committed to custody.

10. The Government wishes to inform the Mandate Holders that in this case the Court has the discretion in granting bail to the accused. It has the liberty to decide whether or not to allow the bail and may also impose additional conditions that it considers fit. On similar occasions, the Court often grants bail by imposing certain conditions after considering various factors including the appeal by the prosecution, especially if the case involved the public's best interest.

11. Based on the Court's record, all of the accused had no objection to the Court's decision for them to report to the nearest police station every month pending disposal of their case. However, they disagreed with the Court injunction prohibiting protesters from discussing their case on social media and other additional conditions. The Court had explained that the conditions were mainly related to the prohibition to issue or make any comments to third parties relating to the case. The Court's decision is intended to avoid any comments or reviews related to the course of the proceedings. This was also to avoid any personal views which were not based on real facts and evidence by the third parties not involved in the trial proceedings and could disrupt the smooth process of the Court.

12. In this context, the Court had ensured that the accused were treated in accordance with the law. In this case, the Government of Malaysia wishes to iterate that the Court has always upheld the principle that a person is innocent until proven otherwise. The Court took the approach that all of the accused were given the space and opportunity to exercise their rights as guaranteed in the Federal Constitution.

13. Based on the foregoing responses and observations, the Government of Malaysia requests the esteemed Special Rapporteurs to transmit the above observations to the kind attention of the Human Rights Council.

Regards,



ZAHID RASTAM
(Chargé d'Affaires a.i.)