



Permanent Representative of Malaysia
Geneva

OHCHR REGISTRY

27 SEP 2012

Recipients : *SPD*
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Date: 26th September 2012

Mr. Frank La Rue

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

Mr. Maina Kiai

Special Rapporteur on the rights to
freedom of peaceful assembly and of association

Mdm. Margaret Sekaggya

Special Rapporteur on the situation of human rights defenders

Mr. Juan E. Mendez

Special Rapporteur on torture and other cruel, inhuman or degrading treatment or
punishment

Dean Sims, Madame,

I wish to refer to the Joint Letter of Allegation ref: **AL G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (53-24) MYS 3/2012** dated 16 May 2012 (hereinafter known as "the Joint Communication") from the Special Rapporteurs (SR) on the promotion and protection of the right to freedom of opinion and expression; on the rights to freedom of peaceful assembly and of association; on the situation of human rights defenders and on torture and other cruel, inhuman or degrading treatment or punishment concerning the Bersih 3.0 rally of 28 April 2012.

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

3. The Government of Malaysia wishes to firstly reaffirm and emphasise its longstanding commitment to continue the reinforcement of democratic practices,

institutions and values including the freedoms of expression, of assembly, and of association.

4. The Government finds the substantive issues raised by the Special Rapporteurs are fundamentally similar to earlier Reports/Press Release/Communication on the same subject matter namely:

- 4.1 Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr. Frank La Rue dated 4 June 2012, A/HRC/20/17;
- 4.2 Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Mr. Maina Kiai dated 21 May 2012, A/HRC/20/27;
- 4.3 Human Rights Council Press Release dated 7 June 2012 : “Malaysia: UN rights experts call for the protection of NGOs working for free and fair elections”; and
- 4.4 Joint Communication by the Special Rapporteur on the human rights of migrants, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the rights to freedom of peaceful assembly and of association, and the Special Rapporteur on the situation of human rights defenders dated 2 December 2011 concerning a Peaceful Assembly Bill, tabled at the Malaysian Parliament on 22 November 2011.

5. Thus, the Government wishes to refer the attention of the Special Rapporteurs to the Statement made by the Senior Officials representing the Government of Malaysia on 20 June 2012 at the Interactive Dialogue with the SR on the Right to Freedom to Peaceful Assembly and of Association in the course of the 20th Session of the Human Rights Council which, inter alia, were as follows:

“3. In furtherance of its commitment, the Government of Malaysia had undertaken a massive reform of its law relating to Freedom of Assembly from a mechanism which was highly criticised as restrictive towards an open system.

3.1 The Peaceful Assembly Act 2012 (Act 736) was enacted and entered into force recently with the most noble objective of enhancing freedom of assembly and facilitating peaceful assembly. Participants and organisers are no longer required to seek any approval or permit to peacefully assemble.

3.2 Various rallies and assemblies were held over the past few months since the coming into force of the new law and are pleased to report that most of them were conducted in a peaceful manner.”

The full Statement by Malaysia delivered on 20 June 2012 is attached herewith as Annex A.

6. The Government would further bring the Special Rapporteurs' attention to the fact that the Bersih 3.0 rally was allowed to proceed despite the organizers' failure to submit a notification to the Officer in Charge of the Police District (OCPD) of the Royal Malaysia Police (RMP) as required under section 9 of the Peaceful Assembly Act 2012 [Act 736]. This is due to the fact that the new law is intended to facilitate the conduct of peaceful assembly and not to hinder the exercise of the right to assemble.

Allegation of excessive use of force by law enforcement authorities

7. The commitment of the Government to ensure the right of all Malaysians to assemble peaceably and without arms is clearly reflected in the handling of the recent Bersih 3.0 rally in Kuala Lumpur. In order to facilitate the right to peaceful assembly, the RMP assisted in the gathering of Bersih supporters at 16 points in various parts of Kuala Lumpur city. The RMP also allowed the crowd to move towards Dataran Merdeka without any hindrance.

8. The Government reiterates that in the instance of the recent Bersih 3.0 rally in Malaysia, the RMP had acted in accordance with the law and international standards when there was in fact a clear violation of a prohibition Order issued by the Court for a specific and clearly defined very small area. The verbal warnings and ample time given by the RMP for the crowd to disperse in accordance with the law and international standards were ignored. In short, the RMP had used reasonable force in such situation to thwart the rioters from breaching the prohibition order. Peaceful assemblies held in other towns in the country at the same time and date were held without any untoward incidents. The RMP only intervened when the crowd became unruly and violent.

9. In light of the above, the allegation of excessive use of force by law enforcement authorities during the recent Bersih 3.0 rally is wholly inaccurate.

10. The Government has and continues to provide regular programmes and training for its law enforcement officials including formulating guidelines and procedures to serve as a guide to enforcement agencies to ensure that they would be able to carry out their duties in accordance with the law and international human rights standards.

Acts of harassment against media personnel

11. The Government fully respects the right of any media representative to have reasonable access to any place of assembly as clearly provided in Act 736. As such, the Government does not condone any form of violence or excessive criminal force against any person including journalists. In this regard, a total of 25 police reports were lodged against police personnel including 8 reports by journalists. At the conclusion of police investigations, 2 police personnel have been charged in the Kuala Lumpur Magistrate's Court for using criminal force against a journalist.

Censorship of News Coverage

12. In relation to the allegations of censorship of international news coverage of the BERSIH 3.0 rally, the Government would like to highlight that the censorship of BBC World and Al Jazeera's coverage of the BERSIH 3.0 rally by Astro was carried out in accordance with the Communications and Multimedia Content Code (the Content Code) and the Guidelines for Measat Broadcast Network System Sdn Bhd (Astro). The Content Code basically sets out the guidelines and procedures for good practice and standards of content disseminated to audiences by service providers in the communications and multimedia industry in Malaysia. The Content Code demonstrates a commitment toward self-regulation by the industry in compliance with the Communications and Multimedia Act 1998 (Act 588) and it seeks to identify what is regarded as offensive and objectionable while spelling out the obligations of content providers within the context of social values in this country.

13. To this effect, Astro has released a press statement dated 1 May 2012 stating inter alia:

"As a licensed broadcaster, Astro is required to comply with the national content regulations.

When it comes to international content providers, Astro reserves the right to edit their international channels for the purposes of complying with the content regulations."

14. Nevertheless, the public at large were able to obtain the full coverage of such events as the 28 April 2012 assembly was widely published and broadcasted in the mainstream and alternative media.

A copy of the press statement released by Astro dated 1 May 2012 is attached herewith as Annex B.

Acts of harassment against human rights defenders

15. Details of the allegations pertaining to acts of harassments against Ms. Sreenevasan and other Bersih members and the actions taken by the Government are found in the compilation of the Government's response to the Human Rights Council which was submitted by Malaysia during the 20th Human Rights Council Session. A copy of the Government's response is attached herewith as Annex C.

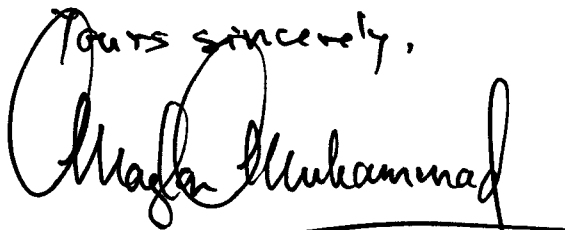
Conclusion

16. The Government would like to reiterate the Statements made by the Senior Officials representing the Government of Malaysia on 20 June 2012 at the Interactive Dialogue with the SR on Promotion and Protection of the Right to Freedom of Opinion and Expression and the Interactive Dialogue with the SR on the Right to

Freedom to Peaceful Assembly and of Association in the course of the 20th Session of the Human Rights Council and the documents submitted therewith.

17. The Government remains committed to take necessary steps to create and sustain an environment where all Malaysians are secure, where their welfare is safeguarded, and where they can realise their full potential through the promotion and protection of the right to freedom of expression and peaceful assembly. Every society strikes its own balance between the rights of the individual and the public at large. In this manner, the constitutionally guaranteed freedom to assemble peaceably and without arms and freedom of expression are only limited by lawful restrictions imposed by Parliament, in the interest of the security of the Federation or any part thereof or public order.

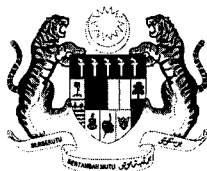
Please accept, Sirs/Madam, the assurances of my highest consideration.

Yours sincerely,


MAZLAN MUHAMMAD
(Ambassador and Permanent Representative)

Copy to:

Mdm. Jane Connors
Chief of Special Procedures Branch
Office of the High Commissioner for Human Rights



Statement by Malaysia

Agenda Item 3: ID with the SR on the right to freedom of peaceful assembly and of association

20th Regular Session of the Human Rights Council, 20 June 2012

Thank you, Madam President,

The Malaysian delegation thanks Mr. Maina Kiai, Special Rapporteur on freedom of peaceful assembly and of association for his presentation and we appreciate the opportunity to deepen engagement with him. My delegation aligns itself fully with the statement delivered by Pakistan on behalf of the OIC.

2. Malaysia wishes to reaffirm the importance it attaches to the freedom of peaceful assembly and of association. We take note of the Special Rapporteur's thematic report which focused on the best practices that promote and protect the rights to freedom of peaceful assembly and of association. I wish to assure you that the Government of Malaysia is fully committed to upholding the rule of law and promotion and protection of human rights of its people.

Madam President,

3. In furtherance of its commitment, the Government of Malaysia had undertaken a massive reform of its law relating to Freedom of Assembly from a mechanism which was highly criticised as restrictive towards an open system. As such, the Special Rapporteurs' report in para 34 which mentioned that peaceful assemblies were either not allowed or violently dispersed is not accurate for the following reasons:

3.1 The Peaceful Assembly Act 2012 (Act 736) was enacted and entered into force recently with the most noble objective of enhancing freedom of assembly and facilitating peaceful assembly. Participants and organisers are no longer required to seek any approval or permit to

peacefully assemble. The role of the police is merely provided to safeguard the interest of all stakeholders involved including third parties and most importantly to ensure that any form of violence is carefully addressed.

- 3.2 Various rallies and assemblies were held over the past few months since the coming into force of the new law and we are indeed pleased to report that most of them were conducted in a peaceful manner. The police only intervened when the crowd became unruly and violent. We contend that in the instance of the recent rally in Malaysia, the police had acted in accordance with the law and International standards when in one incident there was in fact a clear violation of a prohibition order issued by the Court for a specific and clearly defined very small area. In short, the police had used reasonable force in such situation to thwart the rioters from breaching the prohibition order. Peaceful assemblies held in other towns in the country at the same time and date were without any incidents.

Madam President,

4. The existence of any rights must be taken in tandem with certain responsibilities including the right to peaceful assembly. In this respect, it is pertinent to note that in many jurisdictions, laws had been enacted to provide for freedom for assembly with certain safeguard to ensure that the right of others would not be adversely affected. As such, we are of the view that participants and organisers must be held responsible and liable as a consequence of any violent behaviour by the participants.

5. We share the Special Rapporteur's views on the importance of providing training and capacity building to the administrative and law enforcement officials in dealing with peaceful assembly. In this regard, we wish to inform that the Government has and continues to provide regular programmes and training for its law enforcement officials including formulating guidelines and procedures to serve as

a guide to enforcement agencies to ensure that they would be able to carry out their duties in accordance with the law and international human rights standards.

Madam President,

6. In concluding, Malaysia remains committed to take necessary steps and measures to continuously guarantee the right to freedom of assembly and of association of its people, subject to such restrictions as permitted by international norms and standards.

I thank you, Madam President.

GENEVA
20 June 2012

1 May 2012

Dear Editor,

With reference to your enquiries on the censorship of the Bersih 3.0 on the BBC channel, please find Astro's comments as below:-

Astro required to comply with content guidelines

Rohaizad Mohamed, Senior Vice President of Broadcast Operations at Astro said, "As a licensed broadcaster, Astro is required to comply with the national content regulations.

When it comes to international content providers, Astro reserves the right to edit their international channels for the purposes of complying with the content regulations.

We are surprised and somewhat disappointed that our long-standing partner, the BBC, when, issuing its statement, did not take cognizance of the duty of Astro to comply with local content regulations."

We hope the above statement clarifies the matter at hand.

Yours sincerely

Tammy Toh
Vice President/Head, Communications
Astro

STATEMENT OF MALAYSIA
UN HUMAN RIGHTS COUNCIL PRESS RELEASE

REPORT AT PARA 2, PAGE 1

To protect effectively one of the directors of the Coalition for Clean and Fair Elections (Bersih), Ambiga Sreenevasan, and other Bersih members, against acts of harassment and intimidation by various groups of individual

REPLY:

- Ms Sreenevasan and other Bersih members, had never asked for any protection from the authorities pertaining to any alleged acts of harassment and intimidation by various groups of individual.
- Based on the diary kept by the Kuala Lumpur City Hall Enforcement Unit, it has been shown that no credible threats against Ms Sreenevasan following the Bersih Rally 3.0. The said authority together with the Royal Malaysia Police have conducted regular surveillance and patrolling outside her home and in surrounding area.
- These are done to provide protection on Ms Ambiga Sreenevasan and maintaining public order. Ms Sreevanesan had only lodged one police report relating to one incident occurred on 10 May 2012 vide Travers Report no. 3416/12 where she alleged among others, that she saw the presence of number of men outside her house and set up a burger stall and started frying burgers. She also saw the leader of the group gave a press conference to several reporters present outside her home.
- She also alleged that the leader was heard saying that he would bring more people to gather in front of her home in two week's time if she did not respond to their demands. She did not know what were the demands as she never

received any memorandum pertaining to the group's demands. The police has investigated the report lodged by Ms Ambiga Sreenevasan. To date, the police is still investigating the case where statement from Ms Ambiga Sreenevasan had already been taken. However, the statements from the organizers have yet to be taken because they refused to co-operate with the police. However, notice has been served to one of the organizers to come forward and to give statement to the police by this week.

REPORT AT PARA 3, PAGE 1:

Ms. Sreenevasan has been subject to credible threats against her life in the past months.

REPLY:

- On 23 June 2011, Ms Ambiga Sreenevasan allegedly received a death threat via text message. The Minister of Home Affairs has reportedly pledged to investigate the threat. The text was as follows:

"...aku nak kasi amaran kat korang semua. Kalau perhimpunan ni jadi, aku dan org2 aku akan bunuh Ambiga dan korang 2 keliling dia satu persatu, termasuklah orang2 politik bangang yang bersekongkol ngan kafir laknat tu. Ini amaran aku, korang tengoklah nanti"

(translation: "I want to warn all of you if the assembly takes place, my men and I will kill Ambiga and those people around her one by one including those politicians who collaborated with this infidel. This is my warning, you will see later")

- The Royal Malaysia Police, and agency under the purview of the Ministry of Home Affairs, had recorded statements from six witnesses. Upon investigation, RMP discovered that the telephone number was registered to the name of a person, who denied having the number registered in his name.

- Further investigations disclosed that the registered address and the Identity Card (IC) number belonged to two different persons, respectively. The person who lives in the said address and the person who holds the IC number denied having the number registered in their names. The telephone number was only used on 22nd and 23rd June 2011 to send the same message to other people.

Thus far, the identity of the sender cannot be ascertained.

(Annex A : Brief Report on the Credible Threats against Ambiga)

REPORT AT PARA 3, PAGE 1:

Effigies of Ms Sreenevasan were also burned. Recently she had to cancel her participation in a public event because of fears for her safety

REPLY:

- Based on available media sources, there were two incidences whereby Ms Sreenevasan's effigy and poster were burnt. The first incident was reported to take place on 22 April 2012 in the compound of University Putra Malaysia where several individuals from various NGOs burnt Ms Sreenevasan's poster. The second incident took place on 5 May 2012 in Baling, Kedah where a group of NGOs were reported to have burnt Ms Sreenevasan's effigy. However, to date, no police report has been lodged on these incidences by Ms Sreenevasan or any other persons.

REPORT AT PARA 3, PAGE 1:

Ms Sreenevasan had to cancel her participation in a public event because of fear for her safety

REPLY:

- To date, Ms Sreenevasan has not lodged any police report on this matter nor did she ever requested for a protection from the authorities.

REPORT AT PARA 5, PAGE 1

In addition, Ms Sreenevasan, together with other organizers from the Bersih Steering Committee, has been sued by the Federal Government in relation to property which was allegedly damaged during a rally organized by the coalition.

REPLY:

- We take note that Ms Sreenevasan had asked the crowd to disperse after stating that the assembly had reached its objectives which is to call for electoral reform. The core issue is that during the conduct of the assembly, there were damages caused to the public property. Ms Sreenevasan was later sued by the Government for civil damages. She was also the Co-Chairman of Bersih 2.0 (Bersih) as admitted in paragraph 2 of the Defence. She together with the other Defendants were sued because they are the organizers of a sit-in assembly named Bersih 2.0 which was held on 28th April 2012 at Dataran Merdeka and its vicinity in Kuala Lumpur. She organized the assembly to seek free and fair election in Malaysia, to educate Malaysians of the importance of electoral reform and to deal with the relevant authorities. During the rally, she delivered a short speech at 2.30 pm reiterating the call for free and fair election.

- Thereafter, she told the crowd in Masjid Jamek to disperse. Shortly, at approximately 2.40 pm, the truck that Ms Sreenevasan, Anwar and the rest were standing atop slowly hit in the direction of Dataran while the crowd follows. The assembly turned unruly when the participants crashed into the barricades set up by PDRM and as a result physical damage was caused to 15 government owned motor vehicles amounting to RM122,000.00. The Plaintiff alleges that under section 6(2)(g) of the Peaceful Assembly Act 2012 (Act 736) that the Defendants, as organizers of the assembly, had a statutory responsibility, amongst other things, to ensure that the assembly is to be held peacefully and to ensure that the assembly will not cause damage to property.
- The Plaintiff alleges that the Defendants, as organizers of the assembly, failed to carry out their statutory responsibility, and as a consequence the assembly turned unruly and developed into a riot and thus caused damage to the said 15 government owned motor vehicles. Malaysia does not impose the requirement for the organizer to provide a deposit or to provide adequate insurance cover which is practiced in other countries like Finland and the Republic of Serbia. Under s.16 of Finland's Assembly Act, there is a provision on liability insurance which provides: "If the arrangement of the event may cause damage to persons or property, the police may order it to be a prerequisite of the arrangement of the event that the arranger has adequate insurance cover for possible damages liability. Under Article 4 of the Republic of Serbia's Public Assembly Act 1992, the organizer should submit along with the application the proof of paying the amount for the purpose of covering costs under paragraph 2 of this Act (henceforth referred to as "the deposit")

(Annex B: Civil suit document)

(Annex C: The law in Finland)

(Annex D: The law in Serbia)

REPORT AT PARA 6, PAGE 1

The special rapporteur had stated “ Holding assembly organizers liable for the alleged unlawful conduct of others is not compatible with standards governing the right to freedom of peaceful assembly, and has a detrimental effect on the exercise of this right.”

REPLY:

- The OSCE Guidelines provide clearly that organizers of an assembly should not be held liable for the failure to perform their duties **subject to the conditions that they make reasonable efforts to do so.**

(Annex E: The OSCE Guideline: Guideline on freedom of peaceful assembly)

REPORT AT PARA 1, PAGE 2

Request to visit the country from Maina Kiai and Margaret Sekaggya

Response:

- Malaysia is open to the possibility of further discussion with the various special procedures and is willing to consider requests for visits positively on the merit of each proposal. Ms Margaret Sekaggya has requested to visit Malaysia in 2002 whilst Mr Maina Kiai had made a request to visit Malaysia in 2011. Mr Frank La Rue had never made any request to visit Malaysia.
- Wisma had decided that based on input from relevant agencies not to extend any invitation to both SRs at this juncture. Wisma had also decided that there is no necessity to inform the SRs of the decision because State practice dictates that the relevant SRs would only be notified when the State decides to invite them for visit.

(Annex F: Request to visit the country by SR)