



Our Ref. :
Your Ref. :

Date: 24 April 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

Ms. Margaret Sekaggya

Special Rapporteur on the situation of human rights defenders

Copy to:

Mdm. Jane Connors

Chief of Special Procedures Branch
Office of the High Commissioner for Human Rights

Dear Sirs/Madam,

I wish to refer to the Joint Communication: Urgent Appeal ref: **UA G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9) MYS 7/2011** dated 28 July 2011 (hereinafter known as "the Communication") concerning information relating to allegations of acts of intimidation against thirteen (13) human rights defenders in connection with a planned street march organized by Bersih 2.0 in Kuala Lumpur the capital city of Malaysia on Saturday, 9 July, 2011.

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.

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. At the same time, the Government regrets that the allegations summarized in the Joint Communication were not entirely accurate.

OHCHR REGISTRY

25 APR 2012

Recipients : *S.P.D.*
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General

5. In terms of the applicable standards of international human rights law, the Government of Malaysia notes that Articles 19 and 20 of the Universal Declaration of Human Rights (UDHR) 1948 speak about the rights to freedom of opinion and expression and the right to freedom of peaceful assembly and association, respectively.

6. However, at the same time the UDHR also enshrines the notion of individual duties, limitations and restrictions which are placed on the exercise and enjoyment of human rights.

7. In particular, the Government wishes to highlight that UDHR Article 29(1) states that the individual "has duties toward the community in which alone, the free and full development of the human personality is possible".

8. Such clear reference to the importance of the community in the UDHR indicates the essential role which the community plays in society. Indeed, the role of the community could be likened to that of a pediment of the portico of a temple, as the community shelters underneath it the state, individuals, civil society and other stakeholders with all their respective rights and responsibilities. The scope of the permissible limitations to the exercise of such rights is further elaborated in UDHR Article 29(2).

9. The Government is also of the view that the linkage between individual duties and responsibilities taking into account the communal dimension of life is similarly reflected in the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Declaration on Human Rights Defenders), specifically Article 18 of the Declaration which states that '[e]veryone has duties towards and within the community, in which alone the free and full development of his or her personality is possible'. The scope of permissible limitations is further elaborated in Article 17.

10. The Government wishes to draw to the attention of the mandate holders to the clear guarantees pertaining to the exercise of freedom of expression, freedom of peaceful assembly and of association in Malaysia as enshrined in Articles 10(1)(a), 10(1)(b) and 10(1)(c) of the Federal Constitution of Malaysia which is the supreme body of law in the country.

11. Consistent with the international standards of human rights law as briefly discussed above, the exercise of such rights and freedoms are similarly subject to limitations which are also enshrined in the Federal Constitution Malaysia.

12. These limitations have long been judicially endorsed domestically on the premise that there cannot be any such thing as absolute or uncontrolled liberty, wholly free from restraint; for that would lead to anarchy and disorder.

Provisions of the Federal Constitution of Malaysia

13. The promotion of human rights must take into account the historical, political, social, economic and cultural backgrounds of a society. Bearing this in mind, the idealism of democracy and the human rights movement as symbolised in the United Kingdom and in the United States, cannot be adopted in toto in Malaysia due to a significant variance in historical backgrounds, cultures and civilizations. Malaysia subscribes to her own unique blend of democracy and human rights – a practice efficacious to the prevalence of the Malaysian society.

14. Against this backdrop, Malaysia has a practicable constitution befitting the Malaysian society.

15. Each constitution has its own uniqueness. The FCM is no exception.

16. In a plural society such as that of the Malaysian society, the constitution rests on the fundamental values and assumptions which mirror the character of the society at large.

17. These in turn influence the essence and nature of the constitution, determining its viability and progress.

18. A constitution must be seen in the light of the local setting, local history, local environment, local culture, local political system and the local conditions.

19. The FCM is a historical, economic, social, cultural and political testament of the embodiment of assumptions and values of the Malaysian communities.

20. Similarly, the provisions on fundamental rights and fundamental liberties must be seen against the local backdrop and local setting. It cannot be appreciated from the exterior, only from within.

21. A meaningful understanding of the exercise of the freedoms of expression, assembly and association under the FCM, must be based on the contrasting vividness of the Malaysian society.

22. Whilst the exercise of such freedoms as underlined in the FCM would not necessarily be apt for everybody else, we ought always to remember that it is a law that suits the Malaysian temperament.

23. To reiterate, as demonstrated by Article 29(1) of the UDHR 1948, human rights could not be applied in a vacuum.

24. How human rights are to be exercised and practiced in Malaysia depends upon the vision of the Malaysian communities to provide a scale of values governing their exercise and manifestation.

25. The Government maintains that the rights accorded a citizen of democracy entail not only individual liberties and the demands of one's special interest group, but also the duties and responsibilities to the community at large. In sum, rights

stand with, not against democracy – and if the two do not progress together, they do not progress at all.

26. At this juncture, it is well to remember Article 30 of the UDHR states '[n]othing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of the rights and freedoms set forth therein'.

27. Thus, article 30 provides that nobody may invoke the rights and freedoms in support of an activity aimed at the destruction of any of the declared rights and freedoms. In short: no freedom for the enemies of freedom.

28. This fundamental provision, which is designed to prohibit not only the state but also groups or individuals from using the provisions of the UDHR as a shield for activities that will undermine the basic free and democratic order and destroy the rights recognized in the said declaration, is similarly echoed in Article 19 of Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.

Situation prior to 9 July 2011

29. As of Wednesday 6 July 2011, thousands of police reports had been filed by various parties including Non-Governmental Organisations (NGOs), business groups, associations, politicians and members of the public.

30. A large majority of the police reports expressed opposition to the planned marches on 9 July and further called on the police to intervene and take action against the organisers of the planned marches.

31. In the Government's view, the sheer number of police reports indicated the gravity of the situation and the intense concern of the public that the planned marches on 9 July could possibly degenerate into a security situation.

32. It must be noted that apart from Bersih 2.0, two other groups namely Patriot and Perkasa were adamant and had openly declared their intention to march against Bersih 2.0 on 9 July 2011.

33. Against such background where supporters of Bersih, Patriot and Perkasa appeared to be willfully heading towards a confrontation with each other, the Government held the view that such situation posed an unacceptable risk to the security of the public at large, particularly those that were not involved in any of the planned street marches.

34. While Perkasa would eventually abandon its plans to march, the Government stands by its position that the planned marches by the opposing groups posed a real threat to public order, public safety and public security which merited an immediate and firm response from the relevant authorities.

35. Given the delicate circumstances, the Government stands by the view that it was justified in taking certain preventive measures in accordance with domestic laws and regulations in order to maintain public security, public safety and public order.

36. Among the pre-emptive measures included the application by the Royal Malaysia Police on 6 July 2011 for three restriction orders from the Kuala Lumpur Magistrate's Court prohibiting 91 individuals who were perceived or alleged to be involved in planning the three separate street marches on 9 July 2011 from entering into Kuala Lumpur on 9 July 2011 from 8.00 am to 6.00 pm. In applying for the restriction orders, Royal Malaysian Police had acted under section 98 of the Criminal Procedure Code which states that:

- i. In cases where in the opinion of a Magistrate immediate prevention or speedy remedy is desirable that the Magistrate may, by a written order stating the material facts of the case and served in the manner provided in section 90, direct any person to abstain from a certain act or to take certain order with certain property in his possession or under his management if the Magistrate considers that the direction is likely to prevent or tends to prevent obstruction, annoyance or injury to any persons lawfully employed, or danger to human life, health or safety, or a riot any affray;
- ii. An order under this section may in cases of emergency or in cases where the circumstances do not admit of the serving in due time of notice upon the person against whom the order is made ex parte; and,
- iii. An order under this section may be directed to a particular person or to the public generally when frequenting or visiting a particular place.

37. Yet another preventive measure was the decision by the Police to deny permission to any parties including Bersih, Perkasa and Patriot which sought to organise street marches or public gatherings in Kuala Lumpur City Centre on 9 July 2011. In taking such decision Royal Malaysian Police, was lawfully discharging its function as prescribed in Section 27 of the Police Act.

38. The 91 individuals included members and supporters of Bersih 2.0, Perkasa and Patriot as well as those individuals listed in the Joint Communication UA G/SO 214 (67-17) **Assembly & Association (2010-1) G/SO 214 (107-9) MYS 7/2011** of 28 July 2011.

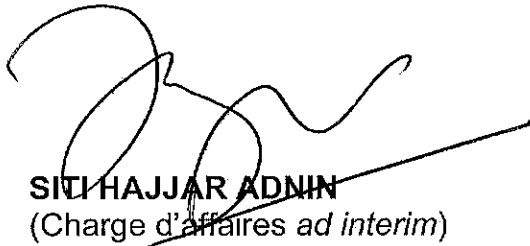
39. According to the Royal Malaysia Police, the 13 human rights defenders listed in the communication were never detained by the police.

40. The Government wishes to emphasize that the actions it had taken with respect to the 13 individuals were fully in line and in accordance with both domestic as well as international standards.

Conclusion

41. In conclusion, the Government wishes to reiterate that the actions taken prior to, during and immediately after the events of 9 July 2011 by the relevant Malaysian authorities had been fair and in full compliance with domestic laws and regulations which in turn are consistent with international standards.

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



SITI HAJJAR ADNIN
(Charge d'affaires *ad interim*)