



Permanent Representative of Malaysia
Geneva

OHCHR REGISTRY

15 AUG 2014

Recipients : SPB
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Date: 14th August 2014

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

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

Dear Sirs,

I wish to refer to the Joint Letters of Allegation ref: AL G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9) MYS 6/2013 dated 12 July 2013, and ref: AL G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9) MYS 10/2013 dated 26 September 2013, and AL G/SO 214 (67-17) Assembly & Association (2010-1) G/SO214 (107-9) dated 5 May 2014 (hereinafter known as the "Joint Communications") from the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Special Rapporteur on the rights to freedom of peaceful assembly and of association, and the Special Rapporteur on the situation of human rights defenders (hereinafter known as the "Special Rapporteurs") concerning the arrest of 3 staff members of Pusat Komunikasi Masyarakat (Pusat KOMAS), and the charge against Miss Lena Hendry on the screening of a documentary film entitled "No Fire Zone: the Killing Fields of Sri Lanka" at the Selangor Chinese Assembly Hall on 3 July 2013.

2. We note the Joint Communication dated 12 July 2013 was mainly premised on information received by the Special Rapporteurs regarding the allegation of arrest and detention of three (3) staff members of Pusat KOMAS for organizing a private screening of the documentary film entitled "No Fire Zone: the Killing Fields of Sri Lanka". Subsequently, the Joint Communication dated 26 September 2013 pertains to the information that the Special Rapporteurs had received regarding Ms. Lena Rasathi d/o

A. Hendry (Ms. Lena Hendry), who had been charged in court on 19 September 2013 under section 6(1) of the Film Censorship Act 2002 [Act 620]. Further to that, Joint Communication dated 5 May 2014 is further based on information received by the Special Rapporteurs on the court hearing of Ms. Lena Hendry's case.

3. Without prejudging the accuracy of the allegations contained in the Joint Communications, I hereby wish to present the Special Rapporteurs with the response from the Government of Malaysia to the issues and allegations mentioned the Joint Communications.

Arrest and Detention of 3 Staff Members of Pusat KOMAS

4. Based on the official information by the relevant authority, on 2 July 2013, an enforcement officer from the Film Censorship Control and Enforcement Division of the Ministry of Home Affairs (Film Control Division), had contacted Ms. Lena Hendry and informed her that the screening of the film "No Fire Zone: the Killing Fields of Sri Lanka" is an offence under the Film Censorship Act 2002 [Act 620] as the film had yet to be approved by the Film Censorship Board of the Ministry of Home Affairs.

5. At around 1930 hours on 3 July 2013, a team of enforcement officers from the Film Control Division conducted an operation in Kuala Lumpur and Selangor Chinese Assembly Hall (KLSCAH) pursuant to a complaint lodged against the screening of the film. The enforcement team had conducted the operation in a respectful manner, where despite having the authority to enter any suspected premise as provided under Section 33 of the Film Censorship Act [Act 620], they had opted to wait for the screening of the documentary to end as requested by the organiser. At about 2100 hours, the enforcement team commenced the inspection at KLSCAH and was given a copy (in DVD-R format) of the film by Ms. Lena Hendry.

6. Subsequently, Ms. Lena Hendry and two (2) other individuals, Mr. Arul Prakash s/o Sinnapan and Ms. Anna Har Mei-Yoke were arrested and brought to the Dang Wangi Police Station for investigation.

Legal Basis for the Arrest

7. The Government wishes to inform the Special Rapporteurs that it views films as playing an important part in national development, security, social justice, racial unity, and public behaviour. In this regard, the Government strives to ensure the suitability of a film for the viewing of the general public to curb negative and extreme elements that could potentially affect four (4) aspects namely security and public order; religion; socio-culture; as well as decorum and morality of the Malaysian society, as spelled out in the Guidelines on Film Censorship.

8. The Film Control Division under the Ministry of Home Affairs of Malaysia is entrusted to undertake enforcement against any person who contravenes the Film Censorship Act 2002 [Act 620]. The Division also carries the responsibility to ensure that all films and film-publicity materials that are either manufactured, produced, in possession, in custody, under control, screened, exhibited, circulated, rented or sold in Malaysia fulfil the criteria of the Guidelines on Film Censorship.

9. Notwithstanding the above, films that contain themes, story lines, parts or dialogues that concern any of the four (4) abovementioned aspects continue to be permitted, provided that they do not contribute to controversy and dissonance within the society.

10. In the present case, the 3 individuals had screened a film dubbed as a true story of war crimes committed at the end of the Sri Lankan civil war in 2009. As the film has not been approved by the Film Censorship Board, the 3 individuals who organised the screening of the film were investigated for the offence under section 6(1)(b) of the Film Censorship Act 2002 which provides that no person shall circulate, exhibit, distribute, display, manufacture, produce, sell or hire, any film or film-publicity material which has not been approved by the Board (Board of Censors).

11. In such cases, Enforcement Officers and police officers are empowered to investigate the matter under section 30 of the Act 620. In relation to the arrest of the 3 individuals, section 37(1) of Act 620 provides that any Enforcement Officer may arrest without warrant any person whom he reasonably believes has committed or is attempting to commit an offence or violate any regulations made under Act 620. This case was referred to the Attorney General's Chambers on 31 July 2013, where the decision was made on 22 August 2013 to charge Ms. Lena Hendry under section 6(1) of Act 620. Ms. Lena was then charged in court on 19 September 2013. No charge had been made against Mr. Arul Prakash s/o Sinnapan and Ms. Anna Har Mei-Yoke.

Legal Basis of the Charge against Ms. Lena Hendry

12. According to section 6(2)(a) of the Film Censorship Act 2002, any person who contravenes subsection (1) of the Act commits an offence and shall be liable on conviction, in respect of any film, to a fine of not less than five thousand ringgit and not more than thirty thousand ringgit or to imprisonment for a term not exceeding three years or to both.

13. The Magistrate Court granted MYR1,000 bail with one surety and fixed 21 October 2013 for mention for the handing over of documents, pre-trial conference and case management. Ms Lena Hendry pleaded not guilty and claimed trial. She was represented by three counsels namely Mr. New Sin Yew, Mr. Andrew Khoo and Mr. Joshua Teiy. Ms. Lena Hendry filed the case before the High Court on 25 November 2013, challenging the constitutionality of Act 620 and claiming her absolute right to freedom of opinion and expression under Article 10 of the Federal Constitution. On 11

April 2014, the High Court dismissed Ms. Hendry's application to drop the charge made against her. Subsequently, Ms. Hendry filed for an appeal at the Court of Appeal. The case is currently still undergoing its due process.

14. Ms. Lena Hendry's rights to defend herself was fully respected by the Court. The rights were her right to challenge the validity of the charge, and to challenge the constitutionality of Act 620.

15. Malaysia has constantly adhered to the underlying philosophy and norms as set forth in the Universal Declaration on Human Rights (UDHR). The Government also emphasizes that certain rights are not absolute rights under international law. In tandem with the acknowledging of these rights, the Government would highlight that international law also recognizes that in certain circumstances, limitations or restrictions are necessary for the respect of the rights or reputation of others and to maintain the social balance, peace and harmony in the society.

16. In particular, the Government reiterates its adherence to articles 19 and 20 of the UDHR on the right to freedom of opinion and expression and the right of everyone to peaceful assembly and association. The Government maintains its understanding that these rights are not absolute by virtue of the limitations outlined in article 29(2) of the UDHR. While the limitations under the UDHR must be "determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society", the Special Rapporteurs would note that these limitations are reproduced with modification in Malaysia's Peaceful Assembly Act 201 [Act 736], which provides that restrictions may only be imposed on the grounds of security, public order and the protection of the rights and freedoms of others.

17. With regard to operative paragraph 1 of Human Rights Council resolution 21/16 which calls upon States to, inter alia, "respect and fully protect the rights of all individuals to assemble peacefully and associate freely,...and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law", the Government stresses that both the provisions of the Federal Constitution of Malaysia and Act 736 are compatible with international human rights norms and standards, which allow for restrictions to be imposed on the right to peaceful assembly in certain circumstances.

18. Malaysia appreciates that articles 1, 2 and 6(b) and (c) of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (the Declaration) provides that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, and that everyone has the right individually and in association with others, to peaceful assembly. The Declaration nonetheless recognizes under article 17 that everyone, acting individually and in association with others, shall be subject only to such limitations as are in

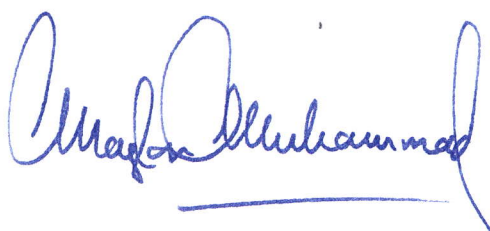
accordance with applicable international obligations and are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

19. The Government of Malaysia continues to uphold its commitment in taking all necessary measures to guarantee that the rights and freedoms of all citizens are respected. The Government also reaffirms that the right to freedom of expression, to assemble peacefully and to information shall be continuously ensured in accordance with the prevailing domestic laws of Malaysia, which are in full consonant with the norms and standards of international law. The Government also reiterates its commitment towards its prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms as well as the legal guarantees required to protect all persons under its jurisdiction.

20. The investigation, arrest and detention of the 3 staff members of KOMAS by the Film Censorship Control and Enforcement Division, Ministry of Home Affairs were conducted in the performance of their statutory duties in accordance with the Film Censorship Act 2002 [Act 620]. The charge against Ms. Lena Hendry is within the confines of the Malaysian law. She had committed an offence under section 6(1)(b) of the Film Censorship Act 2002, which is valid in light of Malaysia's sovereign responsibility in regulating the illegal screening of any material that affects public security and safety, socio-cultural well-being, decency and morality in the community, and to preserve peace.

21. In conclusion, the Government wishes to reiterate that the actions taken pertaining to the above-matter by the Malaysian authorities had been fair and in full compliance with domestic laws and regulations which in turn are consistent with international standard.

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



DATO' MAZLAN MUHAMMAD
(Ambassador and Permanent Representative)

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