



*Permanent Representative of Malaysia
Geneva*

Date: 29th August 2012

Mr. Frank La Rue

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

OHCHR REGISTRY

Mr. Maina Kiai

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

3.0 AUG 2012

Recipients: SPD.....

Mme. Margaret Sekaggya

Special Rapporteur on the situation of human rights defenders

Dear Sirs, Mme,

I wish to refer to the Joint Urgent Appeal ref: **UA G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9) MYS 5/2012** dated 27 July 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 and on the situation of human rights defenders concerning the alleged risk of detention of Mr. P. Waytha Moorthy upon his planned return to Malaysia on 1 August 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. Based on the Joint Communication, the Experts had received the alleged information as follows:

- (i) On 25 November 2007, a petition of 100,000 signatures denouncing human rights violations of the Malaysian Indian community was reportedly submitted to the British High Commission in Kuala Lumpur, during a mass rally organized by HINDRAF. According to reports, lawyers of HINDRAF were subsequently arrested as a result of the rally and detained under the Internal Security Act (ISA), which permits detention without trial up to a period of two years. While the ISA has been voted by Parliament to be replaced with the Security Offences (Special Measures) Act as of July 2012, this is reportedly still awaiting the approval of the Minister of Home Affairs;
- (ii) In November 2007, Mr. P. Waytha Moorthy reportedly travelled to the United Kingdom to promote the work of HINDRAF and to seek international support for its causes. On 2 April 2009, he travelled to the United Kingdom for the second time and was reportedly given leave to remain there for six months;
- (iii) On 17 April 2008, Mr. P. Waytha Moorthy travelled to Geneva to meet with members of the United Nations Human Rights Council. Upon his return to the United Kingdom (UK) on 19 April 2008, he was allegedly detained by immigration officials who claimed that his passport was no longer valid for travel but was allowed temporary permission to enter the country. On 21 April 2008, Mr. P. Waytha Moorthy reportedly applied for political asylum under the Geneva Convention after being informed by the UK immigration authorities that his passport has been revoked by Malaysian authorities. Asylum was granted to Mr. P. Waytha Moorthy on 9 September 2008;
- (iv) On 17 May 2008, the Malaysian Home Minister reportedly denied that Mr. P. Waytha Moorthy's passport was revoked. Mr. P. Waytha Moorthy's solicitors subsequently wrote to the UK Minister of Immigration and the Malaysian High Commission for clarification. On 23 September 2008, the UK Home Office confirmed that the UK High Commission in Malaysia was informed of the cancellation of the passport in a letter from the Malaysian authorities dated 14 March 2008, as a result of alleged criminal charges brought against Mr. P. Waytha Moorthy. On 2 July 2008, the UK High Commission reportedly received a request from the Malaysian authorities for Mr. P. Waytha Moorthy's passport to be returned;
- (v) On 24 October 2008, Mr. P. Waytha Moorthy allegedly received his passport from the Malaysian High Commission without clarification of whether the document was valid. It is alleged that the reason the Government of Malaysia returned the passport to Mr. P. Waytha Moorthy was to interfere with his asylum status in the UK, which was granted to him on the condition that he was not in possession of a Malaysian passport. In consequence, Mr. P. Waytha Moorthy returned

the passport, which was due to expire on 17 October 2010, to the Malaysian High Commission on 25 October 2008;

- (vi) According to the information received, Mr. P. Waytha Moorthy is to return to Malaysia on 1 August 2012 in order to continue his human rights activities and to be reunited with his family. It is reported that he is travelling to Singapore on the travel document issued to him by the United Kingdom and that he will cross the border to Malaysia by land.

5. The Joint Communication expressed concern that the alleged revoking of Mr. P. Waytha Moorthy's passport may be directly related to his peaceful and legitimate human rights activities, in particular his work with HINDRAF in defending the rights of the Malaysian Indian community.

6. Further concern was expressed that Mr. P. Waytha Moorthy may face arrest and criminal charges upon his return to Malaysia on 1 August 2012 and that if this were to occur, these actions may be directly motivated by Mr. P. Waytha Moorthy's peaceful and legitimate human rights activities.

7. In this connection, the Government of Malaysia has studied the case summary as appended to the Joint Communication and presents herewith the official information in response to the factual and legal allegations which were prepared pursuant to the consultations with the relevant authorities in Malaysia.

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

Observations by the Government

9. The Government would like to impress upon the Experts that Mr. P. Waytha Moorthy's passport was never revoked by the Government.

10. On 17 December 2007, the Royal Malaysia Police (RMP) had requested the Immigration Department of Malaysia (IDM) to revoke the passport of Mr. P. Waytha Moorthy on the grounds of national security as police reports were lodged against Mr. P. Waytha Moorthy under, inter alia, section 186 of the Penal Code (obstructing a public servant in discharge of his public functions), section 90 of the Police Act 1967 (disorderly conduct in a police station) and section 4 of the Sedition Act 1948 (offences relating to sedition).

11. Following the police reports, Mr. P. Waytha Moorthy was charged under subsection 4(1)(b) of the Sedition Act 1948 (uttering any seditious words). The proceedings against him were adjourned sine die.

12. However, despite the request by the Royal Malaysia Police to revoke Mr. P. Waytha Moorthy's passport, on 26 May 2008, the Minister of Home Affairs issued a press release pertaining to the revocation of Mr. P. Waytha Moorthy's passport stating that the Government had never revoked Mr. P. Waytha Moorthy's passport

and his passport was still valid and active. Thus Mr. P. Waytha Moorthy was free to travel abroad.

13. Subsequently on 24 October 2008, the Ministry of Home Affairs reiterated to the Ministry of Foreign Affairs of its decision of not revoking the passport of Mr. P. Waytha Moorthy.

14. Despite the Government's decision not to revoke Mr. P. Waytha Moorthy's passport, Mr. P. Waytha Moorthy through his lawyer had surrendered his passport to the Malaysian High Commission in the UK on 25 November 2008.

15. The Ministry of Home Affairs had advised the Malaysian High Commission in the UK to return Mr. P. Waytha Moorthy's passport to him in a proper manner and if he intended to renounce his citizenship, he should do so through the procedures as stated in the Federal Constitution.

16. On 6 April 2009, the Government maintained its decision not to revoke Mr. P. Waytha Moorthy's passport.

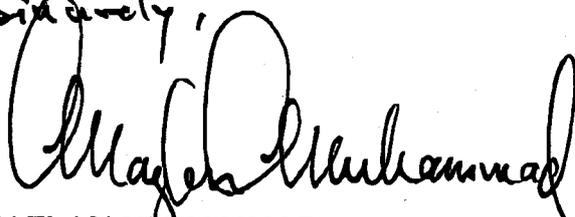
17. The Experts would also note that Mr. P. Waytha Moorthy has travelled to Singapore using a British passport to obtain a Malaysian passport and was given the necessary documents on 30 July 2012 (Serial No. 26935116).

18. The Government is committed to ensure the physical and psychological integrity of Mr. P. Waytha Moorthy by treating him as an ordinary Malaysian citizen. There is currently no intention on the part of the Government to charge Mr. P. Waytha Moorthy with a criminal offence.

19. The Government also reiterates its commitment to ensure that all its citizens are accorded all fundamental rights as guaranteed under the Federal Constitution.

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

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