

TIME RECEIVED	REMOTE CSID	DURATION	PAGES	STATUS
September 9, 2014 5:16:28 PM GMT+02		173	8	Received
9. SEP. 2014 16:11			NO. 340	P. 1



*Permanent Representative of Malaysia  
Geneva*

9 September 2014

**Mr. David Kaye**

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. Heiner Bielefeldt**

Special Rapporteur on freedom of religion or belief

**Mr. Michel Forst**

Special Rapporteur on the situation of human rights defenders

*Dear Sirs,*

I wish to refer to the Joint Urgent Appeal ref.: UA G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (56-23) G/SO 214 (107-9) MYS 1/2014 dated 22 January 2014 (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 freedom of religion or belief; and on the situation of human rights defenders (hereinafter known as the "Special Rapporteurs") concerning numerous incidents of public harassment against COMANGO, a coalition of Malaysian non-governmental organisations (NGOs) engaging in the Universal Periodic Review (UPR) process, as well as the banning of COMANGO.

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

3. The Government of Malaysia wishes to firstly reaffirm and underscore its continuous support and commitment to the Universal Periodic Review (UPR) process undertaken by the United Nations Human Rights Council (HRC). As you are aware, Malaysia has successfully completed its second UPR on 20 March 2014. All relevant stakeholders were able to freely participate in Malaysia's UPR process without any

restrictions, based on the guidelines defined by the United Nations. This demonstrates that the allegations propagated by COMANGO that the Government of Malaysia hinders the civil society from participating in the UPR process is utterly baseless.

4. We note that the Joint Communication issued by the Special Rapporteurs outlined 33 specific allegations. At the onset, the Government of Malaysia would like to state that 21 of the allegations listed were activities or statements made by private entities, which the Government of Malaysia is not in the position to verify or provide any response or observation. The activities and statements made by the private entities have no connection in any manner to the Government.

5. In this response, the Government of Malaysia will provide explanation to those which full facts and details are available and fully known to the Government. Specifically, these incidents involved Federal and State Ministers, governmental agencies and the Parliament which took place allegedly on 18 October 2013, 19 October 2013, 23 October 2013, 24 October 2013, 31 October 2013, 11 November 2013, 16 November 2013, 20 November 2013, 24 November 2013, 27 November 2013 and 8 January 2014.

6. The Government's response to the relevant issues and allegations mentioned in the Joint Communication are elucidated in the subsequent paragraphs.

**Minister's Statement Calling for Special Prayers on Malaysia's Second UPR, and Other Issues on the Protection of Islam**

7. The Government emphasizes that the statement by a Minister issued on 15 October 2013 urging Malaysian Muslims to offer special prayers and protecting the sanctity of Islam in defending human rights was made in the context of the exercise of his Ministerial duties and functions. As a Minister in the Prime Minister's Department in charge of Islamic affairs, the Minister acted within the ambit of his authority in encouraging all Malaysian Muslims to diligently perform their religious duties and practices.

8. Prayer is one of the five pillars of Islam, which constitutes the foundation of the Islamic faith. Apart from obligatory daily prayers, the Islamic teachings encourage special prayers which may be performed by Muslims voluntarily at any time, usually with the intention of seeking Divine guidance, delivery and relief. The Special Rapporteurs would therefore note that the performance of such special prayers are in line with the right to freedom of religion as guaranteed by the Federal Constitution of Malaysia, and similarly entrenched in international human rights law.

9. Article 11(1) of the Federal Constitution of Malaysia provides for the right of every person to profess and practice his religion. This right is subject to the restriction as provided under Article 11(4) of the Federal Constitution, where State law and Federal law can be enacted to control and restrict the propagation of any religious or doctrine or belief among persons professing the religion of Islam.

10. In this regard, Article 3 of the Federal Constitution of Malaysia declares Islam as the religion of the Federation and confers the special position to Islam as the main and dominant religion in the Federal. This is further fortified by the constitutional Oath of Office of the Yang di-Pertuan Agong, the Supreme Head or King of the Federation, which amongst others states "*Further We do solemnly and truly declare that We shall at all time protect the Religion of Islam and uphold the rules of law and order in the Country*".<sup>1</sup>

11. In light of the above, the statement made by the Minister was justified and consistent with his duties in defending the sanctity of Islam in the exercise of his executive function under the Federal Constitution of Malaysia.

### **Sermon by JAKIM on the situation of COMANGO and Islam**

12. The Special Rapporteurs would recall that as part of the congregational Friday prayers obligatory for adult male Muslims, the sermon is a platform for intellectual discussion about the teachings of Islam and duties as Muslims, and to raise awareness on matters of importance to Islam.

13. The Department of Islamic Development Malaysia (JAKIM) is the central agency that oversees the development of Islamic affairs including the protection of the sanctity of Islam, the well-being of the Islamic community, and the cultivation of Islamic knowledge in Malaysia. The sermon dated 18 October 2013 that was issued by JAKIM made reference to Malaysia's Second UPR. The sermon, among others, highlighted COMANGO's report to the Human Rights Council, which contains several issues that run counter to Islamic values and ethics.

14. The Government maintains that some issues championed by COMANGO, such as the call for recognition of rights for Lesbian, Gay, Bisexual and Transgender (LGBT) persons, are not consistent with Malaysia's domestic legal framework. Under the Malaysian Penal Code, Section 377B provides that committing carnal intercourse against the order of nature, or sodomy, is a crime. Section 377D also makes it a crime for any person who, in public or private, commits, or abets the commission of, or procures or attempts to procure the commission by any person of, any act of gross indecency with another person. By virtue of these provisions, any same sex act by any person or partner is an offence, regardless of whether the act was voluntarily or otherwise, or whether the partner is married or otherwise under the law which is applicable to them. Likewise, the Islamic Family Law enactments criminalize acts of sodomy, sexual relations between women and a male person posing as a woman.

### **Involvement of an Official of the Department of Islamic Development Malaysia (JAKIM) at the Seminar Entitled "The threat of liberalism by human rights organisations at the United Nations"**

15. The Government wishes to clarify that the presence of a JAKIM official at the abovementioned seminar was only to discuss issues relating the liberalism and

---

<sup>1</sup> Fourth Schedule of the Federal Constitution read together with Article 37 of the Federal Constitution.

pluralism of religions. The Government does not see such presence as a form of harassment against COMANGO.

**Pahang State Minister's Comments on Threats of Liberalism as Propagated by COMANGO**

16. The Pahang State Minister commented on the incompatibility of several elements contained in the COMANGO report to the Human Rights Council with Islamic values and ethics. The Government further holds the position that free, intellectual discussions and academic gatherings to discuss matters of interest have never been an issue in Malaysia provided that Malaysian laws and regulations are fully respected.

**Statement by a Member of Parliament on COMANGO Insulting the Federal Constitution and Undermining Islam**

17. The Government contends that such allegation is vague and unsubstantiated.

**Comments in the Parliament of Malaysia Regarding COMANGO Interfering in Religious Affairs, Including Promoting Unnatural Lifestyle through LGBT Rights**

18. Based on official records of the Parliament, no such statement was made by any Member of the Parliament.

**Comments in the Parliament Made on 31 October 2013 Urging the Registrar of Societies to Investigate the Status of 54 NGOs under COMANGO**

19. The Parliament did not hold a session on the said date.

**Minister of Islamic Affairs Called for COMANGO to Respect the Federal Constitution**

20. The Government emphasizes that the Minister's statement was meant to call on all parties including COMANGO to respect the Federal Constitution particularly regarding Islam as the religion of the Federation. In this regard, Article 11(4) of the Federal Constitution provides that federal law may control or restrict the propagation of any religious doctrine or belief among persons professing the religion of Islam. The Government reiterates its response on this matter in the preceding paragraphs.

**Minister for Islamic Affairs' Speech at the Forum on Universal Fundamental Rights on 20 November 2013**

21. The Minister for Islamic Affairs of Malaysia made a general reference to the Universal Declaration on Human Rights (UDHR) during his speech at the Forum on Universal Fundamental Rights, organised by the Malaysian Islamic University Council in November 2013. He further commented that several articles of the UDHR are found to be not consistent with Islamic values.

22. The statement by the Minister reflects his understanding of international human rights laws; the statement did not in any way imply or cause any harassment against COMANGO.

**Motion in the Parliament to Condemn COMANGO for Interfering and Challenging the Sanctity of Islam, and Called Upon the Registrar of Societies to Investigate COMANGO**

23. The Government confirms that the motion was proposed before the Parliament. Nonetheless, based on official records of the Parliament, the motion was rejected on the basis of non-urgency.

**Ministry of Home Affairs' Press Statement Declaring COMANGO to be Illegal**

24. On 8 January 2014, the Secretary-General of the Ministry of Home Affairs had issued a press statement on the Ministry's official website regarding COMANGO. The press statement, among others, highlighted that COMANGO was not registered under the Societies Act 1966. The Government confirms that COMANGO was only declared as an unregistered society under the Societies Act 1966. The press statement neither banned nor declared COMANGO as an illegal or an unlawful society.

25. The Government emphasizes that the statement released by the Secretary-General of the Ministry of Home Affairs was based on section 6 of the Societies Act 1966 which states that every local society shall be registered. The Societies Act 1966 does not prohibit individuals from forming, joining or participating in any association but rather provides a framework for the authorities to monitor whether societies are being used for purposes prejudicial to or incompatible with the interest of the security of the country, public order or morality.

**Other Matters**

26. Whilst the Government remains committed in ensuring all incidents are dealt with in accordance with the law, the Government impresses upon the Special Rapporteurs that the relevant authorities, particularly the Royal Malaysian Police, have confirmed that no report, by or against COMANGO were lodged. The Government therefore confirms that no investigation and judicial or other inquiries were carried out in relation to COMANGO.

27. This statement issued by the Ministry of Home Affairs of Malaysia was in full compliance with the law, as the Act provides that until a local society is registered, no person shall organize or take part in any activity of or on behalf of the society, without a written permission of the Registrar of Societies. In this regard, the Government emphasizes that only 15 societies under the coalition are registered with Registrar of Societies (ROS) and only one society is registered as a company under the Companies Act 1965.

28. The Government also confirms that the relevant authority namely the ROS has not received any instruction from the Home Minister to declare COMANGO as an

unlawful society pursuant to the abovementioned provision or any direction to take any action towards COMANGO for being an unregistered society.

29. The Government reaffirms its commitments to the principles contained in various international human rights instruments including the Universal Declaration of Human Rights (UDHR) and 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 on Right and Responsibility).

30. 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 the right to freedom of opinion and expression, and the right to freedom of assembly and association are not absolute rights under international laws. In tandem with the acknowledgment of these rights, international laws also recognize that in certain circumstances, limitations or restrictions are necessary for the respect of the rights or reputations of others and the maintenance of social balance, peace and harmony.

31. Malaysia adheres to Articles 19 and 20 of the UDHR on the right to freedom of opinion and expression and the right for everyone to freedom of association respectively as well as Article 19 of the International Covenant on Civil and Political Rights (ICCPR) on the right to hold opinions without interference and Article 22 of the ICCPR on the right to freedom of association with others. Malaysia nonetheless, maintains that these rights are not absolute by virtue of the restrictions as outlined in Article 29(2) of the UDHR and the exercise of derogating measures by the State as provided under Article 4(1) of the ICCPR respectively. Thus, Articles 19 and 22 of the ICCPR permit some form of restrictions or limitations, whereby if a State Party chooses to limit or restrict this right within the limits prescribed, this is permissible and does not amount to a violation of the right in question.

32. In this regard, the Government notes that any catalogue of duties to the community – as one finds in other jurisdictions – would therefore be a matter of domestic law. Article 10(1) of the Federal Constitution grants, among others, freedom of speech and the right to form associations to all citizens, which are only subject to Article 10 (2) of the Federal Constitution itself which permits Parliament by law to impose restrictions in the interest of the security of the Federation, friendly relations with other countries, public order, morality, to protect the privileges of Parliament, to provide against contempt of court, defamation, or incitement to any offence. Specifically on the freedom of association, Article 10(2)(c) and (3) of the Federal Constitution guarantees this right subject only to restrictions imposed through any federal law on the grounds of national security, public order or morality or through any law relating to labour or education.

33. The Government, particularly in recent times, has taken various steps to further strengthen fundamental freedoms in Malaysia. This would indeed provide the civil society, including human rights defenders, an enabling environment to carry out activities without fear of harassment, stigmatization or criminalization of any kind. Amongst the measures taken by the Government that underscores its serious efforts

and commitment to protect human rights in Malaysia was the abolishment of the Internal Security Act 1960 (ISA) which was enacted for the purpose of curbing acts such as subversion and action prejudicial to public order.

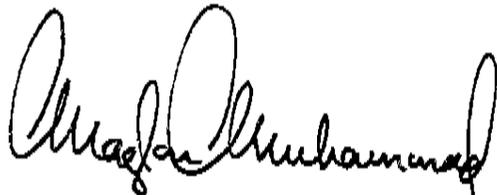
34. The promotion and protection of the right to freedom of assembly in Malaysia has also been reaffirmed. The Peaceful Assembly Act 2012 was promulgated to breathe life to Article 10 of the Federal Constitution to enhance the implementation of the right to assemble peaceably as guaranteed by the Federal Constitution.

35. Apart from the above measures, another measure taken was the establishment of the Human Rights Commission (SUHAKAM) vide the Human Rights Commission of Malaysia Act 1999. SUHAKAM serves as one of the avenues for the civil society including the human rights defenders to voice any grievances or complaints regarding infringement of human rights. SUHAKAM's functions is to, among others, inquire into complaints regarding infringement of human rights.

### **Conclusion**

36. The Government of Malaysia reassures its commitment in taking all necessary measures to guarantee that the rights and freedoms of the all citizens are respected. The Government also reassures that the rights which are presently available to all citizens with regard to the right to freely associate shall be continuously afforded in accordance with the prevailing domestic laws of Malaysia which are in full consonant with the norms and standards of international law.

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

