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*Permanent Representative of Malaysia
Geneva*

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Date: 15 March 2016

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. Michel Forst

Special Rapporteur on the situation of human rights defenders

Ms. Mónica Pinto

Special Rapporteur on the independence of judges and lawyers

Dean Sius,

I wish to refer to the Joint Urgent Appeal ref. : MYS 6/2014 dated 1 October 2014 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 the independence of judges and lawyers (hereinafter known as the "Mandate Holders") concerning the announcement by the Government of Malaysia on the latter's intention to retain the Sedition Act of 1948. I wish to also refer to the Joint Allegation Letters ref. : MYS 8/2014 dated 23 December 2014 and MYS 1/2015 dated 25 February 2015 from the 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 the independence of judges and lawyers concerning the implementation of the Sedition Act 1948 and the use of the Sedition Act 1948 to arrest, detain and charge Mr. Eric Paulsen ("Mr. Paulsen") and to arrest and possibly charge Mr. Zulkiflee SM Anwar Ulhaque ("Mr. Ulhaque") for exercising their right to freedom of expression and promoting human rights and accountability in Malaysia in accordance with international human rights law including the Universal Declaration on Human Rights (UDHR). Both the Joint Urgent Appeal and the Joint Allegation Letter are hereinafter known as the "Joint Communications".

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 (hereinafter known as "the Government") on the Joint Communications.

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

Measures have been taken in relation to Malaysia's commitment made at the Universal Periodic Review to consider repealing the Sedition Act 1948 and to put Malaysian legislation in conformity with its international obligations.

4. The Government would like to reaffirm its commitment to ensure the freedom of speech and expression of its people as enshrined under Article 10 of the Federal Constitution of Malaysia. The Government is also committed to ensuring that all citizens can enjoy their fundamental liberties in a manner which does not impinge on the exercise of the rights of others. While the Government notes the reference made by the Special Rapporteurs to the commitment made by Malaysia during the Universal Periodic Review session in 2014 on repealing the Sedition Act 1948, the Government reiterates that limitations on grounds of national security, public order or morality are permissible. It is noted that Article 29 of UDHR and Article 19 of the International Covenant on Civil and Political Rights (ICCPR) provide that the enjoyment of all rights and freedoms is subject to restrictions and limitations as may be determined by law to meet the just requirements of national security and public order.

5. In a multi-racial, multi-religious and multi-ethnic society, the Government strongly believes that the principle of tolerance is crucial while maintaining social unity and stability of Malaysia. It is the duty of the Government to protect national security and to maintain public order and peace in Malaysia while ensuring the freedom of opinion and expression as guaranteed by and exercised in accordance with the Federal Constitution. As explained in the Government's response to the Special Rapporteurs' press release dated 8 October 2014 concerning the Sedition Act of 1948, the Government has established a national unity consultative council to look into recommendations and the way forward in strengthening ethnic harmony and national unity in Malaysia. Consultations with the relevant stakeholders have been undertaken to garner their views and proposals to further enhance the current legal framework pertaining to national harmony.

6. The Government is of the view that the Sedition Act of 1948 remains as a useful preventive measure to further ensure the harmony, peace and stability of Malaysia. The Act provides an effective legislative intervention in matters such as incitement of tensions and hatred as well as campaign of ill will and hostility which are proven to be detrimental to the harmony, peace and stability of this country. The decision to retain and improve the Sedition Act of 1948 was to ensure that no parties would incite religious and racial tension that could threaten the prosperity and security of the country. Without this legal frameworks, such threats could escalate to

more serious implications and hence if left unattended, will cause real danger and harm to the peace, stability and harmony of Malaysia. The Government firmly believes that the Sedition Act will guarantee that freedom of speech, opinion, and expression are not abused, as the Act provides a framework to ensure the rights to freedom of opinion and expression is exercised prudently and responsibly compatible with the interest of security as well as the maintenance of public order, peace and stability of the country.

Legal grounds for the respective charges and detention under the Sedition Act of 1948 and the compatibility of these measures with international human rights norms and standards, in particular article 19 of the UDHR, Human Rights Council Resolution 24/5 and 22/6.

7. With regard to the legal grounds for the respective charges and detention of Mr. Paulsen, the Government wishes to highlight that Mr. Paulsen was charged at the Sessions Court in Kuala Lumpur with an offence under paragraph 4(1)(c) of the Sedition Act 1948 for publishing a seditious publication against the Department of Islamic Development Malaysia ("JAKIM") by posting via the social media Twitter the following statement:

"JAKIM is promoting extremism every Friday. Govt needs to address that if serious about extremism in Msia."

8. The statement made by Mr. Paulsen falls within the definition of seditious tendency under paragraph 3(1)(e) of the Sedition Act 1948, whereby the statement has a tendency to promote feelings of ill-will and hostility between different races or classes of the population of Malaysia. Mr. Paulsen's statement which was publically posted via his Twitter account had enraged a large number of Muslims in Malaysia, who form the majority of the population of Malaysia. JAKIM being a body that governs and administers the administration of Islam in Malaysia is highly regarded within the Muslim community in Malaysia and Mr. Paulsen's statement towards the Department was seen to be an attack against Islam in general by Muslims in Malaysia. Mr. Paulsen was granted bail by the Sessions Court at Kuala Lumpur at the amount of RM 2,000.00 with one surety. The case is currently before the Sessions Court.

9. With regard to the confiscation of 500 copies of "Gedung Kartun", which is a published work of Mr. Ulhaque, there was no prohibition order under the Printing Presses and Publications Act 1984 ("PPPA") against those cartoon books. However the books were confiscated for an offence committed under subsection 5(2) of the PPPA for publication without permit and also subsection 8A(1) of the same Act for publishing false news. Similarly for Mr. Ulhaque's cartoon book "Cartoon O-Phobia", there was no prohibition order against them under the PPPA. As indicated in the Joint Communication, Mr. Ulhaque was awarded compensation by a civil court for unlawful arrest and detention.

10. In relation to the publications of "Perak Darul Kartun" and "1Funny Malaysia" by the same cartoonist, these works were declared to be prohibited publications by the Minister of Home Affairs through the Printing Presses and Publications (Control

of Undesirable Publications) (No.5) Order 2010, made under subsection 7(1) of the PPPA. The publishers of the books, MKini Dotcom Sdn Bhd and Sepakat Efektif Sdn Bhd respectively, applied to quash the said order by way of judicial review. The High Court dismissed the applications but on appeal the Court of Appeal reversed the decision of the High Court and quashed the order banning the publications of the books. The Minister of Home Affairs has since filed an application for leave to appeal to the Federal Court against this decision.

11. Mr. Ulhaque was charged on 3 April 2015 at the Sessions Court at Kuala Lumpur with nine charges under paragraph 4(1)(c) of the Sedition Act 1948. The nine charges are in regard to a series of tweets posted by Mr. Ulhaque on 10 February 2015 on his Twitter account. The statements made by Mr. Ulhaque fall within the definition of seditious tendency under paragraph 3(1)(c) of the Sedition Act 1948 i.e. the statements have a tendency to bring into hatred or contempt or to excite disaffection against the administration of justice in Malaysia or in any State. Mr. Ulhaque's postings were in relation to the decision in Datuk Seri Anwar Ibrahim's case and were an obvious attack on the integrity and independence of the judiciary. Mr. Ulhaque was granted bail by the Sessions Court at Kuala Lumpur at the amount of RM 2,500.00 with one surety for each charge.

12. The Government would like to reaffirm its continuous adherence to the underlying philosophy and norms as set forth in the Universal Declaration of Human Rights (UDHR). Nonetheless, the Government wishes to highlight that certain rights are not absolute under international law. In tandem with the acknowledgment of these rights, international law 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.

13. The Government maintains its understanding that these rights are not absolute by virtue of the limitations outlined in article 29(2) of the UDHR. 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". It is therefore emphasised that the actions initiated against Mr. Ulhaque, which were duly taken under the Sedition Act 1948, are to safeguard public order and the general welfare of the Malaysian society.

14. With regard to Human Rights Council resolution 24/5, the Government is cognisant of the underlying principles under the resolution, which calls upon States, inter alia, "...to 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;" and Human Rights Council resolution 22/6 which recognizes "...right of everyone, individually and in association with others, to unhindered access to and communication with international bodies, in particular the United Nations, its representatives and mechanisms in the field of human rights, including the Human Rights Council, its special procedures, the universal periodic review mechanism and the treaty bodies, as well as regional human rights mechanisms".

15. In line with the said principles, the Government reaffirms that Article 10(1) of the Federal Constitution, among others, guarantees both the freedom of expression and freedom of assembly in Malaysia. However, these freedoms are not absolute and are subject to the limitation under Article 10(2) of the Federal Constitution of Malaysia. In addition, Article 10(2) provides that the Malaysian Parliament, by law, may impose restrictions on the rights of freedom of speech and expression, assembly and association, as it deems necessary or expedient in the interest of the security of the Federation, public order or morality. In addition to this, Article 10(4) and Article 149 of the Federal Constitution also permit Parliament to impose restrictions on the exercise of these freedom based on constitutionally permissible grounds which relate to national security and public order.

The total number of persons currently charged and the number of persons currently detained, as well as the number of persons sentenced under the Sedition Act 1948 in the last two years, and how these prosecutions are compatible with the aforementioned international human rights norms and standards, in particular article 19 and 20 of the UDHR.

16. For information, in 2013, 2 persons were charged under the Sedition Act 1948 while for the year 2014 out of a total of 116 Investigation Papers opened based on police reports that were made, a total of 23 persons were charged under the Act.

17. The Government wishes to reaffirm that decisions to prosecute cases under the Sedition Act 1948 or any other laws are based on the evidence obtained through thorough investigations by the law enforcement agencies. There must be sufficient evidence to satisfy the elements of the offence of sedition or any other offence in relevant laws before a person is charged for that offence. It is therefore emphasised that investigation under the Sedition Act 1948 and other laws are carried out in accordance with the Criminal Procedure Code.

18. The Government is also committed to ensure the freedom of speech and expression of its people as enshrined under the relevant provisions of the Federal Constitution of Malaysia. However, firm and decisive action must be taken against acts which prejudice national harmony, security, morality, public order and the general welfare of Malaysians and Malaysia. The first duty of a responsible government must be to its people as a whole. While Article 10(1) of the Federal Constitution, among others, guarantees both the freedom of expression and freedom of assembly in Malaysia, these freedoms are not absolute and are subject to the limitation under Article 10(2) of the Federal Constitution of Malaysia in ensuring the right balance between freedom of opinion and expression and national harmony.

Safe and enabling environment for the human rights defenders to carry out their legitimate work without fear of criminalization.

19. The Government would like to emphasise that the Sedition Act is not intended to curb freedom of opinion and expression, but to prevent actions that go overboard and are seditious that incite hatred and extremism. The retaining of the Act also will not impede the work of the human rights defenders, academics, journalists, lawyers,

students, politicians and civil society, as long as they are undertaken with full accountability and in accordance with the relevant laws.

20. The Government appreciates that Articles 1, 2 and 6(a), (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") provide 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. The aforementioned limitations are also encapsulated in Article 29(2) of the UDHR.

21. Notwithstanding the above, the Government of Malaysia has never stopped or prevented freedom of speech in Malaysia except as authorized by the Federal Constitution and provided by law. Human rights defenders, academics, journalists, students, politician, lawyers and civil society members are able to carry out their work and activities as long as it is done in accordance within the law. Ideas and views can be expressed within the ambit of the law and acceptable social mores. Guidance on the interpretation and application of the Sedition Act 1948 is provided through the decisions and principles enunciated in court cases. Hence, the courts remain the principal arbiter on the legality and validity of the law as well as the actions taken under those laws.

22. The Government, particularly in recent times, has also 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.

23. Further amendments made to the Sedition Act 1948 in April 2015 ensure that the act of bringing into hatred or contempt or exciting disaffection against the Government or the administration of justice in Malaysia is no longer to be considered seditious. These amendments are in line with the intention of the Government to be more open whereby the public is at liberty to give feedback or criticize the Government so as to create a transparent and accountable administration in Malaysia.

24. The promotion and protection of the right to freedom of assembly in Malaysia has also been reaffirmed. The Peaceful Assembly Act 2012 ("PAA 2012") was promulgated to breathe life into Article 10 of the Federal Constitution to enhance the

implementation of the right to assemble peaceably as guaranteed by the Federal Constitution. The PAA 2012 is reflective of the international human rights regime and the prevailing laws of other jurisdictions. Malaysia reiterates that in enacting this Act, similar laws of various countries and international standards and norms were referred to, including Peaceful Assembly Act 1992 (Queensland, Australia); Assembly Act 1999 (Finland); Public Order Act 1986 (United Kingdom) and Assembly Act 2008 (Germany), as well as OSCE Guidelines.

25. Prior to the enactment of the PAA 2012, the rights of citizens to assemble were governed by the Police Act 1967. The PAA 2012 is seen as a significant progress in terms of human rights elements especially from the perspective that it allows citizens to organize assemblies and participate in assemblies peaceably and without arms subject only to restrictions deemed necessary or expedient in the interest of the security of Malaysia or any part thereof or public order, including the protection of the rights and freedoms of other persons. Other salient features of the PAA 2012 that are noteworthy are that there is no requirement to apply for a licence to assemble and it does not explicitly grant the power to the police to approve or reject the notification submitted by the organizer. Instead, the police are required to take into account the concerns or objections received from persons who have interests for the purpose of imposing restrictions and conditions and conveying that decision to the organizer. In other words, the permission of the police is not an explicit requirement under the Act. In addition, the organizers have the right to appeal against the restrictions and conditions imposed on the assembly to the Minister.

26. 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.

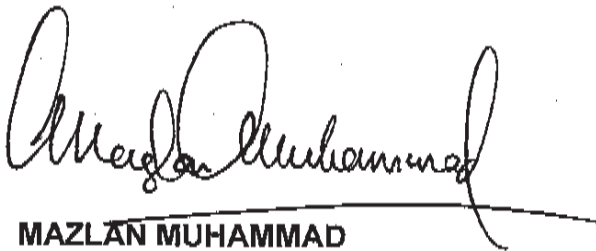
Conclusion

27. The Government also takes a serious view on the fulfilment of its commitments and obligations as a member of the international community and remains committed to implementing the accepted recommendations within the Universal Periodic Review Process, as well as with regard to special procedures emanating from concerns of Special Rapporteurs. The Government values and appreciates the work of the Office of the High Commissioner for Human Rights, as well as the various Special Rapporteurs involved in the protection of human rights throughout the world.

28. The Government remains committed to take necessary steps and measures to continuously guarantee the right to freedom of assembly, subject to such restrictions as permitted by international norms and standards. The Government gives its assurances that human rights defenders, academics, journalist, students, politicians, lawyers and civil society members are all able to carry out their legitimate work as long as they act within the scope of law.

29. Malaysia takes its international obligations in the area of human rights very seriously, including with regard to special procedures emanating from concerns of Special Rapporteurs. Malaysia values and appreciates the work of the Office of the High Commissioner for Human Rights, as well as the various Special Rapporteurs involved in the protection of human rights throughout the world. Malaysia will continue to do its' utmost to advance human rights objectives and to uphold its' commitments to the international community and to its' own citizens in that regard. Further, Malaysia's domestic laws are adequate and in place to ensure the necessary rights are provided and due process accorded.

Please accept, Sirs, the assurances of my highest consideration

A handwritten signature in black ink, appearing to read 'Mazlan Muhammad', is written over a horizontal line.

MAZLAN MUHAMMAD

Ambassador and Permanent Representative