



*Permanent Representative of Malaysia
Geneva*

24 January 2020

Mr. David Kaye
Special Rapporteur on the promotion and protection of the right to freedom of opinion

Mr. Clement Nyaletsossi Voule
Special Rapporteur on the rights to freedom of peaceful assembly and of association
and expression

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

Mr. Victor Madrigal-Borloz
Independent Expert on protection against violence and discrimination based on sexual
orientation and gender identity

Mrs. Ivana Radačić
Chair-Rapporteur of the Working Group on the issue of Discrimination against women in
law and in practice

Dear Sir/Madam,

I refer to the Joint Communication dated 10 May 2019, bearing reference no. AL MYS
2/2019.

2. I wish to hereby transmit in the **ANNEX** the response of the Government of
Malaysia to the afore-mentioned case.

3. In thanking the Human Rights Council's Special Procedures Mandate Holders
for the understanding and cooperation, I express my sincere hope that the attached
response from the Government of Malaysia will be fully taken into consideration.

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

Yours Sincerely,

DATO' DR. AHMAD FAISAL MUHAMAD

**THE GOVERNMENT OF MALAYSIA'S RESPONSE TO THE JOINT
COMMUNICATION CONCERNING THE SITUATION OF MR. NUMAN AFIFI**

The Government of Malaysia refers to the Joint Communication submitted by Mr. David Kaye, Special Rapporteur on the promotion and protection of the right to freedom of opinion, Mr. Clement Nyaletsossi Voule, Special Rapporteur on the rights to freedom of peaceful assembly and of association and expression, Mr. Michel Forst, Special Rapporteur on the situation of human rights defenders, Mr. Victor Madrigal-Borloz, Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity and Mrs. Ivana Radačić, Chair-Rapporteur of the Working Group on the issue of Discrimination against women in law and in practice ("the Experts") vide their letter dated 10 May 2019, bearing reference no. AL MYS 2/2019 ("the Joint Communication") to the Permanent Representative of Malaysia to the United Nations Office at Geneva and notes that it was mainly premised on information received regarding, among others, situation of Mr. Numan Affifi. The Government's response to the issues elucidated in the subsequent paragraphs are prepared in the interest of fairness and transparency, and based on information and official record of the Government upon due consultation with the relevant Malaysian authorities.

ISSUE 1:

Additional information and/or comments on the allegations of the Joint Communication

RESPONSE:

2. The Government notes that the information contained in the Joint Communication dated 10 May 2019, particularly on the allegations that Mr. Numan Afifi was summoned for questioning for his involvement in the organization of the KL International Women's Day march on 9 March 2019 and/or for his participation at the 40th Session of the Human Rights Council ("HRC-40") is inaccurate.

3. The Government wishes to clarify that Mr. Numan Afifi was called by the Royal Malaysia Police (RMP) as a witness to facilitate an investigation in relation to a police report lodged concerning a video posted on Facebook. The video featured a man of foreign nationality, which was later identified as a representative of Alliance for Defending Freedom (ADF), delivering a statement at HRC-40 during which he had called for the removal of religious status from the Malaysian Identification Cards. Mr.

Numan Afifi was seated at the back of the man who delivered the statement. The police report triggered an investigation under subsection 4(1) of the Sedition Act 1948 [Act 15] (“Sedition Act”).

4. As it is the sovereign right of any State to carry out all legal measures to ensure that its national security, public order, territories, morality, rights and freedom of all its citizens are protected, the Malaysian authorities had acted in conformity with relevant domestic and international laws when calling Mr. Numan Afifi to facilitate investigations under subsection 4(1) of the Sedition Act.

ISSUE 2:

Information regarding the legal and factual bases for the investigation of organisers of the Kuala Lumpur International Women’s Day march on 9 March 2019 under the Sedition and Peaceful Assembly Acts and explain how such investigation complies with international human rights standards

RESPONSE:

5. No investigation was initiated against the organisers of the Kuala Lumpur International Women’s Day march on 9 March 2019 under the Sedition Act and Peaceful Assembly Acts 2012 [Act 736] (“Peaceful Assembly Act”).

ISSUE 3:

Information regarding the reasons for summoning Mr. Numan Afifi for questioning and any available information regarding any investigation into Mr. Afifi which may be ongoing.

6. Mr. Numan Afifi was called to facilitate the RMP’s investigation as a witness of a case relating to a video featuring a man of foreign nationality delivering a statement at HRC-40, calling for the removal of religious status from the Malaysian Identification Cards. The man was later identified as a representative of ADF.

7. Accompanied by his lawyer, Mr. Numan Afifi presented himself at the RMP Headquarters on 26 April 2019 and had his statement recorded by Inspector [REDACTED] from RMP. No summon was issued against Mr. Numan Afifi for his attendance.

8. The case was then referred to the Attorney General’s Chambers on 2 May 2019 and has been classified as No Further Action (NFA) on the grounds that the statement was made abroad and the person delivering the statement was a foreign national.

ISSUE 4:

Information on the measures which have been put in place to ensure that human rights defenders and civil society organisations are permitted to interact with UN human rights mechanisms in order to disseminate information on all human rights and fundamental freedoms without fear of reprisal.

RESPONSE:

9. Malaysian human rights defenders and civil society organizations (CSOs) are free to participate in all platforms. They have been actively participating not only in UN human rights mechanisms but in all other UN fora, as well as at domestic, regional and international platforms. No restriction has ever been put in place and they certainly do not need permission from the Government to interact / participate in these fora/platforms.

10. The Government regards human rights defenders and CSOs as important partners in the promotion and protection of human rights in Malaysia. To this end, the Government has constantly and constructively engaged with them. This engagement is evident during Malaysia's Universal Periodic Reviews (UPR) as well as Treaty Bodies Reviews. Particularly, drawing from the experience of Malaysia's recent 3rd UPR in November 2018, civil society's engagement prior, during and post review was enriching. The Malaysian Alliance of Civil Society Organizations in the UPR Process (MACSA), *Pusat Kesedaran Komuniti Selangor* (EMPOWER), *Pusat Komunikasi Masyarakat* (KOMAS), Sisters in Islam, Association for Prevention of Torture and the Bar Council were among those that participated in Malaysia's 3rd UPR in Geneva. Further to the Review, the Government has now institutionalized two formal engagement sessions annually with human rights defenders and CSOs to discuss follow-up and implementation of the recommendations received in the UPR.

11. Malaysia has made positive strides in human rights. The Hon. Foreign Minister of Malaysia, during his address at the 40th Session of the HRC, had issued a standing invitation to the Special Procedures Mandates Holders ("SPMH"). Even prior, Malaysia received the visit of the Special Rapporteur ("SR") in the field of cultural rights in September 2017, SR on the sale and sexual exploitation of children in September 2018 and SR on the human rights to safe drinking water and sanitation in November 2018. In 2019, Malaysia received visits by the SR on situation of human rights in Myanmar and the Special Envoy of the Secretary General ("SESG") on Myanmar in July 2019 and SR on extreme poverty in August 2019. These SRs were able to meet and interact with whomever they desire including human rights defenders and CSOs without any restriction from the Government.

ISSUE 5:

Information on what measures have been put in place to ensure human rights defenders, including LGBT+ rights defenders, are able to enjoy their rights to freedom of expression and peaceful assembly and are able to carry out their peaceful and legitimate work in a safe and enabling environment without fear of threats or acts of intimidation and harassment of any sort

RESPONSE:

12. The Government has constantly adhered to the underlying philosophy and norms as set forth in the Universal Declaration of Human Rights (UDHR) as long as they are consistent with the Federal Constitution, the supreme law of Malaysia and national legislation. The Government also emphasizes that certain rights are not absolute rights under international law. In tandem with the acknowledgment of these rights, the Government must balance these rights with the rights of others, whilst maintaining the social balance, peace and harmony in the society.

13. In particular, the Government reiterates its adherence to Articles 19 and 20 of the UDHR on the individual's rights to freedom of opinion and expression as well as freedom of peaceful assembly and of association. Nonetheless, the Government maintains its understanding that these rights are not absolute by virtue of the limitations outlined in Article 29(2) of the UDHR which provides 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.

14. In Malaysia, the right to freedom of opinion and expression and right to freedom of peaceful assembly and of association are guaranteed and protected under Article 10(1) of the Federal Constitution. Nonetheless, these rights are not absolute. For the purposes of the good and orderly conduct and behaviour of people as well as security of the country, Article 10(2) of the Federal Constitution imposes certain restrictions on the exercise of such rights.

15. In respect of the right to freedom of speech and expression, Article 10(2)(a) of the Federal Constitution states that Parliament may by law impose such restrictions as it deems necessary or expedient in the interest of the security of the Federation or any part thereof, friendly relations with other countries, public order or morality and restrictions designed to protect the privileges of Parliament or of any Legislative Assembly or to provide against any contempt of court, defamation or incitement to any offence.

16. With regard to the right to peaceful assembly, Article 10(2)(b) of the Federal Constitution specifies that Parliament may by law impose such restrictions as it deems necessary or expedient in the interest of the security of the Federation or any part thereof or public order. Likewise, under Article 10(2)(c), Parliament may by law impose the restrictions based on the same grounds plus the grounds of morality in respect of the right to form association.

17. In light of the above, the Government emphasizes that the limitations set out in the UDHR are reproduced with modifications under Malaysian laws governing the rights to freedom of opinion and expression as well as freedom of peaceful assembly and association. These include, but are not limited to, the Sedition Act and the Peaceful Assembly Act whereby Parliament imposes restrictions on the exercise of such rights on the grounds of security, public order, morality and protection of the rights and freedoms of others, pursuant to Article 10(2) of the Federal Constitution.

18. The Sedition Act 1948 was amended in April 2015 to ensure that the act of bringing into hatred or contempt or inciting disaffection against the Government or the administration of justice in Malaysia is no longer considered as seditious. These amendments are in line with the Government's commitment in creating a more open, transparent and accountable administration where members of the public are encouraged to channel their feedback, suggestions or constructive criticisms to the Government.

19. The Peaceful Assembly Act 2012 allows citizens of Malaysia 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 the Federation or any part thereof or public order, including the protection of the rights and freedoms of other persons. There is no requirement to apply for a licence to hold a peaceful assembly under the Peaceful Assembly Act. Only a notification of the assembly shall be required and in addition the organizer has the right to appeal to the Minister against the restrictions and conditions imposed on the assembly.

20. Apart from the above measures, another significant measure taken by the Government was the establishment of the national human rights institution, Human Rights Commission (SUHAKAM) *vide* the Human Rights Commission of Malaysia Act 1999 [Act 597]. SUHAKAM serves as one of the avenues for the civil society, including human rights defenders, to voice any grievances or complaints regarding infringement of human rights. SUHAKAM's function, among others, is to inquire into complaints regarding infringement of human rights. In this regard, SUHAKAM has also conducted

several public inquiries to look into matters involving allegations of infringement of human rights, and had engaged with the Royal Malaysia Police on several occasions.

21. In light of the above, it is apparent that the legal measures that have been put in place have allowed human rights defenders in Malaysia to enjoy their rights to freedom of expression and peaceful assembly and are able to carry out their peaceful and legitimate work in a safe and enabling environment without fear of threats or acts of intimidation and harassment of any sort as long as it is in compliance with and any other written domestic law, international norms and standards.

ISSUE 6:

Further information on measures taken by the Government to foster, embrace and celebrate a diverse society, inclusive of LGBT+ people

22. The fundamental freedoms of all Malaysians are guaranteed and protected among others under Articles 5, 8 and 10 of the Federal Constitution. Therefore, like all Malaysians, the rights of LGBT+ are well guaranteed and enshrined under the Federal Constitution. There is no policy that discriminates or denies LGBT+ access to education, healthcare, jobs and other opportunities.

23. The right to life under Article 5(1) of the Federal Constitution is the foundational fundamental right upon which depriving a person of this right renders his other rights under the Federal Constitution as illusory or unnecessarily restrained. To this end, the said Article 5(1) guarantees that no person shall be deprived of his life and personal liberty save in accordance with law.

24. Article 8(1) of the Federal Constitution guarantees equality before the law and equal protection of the law to all persons. It guarantees fairness in all forms of State action in the sense that when any State action is challenged as violating a fundamental right, such as the right to life or personal liberty under Article 5(1), Article 8(1) will at once be engaged (*Tan Tek Seng v Suruhanjaya Perkhidmatan Pendidikan & Anor* [1996] 1 MLJ 261).

25. Therefore, in Malaysia, these are amongst the rights guaranteed by the Federal Constitution that relates to the right to express one's view and to live according to the lifestyle of one's choosing. Nonetheless, such right is exercisable subject to the laws of the country. If certain laws are breached in the exercise of such right, the appropriate authorities will carry out the necessary investigations in accordance with the laws.

26. These constitutional guarantees have been incorporated into our domestic legal framework which allows for its enforcement, ensuring that any case of infringement of human rights is subjected to thorough investigation and remedy.

27. Both traditional and electronic media in Malaysia are independent, providing human rights defenders and CSOs an open and free platform.

28. Additionally, the Government is undertaking in-depth review of a number of legislation such as the Security Offences (Special Measures) Act 2012 (SOSMA), Prevention of Crime Act 1959 (POCA), Prevention of Terrorism Act 2015 (POTA), Sedition Act 1948, Peaceful Assembly Act 2012 and the Printing Press and Publications Act 1984 in the endeavour to ensure access to transparent and reliable information.

CONCLUSION

29. The Government of Malaysia submits that the action taken by the Malaysian authorities against Mr. Numan Afifi was pursuant to Malaysian domestic law, which measures are taken in light of its sovereign responsibility within its territory, as recognized by international law in view of protecting national security, public order, moral, rights and freedom of others. These measures were exercised carefully taking into consideration all the Government's obligations domestically and internationally.

30. The Government reiterates its commitment to fulfilling its obligations in promoting and protecting human rights. Notwithstanding, there is no one size fits all human rights policy and realization of the human rights agenda must take into account national contexts. It is the Government's responsibility to ensure that the religious and cultural sensitivities in Malaysia are equally respected.

31. The Government of Malaysia requests the foregoing responses and observations be submitted to the kind attention of the Human Rights Council.
