

**Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on the situation of human rights defenders**

REFERENCE:  
AL MYS 2/2017

28 March 2017

Excellency,

We have the honour to address you in our capacities as 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 Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 25/2, 32/32 and 25/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the conviction of Ms. **Lena Hendry**, a former program manager at Pusat KOMAS and human rights defender, for screening a human rights documentary back in 2013.

Pusat KOMAS is a non-governmental organization established in 1993, with the sole purpose of using creative media to promote human rights causes in Malaysia.

On the evening of 3 July 2013, Pusat KOMAS together with another organization, organized a parliamentary screening and a private screening of "No Fire Zone: The Killing Field of Sri Lanka", a documentary on the last stages of the civil war in Sri Lanka, directed by the British director Callum Macrae. During the private screening, approximately 30 officials from the Home Ministry, Immigration Department and the police arrived at the venue and stopped the screening. Three KOMAS representatives, including Ms. Hendry were arrested and charged with violating section 6(1) (b) of the Film Censorship Act (2002) for holding the "No Fire Zone: The Killing Field of Sri Lanka". Ms. Hendry subsequently challenged the constitutionality of sections 6(1) (b) and 6(2)(a) of the 2002 Film Censorship Act, which she argued imposed an unreasonable restriction on her right to freedom of expression as guaranteed by article 10(1) (a) of the Federal Constitution. On 10 April 2014, the High Court dismissed the constitutional challenge. Ms. Hendry was acquitted in 2015, against which the Prosecutor subsequently filed an appeal.

Concerns about the criminal prosecution of Ms. Lena Hendry were raised in three previous joint communications by Special Procedures on 12 July 2013 (MYS 6/2013); 26 September 2013 (MYS 10/2013); and on 5 May 2014 (MYS 3/2014). We thank your Excellency's Government for the reply received to MYS 6/2013 and MYS 10/2013. We regret that no reply has been received to the latest communication, MYS 3/2014.

According to the new information received:

On 21 February 2017, Ms. Hendry was convicted by the Kuala Lumpur Magistrate's Court for the "circulation, distribution, display, production, sale, hire or possession" of film material that the government-appointed Board of Censors had not approved. The penalty for this crime is up to three years imprisonment or fine of up to RM 30,000 (approximately USD 7,200).

On 22 March 2017, Ms. Hendry was sentenced to a fine of RM 10,000 (approximately USD 2,260).

We express grave concern at the conviction and sentencing of Ms. Hendry on the basis of provisions in the Film Censorship Act Law that are in clear violation of international human rights standards on freedom of expression. We reiterate our concern that this form of judicial harassment has a chilling effect on public debate, human rights advocacy and the civic space in Malaysia, and may negatively affect the work of NGOs defending human rights.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

It is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. We would therefore be grateful for your observations on the following matters:

1. Please provide any additional information and comment you may have on the above-mentioned allegations.
2. Please provide information about how the conviction of Ms. Lena Hendry is compatible with Malaysia's obligations under international human rights law.
3. Please provide information about how the aforementioned provisions of the Film Censorship Act are compatible with Malaysia's obligations under international human rights law, in particular with standards on the rights to freedom of opinion and expression.
4. Please indicate what measures have been taken to ensure that human rights defenders in Malaysia are able to carry out their legitimate work in a safe and enabling environment without fear of threats or acts of intimidation and harassment of any sort.

We would appreciate receiving a response within 60 days.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

David Kaye

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

Maina Kiai

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

Michel Forst

Special Rapporteur on the situation of human rights defenders

## **Annex**

### **Reference to international human rights law**

In connection with above alleged facts and concerns, we would like to appeal to your Excellency's Government to take all necessary steps to secure the right to freedom of opinion and expression and freedom of association in accordance with fundamental principles as set forth in articles 19 and 20 of the Universal Declaration of Human Rights.

Regarding sanctions, including severe criminal sanctions and deprivation of liberty, we would like to recall the recommendations made by the Special Rapporteur on freedom of opinion and expression and the Special Rapporteur in the field of cultural rights to distinguish between a) expression that constitutes a criminal offence; (b) expression that is not criminally punishable but may justify a civil suit or administrative sanctions; and (c) expression that does not give rise to criminal, civil or administrative sanctions but still raises a concern in terms of tolerance, civility and respect for the rights of others (A/66/290, para. 18; A/HRC/23/34, para. 31). What may be morally objectionable (from one point of view) may not necessarily be legally inadmissible or condemnable. Criminal sanctions should be the very last resort measures only, to be applied in strictly justifiable situations. In this regard, we would like to draw your Excellency's Government attention to a particularly useful suggestion in the Rabat Plan, to use a six-part threshold test for those expressions that are criminally prohibited, implying an analysis of the context, speaker, content or form (which implicitly also refers to "the form of art"), extent of the speech, and likelihood, including imminence (A/HRC/22/17/Add.4).

In addition, we would like to refer to Human Rights Council resolution 24/5 in which the Council "[r]eminds States of their obligation to respect and fully protect the right of all individuals to... associate freely, online as well as offline, including in the context of elections, and *including persons espousing minority or dissenting views or beliefs, human rights defenders*, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the right to freedom of association are in accordance with their obligations under international human rights law" (OP2, emphasis added).

Finally, we would like to refer your Excellency's Government to the fundamental principles set forth in 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, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms. Article 6 ( para. b and c) of the Declaration provides that everyone has the right to publish, impart or disseminate views, information and knowledge on all human rights and fundamental freedoms, as well as to

hold opinions on the observance of all human rights and fundamental freedoms and to draw public attention to those matters.