

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; the Special Rapporteur on the situation of human rights defenders; the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity and the Working Group on the issue of discrimination against women in law and in practice

REFERENCE:
AL MYS 2/2019

10 May 2019

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; Special Rapporteur on the situation of human rights defenders; Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity and Working Group on the issue of discrimination against women in law and in practice, pursuant to Human Rights Council resolutions 34/18, 32/32, 34/5, 32/2 and 32/4.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning investigations into the organisers of a women's day march in Kuala Lumpur under the Sedition Act, and the summoning for questioning of LGBT+ human rights defender **Mr. Numan Afifi** in connection with his participation in the 40th session of the Human Rights Council in Geneva.

Mr. Numan Afifi is a human rights defender who advocates for LGBT+ rights in Malaysia. He is the President of PELANGI Campaign, an organisation which works in bringing LGBT+ awareness to the public and mobilising grassroots action among its community, and has worked with the Coalition of Malaysian NGOs (COMANGO) during Malaysia's Universal Periodic Review (UPR) process.

According to the information received:

On 9 March 2019, hundreds of people participated in a march in Kuala Lumpur to commemorate International Women's Day. Participants called for a number of reforms, including an end to violence and discrimination on the basis of gender, sexual orientation and gender identity. After the march, Mr. Mujahid Yusof Rawa, the Minister in the Prime Minister's Department for Religious Affairs, stated "*I am very shocked with the actions of certain parties... that misused democratic space in order to defend things that are wrong from the point of view of Islam,*", an apparent reference to the participation of LGBT+ groups in the march. Media outlets also reported on the LGBT+ presence disproportionately and in a negative light.

On 14 March 2019, several organisers of the march were informed by police that they would be summoned for questioning under section 4(1) of the Sedition Act 1948 and section 9(5) of the Peaceful Assembly Act 2012. If convicted under

section 4(1) of the Sedition Act, the organisers could face three years' imprisonment, a RMS 5,000 fine, or both. The charges against the organisers under the Peaceful Assembly Act relate to allegations that they did not provide police with the required 10 days' notice for the march, an allegation the organisers have reportedly denied on grounds of having met with police on 25 February 2019, giving their names and briefing them on the proposed route.

On 14 March 2019, in Geneva, Mr. Numan Afifi made a statement in the Human Rights Council on behalf of 12 Malaysian organisations working on sexual orientation and gender identity. The statement related to the outcome of Malaysia's UPR and raised concerns over Malaysia's rejection of a number of recommendations on sexual orientation and gender identity. It also mentioned sensationalised reporting from media and comments from politicians regarding LGBT+ participation during the women's march on 9 March 2019.

On 16 April 2019, Mr. Afifi was summoned for interrogation by Inspector [REDACTED] of the Classified Criminal Investigation Unit (D5) and asked to present himself to the Royal Malaysia Police (PDRM) headquarters in Bukit Aman on 26 April 2019.

On 17 April 2019, pro-government groups posted on social media that Mr. Afifi had spread incorrect information during his statement at the Human Rights Council and requested him to retract it. On 21 April 2019, the Islamic Development Department of Malaysia (JAKIM), a unit of the Religious Affairs Ministry under the Prime Minister's Office, released a statement denying claims made by Mr. Afifi and aligning itself with statements made by the Prime Minister to the effect that the lifestyles of LGBT+ persons will not be accepted in Malaysia.

On 26 April 2019, Mr. Afifi presented himself to the Royal Malaysia Police (PDRM) headquarters in Bukit Aman, where he was questioned by Inspector [REDACTED] for approximately one hour. He was permitted to have a lawyer present. During his questioning, no questions were asked about the content of the statement which he made on 14 March 2019 at the Human Rights Council. Rather, he was questioned about a separate statement which was read before his own by a representative of the Alliance for Defending Freedom, and which condemned Malaysia's practices regarding sexual orientation and gender identity. Towards the end of the interview, Mr. Afifi was asked "do you think you have said or done anything that could make you criminally liable or be charged", however his lawyer stated that this question would only be answered in court, if necessary.

We wish to express our serious concerns over alleged investigations into organisers of the International Women's Day march in Kuala Lumpur under the Sedition Act 1948 and the Peaceful Assembly Act 2012. The use of sedition legislation in order to criminalise the rights to freedom of expression and peaceful assembly would constitute an unwarranted and disproportionate attack on these rights and may have severe

repercussions on civic space in the country. Indeed, concerns over the use of the Sedition Act to curtail freedom of expression have been raised in a number of previous communications sent by Special Procedures mandate holders, most recently on 28 December 2018, case no. MYS 6/2018. We regret that no response was received to this letter. We urge your Excellency's Government to stand by the commitments it has made in its election manifesto ("Buku Harapan: Rebuilding Our Nation, Fulfilling Our Hopes," published in 2018) and in front of the UN General Assembly in September 2018 to repeal the Sedition Act 1948.

In addition, while international human rights standards do permit the imposition of a notice period in certain cases for peaceful assemblies, such notice must not act as a de facto requirement for authorisation, and failure to notify authorities of an assembly does not render that assembly unlawful. We further express worries over alleged statements made by Mr. Mujahid Yusof Rawa regarding the "misuse of democratic space", and reassert that the rights to freedom of expression and peaceful assembly belong to all persons, regardless of their gender, sexual orientation and gender identity. We additionally note that such statements, especially when made by public officials, may foster a climate in which discrimination and violence based on gender, sexual orientation and gender identity are condoned and perpetrated with impunity.

We wish to express further concerns over alleged intimidation and threats of criminalisation against Mr. Afifi in relation to his participation the 40th session of the Human Rights Council in Geneva and note that this may constitute an act of reprisal for his cooperation with UN human rights mechanisms. Acts of reprisal against human rights defenders for their interaction with UN human rights mechanisms are condemned in the strongest possible terms. We underscore that the participation of human rights defenders and civil society organisations is vital for the ability of UN human rights mechanisms to carry out their mandated functions, and acts of reprisal seriously jeopardise these interactions.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

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.

As 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/or any comment(s) you may have on the above-mentioned allegations.

2. Please provide 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.
3. Please provide information regarding the reasons for summoning Mr. Afifi for questioning. Please also provide any available information regarding any investigations into Mr. Afifi which may be ongoing.
4. Please provide 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.
5. Please provide information on what measures have been put in place to ensure that 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.
6. Please provide further information on measures taken by your Excellency's Government to foster, embrace and celebrate a diverse society, inclusive of LGBT+ people.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

In light of the allegations of acts of reprisals against Mr. Numan Afifi for speaking about human rights violations at the UN, we reserve the right to share this communication – and any response received - with other UN bodies or representatives addressing intimidation and reprisals for cooperation with the UN in the field of human rights, in particular the senior United Nations official appointed by the Secretary-General to lead efforts within the United Nations system to address this issue.

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.

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

Clement Nyaletsossi Voule

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

Michel Forst

Special Rapporteur on the situation of human rights defenders

Victor Madrigal-Borloz

Independent Expert on protection against violence and discrimination based on sexual
orientation and gender identity

Ivana Radačić

Chair-Rapporteur of the Working Group on the issue of discrimination against women in
law and in practice

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw your attention to articles 2, 19 and 20 of the Universal Declaration of Human Rights (UDHR) which provide that everyone is entitled to the rights in the Declaration, without distinction of any kind and that everyone has the right to freedoms of expression and peaceful assembly.

We would like to draw the attention of your Excellency's Government to Human Rights Council resolution 12/16, calling on States to recognise the exercise of the right to freedom of opinion and expression as one of the essential foundations of a democratic society. Any limitation to the right to freedom of expression must meet the criteria established by international human rights standards, such as article 29 of the UDHR. Under these standards, limitations must be determined by law and must conform to the strict test of necessity and proportionality, must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated.

We wish to also draw your attention to the Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies (A/HRC/31/66) which states that notification procedures for the organising of a protest should not function as de facto requests for authorisation (para. 21), that failure to notify the authorities of an assembly does not render it unlawful (para. 23), and that organisers should not be held responsible for unlawful behaviour of others during an assembly (para. 26), this without determination on whether the outlawing of any specific behaviour is in and of itself compatible with international human rights standards.

We would also like to refer to Human Rights Council Resolution 22/6, which urges States to acknowledge publicly the important and legitimate role of human rights defenders in the promotion of human rights, democracy and the rule of law (OP 5).

In addition, Article 4 (o & p) of the United Nations Declaration on the Elimination of Violence against Women states that States should recognise the important role of the women's movement and non-governmental organisations world-wide in raising awareness and alleviating the problem of violence against women, and should, moreover, facilitate and enhance the work of the women's movement and non-governmental organisations and cooperate with them at local, national and regional levels.

We would like to refer to Human Rights Council Resolution 24/24, which calls on States to ensure adequate protection from intimidation or reprisals for cooperation with the United Nations, its mechanism and representatives in the field of human rights; and to take all appropriate measures to prevent the occurrence of intimidation or reprisals, including, where necessary, by adopting and consequently implementing specific legislation and policies and by issuing appropriate guidance to national authorities in

order to effectively protect those who seek to cooperate, cooperate or have cooperated with the United Nations, its representatives and mechanisms in the field of human rights from any act of intimidation or reprisal; and to Human Rights Council resolution 22/6, which provides for the right 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”.

We also refer to Human Rights Council resolution 12/2, which condemns all acts of intimidation or reprisal by Governments and non-State actors against individuals and groups who seek to cooperate or have cooperated with the United Nations, its representatives and mechanisms in the field of human rights, and urges Governments to prevent and refrain from all acts of intimidation or reprisal against those who seek to cooperate or have cooperated with the United Nations, its representatives and mechanisms in the field of human rights, or who have provided testimony or information to them. Moreover, the 2015 report of the Secretary-General on cooperation with the United Nations, its representatives and mechanisms in the field of human rights pursuant to Human Rights Council resolution 12/2 (A/HRC/30/29) reiterates the Secretary-General’s firm position that “any act of intimidation or reprisal against individuals or groups for their engagement with the United Nations, its mechanisms and representatives in the field of human rights is completely unacceptable and must be halted, immediately and unconditionally” (para. 47).

In connection with the above alleged facts and concerns 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 Recognised 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 realisation 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.

Furthermore, we would like to bring to the attention of your Excellency’s Government the following provisions of the Declaration:

- article 5 (a) and (b), which underscore the rights to meet or assemble peacefully and to form, join and participate in non-governmental organisations, associations or groups;
- article 6 (b) and (c), which reiterate the right to freely publish, impart or disseminate information and knowledge on all human rights and fundamental freedoms, and to study, discuss and hold opinions on the observance of these rights;

- article 9(4), which states that everyone has the right to unhindered access to and communication with international bodies with general or special competence to receive and consider communications on matters of human rights and fundamental freedoms;
- article 12 (2) and (3), which provide that the State shall take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.

We further would like to draw your attention to the principles of equality and non-discrimination as part of the foundations of the rule of law and human rights. Sexual orientation and gender identity are prohibited grounds of discrimination under international law. Under article 1 of the Universal Declaration of Human Rights, '[a]ll human beings are born free and equal in dignity and rights', and '[e]veryone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status' (article 2 of the Declaration).