

Mandates of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity; the Working Group on Arbitrary Detention; the Special Rapporteur on freedom of religion or belief; the Special Rapporteur on violence against women, its causes and consequences and the Working Group on discrimination against women and girls

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Excellency,

We have the honour to address you in our capacity as Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity; Working Group on Arbitrary Detention; Special Rapporteur on freedom of religion or belief; Special Rapporteur on violence against women, its causes and consequences and Working Group on discrimination against women and girls, pursuant to Human Rights Council resolutions 41/18, 42/22, 40/10, 41/17 and 41/6.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **threats, acts of intimidation and persecution against Ms Nur Sajat, a trans woman, and the ongoing harassment of her family members in Malaysia.**

According to the information received:

Persecution of Ms. Nur Sajat

Ms Nur Sajat, a trans woman, is a blogger, social media influencer and cosmetics entrepreneur, who has experienced bullying, including on social media platforms, due to speculation about and scrutiny of her gender identity. This has included continuous harassment and intimidation from State and non-state actors, including calling for disclosure of personal information such as her identification card and childhood photos; and pressure by online groups on social media platforms for her to “change” or “return to the right path”; hateful online/social media comments; name-calling; and calls for investigations by radical Islamic advocacy groups.

In 2020, Ms Nur Sajat was charged in the Shah Alam Syariah High Court with cross-dressing during a religious function in 2018 and during a solat hajat (prayer) event whilst on pilgrimage to Mecca in 2020. She is charged under Section 10 (a) of the Syariah Crimes (State of Selangor) Enactment 1995, which outlines the offence of insulting Islam or causing Islam to be insulted either by mocking or blaspheming the faith and its associated practices and rituals either in a written, pictorial or photographic form. The offence provides for a sentence not exceeding RM5,000 or imprisonment not exceeding three years, or both, if convicted.

According to the charge sheet, Ms Nur Sajat has caused the religion of Islam to be ridiculed by dressing up as a woman wearing a *baju kurung* at a Yasin recitation held in the premises of her boutique. Also, the charge sheet described that in 2020, she posted on her social media accounts photos wearing a white women's prayer garb in Mecca, and a black outfit in Medina.

The media postings attracted more than 5,000 comments, mostly condemning her decision to wear women's clothes. It also led to a media comment by the then Minister in the Prime Minister's Department, Datuk Seri Mujahid Yusof, that Ms Sajat's actions could tarnish Malaysia-Saudi Arabia ties as it is an offence for a man to dress like a woman in the Islamic kingdom. He threatened to ban Ms Sajat's social media accounts on these grounds saying, "*I will take firm steps over the action of [redacted], who uploaded photos and video of him wearing women's prayer garments when in Mecca which circulated widely on the social media and led to discomfort among Muslims,*" referring to Ms Sajat's name that is reportedly registered with the National Registration Department.

The Minister also called on the Internet regulator, Malaysian Communications and Multimedia Commission (MCMC), to block Ms Sajat's social media account.

The Federal Territory Mufti's Office obtained the details of her identification card and birth certificate. Subsequently, it revealed her name and identity assigned at birth to the public, fuelling speculation about her gender identity and a sense of impunity over the doxing of her legal documents by online users. The disclosure of her name and gender in her identity documents without her consent had a wide impact. In particular and most visible was the change in how some media channels reported news related to Ms Sajat. For instance, her name given and assigned sex at birth were widely reported in the media.

On 6 January 2021, Ms Nur Sajat was called in for questioning by the Selangor Islamic Religious Department (JAIS) following reported complaints made to JAIS accusing Ms Sajat of insulting Islam, including for wearing a hijab at a religious charity event that she organized in 2018 where she donated funds to a religious school "posing as a woman." That same afternoon, she was taken in front of the Shah Alam Syariah court, where she pleaded not guilty to the offence. However, delay in court proceedings and bureaucratic process delayed the bail process, as a result of which she was not able to pay her bail. The police subsequently detained her for a night.

Later that same day (6 January 2021), a video of Ms Sajat appearing in distress while being interrogated by JAIS went viral on social media. In the video, she is seen crying and in handcuffs where she says that she was summoned by the religious authority over a report that was filed in 2018 accusing her of allegedly insulting Islam.

On 7 January 2021, Ms Sajat was released from police custody on payment of a bail amount of RM3,000.

On 23 February 2021, the date set by the court for the next hearing, Ms Sajat failed to appear in court, following which the Shah Alam Syariah High Court issued an arrest warrant against Ms Sajat “for failing to attend proceedings scheduled for the day”.

On 25 February 2021, the JAIS deployed about 122 personnel and enforcement officers to find and arrest Ms Sajat.

On 3 March 2021, the Selangor State Police reportedly told the media that it is willing to help JAIS trace the whereabouts of Ms Sajat, adding that JAIS had yet to contact the police for assistance officially.

Harassment of Ms Sajat’s family

While Ms Sajat has not yet been taken into custody, her family in Malaysia have become a target for harassment by authorities and followers from radical Islamist groups. On 27 February 2021, the police entered the house of Ms Sajat’s parents, searched, and questioned her parents about her whereabouts. The police reportedly searched the house again on 28 February 2021.

While we do not wish to prejudge the accuracy of these allegations, we express grave concern at the alleged persecution of Ms Sajat due to her gender identity and gender expression. In particular, we remain concerned about the hate campaigns, threats and incitement to violence in the name of religion by State and non-state actors against Ms Sajat and her family. In this regard, we note that there has been no investigation or statement from the authorities condemning such open incitement to violence, discrimination and hatred.

These events are reportedly taking place in the context of increased harassment, intimidation and violence against lesbian, gay, bisexual, trans and gender diverse (LGBT) persons in Malaysia. Discriminatory attitudes towards LGBT persons, pressure by conservative religious groups or political parties have allegedly generated hateful rhetoric that has continued to affect the physical security and safety of LGBT persons and their ability to exercise fundamental freedoms and rights. LGBT people across the country remain vulnerable to violence, harassment, intimidation, including arbitrary arrests and detention and unlawful searches by law enforcement personnel and public order officers and, in some cases, death threats by extremist religious groups.

Protection of LGBT individuals and their families

We would like to remind your Excellency’s Government that everyone has the right to life, liberty and security of persons as reflected, inter alia, under articles 3 and 14 (1) of the Universal Declaration of Human Rights (“UDHR”), article 4 of the Declaration on the Elimination of Violence against Women, under which State

authorities bear the obligation to prevent, investigate and punish hate-motivated violence against women.

Also, the principles of equality and non-discrimination are part of the foundations of the rule of law and human rights. Under articles 1 and 2 of the UDHR, “[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”. This principle is reaffirmed by other human rights treaties, including Article 2 (f) of the Convention on the Elimination of All Forms of Discrimination against Women (acceded to by Malaysia on 5 July 1995). This right is of universal nature and applies to everyone, irrespective of sexual orientation or gender identity. Article 13 of the Convention further includes the obligation of State Parties to take all appropriate measures to eliminate discrimination against women in all areas of social life.

In February 2018, the Committee on the Elimination of Discrimination against Women expressed concerns at reports of harassment of, and discrimination and attacks against lesbian, bisexual and transgender women and intersex persons by State authorities, including the police, members of religious institutions and private citizens. It noted with concern that their situation is exacerbated by the discriminatory laws and policies of the State party and recommended that Malaysia amend all laws that discriminate against lesbian, bisexual and transgender women and intersex persons, including the provisions of the Penal Code and Syariah laws that criminalize same-sex relations between women and cross-dressing; apply a policy of zero tolerance with regard to discrimination and violence against lesbian, bisexual and transgender women and intersex persons, including by prosecuting and adequately punishing perpetrators; expedite measures to discontinue all policies and activities aimed at “correcting” or “rehabilitating” lesbian, bisexual and transgender women and intersex persons; and undertake awareness-raising measures to eliminate discrimination and negative stereotypes against LBT women and intersex persons (CEDAW/C/MYS/CO/3-5, para. 47 and 48).

The United Nations High Commissioner for Human Rights expressed his alarm at violence by religious extremists directed at individuals, especially on the grounds of their gender identity, due to gender inequality and power imbalances within wider society (A/HRC/19/41, para. 21). In light of this, he recommended that States investigate promptly all serious incidents of violence perpetrated against individuals because of their actual or perceived sexual orientation or gender identity, whether carried out in public or in private by State or non-State actors, and hold perpetrators accountable, and establish systems for the recording and reporting of such incidents (*Ibid.*, para. 84 (a). See, also, A/HRC/29/23, para. 78 (b)).

In her country visit report on Malaysia, the Special Rapporteur on Cultural Rights noted the growing concern at the Islamization and Arabization of the society and polity based on an increasingly rigid and fundamentalist interpretation of Islam, which has reportedly had deleterious consequences for the cultural rights of LGBT and

intersex persons. She recommended that Malaysia take immediate and effective measures to end hostility and intolerance on the basis of sexual orientation and gender identity and provide meaningful protection to LGBTI people against all forms of stigmatization, violence and discrimination. (A/HRC/40/53/Add.1, para. 72 and 93(b))

Freedom of religion or belief of LGBT persons

We would like to recall that everyone, regardless of one's race, religion, ethnic origin, and gender, has the right to freedom of thought, conscience and religion or belief, which includes the right to manifest one's religion or belief in teaching, practice, worship and observance, either alone or in community with others, and in public or private as provided in Article 18 of the UDHR. Ms Sajat cannot be discriminated against and be restricted in the exercise of her right to freedom of religion or belief solely based on her gender identity. As provided in Article 29 (2) of the UDHR, in the exercise of one's rights and freedoms, one shall be subject only to such limitations as 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, none of which is negatively impacted in regard to the activities of Ms Sajat.

Furthermore, as a universal human right, the right to freedom of religion or belief protects primarily individuals, it does not protect religions or beliefs per se. Many of the communications under the mandate of freedom of religion or belief concern cases in which victims of human rights violations suffer from aggravated discrimination with regard to their religious, ethnic, sexual orientation or gender identity. The Special Rapporteur on freedom of religion or belief rejected any claim that religious beliefs can be invoked as a legitimate "justification" for violence or discrimination on the basis of their sexual orientation or gender identity (A/HRC/43/48, para. 70). In addition, he recommended States: (i) reaffirm that traditional, historical, religious or cultural attitudes must not be used to justify violation of human rights, (ii) combat all forms of violence and coercion perpetrated against LGBT persons justified with reference to religious practice or belief, ensure their personal safety and liberty, and hold accountable perpetrators of such violence and ensure victims obtain redress, and (iii) publicly condemn expressions of hostility against, and the perpetuation of harmful gender stereotypes of LGBT persons, including by religious figures or "justified" with reference to religious belief; and instead express active support for gender equality (*Ibid.*, paras. 77 (a) (i), (iv), (vii),).

Preventing incitement to violence and hate speech

The right to freedom of opinion and expression is guaranteed under Article 19 of UDHR, which affirms that everyone has the right to hold opinions without interference and to seek, receive and impart information and ideas of all kinds through any media and regardless of frontiers. Ms Sajat should not be restricted her freedom of expression and her social media account should not be blocked.

In relation to hateful online or social media comments or any other statements or speeches that incite hatred or violence against Ms Sajat, we would like to stress that the State has an obligation to prohibit propaganda for war and advocacy of national, racial or religious hatred that constitutes incitement to discrimination, violence or hostility. The Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence provides further guidance on discharging state obligations in this regard (A/HRC/22/17/Add.4). Only speech that reaches a very high threshold based on a contextual assessment using the six-part threshold test identified by the Rabat Plan of Action should be prohibited. When such a speech occurs, it requires a robust response from the authorities to reject the dissemination of hatred that incites discrimination or violence. As highlighted in the Joint Statement from the Special Rapporteur on freedom of opinion and expression, together with regional mechanisms on freedom of expression, “Politicians and other leadership figures in society should refrain from making statements which encourage or promote racism or intolerance against individuals on the basis of protected characteristics, including race, nationality or ethnicity”.¹

In addition, Human Rights Council Resolution 16/18 on Combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence and violence against, persons based on religion or belief, noted the call on States to speak out against intolerance, including advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence; adopt measures to criminalize incitement to imminent violence based on religion or belief; and understand the need to combat denigration and negative religious stereotyping of persons, as well as incitement to religious hatred, by strategizing and harmonizing actions at the local, national, regional and international levels through inter alia, education and awareness-building.

Finally, we would like to refer to the report of the Special Rapporteur on violence against women, its causes and consequences, on online violence (A/HRC/38/47), in which she recommends that States, in accordance with the principle of due diligence, address new forms of online violence against women and girls as human rights violations that are interrelated with the broader framework of discrimination against women and girls. She further explains that “human rights and women’s rights protected offline must also be protected online and should fully integrate the right to live free from emerging forms of online and ICT-facilitated violence against women, while respecting the right to freedom of expression and the right to privacy and data protection”.

Right to Privacy

We would also like to remind your Excellency’s Government that under article 12 of UDHR, “No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

¹ <https://www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=19915&LangID=E> See also para 18 of the report A/74/486 on the specific role played by leaders in society in this context.

The United Nations High Commissioner for Human Rights expressed concern that the use of information and communications technologies could result in arbitrary or unlawful interference in women's privacy, for instance, in targeted attacks on women's privacy through the publication of personal data and information on the Internet ("doxing") (A/HRC/35/9, para. 19). Especially, trans women may be at greater risk and may experience a particularly severe form of online violence, which includes online threats and harassment and gross and demeaning breaches of privacy (Ibid., para. 35-36). In light of this, he recommended that States and business enterprises act to prevent and combat online violence against women. Also, they should collect comprehensive data on the extent and nature of online violence against women and conduct further research to understand and address its underlying causes and how best to combat it (Ibid., para. 59).

Right to liberty and right to legal assistance

We would also like to recall the right to liberty and the absolute prohibition of arbitrary detention as per article 9 of the UDHR. We further note that, as per well-established jurisprudence of the Working Group on Arbitrary Detention, the detention on discriminatory grounds, including sexual orientation and gender identity, may be arbitrary.

We further recall that in its 2019 annual report, the Working Group on Arbitrary Detention, which states that the right to legal assistance is one of the key safeguards in preventing the arbitrary deprivation of liberty. This right applies from the moment of deprivation of liberty and across all settings of detention, including criminal justice. It must be ensured from the moment of deprivation of liberty and, in the context of the criminal justice setting, prior to questioning by the authorities. All persons deprived of their liberty must be made aware of their right to legal assistance from the moment of detention and should have access to legal aid services if they cannot afford such assistance themselves. The right to legal assistance is also essential to preserve the right to fair trial, as it safeguards the principle of the equality of arms envisaged in articles 10 and 11 (1) of the UDHR.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned person(s) in compliance with international instruments.

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 be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.

2. Please provide information on the legal and factual grounds for the investigation of Ms Nur Sajat by the Selangor Islamic Religious Department as well as her detention and explain how these measures are compatible with Malaysia's international human rights obligations.
3. Please provide information on access to the legal representation of Ms Nur Sajat in the context of these charges, as well as the bail hearing she appeared at.
4. Please provide information on what steps have been taken to guarantee Ms Nur Sajat's right to freedom of religion or belief without discrimination and harassment by the non-state actors and State agents.
5. Please provide information about the measures taken by your Excellency's Government to protect Ms Nur Sajat and her family from further intimidation, harassment or pressure and to ensure their safety.
6. Please provide information on any investigation regarding the hate campaign and incitement to violence by State and private actors against Ms Nur Sajat and her family. What measures are planned or implemented to combat the growing pattern of incitement to violence?

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 responsible of the alleged violations.

We would like to inform your Excellency's Government that after having transmitted an allegation letter to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such letters in no way prejudge any opinion the Working Group may render. The Government is required to respond separately for the urgent appeal procedure and the regular procedure.

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.

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

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