

Mandates of the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the human rights of migrants and the Special Rapporteur on minority issues

Ref.: AL MYS 8/2021
(Please use this reference in your reply)

3 December 2021

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the human rights of migrants and Special Rapporteur on minority issues, pursuant to Human Rights Council resolutions 43/16, 43/4, 43/6 and 43/8.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **alleged threats and harassment of human rights defender Mr. Zafar Ahmad Abdul Ghani**, in response to his defence of the human rights of refugees and asylum seekers, including the rights of the Rohingya minority.

Mr. **Abdul Ghani** is a human rights defender and President of the Myanmar Ethnic Rohingya Human Rights Organization Malaysia (MERHRM), a non-profit organization based in Kuala Lumpur. As part of this work, Mr. Abdul Ghani advocates for the human rights of refugees and asylum seekers, combating human trafficking, the rights of the Rohingya minority, and promotes the establishment of democracy in Myanmar. Mr. Abdul Ghani sought refuge in Malaysia in 1992 and was recognized as a refugee in 2004.

According to the information received:

On 16 April 2020, the Malaysian Navy allegedly denied entry to a boat with 206 Rohingya people into Malaysia, due to the COVID-19 pandemic. Following this, Mr. Abdul Ghani was contacted by local and international media for comments. On 21 April 2020, MERHRM issued a press statement in response to this incident, requesting the United Nations, ASEAN and world leaders to protect the rights of Rohingya minority and prosecute human traffickers in respective ASEAN countries. On the same day, the statement was posted on an unknown individual's Facebook account, who allegedly urged the Malaysian Government to be stern with the Rohingya community and urged others to attack Mr. Abdul Ghani's Facebook account. The account also reportedly stated that Mr. Abdul Ghani's phone number was available.

On the same day, a picture of Mr. Abdul Ghani was uploaded on another unknown individual's Facebook account, claiming that Mr. Abdul Ghani was demanding full citizenship rights for Rohingya living in Malaysia. Mr. Ghani's social media account received almost 20,000 comments the same day, including threats and insults, including posts urging him and the Rohingya minority to leave Malaysia.

On the same day, an online petition was launched by unknown individuals, urging the Malaysian Government to send Mr. Abdul Ghani and all Rohingya minority back to Myanmar. On 22 April 2020, an open letter from Malaysian nationals was issued to MERHRM, demanding all Rohingya, including Mr. Abdul Ghani, be expelled back to Myanmar.

Since then, Mr. Abdul Ghani has reportedly received further threats and harassment, including death threats and threats of physical violence through phone calls, WhatsApp messages, SMS, Facebook and various other social media platforms. These attacks call for the killing and violent attack of Mr. Abdul Ghani, as well as for the Malaysian government to expel him and all Rohingya minority from Malaysia. Mr. Abdul Ghani's family have also reportedly received threats and insults, with threats that they will find him, his wife and children and kill them all, and made serious threats against his mother.

On 23 April 2020, Mr. Abdul Ghani and his wife lodged a report at the Gombak police station based on the threats and harassment they had been receiving online. They were reportedly instructed to meet the Investigation Officer at Setapak police station, where they were allegedly confronted by three unknown individuals regarding Mr. Abdul Ghani's alleged claim for Malaysian citizenship.

Mr. Abdul Ghani's and MERHRM's advocacy and community work has reportedly been increasingly affected following the harassment and threats against him. As a result of this harassment, he together with MERHRM's committee members have had to cease their efforts in assisting Rohingya who have been affected by the COVID-19 pandemic.

On 5 September 2021, Mr. Abdul Ghani reportedly received a call from an unknown individual, believed to be a Myanmar national based on his accent, who told him to be careful, as the Myanmar Military Intelligence is allegedly following him. The caller told Mr. Abdul Ghani to stay at home and not leave.

Additionally, following the death of human rights defender and Chair of the Arakan Rohingya Society for Peace and Human Rights (ARSPH) Mr. Mohib Ullah on 29 September 2021, in the Rohingya refugee camps in Bangladesh, Mr. Abdul Ghani has been receiving threats on social media platforms, urging him and Rohingya refugees in Malaysia to return to Myanmar. Although Mr. Abdul Ghani's name is not always referenced, he is referred to on social media as the "President or Rohingya Leader in Malaysia".

On 30 September 2021, the Sinar Harian Malaysian newspaper published an article on Mr. Ullah's assassination. The article received over 1.3k comments, reportedly mostly negative and many targeting Mr. Abdul Ghani. Allegedly, some comments included threats of violence, including that Mr. Abdul Ghani should be shot, or that he should take Mr. Ullah's place in the refugee camp where he was assassinated.

Without prejudging the accuracy of these allegations, we express our deep concern at the death threats, harassment and intimidation against human rights defender Mr. Abdul Ghani, which appear to be directly linked to his legitimate work as a human rights defender in Malaysia, working on the protection of the rights of refugees and asylum seekers, combating human trafficking, the rights of the Rohingya minority, and promoting the establishment of democracy in Myanmar. Furthermore, we express our concerns regarding the targeting of Mr. Abdul Ghani for the legitimate exercise of his right to freedom of opinion and expression, as well as of peaceful assembly and of association. We express further serious concerns at the threats and intimidation against Mr. Abdul Ghani's family members as well.

We also wish to express concern with regard to the online targeting of, smear campaigns and xenophobia against refugees and migrants. We are concerned that such actions heighten the vulnerability of refugees, migrants and certain minorities, given the precarity of their status, and could result in the normalisation of xenophobia and discrimination against refugees and migrants in Malaysia. As such, this could also potentially inhibit human rights defenders in Malaysia from carrying out their legitimate work regarding minority, refugee and migrant rights, due to potential retaliation.

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 be grateful for the observations of your Excellency's Government 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 the details, and where available the results, of any investigation, prosecution, and judicial or other inquiries, which may have been carried out in relation to the threats and harassment alleged in this case, in particular the outcome of the complaint filed by Mr. Abdul Ghani at the Gombak police station.
3. Please provide the full details of any protective measures put in place to ensure the physical and psychological security and integrity of Mr. Abdul Ghani and his family, including information as to the effectiveness of these measures and details of prior consultations conducted with Mr. Abdul Ghani and his family as to their application.

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

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.

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

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

Felipe González Morales
Special Rapporteur on the human rights of migrants

Fernand de Varennes
Special Rapporteur on minority issues

Annex

Reference to international human rights law

In connection with the above alleged facts and concerns, we would like to refer your Excellency's Government to articles 2, 7, 19 and 20 of the Universal Declaration of Human Rights (UDHR), which guarantee that every person is entitled to all the rights and freedoms set forth in the 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, guarantee that all are equal before the law and are entitled without any discrimination to equal protection of the law and the right to freedom of opinion and expression; including freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers, and freedom of peaceful assembly and association.

Moreover, we would like to draw your Government attention to the principles enunciated by Human Rights Council resolution 24/5, and in particular operative paragraph 2, which "reminds States of their obligation to respect and fully protect the [right] of all individuals to... associate freely, online as well as offline... including human rights defenders... 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".

We would like to draw the attention of your Excellency's Government to article 19 of the Universal Declaration of Human Rights (UDHR), which provides for the right to freedom of expression, as well as to the 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. This right applies online as well as offline. 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 also refer to Human Rights Council resolution 13/13, which urges States to put an end to and take concrete steps to prevent threats, harassment, violence and attacks by States and non-State actors against all those engaged in the promotion and protection of human rights and fundamental freedoms.

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.

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the UN Declaration on Human Rights Defenders:

- article 6 point a), which provides for the right to know, seek, obtain, receive and hold information about all freedoms;
- article 5 (b), which provides for the right to form, join and participate in non-governmental organizations, associations or groups;
- article 6 points b) and c), which provides for 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;
- and article 12, paragraphs 2 and 3, which provides 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.

Under international law, the right to freedom of expression extends to everyone, including all migrants regardless of their status. The rights to freedom of expression and freedom of association for migrants and migrants rights defenders is essential to express their needs, protect their right to life and defend their economic, social, cultural and other human rights. As emphasised by the Special Rapporteur on the human rights of migrants in his report on the right to freedom of association of migrants and their defenders, the work of migrants rights defenders and support from civil society organizations is crucial for migrants, particularly for those in an irregular situation or with vulnerabilities (A/HRC/44/42). Given the interconnected nature of human rights, restrictions on migrants' and their defenders' freedom of expression and association further hinder migrants' enjoyment of other rights. In this report, the Special Rapporteur also urged States to ensure that criminal justice laws are not misused to punish migration-related humanitarian acts or to harass civil society organizations that work with migrants.

Furthermore, the importance of the right to defend the human rights of migrants was recently reaffirmed in the report on principles and practical guidance on the protection of the human rights of migrants in vulnerable situations (A/HRC/37/34); according to principle 18, States must "respect and support the activities of human rights defenders who promote and protect the human rights of migrants".

We would like to also refer to the report of the Special Rapporteur on the situation of human rights defenders concerning defenders of people on the move (A/HRC/37/51), including migrants. In this report, the Expert noted that these defenders, many of whom are themselves people on the move, face a constellation of challenges, arising from both some of the disturbing features of global migration policy and the general trend towards the closing of civic space to human rights defenders. The Special Rapporteur called on States to enable people to promote and protect human

rights regardless of their immigration status; in particular, people on the move and those who defend their rights should be able to exercise, inter alia, their right to freedom of information, freedom of expression, freedom of association and freedom of assembly. As well as to ensure that people on the move and those who defend their rights have access to justice and to effective remedies through national courts, tribunals and dispute-settlement mechanisms, regardless of their immigration status; and to ensure that they are not threatened with or subject to arrest, detention or deportation when reporting crimes, labour rights violations, and other forms of human rights violations.

We would also like to recall General Recommendation 30 of the Committee on the Elimination of Racial Discrimination, in which the Committee recommends “to ensure that legislative guarantees against racial discrimination apply to non-citizens regardless of their immigration status”. Furthermore, the Committee states that governments should “take steps to address xenophobic attitudes and behaviour towards non-citizens, in particular hate speech and racial violence, and to promote a better understanding of the principle of non-discrimination in respect of the situation of non-citizens”; an “take resolute action to counter any tendency to target, stigmatize, stereotype or profile, on the basis of race, colour, descent, and national or ethnic origin, members of “non-citizen” population groups, especially by politicians, officials, educators and the media, on the internet and other electronic communications networks and in society at large”.

We would like to draw the attention of your Excellency's Government to the provisions set out in the Global Compact for Safe, Orderly and Regular Migration (A/CONF.231/3) that your Excellency adopted on 10 December 2018, which affirms in its Objective 17 d) the commitment of States to establish mechanisms to prevent, detect and respond to racial, ethnic and religious profiling of migrants by public authorities, as well as systematic instances of intolerance, xenophobia, racism and all other multiple and intersecting forms of discrimination in partnership with National Human Rights Institutions, including by tracking and publishing trends analyses, and ensuring access to effective complaint and redress mechanisms. In this respect, we would like to also refer your Excellency's Government to the Joint Guidance Note on the Impacts of the COVID-19 Pandemic on the Human Rights of Migrants, of the UN Committee on the Protection of the Rights of All Migrant Workers and Members of their Families and UN Special Rapporteur on the human rights of migrants.¹ In this Note, the Experts called on States to pro-actively prevent discrimination and scapegoating of individuals or groups of migrants. The Experts noted with concern xenophobic speeches or expressions associating the disease of COVID-19 with migrants or based on their ethnicity or if they are identified as nationals of a particular country. Minority communities, in particular, have faced attacks on individuals linked to fears about COVID-19.

Finally, we would also like to bring to your attention the international standards regarding the protection of the rights of persons belonging to minorities, in particular article 27 of the ICCPR and the 1992 UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, which refers to the obligation of States to protect the existence and the identity of minorities within their territories and to adopt the measures to that end (article 1) as well as to adopt the

¹ [Joint Guidance Note on the Impacts of the COVID-19 Pandemic on the Human Rights of Migrants.](#)

required measures to ensure that persons belonging to minorities can exercise their human rights without discrimination and in full equality before the law (article 4).