

**Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, A/HRC/20/27/Add.3, 19 June 2012**

**Malaysia: Alleged banning of the Lesbian, Gay, Bisexual and Transgender (LGBT) festival, harassment and questioning of organisers**

200. JAL 23/01/2012. Case no. MYS 11/2011.

State Reply: 24/04/2012.

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.

Excellency,

We have the honour to address you in our capacity 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 General Assembly resolution 60/251 and to Human Rights Council resolutions 16/4, 15/21 and 16/5.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning the alleged banning of the fourth annual Seksualiti Merdeka Lesbian, Gay, Bisexual and Transgender (LGBT) festival in Kuala Lumpur. Seksualiti Merdeka is a coalition of organizations, including the Malaysian Bar Council and Amnesty International Malaysia, working to promote the rights of LGBT individuals and communities in Malaysia.

According to the information received:

From 9 to 13 November 2011, a series of talks, workshop, performances and literary events were scheduled to take place as part of the fourth annual Seksualiti Merdeka festival in Kuala Lumpur. The purpose of the festival is reportedly to celebrate sexual diversity and gender rights and to promote human rights and acceptance of the LGBT community.

On 3 November 2011, it is reported that the Sungai Besi township police disbanded a peaceful event by Seksualiti Merdeka supporters at the Annexe Gallery in Kuala Lumpur and declared a ban on the aforementioned festival, on the grounds that it constituted a "threat to public order" under section 298A of the Penal Code. It is alleged that no evidence to justify this decision was provided and that the organizers had consistently stated that this year's events were to follow the model of previous years which had taken place without incident or interference from State authorities.

The police Deputy Inspector-General reportedly stated that the police had received 28 reports opposing the festival and that the police were undertaking an investigation into

the matter under Section 298A of the Penal Code and Section 27A (1) (C) of the Police Act. It is alleged that the Inspector-General also stated that these laws would be used to clamp down on any future events organized by the Seksualiti Merdeka coalition.

Section 298A of the Penal Code allows the police to take action against anyone who causes "disharmony, disunity, feeling of enmity, hatred, ill-will or prejudice" or can be invoked "for the maintenance of harmony or unity on the grounds of religion". It carries with it a sentence of between two to five years of imprisonment. Section 27 A (1) ( C) of the Police Act carries a fine of between 2,000 and 10,000 Malaysian Ringgit (approximately 472-2,361 Euros) and up to one year of imprisonment. It allows the police to ban any activity that takes place on private premises and to disperse anyone found on the premises, where the activity is deemed to be "prejudicial to the interest and security of Malaysia" or to be an activity that would "excite disturbance of the peace".

On 4 November 2011, it is reported that a non-governmental Malay supremacy body comprised of several Islamic groups, protested against the festival on the basis that it opposed the teachings of Islam. The protestors allegedly demanded that some of the organizations, including the Malaysian Bar Council, withdraw their support for the festival. It is alleged that at this protest language inciting hatred against the LGBT community was used but despite this the police failed to intervene.

On 7 November 2011, Mr. Pang KheeTeik, co-founder of the festival, Ms. Ambiga Sreenevasan, the former Bar Council Chair and current Bersih 2.0 Chair, Ms. Irene Fernandez, Tenaganita Chair and Ms. Maria Chin Abdullah Bersih 2.0 committee member were allegedly called in for questioning by the police regarding the festival. Bersih 2.0 is reportedly a coalition of opposition parties and civil society organizations campaigning for increased electoral transparency in Malaysia.

The Deputy Inspector-General of Police reportedly stated, on 9 November 2011, that the police had received a total of 154 reports expressing opposition to the festival, from both individuals and various organizations. It is alleged that the Home Minister has reportedly confirmed that the police have finished its investigation into the organization of the festival and that the matter would now be submitted to the Attorney General who would decide whether to initiate judicial proceedings.

According to information received, organizers of the festival have been subjected to harassment and threats of violence by way of phone calls, text messages and through social media following the imposition of the ban on the festival.

Concern is expressed that the banning of the fourth annual Seksualiti Merdeka LGBT festival in Kuala Lumpur may constitute a violation of the rights to freedom of peaceful assembly and expression as well as discrimination against the LGBT community. Further concern is expressed that the organizers of the event may face criminal prosecution for their peaceful and legitimate work in the promotion and protection of human rights and in particular the rights of the LGBT community in Malaysia.

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 in accordance with fundamental

principles as set forth in article 19 of the Universal Declaration of Human Rights (UDHR) which provides that “[e]veryone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”

We would also like to appeal to your Excellency's Government to take all necessary steps to ensure the right to freedom of assembly, as recognized in article 20(1) of the UDHR, which provides that “[e]veryone has the right to freedom of peaceful assembly and association.”

Furthermore, we would like to draw the attention of your Excellency's Government's attention to Human Rights Council's resolution 15/21, in which the Council “[c]alls upon States to respect and fully protect the rights of all individuals to assemble peacefully... including persons espousing minority or dissenting views or beliefs, human rights defenders... seeking to exercise or to promote [this] right, and to take all necessary measures to ensure that any restrictions on the free exercise of the right to freedom of peaceful assembly... are in accordance with their obligations under international human rights law” (OP1).

In this connection, 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, and in particular articles 1 and 2 which state that “everyone has the right individually or in association with others, 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, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice.”

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

- article 5, point a) which establishes that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels, to meet or assemble peacefully; and
- article 12, paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, 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. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in

violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

With regard to article 7 of the Declaration on Human Rights Defenders, the Special Rapporteur on the situation of human rights defenders has stated that the right to develop and discuss new human rights ideas is enshrined in the Declaration on Human Rights Defenders as an important provision for the ongoing development of human rights. This includes the right to discuss and advocate for human rights ideas and principles that are not necessarily new but that, in some contexts, may be perceived as new or unpopular because they address issues that might challenge tradition and culture.

In this connection, the Special Rapporteur has encouraged States to do the necessary to guarantee the principle of pluralism and recognize the right of defenders to promote and advocate for new human rights ideas or ideas that are perceived as new. She has further encouraged States to take additional measures to ensure the protection of defenders who are at greater risk of facing certain forms of violence and discrimination because they are perceived as challenging accepted sociocultural norms, traditions, perceptions and stereotypes, including about sexual orientation and gender identity.

We would also like to recall resolution 17/19 of the Human Rights Council, where the Council expressed grave concern at acts of violence and discrimination in all regions of the world, committed against individuals because of their sexual orientation and gender identity.

We urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the above mentioned persons are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible for the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

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 persons in compliance with the above international instruments.

Moreover, 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. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the summary of the case accurate?
2. Has a complaint been lodged by or on behalf of Seksualiti Merdeka?
3. Please provide the full details of the legal basis for the banning of the fourth annual Seksualiti Merdeka Lesbian, Gay, Bisexual and Transgender (LGBT)

festival. Please indicate how this ban is compatible international human rights standards as contained in the aforementioned legal instruments.

We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the report we will submit to the Human Rights Council for its consideration.

## **Observations**

201. The Special Rapporteur thanks the Government of Malaysia for having replied to all communications sent during the reported period. He remains nevertheless concerned by repeated allegations that those peacefully exercising their rights to freedom of peaceful assembly and association face undue restrictions, as echoed in a press release dated 7 December 2011 issued by four special procedures mandate holders.

202. The Special Rapporteur is concerned that, according to the Government's response, a demonstration of members and supporters of the Coalition for Fair and Free Elections (Bersih) was prevented on the sole basis that an opposite group wanted to demonstrate on the same day and at the same location. When there is still credible information that a violent counter-demonstration may take place, greater efforts are required to ensure adequate protection for the members of the first assembly planned. In this connection, the State has a positive obligation to ensure that the right of peaceful assembly is protected against any disruption or provocation.

203. Given the repeated allegations of acts of harassment and intimidation, the Special Rapporteur recommends the Government to immediately put in place an enabling and safe environment allowing individuals to exercise their legitimate freedoms of peaceful assembly and association without undue hindrances. A thorough and independent investigation into any allegations of any alleged human rights violations, including acts of intimidations or harassments, committed against those exercising their rights to freedom of peaceful assembly and of association, should be conducted; those responsible should be held accountable; and victims should be provided with full redress.

204. The Special Rapporteur thanks the Government for the information it transmitted with regard to the new legislation. He nevertheless remains concerned about numerous provisions of this law, as identified in the communication he sent. He renews its availabilities to provide any technical support and assistance needed to ensure that the legal framework related to peaceful assemblies and its implementation meet international law standards.

205. The Special Rapporteur refers again to Human Rights Council resolution 15/21, and in particular operative paragraph 1 that "[c]alls upon States to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, 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 rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law".

206. The Special Rapporteur reminds the Government of Malaysia of his country visit request sent in September 2011, to which a response is yet to be received. In this connection, OP6 of resolution 15/21 states that the "Human Rights Council... [c]alls upon States to cooperate fully with and assist the Special Rapporteur in the performance of his or her tasks, to provide all necessary information requested by him or her, ... and to consider favourably his or her requests for visits".