

Allow UN Special Rapporteur to probe Bersih 3.0

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Malaysia is one of the 47 members sitting in the United Nations Human Rights Council (HRC) for the second term covering 2010-2013.

When our Foreign Affairs Minister, Anifah Aman opined that there is no necessity for outsiders, in this context, the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Frank William La Rue to investigate the Bersih 3.0 rally that took place on April 28, he is stretching the truth way a little because, I quote, "We are a sovereign nation. We are capable of doing our own impartial investigation and we have faith in the authorities and the police. For responsible Malaysians, I don't think this is an issue. We don't need someone to investigate what transpired in our country. We have seen it on television and there are people who were actually on the spot who witnessed what happened."

He also added that "The government is going to appoint a panel to investigate; therefore I do not see the necessity. I mean, maybe it's possible, but I do not see the necessity for any outside organisation to determine whether we are free or fair."

In declaring its intention for its candidature, the Malaysian government circulated a memorandum dated March 9, 2010, outlining its human rights record and its pledges and voluntary commitments.

As the member of the HRC, Malaysia's voluntary commitments and pledges include "deepening and widening our cooperation with and support for the work of various UN actors and mechanisms involved in the promotion and protection of human rights such as the ... Special Procedures of the HRC," which includes Special Rapporteurs, Working Groups, and Independent Experts.

If we take a peek to the UN General Assembly resolution A/RES/60/251, it states clearly that members of the HRC shall uphold the highest standards in the promotion and protection of human rights; fully cooperate with the HRC; and be reviewed under the Universal Periodic Review (UPR) mechanism during their term.

However, the way Anifah Aman described the Special Rapporteur and the HRC which we are a member, as the "outsider" and the "outside organisation" is detrimental to the country.

It doesn't reflect the commitment that the government has promised to the HRC and it is obviously just another diplomatic exercise.

In order to understand further about the Special Rapporteurs mechanism, we should understand that Special Procedures is the general name given to the mechanisms established by the HRC to address either specific country situations or thematic issues in all parts of the world.

Special Procedures are either an individual (called "Special Rapporteur", "Special Representative" or "Independent Expert") or a Working Group usually composed of five members (one from each region).

Before issuing his defensive statement, the Foreign Affairs Minister was either not aware or simply ignorance of the fact that Malaysia has made its commitments to the HRC on providing cooperation to the mechanisms introduced by the HRC.

In 1998, Malaysia has in fact received the country visit by the former Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Abid Hussain.

In its Resolution 1998/42, Abid Hussain, during his visit to Malaysia from October 20-24, 1998 has made the below recommendations to Malaysia followed his observations, I quote from the said report:

1. The government is strongly encouraged to consider taking further steps to fully guarantee the protection of the right to freedom of opinion and expression. These steps should include the repeal of the ISA and the consideration of other means, in accordance with international standards, to protect its national security. It should furthermore include amendments to some of the current national legislation, in particular the Printing Presses and Publication Act, the Sedition Act and the Official Secrets Act, to facilitate the exercise of the right to freedom of opinion and expression in a more transparent and judicious manner.

2. It is recommended that the government review cases of persons who are being held for having exercised their right to freedom of opinion and expression with a view to releasing them. The cases of all persons who have been tried in court and convicted in application of laws or regulations incompatible with the protection of the right to freedom of opinion and expression, as affirmed in the Universal Declaration on Human Rights, should also be reviewed.

3. The Special Rapporteur urges the government of Malaysia to repeal the regulations on annual licensing of newspapers in order to ensure that any registration requirements serve an administrative purpose only and are not used to impose restrictions on the media outside the scope of article 19 of the Universal Declaration on Human Rights.

4. The Special Rapporteur strongly encourages the government to take all necessary steps to ensure the independence of the media, including safeguards against any interference by political interests. The establishment of an independent media council could be a first step. Initiatives on the part of media professionals to establish independent and voluntary professional associations should also be encouraged, in particular with regard to developing methods and systems of voluntary self-regulation such as codes of ethics for the profession, training programmes which address the rights and responsibilities of the media and the government, as well as monitoring the implementation of the right to freedom of expression and freedom of the media in accordance with international standards.

5. The Special Rapporteur urges the government to respect the right of Malaysians to hold

peaceful demonstrations and assemblies and to adhere to international standards on the use of force against demonstrators.

6. The government is encouraged to align its national law with the provisions of international law relating to freedom of opinion and expression, in particular by introducing more explicit national legislation to facilitate the attainment of a proper balance in the judiciary's efforts to protect human rights in general and the right to freedom of opinion and expression in particular.

7. The Special Rapporteur strongly encourages the government of Malaysia to take all necessary steps to sign and ratify the International Covenant on Civil and Political Rights, as well as its Optional Protocols.

8. Finally, the Special Rapporteur recommends that the government give serious consideration to the establishment of an ombudsman's office and of a special commission for human rights or a separate ministry for human rights.

The government has thus far made some improvements on some of the recommendations made by Abid Hussain, i.e. the repeal of the annual licensing for newspapers.

However, many of the recommendations are still being ignored; particularly point 5 where the government is urged to respect the right of Malaysians to hold peaceful demonstrations and assemblies and to adhere to international standards on the use of force against demonstrators.

Until today, demonstrations despite of what form it takes are still deemed as illegal.

In addition to the Special Procedures mechanism, Malaysia has also made its human rights commitment at the international level through the UPR mechanism.

The UPR is a review of countries' human rights records and Malaysia was being reviewed for the first time on February 11, 2009 during its fourth session. So basically the UPR is an inter-governmental process, whereby the states are judging states.

At the UPR back in 2009, Malaysia's national report was presented by Tan Sri Rastam Mohd Isa, whom at that time, the Secretary General of the Ministry of Foreign Affairs. During the UPR process, Malaysia received numerous recommendations from other member states. These recommendations are the final results of the UPR process, and are included in the final report.

Although the recommendations are not binding, they act as a set of commitments by the state to improve the protection and promotion of human rights in their country. These recommendations will serve as benchmarks to the state, on what it must achieve until the next UPR cycle.

At that time, Tan Sri Rastam clarified that the government had received acknowledgment in the reports of the relevant Special Rapporteur of the HRC. He added that the Malaysian delegation was ready to share further information with the HRC and members.

He also said that Malaysia would remain open to further discussions with the various Special

Procedures on the proposed visits and was willing to consider such requests positively on the merit of each proposal.

Nevertheless, the government doesn't seem to walk the talk. Apart from the current offer by La Rue, there are several other outstanding requests from Special Rapporteurs whose mandates cover critical areas for human rights protection in Malaysia.

These would include for examples, visits by the Special Rapporteurs on human rights defenders, indigenous people, freedom of religion, migrants, and independence of judges and lawyers.

Despite the obligation on government to protect and promote the human rights, Malaysia continues to brush these concerns aside. It is indeed contradictory for Anifah Aman to come up with such a response on the offer made by La Rue.

The Foreign Affairs Minister should have been more sensitive and aware of the promises made by the government in the international level particularly in view of the next UPR review in 2013.

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