

**NATIONS UNIES
HAUT COMMISSARIAT DES NATIONS UNIES
AUX DROITS DE L'HOMME**

**PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME**

**UNITED NATIONS
OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS**

**SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL**

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

REFERENCE: UA G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9)
MYS 7/2011

28 July 2011

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; 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 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 draw the attention of your Excellency's Government to information we have received regarding allegations of **acts of intimidation against Mr. Yap Swee Seng, Mr. Ong Boon Keong, Ms. Enalini A/P Elumalai, Mr. Zaid bin Kamuruddin, Mr. Syed Shahir, Mr. Wong Chin Huat, Mr. Syed Ibrahim, Mr. Haris Ibrahim, Ms. Fadiyah Nadwa, Mr. Kohila A/P Yanasekaran, Mr. Muhammad Hilma Idham, Mr. Mohd Shukri Che Ab Razab and Mr. Arutchelvan A/L Subramaniam.** The aforementioned human rights defenders are members of different organizations such as the Asian Forum for Human Rights and Development (FORUM-ASIA), Suara Rakyat Malaysia (SUARAM), Malaysian Trade Union Congress (MTUC), Malaysians for Free and Fair Elections (MANFREL), Network of Oppressed Peoples (JERIT), Malaysian Students Solidarity (SMM) and the Coalition for Clean and Fair Election (Bersih).

On 7 July 2011, a joint urgent appeal was sent by the Chair-Rapporteur of the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and the Special Rapporteur on the rights to freedom of peaceful assembly and of association, concerning the harassment, intimidation, arrest or questioning by police of over 170 members and supporters of the Coalition for Fair and Free Elections (Bersih). A response to this appeal is yet to be received from your Excellency's Government.

According to the information received:

On 7 July 2011, the Magistrate's Court in Kuala Lumpur reportedly issued a restriction order prohibiting a total of 91 individuals, including the aforementioned 13 human rights defenders, from remaining in, entering or passing through the capital of Malaysia. The other individuals to whom the order applied were allegedly members of political parties.

It was reported that the order prohibits the aforementioned 13 human rights defenders, many of whom live in Kuala Lumpur, from passing through the city between 8:00 a.m. and 6:00 p.m. whether on foot or by means of public or private transport. Allegedly, under Malaysian law, the ban can remain in place for up to seven days. If any of the individuals are found to be in breach of the ban they can reportedly be arrested immediately and fined up to RM2,000(€468) and/or imprisoned for up to six months.

It was further reported that most of the human rights defenders are affiliated with the Coalition for Clean and Fair Election (Bersih), which is composed of 62 civil society organizations. In fact, it is alleged that the Court issued the order amid preparations for a 'Walk for Democracy' demonstration organized by Bersih, which took place on 9 July 2011. The aforementioned demonstration had as objectives to call for free and fair elections and to demand all public institutions to act according to the law and the protection of human rights.

It was further alleged that the order also follows the arrests of more than a hundred activists prior to 9 July 2011, after their participation in supporting the demonstration, such as for wearing t-shirts and handing out leaflets. SUARAM and FORUM-ASIA made public statements during the period of 28 June and 7 July 2011, condemning these arrests and calling on the authorities to desist from detaining persons in connection with the demonstration.

Concern is expressed that the order was issued against the 13 human rights defenders as a direct result of their work in the promotion and protection of human rights, particularly days before the "Walk for Democracy" demonstration was due to take place. Further concern is expressed for the physical and psychological integrity of the human rights defenders who have been restricted as a consequence of their work on the protection of civil and political rights. Finally concern is expressed that the members of SUARAM and FORUM-ASIA who were included in the order may have been specifically targeted as a result of public statements made by these organizations calling on the authorities to refrain from arresting persons associated with Bersih.

While we do not wish to prejudge the accuracy of these allegations, we wish to draw your Excellency's attention to the right to physical and mental integrity of the 13 human rights defenders and the members of SUARAM and FORUM-ASIA

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, which provides that "Everyone 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 also wish to reiterate the principle enunciated in Human Rights Council Resolution 12/16, which calls on States, while noting that the exercise of the right to freedom of opinion and expression carries with it special duties and responsibilities, to refrain from imposing restrictions, including on (i) discussion of government policies and political debate; reporting on human rights, government activities and corruption in government; engaging in election campaigns, peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups.

Furthermore, 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 of the Universal Declaration of Human Rights, which provides that "Everyone has the right to freedom of peaceful assembly and association."

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;

- article 6, points b) and c) which provide that everyone has the right, individually and in association with others as provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views,

information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters; 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.

We urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the 13 human rights defenders and the members of SUARAM and FORUM-ASIA are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of 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 13 human rights defenders and the members of SUARAM and FORUM-ASIA 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 above summary of the case accurate?
2. Has a complaint been lodged by or on behalf of the human rights defenders listed above against whom the restriction order dated 7 July 2011 was made?
3. Please provide the details, and where available the results, of any investigation, and judicial or other inquiries carried out in relation to the inclusion of these human rights activists in the restriction order. If no inquiries have taken place, or if they have been inconclusive, please explain why.

4. Please provide the full details of any legal basis which provides for the inclusion of the aforementioned human rights defenders in the restriction order?

5. Please indicate what measures have been taken to ensure that the legitimate right to meet and assemble peacefully is respected and that the physical and psychological integrity of those exercising this right is guaranteed.

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.

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

Frank La Rue
Special Rapporteur on the promotion and protection of the right to freedom of
opinion and expression

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

Margaret Sekaggya
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