

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

PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

Mandates of the Chair-Rapporteur of the Working Group on Arbitrary Detention; the Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances; 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; the Special Rapporteur on freedom of religion or belief; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on extrajudicial, summary or arbitrary executions; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

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

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

REFERENCE: UA G/SO 218/2 G/SO 217/1 G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (56-23) G/SO 214 (107-9) G/SO 214 (33-27) G/SO 214 (53-24)
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28 September 2012

Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Arbitrary Detention; Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances; 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; Special Rapporteur on freedom of religion or belief; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on extrajudicial, summary or arbitrary executions; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolutions 15/18, 16/16, 16/4, 15/21, 14/11, 16/5, 17/5, and 16/23.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding **new acts of harassment against members of the Peoples Movement Against Nuclear Energy (PMANE) and other human rights defenders.**

A joint urgent appeal in relation to previous acts of harassment against the members of this movement was sent by special procedures mandate holders on 13 July 2012. We thank your Excellency's Government for acknowledging receipt of the appeal, and we look forward to receiving a comprehensive response to our letter.

According to the new information received:

On 9 September 2012, a large number of security forces were deployed following the announcement by protestors to lay siege to the Koodankulam plant. The call

was in response to the Atomic Energy Regulatory Board's clearance to commence nuclear fuel loading in the plant. Between 8,000 and 10,000 people, including children and women, from Idinthakarai and neighbouring villages, started marching from the Lourde Matha church in Idinthakarai to the coastal shore, in the direction of the plant, when they were stopped by security forces 800 meters before the plant. The peaceful protestors sat down on the shore and declared that they would continue their peaceful protest at this location. Mr. S.P. Udayakumar, coordinator of PMANE and director of the South Asian Community Centre for Education and Research, stated that the peaceful protestors wanted the Tamil Nadu Government to respond to their demands amidst fear of adverse effects on the health and livelihoods of local residents.

On 10 September 2012, at around 10:30 a.m., the police made a first attempt to disperse the crowd with batons. Additional police forces arrived soon after. Two protestors then tried to reach the plant by boat, but were dissuaded by other protestors from doing so. The two protestors were then apprehended by the police, which caused unrest among the protestors. At 11:30 a.m., the police told the protestors to disperse within ten minutes. However, the police fired tear gas shells and charged with batons before the ultimatum elapsed. Women and children were beaten, and many men jumped into the ocean to escape police brutality; the police then threw stones and sticks at the protestors in the ocean, threatening them with death and further harm upon their return to the beach.

Mr. **Udayakumar** was reportedly shot at by the police when trying to leave the beach on a boat, and Mr. **Sahaya Initha**, a prominent leader of the anti-nuclear movement, was badly injured by the police.

The following individuals who were injured during the protests were admitted to the Lourdu Matha Hospital in Idinthakarai:

1. Ms. **Initha**, age unknown, from Idinthakarai;
2. Ms. **Chennammal**, age unknown, from Idinthakarai;
3. Ms. **Jesu Ammal**, age unknown, from Idinthakarai;
4. Mr. **Gnanaprakasam**, 80 years old, from unknown village;
5. Mr. **David**, 49 years old, from Idinthakarai;
6. Mr. **Gloudin**, 35 years old, from Idinthakarai;
7. Mr. **Jeniker**, 26 years old, from Idinthakarai;
8. Mr. **Selvan**, age unknown; from Idinthakarai;
9. Mr. **Joseph**, 47 years old, from unknown village;
10. Mr. **Michael**, 28 years old; from Koothenkuli;
11. Mr. **Valan**, 23 years old, from Koothenkuli;
12. Mr. **Thangasamy**, age unknown, from Koodankulam;
13. Mr. **Jeniker**, 24 years old, from Idinthakarai;
14. Mr. **Kennedy**, 50 years old, from Idinthakarai; and
15. Mr. [REDACTED], 3 years old, from Idinthakarai.

The following three persons were hospitalized in Lourdu Matha Hospital and were subsequently transferred by the police to a different location. Their current whereabouts are reportedly unknown:

1. Mr. **Selson** from Idinthakarai;
2. Mr. **Siluvai** John from Koothenkuli; and
3. Mr. **Jesu** from Idinthakarai.

More than 25 protestors, including four minors, have been arrested and charged with offences, including sedition and rioting, for which they face life imprisonment:

1. Mr. [REDACTED] (16 years old) is charged under Sections 147 (rioting), 148 (rioting with deadly weapon), 353 (assault or criminal force to deter public servant from discharge of his duty), 431 (damaging road, bridge, river, channel etc.), 121(A) (conspiring to overawe, by means of criminal force or the show of criminal force, the Central Government or any State Government), 395 (dacoity), 307 (attempt to murder) r/w 149 IPC (unlawful assembly) and Sec 3 of TNPPDL Act (causing damage to public property);
2. Mr. [REDACTED] (16 years old) is charged under Sections 147, 148, 188 (disobedience to order duly promulgated by public servant) r/w 144 Cr. P. C and 332 (voluntarily causing hurt to deter public servant from his duty), 352 (assault or criminal force otherwise than on grave provocation), 355 (assault or criminal force with intent to dishonour person, otherwise than on grave provocation), 294 (b) (sings, recites or utters any obscene song, ballad or words, in or near any public place), 307, 427 (mischief to cause minor damage) IPC r/w 149 IPC and Section 13 of Unlawful Assembly Act and Section 3 of TNPPDL Act; and
3. Mr. [REDACTED] (15 years old) and Mr. [REDACTED] (16 years old) are charged under Sections 147, 148, 188 (disobedience to order duly promulgated by public servant) r/w 144 Cr. P. C and 332 (voluntarily causing hurt to deter public servant from his duty), 352 (assault or criminal force otherwise than on grave provocation), 355 (assault or criminal force with intent to dishonour person, otherwise than on grave provocation), 294 (b) (sings, recites or utters any obscene song, ballad or words, in or near any public place), 307, 427 (mischief to cause minor damage) IPC r/w 149 IPC and Section 13 of Unlawful Assembly Act and Section 3 of TNPPDL Act.

Warrants have also been recently issued for the arrest of Mr. Udayakumar and his associate Mr. **Pushparayan**.

According to reports, several media personnel were injured while covering the peaceful protest. One cameraman from *Times Now* was assaulted by police

officers while videotaping police officers damaging the vehicles used by demonstrators to reach the protest site. He received four stitches above his eyebrow. The police destroyed his camera and confiscated the videotape. Furthermore, journalists working for the newspaper *Dinakaran* and *Makkal TV* were manhandled.

During the repression of the peaceful demonstration on the beach, a separate group of 400 police officers reportedly raided the Idinthakarai village, conducting a door-to-door search for men. When joining their colleagues on the beach, the police officers encountered a group of 150 to 200 youths, who for fear dived into the sea to seek refuge. The police officers then threatened the youths with harsh treatment should they swim back to the beach.

In the aftermath of the protest, it is reported that the police desecrated the Lourdu Matha shrine, located on the beach at Idinthakarai, where many protestors have made the church their home. The police reportedly broke idols and spitting and urinating inside the church. The police further pulled down the tent which sheltered several protestors, and damaged the lights, water cans and the Tamil Nadu Water and Drainage Board's public water supply point in Koodankulam village; police forces also allegedly burned boats and motorcycles belonging to inhabitants of the village, and looted property. The police also raided the Tsunami Colony in Idinthakarai and conducted door-to-door searches, allegedly damaging a number of houses in the course of the operation.

The following peaceful protests in solidarity with PMANE took place in the following days and were repressed:

- In Manappad, Thoothukudi district, Mr. **Anthony Samy** was reportedly shot dead while peacefully demonstrating;
- Messrs **Suseendaran**, **Vivekanandan** and **Thirumurugan** were arrested while extending solidarity for students protesting of Nandanam Arts and Science College. They were released on the same day;
- In Chennai, a protest at Panagal Malligai was held in the course of which 30 people were arrested; similarly, a protest was organized in Parry's Corner, and 300 persons were arrested;
- In Coimbatore, law students organized a protest and were dispersed by police officers using batons; and
- In Tirunelveli, 40 protestors were detained and released on the same day.

Few days after the police repression of the protest, a plane belonging to the India Coastal Guards reportedly flew at a very low altitude where protestors had gathered again near the Koodankulam plant, with a view to intimidating them. It is reported that Mr. **Sahayam Francis**, 42 years old, died of an alleged heart attack in the course of this operation.

Grave concerns are expressed that the ongoing harassment against members of the Peoples Movement Against Nuclear Energy (PMANE) and other human rights defenders may be linked to their human rights activities in defence of human rights, in the exercise of their rights to freedom of expression and peaceful assembly. Due to the fact that the fate and whereabouts of Messrs. **Selson** from Idinthakarai; **Siluvai** John from Koothenkuli; and **Jesu** from Idinthakarai are currently unknown, if the aforementioned allegations are confirmed, these cases may amount to enforced disappearances.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of the abovementioned persons is arbitrary or not, we would like to recall the right not to be deprived arbitrarily of liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights (UDHR) and articles 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR), which your Excellency's Government acceded to on 10 April 1979.

In relation to the allegations according to which the fate and whereabouts of Messrs. **Selson** from Idinthakarai; **Siluvai** John from Koothenkuli; and **Jesu** from Idinthakarai are currently unknown, we would like to bring to the attention of your Excellency's Government the United Nations Declaration on the Protection of All Persons from Enforced Disappearance which sets out necessary protection by the State, and in particular:

- article 2 (no State shall practice, permit or tolerate enforced disappearances);
- article 3 (each State shall take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction);
- article 6 (no order or instruction of any public authority, civilian, military or other, may be invoked to justify an enforced disappearance); and
- article 7 (no circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances).

In this context, we would like to draw the attention of your Excellency's Government to paragraph 1 of Human Rights Council Resolution 16/23 which "Condemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, including through intimidation, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all States to implement fully the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment."

We also deem it appropriate to make reference to Resolution 12/16 of the Human Rights Council which calls upon states to ensure that victims of violations of the right to freedom of expression have an effective remedy, to investigate effectively threats and acts of violence, including terrorist acts, against journalists, including in situations of armed conflict, and to bring to justice those responsible to combat impunity.

We wish to stress that, under international law, excessive use of force and firearms is not permitted when policing peaceful assemblies. Principle 12 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials provides that “everyone is allowed to participate in lawful and peaceful assemblies, in accordance with the principles embodied in the UDHR and the ICCPR, Governments and law enforcement agencies and officials shall recognize that force and firearms may be used only in accordance with principles 13 and 14.” The provisions in principles 13 and 14 restrict the use of firearms to situations of violent assemblies and provide that force and firearms may only be used as a last resort when unavoidable and require exercising the utmost restraint.

We would, further, like to draw the attention of your Excellency's Government to principle 4 which provides that, “Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms.” Furthermore, principle 5 provides that, “Whenever the use of force and firearms is unavoidable law enforcement officials shall, (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate object to be achieved; (b) Minimize damage and injury, and respect and preserve human life; (c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment and (d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment.” Finally, principle 7 requires that Governments ensure that arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under their law. (Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990).

Furthermore, we would like to recall the right to freedom of opinion and expression as set forth in article 19 of the ICCPR, which provides that “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”

Similarly, we would like to remind your Excellency's Government of article 21 of the ICCPR, which provides that “The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interest of national security of public safety, public order (ordre public), the protection of public health or morals of the protection of the rights and freedoms of others.”

In this context, we would also like to refer to Human Rights Council resolution 15/21, and in particular operative paragraph 1 that “Calls upon States to respect and fully protect the rights of all individuals to assemble peacefully and associate freely... 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.”

In addition, 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 point a) which provides that everyone has the right, individually and in association with others to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems; and

- article 12 paragraphs 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 would also like to refer to the right to freedom of religion or belief as stipulated in article 18 of the UDHR and the ICCPR.

Furthermore, the Human Rights Council resolution 6/37, paragraph 9 (e) urges States, “[T]o exert the utmost efforts, in accordance with their national legislation and in conformity with international human rights and humanitarian law, to ensure that religious places, sites, shrines and symbols are fully respected and protected and to take additional measures in cases where they are vulnerable to desecration or destruction.”

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, 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 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 the alleged victims?
3. Please indicate the legal basis for all the aforementioned measures taken by law enforcement authorities, and how such measures are compatible with international norms and standards as contained, inter alia, in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. Please further provide information, and where available the results, of any investigation, and judicial or other inquiries carried out in relation the death and injuries occurred as a consequence of the use of force during the said assemblies. If no inquiries have taken place, or if they have been inconclusive, please explain why.
4. Please provide information on the fate and whereabouts of Messrs. Selson from Idinthakarai; Siluvai John from Koothenkuli; and Jesu from Idinthakarai. If their fate and whereabouts are unknown, please provide the details on any investigation or other queries which may have been carried out. If no queries have taken place, or if they have been inconclusive, please explain why.

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

We would like to bring to the attention of your Excellency's Government that should the sources submit the allegations concerning Messrs. Selson from Idinthakarai; Siluvai John from Koothenkuli; and Jesu from Idinthakarai as cases to the Working Group on Enforced or Involuntary Disappearances, they will be considered by the Working Group according to its methods of work, in which case your Excellency's Government will be informed by separate correspondence.

While waiting for your response, 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 that thorough, prompt and impartial investigations are conducted into the reported death and injuries of the protestors mentioned. 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.

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

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