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PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Working Group on Arbitrary Detention; 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

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Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Arbitrary Detention; 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 Human Rights Council resolutions 15/18, 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 the **harassment of members of the Peoples Movement Against Nuclear Energy (PMANE) and other human rights defenders**. PMANE is a peaceful anti-nuclear group from Tamil Nadu, which has been organizing a series of peaceful rallies, public meetings, seminars, conferences and other demonstrations, in protest of the Koodankulam Nuclear Power Project (KNPP), amidst fear of adverse effects on the health and livelihoods of local residents.

According to the information received:

Between 10 September 2009 and 23 December 2011, 107 first information reports (FIRs) were reportedly filed by the police against 55,795 anti-KNPP protestors, among whom 6,800 have been charged with "waging war against the State" and/or "sedition" under Sections 121 and 124A respectively of the Indian Penal Code. Furthermore, during this period, members of PMANE were targeted on numerous occasions by unknown individuals, including being pelted with stones and having their vehicles destroyed.

On 19 March 2012, the construction of the Koodankulam nuclear power plant resumed, and all roads leading to Koodankulam and Idinthakarai, the villages near the Koodankulam nuclear power plant site, were blocked by the police in an attempt to prevent people from gathering there. Nevertheless, over 20,000 people gathered at the gate of the Koodankulam site. In total, 203 women and men were arrested, among them PMANE's legal advisor Mr. [REDACTED], and

leading PMANE activists Mr. [REDACTED], and Mr. [REDACTED]. They were charged with Sections 121, 124A, and 153A (“promoting enmity between different groups”) of the Indian Penal Code. All those who were arrested on 19 March were released during the following weeks, except Mr. [REDACTED].

On 20 March 2012, access via roads and sea routes to Idinthakarai, including media access, continued to be blocked by the police. An order invoking section 144 of the Criminal Procedure Code, banning groups of people from gathering in public places in and around Koodankulam, was passed. However, around 1,000 villagers, mostly fishermen, gathered in an overnight vigil, and more than 8,000 people went on a hunger strike in protest of the KNPP.

On 21 March 2012, over 4,000 police personnel and four companies of the Central Reserve Police Force’s rapid action force were sent to disperse the protestors. The power and water supplies were reportedly cut off, and the movement of people and transportation of daily essentials, including milk for babies, was forcibly restricted. Furthermore, mobiles phones and water supply equipments were confiscated by the police.

On 23 March 2012, Mr. [REDACTED], a youth organizer, was arrested and charged with Sections 121 and 153A of the Penal Code. He remains in detention as of today.

On 29 March 2012, the office of the **South Asian Community Centre for Education and Research** (SACCER) was searched by Central Government officials following allegations that the protesters had received funds from abroad to organise the protests. The residence of Mr. [REDACTED], convenor of PMANE and director of SACCER, was similarly searched, and Mr. [REDACTED] was questioned about the activities of SACCER.

On 2 April 2012, Mr. [REDACTED] was instructed by the Regional Passport Office in Madurai 2 to surrender his passport as 98 criminal cases were reportedly pending against him.

On 15 April 2012, Ms. Sagaya Peklin Egecinec, President of Idinthakarai panchayat (local government), lodged a complaint against Mr. [REDACTED], his associate Mr. [REDACTED] and **eight other PMANE** activists, alleging that a gang, “instigated by PMANE activists”, had tried to attack her and her husband on 14 April. The police registered the case under various sections of the Indian Penal Code, including Section 307 (“attempt to murder”).

On 25 April 2012, Mr. [REDACTED] and Mr. [REDACTED] began an indefinite hunger strike in Tiruchirapalli prison, demanding a fair trial, an end to new charges against them and the withdrawal of existing charges against them which are still pending as of today. On 4 May, they ended their hunger strike.

On 1 May 2012, 25 men started a hunger strike, and were joined by 302 women, and 10 more from 4 May. On 6 and 7 May, a medical team was sent by the local county administrator to examine the strikers’ health. On 11 May 2012, the organizers called on the elderly and people with health concerns to stop their

strike, and continued the strike with 102 men and women. It is alleged that neither the Government of Tamil Nadu, nor the Government of India, sought to discuss the eleven demands put forward by the strikers.

On 11 May 2012, a list of passport holders who have been participating for the past nine months in the peaceful protests against KNPP was reportedly prepared by the police, for submission to the Office of Regional Passport. On the same day, Mr. [REDACTED], a member of the PNAME Struggle Committee, was reportedly physically and verbally abused, near the East Bazaar of Koodankulam, by Mr. [REDACTED] and Mr. [REDACTED] police station.

On 14 May 2012, the 'Chennai Solidarity Group for Koodankulam Struggle' organized a public hearing on the state's actions against anti-KNPP activists, led by the former Chief Justice of the Chennai high court, on the claims of at least 180 protestors that they had faced alleged false charges, including sedition and waging war against the State. Justice A.P. Shah called on the state authorities and the protestors to enter into a dialogue. He also told the protestors that he would take up the issue of filing of alleged false charges with the National Human Rights Commission.

On 15 May 2012, following a call from Justice A.P. Shah, over 330 protestors stopped their hunger strike

On 4 June 2012, following the public hearing of 14 May 2012, a report titled "Report of the Jury on Public Hearing on Kudankulam and State Suppression of Democratic Rights" was released, in which the jury alleged, inter alia, that the individuals' right to freedoms of expression and movement had been unduly restricted, and that "[t]he systematic registration of various cases against the protestors charging them with sedition, waging war against the Government of India, promoting enmity between different groups, and other provisions of the Indian Penal Code, seems to support the allegation of the persons who appeared before the committee that cases have been foisted on them in view of their active participation against the nuclear plant". The jury recommended that all cases against individuals should be withdrawn as they were merely exercising their legitimate right to freedom of peaceful assembly. The report also recommended the immediate revocation of the order under section 144 of the Indian Penal Code.

Serious concerns are expressed that the harassment of members of the Peoples Movement Against Nuclear Energy, and other human rights defenders, may be linked to their human rights activities, in the exercise of their rights to freedom of peaceful assembly, association opinion and expression, and movement. Further concerns are expressed for the physical and psychological integrity of Mr. [REDACTED] and Mr. [REDACTED] who remain in detention as of today.

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 appeal to your Excellency's Government to take all necessary measures to guarantee their right not to be deprived arbitrarily of their 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).

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 9 paragraph 1 which establishes that in the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights as referred to in the present Declaration, everyone has the right, individually and in association with others, to benefit from an effective remedy and to be protected in the event of the violation of those rights.
- 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.

In addition, we would like to refer to the 2006 report to the General Assembly (A/61/312) of the then Special Representative of the Secretary-General on the situation of human rights defenders and in particular to paragraph 98 which states that "in conformity with article 15 of the Declaration [on Human Rights Defenders], the Special Representative urges States to ensure that law enforcement agencies and their members are trained in and aware of international human rights standards and international standards for the policing of peaceful assemblies, including the Declaration on Human

Rights Defenders, the Code of Conduct for Law Enforcement Officials and other relevant treaties, declarations and guidelines. The Special Representative also advises all States that all allegations of indiscriminate and/or excessive use of force by law enforcement officials should be properly investigated and appropriate action taken against the responsible officials”.

With regards to youth defenders taking part in demonstrations, we would like to refer to the 2007 report to the General Assembly of the then Special Representative of the Secretary-General on the situation on human rights defenders in which she recommends to “take steps to create a conducive environment that allows children and young adults to associate and express views on matters affecting them as well as on broader human rights issues. Student protests have a high educational value as they are among the first experiences of public participation and human rights defense of students. Ensuring a conducive environment for student protests is a social investment in addition to a legal obligation” (A/62/225, paragraph 101 b).

More specifically, in her report on her mission to India (A/HRC/19/55/Add.1) conducted in January 2011, the Special Rapporteur on the situation of human rights defenders stated that “[s]pecific attention must be given by all authorities to the categories of human rights defenders mentioned in the present report, in particular... defenders working on economic, social and cultural rights” (para. 138). She added that “[s]ecurity forces should be clearly instructed to respect the work and the rights and fundamental freedoms of human rights defenders, especially [inter alia, defenders working on economic, social and cultural rights]” (para. 140).

We would also 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 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.” In this connection, we 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 which are not consistent with article 19, paragraph 3 of the ICCPR, 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.

We would further like to appeal to your Excellency's Government to take all necessary steps to ensure the right of peaceful assembly as recognized in 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 or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

In this context, we would 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.”

We would like to appeal to your Excellency's Government to take all necessary steps to ensure the right to freedom of association, as recognized in article 22 of the ICCPR, which provides that “Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests”.

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 aforementioned 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. Please indicate the legal basis of the arrest, detention and charges against all of the aforementioned individuals, and how these are compatible with international human rights norms and standards contained, inter alia, in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Declaration on Human Rights Defenders.

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.

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, 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.

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

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