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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: AL G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9)
MYS 3/2014

5 May 2014

Excellency,

We have the honour to address you in our capacities 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 Human Rights Council resolutions 25/2, 24/5, and 25/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the situation of Ms. **Lena Hendry**, programme coordinator of Pusat KOMAS. Pusat KOMAS is a non-governmental organization (NGO) which promotes and protects human rights. It has reportedly produced several educational videos and publications on many human rights issues.

On 19 September 2013, the Home Ministry and Attorney General Chamber filed a complaint against Ms. Hendry under Section 6 (1) (b) of the Film Censorship Act (2002) for holding a screening of the documentary film "No Fire Zone: The Killing Field of Sri Lanka" on 3 July 2013. "No Fire Zone" is a documentary that depicts human rights violations committed during the Sri Lankan civil war. Ms. Hendry is facing a fine of between RM 5,000 to RM 30,000 (USD 1,562 to USD 9,377) and/or a maximum prison term of three years.

Ms. Hendry was the subject of two allegation letters on 12 July 2013 and 26 September 2013 sent by the Special Rapporteur on the rights to freedom of peaceful assembly, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and the Special Rapporteur on the situation of human rights defenders. We regret that no responses from your Excellency's Government on the concerns raised in both letters have been received to this day.

According to the new information received:

On 21 October 2013, Ms. Hendry appeared before the Majistret Court 6, Duta High Court Complex, in Kuala Lumpur. The charge sheet, the police report, the layout of the venue where the documentary was screened, and a DVD copy of the film, were produced in court.

The criminal proceeding was subsequently stayed, pending Ms. Hendry's constitutional challenge against sections 6(1)(b) and 6(2)(a) of the 2002 Film Censorship Act. According to Ms. Hendry, these sections impose an unreasonable restriction on her right to freedom of speech and expression as guaranteed by article 10(1)(a) of the Federal Constitution.

On 10 April 2014, the High Court dismissed Ms. Hendry's constitutional challenge.

On 15 April 2014, Ms. Hendry filed an appeal against the dismissal of her constitutional challenge. However, her request to further stay the criminal proceeding against her pending the said appeal was rejected.

A preliminary hearing is scheduled to take place on 16 May 2014.

Serious concern is reiterated that the charges brought against Ms. Hendry may be linked to her legitimate human rights activities, in the exercise of her rights to freedom of opinion and expression and of association. Further concern is expressed that such judicial harassment may negatively affect the work of NGOs defending human rights.

In connection with above alleged facts and concerns, please refer to **the Reference to international law Annex** where the applicable international human rights instruments and standards that we would like to recall are outlined.

Since 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:

1. Are the facts alleged in the summary of the case accurate?
2. Please provide the legal basis of the charges against Ms. Lena Hendry, and the dismissal of her constitutional challenge against the aforementioned sections of the 2002 Film Censorship Act. Please indicate how such measures are compatible with the aforementioned international norms and standards on the rights to freedom of opinion and expression and of association.

We would appreciate a response within sixty days. Your Excellency's Government's response will be made available in a report 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 Ms. Hendry 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.

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
Special Rapporteur on the situation of human rights defenders

Reference to international human rights law Annex

In connection with the above concerns, we would like to refer to your Excellency's Government to articles 19 and 20 of the Universal Declaration of Human Rights which guarantee the rights to freedom of opinion and expression and to freedom of peaceful assembly and association.

We would like to further refer to Human Rights Council resolution 24/5, and in particular operative paragraph 2 that reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline. This paragraph also reminds States that any restriction they introduce on the free exercise of the rights to freedom of peaceful assembly and of association must be in accordance with their obligations under international human rights law.

Finally, 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, 2 and 6.