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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

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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; 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 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 and arrest of activists and political leaders participating in demonstrations following the conclusion of the last national elections on 5 May 2013.**

According to the information received:

Political parties are challenging the outcome of the 13th General Elections held on 5 May 2013. They claim that the results were marred by electoral fraud, with some petitioning to the High Court challenging the results. The electoral period was reportedly marked by violent episodes including bomb blasts at campaign sites and the killing of at least one campaigner.

Over the last two weeks, members of opposition parties, protesters and human rights defenders were reportedly harassed and, in some cases, arrested by authorities as a consequence of their involvement in demonstrations questioning the electoral results. Protesters were also allegedly physically harassed, inflicting in some instances bodily injuries, by groups supportive of the Government.

On 17 May 2013, a leader of the opposition People's Justice Party and Selangor state assembly person, **Nik Nazmi**, was charged under the Peaceful Assembly Act 2012 for allegedly having failed to serve the police with sufficient notice for an opposition-led demonstration at the Kelana Jaya Stadium on 8 May 2013. Six Pakatan Rakyat leaders were subsequently charged under the same law for organizing similar rallies in different locations throughout the country.

On 18 May 2013, student activist **Adam Adli** was arrested in Kuala Lumpur. On 23 May 2013, he was subsequently charged under the Sedition Act 1948, for allegedly uttering a seditious statement during a public forum on 13 May, where he called for street protests against the Government. He was released on bail on the same day, pending court hearing set for 2 July 2013. A candlelight vigil that was held on 22 May 2013 to call for the release of Adam Adli resulted in the arrest of further 18 participants, who were also questioned by the police.

On 29 May 2013, authorities allegedly re-arrested opposition Member of the Parliament Tian Chua, opposition PAS Islamic Party member, **Tamrin Bin Abdul Ghafar** and civil society activist, **Haris Ibrahim**, along with a student activist **Safwan Anang** under the same Sedition Act in Kuala Lumpur. They were first arrested on 23 May 2013, but were later released by the magistrate. Their arrest is reportedly linked to their involvement in protests.

Thousands of copies of printed publications by opposition parties were reportedly seized in various States. Officers from the Home Ministry had not only seized the publications but also raided the vendors' stalls. The Home Minister allegedly stated that some of the seized publications had violated Section 5 of the Printing Presses and Publications Act 19841.

Authorities have reportedly further contributed to the atmosphere of tension by making statements blaming minorities for the political instability. On 12 May 2013, the former Court of Appeal Judge Mohd Noor Abdullah (now a commissioner for the Malaysian Anti-Corruption Commission) reportedly stated that the Chinese Malaysians must be prepared for a backlash from the Malay community given their betrayal in the recent elections.

Concern is expressed at the allegations that the arrest and detention of the above political leaders and activists was motivated by their participation in peaceful demonstrations. Further concern is expressed at reports of seizure of publications.

While we do not wish to prejudge the accuracy of these allegations, we would like to refer to article 19 of the Universal Declaration of Human Rights (UDHR) which provides that "[e]veryone 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."

Similarly, we would like to refer to article 20 of the UDHR which provides that “[e]veryone has the right to freedom of peaceful assembly and association. No one may be compelled to belong to an association.”

In this connection, we would like to refer to Human Rights Council resolution 21/16, and in particular operative paragraph 1 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, including in the context of elections, and 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.”

Furthermore, 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.

Given the seriousness of the allegations, we would like to inform your Excellency's Government that we are considering issuing a press release in relation to the issues raised.

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, 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, 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 alleged victims?
3. Please provide details of the legal basis for the alleged arrest and detention of the above mentioned persons, as well as the legal basis for the seizure of publications. Please indicate how these measures comply with the aforementioned international human rights norms and standards.

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 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