

Mandates of the Independent Expert on the issue of human rights obligations related to the enjoyment of a safe, clean, healthy and sustainable environment; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes.

REFERENCE: AL
MYS 5/2014:

18 August 2014

Excellency,

We have the honour to address you in our capacity as Independent Expert on the issue of human rights obligations related to the enjoyment of a safe, clean, healthy and sustainable environment; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, pursuant to Human Rights Council resolutions 19/10, 24/5, 25/18, and 21/17.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received regarding alleged violations of the rights of 16 environmental and human rights defenders in relation to their participation in a peaceful protest against Lynas Corporation.

According to information received:

On 22 June 2014, around 1,000 environmental activists and local residents gathered to peacefully protest against Australian mining company, Lynas Corporation, at Jalan Bandaran in Gebeng, Malaysia. The protesters called for the closure of Lynas Corporation, Ltd. and its Lynas Advanced Materials Plant (LAMP) - a rare earth processing plant being set up in Kuantan, Malaysia, which will potentially impose tons of toxic waste on the local community. Since 2011, environmental activists and local residents have been concerned about the radioactive element thorium which is produced by the plant. It is alleged that Lynas has no long-term waste management plan and despite eleven recommendations by the International Atomic Energy Agency on ensuring the safety of the Lynas refinery, Lynas' temporary operating license was approved, thus allowing Lynas to start operations.

It is reported that after some attempts to negotiate with the police, the protesters sat down peacefully to symbolize their protest. It is alleged that the Kuantan Police Assistant Commissioner gave the instruction to police to arrest the protestors after ordering them to disperse within 10 minutes. At around 4.30 p.m., while the demonstrators were sitting peacefully, the police moved in and started beating and arresting them. Two protesters were hospitalized and one sustained serious injuries to his head, resulting in concussion. On 2 July 2014, a Malaysian human rights group lodged a complaint with the Human Rights Commission of Malaysia about the police violence during the protest and the failure of the police in protecting civilians from attacks in front of the Kuantan police station.

Fifteen Malaysian protesters were charged, among which six members of Himpunan Hijau Hijau (Green Assembly) - a Malaysian environmentalist movement - were detained on charges of illegal assembly and rioting. **Wong Tack**, leader of Himpunan Hijau, was charged with unlawful assembly for not abiding by the order to disperse, and **Phua Kia Yeow, Ho Kam Huat, Wong Chee Wai, Wong Chee Wen** and **Foong Poh Choo** were all charged with rioting under Section 147 of the Penal Code. **Ho Kam Huat** also faces another charge under Section 353 of the Penal Code for deterring a public servant from discharge of his duty. Nine others - **Chong Kong Yeun, Raymond Ng Abdullah, Hew Kuan Yau, Thomas Wang, Ta Weng Seng, Rapar Ahmad, Lee Khai Ming, Tan Chee Hooi, Zamri Zonal** - were also charged under Section 145 of the Penal Code, which carries a jail term of up to two years and/or a fine, if convicted.

The above-mentioned detainees were released on condition of bail amounting to 2,500 Malaysian Ringgit (around EUR 576) per person, accompanied by a court injunction prohibiting them to discuss their case on social media, and ordering them to report monthly to the police station. It is reported that the activists will appeal this condition in the High Court in Kuantan arguing that the injunction was an unconstitutional infringement of the right to freedom of expression. The next case hearing has been scheduled for 2 September 2014.

Natalie Lowrey, an Australian citizen, was amongst those arrested with the above-mentioned 15 detained Malaysians. Ms Lowrey was detained for six days without being able to see her lawyer and investigated under Section 145 of the Penal Code and Section 39(b) of the Immigration Act 1959/63. According to information received, Ms Lowrey was denied access to basic necessities such as clean water, bed, blanket and pillow in detention. On 27 June 2014, Ms Lowrey was released without charge, but was deported back to Australia.

Serious concern is expressed about the alleged excessive use of force by the police against the aforementioned peaceful protesters, and their subsequent arrest and detention. Similar concern is expressed about the charges brought against these protesters, and the deportation of Ms Lowrey. Further concern is expressed about the court injunction prohibiting the protesters to discuss their case on social media and ordering them to report to the police on a monthly basis.

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 mandate provided to us by the Human Rights Council to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

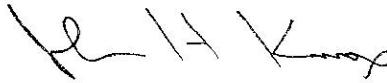
1. Please provide any additional information and any comment you may have on the above-mentioned allegations;
2. Please explain the application of Sections 145, 147 and 353 of the Malaysian Penal Code and how these Sections conform to international human rights law;
3. Please explain the grounds for the decision granting bail and the court injunction prohibiting protesters to discuss their case on social media and ordering them to report to the police station on monthly basis. Please explain the status of and any information related to this court proceeding;
4. Please provide the details, and where available the results, of any investigation, and judicial or other inquiries carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why;
5. Please indicate what measures have been taken to ensure that human rights defenders in Malaysia, including civil society and environmental activists, can operate in a safe and enabling environment and can carry out their legitimate activities without fear of harassment, stigmatization or criminalization of any kind.

We would appreciate a response within 60 days.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

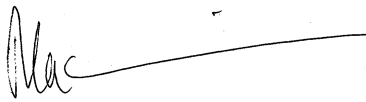
Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

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



John Knox

Independent Expert on the issue of human rights obligations related to the enjoyment of a safe, clean, healthy and sustainable environment



Maina Kiai

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



Michel Forst

Special Rapporteur on the situation of human rights defenders

Baskut Tuncak

Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes

Annex
Reference to international human rights law

In connection with the above concerns, we would like to refer to the report of the Special Rapporteur on the situation of human rights defenders which specifically makes the following recommendation for defenders working on environmental issues: “States should give full recognition to the important work carried out by defenders working on land and environmental issues in trying to find a balance between economic development and respect of the environment, including the right to use land, natural wealth and resources, and the rights of certain groups, including indigenous peoples and minorities (A/HRC/19/15 para. 124)”.

Furthermore, we would like to remind that the Article 8 (2) of the Declaration on the Right to Development (A/RES/41/128) stipulates the duty of States to “encourage popular participation in all spheres as an important factor in development and in the full realization of all human rights”, which would mean that it is the State’s obligation to guarantee the participation of environmental human rights defenders via peaceful assembly, association and protest.

We would also like to refer 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.

We would like to further refer to Human Rights Council resolution 24/5, which highlights the obligation of States to respect and gully protect the right to freedom of peaceful assembly.

We also wish 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, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right 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.