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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 in the field of cultural rights; 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 freedom of religion or belief.

REFERENCE: AL Cultural rights (2009) G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (56-23)
MYS 4/2014

27 May 2014

Excellency,

We have the honour to address you in our capacities as Special Rapporteur in the field of cultural rights; 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 freedom of religion or belief pursuant to Human Rights Council resolutions 19/6, 25/2, 24/5, and 22/20.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning Mr. **Mohd Kamilzuhairi Abdul Aziz** and Mr. **Mohd Faizal Musa**. In the light of the allegations below, as well as allegations made in the communication sent to your Excellency's Government on 27 March 2014, reply to which is yet to be received, we respectfully recommend your Excellency's Government to guarantee and protect their right to freedom of religion or belief and accordingly, to cease what appears to be a systematic persecution and discrimination against Shi'a Muslims, in particular through such repressive activities as arbitrary arrest and detention, the raiding of religious meetings and the banning of their publications and teaching.

According to the information received:

On 21 April 2014, Mr. Mohd Kamilzuhairi Abdul Aziz, a local Shi'a cleric from Gombak, state of Selangor, was arrested during his opening speech at a luncheon attended by approximately 100 people. The luncheon was organized in the Shia Community Centre, Taman Sri Gombak, State of Selangor by the local Shi'a community members. Reportedly, similar gatherings have been held for many years at the same place to commemorate the birth of Fatimah Al Zahra, the

daughter of Prophet Muhammad. The gathering was reportedly peaceful as participants were exercising their right to freedom of religion, belief and practice.

We were informed that officials of the Selangor State Islamic Department and the Registrar of Societies of Malaysia (the ROS), which is a department under the Ministry of Home Affairs that handles non-governmental organizations and political parties, interrupted the event, accompanied by about 10 police officers. The latter reportedly arrested Mr. Kamilzuhairi, after the officials from the ROS filed to the police a report accusing the Ja'fari Shi'a movement to be unregistered, as required by the law.

Mr. Kamilzuhairi was brought to Selayang Police headquarters, Selangor State, where he was interrogated for several hours. During his detention the police officers and the officials from the ROS went to his house searching for documents related to the Ja'fari Shi'a community in Malaysia. Thereafter, Mr. Kamilzuhairi was charged of violating section 42 of the Societies Act, according to which "any office-bearer and any person managing or assisting in the management of any unlawful society shall be guilty of an offence and shall be liable, on conviction, to imprisonment for a term not exceeding five years or to a fine not exceeding RM 15,000 or to both". He was subsequently bailed out for two months waiting for trial.

On 9 April 2014, the novel "Perempuan Nan Bercinta" (The Beloved Lady), written by Mr. Mohd Faizal Musa (under his pen name Faisal Tehrani) was banned by the Ministry of Home Affairs under the Section 7(1) of the Printing Press and Publications Act 1984. Reportedly, in a public statement issued on 2 May 2014, the Ministry explained that the ban was imposed because the novel sought to spread "Shi'a propaganda" through creative art work, directed at academics and youths, which might affect the "safety and social aspects" of Muslims nationwide. Allegedly, following the ban a mere possession of this book can lead to a jail term and fine of RM 5,000.

The ban appears to be imposed as a result of a *fatwa* issued by the National Council for Islamic Affairs on 5 May 1996, which declared Shi'a school of Islam as a deviant sect and any production, broadcast and distribution of any books, pamphlets, films and video deviating from the official interpretation of the Sunna as *haram* (forbidden). Reportedly, the Ministry of Home Affairs based its decision on the following reasons: the novel allegedly casts doubts and mocks Sunni *hadiths* as discriminatory against women, negatively reflects on the Quran. The novel is also said to worship the Ahlul Bayt's group and portrays those who do not follow the group's interpretation of Islam as "dubious Muslims". Ahlul Bayt, literally meaning "Members of the House", refers to the family and descendants of the Islamic prophet Muhammad. Shia followers believe the group was the true interpreter of Muhammad's teachings, while Sunnis believe in the interpretations

of Muhammad's companions. Lastly, the novel allegedly incites readers to stand up against Sunni authorities, which have been repressing religious freedoms in the name of "institutionalized" Islam.

Mr. Musa is the author of more than twenty novels, a human rights activist and an academic researching faith related topics. As a Research Fellow at the Institute of the Malay World and Civilization, National University of Malaysia, his research fields are human rights and Shi'a minority in the Malay world. It is alleged that the banning of his novel aims at discouraging his academic work. In 2011 another of his novels "Sebongkah Batu di Kuala Berang" (The Inscribed Stone of Kuala Berang) was banned by the Malaysia Islamic Development Department (JAKIM). Reportedly, three other novels may be banned in the future by the Ministry of Home affairs due to claims that they contain heavy Shi'a propaganda.

We would appreciate a response about the initial steps taken by your Excellency's Government to safeguard the rights of Mr. Mohd Kamilzuhairi Abdul Aziz and Mr. Mohd Faizal Musa.

In connection to the above alleged facts and concerns, please refer to the **Reference to international human rights standards Annex** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

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 observations to clarify the following elements:

1. Are the facts described in the above cases accurate?
2. Please provide details concerning the arrest and temporary detention of Mr. Mohd Kamilzuhairi Abdul Aziz and how this arrest is compatible with the aforementioned international human rights standards, in particular with the prohibition of arbitrary detention;
3. Please provide details, including the legal basis and reasons for banning publications and how these measures are compatible with the aforementioned international human rights standards.
4. Please provide information and explain in detail how the 1996 fatwa issued by the National Council for Islamic Affairs is in compliance with the aforementioned international human rights standards.
5. Please provide detailed information on the measures taken to ensure the right to freedom of religion or belief, in particular, the freedom to have or adopt a religion

or belief of one's choice and the freedom to manifest one's religion or belief, in line with Malaysia's international human rights obligations.

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.

Farida Shaheed
Special Rapporteur in the field of cultural rights

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

Heiner Bielefeldt
Special Rapporteur on freedom of religion or belief

ANNEX

Reference to international human rights standards

The following international human rights standards, are in our view the sources of international customary law, or at least subsidiary means for the determination of rules of law which can be used as guidance by the Government of Malaysia to ensuring that the rights to freedom of religion or belief, freedom of expression, freedom of association, as well as the prohibition of arbitrary deprivation of liberty and the issue of incitement to hatred are fully protected in Malaysia in accordance with article 9, 18, 19 and 20 of the Universal Declaration of Human Rights.

1. The 1981 United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (A/RES/36/55) provides that the right to freedom of religion or belief includes freedom to have a religion or whatever belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance,

practices and teaching. It further provides that no one shall be subject to discrimination by any State, institution, group of persons, or person on the grounds of religion or other belief. Discrimination between human being on the grounds of religion or belief constitutes an affront to human dignity and a disavowal of the principles of the Charter of the United Nations, and shall be condemned as a violation of the human rights and fundamental freedoms and as an obstacle to friendly and peaceful relations between nations.

2. The 1992 United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities provides in articles 1.1, 2.1, 3.1 and 4.1 that the State shall protect the existence and the national or ethnic, cultural or religious identity of minorities within its respective territories and shall encourage conditions for the promotion of that identity and that persons belonging to national or ethnic, religious and linguistic minorities have the right to enjoy their own culture, to profess and practice their own religion, and to use their own language, in private and in public, freely, without any interference or any form of discrimination, as well as that states will take measures where required, to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law.

3. With regard to the **allegations of arrest and temporary detention of Mr Mohd Kamilzuhairi Abdul Aziz for the peaceful exercise of his right to freedom of religion, belief and practice**, the rights to liberty and security of persons are guaranteed under international law. The General Assembly has repeatedly, and by consensus, urged States to ensure that no one within their jurisdiction should be deprived of these rights because of their religion or belief and that they bring to justice any perpetrator of violations of these rights (General Assembly resolutions 60/166, 61/161, 62/157, 63/181, 64/164, 65/211, 66/168, 67/179 and 68/170).

4. With regard to the **allegations that Malaysian authorities have raided peaceful religious gathering by members of Shi'a Muslim minority**, the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief provides that the right to freedom of thought, conscience, religion or belief includes the freedom to worship or assemble in connection with a religion or belief, and to establish and maintain places for these purposes and to establish and maintain communications with individuals and communities in matters of religion and belief at the national and international levels.

5. The rights to **freedom of peaceful assembly and of association** are established in article 20 of the Universal Declaration of Human Rights. In this connection, the Human Rights Council resolution 24/5 reminds States of their obligation 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... 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 (A/HRC/RES/24/5).

6. With regard to the **allegation that the Malaysia Islamic Development Department (JAKIM) and Ministry of Home Affairs banned in 2011, 2013 and 2014 three novels written by Dr. Mohd Faizal Musa**, the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief provides that the right to freedom of religion or belief includes the freedom to make, acquire and use the necessary articles and materials related to the rites or customs of a religion or belief and to write, issue and disseminate relevant publications in these areas.

7. Furthermore, the Human Rights Committee states in paragraph 48 of its General Comments 34 that prohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the ICCPR, except in the specific circumstances envisaged in article 20, paragraph 2, of the Covenant. Such prohibitions must also comply with the strict requirements of the Covenant's article 19, paragraph 3, as well as articles as 2, 5, 17, 18 and 26. The Committee observed that nor would it be permissible for such prohibitions to be used to prevent or punish criticism of religious leaders or commentary on religious doctrine and tenets of faith (CCPR/C/GC/34).

8. In addition, the Special Rapporteur in the field of cultural rights, in her report related to the right to freedom of artistic expression and creativity, reminded that all persons enjoy the right to freedom of artistic expression and creativity, which includes the right to freely experience and contribute to artistic expressions and creations, through individual or joint practice, to have access to and enjoy the arts, and to disseminate their expressions and creations. She called upon States to review critically their legislation and practices imposing restrictions on the right to freedom of artistic expression and creativity, taking into consideration relevant international human rights law provisions. (A/HRC/23/34m paras. 85 and 88)