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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; the Special Rapporteur on freedom of religion or belief; and the Independent Expert on minority issues**

REFERENCE: AL G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (56-23) Minorities (2005-4)  
MYS 2/2014

28 March 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; Special Rapporteur on freedom of religion or belief; and Independent Expert on minority issues pursuant to Human Rights Council resolutions 16/4, 24/5, 22/20, and 16/6.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning **alleged persecution of Shi'a Muslims in Malaysia**. In the light of the allegations below, we respectfully recommend your Excellency's Government to repeal the National Council for Islamic Affairs' 1996 fatwa that refers to Shi'a Muslims as "deviant ideology". We also recommend that the Islamic Religious Departments and the police in the States, which are currently enforcing it, cease what appears to be persecution and discrimination against Shi'a Muslims, including their arbitrary arrest and detention, pressure to renounce their faith and practices, the raiding of religious meetings, and the banning of their religious publications and teaching and to guarantee and protect their right to freedom of religion or belief.

According to the information received:

On 8 March 2014, Mr. **Mohd Kamilzuhairi Abd Aziz**, a local leader of the Malaysian Shi'a Muslim community, along with one hundred thirteen other individuals, including women and children, were arbitrary arrested by the police and the Perak's Islamic Religious Affairs Department (JAIP). The arrest appears to have been motivated by the fact that these persons were Shi'a Muslims, and gathered to attend a religious ceremony to commemorate the birth of Sayyidah Zaynab, the daughter of Islam's fourth caliph Ali and granddaughter of Prophet Mohammad. All were released shortly after arrest under the condition that they

would present themselves to the JAIP offices on different dates for each individual.

It appears that the 8 March 2014 arrest is not an isolated incident, but part of a systematic harassment against Shi'a Muslims in Malaysia. In particular, it is reported that despite the Malaysian Federal Constitution which guarantees freedom of religion, Shi'a Muslims face various restrictions on their ability to practice their faith, originating from a fatwa that describes Shi'ism as a "deviant ideology". The fatwa, currently enforced in eleven out of fourteen States in Malaysia, was issued in 1996 by the Fatwa Committee of the National Council for Islamic Affairs. The fatwa would determine that all Muslims in Malaysia must follow the teachings of Islam based on the Sunnah, and prohibits the publishing, broadcasting and distribution of Shi'a texts and teaching materials. Under the fatwa, it would seem that every individual, who is suspected to be Shi'a, is subject to the 1960 Internal Security Act (ISA), which provides for possible detention without trial for a period of at least two years. Malaysian States have reportedly been actively urged by the National Council for Islamic Affairs to implement that fatwa, outlaw Shi'ism and repress individuals or organizations preaching that confession. The fatwa has been enforced in different ways, in each State. For example, Shi'a believers in Negeri Sembilan State are allegedly free to practice their faith, but are not permitted to spread their beliefs and practices. In Perak, there seem to be legal provisions to arrest Shi'a followers for possessing Shi'a literature.

Furthermore, we are concerned about reports that since the adoption of that fatwa, State authorities have conducted a campaign to repress Shi'a activities. This has included the arrest under the ISA of several individuals suspected or accused of preaching Shi'a teachings. They were released several months later in 1997 on condition that they renounce their faith and to embrace or revert to Sunni Islam. At the time the police invoked "activities prejudicial to national security and Muslim unity" to justify their detention under the ISA.

In another instance, Mr. **Abdullah Hassan**, a Shi'a believer, was allegedly detained without trial under the ISA from 2 October 1997 until 31 December 1999. In 2012 he filed a report to the Human Rights Commission of Malaysia (SUHAKAM) in connection with the detention of six other Shia followers under the ISA between 20 October 2000 and 5 January 2001.

In December 2010, religious authorities of Selangor State reportedly raided the Ali al-Ridha Islamic Centre in Seri Gombak, where Shi'a believers congregated to observe the *ashura*, a ceremony that commemorates the death of the Prophet Mohammad's grandson. They arrested and detained 200 of them, whom they accused of threatening national security. In May 2011, a lunch celebrating the birthday of Fatimah Zahra, the daughter of Prophet Mohammad, was broken up by Selangor religious officers. Four Shi'a believers were arrested that day.

On 1 August 2013, the State religious authorities reportedly warned individuals involved in Shi'a proselytism that they may be prosecuted in civil court, through the Control and Restrictions of Non-Islamic Religions Bill and the *Syariah* (Sharia) Criminal Offences Fatwa.

On 5 August 2013, two Shi'a followers were arrested allegedly on the occasion of celebration of Eid by the Perak Islamic Religious Department, which seized their books and personal belongings. One of them was a woman, Ms. **Nur Azah Binti Abdul Halim**, aged 41, who is also a homeopathic practitioner and a mother of an infant. Her clinic in Taiping was raided by eight officers from the JAIP. She was taken to a police detention facility in Pekan Baru and released later. The other person was a businessman, Mr. Mohammad Ridzuan, aged 51. He was also released.

Also in the State of Perak, on 10 September 2013 three other Shi'as, Mr. **Abdul Manap Abdul Hamid**, aged 49, **Idris Mat Desa**, aged 49, and **Abu Bakar Ahmad**, aged 45 were arrested. They were charged under section 16 of *Syariah* (Sharia) Criminal Enactment 1992, for disobeying the Mufti of Perak Fatwa Department. They were accused of illegal possession of Shi'a related materials such as banners, books and *turbahs* (praying tablets). Their heads were shaved, they were held in the Taiping jail and they were released after paying RM 3000 each.

On 27 September 2013, a Shi'a follower, Mr. Abdullah Isa, aged 65, a former Imam of a mosque in Rompin district, was arrested in the state of Pahang, and detained for practicing his religion. He was charged with possession of books containing Shi'a teachings under Section 165 of the Pahang Islamic Religious Administration and Malay Customs Enactment 1982, which carries a maximum imprisonment term of one year or a fine up to RM 2000, or both, upon conviction.

On 28 September 2013, another raid was conducted at the Ali al-Ridha Islamic Center in Selangor. Religious authorities allegedly broke into the premises in the middle of the night when no one was inside, seized properties, a sum of charity money for orphans and numerous valuable items belonging to Shi'a followers. The raid allegedly caused severe damage to the premises.

We have also learnt that the mosques across Malaysia have been instructed by the State religious authorities to deliver anti-Shi'a message at the Friday prayer sermons, and are concerned that these messages could be construed as inciting hatred against members of the Shi'a communities. In December 2013, the Director-General of Malaysia's Department of Islamic Development was said to have referred to Shi'a Islam as "a cancer that is to be prevented from spreading."

On 6 and 9 January 2014, the Home Ministry of Malaysia reportedly banned the publication of twelve books on Shi'a Islam teaching that were construed as threatening public order and morality. According to the ban, any person who

disseminates these books or their content may be liable under Section 8 (2) of the Printing Presses and Publications Act 1984 which carries three years imprisonment or a fine of up to RM 20000, or both.

While we do not wish to prejudge the accuracy of these allegations, we are expressing grave concerns at what appears to be a policy of religious discrimination which would seem to impose unjustified restrictions on the ability of Shi'a believers in Malaysia to practice their religious beliefs in accordance with international human rights standards. International human rights standards relevant to the situation described above are provided in the Appendix to this communication. They include in particular, the Universal Declaration of Human Rights; the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (A/RES/36/55); the 1992 United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (A/RES/47/135); the General Assembly resolutions 60/166, 61/161, 62/157, 63/181, 64/164, 65/211, 66/168, 67/179 and 68/170; the Deliberation No. 9 of the United Nations Working Group on Arbitrary Detention (A/HRC/22/44); the Human Rights Council resolutions 22/20 and 24/5 (A/HRC/RES/22/20 and A/HRC/RES/24/5)); and the General Comments 22 and 34 of the Human Rights Committee (CCPR/C/21/Rev.1/Add.4 and CCPR/C/GC/34).

We would appreciate a response about the initial steps taken by your Excellency's Government to safeguard the rights of Mr. Mohd Kamilzuhairi Abd Aziz, Mr. Abdullah Hassan, Ms. Nur Azah Binti Abdul Halim, Mr. Mohammad Ridzuan, Mr. Abdul Manap Abdul Hamid, Idris Mat Desa, Abu Bakar Ahmad, Mr. Abdullah Isa and other members of the Shi'a Muslim minority community in Malaysia in compliance with the aforementioned international standards; and more widely for the Government of Malaysia to guarantee, respect and protect the peaceful exercise of their freedom to practice the religion of their choice to all people living in the country.

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 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 Abd Aziz, Mr. Abdullah Hassan, Ms. Nur Azah Binti Abdul Halim, Mr. Mohammad Ridzuan, Mr. Abdul Manap Abdul Hamid, Idris Mat Desa, Abu Bakar Ahmad, Mr. Abdullah Isa and other members of the Shi'a Muslim minority, and how these arrests are compatible with the afore mentioned international human rights standards, in particular with the prohibition of arbitrary detention;
3. Please provide details, including the legal basis and reasons for conducting raids on religious meetings, and for banning religious 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, as well as other legislative acts which were enacted in eleven Malaysian States to enforce it, are 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 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 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

Heiner Bielefeldt  
Special Rapporteur on freedom of religion or belief

IZSÁK Rita  
Independent Expert on minority issues

## APPENDIX

### **Note on the international human rights standards relevant to the allegations of restrictions and repression of the exercise of the right to freedom of religion and belief in Malaysia as described in this communication**

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, 20 and 21 of the Universal Declaration of Human Rights.

1. Paragraph 1 of article 1 of 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), which provides that “everyone shall have the right to freedom of thought, conscience and religion. This right shall include 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.”

2. Paragraph 1 of article 2 of the same Declaration 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.” Article 3 states that “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 proclaimed in the Universal Declaration of Human Rights and enunciated in detail in the International Covenants on Human Rights, and as an obstacle to friendly and peaceful relations between nations.”

3. The international standards relevant to the protection and promotion of the rights of minorities include the 1992 United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. Its Article 1.1 provides 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”. Article 2.1 states 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”. Article 3.1 highlights that “Persons belonging to minorities may exercise their rights, including those set forth in the present Declaration, individually as well as in community with other members of their group, without any discrimination. Article 4.1 provides 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”.

4. With regard to the **allegations of repeated arrest and detention of members of Shi'a communities for the peaceful exercise of their 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).

5. In particular, in paragraph 38 of its Deliberation No. 9 (A/HRC/22/44) concerning the definition and scope of arbitrary deprivation of liberty under customary international law, the UN Working Group on Arbitrary Detention “regards cases of deprivation of liberty as arbitrary under customary international law in cases where: (b) The deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights; (e) The deprivation of liberty constitutes a violation of the international law for reasons of discrimination based on birth; national, ethnic or social origin; language; religion; economic condition; political or other opinion; gender; sexual orientation; disability or other status, and which aims towards or can result in ignoring the equality of human rights.” In concluding paragraph 79 of its same Deliberation, the Working Group on Arbitrary Detention “finds that the prohibition of all forms of arbitrary deprivation of liberty constitutes part of customary international law and constitutes a peremptory norm or *jus cogens*.” Deliberation No. 9 was presented to the 22nd session of the UN Human Rights Council in 2013, and was supported by a large number of States.

6. With regard to **allegations related to enforcement of the ban on proselytism by Shi'a believers, and to what appears to be an official requirement for Shi'a followers to renounce their faith and revert to or embrace Sunni Islam as a condition to be released from detention under the ISA**, Article 18 of the Universal Declaration of Human Rights, explicitly guarantees the freedom to hold religious beliefs of one's choice, as well as the freedom to change one's religion or belief as an inextricable component of the human right to freedom of religion or belief. While subsequent United Nations instruments use slightly different wording, the right to freedom of conversion remains fully protected. Article 18 of the International Covenant on Civil and Political Rights (ICCPR) provides that freedom of thought, conscience and religion includes “freedom to have or adopt a religion or belief of his choice”. Article 18 (2) was included partly to reinforce the protection of the right to conversion, stating that “[n]o one shall be subject to coercion which would impair his freedom to have or adopt a religion or belief of his choice”. Article 1 of the 1981 Declaration refers to everyone's “freedom to have a religion or whatever belief of his choice”

7. Special Rapporteurs on freedom of religion or belief have consistently understood since as early as 1987, that while provisions may varied slightly in wording, they “all meant precisely the same thing: that everyone has the right to leave one religion or belief and to adopt another, or to remain without any at all” (see E/CN.4/Sub.2/1987/26, para. 21).” In its General Comment 22, the Human Rights Committee also interprets the “have

or adopt” formulation of the International Covenant on Civil and Political Rights to include the right to conversion. The Committee observes that “the freedom ‘to have or to adopt’ a religion or belief necessarily entails the freedom to choose a religion or belief, including the right to replace one’s current religion or belief with another or to adopt atheistic views, as well as to retain one’s religion or belief” (CCPR/C/21/Rev.1/Add.4, para. 5).<sup>8</sup> The General Assembly has repeatedly and by consensus urged States to ensure that their constitutional and legislative systems provide adequate and effective guarantees of freedom of thought, conscience and religion or belief, including the right to freely practice one’s religion and to change one’s religion or belief, to all without distinction, inter alia, by providing access to justice and effective remedies in cases where these rights are violated (see General Assembly resolutions 60/166, 61/161, 62/157, 63/181, 64/164, 65/211, 66/168, 67/179 and 68/170). In this regard, in paragraph 68 of his interim report to the General Assembly (A/67/303), the Special Rapporteur of freedom of religion or belief calls upon States to consistently respect, protect and promote the human right to freedom of religion or belief with respect to conversion. He reiterated that the right to conversion and the right not to be forced to convert have the status of unconditional protection under international human rights law. Freedom of religion or belief includes the right to try to persuade others in a non-coercive manner; any restrictions on missionary activities deemed necessary by States must strictly abide by article 18 (3) of the International Covenant on Civil and Political Rights.

8. With regard to the **allegations that Malaysian authorities have raided peaceful religious gatherings by members of Shi’a Muslim minority who were worshipping and that they have seized religious literature**, the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief, in particular, article 6 (a), (c), (d) and (i) provide 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;” “to make, acquire and use the necessary articles and materials related to the rites or customs of a religion or belief;” “to write, issue and disseminate relevant publications in these areas;” as well as “to establish and maintain communications with individuals and communities in matters of religion and belief at the national and international levels.”

9. The rights to **freedom of peaceful assembly and of association** are established in article 20 of the Universal Declaration of Human Rights, which provides that “Everyone has the right to freedom of peaceful assembly and association. No one may be compelled to belong to an association.” In this connection, the Human Rights Council resolution 24/5, and in particular operative paragraph 2 “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” (A/HRC/RES/24/5).

10.



11. In addition, paragraph 8(h) of the Human Rights Council resolution 22/20 (A/HRC/RES/22/20) and paragraph 14 (h) of General Assembly resolution 68/170 (A/RES/68/170) urge States to step up their efforts to protect and promote freedom of thought, conscience and religion or belief, and to this end “to ensure, in particular, the right of all persons to worship, assemble or teach in connection with a religion or belief and their right to establish and maintain places for these purposes, and the right of all persons to seek, receive and impart information and ideas in these areas.” General Comment 22 the Human Rights Committee observed that “in addition, the practice and teaching of religion or belief includes acts integral to the conduct by religious groups of their basic affairs, [...] the freedom to establish seminaries or religious schools and the freedom to prepare and distribute religious texts or publications” (CCPR/C/21/Rev.1/Add.4, para. 4).

11. With regard to the **allegation that the Ministry of Home Affairs issued three decisions on 6 and 9 January 2014 to ban 12 publications of Shi’a literature**, 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).

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The signatories of this communication remain at the disposal of the authorities of the Government of Malaysia for any further information, advice or guidance to assist them in their effort to ensure that the fundamental rights and freedoms of all persons living in Malaysia are guaranteed, respected and protected.