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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 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 12/2013

18 November 2013

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 16/4, 24/5, and 16/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the arrest of, and possible charges against, 19 demonstrators during a peaceful protest against the demolition of Kampung Hakka Mantin historical village in Negeri Sembilan State, with a view to implementing a mixed housing and commercial project, which, if approved at the time of the events, would have led to the forced eviction of many local residents.

Ms. Nalini Elumalai was the subject of an urgent appeal sent by 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 sent on 28 July 2011; and of an allegation letter sent by 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 on 5 October 2012. We acknowledge receipt of the responses from your Excellency's Government received on 24 April 2012 and 6 February 2013 respectively.

Mr. Parameiswary Elumalai was the subject of an allegation letter sent by the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, and the then Special Representative of the Secretary-General on the situation of human rights defenders on 14 December 2006. We regret that your Excellency's Government did not respond to the concerns raised in this letter.

According to the information received:

On 31 October 2013, Ms. **Nalini Elumalai**, Executive Director of the human rights non-governmental organization Suara Rakyat Malaysia (SUARAM), Mr. **A. Thevaraj**, SUARAM's Coordinator, Mr. **Parameiswary Elumalai**, activist from the Oppressed Peoples' Movement, as well as seven residents of the Kampung Hakka Mantin village, three grass root activists from the Socialist Party of Malaysia, four State Assembly representatives, and two members of Parliament, were taking part in a peaceful protest against the demolition of the said village, when they were arrested by security forces for "obstructing public servant[s] from carrying out their work", pursuant to Article 186 of Malaysia's Penal Code. It is reported that the 19 protestors, who sought a peaceful negotiation of the situation with police officers, were aggressively manhandled by them. One of the peaceful demonstrators was forcibly pushed to the ground, kicked and slapped by the officers, one of whom sat on him while he was been handcuffed. The remaining demonstrators were tightly handcuffed for more than two hours.

The 19 peaceful protestors were taken to a police station and subsequently released on police bail later the same day. They face up to three months' imprisonment, as well as a fine of MYR 1,000 (around USD 315).

On the same day, the demolition of the village was temporarily suspended following a stay of execution order issued by the Court of Appeal.

Serious concerns are expressed that the arrest of, and possible charges against, the aforementioned peaceful protestors may be linked to their legitimate human rights activities, while exercising their rights to freedom of peaceful assembly and freedom of opinion and expression. Further concerns are expressed about the alleged excessive use of force against one of the peaceful demonstrators. Finally, serious concerns are expressed that these alleged violations take place in a context of on-going violations of the rights to freedom of opinion and expression, freedom of peaceful assembly and freedom of assembly in the country.

While we do not wish to prejudge the accuracy of these allegations, we would like to refer your Excellency's Government to article 19 of the Universal Declaration of Human Rights (UDHR), which provides that "[e]veryone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."

Similarly, we would like to refer your Excellency's Government 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 also 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.”

In addition, 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.
- 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.

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 observations on the following matters:

1. Are the facts alleged in the summary of the case accurate?
2. Please confirm the legal basis of the arrest of, and possible charges against, the aforementioned peaceful protestors, and how these measures are compatible with the aforementioned international human rights norms and standards.

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

Margaret Sekaggya
Special Rapporteur on the situation of human rights defenders