

**NATIONS UNIES**  
**HAUT COMMISSARIAT DES NATIONS UNIES**  
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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 12/2012

5 October 2012

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, 15/21, and 16/5.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning the alleged harassment of the **non-governmental organization Suara Rakyat Malaysia (SUARAM)**, which works for the promotion and protection of human rights in Malaysia, and whose work has resonated positively at the regional and international levels. SUARAM belongs to the Coalition for Fair and Free Elections (BERSIH), which advocates for the reform of the electoral process in Malaysia.

SUARAM and other BERSIH members were the subjects of a series of communications sent by several mandate holders on 7 July 2011, 28 July 2011, 16 May 2012 and 1 July 2012. We thank your Excellency's Government for its responses dated 10 August 2011, 24 April 2012, and 26 September 2012.

According to the information received:

On 6 July 2012, SUARAM received, via registered mail, notices of inspection pursuant to s7B(2) and s7(11)(a) of the Companies Act 1965 from the Companies Commission Malaysia (CCM), requiring SUARAM's directors, Messrs Kua Kia Soong and Yeoh Seng Guan, to produce a series of documents to the CCM pertaining to the financial situation of the organization on 13 July 2012.

On 13 July 2012, members of SUARAM, accompanied by the lawyers' organization, appeared before the CCM. Due to the short notice and the need for

clarification on the information and documents requested by CCM, SUARAM applied for an extension of time to compile and submit records related to the past four years to the CCM.

On 20 July 2012, following the letter from CCM providing clarification on the requested information and documents, SUARAM produced a list of detailed information on administrative expenses for the years 2008-2011; a list of detailed information on the company's business activities for the years 2008-2011; the general ledger including trial balance and chart of accounts; supporting documents related to income including letters, cheques, contracts, bank statements, receipts, invoices and delivery orders; and supporting documents related to expenses, including bank statements and staff listing.

On 3 August 2012, the Social Security Organisation, under the Ministry of Human Resources (PERKESO), issued a notice to SUARAM requesting that a list of documents be produced on the social security fund on 30 August, highlighting that failure to do so would be sanctioned by a fine up to RM10,000.00 or 2 year imprisonment or both. SUARAM produced the documents on 30 August.

On 3 August 2012, while the investigation was still ongoing, the Minister of Domestic Trade, Cooperatives and Consumerism reportedly stated in a press conference that SUARAM's accounts were "highly suspicious", that 99.4% of SUARAM's activities are "money collecting", and that the investigation was not politically motivated. A lawyer of the United Malays National Organization suggested that SUARAM is involved in money laundering for terrorist organizations, and called on the Central Bank of Malaysia (Bank Negara Malaysia) to take immediate measures against SUARAM.

On 5 September 2012, the CCM seized documents from SUARAM's Company Secretary and auditors notices, pursuant to S7C and S7D(1) of the Companies Act 1965, with a view to searching, seizing and detaining documents related to SUARAM.

On 7 September 2012, the CCM served notices to SUARAM for investigation pursuant to Section 7D (1) of the Companies Act 1965. Messrs Kua Kia Soong, Dr. Yeoh Seng Guan, together with SUARAM's executive director, Ms. Nalini Elumalai, were required to appear before the CCM for investigation on 13 September 2012, while Finance Manager, Ms. Danapakiam Savari, and Refugees Coordinator, Ms. Sarah Devaraj were required to appear on 11 September 2012.

On the same day, the Ministry of Foreign Affairs (Wisma Putra) declared that it would summon the Embassy of Germany in Malaysia to explain the alleged channeling of funds to SUARAM for activities that show its "partiality to certain issues that have implications on Malaysia's domestic situation".

On 8 September 2012, the Minister of Domestic Trade, Cooperatives and Consumerism stated that the CCM had identified five charges, under the Companies Act 1965, that could be made against Suara Inisiatif Sdn Bhd, the legal entity of SUARAM.

On 10 and 11 September 2012, SUARAM's company secretary and auditors were investigated by the CCM, and on 13 September 2012, Ms. Danapakiam Savari and Ms. Sarah Devaraj were investigated by the CCM.

On 11 September 2012, a meeting was reportedly held between the CCM, the Malaysian Communication and Multimedia Commission, the Central Bank of Malaysia, the Registrar of Societies (RoS), the Royal Malaysia Police (Polis Diraja Malaysia – PDRM), and the Home Ministry to determine the jurisdictions of respective agencies and actions to be taken against SUARAM.

On 13 September 2012, SUARAM's Chairman, Mr. Arumugam Kalimuthu received a notice pursuant to S7D(1) CA 1965 by way of registered mail and was summoned to appear at CCM on 19th September 2012 for investigation.

On 18 September 2012, Ms. Nalini Elumalai answered questions posed by the CCM.

On 19 September 2012, the RoS and the PDRM went to SUARAM's office to conduct an inspection; however, they could not proceed as they were informed by SUARAM that it is a registered private limited company, and therefore is not a society under the purview of the RoS.

On the same day, Ms. Danapakiam Savari was summoned once again to appear before the CCM the following day for further investigation.

On 21 September 2012, Ms. Nalini Elumalai was summoned by the CCM for further investigation, and appeared before the Commission on 24 September. It is reported that the CCM investigation is now completed, and that a decision on whether SUARAM will be charged, and on what basis, is pending.

On 28 September 2012, two staff members of SUARAM were issued notice 111 under the criminal procedure code to record a statement as witnesses at the office of the RoS on 1 October 2012, although the RoS reportedly has no jurisdiction over any registered company.

It is further reported that SUARAM is victim of a smear campaign, led by the newspaper *News Straits Times*, which claims that the organization is trying to destabilize the Government. In addition, unidentified groups have been hanging banners around Kuala Lumpur stating, inter alia, that "SUARAM supports Jews", and "Not cooperating with CCM means SUARAM is guilty".

Serious concerns are expressed that the alleged on-going harassment against SUARAM and its staff members may be linked to its legitimate human rights activities in Malaysia. In this connection, according to a number of reports, the timing of the aforementioned investigations against SUARAM seems to be related to the anti-corruption work of the organization.

Without in any way implying any determination on the facts of the case, we would like to refer your Excellency's Government to article 19 of the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), 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 remind your Excellency's Government of article 22 of the ICCPR, which provides that "[e]veryone shall have the right to freedom of association with others..."

In this context, we would like to further refer to Human Rights Council resolution 15/21, and in particular operative paragraph 1 that "[c]alls upon States 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, 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 highlight the first thematic report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association (A/HRC/20/27), in which he recommends that "[a]ny associations, including unregistered associations, should be allowed to function freely, and their members operate in an enabling and safe environment" (para. 96), and "[a]ny associations, both registered or unregistered, should have the right to seek and secure funding and resources from domestic, foreign, and international entities, including individuals, businesses, civil society organizations, Governments and international organizations" (para. 68). The Special Rapporteur calls upon States to "ensure that no one is criminalized for exercising the rights to freedom of peaceful assembly and of association, nor is subject to threats or use of violence, harassment, persecution, intimidation or reprisals" (para. 84(c)).

We would also 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 6 point a) which provides that everyone has the right, individually and in association with others to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems;

- 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 13 which stipulates that everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedom, through peaceful means, in accordance with article 3 of the declaration.

As 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:

1. Are the facts alleged in the summary of the case accurate?
2. Please indicate the legal basis of the different investigations and of the charges (if any) which will be brought against SUARAM. Please indicate how such measures are compatible with international norms and standards as contained, inter alia, in the International Covenant on Civil and Political Rights and the Declaration on Human Rights Defenders.

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 SUARAM and its

members 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.

Finally, we welcome the invitation extended by your Excellency's Government to the Special Rapporteur on the rights to freedom of peaceful assembly and of association to undertake a country visit in 2013.

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

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

Frank La Rue  
Special Rapporteur on the promotion and protection of the right to  
freedom of opinion and expression