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**UNITED NATIONS**  
**OFFICE OF THE UNITED NATIONS**  
**HIGH COMMISSIONER FOR HUMAN RIGHTS**

**PROCEDURES SPECIALES DU**  
**CONSEIL DES DROITS DE L'HOMME**

**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: UA G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9)  
MYS 5/2012

27 July 2012

Excellency,

We have the honour to address you in our capacity 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 draw the attention of your Excellency's Government to information we have received regarding the alleged risk of detention of **Mr. P. Waytha Moorthy** upon his planned return to Malaysia on 1 August 2012.

Mr. P. Waytha Moorthy is a lawyer and chairperson of Hindu Rights Action Force (HINDRAF), an organization founded to promote human rights in Malaysia, and in particular, to defend the rights of the Malaysian Indian minority. HINDRAF was declared an illegal organization by the Malaysian Government on 15 October 2008 under Section 5(1) of the Societies Act, though its members remain active.

The alleged arrest of family members of HINDRAF lawyers, including Ms P. Vwaishhnnavi, daughter of Mr. P. Waytha Moorthy, and the decision to declare HINDRAF illegal, were the subject of a previous communication sent to your Excellency's Government on 28 October 2008, by the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and the Independent Expert on minority issues. Regrettably, no substantive reply has yet been received from your Excellency's Government in relation to this communication.

The alleged harassment and arrest of lawyers and members of HINDRAF was the subject of previous communications sent to your Excellency's Government, the most recent sent on 9 May 2011, by the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and the Independent Expert on minority issues. We

acknowledge receipt of your Excellency's Government's response to this communication on 24 August 2011.

According to the information received:

On 25 November 2007, a petition of 100,000 signatures denouncing human rights violations of the Malaysian Indian community was reportedly submitted to the British High Commission in Kuala Lumpur, during a mass rally organized by HINDRAF. According to reports, lawyers of HINDRAF were subsequently arrested as a result of the rally and detained under the Internal Security Act (ISA), which permits detention without trial up to a period of two years. While the ISA has been voted by Parliament to be replaced by the Security Offences (Special Measures) Act as of July 2012, this is reportedly still awaiting the approval of the Minister of Home Affairs.

In November 2007, Mr. P. Waytha Moorthy reportedly travelled to the United Kingdom to promote the work of HINDRAF and to seek international support for its causes. On 2 April 2008, he travelled to the United Kingdom for the second time and was reportedly given leave to remain for six months.

On 17 April 2008, Mr. Moorthy travelled to Geneva to meet with members of the United Nations Human Rights Council. Upon his return to the United Kingdom on 19 April 2008, he was allegedly detained by immigration officials who claimed that his passport was no longer valid for travel but was allowed temporary permission to enter the country. On 21 April 2008, Mr. Moorthy reportedly applied for political asylum under the Geneva Convention after being informed by UK immigration authorities that his passport had been revoked by Malaysian authorities. Asylum was granted to Mr. Moorthy on 9 September 2008.

On 17 May 2008, the Malaysian Home Minister reportedly denied that Mr. Moorthy's passport was revoked. Mr. Moorthy's solicitors subsequently wrote to the UK Minister of Immigration and the Malaysian High Commission for clarification. On 23 September 2008, the UK Home Office confirmed that the UK High Commission in Malaysia was informed of the cancellation of the passport in a letter from the Malaysian authorities dated 14 March 2008, as a result of alleged criminal charges brought against Mr. Moorthy. On 2 July 2008, the UK High Commission reportedly received a request from the Malaysian authorities for Mr. Moorthy's passport to be returned.

On 24 October 2008, Mr. Moorthy allegedly received his passport from the Malaysian High Commission without clarification of whether the document was valid. It is alleged that the reason the Malaysian Government returned the passport to Mr. Moorthy was to interfere with his asylum status in the United Kingdom, which was granted to him on the condition that he was not in the possession of a Malaysian passport. In consequence, Mr. Moorthy returned the passport, which was due to expire on 17 October 2010, to the Malaysian High Commission on 25 October 2008.

According to the information received, Mr. Moorthy is to return to Malaysia on 1 August 2012 in order to continue his human rights activities and to be reunited with his family. It is reported that he is travelling to Singapore on the travel document issued to him by the United Kingdom and that he will cross the border to Malaysia by land.

Without expressing at this stage an opinion on the facts of the case, concern is expressed that the alleged revoking of Mr. P. Waytha Moorthy's passport may be directly related to his peaceful and legitimate human rights activities, in particular his work with HINDRAF in the defence of the rights of the Malaysian Indian community.

In light of the alleged harassment and arrest of HINDRAF lawyers and members, as referred to in previous communications sent to your Excellency's Government, concern is further expressed that Mr. P. Waytha Moorthy may face arrest and criminal charges upon his return to Malaysia on 1 August 2012. Concern is expressed that if this were to occur, these actions may be directly motivated by Mr. P. Waytha Moorthy's peaceful and legitimate human rights activities.

We would like to appeal to your Excellency's Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the Universal Declaration of Human Rights which provides that "[e]veryone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."

We would also like to draw the attention of your Excellency's Government to article 20 of the Universal Declaration of Human Rights, 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 context, we would like to refer to Human Rights Council resolution 15/21, and in particular operative paragraph 1 that "Calls 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 this connection, 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 points b) and c) which provide that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right to form, join and participate in non-governmental organizations, associations or groups, and to communicate with non-governmental or intergovernmental organizations.

- 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.

- article 7 which states that "Everyone has the right, individually and in association with others, to develop and discuss new human rights ideas and principles and to advocate their acceptance."; and

- article 12 paragraphs 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.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency’s Government to safeguard the rights of Mr. P. Waytha Moorthy in compliance with the above international instruments.

Moreover, 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. Since we are

expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the above summary of the case accurate?
2. If so, please confirm what measures will be taken to ensure the physical and psychological integrity of Mr. P. Waytha Moorthy upon his return to Malaysia.
3. Please also clarify the legal basis of the alleged revoking of Mr. P. Waytha Moorthy's passport and the alleged criminal charges brought against him.
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.

We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the report we will submit 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 Mr. P. Waytha Moorthy 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