

Lawyers' Rights Watch Canada

NGO in Special Consultative Status with the Economic and Social Council of the United Nations

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His Excellency Tan Sri Dato' Haji Muhyiddin bin Haji Mohd. Yassin

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Your Excellencies,

Malaysia: Judicial harassment of human rights lawyer Charles Hector

Lawyers' Rights Watch Canada (LRWC) is a committee of lawyers and human rights defenders who promote international human rights, the independence and security of human rights defenders, the integrity of legal systems, and the rule of law through advocacy, education, and legal research. LRWC has Special Consultative Status with the Economic and Social Council of the United Nations (UN).

LRWC has received information that two logging contractors, Beijing Million SDN BHD ("Beijing Million") and Rosah Timber & Trading SDN BHD ("Rosah Timber") have brought an application to begin contempt of court proceedings against a human rights lawyer, Mr. Charles Hector and eight of his clients ("defendants"). The hearing is scheduled for 25 March 2021 at Kuantan High Court in Pahang, Malaysia.

The defendants have been protesting plans to log a forest reserve in the vicinity of their community. They are concerned about negative impacts of logging on the environment and community livelihoods. The contempt proceedings appear to be an attempt by Beijing Million and Rosah Timber to obstruct the court's determination of the defendants' rights, including their right to legal representation by Mr. Hector. LRWC is monitoring this matter in light of international law and standards, including the *Universal Declaration on Human Rights* (UDHR)¹

¹ UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), Article 10, 11, available at: <https://www.un.org/en/universal-declaration-human-rights/>,

the UN Declaration on Human Rights Defenders,² the *UN Basic Principles on the Role of Lawyers*,³ and the *UN Guiding Principles on Business and Human Rights*.⁴

Background

Since 2013, numerous villagers in Jerantut, Pahang State, have been protesting logging in the Permanent Forest Reserve in Jerantut. Despite classification of the area as a Forest Reserve, the Forestry Department issued a logging license in 2019 to the Pengurus Besar Yayasan Pahang (General Manager of the Pahang Foundation). The Pahang Foundation is a statutory body of the Pahang State government. The General Manager of the Pahang Foundation appointed Beijing Million and Rosah Timber as logging contractors. The portion of the forest planned to be logged is a water catchment area, and the villagers, including the defendants, are concerned about the impact of logging on the quality of water required for their livelihoods. It has been alleged that the State government failed to conduct required environment and social impact assessments.

On 5 November 2020, Beijing Million and Rosah Timber obtained an ex parte interlocutory injunction to prevent the defendants from accessing a contested 202.61-hectare area in the Forest Reserve. The defendants' lawyer, Charles Hector, is currently preparing for a full trial of the matter. According to information we have received, on 20 February 2020 the Jerantut Forestry Officer, Mohd Zarin Bin Ramlan, issued a letter suspending permission for Beijing Million and Rosah Timber to build an access road into the forest after alleged disturbances by villagers on 19 February 2020. We understand that the alleged disturbances formed the foundation of the interlocutory injunction despite police investigations that determined the allegations against the villagers to be unfounded.

During trial preparation, Mr. Hector, wrote to Mr. Mohd Zarin Bin Ramlan to seek clarification of his letter of 20 February 2021. Beijing Million and Rosah Timber are now claiming that Mr. Hector's letter to Mr. Bin Ramlan was a violation of interlocutory injunction orders, one of which prohibits the defendants, "their agents, representatives, servants and/or any party connected with them" from "1.4 Interfering with department or approval given to the Plaintiffs on 15 September 2019 by the District Forest Office... 1.5 Cause nuisance to the work of the Plaintiffs in any manner whatsoever including physically, online or by communication with the authorities..." Beijing Million and Rosah Timber appear to be manipulating this overbroad order in an illegitimate attempt to interfere with the defendants' legitimate pursuit of a court remedy challenging the validity of the interlocutory injunction.

² UN General Assembly, *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms* : resolution / adopted by the General Assembly, 8 March 1999, A/RES/53/144, article 9.2, available at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/RightAndResponsibility.aspx>.

³ United Nations, *Basic Principles on the Role of Lawyers*, 7 September 1990, articles, available at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfLawyers.aspx>.

⁴ UN Human Rights Council, *Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework*, A/HRC/17/4, 16 June 2011, available at: https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf.

International human rights law analysis

LRWC is concerned that the complaint against Mr. Hector and the defendants is intended to obstruct a legitimate legal process, to silence valid concerns of the defendants, and to discredit, punish, and criminalize the legitimate professional work of a respected human rights lawyer.

The UDHR guarantees that everyone has “the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.”⁵ Equality of access to the law without discrimination is a fundamental right protected by the UDHR.⁶

The UN Declaration on the Human Rights Defenders affirms that:

everyone whose rights or freedoms are allegedly violated has the right, either in person or through legally authorized representation, to complain to and have that complaint promptly reviewed in a public hearing before an independent, impartial and competent judicial or other authority established by law and to obtain from such an authority a decision, in accordance with law, providing redress, including any compensation due, where there has been a violation of that person's rights or freedoms, as well as enforcement of the eventual decision and award, all without undue delay.⁷

Thus, it is a violation of international human rights standards to obstruct Mr. Hector's exercise of his professional duties on behalf of his clients to obtain evidence, gather documents and correspond with potential witnesses in preparation for the court trial.

The UN *Basic Principles on the Role of Lawyers*, which have been welcomed by consensus of all States of the UN General Assembly, elaborate these fundamental principles and emphasize that governments “shall ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference” and must not be “threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.” The Basic Principles also affirm that lawyers “shall not be identified with their clients or their clients' causes as a result of discharging their functions.”⁸ The government of Malaysia has a duty to prevent Beijing Million and Rosah Timber from interfering with Mr. Hector's exercise of his duties as a lawyer.

We understand that in 2015 the government of Malaysia made a commitment to develop a National Action Plan on Business and Human Rights based on a framework outlined by the Human Rights Commission of Malaysia (SUHAKAM). The framework references the UN *Guiding Principles on Business and Human Rights*⁹ (Guiding Principles) and notes the need for

⁵ UDHR, *supra* note 1, article 8.

⁶ UDHR, *ibid*, article 7.

⁷ UN Declaration on Human Rights Defenders, *supra* note 2, article 9.2

⁸ *Ibid*, paras 16, 18.

⁹ Danish Institute for Human Rights (DIHR), National Action Plans on Business and Human Rights: Malaysia, available at: <https://globalnaps.org/country/malaysia/>. See the Human Rights Commission of Malaysia Strategic Framework on a National Action Plan on Business and Human Rights for Malaysia, which notes the need to address

remedies to address risks of reprisals and intimidation against “individuals and communities, their representatives, advocates and human rights defenders... intended to deter them from pursuing claims and raising complaints.”¹⁰ LRWC would welcome information as to how your government is implementing the Guiding Principles to ensure protection of all those pursuing claims related to alleged violations of human rights by business enterprises.

Finally, we note that the Malaysian Bar Council has called for review and revision of Malaysia’s common law on contempt of court. There are concerns that the law is vague and that sentences for contempt may be arbitrary and disproportionate, including high fines and custodial sentences. LRWC urges your government to review and revise the law in accordance with international law and standards.¹¹

LRWC plans to continue to monitor the situation of Mr. Hector and the defendants in light of the above international human rights law and standards. We urge your government to take immediate steps to ensure the protection of Mr. Hector and the defendants, together with all lawyers and human rights defenders, from retaliation and reprisals as a result of their legitimate exercise of their internationally protected rights.

Yours sincerely,

[signed]

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risks to human rights defenders at paras 106 (15), and 107.c, available at: <https://suhakam.org.my/portfolio/business-and-human-rights/>.

¹⁰ *Ibid.* In particular see the Human Rights Commission of Malaysia Strategic Framework on a National Action Plan on Business and Human Rights for Malaysia, paras 106 (15), and 107.c, available at: <https://suhakam.org.my/portfolio/business-and-human-rights/>.

¹¹ Malaysia Bar Council, Press Comment: Codifying the Law of Contempt is a Step in the Right Direction, 5 August 2020, available at: <https://www.malaysianbar.org.my/article/news/press-statements/press-statements/press-comment-codifying-the-law-of-contempt-is-a-step-in-the-right-direction>

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