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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)
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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 increase in attacks and threats against Ms. **Ambiga Sreenevasan**, co-chair of the Coalition for Fair and Free Elections (Bersih), and **other Bersih members**, by non-State and State actors.

Ms. Sreenevasan and other Bersih members were the subject of a communication by several Special Procedures mandate holders on 16 May 2012.

According to the new information received:

On 19 May 2012, members of the right wing Malay rights group Pertubuhan Pribumi Perkasa Negara (Perkasa) threw stones and eggs at participants of a public event in Melaka organized by the Malacca PAS Supporters' Club, which Ms. Sreenevasan was scheduled to attend. Due to safety concerns, she was advised not to appear. Participants in the meeting were injured and their cars damaged.

On 21 May, a group of people, that supposedly represents petty traders, the Kuala Lumpur Petty Traders Action Council, drew yellow lines on the street outside Ms. Sreenevasan's house, and shouted threatening and derogatory statements. This group planned to organize a protest outside her house, but then later decided not to do so. The police and the local council blocked the street in anticipation of the planned protest. On 24 May, the group of people negotiated with the police to get

access to Ms. Sreenevasan's house to deliver a memorandum, to which the police consented. The memorandum was handed to Mr. Pak Samad, co-chair of Bersih 2.0 as Ms. Sreenevasan feared for her safety. On the same day, another group of 40 youths handed a memorandum to Mr. Pak Samad, in which Ms. Sreenevasan is presented as an enemy and traitor of the State. The document also lists 10 reasons why Ms. Sreenevasan should be expelled from Malaysia.

On 23 May, the federal Government announced that it would sue Ms. Sreenevasan, together with other Bersih organizers, in relation to property which was allegedly destroyed during the Bersih 3.0 rally of 28 April 2012.

Serious concerns are expressed about the physical and psychological integrity of Ms. Sreenevasan, and, more generally, of Bersih members. Concerns are also expressed that the aforementioned acts of intimidation and harassment against Ms. Sreenevasan and other Bersih members are linked to their activities in defence of human rights, in the exercise of their rights to freedom of association, peaceful assembly, and opinion and expression. Similar concerns are expressed regarding the decision of the federal Government to sue Ms. Sreenevasan and other Bersih organizers for damages which allegedly occurred during the Bersih 3.0 rally.

While we do not wish to prejudge the accuracy of these allegations, 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, and in particular to article 12 paras 2 and 3 of the Declaration which provides 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.

Regarding the allegations received indicating that both State and non-State actors were responsible for the acts outlined above, we would like to call the attention of Your Excellency's Government to Human Rights Council Resolution 13/13 of 15 April 2010, which recognizes "the immediate need to put an end to and take concrete steps to prevent threats, harassment, violence, including gender-based violence, and attacks by State and non-State actors against all those engaged in the promotion and protection of human rights and fundamental freedoms for all" as well as to adopt the necessary measures to prevent such acts. In this Resolution the Human Rights Council also "urges States to promote a safe and enabling environment in which human rights defenders can operate free from hindrance and insecurity".

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."

Similarly, we would like to call on your Excellency's Government to take all necessary steps to secure the rights to freedom of peaceful assembly and of association in accordance with fundamental principles as set forth in 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 "[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."

Furthermore, we would like to draw your Excellency's Government's attention to the fact that holding assembly organizers liable for the alleged unlawful conduct of others are not compatible with standards governing the right to freedom of peaceful assembly, and has a detrimental effect on the exercise of this right.

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 the above-mentioned persons in compliance with the relevant international instruments.

Moreover, 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, when relevant to the case under consideration:

1. Are the facts alleged in the summary of the case accurate?
2. Has a complaint been lodged by or on behalf of the alleged victims?
3. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation to the aforementioned incidents. If no inquiries have taken place, or if they have been inconclusive, please explain why.
4. Please provide the full details of any prosecutions which have been undertaken. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?
5. Please indicate what protective measures have been taken to effectively ensure the physical and psychological integrity of Ms. Sreenevasan, and more generally, of Bersih members.
6. Please indicate the legal basis of the suit against Ms. Sreenevasan, and other Bersih organizers.
7. Please indicate what measures have been taken to ensure a safe and conducive environment in which the rights to freedom of opinion, expression and peaceful assembly are guaranteed.

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.

In view of the serious and protracted nature of the allegations submitted to us, and our concerns in relation to the deteriorating situation of Ms. Sreenevasan, and more generally, of Bersih members, we would like to inform your Excellency's Government that we may issue a press statement on the said situation, which will be shared with you prior to its release.

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
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