

**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 Chair-Rapporteur of the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and the Special Rapporteur on the rights to freedom of peaceful assembly and of association

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Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and Special Rapporteur on the rights to freedom of peaceful assembly and of association pursuant to General Assembly resolution 60/251 and to Human Rights Council resolutions 15/18, 16/4, and 15/21.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received concerning reports of **harassment, intimidation, arrest or questioning by police of over 170 members and supporters of the Coalition for Fair and Free Elections (Bersih)**. Bersih advocates for the reform of the electoral process in Malaysia, which includes inter alia the use of permanent ink to ensure that voters only vote once, and equal access to print and broadcast media for all candidates and political parties. It is planning to organize a demonstration on 9 July 2011, known as "Bersih 2.0", in advance of the general elections expected to take place in 2012. The first demonstration was held in November 2007 prior to the 2008 general elections.

According to information received:

On 23 June 2011, **Ms. Ambiga Sreenivasan**, chair of Bersih and former President of the Malaysian Bar Council, allegedly received a death threat via text message. The Minister of Home Affairs has reportedly pledged to investigate the threat.

On 24 June 2011, at least ten individuals, including seven members of the Socialist Party of Malaysia (PSM) and the People's Justice Party (PKR), were

allegedly arrested for distributing Bersih 2.0 leaflets and wearing or carrying Bersih 2.0 t-shirts. These individuals have reportedly been released.

On 25 June 2011, 30 members of the PSM party, including two minors, were allegedly taken off a bus and arrested on the way to a political rally in Penang. By virtue of allegedly restarting the Communist Party of Malaysia, they have reportedly been charged under section 112 of the Penal Code with “waging war” against the King of Malaysia. Violation of section 112 of the Penal Code carries a sentence of up to life imprisonment and an undefined amount of fines. The Penang police have reportedly presented the possession of t-shirts with leaders of the former Communist Party of Malaysia and several leaflets promoting political change as evidence against these individuals. They were held in remand for seven days while the police investigated the charge.

Upon the end of the seven-day remand order on 2 July 2011, the following six individuals were allegedly re-arrested at the Seberang Prai Utara district police headquarters, under the Emergency Ordinance:

1. Mr. **Michael Jeyakumar Devaraj**, PSM Member of Parliament;
2. Ms. **Saraswathy Muthu**, Deputy Chair of PSM;
3. Mr. **Chon Kai Choo**;
4. Mr. **Munisamy Sukumaran**;
5. Mr. **Letchumanan Aasirpatham**; and
6. Mr. **Sarat Babu Raman**

The Emergency Ordinance allows police to detain suspects for up to 60 days. Reports indicate that the remand for the other 24 individuals may be extended, and they are expected to stand trial on 21 July 2011.

On 26 June 2011, the Minister of Home Affairs reportedly stated that the Government will not permit the planned march on 9 July 2011, and has indicated that the authorities may apply the Internal Security Act, which provides for indefinite detention without trial, to prosecute the organizers of the march.

On the same day, seven people were arrested by police in Taman Kosas, Kuala Lumpur, for wearing Bersih 2.0 t-shirts and allegedly “disrupting public order”.

On 27 June 2011, Ms. **Ambiga Sreenevasan**, Chair of the Bersih 2.0 organizing committee, and Mr. **A. Samad Said**, prominent poet and novelist, were summoned to Dang Wangi police station. Both are reportedly being investigated by police under section 27(5) of the Police Act and section 27(5) of the Sedition Act for organizing an “unlawful assembly”.

On 29 June 2011, 14 members of the Perak State Legislative Assembly were arrested while they were wearing Bersih 2.0 t-shirts and distributing Malaysian flags in Sungai Siput, Perak State.

On the same day, police officers from Selangor State Headquarters allegedly raided the office of the Bersih 2.0 secretariat without a warrant, and arrested seven individuals and confiscated laptops, cameras, and rally materials. The seven individuals were released on bail the same day at 11:00 p.m.

It has also been reported that the Registrar of Societies has declared Bersih an unlawful organization, effective as of 1 July 2011. The request was allegedly made by the Minister of Home Affairs, who made the order under Section 5 of the Societies Act, which states that “it shall be lawful for the Minister in his absolute discretion by order to declare unlawful any society or branch or class or description of any societies which in his opinion, is or is being used for purposes prejudicial to or incompatible with the interest of the security of Malaysia or any part thereof, public order, or morality.” He has reportedly stated that Bersih’s activities are threatening public order, security, economic prosperity and national sovereignty.

On 2 July 2011, three PKR Youth members were arrested in Batu Gajah, Perak at the town market for wearing the yellow Bersih 2.0 t-shirts despite wearing these garments under other clothing. According to PKR Perak Deputy Secretary, Mr. Tan Kar Hing, the three were having tea when the police asked them to open their shirts to reveal the t-shirts.

On 2 July 2011, police arrested 11 men and three women political activists at a coffeeshop for conspiring to plan a rally in Kuala Lumpur on 9 July, including Mr. **Gooi Hsiao Leung**, PKR Kedah Legal Bureau Chief who is involved in the Bersih campaign.

On 3 July 2011, 17 Pan-Malaysian Islamic Members (PAS) leaders and members, between 30 and 72 years-old, were arrested for possessing Bersih 2.0 t-shirts and have been detained for three days for investigation under Section 47 of the Societies Act. Police have reportedly confiscated 113 banned Bersih t-shirts and 303 flyers.

On 6 July 2011, three individuals were reportedly arrested in Subang Jaya for possession of Bersih 2.0 t-shirts.

On 7 July 2011, police obtained court orders to prevent 91 persons associated with Bersih, Umno Youth and Perkasa from entering Kuala Lumpur on 9 July, and to shut down city roads. According to the court orders, the people named can be arrested on sight, which includes Ms. **Ambiga Sreenevasan**, Bersih chief; Mr. **Ibrahim Ali**, Perkasa chief; Mr. **Khairy Jamaluddin**, Umno Youth chief; and Ms. **Maria Chin Abdullah**, Bersih steering committee member.

In addition, roadblocks have allegedly been set up in many parts of the country along highways and transport hubs to prevent people from travelling to Kuala Lumpur before and after the planned demonstration of 9 July 2011.

Concern is expressed that the above-mentioned allegations constitute undue restrictions of the rights to freedom of opinion and expression, freedom of assembly, and freedom of association.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of the abovementioned persons is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee their right not to be deprived arbitrarily of their liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights (UDHR).

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 UDHR, which provides that "Everyone 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 appeal to your Excellency's Government to take all necessary steps to ensure the right to freedom of assembly, as recognized in article 20 of the UDHR, which provides that "Everyone has the right to freedom of peaceful assembly and association."

We urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the above mentioned persons and members and supporters of the Coalition for Fair and Free Elections (Bersih) 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.

We appeal to your Excellency's Government to cease the use of preventive detention in violation of fundamental due process rights. We note that the UN Working Group on Arbitrary Detention in their report following their June 2010 mission to Malaysia (A/HRC/16/47/Add.2) called for the repeal of provisions allowing for preventive detention under the Emergency (Public Order and Prevention of Crime) Ordinance 1969, the Dangerous Drugs (Special Preventive Measures) Act 1985, and the Restricted Residency Act 1933.

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 and members and supporters of the Coalition for Fair and Free Elections (Bersih) 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. Please provide detailed information on how the alleged violations mentioned above are compatible with Malaysia's obligations to promote and protect the rights to freedom of expression, freedom of assembly, and freedom of association, respectively.
3. Please provide information on the measures taken to ensure the safety of the above mentioned persons and members and supporters of the Coalition for Fair and Free Elections (Bersih).

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.

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

El Hadji Malick Sow
Chair-Rapporteur of the Working Group on Arbitrary Detention

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
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