

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
MYS 4/2015:

16 December 2015

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 25/2, 24/5, and 25/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning charges brought against woman human rights defender Ms. **Maria Chin Abdullah**.

Ms. Maria Chin Abdullah is a woman human rights defender working for the promotion of women's rights, good governance and democracy in Malaysia. She is Chairperson of the Coalition for Clean and Fair Elections (BERSIH 2.0), a coalition of non-governmental organisations that advocate for electoral reform and democratic rights in Malaysia through peaceful protest and widespread social action. Ms. Abdullah and other members of BERSIH 2.0 were the subjects of previous communications sent to you Excellency's Government on 6 July 2011, see A/HRC/19/44, case no MYS 6/2011; 28 July 2011, see A/HRC/19/44, case no MYS 7/2011; 16 May 2012, see A/HRC/19/44, case no MYS 3/2012; 1 June 2012 see A/HRC/21/49, case no. MYS 4/2012. We appreciate the replies received to these communications by your Excellency's Government on 10 August 2011, 24 April 2012 and 26 September 2012 and we reiterate our concerns in light of the new allegations received.

According to the information received:

On 29 July 2015, a press statement was issued by the coalition of NGOs, BERSIH 2.0, announcing that a peaceful rally would take place on 29 and 30 August 2015 to demand the implementation of institutional reforms to fight corruption and ensure the protection of fundamental freedoms in Malaysia.

On 13 August 2015, Ms. Maria Chin Abdullah, along with two lawyers, met with the Police Chief of the Dang Wangi Police Station, in the presence of high-ranking members of the Malaysian police, to discuss the holding of the rally, as well as cooperation between BERSIH 2.0 and police to ensure its peaceful passing. During this meeting, a copy of the letter of notice to stage the rally was shared with police.

On 26 August 2015, Ms. Abdullah and her lawyers had a second meeting with the Police Chief of Dang Wangi Police Station to discuss the rally further. On that occasion, the police allegedly refused to accept the letter of notice of the rally's taking place.

On 29 and 30 August 2015, the rally organised by BERSIH 2.0, entitled BERSIH 4.0, took place peacefully in the Malaysian states of Selangor, Sabah and Sarawak, with the attendance of approximately 500,000 peaceful activists.

On 1 September 2015, six members of the Steering Committee and Secretariat of BERSIH 2.0, including Ms. Abdullah, were brought for questioning by the office of the Inspector General of Police. They were informed of their alleged investigation under sections 120 (criminal conspiracy), 124C (attempt to commit activity detrimental to parliamentary democracy) and 141 (unlawful assembly) of the Penal Code, in relation to the BERSIH 4.0 rally.

On 3 November 2015, Ms. Abdullah was charged at the Kuala Lumpur Sessions Court under article 9(5) of the 2012 Peaceful Assembly Act, for failing to give notice to police 10 days prior to the holding of the BERSIH 4.0. Ms. Abdullah was released on bail of 5,000 Malaysian Ringgit (approximately 1,158 USD). Her trial was to commence on 11 December 2015.

Concern is expressed that the allegations that the charges of Ms. Abdullah are related to her human rights activism and her exercise of the right to fundamental freedoms of expression, peaceful assembly and association. Further concern is expressed at the continued targeting of members of BERSIH 2.0 despite previous appeals from various mandate-holders of the United Nations Special Procedures to your Excellency's Government to ensure protection and promotion of the rights of the coalition and its members.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

In connection with the above alleged facts and concerns, please refer to the **Reference to International Law Annex** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

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 observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please indicate the legal basis for the charges brought against Ms. Maria Chin Abdullah and how they are in conformity with international norms as stated, inter alia, in the Universal Declaration of Human Rights (UDHR).
3. Please kindly indicate what measures have been taken to ensure that human rights defenders are able to carry out their human rights work and realize their fundamental rights in a safe and enabling environment without fear of threats or acts of intimidation and persecution of any sort.

We would appreciate receiving a response within 60 days.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

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

David Kaye
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

Michel Forst
Special Rapporteur on the situation of human rights defenders

Annex
Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw your attention to the following human rights standards:

We would like to refer to articles 19 and 20 of the Universal Declaration of Human Rights (UDHR), which provide for the right to freedom of expression and opinion and the right to freedom of peaceful assembly and association.

We also wish 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, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right 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.

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the UN Declaration on Human Rights Defenders:

- article 5 (a), which provides for the right to meet or assemble peacefully;
- article 5 (b), which provides for the right to form, join and participate in non-governmental organizations, associations or groups;
- article 6 (a), which provides for the right to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms;
- article 6 (b), which provides for the right to freely publish, impart, or disseminate information and knowledge on all human rights and fundamental freedoms, and to study, discuss and hold opinions on the observance of these rights.

We would also like to refer to Human Rights Council resolution 22/6, which urges States to acknowledge publicly the important and legitimate role of human rights defenders in the promotion of human rights, democracy and the rule of law (OP 5), as well as to ensure that legislation designed to guarantee public safety and public order contains clearly defined provisions consistent with international human rights law and that it is not used to impede or restrict the exercise of any human right (OP 4).

Similarly, we would like to refer to Human Rights Council resolution 24/5, and in particular its operative paragraph 2, in which the Council "reminds States of their

obligation to respect and fully protect the rights of all individuals to associate and assemble peacefully, ... including persons espousing minority or dissenting views or beliefs, human rights defenders... 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”.