

**NATIONS UNIES**  
**HAUT COMMISSARIAT DES NATIONS UNIES**  
**AUX DROITS DE L'HOMME**

**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 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; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.**

REFERENCE: AL G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (53-24)  
MYS 3/2012

16 May 2012

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; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolution 16/4, 15/21, 16/5, and 16/23.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **alleged excessive use of force by law enforcement authorities against peaceful protestors, and acts of harassment against media personnel and human rights defenders, in the context of a public sit-in organized by the Coalition for Fair and Free Elections (Bersih)**. Bersih advocates for the reform of the electoral process in Malaysia.

Bersih members were the subject of a previous urgent appeal sent on 7 July 2011 by the Chair-Rapporteur of the Working Group on Arbitrary Detention; the Special Rapporteur on the rights to freedom of peaceful assembly, and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. We acknowledge receipt of the response of Your Excellency's Government to this letter received on 10 August 2011.

In addition to the urgent appeal mentioned above, Ms. Ambiga Sreenevasan was also the subject of a joint allegation letter sent on 23 of January 2012 by 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. We

acknowledge receipt of the response of Your Excellency's Government to this letter received on 24 April 2012.

According to the information received:

On 28 April 2012, Bersih reportedly organized peaceful demonstrations (Bersih 3.0) throughout Malaysia, and in 85 countries around the world, calling on electoral reforms. 250,000 persons reportedly took part in the demonstrations in Malaysia. All demonstrations took place without any incident, except in Kuala Lumpur where police brutality was widely reported.

In Kuala Lumpur, Bersih had intended to organize a peaceful sit-in at the Independence Square. However, access to the square was blocked by the police, following a court order issued the day before preventing the public from entering the area until 1 May 2012. Barricades were therefore erected around the corner from the square, but also further up the street. Following isolated acts of disobedience, including some police barricades being breached, the police used, in an indiscriminate manner, tear gas and water cannons to disperse the peaceful protestors who had gathered near the Independence Square. Some reports state that tear gas canisters were fired directly at peaceful protestors, rather than being fired into the air. Many persons suffered related injuries. Hundreds of peaceful demonstrators were also punched, kicked, slapped or stamped on by police officers wearing boots. Such violence reportedly occurred during the dispersal of the protests, but also hours after the crowd had dispersed. As a consequence, several demonstrators were admitted to hospital. In the course of the event, a total of 471 persons were reportedly arrested. They were all released the following day.

According to reports, a number of police officers wearing yellow Bersih t-shirts were present in the crowd of peaceful demonstrators as they proceeded to arrest several of them. It is alleged that such police officers might have acted as agents provocateurs.

Media personnel covering the protest were allegedly targeted by law enforcement authorities. Reportedly, journalists, photographers and video cameramen working for the *Sun*, *Star*, *Nanyang*, *Malay Mail*, and *Guang Ming Daily* newspapers, *Merdeka Review* news portal, the *Channel News Asia*, and *Al Jazeera*, were assaulted by security forces while documenting police brutality, despite clearly identifying themselves as media personnel. It is alleged that a journalist working for the *Sun* had his leg broken and may have suffered internal injuries. Sources indicate that in most instances, the equipment was destroyed by police officers, or confiscated and never returned. Photographers were also allegedly forced to delete the pictures they took. Furthermore, it is reported that a journalist from the news website *Malaysiakini* was arrested, and his camera, together with the memory

card, was confiscated by the police. Similarly, a photographer from the *Guang Ming Daily* was allegedly arrested, and his equipment not returned.

It is further alleged that the Government-sponsored news channel *Astro* censored news coverage from, inter alia, BBC World and Al Jazeera, by removing scenes of police brutality.

The aforementioned acts were corroborated by SUHAKAM, the Malaysian Human Rights Commission, which in a press statement dated 3 May 2012, stated that the Commission is “deeply disappointed and concerned over various reported incidents, including those reported by its monitoring teams, that took place during the public rally held on 28 April 2012, in particular, allegations of the heavy-handed and arbitrary manner by which the police dispersed members of the public. The Commission is also appalled by the alleged treatment of the police of members of the media, who are duty-bound to professionally and ethically record, document and report any event of public interest; some were allegedly assaulted while two reporters were reportedly arrested, besides having their equipment damaged or confiscated by the authorities. The Commission also notes with great concern instances of unruly and disorderly conduct and behaviour on the part of some of the participants of the rally. Nevertheless, the use of disproportionate and unwarranted force against the participants of the rally as well as members of the media is an unacceptable conduct on the part of the police whose duty is to maintain law and order and public security in a professional manner, more so when handling and facilitating public assemblies.”

Prior to the demonstration, the organizers had called on the demonstrators not to breach the barriers, and they subsequently denounced the aforementioned isolated acts of disobedience, and called on the authorities to investigate such acts. In addition, according to the organizers, the area marked in the court order was never breached, only the outer barricades erected by the police were breached.

Since 3 May 2012, the police have released photographs of authors of alleged violence during the demonstration of 28 April. On 9 May 2012, the police reportedly gave a one-week ultimatum to 141 individuals to present themselves to police stations to be questioned in relation to the incidents.

Since the Kuala Lumpur demonstration, it is further reported that Ms. Ambiga Sreenevasan, one of the leaders of the Coalition for Fair and Free Elections, has been, on different occasions, the target of severe and sustained acts of harassment and intimidation. Reportedly, the most recent of these alleged acts took place on 15 May 2012, when a group of approximately 10 people from the Malay Armed Forces Veterans Association (PVTM) protested outside Ms. Sreenevasan’s house. The PVTM President is alleged to have defended the right to protest against “an enemy who tried to smear the nation’s name”.

Serious concerns are expressed about the alleged excessive use of force against peaceful protestors, and acts of harassment against media personnel and human rights defenders. Further concerns are expressed that such measures may be linked to the exercise of their rights to freedom of peaceful assembly, opinion and expression, as well as their legitimate activities carried out in the defence of human rights.

While we do not wish to prejudge the accuracy of these allegations, 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 (UDHR) 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 like to appeal to your Excellency's Government to take all necessary steps to ensure the right of peaceful assembly as recognized in article 21 of the International Covenant on Civil and Political Rights, which provides that "The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others."

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 12 paras 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.

With regards to the role of media and human rights defender in monitoring demonstrations, we would like to refer to the Guidelines on Freedom of Peaceful Assembly of the Office for Democratic Institutions and Human Rights (ODHIR) of the Organization for Security and Cooperation in Europe (OSCE), available at [www.osce.org/odihr/24523](http://www.osce.org/odihr/24523), and to the 2007 report to the General Assembly of the then Special Representative of the Secretary-General on the situation of human rights defenders (A/62/225, paras. 91 and 93) that underlines how “monitoring of assemblies can provide an impartial and objective account of what takes place, including a factual record of the conduct of both participants and law enforcement officials. [...] The very presence of human rights monitors during demonstrations can deter human rights violations. It is therefore important to allow human rights defenders to operate freely in the context of freedom of assembly. [...] Journalists as well have an important role to play in providing independent coverage of demonstrations and protests. [...] The media must therefore have access to assemblies and the policing operations mounted to facilitate them.

We would like to draw your Excellency’s Government’s attention to principle 4 of the UN Basic Principles on the Use of Force and Firearms by Law Officials, which provides that, “Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms.” Furthermore, principle 5 provides that, “Whenever the use of force and firearms is unavoidable law enforcement officials shall, (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate object to be achieved; (b) Minimize damage and injury, and respect and preserve human life; (c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment and (d) Ensure that relatives or close friends of the injured or affected

person are notified at the earliest possible moment.” (Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990).

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:

1. Are the facts alleged in the summary of the case accurate?
2. Has a complaint been lodged?
3. Please indicate the legal basis of the use of force during the 28 April Kuala Lumpur demonstration, and where available the results, of any investigation, medical examinations, and judicial or other inquiries which may have been carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.
4. In the event that the alleged perpetrators are identified, 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 advise if any demonstrators are still hospitalised. If so, please detail the extent of their injuries and whether they have received adequate medical treatment.
6. Please provide full details of any protective measures put in place to ensure the physical and psychological security and integrity of Ms. Ambiga Sreenevasan.

We would appreciate a response within sixty days. Your Excellency’s Government’s response will be made available in a report 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 peaceful protestors, media personnel, and human rights defenders 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

Juan E. Méndez  
Special Rapporteur on torture and other cruel, inhuman or degrading  
treatment or punishment