

**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 Working Group on the issue of discrimination against women in law and in practice**

REFERENCE: AL  
MYS 7/2016:

1 December 2016

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 Working Group on the issue of discrimination against women in law and in practice, pursuant to Human Rights Council resolutions 25/2, 24/5, 25/18 and 15/23.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the situations of human rights defenders, Ms. **Maria Chin Abdullah**, Ms. **Ambiga Sreenevasan** and Mr. **Mandeep Singh**, in relation to violence and threats to their lives and that of their relatives; harassment; and the violation of their rights to freedoms of expression, peaceful assembly and association, as well as the arbitrary detention of Ms. Maria Chin Abdullah.

The situation of Ms. Maria Chin Abdullah was already the subject of communications MYS 6/2011; MYS 11/2011 and MYS 4/2015, while the situation of Ms. Ambiga Sreenevasan was the subject of communications MYS 6/2011; MYS 11/2011, MYS 3/2012 and MYS 4/2012. We thank your Excellency's Government for its detailed replies to communications MYS 6/2011, MYS 11/2011, MYS 3/2012 and MYS 4/2012 and take note of the commitment by the Government of Malaysia to "take necessary steps to create and sustain an environment where all Malaysians are secure, where their welfare is safeguarded, and where they can realise their full potential through the promotion and protection of the right to freedom of expression and peaceful assembly." We regret that no reply has yet been received regarding communication MYS 4/2015.

Ms. Maria Chin Abdullah is a woman human rights defender and the Chairperson of BERSIH 2.0. She has served as president of the National Women's Coalition and the All Women Action Society. She was also executive director of the Women's Development Collective and executive director of Persatuan Kesedaran Komuniti Selangor (EMPOWER). She was recently awarded the prestigious Gwangju Prize for Human Rights.

Ms. Ambiga Sreenevasan is a woman human rights defender and was the former Chairperson of BERSIH 2.0.

Mr. Mandeep Singh is a human rights defender and the Secretariat Manager member of BERSIH 2.0.

BERSIH was officially launched in 2006 by five political parties and 25 NGOs, who came together to form the “Coalition for Clean and Fair Elections”. In 2011, BERSIH was relaunched as BERSIH 2.0 a coalition of like-minded civil society organisations without affiliation to any political party with the objective of campaigning for clean and fair elections in Malaysia. BERSIH 2.0 held major rallies in 2011 (Bersih 2), 2012 (Bersih 3), 2015 (Bersih 4). The last rally (Bersih 5) was held on 19 November 2016.

Persatuan Kesedaran Komuniti Selangor (EMPOWER) is a non-governmental organisation that promotes and supports actions that advance justice and democracy, based on feminist and human rights principles. EMPOWER works with women and youths to realise their potential in the areas of political participation and civil liberties. Ms. Abdullah was director of EMPOWER before stepping down to take the position of Chairperson of BERSIH 2.0.

According to information received:

*Violence and threats against organisers of Bersih 5 rally*

Organisers of the Bersih 5 rally have been subject to violence and threats in the lead up to the rallies organised on 19 November 2016.

On 14 September 2016, BERSIH 2.0 announced that mass rallies would be held in the cities of Kuala Lumpur, Kota Kinabalu and Kuching on 19 November 2016 demanding: clean elections, clean government, strengthened parliamentary democracy, the right to dissent, and the empowerment of Sabah and Sarawak.

BERSIH 2.0 also announced a nationwide convoy, starting on 1 October 2016 until 19 November, to raise awareness about the demands of Bersih 5. Division leaders of the United Malays National Organisation (UMNO), reportedly announced they would attempt to stop the activities of BERSIH 2.0. On 8 October 2016, members of the UMNO ‘Red Shirt’ movement allegedly surrounded two motorists wearing BERSIH 2.0 shirts and beat them severely. The motorists also tried to hit Mr. Mandeep Singh and Ms. Ambiga Sreenevasan’s cars, and attacked a BERSIH 2.0 convoy by smashing car windows and puncturing tires. These violent incidents have allegedly not yet been investigated. Throughout the convoy, BERSIH 2.0 members refused to be provoked by threats and remained peaceful at all times. The convoy eventually reached out to 236 villages, towns and cities throughout the country.

On 17 October 2016, Ms. Maria Chin Abdullah received extremely violent and graphic WhatsApp messages threatening to kill her, her three sons, Mr. Mandeep Singh and Ms. Ambiga Sreenevasan if the human rights defenders continued their work. The threat also referred specifically to the Bersih 5 Rally scheduled for 19 November 2016. The messages claimed to be from the “Islamic State Malaysia”.

Ms. Maria Chin Abdullah also received photos of an executor with a blade appearing ready to behead the human rights defender. Another image she received was of a man in black attire pointing a dagger to pictures of Ms. Ambiga Sreenevasan and Ms. Maria Chin Abdullah with a yellow Bersih 5 T-shirt

superimposed on it. Ms. Maria Chin Abdullah's sons also received threatening photos.

On 11 November 2016, Ms. Maria Chin Abdullah received a new WhatsApp message repeating the same death threats against her, her sons, Mr. Mandeep Singh and Ms. Ambiga Sreenivasan, with even more graphic photos of beheading by an alleged executioner from the "Islamic State". She subsequently lodged a police report on the incident.

On 29 November 2016, Ms. Maria Chin Abdullah received a bullet and a threatening note delivered to her home in an envelope. The note was written in red ink and stated "*Last warning if not R.I.P Maria & family*". It is believed that the envelope was hand-delivered to her home on 18 November 2016, the day she was arrested by the police (see below). Ms. Maria Chin Abdullah is lodging a police complaint.

#### *Harassment of organisers of Bersih 5 rally*

Organisers of the Bersih 5 rally have also reportedly been harassed by the authorities.

On 23 July 2015, Ms. Maria Chin Abdullah and Ms. Ambiga Sreenivasan were informed that if they wished to travel, they would need to inform the Department of Immigration. The same year, Ms. Ambiga Sreenivasan found her name on the immigration blacklist of Sabah and Sarawak. Both Ms. Maria Chin Abdullah and Ms. Ambiga Sreenivasan have challenged these travel bans. It is reported that, to date, the reasons for restricting their movement have not yet been disclosed.

On 15 May 2016, Ms. Maria Chin Abdullah was not permitted to board her flight to the Republic of Korea. She was allegedly told that the Immigration Department and the Ministry of Home Affairs had issued a travel ban. As a result, she was not able to participate in the human rights conference she was invited to and was not able to receive a human rights award on behalf of BERSIH 2.0.

In October 2016, a number of local BERSIH 2.0 coordinators were summoned by the police for questioning in the States of Johor, Penang, Selangor, Negeri Sembilan, and Perak, over a Bersih 5 convoy, which travelled from Melaka to Negeri Sembilan from 6 to 8 October 2016.

On 23 October 2016, the Prime Minister's Department Minister reportedly threatened that organizations and companies found to support the Bersih 5 rally would be blacklisted from government contracts.

On 29 October 2016, the police arrested Ms. Maria Chin Abdullah for distributing flyers relating to the 19 November 2016 Bersih 5 rally. She was charged under the Printing Presses and Publications Act 1984 as the flyers did not have the name and address of the publisher. She was released on bail after two hours. Several other individuals have also been threatened with arrest under the 1984 Printing Presses and Publications Act and the 1948 Sedition Act for distributing the same leaflets.

On 3 November 2016, the Minister of Home Affairs reportedly warned Bersih 5 organisers that they would face legal action if the rally went ahead. The Minister claimed that Bersih 5 did not comply with the 2012 Peaceful Assembly Act because the rally venue was among the locations prohibited by the Act. Bersih 5 organisers maintained that the 19 November rally did comply with the legal requirements under the Peaceful Assembly Act, including the requirement to notify the authorities 10 days before the demonstration.

On 4 November 2016, Ms. Maria Chin Abdullah was briefly detained for questioning at the Bukit Aman police headquarters over allegations that BERSIH 2.0 received foreign funding, which the police claimed was in violation of Section 124C of the Penal Code (“attempt to commit activity detrimental to parliamentary democracy”, punishable with imprisonment of up to 15 years). Ms. Maria Chin Abdullah was released on the same day pending further investigations. During questioning, the police officers reportedly told her that she would be summoned after the 19 November rally. The Penal Code of Malaysia was amended in 2012 to include Sections 124B through to 124L with the said intention of combating violent offences against the State.

#### *18 November 2016 – Raid in BERSIH 2.0 office and arrests*

On 18 November 2016 – one day before the Bersih 5 rally – the office of BERSIH 2.0 was raided by plain-clothed police officers from the Bukit Aman Police Headquarters, together with officers from the Malaysian Communications and Multimedia Commission. The raid was carried out under 124C of the Penal Code. During the raid, 10 laptops were confiscated along with documents, including bank statements and the office pay roll.

The same day, Ms. Maria Chin Abdullah and Mr. Mandeep Singh were arrested by plain-clothed police officers from the Bukit Aman Police Headquarters. They were taken to the Petaling Jaya Police Station and subsequently held overnight for investigation. Ms. Maria Chin Abdullah was held under Article 124C of the Penal Code. Mr. Mandeep Singh was held under Section 147 of the Penal Code (“rioting” with possible imprisonment of up to two years). He was remanded for two days and released on 20 November 2016.

On the evening of 18 November 2016 and early hours of 19 November 2016, thirteen other individuals, including BERSIH 2.0 members, student activists and members of the opposition were subsequently arrested. They were held under remand for 48 hours and released after the rally concluded.

#### *19 November 2016 – Detention of Ms. Maria Chin Abdullah under the Security Offences (Special Measures) Act 2012 (SOSMA)*

On 19 November 2016, the Bersih 5 rally was held peacefully in Kuala Lumpur, Kota Kinabalu and Kuching with participation and support from more than 100,000 people around the country.

On 19 November 2016, as the rally was ongoing, Ms. Maria Chin Abdullah was detained under the Security Offences (Special Measures) Act 2012 (SOSMA), which allows for preventive detention for up to 28 days for “security offences”. Section 3 of SOSMA defines “security offences” to include Part VI of the Penal Code, under which Section 124C falls. SOSMA allows the arrest of suspects without warrant and denies access to legal counsel and communication to next of kin for 48 hours. If formally charged and convicted under SOSMA, Ms. Maria Chin Abdullah may be imprisoned for up to 15 years.

SOSMA specifically states that no individual will be arrested under the law for ‘political activity’ or ‘belief’ (Section 4) and that its use is strictly restricted to matters pertaining to public order and national security. Ms. Maria Chin Abdullah is the first peaceful activist charged under SOSMA.

On 23 November 2016, the Inspector General of Police (IGP) claimed that there was enough evidence to arrest Ms. Maria Chin Abdullah under SOSMA. He reportedly stated that her arrest was not linked to the Bersih 5 rally but rather linked to a document indicating a ‘threat to parliamentary democracy’ found during the 18 November raid in the office of BERSIH 2.0. The Inspector General of Police also made a reference to the fact that Ms. Abdullah had admitted to receiving funding from the Open Society Foundation (OSF). Earlier in November, Ms. Maria Chin Abdullah allegedly said that BERSIH 2.0 had received a one-time RM 70,000 (USD 15,700) contribution from OSF between 2010 to 2011, an amount which represented only 11% of the movement’s income at the time.

On 12 November 2016, the Deputy Minister for Home Affairs reportedly said: “OSF has been providing funds for the past 10 years and the government has been monitoring such activities but there are no concrete evidence that NGOs in the country are involved in activities that can disrupt the peace of the country by using the funds (...) the matter is still being investigated”.

The Malaysian Bar stated that it was “startling that the authorities had invoked SOSMA against Ms. Maria Chin Abdullah in respect of the purported receipt of the OSF funds. They noted that OSF was not an “unlawful society” under the Prevention of Crime Act 1959 or Societies Act 1966, or a “listed terrorist organisation” under the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001.

#### *Conditions of detention of Ms. Maria Chin Abdullah and bail*

Ms. Maria Chin Abdullah was denied access to her lawyers and family during the first 48 hours of her detention. She was allowed to see her lawyers and family once, on 20 November 2016. In that meeting, Ms. Maria Chin Abdullah informed her lawyers that she was being kept in solitary confinement, in a small, windowless room, with a light that was on 24 hours a day. She was initially only given a plank of wood to sleep on. Since then, Ms. Maria Chin Abdullah has had no access to her lawyers or family. On 22 November 2016, the Human Right Commission of Malaysia (SUHAKAM) was given access to visit Ms. Maria Chin Abdullah in her place of detention. They confirmed her accounts of the conditions under which she was being detained.

On 22 November, Ms. Maria Chin Abdullah's lawyers filed a habeas corpus application to challenge her detention under SOSMA. The hearing was scheduled for 29 November 2016. The application sought her immediate release due to the unlawful use of SOSMA. The application highlighted the lawful nature of BERSIH 2.0's activities in advocating for clean elections and good governance.

On 28 November 2016, a day before the hearing on her habeas corpus application, Ms. Maria Chin Abdullah was released.

*28 November 2016 – Raid at the office of EMPOWER Malaysia*

On 28 November 2016, it was reported that the office of EMPOWER Malaysia was raided under SOSMA and Section 124C of the Penal Code. During the raid, the lawyers of EMPOWER were not allowed to enter the office. The police seized a series of documents and left the premises.

We express serious concern over the alleged arbitrary detention of Ms. Maria Chin Abdullah between 19 and 28 November 2016 under SOSMA. While she has now been released, we are particularly concerned at the use of “anti-terrorism” provisions to silence the dissenting voice of a human rights defender. While counter-terrorism and national security is a legitimate basis to restrict expression, we express grave concern at the use of such grounds to criminalize the exercise of the rights to peaceful assembly and association and the legitimate exercise of expression in order to target speech that is critical. Moreover, SOSMA is a vaguely worded legislation, which makes it open to abuse.

We also express serious concern at the use of Section 124C of the Penal Code against human rights defenders and at the broad language used in Sections 124B to 124L, which leaves these provisions open to possible abuse.

More broadly, we express serious concern at the continuing harassment and crackdown suffered by BERSIH 2.0 as well as its supporters and members, especially Ms. Maria Chin Abdullah, Ms. Ambiga Sreenevasan, and Mr. Mandeep Singh. For the past years, BERSIH 2.0 and its members have been the targets of defamation campaigns, violence, threats to life, harassment, travel bans, and alleged arbitrary arrests and detentions. All these developments seem to result from their peaceful and legitimate activities as human rights defenders and the exercise of their rights to freedom of expression, peaceful assembly and association. We express equal concern that the threats to the life of Ms. Maria Chin Abdullah and her children target her especially in relation to her role of mother. The threat to her children appear to be an attempt to intimidate and silence Ms. Maria Chin Abdullah through a gender-specific threat.

We are also concerned at the use of SOSMA and article 124 C of the Penal Code to undertake the raid that took place in the premises of EMPOWER.

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

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 observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide information on the steps taken to investigate the violence and death threats against Ms. Maria Chin Abdullah, her sons, Ms. Ambiga Sreenevasan and Mr. Mandeep Singh.
3. Please provide information concerning the legal grounds for the raids that took place in the office of BERSIH 2.0 on 18 November 2016 and in the office of EMPOWER on 28 November 2016. Please provide information about whether any of the confiscated items have been returned.
4. Please provide information concerning the legal grounds for the arrest and detention of Ms. Maria Chin Abdullah and Mr. Singh, as well as the charges brought against them, and explain how these are compatible with Malaysia's obligations under international human rights law
5. Please provide information on the legal basis for applying SOSMA against the peaceful human rights activities of Ms. Maria Chin Abdullah. In particular, please provide information about the justification for why the clear exception provided in section 4 of SOSMA has not been applied in this case.
6. Please provide information about measures taken to bring SOSMA and the Sedition Act as well as their implementation into line with Malaysia's obligations under international human rights law.
7. Please provide detailed information concerning measures to ensure that human rights defenders, including women human rights defenders, can exercise their rights to freedom of association, peaceful assembly and expression in Malaysia, including the ability to peacefully express views critical of the human rights situation and of the conduct of the government or government officials.

We would appreciate receiving a response within 60 days. Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

We intend to publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issues in question.

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.

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

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Chair-Rapporteur of the Working Group on the issue of discrimination against women in law and in practice



## **Annex**

### **Reference to international human rights law**

In connection with the above alleged facts and concerns, we would like to refer to articles 9, 10, 19 and 20 of the Universal Declaration of Human Rights, which guarantee the right not to be deprived arbitrarily of liberty, the right to a fair hearing, the right to freedom of expression and the right to freedom of peaceful assembly and association, respectively.

We also make reference to Resolution 12/16 of the Human Rights Council, which calls upon states to ensure that victims of violations of the right to freedom of expression have an effective remedy, to investigate effectively acts of violence and to bring to justice those responsible to combat impunity.

Furthermore, we would like to recall Human Rights Council resolution 24/5 (operative paragraph 2), in which the Council “reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline (...), including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others (...) 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.”

Regarding allegations that the detention of Ms. Maria Chin Abdullah under SOSMA might be related to the alleged receipt of foreign funds by BERSIH 2.0, we would like to draw the attention of your Excellency’s Government to the report of the Special Rapporteur on the rights to freedom of peaceful assembly and association pertaining to the funding of associations (A/HRC/23/39). According to the Special Rapporteur, “the ability to seek, secure and use resources is essential to the existence and effective operations of any association, no matter how small. The right to freedom of association not only includes the ability of individuals or legal entities to form and join an association but also to seek, receive and use resources – human, material and financial – from domestic, foreign, and international sources. (...) One of the most common reasons used by governments to limit access to funding relate to security measures, including protection against terrorism and prevention of money-laundering. (...) It is (...) a violation of international law for counter-terrorism or “anti-extremism” measures to be used as a pretext to constrain dissenting views or independent civil society (A/HRC/23/39, para.8, 22 and 23).

In addition, we would like to draw the attention of 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 highlight articles 1, 2, 5, 6 and 12.

We would like to highlight that the General Assembly Resolution A/RES/68/181, called upon States to ensure that women human rights defenders can perform their important role in the context of peaceful protests, and to ensure that no one is subject to

excessive or indiscriminate use of force, arbitrary arrest or detention, torture or other cruel, inhuman or degrading treatment or punishment, enforced disappearance, abuse of criminal and civil proceedings or threats of such acts (op 8).

We would like to bring to your attention a public statement issued on 25 November 2016 by the Working Group on the issue of discrimination against women, the Special Rapporteur on violence against women, its causes and consequences, and the Special Rapporteur on the situation of human rights defenders, about women human rights defenders and the discrimination they face.