



Joint Statement - Malaysia: Drop Charges and Release Bersih Organizers and Supporters

Kuala Lumpur, 21 November 2016

The Asian Forum for Human Rights and Development (FORUM-ASIA), Asia Pacific Forum on Women, Law and Development (APWLD), Fortify Rights, Human Rights Watch, the International Commission of Jurists (ICJ), and Southeast Asian Press Alliance (SEAPA), acting as international observers of the Bersih 5 rallies and related events, are calling on the Malaysian authorities to drop all charges against the Bersih organizers and activists. The authorities should return all items confiscated from the Bersih offices and stop making further arbitrary arrests in connection with these events. We consider these arrests to be violations of the rights to freedom of expression, peaceful assembly and association.

The Coalition for Clean and Fair Elections (or in Malay "*Gabungan Pilihanraya Bersih dan Adil*"), otherwise known as Bersih (which means "clean" in Malay), is a coalition formed in 2006 by Malaysian non-governmental organisations calling for free, clean, and fair elections. Since its founding, Bersih has organized four previous peaceful assemblies. These public assemblies have attracted support from thousands of Malaysians throughout the country and among Malaysians living abroad. In the past year, Bersih faced harassment from multiple sources, including the Malaysian Government, which has leveled charges against Bersih and its chair Maria Chin Abdullah for organizing and participating in peaceful activities.

To date, four Bersih organizing committee members and more than 20 pro-Bersih supporters are currently facing a range of criminal charges, including under Section 124(c), 147, 153 and 511 of the Penal Code and the Sedition Act. The arrests were made in the lead up to and after the Bersih 5 rallies that took place on November 19, 2016 in Kuala Lumpur and other locations in Malaysia.

In the afternoon of 18 November 2016, the day before the rally, Malaysian authorities raided the office of Bersih and arrested its chair Maria Chin Abdullah and secretariat manager Mandeep Singh. Members of the international observers' team witnessed

the raid, which took place over several hours and included the confiscation of computers, office equipment, and documents, including financial and payroll records.

Maria Chin Abdullah was arrested and detained on November 18 under the Security Offenses Special Measures Act 2012 (SOSMA). Her lawyer has confirmed that she will be detained for the full 28 days allowed under SOSMA. This is the first case where government authorities used SOSMA against a civil society representative. If convicted, she faces up to 15 years' imprisonment. Maria Chin Abdullah is currently being held in an undisclosed detention center in solitary confinement. She was reportedly denied access to her lawyers and family during the first 48 hours of her detention. Her lawyers later on reported that Maria Chin Abdullah is being kept in a 15 feet by 8 feet windowless cell with no bed, concrete floors, and with two light bulbs kept on for 24 hours a day.

The observers are alarmed at the conditions of detention of Maria Chin Abdullah and the use of SOSMA to detain her. We call on the government of Malaysia to release her immediately. We believe that SOSMA is a law that violates human rights as it allows incommunicado detention for up to 48 hours, and detention without charge or judicial review for up to 28 days. We strongly urge the government of Malaysia to repeal SOSMA or substantially amend it so that it would be in compliance with international law and standards. During debates in Parliament considering passage of SOSMA, the government asserted that the purpose of this law is to protect peoples' security, however, the authorities are instead using it to prevent the exercise of fundamental human rights, constituting an abuse of law.

At least 14 other pro-Bersih supporters were arrested on the day of the rally and on the days following. Many of those arrested were released after 48 hours but according to Bersih organizers, they expect authorities to undertake more arbitrary arrests in the next few weeks.

Malaysian authorities also arrested six members of the anti-Bersih "red-shirt" and "black shirt" groups. Among those arrested were Jamal Yunos and Ariffin Abu Bakar, leaders of the red shirts and black shirts, respectively. These anti-Bersih groups allegedly threatened and carried out physical assaults and attacks on members of the Bersih organizing committee, pro-Bersih supporters, and journalists in the weeks leading up to the day of the public assembly. While there was concern of potential attacks by these groups during the day of the public assembly, the team of international observers saw little presence of these groups and did not witness any major incidents.

These arrests violate international human rights standards. The Malaysia government should release all those arrested in connection with the Bersih 5 rallies immediately.

The UN Special Rapporteur on the right to freedom of peaceful assembly and association, Maina Kiai, also said in a statement on the arrests prior to the peaceful assembly that they are a "pre-emptive restriction of assembly rights."

Despite the arbitrary arrests and pattern of harassment committed by the Malaysian authorities against the Bersih organizers, the international team of observers noted the overall peaceful nature of the Bersih 5 gatherings. Tens of thousands of Malaysians gathered at rallying points across Kuala Lumpur on the day of the rally. Several hundred pro-Bersih supporters also gathered in Kuching, Malaysia. The international team of observers noted the vigorous efforts on the part of the organizers of the rally to maintain peace and security throughout the day.

The international team of observers also saw the blockades set up by Malaysian authorities meant to prevent protesters from accessing the designated converging point, Dataran Merdeka (Independence Square). The observers witnessed the deployment of significant numbers of security forces at various locations along the planned route going to Dataran Merdeka. In some areas, authorities set up water cannons aimed at approaching Bersih protesters. The authorities also completely cordoned off access to the Dataran Merdeka.

The observers believe that these blockades posed an unwarranted interference on the participants' right to peaceful assembly. We remind the Malaysian government that the UN Human Rights Council, in a 2013 resolution, urged States to "facilitate peaceful protests by providing protesters with access to public space and protecting them, where necessary, against any form of threat." (UN Doc. A/HRC/22/L.10, para. 3, 18 March 2013)

The right to freedom of peaceful assembly is protected under international human rights law and standards, including Article 20 of the Universal Declaration of Human Rights. International law permits state authorities to restrict peaceful assemblies only where circumstances make it strictly necessary for limited purposes, and when certain specific conditions are met. The observer mission considers that none of these conditions apply or were present in the case of the Bersih rally.

The observers remind Malaysia of its obligation to protect the rights to freedom of peaceful assembly and expression in accordance with its constitution and international human rights law. The authorities should ensure future peaceful assemblies take place without undue interference.

We call on Malaysia to drop all charges against Bersih members and supporters and release all those detained immediately. All equipment confiscated as part of the unwarranted raid on Bersih's office on November 18 should be immediately returned.

Finally, the observers noted and benefitted from sharing observations in the field with monitors from the Malaysian Bar Council, was also on hand to monitor and provide legal assistance if necessary, as well as the four commissioners and staff of the National Human Rights Commission (SUHAKAM) who were also monitoring the rallies.

Signed:

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