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Written statement* submitted by the Aliran Kesedaran Negara National Consciousness Movement, a non- governmental organization on the roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

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* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

Malaysia-police violence and human rights violations

On the world stage, Prime Minister Najib Razak promotes himself as the leader of a Global Movement of Moderates espousing the rhetoric of ‘universal principles of justice, excellence and equilibrium’. However, when faced with domestic pressure for progressive democratic change and criticism of Malaysia’s human rights abuses, the true nature of Prime Minister’s ‘justice’ is highlighted by violence against peaceful protestors, human rights activists and defenders.

In July 2011, in the aftermath of Bersih 2.0 and the Malaysian government’s use of excessive force to disperse peaceful protestors and arrest of nearly 1,700 people, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, made compelling appeals about the Malaysian government’s use of excessive force and crackdown on peaceful protesters.¹ At that time, Mr La Rue noted, “Actions taken by the authorities prior to and during the rally unduly restricted the rights to freedom of expression, assembly and association.”²

Background

The Malaysian government responded with a programme of legislation, which, although packaged and internationally acclaimed as ‘reform-oriented’ by ‘moderates’, in effect further restricted freedom of assembly, association and expression. It is important to briefly consider the legislative framework which empowers the Malaysian police to act with impunity.

In December 2011, the Senate passed a highly restrictive Peaceful Assembly Act (PAA) after only one day of debate. Contrary to its euphemistic title, the bill imposes far greater limitations on the rights to freedom of assembly and association. Sweeping restrictions ban street protests (‘assemblies in motion or processions’), prohibit non-citizens and citizens under 15 years of age from engaging in peaceful assembly, prohibit citizens below the age of 21 from organising public assemblies, restrict access of the media to public gatherings and impose excessive fines for non-compliance with the PAA. On 7 December 2011, a group of United Nations independent experts warned that this was likely to “arbitrarily and disproportionately restrict the right to assemble peacefully”. Mr Kiai further criticised the fact that “neither the Human Rights Commission of Malaysia (SUHAKAM), nor civil society was meaningfully consulted in the drafting of this Bill.”³

Similarly, on 17 April 2012, the Malaysian parliament’s lower house hurriedly approved the Security Offences (Special Measures) Act, only seven days after it was first tabled and without amendments or consultation with civil society. Although it replaces the much-criticized Internal Security Act (ISA), which sanctioned indefinite detention without charge/trial, the Security Offences Act still falls well below international human rights standards. Combined with amendments to the Penal Code, its provisions restrict a range of fundamental rights; for instance, individuals suspected of vaguely defined security offences could be detained for up to 28 days without judicial charge or access to court. The Act also grants the police significant discretionary powers to detain suspects incommunicado for 48 hours and to intercept any electronic communication without judicial oversight.

¹ OHCHR, ‘Malaysia: Government risks undermining democratic progress’, July 2011.

² Ibid.

³ OHCHR, ‘Malaysia: New Bill threatens right to peaceful assembly with arbitrary and disproportional restrictions’, 7 December 2011.

Furthermore, media and censorship legislation seriously impede freedom of expression in Malaysia. Although cosmetic amendments have been made to the Printing Presses and Publications Act 1984 (PPPA), the government still requires all newspapers, printing presses and publications to be licensed. The frequent use of the Sedition Act 1948 to ‘muzzle’ criticism or opposition voices further undermines the right to freedom of expression.

This cocktail of legislations effectively serves to silence human rights defenders on the ‘wrong’ side of the ruling coalition. It also ‘legitimises’ endemic police brutality. Dissidents are criminalised and ‘the police can mete out extra-judicial punishments with impunity.’ The nexus between legislation aimed at restricting civil liberties and police brutality is starkly illustrated by recent events as follows: Bersih 3.0 (Coalition of Clean and Fair Elections)

On 28 April 2012, the world witnessed the biggest public demonstration in Malaysian history, whereby an estimated 250,000 citizens took to the streets to demand electoral reform. International solidarity protests by concerned overseas Malaysians also took place peacefully in 85 cities around the world.

In the days before the rally, a court order declared Merdeka Square (Independence Square) a ‘no-go-zone’, barricaded with razor wire and police lines. As peaceful protestors approached the square, the police and Federal Reserve Unit fired tear gas and chemical laced water cannons at them, in an attempt to ‘kettle’ them. There is overwhelming evidence that, contrary to international standards, tear gas canisters were fired directly at individual protesters with the intention of causing injury. Over 300 people were arrested. The Malaysian Bar Association and SUARAM have received more than a hundred reports of police brutality and unprovoked attacks against protestors.

The Final Report of the Malaysian Bar on the Bersih 3.0 rally⁴ concluded (inter alia) that: the police used force without provocation or cause and that the force used was indiscriminate, disproportionate and excessive; police brutality was more widespread than at the Bersih 2.0 rally in July 2011; there was a concerted effort by the police to prevent and stop any recording of their actions and conduct; police fired tear gas directly at the crowd and their firing pattern was to box in the participants disallowing them to disperse quickly; and that police personnel were not wearing and displaying their police identification numbers on their uniform.

There are many points worthy of note in the Malaysian Bar Association’s report (which the Malaysian government and government sponsored media has actively sought to discredit⁵), but we refer you to the documented evidence of police brutality, which is also available on YouTube.⁶

The scale of police violence and brutality indicates that either there was direct or tacit ‘permission’ to police officers to act without restraint. This was not one or two rogue officers or ‘bad apples’; there is overwhelming evidence that police officers had removed all identification names and numbers from their uniforms and, moreover, that their conduct demonstrated that they were confident that they acted with impunity.

⁴ The Final Report of the Malaysian Bar on Bersih 3.0 rally held on 28 April 2012’, The Malaysian Bar, 10 May 2012, http://www.malaysianbar.org.my/index.php?option=com_docman&task=doc_details&gid=3709&Itemid=332.

⁵ “Dr. M: Concentrate on legal matters”, New Straits Times, 17 May 2012, <http://www.nst.com.my/nation/general/dr-m-concentrate-on-legal-matters-1.84815>.

⁶ <http://www.youtube.com/watch?v=8iTrZBc3gw&feature=youtu.be>.

It is also evident that the police also focused their attacks on local and foreign journalists reporting on the event. Indeed, a few journalists were beaten and there occurred destruction and confiscation of camera/recording equipment.⁷ The online newspaper Malaysiakini reported injuries sustained by local journalists which included head wounds and broken ribs as a result of police brutality. As well, the government sponsored news channel, Astro, censored BBC and Al Jazeera news coverage cutting out scenes of police violence that would have shown the Bersih 3.0 rally in a prejudicial light.

The plight of Malaysian human rights defenders

The Malaysian government's complicity in the sustained harassment, threats and arrests of Malaysian Human Rights Defenders is evident.

On 20 April 2012, Mr Tan Hong Kai, an intern of SUARAM (a Malaysian Human Rights group), was arrested on an allegation of trespassing while putting up Bersih 3.0 posters in University Science Malaysia. On 7 May 2012 he was charged with criminal trespassing. On 22 April, the Kuala Lumpur City Council (DBKL) and police officers raided a protest campsite at Merdeka Square and arrested two activists under Section 186 of the Penal Code (obstructing public servants from performing their duties); they were released later that day on police bail. On 24 April, the authorities again arrested three student activists and one supporter.

On 22 May 2012, former deputy prime minister Anwar Ibrahim, president of the opposition Parti Keadilan Rakyat (PKR), Azmin Ali PKR deputy president, and Badrul Hisham Shaharin a PKR activist, appeared in court charged under section 4(2)(c) of the Peaceful Assembly Act 2012 for participating in the Bersih 3.0 rally and engaging in a street protest.⁸ It appears that the Malaysian government is using what happened at the Bersih 3.0 protest as a pretext to prosecute political opposition leaders. The timing is telling: if found guilty, criminal prosecution ahead of an imminent General Election will render these opposition leaders/activists ineligible to be elected to parliament.

Further, the Malaysian government has pointedly failed to act against sustained threats against Ambiga Sreenevasan, co-chair of the civil society movement, which organised the Bersih 3.0 rally. She has been publically vilified, her effigy has been burnt and there have been calls to strip her of her citizenship.⁹ On 23 May 2012, the Malaysian government initiated a civil suit against Ambiga and nine other Bersih 3.0 steering committee members for damages allegedly caused during the Bersih rally, including to two water cannon trucks!¹⁰

⁷ 'Major Protest Prompts Attacks on Journalists, Censorship and Missing Media Replaced by Civil Society', Reporters Without Borders, 5 May 2012, <http://en.rsf.org/malaysia-major-protest-prompts-attacks-on-05-05-2012,42567.html>.

⁸ 'Anwar 2 others charged over April 28 rally', New Straits Times, 22 May 2012 <http://www.nst.com.my/latest/anwar-2-others-charged-over-april-28-rally-1.86479>.

⁹ "Call to strip Ambiga of citizenship", New Straits Times, 8 May 2012, <http://www.nst.com.my/nation/general/call-to-strip-ambiga-of-citizenship-1.81704>; "Revoke Ambiga's citizenship, urged NGOs", New Straits Times, 5 May 2012 <http://www.nst.com.my/latest/revoke-ambiga-s-citizenship-urged-ngos-1.80942>; "1,000 vent anger at anti-LGBT rally", Malaysiakini, 21 April 2012, <http://www.malaysiakini.com/news/195626>.

¹⁰ "Government sues Ambiga, 9 others for Bersih 3.0 damage", Malaysiakini, 23 May 2012, <http://www.malaysiakini.com/news/198817>.

Phil Robertson, deputy Asia Director of Human Rights Watch states, “These charges, and the actions by police at the Bersih rally, don’t inspire confidence that the Malaysian government is committed to protecting basic free expression rights.”¹¹

Conclusions

These emerging trends in Malaysia seriously undermine the rights of citizens to freedom of expression and assembly. In this light, Aliran on behalf of the Bersih 2.0 steering committee calls upon the United Nations:

- To condemn immediately the unacceptable police violence and human rights violations currently taking place in Malaysia.
- To call on the Malaysian government to:
 - immediately stop the intimidation and harassment of democracy activists and human rights defenders by the police and other parties;
 - allow UN Special Rapporteurs to visit Malaysia to carry out an independent inquiry and that the Malaysian government fully facilitate their investigation; and;
 - implement meaningful electoral reform and invite independent international observers to observe the 13th General election to ensure that they are clean, fair and free.

¹¹ ‘Malaysia: Drop Charges Against Protest Participants’, Human Rights Watch 22 May 2012, <http://www.hrw.org/news/2012/05/22/malaysia-drop-charges-against-protest-participants>.