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2 November 2015

Re: Investigation of and charges against organizers of Bersih 4.0

Your Excellency,

I write to you on behalf of the International Commission of Jurists (ICJ) to express our concerns regarding the recent investigation of and charges against organizers of Bersih 4.0, a public assembly held from 29 to 30 August 2015. The charges brought against the public assembly's organizers should be dropped immediately, and the law should be amended to bring it into line with Malaysia's international obligations.

The ICJ is an international non-governmental organization that has been dedicated since 1952 to promoting the understanding and observance of the rule of law and the legal protection of human rights throughout the world.

Monitors from the ICJ observed Bersih 4.0 and reported that it was a peaceful assembly and that the organizers took careful measures to keep it orderly and free from violence. However, in the weeks after Bersih 4.0, its organizers have been subjected to investigations and threats of prosecution because of their role in leading the organization of this peaceful public assembly.

The ICJ recalls that under international law, the Government of Malaysia has the obligation to respect the rights to freedom of expression and freedom of assembly. These rights are also safeguarded under article 10 of the Constitution of Malaysia. Article 10(1)(b) of the Constitution particularly provides that "all citizens have the right to assemble peaceably and without arms." Under the constitution, the Parliament may by law impose restrictions on this right for purposes considered necessary in the interest of security of the Federation or public order.

On 2 September 2015, seven members from the organizing team of Bersih 4.0 were summoned by police authorities pursuant to

investigations for alleged violations committed under the Penal Code.¹ These seven individuals are: Maria Chin Abdullah, Sarajun Hoda Abdul Hassan, Masjaliza Hamzah, Farhana Abdul Halim, Fadiyah Nadwa Fikri, Mandeep Singh and Adam Adli Abdul Halim.

On 22 October 2015, Jannie Lasimbang, the Vice-Chairperson of Bersih 2.0 for the State of Sabah and organizer of Bersih 4.0 in Sabah, was charged under section 9(5) of the Peaceful Assembly Act of 2012, which states that failure to notify relevant authorities of a planned public assembly, as provided under section 9(1) of the Act, constitutes an offence.

On 30 October 2015, Maria Chin Abdullah was informed by the investigating officer from Bukit Aman police headquarters that she would be charged at the Kuala Lumpur Sessions Court on 3 November 2015 also under section 9(5) of the Peaceful Assembly Act for failing to give notification to the authorities 10 days before the Bersih 4.0 public assembly was scheduled to take place.

These actions against the organizers of Bersih 4.0 constitute acts of harassment against the organizers for exercising their rights of peaceful assembly for the purpose of publicly raising concerns regarding the governance of the country. The actions against them disregard their rights to freedom of expression and peaceful assembly.

The right to peaceful assembly is guaranteed under several international human rights instruments, including the Universal Declaration of Human Rights. As mentioned above, it is also guaranteed under the Constitution of Malaysia. The United Nations Human Rights Council has repeatedly adopted several resolutions emphasized that the rights to peacefully assemble and freedom of expression can only be restricted under very strict circumstances, none of which would appear to apply in respect of the Bersih 4.0 situation.

In 2014, during the review of Malaysia by the Human Rights Council under the second cycle of the Universal Periodic Review, the Government of Malaysia rejected recommendations regarding the revision of the Peaceful Assembly Act of 2012. The Government said that this law was "enacted to ensure that all citizens have the right to organize assemblies or to participate in assemblies, peaceably and without arms."

We note, however, that the Peaceful Assembly Act of 2012 instead provides for and facilitates actions by public officials that will inevitably lead to violations of this right. Under this law, organizers of public assemblies are required to notify the Officer in Charge of the Police District in which the assembly is to be held. The organizers are required under the law to make this notification 10 days prior to the date of the assembly. Failure to make such notification constitutes an offence. Hence, upon conviction, organizers may be liable to a fine not exceeding 10,000 Malaysian Ringgit (approximately US\$2,322).

International law and standards do not allow for the overbroad and wide reaching restrictions to freedom of Assembly contemplated under the Peaceful Assembly Act. As emphasized by the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and association, the right to peaceful assembly may, at the most, be subject to a prior notification procedure only for purposes to allow the authorities to facilitate and take measures to ensure the safety of the public. The Special Rapporteur has indicated that notification should be submitted a maximum of, for example, 48 hours prior to the day the assembly is planned to take place.² The process for notification should not be

¹ Specifically, the seven members from the organizing team of Bersih 4.0 were informed that they were being investigated under section 120 (concealing a design to commit an offence punishable with imprisonment), section 124C (attempt to commit activity detrimental to parliamentary democracy) and section 141 (unlawful assembly) of the Penal Code for their involvement in organizing Bersih 4.

² Report of the UN Special Rapporteur on the rights to freedom of assembly and association, UN Doc. A/HRC/23/39 (2013), para. 52.

unduly cumbersome. Organizers of a peaceful assembly should be able to notify the designated authorities through the simplest and speediest means possible.³

Furthermore, even in the event where “the organizers fail to notify the authorities, the organizers should not be subject to criminal sanctions, or administrative sanctions resulting in fines or imprisonment.”⁴

Filing charges against Maria Chin Abdullah and Jannie Lasimbang for allegedly failing to notify the designated authorities about Bersih 4.0 is therefore incompatible with international law and standards. Filing these charges also creates a chilling effect for others who would want to exercise their human rights and freedoms. Organizers of peaceful assemblies should not be subjected to criminal sanctions, fines, or imprisonment, for the mere failure of notifying designated authorities.

We therefore call on the Government of Malaysia to discontinue any investigations against organizers of Bersih 4.0 and drop all charges against Maria Chin Abdullah and Jannie Lasimbang.

We also call on the Government of Malaysia to amend the Peaceful Assembly Act of 2012 so that it accords with international standards and serves to truly protect the right of Malaysians to organize and participate in peaceful assemblies.

Very truly yours,

PP. 

Wilder Tayler
Secretary General

For questions and clarifications, please contact Ms. Emerlynne Gil, Senior International Legal Adviser for Southeast Asia, email: emerlynne.gil@icj.org, tel: +66840923575

³ Ibid at para. 53.

⁴ Report of the UN Special Rapporteur on the rights to freedom of assembly and of association, UN Doc. A/HRC/20/27 (2012), para. 29.