

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; and the Special Rapporteur on the situation of human rights defenders

REFERENCE: AL
AUS 3/2014:

4 September 2014

Dear Ms. Ruth,

We have the honour to address you in our capacity as 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 pursuant to Human Rights Council resolutions 25/2, 24/5, and 25/18.

In this connection, we would like to bring to the attention of your Government information we have received concerning **a proposed Bill, Workplaces (Protection from Protesters) Bill 2014 (hereinafter the “Bill”)** that, if adopted, will unduly restrict the right to freedom of peaceful assembly and the right to freedom of opinion and expression.

According to the information received:

On 24 June 2014, House of Assembly for the Parliament of Tasmania passed the proposed Bill¹. The Legislative Council considered the Bill on 19 August 2014, at first reading, and has yet to vote on its provisions.

Clauses under provision 6 of the Bill establish a series of explicit prohibitions to demonstrate both in private and public areas. Among others, these include prohibition for protesters to “enter business premises, or a part of business premises”, “or “do an act on business premises, or on a business access area in relation to business premises”, if this “prevents, hinders or obstructs the carrying out of a business activity on the premises by a business occupier in relation to the premises”, if “the protester knows, or ought reasonably to be expected to know, that [his or her entry, remaining or act] is likely to prevent, hinder or obstruct the

¹ Text of the Bill at: http://www.parliament.tas.gov.au/bills/Bills2014/pdf/15_of_2014.pdf

carrying out of a business activity on the premises by a business occupier in relation to the premises” or if this prevents, hinders or obstructs the access to or the exit of the premises (clauses 6.1, 6.2 and 6.3).

The Bill also explicitly prohibits any person to “do an act on a road, footpath, public place, or another area of land, if the act is done in furtherance of; or for the purposes of promoting awareness of or support for an opinion, or belief, in respect of a political, environmental, social, cultural or economic issue”; and as a result of the act, the movement of a vehicle, vessel or aircraft used by a business occupier in relation to business premises is prevented, hindered or obstructed”; or “likely” to be prevented, hindered or obstructed (clause 6.4).

Provisions in clause 19 of the Bill impose mandatory penalties for acts describes in provisions 6, including fines for body corporate between AUD 50,000 and 100,000 (Australian dollars) and establishes for individuals mandatory fines between AUD 5,000 and 10,000 and mandatory minimum prison sentences of three months for repeat offenders. Clauses under provision 10 of the Bill establish fines up to AUD 10,000 for individuals and AUD 100,000 for body corporate for incitement to commit acts defined as offences under provision 6.

Provisions 8 of the Bill prohibit and establish penalties for any persons to “remain on a business access area” or on “an area of land” after having been directed by a police officer to leave the area. Provisions 9 of the Bill prohibit any person to prevent, hinder or obstruct a police officer from taking action regarding acts described in the Bill.

Part 3 of the Bill establishes provisions relative to police powers in application of the Bill, including arrests without warrant and the use of force.

The Government of Tasmania expressed support to the Bill, stressing the importance of the right to protest and freedom of speech and that “[t]he Bill does not seek to remove that right but ensure that it is exercised responsibly and lawfully so that others rights are not negatively impacted”, including “the rights of businesses to create economic opportunities and to develop the economy of this State, along with the rights of workers to go about their work without disruption, [that] are equally important rights contributing to the wellbeing and prosperity of Tasmania”. This includes government-owned businesses, as well as private for profit businesses. The Government stressed that the “context of this legislation is about addressing unlawful acts against economic businesses central to the Government’s policy”.²

² http://www.parliament.tas.gov.au/bills/Bills2014/pdf/notes/15_of_2014-SRS.pdf

We express serious concern about the proposed Bill, Workplaces (Protection from Protesters) that, if adopted, will unduly restrict the right to freedom of peaceful assembly and the right to freedom of opinion and expression. We are seriously concerned that the provisions of the Bill encompass excessive restrictions to demonstrations, applied both in private and public areas. We are concerned that provisions of the Bill are so broad as to prohibit peaceful acts of protest and establish prohibitions that go far beyond the legitimate restrictions established by international standards.

We are similarly concerned that the Bill criminalizes protest activities organised in private and public areas if these hinders, obstructs or prevents business operations, access to business premises or the circulation of vehicles, among others.

We are further concerned about the mandatory penalties imposed on peaceful acts of protest, including heavy fines and mandatory minimum prison sentence of three months for repeat offenders. We are concerned about the fact that this would amount to criminalise the fundamental right to organise and participate in peaceful assemblies. If adopted, the Bill would have the chilling effect of silencing dissenters and outlawing the rights to freedom of expression, opinion and peaceful assembly as established in international human rights standards.

In democratic societies, demonstrations and protests represent a central mechanism for raising awareness about human rights, political, social concerns, including on environmental, labour or economic issues, holding not just governments, but also corporations accountable. The Bill, if adopted, would impede that very function.

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

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 any additional information and any comment you may have on the above mentioned allegations. We also welcome any clarifications on measures taken to ensure the compliance of the proposed Bill with Australia's obligations under international human rights law and standards, particularly with regard to the right to freedom of peaceful assembly and association and the right to freedom of opinion and expression.

We are intending to publicly express our concerns in the near future, as we are aware that the information upon which the press release is going to be based indicates a matter warranting immediate attention in light of the Legislative Council's consideration of the Bill. The press release will indicate that we have been in contact with your Government to clarify the issues in question.

We would be grateful to Your Government if the present letter could be shared with the Government of Tasmania and Members of the Parliament of Tasmania for their attention.

Your Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Ms. Ruth, 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

Annex
Reference to international human rights law

In connection with the above, and without prejudice to the accuracy of these allegations, we would like to draw the attention of your Government to the relevant international norms and standards.

We would like to refer to the right to freedom of opinion and expression and the right to freedom of peaceful assembly as set forth in Articles 19 and 21 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Australia on 13 August 1980.

We would also like to refer to Article 50 of the ICCPR, which provides, “The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.”

We would like to refer you to resolution 24/5 adopted by the Human Rights Council on 8 October 2013, which concerns the rights to freedom of peaceful assembly and of association. It stresses the importance of the rights to freedom of peaceful assembly and association for civil society and for addressing issues that are important to society such as the environment, consumer protection, social justice, and the realization of all human rights.

We would like to draw your attention to resolution 25/2 adopted by the Human Rights Council on 24 March 2014, concerning the right to freedom of opinion and expression. It recognizes that this right “is essential for the enjoyment of other human rights freedoms, and constitutes a fundamental pillar for building a democratic society, and strengthening democracy, bearing in mind that all human rights are universal, indivisible, interdependent and interrelated.”

We would also like to refer you to resolution 25/38 adopted by the Human Rights Council on 11 April 2014, concerning the promotion and protection of human rights in the context of peaceful protests. The resolution emphasizes the duty states have to protect human rights in the context of peaceful protests, which is an “important form of exercising the rights to freedom of peaceful assembly, of expression, of association and of participation in the conduct of public affairs.” It recognizes that peaceful protests can be used as a means to hold human rights violators accountable for abuses. The resolution urges states to provide protesters with access to public spaces, protect them from discrimination, and ensure that “no one is subject to excessive or indiscriminate use of force.” It further calls upon states to ensure that their domestic legislation is in accordance with international obligations, even as applied to law enforcement, where principles of necessity and proportionality must be upheld.

Lastly, reference is made to draft resolution 26/22 adopted by the Human Rights Council on 25 June 2014, which emphasizes the important role civil society plays in encouraging accountability and raising awareness about the impact enterprises have on human rights issues.

We would also 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, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right 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.