

**NATIONS UNIES
HAUT COMMISSARIAT DES NATIONS UNIES
AUX DROITS DE L'HOMME**

**PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME**

**UNITED NATIONS
OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS**

**SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL**

Mandates of the Special Rapporteur on the human rights of migrants; 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 G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9) G/SO 214 (106-10)
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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the human rights of migrants; 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, and Special Rapporteur on the situation of human rights defenders pursuant to General Assembly resolution 60/251 and to Human Rights Council resolutions 17/12, 16/4, 15/21, and 16/5.

In this connection, we would like to bring to your Excellency's Government's attention to information we have received **concerning a Peaceful Assembly Bill, tabled at the Malaysian Parliament on 22 November 2011, which may unduly and arbitrarily restrict the free exercise of the right to peaceful assembly.** The first and second readings of the Bill in Parliament we understand took place on 22 and 29 November 2011 respectively, and action is expected to be taken shortly.

According to the information received:

The following amendments appear to be problematic:

- **Ban on street protests:** Street protest is defined as "an open air assembly which begins with a meeting at a specified place and consists of walking in a mass march or rally for the purpose of objecting to or advancing a particular cause or cases". Articles 4(1)(c) prohibit street protest and article (2)(c) considers its participation an offense.
- **Broad definition of assembly:** Article 3 interprets an assembly as "an intentional and temporary assembly of a number of persons" in a public area.

- **Ban on non-citizens:** Article 4(1)(a) prohibits a non-citizen to organize or participate in a peaceful assembly.
- **Age limit:** Articles 4(d) (e), and 2 (d) prohibits a person under 21 years of age to organize or participate in a peaceful assembly, as well as bringing a child to an assembly or allowing a child to attend an assembly is also considered an offence. Article 20(1)(c) further stipulates that police can arrest any organizer or participants if he/she recruits or takes a child to an assembly.
- **Notification:** Article 9 states that “an organizer shall, within thirty days before the date of an assembly, notify the Officer in Charge of the Police District in which the assembly is to be held, except if an assembly is held at a designated place or other permitted assemblies under the third schedule”. Article 10 (e) further provides a substantial amount of detailed information to notify the assembly.
- **Restrictions and conditions:** The Officer in Charge of the Police District may impose restrictions and conditions on assemblies under article 15 for safeguarding the “security or public order, including the protection of the rights and freedoms of other persons”. Article 3 interprets the rights and freedoms of others as “the right to enjoy the natural environment” “the right to freedom of movement”. Such conditions and restrictions under article 15 “may relate” to elements such as “the manner of the assembly”, “the payment of clean-up costs arising out of the holding of the assembly”, or “any other matters the Officer in Charge... deems necessary...”
- **Enforcement:** Articles 20 and 21 relate to enforcement provisions giving authority and power to law enforcement officers to interpret the law and take enforcement action (article 20 and 21).
- **Power to disperse:** Article 21 gives the authority to the police officer to use “all reasonable force” to disperse an assembly for reasons such as if “the assembly is held at a prohibited place or within fifty metres from the limit of a prohibited place”; “the assembly is or has become a street protest”; or if “any person at the assembly does any act or makes any statement which has a tendency to promote feelings of ill-will, discontent or hostility amongst the public at large or does anything which will disturb public tranquillity”.
- **Recordings and media:** While article 23 empowers a police officer to “make any form of recording of an assembly”, article 24 provides for “reasonable access” to media to a place of assembly.
- **Prerogatives of the Minister:** Articles 25, 26, 27 allow the Minister charged with the responsibility for home affairs to decide the designated place of assembly, amend schedules and make regulations regarding peaceful assembly at his/her own discretion.

The Human Rights Commission of Malaysia (SUHAKAM), the Malaysian Bar as well as civil society organizations have reportedly already expressed concerns on the proposed legislation.

Should this information be corroborated, serious concerns are expressed that the proposed legislation may gravely and arbitrarily limit the free exercise of the right to peaceful assembly. Concerns are further expressed that such obstacles to assemble freely, including the imposition of broad restrictions and conditions on assemblies; a ban on street protests; a vague definition of assembly; a prohibition on non-citizens and citizens under 21 years of age to assemble peacefully; a prohibition on children attending peaceful assemblies; a restrictive notification procedure; a full discretion to the police for recording assemblies but only "reasonable" access to media; and excessive discretionary authority and power to law enforcement officials and the Minister charged for home affairs for matters related to assemblies and their conduct; may be put in place to prevent human rights defenders and political activists to peacefully express dissenting views and exercise their legitimate rights.

We wish to remind your Excellency's Government that the limitations set forth under article 29(2) of the Universal Declaration of Human Rights to the right to peaceful assembly can only be justified if they are "determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society." Such permissible restrictions, however, can only be justified in a democratic society for achieving one of the abovementioned purposes and shall be proportionate to the pursuance of legitimate aims in order to ensure effective protection of other Declaration's rights. Hence, they shall not be arbitrarily invoked to prevent dissenting views from exercising their legitimate rights.

We would also like to recall Human Rights Council resolution 15/21 that recognizes that "exercising the rights to freedom of peaceful assembly and of association free of restrictions, subject only to the limitations permitted by international law, in particular international human rights law, is indispensable to the full enjoyment of these rights, particularly where individuals may espouse minority or dissenting religious or political beliefs." Moreover, and in line with operative paragraph 1 of the same resolution, we call on your Excellency's Government "to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, 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."

Additionally, given that the right to freedom of expression is also intrinsically linked to the right to freedom of assembly, we would like to appeal to your Excellency's Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the Universal Declaration of Human Rights, which provides that "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and

impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”

Concerning the potential impact that the Bill could have on the exercise and defense of the right to peaceful assembly by human rights defenders and activists, we would 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, and in particular articles 1 and 2 which state that “everyone has the right individually or in association with others, 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, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice.”

Furthermore, we would like to bring to the attention of your Excellency's Government article 12, paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

With regards to young people taking part in demonstrations, we would like to refer to the 2007 report to the General Assembly of the Special Representative of the Secretary-General on the situation on human rights defenders in which she recommends to “take steps to create a conducive environment that allows children and young adults to associate and express views on matters affecting them as well as on broader human rights issues. Student protests have a high educational value as they are among the first experiences of public participation and human rights defense of students. Ensuring a conducive environment for student protests is a social investment in addition to a legal obligation (A/62/225, para. 101 b)”.

In respect to the provision on the prohibition of non-citizens to organize or participate in a peaceful assembly, we would like to recall Your Excellency's Government that article 20 of the Universal Declaration of Human Rights guarantees to “everyone” the right to freedom of assembly and association. This includes everyone, without distinction of any kind, such as “race, colour, sex, language, religion, political or other

opinion, national or social origin, property, birth *or other status*”, including nationality. We wish to refer in this regard to the resolution 18/12 adopted by the Human Rights Council on 30 September 2011 which stresses the obligation of States to protect the human rights of migrants (para. 3), regardless of their status, and expresses concern at legislation and measures adopted by some States that may restrict the human rights and fundamental freedoms of migrants (para. 4).

In connection to the allegations and concerns described above, we urge your Excellency’s Government to take all necessary measures to guarantee that the right to freedom of peaceful assembly is upheld. We also encourage your Excellency’s Government to adopt the necessary measures to ensure that defenders, activists and civil society organizations can carry out their human rights work in a free and safe environment.

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. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters:

1. Is the information alleged in the summary accurate?
2. Please provide the full details of the abovementioned Peaceful Assembly Bill. Are its provisions in accordance with your obligations under international human rights law? Please explain.
3. Please explain how the difference between “peaceful assembly” and “street protest” is defined by the draft law and how this will be applied by law enforcement officers.
4. Please explain what constitutes “reasonable access” for media to a place of assembly, as the draft law provides for, and how this provision will be enforced.
5. Please indicate what measures have been taken to ensure that human rights defenders, activists and civil society organizations can operate in an enabling environment and can carry out their legitimate activities without fear of harassment, stigmatization or criminalization of any kind.
6. Please indicate any consultation with civil society on the drafting of this Bill.

We would appreciate a response within sixty days. We undertake to ensure that your Excellency’s Government’s response to each of these questions is accurately reflected in the reports we will submit to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

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freedom of opinion and expression

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