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SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

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; the Special Rapporteur on freedom of religion or belief; and the Special Rapporteur on the situation of human rights defenders.

REFERENCE: OL G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (56-23) G/SO 214 (107-9)
IDN 11/2012

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Excellency,

We have the honour to address you in our capacities as 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; Special Rapporteur on freedom of religion or belief; and Special Rapporteur on the situation of human rights defenders pursuant to Human Rights Council resolutions 16/4, 15/21, 14/11, and 16/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **a new "Bill on Societal Organizations" which can unduly restrict the right to freedom of association. The House of Representatives of the People's Consultative Assembly is expected to conduct a final deliberation of the bill in September 2012.**

According to the information received:

On 3 October 2011, the House of Representatives established a Special Committee (Panitia Khusus) to draft a "Bill on Societal Organizations". It is reported that consultations with civil society organizations were held in late November 2011. In May 2011, it is also reported that the Working Committee of the House of Representatives (Panitia Kerja) began their substantive deliberations on the drafting of the bill. Concern has been expressed that the main purpose of the bill is to exert control on civil society.

Articles 2 and 3 of the proposed bill stipulate, respectively, that the principles of a "societal organization" and its goals and objectives cannot be "in contradiction with Pancasila". Similarly, **article 5 (c)** stipulates that "the purpose of a societal organization... (is) to safeguard the religious and belief values on One Supreme God". Further, **article 20 (c)** reads that "organizations have the duty to...maintain

religious values... ”. Concern has been expressed that these provisions can violate the rights of all persons who belong to an association to freedom of religion or belief and to freedom of opinion and expression. Pancasila is the official philosophy of the State. Its principles are recognized in the preamble of the 1945 Constitution of the Republic of Indonesia and include, among others, the belief “in the One and Only God”.

Article 34 (2) stipulates that any “support/donation from foreign citizens and/or institutions... should be reported and/or obtain the agreement from the Government”. According to reports received, the understanding of this provision is that the reporting requirement is applicable to “societal organizations” receiving funds of less than 500 million rupiahs (approximately 50,000 USD) and that the requirement of a previous agreement with the Government is mandatory for those that receive more than 500 million rupiahs.

Article 38 (1) allows the Government to “empower and supervise” the administration of “societal organizations” through the establishment of an information system. Concern has been raised that the use of such a system to facilitate supervision of civil society organizations could infringe on their autonomy and on their right to privacy.

In terms of foreign organizations, the bill contains a number of provisions that regulate foreign “societal organizations” operating in the country. It has been reiterated that these provisions can have a serious negative impact on foreign civil society organizations in Indonesia.

Article 39 creates a system of authorization for foreign “societal organizations” wishing to conduct activities in Indonesia. Paragraph (1) states that “(f)oreign societal organizations in carrying out their activities in the territory of Indonesia should have an operational permission from the minister responsible for foreign affairs”. Moreover, paragraph (2) (b) mandates foreign societal organizations to be “in accordance with the legislation in Indonesia”, which could be read as including the philosophy of Pancasila. In case of non-compliance with paragraph 2, paragraph (5) provides for denial of permission to foreign “societal organizations” to conduct activities in the country.

Similarly, **article 41** lists a number of prohibitions for foreign “societal organizations”, including, inter alia, to: “(a) carry out activities which are against the laws and legislation of the Unitary Republic of Indonesia”, which could be read as including the philosophy of Pancasila; “(d) carry out any political activities”, which can infringe on the right of foreign civil society organizations to carry out legitimate civil and political activities for the defence of human rights; or “conduct any activities without operational permission from the minister who is responsible for foreign affairs”.

In terms of the right to privacy of foreign civil society, **article 43** states, in paragraph (1), that “the Government and Regional Government can monitor the presence and activities of Foreign Societal Organizations”.

With regard to the prohibition to foreign “societal organizations” to carry out activities contrary to the legislation in **article 41 (a)**, a similar provision for “societal organizations” can be also found in **article 50 (2) (a)**. Such a prohibition has been questioned by civil society organizations as it can be the subject of abusive interpretations in favour of a strict observance of Pancasila and on the belief in “One and only God” by any “societal organization” in the country. In addition, **article 50 (4)** prohibits societal organizations from “embracing and developing and disseminating doctrines or ideologies contrary to Pancasila”. Concern has been expressed that by “doctrines or ideologies contrary to Pancasila” the provision could imply any belief such as, for example, capitalism, liberalism or Marxism. This prohibition has also been subjected to criticisms as it could also be extended to foreign “societal organizations” or national “societal organizations” receiving foreign support.

We would like to express our serious concern with regard to some of the provisions contained in the “Bill on Societal Organizations”. These provisions may be in contradiction with the obligations of the Republic of Indonesia under international human rights law, including articles 17, 18, 19, and 22 of the International Covenant on Civil and Political Rights (ICCPR). We reiterate our concern that these provisions may have been included in the bill to hamper the legitimate human rights work of civil society in the country, and of foreign societal organizations in particular.

While we do not wish to prejudge the accuracy of these allegations, we wish to refer to article 19 of the International Covenant on Civil and Political 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.”

We would also like to recall the Human Rights Committee General Comment 22 that emphasized that “(A)rticle 18 protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. The terms “belief” and “religion” are to be broadly construed. Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions”. The Committee also pointed out that Article 18 distinguishes the freedom of thought, conscience, religion or belief from the freedom to manifest religion or belief. It does not permit any limitations whatsoever on the freedom of thought and conscience or on the freedom to have or adopt a religion or belief of one's choice. These freedoms are protected unconditionally, as is the right of everyone to hold opinions without interference as provided for in Article 19 (1).

We would also like to refer to article 22 of the International Covenant on Civil and Political Rights, which provides that “Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests”. We wish to recall that the exercise of fundamental freedoms should not be subjected to a regime of prior authorization, and that a regime of notification should be deemed sufficient, as reiterated by the Special Rapporteur on the rights to freedom of peaceful assembly and of association (A/HRC/20/21 para 58).

Moreover, the right to freedom of association also entails the ability of its members to conduct its activities freely and to be protected from undue interference (A/HRC/20/27 paras 63 – 66). Associations should also have the possibility to access funding freely and without undue obstacles. We would like to recall the recommendations of the Special Representative of the Secretary-General on the situation of human rights defenders whereby “Governments must allow access by NGOs to foreign funding as a part of international cooperation, to which civil society is entitled to the same extent as Governments” (A/59/401, para. 82). Moreover, we reiterate that “any association...should have the right to seek and secure funding and resources from domestic, foreign, and international entities, including individuals, businesses, civil society organizations, Governments and international organizations” (A/HRC/20/27 para. 68).

In this context, we would like to refer to Human Rights Council resolution 15/21, and in particular operative paragraph 1 that “Calls upon States to respect and fully protect the right... of all individuals to ... associate freely... 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 right... to freedom of ... of association are in accordance with their obligations under international human rights law.”

In this connection, 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 the following provisions of the Declaration:

- article 5 points b) and c) which provide that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right to form, join and participate in non-governmental organizations, associations or groups, and to communicate with non-governmental or intergovernmental organizations;

- article 6 point a) which provides that everyone has the right, individually and in association with others to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems;

- article 6 points b) and c) which provide that everyone has the right, individually and in association with others as provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters; and

- article 13 which stipulates that everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedom, through peaceful means, in accordance with article 3 of the declaration.

Moreover, as 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 your cooperation in clarifying the following matters:

1. Please provide information on how the aforementioned bill is in line with the obligations under international human rights law, particular with articles 17, 18, 19 and 22 of the International Covenant on Civil and Political Rights.

2. Please provide information on how the aforementioned legislation contributes to creating a conducive environment for the work of activists and human rights defenders.

We would appreciate a response within sixty days. Your Excellency's Government's response will be made available in a report to the Human Rights Council for its consideration.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the human rights work of civil society in the country, and of foreign "societal organizations", are respected.

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

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