

PRESS RELEASE - THE OBSERVATORY

MALAYSIA: Peaceful assembly bill inconsistent with international human rights standards

Paris-Geneva, December 6, 2011. *The peaceful assembly bill passed by the lower house of the Malaysian Parliament on November 29 contains a number of defects that render the legislation restrictive, discriminatory and inconsistent with international human rights standards. If promulgated in its current form, the bill will gravely undermine freedoms of peaceful assembly guaranteed by domestic and international standards and instruments, the Observatory for the Protection of Human Rights Defenders, a joint programme of the World Organisation Against Torture (OMCT) and the International Federation for Human Rights (FIDH), said today.*

The bill was tabled on November 22 and the text was not made available in advance for input from civil society groups. Although the Government consulted with the Malaysian Bar Council on this bill, the version the Council was consulted on differed from the version tabled later in Parliament. The Malaysian Senate is due to review the bill on December 7.

Article 10(1)(b) of the Federal Constitution of Malaysia guarantees the freedom of peaceful assembly, which is also enshrined in Article 20 of the Universal Declaration on Human Rights and Articles 5 and 12 of the UN Declaration on Human Rights Defenders. Governments have an obligation to protect and promote the right to freedom of peaceful assembly and any restrictions on this right must meet the strict requirements necessity and proportionality.

The Observatory is deeply concerned that a number of provisions of the bill restrict, rather than promote and protect, the constitutional right to peaceful assembly. Most glaringly, Article 4 in Part II of the bill expressly prohibits “street protest” which is defined by the bill as an assembly in motion. This provision contradicts Part IV of the bill itself regarding notification procedures which recognises assembly in the form of a procession (Article 10(e)(viii)).

In addition, the bill prohibits anyone under the age of 21 to participate in an assembly, in contravention of the protection of freedom to peaceful assembly provided for by Article 15 of the UN Convention on the Rights of the Child, which Malaysia ratified in 1995.

Part IV of the bill also grants significant power to district police chiefs to impose restrictions and conditions on an assembly. The Home Minister is given the ultimate authority to approve or reject appeals of restrictions and conditions. Granting the Home Minister exclusive discretionary power to decide on appeals precludes recourse to meaningful and adequate judicial safeguards against arbitrary denial of the freedom of assembly. In her commentary on the UN Declaration on Human Rights Defenders, the UN Special Rapporteur on the situation of human rights defender urges States to “ensure access to courts to appeal against any decision to restrict an assembly”¹.

“The hasty tabling of such a restrictive bill without any meaningful consultation with civil society contradicts recent announcement of legal reform by the Prime Minister and bodes ill especially for the work of human rights defenders, who have been victims of preventive detention, arbitrary arrest, and excessive use of force by law enforcement personnel, especially in recent months before and during the peaceful Bersih rallies calling for electoral reform”, said Ms. Souhayr Belhassen, President of FIDH.

¹ <http://www.ohchr.org/Documents/Issues/Defenders/CommentarytoDeclarationondefendersJuly2011.pdf>.



The Observatory
for the Protection
of Human Rights Defenders

“Malaysian civil society and human rights lawyers have pointedly laid out the defects of this bill. The authorities should heed their concerns and recommendations, and delay its promulgation until being brought into full compliance with the Constitution and international human rights standards”, said Gerald Staberock, Secretary General of OMCT.

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