



**Resolution Adopted at the 77<sup>th</sup> Annual General Meeting of the Malaysian Bar  
(Held on 18 March 2023)**

**Resolution on the Right of Peaceful Assembly and Related Matters**

**Whereas:**

- (1) The right of peaceful assembly is a fundamental human right, which is also acknowledged in our Federal Constitution.
- (2) The use of this right is a means that persons use to highlight issues and demands not just to the state but also to others, not just in Malaysia.
- (3) This right of peaceful assembly has existed since Independence, but at the same time the gathering of three or five or more was also criminalised in law. Irrespective of that, there have been many peaceful assemblies over the years.
- (4) Sadly, the advent of the Peaceful Assembly Act 2012 (“PAA”) in fact deterred and/or violated the exercise of the right of peaceful assembly. It gave the police too many powers, including the ability to deny the right or “control” the right of peaceful assembly with conditions that are sometimes unreasonable. A right is automatic, with no one having the power to deny or restrict the right.
- (5) The Malaysian Bar spoke out when the Peaceful Assembly Bill was tabled. On 29 November 2011, the Malaysian Bar organised the “Walk for Freedom 2011”, which was reportedly attended by about 1,500 participants in protest against the Government’s Peaceful Assembly Bill that was said to have clauses that were too restrictive on the constitutional right to assemble peacefully. Lawyers and others walked from the Royal Lake Club to Parliament, and handed over the Bar’s Proposed Amendments to the Peaceful Assembly Bill<sup>1</sup> to the then-Deputy Minister in the Prime Minister’s Department, the late Datuk Liew Vui Keong.

---

<sup>1</sup> Malaysian Bar’s “Memorandum on the Peaceful Assembly Bill” dated 24 November 2011, accessible at [bit.ly/3mUGzwC](http://bit.ly/3mUGzwC); Message from then-President of the Malaysian Bar, Lim Chee Wee, to Members of the Bar entitled “Walk for Freedom 2011: Peaceful Assembly Bill Cannot and Must Not Become Law!” dated 24 November 2011, accessible at [bit.ly/3KeMDIk](http://bit.ly/3KeMDIk).

- (6) The issues and concerns of the Bar, the Human Rights Commission of Malaysia (“SUHAKAM”), civil society, and others have sadly still not been taken into account and incorporated in the PAA to enable the exercise of a **real** right of peaceful assembly.
- (7) Sadly, when the Pakatan Harapan-led Government amended the PAA after the 14<sup>th</sup> General Elections (“GE14”), it essentially just reduced the notice period from 10 to five days, and made other small amendments that failed to bring the needed reform, and we still suffer from the denial of our full right of peaceful assembly.
- (8) Some of the concerns regarding the rights-violating provisions of the PAA are as follows:
  - (a) The ability of persons in Malaysia to exercise the right is most difficult, as PAA now requires person(s) to pre-identify themselves as organisers, and comply with onerous conditions, including even providing the name of the “person appointed by the organiser to be in charge of the orderly conduct of the assembly”. In many a peaceful assembly — such as the “Reformasi” protest that took place on several Saturdays — there was really no identifiable organiser. People from all walks of life, on becoming aware of a peaceful assembly on a particular issue, just come, gathered and exercised their right of peaceful assembly. After the PAA came into force, only bigger organisations and political parties may have the capacity or ability to organise and fulfil the various prerequisites stipulated in the PAA. Ordinary people, on their own, find it most difficult to exercise their right of peaceful assembly.
  - (b) The PAA wrongfully denies children (despite Malaysia having acceded to the UN Convention on the Rights of the Child in 1995), foreign nationals, and even youth below 21, the right of peaceful assembly. It is wrong that, for example, Palestinians or other foreigners have no right to protest against injustices happening in or to their country, through peaceful assemblies.
  - (c) The PAA denies Malaysians the ability to speedily exercise the right of peaceful assembly. It is absurd that we now cannot immediately protest against, for example, Israel’s bombing of Palestine. The PAA makes us wait for at least five days and, as such, it may be too late, or the issue is old and may not even receive media attention. Even when a bad law is tabled in Parliament, we simply do not have time to assemble peacefully to protest the bad law or certain bad provisions in it. This is important, as laws in Malaysia can be passed very quickly. When Members of Parliament “obey” directives of the party whips, some concerns or views of the people may never even be expressed in Parliament.
  - (d) The PAA brings in onerous obligations like having to get “consent of the owner or occupier of the place of assembly”, even when it is public property. The requirement of consent is reasonable if the venue is within private property, but there must be no requirement of consent when it comes to public areas and spaces. There should be no such requirement unless the venue is within business or private premises, more so when such actions are already trespass.

- (e) The exercise of the right of peaceful assembly cannot or should not be denied simply because opponents and others are opposed to it. The right must be respected — different persons have different views, but everyone has the right to express their views.
- (9) Even if one were to follow the PAA, and get the needed permission, the police can still, at the eleventh hour, block the exercise of this right, something which the Malaysian Bar experienced on 17 June 2022 when about 500 Members of the Bar assembled peacefully at Padang Merbok in Kuala Lumpur for the Bar’s “Walk for Judicial Independence”, during which they planned to march to Parliament to submit a memorandum to the then-Deputy Minister in the Prime Minister’s Department (Parliament and Law), Datuk Wira Mas Ermieyati bt Samsudin.
- (10) On 20 October 2022, the Malaysian Bar commenced a legal suit against the police and the Government. This motion is not about the legal proceedings now in court, but about the issue of the right of peaceful assembly and the draconian PAA.
- (11) On 16 October 2014, the Malaysian Bar had held the “Walk for Peace and Freedom” to condemn the use of the Sedition Act 1948 and to protest the multiple arrests, investigations and charges made under that law. The march from Padang Merbok to Parliament was estimated to have been attended by between 1,000 and 2,000 lawyers and others.
- (12) There was no action taken to prevent participating lawyers and others from marching to Parliament in 2014, unlike what happened in 2022. Hence, the ability to exercise the right of peaceful assembly is deteriorating.
- (13) A right requires no permission by the police or the government. The police may be informed, merely to protect those exercising the right of peaceful assembly. The police protect them from others who try to interfere with the exercise of the right. The police help in directing traffic. If any offence is committed, the police can take action against the alleged offenders only, not the persons who initiated the assembly.

**Therefore, the Malaysian Bar resolves:**

- (A) To reiterate the call that the draconian provisions in the PAA be repealed; and
- (B) That the Malaysian Bar will never succumb to fear, and will continue exercising the right of peaceful assembly. We will continue to uphold the cause of justice without fear or favour.

---

## **MALAYSIAN BAR**

### **MEMORANDUM ON PEACEFUL ASSEMBLY BILL**

**24 Nov 2011**

Bar Council Malaysia  
No. 13, 15 & 17 Leboh Pasar Besar  
50050 Kuala Lumpur  
(Tel) 03 2050 2050  
(Fax) 03 2026 1313/2034 2825/2072 5818

<http://www.malaysianbar.org.my>

---

The Peaceful Assembly Bill (“**the Bill**”) was tabled in Parliament for its first reading on 22 November 2011. It must be noted that advance notice was not given save for speculation in the media that it would be tabled on 24 November 2011. There appears to be unseemly haste in introducing this far-reaching and crucial legislation without adequate public consultation<sup>1</sup>.

This Bill in replacing the present legislative provision in section 27 of the Police Act 1967, introduced several controversial and objectionable provisions for instance,

1. prohibition of street protests (defined widely as 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 causes);
2. prohibition of organisation of assemblies by persons below the age of twenty one years;
3. prohibition of participation in peaceful assemblies of children below the age of fifteen years;
4. unduly onerous responsibilities and restrictions on organisers and assemblies; and
5. excessive fines for non-compliance of the Bill.

These restrictive provisions in the Bill stand in stark contrast to the words of the Honourable Prime Minister in his eve of Malaysia Day speech which was widely applauded by the Malaysian Bar (“**the Bar**”) and Malaysians in the honest belief that there will be real and genuine reforms. The relevant excerpt of the speech is as follows:

*“I often opine that long gone is the era in which the government knows everything and claims monopoly over wisdom. ...*

*The Government will also review section 27 of the Police Act 1967, taking into consideration Article 10 of the Federal Constitution regarding freedom of assembly and so as to be in line with **international norms on the same matter.** ... (emphasis added)*

*The decisions we make today will determine the fate and shape Malaysia as it will be in the future, the homeland that we will pass on to our children and future generations. The question is, are we capable of surpassing and challenging the common suspicion that Malaysians with their diverse backgrounds, varying socioeconomic statuses and political understandings which are typical of human nature, can arrive at a consensus to not bow or surrender to the trappings of hate and distrust which would certainly drag us down into a valley of disgrace. Instead, let us all brave a future filled with hope and nobility together. ...*

---

<sup>1</sup> The Bar was consulted by the Honourable Attorney General on only certain provisions of the Bill and had made known its views.

*Be confident that it is a strength and not a weakness for us to place our trust in the Malaysian people's intelligence to make decisions that will shape the path of their own future. ...*

*It is absolutely clear that the steps I just announced are none other than early initiatives of an organised and graceful political transformation. It stands as a crucial and much needed complement to the initiatives of economic transformation and public presentation which the government has outlined and implemented for over two years in the effort to pioneer a modern and progressive nation. ...*

*It is neither too early nor too late, but this is the most suitable and precise time for such major estimations to be made and implemented. Though some parties opine that this is too risky, we will proceed with it for the sake of survival, as it has been fifty years since our nation achieved independence, and nearly five decades since Malaysia was formed. Thus, we stand at the threshold of a vehicle that speeds towards its destination as a fully developed nation.*

*In closing, I wish to emphasise that free of any suspicion and doubt, the Malaysia that we all dream of and are in the process of creating is a Malaysia that practices a functional and inclusive democracy where public peace and prosperity is preserved in accordance with the supremacy of the Constitution, rule of law and respect for basic human rights and individual rights."*

The Bar has expressed its view in its Press Release issued on 22 November 2011<sup>2</sup> and objects to some of the provisions of the Bill<sup>3</sup>. It recommends that this Bill be referred to a Parliamentary Select Committee which would engage in a public consultation process consistent with the Honourable Prime Minister's promise of "a Malaysia that practices a functional and inclusive democracy". In addition, the Bar will introduce draft amendments to the Bill which will be ready by Tuesday, 29 November 2011.

This Report seeks to demonstrate that the Bill is not "in line with international norms" by identifying several key differences of the Bill with other jurisdictions' assembly acts. The extracts of Suhakam's recommendations in its Report on Freedom of Assembly are set out in Annexure 3.

These differences are categorised and summarised as follows:

1. Prohibition of Assembly

The Bar is stunned and strongly objects that "street protest" (which is a form of assembly in motion or procession already legally recognised in section 27 of the Police Act 1967) is prohibited. Such an assembly in motion is permitted in most if not all of the jurisdictions which we would consider as having a model piece of

---

<sup>2</sup> Annexure 1.

<sup>3</sup> Further recommendations are contained in Annexure 2.

legislation. There have been several street protests which were peaceful in Malaysia, for instance, the Bar's Walk for Justice in 2007 and the recent Bersih 2.0 rally.

The Bar is also concerned that the wide definition given to "street protest" as provided for under the Bill can and shall be used to curtail assemblies which may fall under the definition.

## 2. Prohibited Places

The Bill provides for an outright prohibition against an assembly held at any "prohibited place" and within fifty metres from the said prohibited place. No such prohibition appears in other jurisdictions which we consider as having a model piece of legislation.

## 3. Children's participation in or organisation of assembly

Section 4 of the Bill prohibits a person below the age of twenty one years to organise an assembly and the participation of a child below the age of fifteen years in an assembly other than an assembly specified in the Second Schedule.

The regulation of the participation of children is restrictive and contrary to our international obligations under the Convention of the Right of the Child ("**CRC**") where Malaysia is a signatory. On 6 June 2010, Malaysia withdrew its reservations to Articles 1, 13 and 15 of the CRC, thus allowing children *"the freedom to have their say, and the right to form associations and assemble peacefully"*.

Minister of Women, Family and Community Development, Datuk Seri Shahrizat Abdul Jalil had said on the same day that the government would give children the freedom to have their say and the right to form associations and to assemble peacefully. She said the move was in line with the recognition given to children's rights as they would be the future leaders of the nation.

## 4. Restrictions of Assembly

The Bar acknowledges that in other jurisdictions, restrictions and conditions may be imposed on public assemblies. In the UK, even though the words *'as appear to him necessary to prevent such disorder, damage, disruption or intimidation'* are stated in the Act, the police may only impose conditions based on date, time and duration, place and manner. In Finland and Queensland, conditions may be placed on payment of clean-up costs, any inherent environmental factor, and cultural or religious sensitivity.

However, in the Bill, the police can also impose other conditions or restrictions not found in other jurisdictions. Further, the OCPD is given wide discretionary powers to impose any restrictions other than those specifically mentioned above as he deems necessary or expedient.

## 5. Notification of Assembly

In the UK, notification is not needed for a public assembly. Notification is required for a public procession in which 6 days notice is to be given before the date of the procession. In Queensland, the arranger of an assembly shall notify not less than 5 business days. In Finland, the arranger of an assembly shall notify the local police at least 6 hours before the meeting. The Act further provides for late notification if the arrangement of the meeting does not cause significant disruption to public order.

The notification period of 30 days is unduly long and not in line with international norms. Further, the Bill ignores the possibility of an immediate public assembly or a spontaneous assembly.

## 6. Powers of the Police

In Finland, the powers of the police are spelt out extensively in the Assembly Act. Section 20 states where necessary, the police may, before or during the event, issue orders or instructions on the arrangement of a public meeting or a public event for the purpose of maintenance of public safety or security; the prevention of damage to health, property or the environment or the reduction of the damage to the environment; the safeguarding of the rights and interests of bystanders; and the ensuring of the free flow of traffic. Furthermore, in sections 4 and 19, it clearly provides for the positive obligations of the police in promoting and safeguarding the exercise of freedom of assembly.

In Queensland, the powers of the police are spelt out in the Police Powers Responsibilities Act 2000, where the police may give directions requiring a person to either leave the regulated place or be within the regulated place for a reasonable time limit or move from a particular location for a specified period of time.

In the UK, the powers of the police to arrest without warrant subject to certain circumstances are stated in sections 12(7) and 14(7) of the Public Order Act 1986. The powers of the police are spelt out clearly and published to the public. The UK Human Rights Act 1998, particularly section 3 requires the police to interpret and apply their powers in a manner which is compatible to the European Convention on Human Rights.

Section 21(2) of the Bill provides that the police officer, in exercising the power to disperse an assembly may use all reasonable force. The lack of public disclosure of the standard operating procedure employed by the police, such as how it handles crowd control or demonstrations evokes distrust in the public as to how it will apply this provision. The extent of the exercise of the police's reasonable force should be clearly identified. It is also important to establish the positive obligations of the police in promoting and facilitating all peaceful assemblies.

## 7. Non citizens

In the UK, Queensland and Finland, the legislation that govern public assemblies do not make a distinction between the right accorded to citizens and non citizens. In the Bill, however, is clearly stated that the right to organise or participate in an assembly



does not extend to a non citizen. The Bar recognises that Article 10(1)(b) of the Federal Constitution guarantees freedom of assembly by citizens only. However, section 27 of the Police Act does not distinguish between citizens and non citizens. The Bill therefore takes away the right of peaceful assembly from non citizens which was recognised by section 27 of the Police Act.

### Conclusion

This Bill is not "*in accordance with the supremacy of the Constitution, rule of law and respect for basic human rights and individual rights*" as stated in the speech of the Prime Minister.

The Bar is hopeful that the Honourable Prime Minister will now reconsider this Bill and amend it by way of the process of public consultation, to ensure that Malaysia will have a legislation which truly enforces, protects and promotes freedom of assembly as guaranteed by the Federal Constitution.

Dated this 24<sup>th</sup> day of November 2011.

# **Annexure 1**

## Press Release

### **Peaceful Assembly Bill is more restrictive than present law and must be improved**

While the Malaysian Bar welcomes the Peaceful Assembly Bill ("Bill"), which recognises the freedom of assembly as guaranteed by Article 10(1)(b) of the Federal Constitution<sup>1</sup>, the Bar is surprised that a "street protest"<sup>2</sup> is prohibited, as it is a form of assembly in motion, or procession, that is already legally recognised in section 27 of the Police Act 1967. Such an assembly in motion is also permitted in most, if not all, of the jurisdictions that we would consider as having a model piece of legislation.<sup>3</sup> Furthermore, there have been several peaceful "street protests" in Malaysia.<sup>4</sup>

This prohibition as well as certain other provisions were not disclosed to us as being part of the contents of the Bill, during the consultation process between the Malaysian Bar and the Attorney General's Chambers.

In its present form, the Bill is more restrictive than present law, and must be improved. The Malaysian Bar proposes that the provisions of the Bill be amended, including:

- (1) Allow "street protests", which the Bill recognises – in the definition of an "assembly" – as including a moving assembly. The prohibition of a "street protest" is inconsistent with section 10(e)(viii) of the Bill itself (regarding the notification process), which refers to an assembly in procession;
- (2) Permit spontaneous assemblies, following the United Kingdom example, where no advance notice is required where it is not reasonably practicable to give such notice (such as protests against declarations of war);
- (3) Impose a statutory obligation on the police and government (namely the Minister of Home Affairs, in the Bill) to promote freedom of assembly. The model to emulate is Finland, where the government is required to promote the exercise of freedom of assembly by protecting the right to assemble without hindrance and by providing for the necessities of the assembly, and the police is under a duty to safeguard the exercise of the freedom of assembly;
- (4) Omit certain conditions that the police may impose under section 15(2), namely "the conduct of participants during the assembly" and "any inherent environmental factor, cultural or religious sensitivity and historical significance of the place of assembly". The objectives of these restrictions have already been catered to in existing law such as the Penal Code, and the First Schedule of the Bill, but in a less restrictive form;
- (5) Delete the presumption in section 19 regarding who is deemed to be an organiser, because it is an overreaching provision and goes too far;
- (6) Omit paragraph (c) of section 21(1), which empowers the police to arrest "any person at the assembly [who] 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 tranquility"; and

(7) Remove the prohibition on the participation of, and organisation by, children, as it is restrictive and contrary to our international obligations under the Convention of the Rights of the Child ("CRC"), which Malaysia acceded to in 1995. On 6 June 2010, Malaysia withdrew its reservations to Articles 1, 13 and 15 of the CRC, thus allowing children "the freedom to have their say, and the right to form associations and assemble peacefully".

On the same day, Dato' Sri Shahrizat Abdul Jalil had said that the government would give children the freedom to have their say and the right to form associations and to assemble peacefully. She added that the move was in line with the recognition given to children's rights, as they would be the nation's future leaders. In Finland, a person who is without full legal capacity but who has attained 15 years of age may arrange a public meeting, unless it is evident that he/she will not be capable of fulfilling the requirements that the law imposes on the arranger of a meeting, while other persons without full legal capacity may arrange public meetings together with persons with full legal capacity.

This Bill, like section 27 of the Police Act, vests wide powers in the police, who are empowered to impose restrictions and conditions, and to disperse assemblies and arrest participants. The police's past consistent and atrocious conduct in suppressing assemblies shows that it is crucial that the police change their mindset and abandon the culture of impunity in managing freedom of assembly. In other jurisdictions, the power to impose restrictions and conditions vests in the local authority or a procession commission.

Finally, the Minister of Home Affairs is empowered by the Bill to make regulations for the better carrying out of the provisions of the Act. It is important that these regulations facilitate freedom of assembly, instead of further restricting it.

Only when the improvements outlined above are implemented, would we begin to have a legislation in the public interest, which truly upholds, protects and promotes freedom of assembly.

**Lim Chee Wee**  
**President**  
**Malaysian Bar**

**22 November 2011**

---

<sup>1</sup> Article 10(1)(b) provides that all citizens have the right to assemble peaceably and without arms, subject only to such restrictions as Parliament may impose by law as it deems necessary or expedient in the interest of security of the country or public order.

<sup>2</sup> Defined in section 3 of the Bill 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 causes".

<sup>3</sup> Examples include the United Kingdom, Finland and Queensland.

## Malaysian Bar's Memorandum on Peaceful Assembly Bill

---

<sup>4</sup> For instance, the Bar's Walk for Justice in 2007, to demand a Royal Commission of Inquiry and the BERSIH 2.0 rally in July 2011. Most recently, a number of peaceful protests against the amendments to the Employment Act 1955 were held nationwide on 3 Nov 2011. It was reported in the media that "[s]everal police officers were seen directing traffic and assisting protesters" at one such protest, in Petaling Jaya, Selangor.

# **Annexure 2**

The Bar's further recommendations of amendments are as follows:

1. The 1<sup>st</sup> Schedule should be abolished and replaced with the words 'suitable place', followed by several characteristics in establishing a suitable place for peaceful assemblies.
2. Section 6 requires the organiser to ensure that he or any other person at the assembly does not commit any offence under any written law. This is an unfair restriction. The duty in ensuring a peaceful assembly falls upon the police and not upon the organisers. Hence, this section should be revised.
3. The imposition of excessive fines should be reviewed.

# **Annexure 3**



**Extracts of Suhakam Recommendations in**  
**Report on Freedom of Assembly**

*"b. Amendments under 2.2.a to also provide for following:*

*Organisers of assemblies to notify the Police of the proposed assembly at least 48 hours before the assembly is due to start. This is to enable the Police to arrange for traffic and crowd control.*

*Assemblies never to be prohibited but conditions may be imposed on organisers to prevent any public disorder, damage to public property or disruption to community life if there is any real threat. Such conditions may relate to the place at which the assembly may be held, its maximum duration or the maximum number of persons who may constitute it. Conditions should not restrict freedom of expression.*

*If there is opposition to the assembly or a counter-demonstration, the original assembly should not be stopped or prevented from taking place. The opposing assembly or counter-demonstration to be allowed to be present, within sight and sound of the original demonstration, but kept apart to maintain public order.*

*A distinction to be drawn between static assemblies and processions as processions require greater effort in traffic and crowd control and may result in disorder in some neighbourhoods such that the Police may wish to prohibit the procession from passing through that area.*

*Organisers of a procession to notify the Police at least ten days before the procession is scheduled to be held.*

*Similar conditions may be imposed on organisers of processions as for assemblies.*

*Subject to the above provisions being implemented, processions may be prohibited if the police officer-in-charge applies to the district council for an order prohibiting the holding of any procession in that district for a period of up to three months, on the ground that particular circumstances existing in that district may result in serious public disorder."*



**Majlis Peguam  
Bar Council Malaysia**

[www.malaysianbar.org.my](http://www.malaysianbar.org.my)

No 15 Leboh Pasar Besar  
50050 Kuala Lumpur, Malaysia  
Tel : +603-2050 2050 (hotline)  
Fax : +603-2026 1313, 2034 2825, 2072 5818  
Email : council@malaysianbar.org.my

**Circular No 279/2011  
Dated 25 Nov 2011**

Dear Members of the Malaysian Bar

**Walk For Freedom 2011: Peaceful Assembly Bill Cannot And Must Not Become Law!  
Tuesday, 29 Nov 2011 at 11:30 am, From Royal Lake Club to Parliament**

Martin Luther King Jr once said that “the ultimate measure of a man is not where he stands in moments of comfort and convenience, but where he stands at times of challenge and controversy.”

The Malaysian Bar and indeed Malaysia is now facing such a moment of challenge and controversy — an objectionable Bill, being rushed into law with unseemly haste without adequate public consultation, which effectively robs the rakyat of our constitutional right to freedom of assembly.

This Peaceful Assembly Bill (“Bill”) is far more restrictive than the current law. It is not a piece of legislation which we, as lawyers, can watch enter our statute books without standing up against it. It is not a piece of legislation which we want future generations to inherit, without us walking, and spending every ounce of our energy to oppose. If this piece of legislation makes it to the statute books, future generations would inherit a nation that is far from modern and progressive.

Members of the Bar are now called upon to march to object to this Bill. The walk will take place next **Tuesday, 29 Nov 2011**, from the entrance of the Royal Lake Club to Parliament House, to deliver the Bar’s Proposed Amendments to the Peaceful Assembly Bill to YB Datuk Liew Vui Keong, Deputy Minister in the Prime Minister’s Department. Members are advised to gather in their court attire at **11:30 am outside the Royal Lake Club entrance**.

The Prime Minister, in his eve of Malaysia Day 2011 speech, had promised that:

... long gone is the era in which the government knows everything and claims monopoly over wisdom ...

The Government will also review section 27 of the Police Act 1967, taking into consideration Article 10 of the Federal Constitution regarding freedom of assembly and so as to be in line with **international norms on the same matter** ... (emphasis added)

... a Malaysia that practices [sic] a functional and inclusive democracy ... in accordance with the supremacy of the Constitution, rule of law and respect for basic human rights and individual rights.

This Bill is not in line with international norms because of, amongst others:

- (1) Prohibition of street protests (defined widely as “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 causes”);
- (2) Prohibition of organisation of assemblies by persons below the age of twenty one years;
- (3) Prohibition of participation in peaceful assemblies of children below the age of fifteen years;
- (4) Unduly onerous responsibilities and restrictions on organisers and assemblies; and
- (5) Excessive fines for non-compliance of the Bill.

Therefore this Bill is not “in accordance with the supremacy of the Constitution, rule of law and respect for basic human rights and individual rights”, which the Prime Minister promised it would be.

The Bill is in its second reading in the Dewan Rakyat, and in all likelihood it will be passed after the third reading. We must remain hopeful that we can make a difference, through our Walk for Freedom. We must urge the Prime Minister to amend the Bill by way of public consultation to ensure that Malaysia will have a legislation in the public interest, which truly upholds, protects and promotes our constitutional right to freedom of assembly.

We feel let down by how far short this Bill falls in relation to what the Malaysian people were promised in the Prime Minister’s Malaysia Day 2011 message. In short, the Prime Minister must walk his own talk.

Attached are:

- (1) Bar Council press release entitled “[Peaceful Assembly Bill is more restrictive than present law and must be improved](#)” issued on 22 Nov 2011;
- (2) Bar Council press release entitled “[Broken promise: Prime Minister has not lived up to Malaysia Day 2011 pledge](#)” issued on 24 Nov 2011; and
- (3) [Malaysian Bar’s Memorandum on Peaceful Assembly Bill](#) dated 24 Nov 2011.

Please contact Gayathiri Paneerselvam, Officer, by telephone at 03-2050 2089 or by email at [gayathiri.p@malaysianbar.org.my](mailto:gayathiri.p@malaysianbar.org.my), should you have any queries.

I call on all Members to support us in this crucial initiative. See you on Tuesday, let’s walk!

**Lim Chee Wee**  
**President**  
**Malaysian Bar**



## **PRESS RELEASE**

### **Peaceful Assembly Bill is more restrictive than present law and must be improved**

While the Malaysian Bar welcomes the Peaceful Assembly Bill (“Bill”), which recognises the freedom of assembly as guaranteed by Article 10(1)(b) of the Federal Constitution<sup>1</sup>, the Bar is surprised that a “street protest”<sup>2</sup> is prohibited, as it is a form of assembly in motion, or procession, that is already legally recognised in section 27 of the Police Act 1967. Such an assembly in motion is also permitted in most, if not all, of the jurisdictions that we would consider as having a model piece of legislation.<sup>3</sup> Furthermore, there have been several peaceful “street protests” in Malaysia.<sup>4</sup>

This prohibition of an assembly in motion as well as certain other provisions were not disclosed to us as being part of the contents of the Bill, during the consultation process between the Malaysian Bar and the Attorney General’s Chambers.

In its present form, the Bill is more restrictive than present law, and must be improved. The Malaysian Bar proposes that the provisions of the Bill be amended, including:

- (1) Allow “street protests”, which the Bill recognises – in the definition of an assembly – as including a moving assembly. The prohibition of a “street protest” is inconsistent with section 10(e)(viii) of the Bill itself (regarding the notification process), which refers to an assembly in procession;
- (2) Permit spontaneous assemblies, following the United Kingdom example, where no advance notice is required where it is not reasonably practicable to give such notice (such as protests against declarations of war);
- (3) Impose a statutory obligation on the police and government (namely the Minister of Home Affairs, in the Bill) to promote freedom of assembly. The model to emulate is Finland, where the government is required to promote the exercise of freedom of assembly by protecting the right to assemble without hindrance and by providing for the necessities of the assembly, and the police is under a duty to safeguard the exercise of the freedom of assembly;

Page 1 of 2

---

<sup>1</sup> Article 10(1)(b) provides that all citizens have the right to assemble peaceably and without arms, subject only to such restrictions as Parliament may impose by law as it deems necessary or expedient in the interest of security of the country or public order.

<sup>2</sup> Defined in section 3 of the Bill 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 causes”.

<sup>3</sup> Examples include the United Kingdom, Finland and Queensland.

<sup>4</sup> For instance, the Bar’s Walk for Justice in 2007, to demand a Royal Commission of Inquiry and the BERSIH 2.0 rally in July 2011. Most recently, a number of peaceful protests against the amendments to the Employment Act 1955 were held nationwide on 3 Nov 2011. It was reported in the media that “[s]everal police officers were seen directing traffic and assisting protesters” at one such protest, in Petaling Jaya, Selangor.

- (4) Omit certain conditions that the police may impose under section 15(2), namely “the conduct of participants during the assembly” and “any inherent environmental factor, cultural or religious sensitivity and historical significance of the place of assembly”. The objectives of these restrictions have already been catered to in existing law such as the Penal Code, and the First Schedule of the Bill, but in a less restrictive form;
- (5) Delete the presumption in section 19 regarding who is deemed to be an organiser, because it is an overreaching provision and goes too far;
- (6) Omit paragraph (c) of section 21(1), which empowers the police to arrest “any person at the assembly [who] 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 tranquility”; and
- (7) Remove the prohibition on the participation of, and organisation by, children, as it is restrictive and contrary to our international obligations under the Convention of the Rights of the Child (“CRC”), which Malaysia acceded to in 1995. On 6 June 2010, Malaysia withdrew its reservations to Articles 1, 13 and 15 of the CRC, thus allowing children “the freedom to have their say, and the right to form associations and assemble peacefully”.

On the same day, Dato’ Sri Shahrizat Abdul Jalil had said that the government would give children the freedom to have their say and the right to form associations and to assemble peacefully. She added that the move was in line with the recognition given to children’s rights, as they would be the nation’s future leaders. In Finland, a person who is without full legal capacity but who has attained 15 years of age may arrange a public meeting, unless it is evident that he/she will not be capable of fulfilling the requirements that the law imposes on the arranger of a meeting, while other persons without full legal capacity may arrange public meetings together with persons with full legal capacity.

This Bill, like section 27 of the Police Act, vests wide powers in the police, who are empowered to impose restrictions and conditions, and to disperse assemblies and arrest participants. The police’s past consistent and atrocious conduct in suppressing assemblies shows that it is crucial that the police change their mindset and abandon the culture of impunity in managing freedom of assembly. In other jurisdictions, the power to impose restrictions and conditions vests in the local authority or a procession commission.

Finally, the Minister of Home Affairs is empowered by the Bill to make regulations for the better carrying out of the provisions of the Act. It is important that these regulations facilitate freedom of assembly, instead of further restricting it.

Only when the improvements outlined above are implemented, would we begin to have a legislation in the public interest, which truly upholds, protects and promotes freedom of assembly.



Lim Chee Wee  
President  
Malaysian Bar

22 November 2011





## **PRESS RELEASE**

### **Broken promise: Prime Minister has not lived up to Malaysia Day 2011 pledge**

The Peaceful Assembly Bill (“Bill”) was tabled in Parliament for its first reading on 22 November 2011, which we believe was the same day that Members of Parliament first received copies of the Bill. It must be noted that advance notice was not given, save for speculation in the media that the Bill would be tabled on 24 November 2011. In addition, the second reading of the Bill began in Parliament today, merely two days after the first reading.

There appears to be unseemly haste in introducing this far-reaching and crucial legislation, without sufficient time for Members of Parliament themselves to review the Bill fully, and without adequate public consultation.

The Bill, in replacing the present legislative provision in section 27 of the Police Act 1967, introduced several controversial and objectionable provisions. For instance:

- (1) Prohibition of street protests (defined widely as “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 causes”);
- (2) Prohibition of organisation of assemblies by persons below the age of twenty one years;
- (3) Prohibition of participation in peaceful assemblies of children below the age of fifteen years;
- (4) Unduly onerous responsibilities and restrictions on organisers and assemblies; and
- (5) Excessive fines for non-compliance of the Bill.

These restrictive provisions in the Bill effectively render meaningless our constitutional guarantee, by constraining assembly to very limited circumstances. This stands in stark contrast to the words of the Prime Minister in his speech on the eve of Malaysia Day 2011. That speech was widely applauded by the Malaysian Bar, and by Malaysians in general, in their honest belief that there would be real and genuine reforms. The Prime Minister had stated:

I often opine that long gone is the era in which the government knows everything and claims monopoly over wisdom. . . .

The Government will also review section 27 of the Police Act 1967, taking into consideration Article 10 of the Federal Constitution regarding freedom of assembly and so as to be in line with **international norms on the same matter**. . . . (emphasis added)

Be confident that it is a strength and not a weakness for us to place our trust in the Malaysian people's intelligence to make decisions that will shape the path of their own future. . . .

It is absolutely clear that the steps I just announced are none other than early initiatives of an organised and graceful political transformation. It stands as a crucial and much needed complement to the initiatives of economic transformation and public presentation which the government has outlined and implemented for over two years in the effort to pioneer a modern and progressive nation. . . .

In closing, I wish to emphasise that free of any suspicion and doubt, the Malaysia that we all dream of and are in the process of creating is a Malaysia that practices [sic] a functional and inclusive democracy where public peace and prosperity is preserved in accordance with the supremacy of the Constitution, rule of law and respect for basic human rights and individual rights.

The Malaysian Bar recommends that the Bill be referred to a Parliamentary Select Committee, which would engage in a public consultation process consistent with the Prime Minister's promise of "a Malaysia that practices [sic] a functional and inclusive democracy".

Further, the Malaysian Bar is now wary as to the form and substance of the two proposed pieces of legislation that will replace the Internal Security Act 1960, given this disappointing experience. We urge the Prime Minister to hold steadfast – with courage and determination – to his laudable Malaysia Day pledges, and fulfil the rakyat's expectations.



Lim Chee Wee  
President  
Malaysian Bar

24 November 2011