

Open Letter To Senators On Peaceful Assembly Bill
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by Lim Chee Wee

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Dear Senator,

Open Letter to Senators on Peaceful Assembly Bill 42/2011

You may have heard that the Malaysian Bar opposes the Peaceful Assembly Bill 2011 ("PA 2011") on the grounds that it imposes unreasonable and disproportionate fetters on the freedom of assembly that is guaranteed under the Federal Constitution.

There are provisions in PA 2011 that are far more restrictive than the current law, such as the banning of "street protests" (assemblies in motion or processions) and the unlimited powers vested in the police to dictate the time, date, place and conduct of an assembly. There are also provisions in PA 2011 that are simply illogical. As an example, although police do not need to be notified of a religious assembly, such an assembly cannot be held at a place of worship. Furthermore, a person living within 50 metres of a kindergarten or school cannot hold an open house for a festival, a funeral procession or a wedding reception.

The Prime Minister, in his Malaysia Day speech on 15 September 2011, promised the Rakyat of the following:

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.

PA 2011 is neither consistent with "international norms", nor "in accordance with the supremacy of the Constitution, rule of law and respect for basic human rights and individual rights". Instead, the Bill will take us further away from being "a modern and progressive nation".

It is outrageous that assemblies in motion are prohibited.

Assemblies in motion provide the demonstrators with a wider audience and greater visibility, in order for others to see and hear the cause or grievance giving rise to the gathering. Assemblies in motion has been described as "a potent method of expression and is a common phenomenon in democratic

societies"[1]. History is replete with peaceful assemblies in motion, which were agents of change and of good.

On 27 February 1946 Dato' Onn Jaafar, founding father of United Malays National Organisation ("UMNO") and the grandfather of our present Minister for Home Affairs, led a procession of 15,000 individuals to protest the establishment of the Malayan Union, which disregarded the interests of the Malay Rulers and the Malays. This was the first of a series of processions that successfully opposed the Malayan Union, and later led to our nation's independence. On 27 February 2008, the then-Prime Minister Datuk Seri Abdullah Ahmad Badawi led 20,000 people in a one-kilometre procession from the Batu Pahat UMNO office to the stadium to commemorate this rally.

There have been other processions calling for the abolition of the Internal Security Act 1960, rights of minorities and electoral reforms.

For the Malaysian Bar, we organised the Walk for Justice, which was held on 26 September 2007, to call for a Royal Commission to investigate the VK Lingam video clip and the establishment of the Judicial Appointments Commission, both of which were subsequently set up by the government.

The present prohibition of procession robs the Rakyat of a right that currently exists under section 27 of the Police Act, which regulates "assemblies, meetings and processions".

Elsewhere, history is full of various peaceful processions led by Mahatma Gandhi, Martin Luther King Jr and Nelson Mandela, to name but a few, which brought an end to oppressive laws, policies and regimes.

It is ironic that the government now wants to prohibit the very processions that led to the founding of our nation, and others that moved the Prime Minister to promise legislative reforms. These promised reforms now strike back at the very demonstrations that catalysed them.

The Malaysian Bar is steadfast in its stand and determination that PA 2011, in its current form, must not become law. The Malaysian Bar is resolute that any attempt to regulate a fundamental liberty guaranteed under the Federal Constitution must only be done after due consultation with all stakeholders, including opposition Parliamentarians and civil society groups. To this end, the Malaysian Bar has proposed an alternative bill to be considered, and calls for PA 2011 to be remitted to a Parliamentary Select Committee for consideration. At the second reading of PA 2011, we ask that you, as a Senator, support our call.

It is not an exaggeration to say that you hold the liberty of the Rakyat in your hands. We ask that you treat it with the deference it deserves. Now, more than ever, you must remember that you were elected as a representative of the people, to carry out responsibilities as a Senator.

Please do not put blind obedience to party and partisanship before your duties as a servant of the people. The Rakyat should not be made to suffer the consequences of party politics. PA 2011 is an unjust law, being made in undue haste, which has received the condemnation of the Rakyat.

There can be no other choice.

Do not pass PA 2011. Support our alternative bill and our call for a Parliamentary Select Committee.

Yours faithfully,

Lim Chee Wee
President
Malaysian Bar

[1] Hong Kong Court of Final Appeal in *Leung Kwok Hung & Ors v Hong Kong Special Administrative Region* (FACC Nos. 1 & 2 of 2005, at para. 3).

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