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Malaysia: Court decision another blow for freedom of peaceful assembly

Amnesty International is gravely concerned with the decision of the Federal Court on 10 October, which ordered seven human rights activists and parliamentarians from the opposition party to face trial for participating in peaceful protests in 2015. The decision, which has happened in response to a constitutional challenge of several provisions of the Peaceful Assembly Act 2012, highlights the ongoing pattern of repression against government critics in the country.

Opposition parliamentarians Chong Chieng Jen and Julian Tan Kok Ping were charged for participating in a Bersih 4 rally on 29 Aug 2015 in Kuching, while opposition parliamentarian Sim Tze Tzin and human rights activists Maria Chin Abdullah, Mandeep Singh, Fariz Musa and Adam Adli Abdul Halim were charged for participating in the #KitaLawan Rally on 28 Feb 2015 at the Sogo shopping mall and Esplanade KLCC. They were demanding political and electoral accountability and reform.

If found guilty, they could be fined up to RM10,000 (USD 2,400). The three parliamentarians could further be disqualified from holding office and contesting in the next election if fined with more than RM 2,000 (USD 480).

The right to freedom of peaceful assembly is enshrined in the Universal Declaration of Human Rights which, as a member state of the United Nations, Malaysia has undertaken to respect. Article 10 of Malaysia's Federal Constitution also protects the right to peaceful assembly.

Amnesty International believes this prosecution is another attempt to intimidate people from exercising their rights to freedom of expression and peaceful assembly. We call on the Malaysian authorities to drop the charges against the seven activists immediately. The charges brought against them are only the latest in the string of criminal charges under the Peaceful Assembly Act 2012 targeted at activists, human rights defenders, government critics and opposition politicians for exercising their right to peaceful assembly.

The organisation also calls on the authorities to review and reconsider Malaysia's laws on peaceful assembly, in particular the Peaceful Assembly Act 2012. Although the Peaceful Assembly Act aims to ensure all citizens have the right to organize or participate in peaceful assemblies without arms, since its inception, this act has been misused to target

government critics and to criminalize the act of organizing or participating in public peaceful assemblies.

The law imposes stringent requirements on organisers to give the police ten days advance notification of a planned rally and the failure to do so will be met with a heavy fine of RM 10,000 (USD 2,400). The law also provides the police officer in charge of the Police District with almost absolute discretion in setting the conditions for the rally — such as the date, time, manner, and conduct of the assembly - and makes it a crime if conditions set by the police are not met. Amnesty International is concerned that these requirements amount to undue restrictions of the right to peaceful assembly that will deter individuals from participating in peaceful assemblies. Amnesty International is further concerned that under this law, organizers of public assemblies can be subjected to criminal sanctions, or administrative sanctions resulting in fines or imprisonment. Furthermore, the term “organizer” is defined in such an overly broad way that includes ‘arranging, convening, collecting or forming or responsible for the conduct of an assembly’, which would mean any person participating in a peaceful protest could be held responsible for the organization of the assembly.

Laws regulating the conduct of peaceful assemblies should aim at facilitating assemblies not imposing bureaucratic procedures that negatively impact the ability of people to freely participate in peaceful assemblies.

Background

All seven individuals were charged in the Sessions Court but the High Courts referred their matters to the Federal Court to decide on the constitutionality of Sections 4(1)(2) and 4(2)(c) of the Peaceful Assembly Act which prohibits organising and participating in street protest. Their lawyers argued these provisions were inconsistent with Article 10 (1) (a), Article 10 (1) and Article 10 (2) (freedom of speech, assembly and association) of the Federal Constitution. The Federal Court ordered the seven individuals to face trial first before they can proceed to take their constitutional challenge to the Federal Court.

