



MALAYSIA

Contribution from the World Organisation Against Torture (OMCT) and its member organisation SUARAM to the Universal Periodic Review (UPR) Process - October 2013

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I. Brief introduction

In this submission, OMCT and SUARAM draw the attention to the situation as regards torture and other cruel, inhuman or degrading treatment or punishment in Malaysia since its last UPR process in 2009. OMCT and SUARAM also provide a series of recommendations to the Malaysian government.

II. Legal framework

- Status of ratification

Malaysia has not yet ratified the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and the International Covenant on Civil and Political Rights (ICCPR).

To the United Kingdom's recommendation to "ratify the ICCPR and CAT and implement both treaties at national level", the government of Malaysia responded, at the time of its first UPR in 2009, that, "it is progressively studying the proposal to ratify ICCPR and CAT and would be in a position to do so once major issues related to the legislative framework are resolved".

An Inter-Agency Committee headed by the Foreign Ministry was reportedly set up in 2009 to study and review international instruments towards ratification and adoption into domestic laws. However, as of December 2012, no information was available on the status of the reviewing.

OMCT and SUARAM recall that Malaysia is one of the few last countries in the region that has not ratified the aforementioned universal instruments and consider that the failure to do so for so many years tends to reveal that the government tolerates a culture of torture and impunity. In light of past and ongoing human rights violations in the country, there is an urgent need to bring Malaysia in line with the international system for the prohibition of torture. Ratification of the UN Convention Against Torture as principal universal instrument – as well as the International Covenant on Civil and Political Rights - should be a central piece of the needed reform process.

OMCT and SUARAM recall, however, that Malaysia is equally bound by customary international law obliging it to respect and ensure respect for the absolute prohibition of torture and cruel, inhuman or degrading treatment or punishment.

- Criminal code

The lack of criminal legislation that clearly defines and prohibits torture contributes to a failure to adequately investigate, prosecute and punish acts of torture.

- Detention-without-trial laws

Malaysia continues to have a legal framework that creates an environment facilitating torture and ill-treatment.

- *Internal Security Act 1960/ Security Offences (Special Measures) Act 2012 (SOSMA)*

While the government of Malaysia has taken a positive step by revoking in 2012 the notorious Internal Security Act (ISA), a colonial style security legislation that was widely denounced for allowing the practice of detention without trial or charge, it has introduced, on 31 July 2012, the Security Offences (Special Measures) 2012 Act (SOSMA), which also fails to meet international human rights standards.

SOSMA, in essence, regulates the procedures of a security trial where it expressly excludes fundamental principles of criminal proceedings provided for in the Criminal Procedure Code, the Evidence Act 1950 and fundamental rights enshrined in the Federal Constitution.

The new Act of Parliament still allows for detention for a period of 28 days without charge or any judicial scrutiny, on the mere basis that the police “has reason to believe” that a person may be involved in security offences, which is too broadly defined. The bill further allows delays of 48 hours before the suspect has access to a lawyer, thus increasing the risk of torture and ill-treatment, and gives power to the public prosecutor and the police to intercept communications of suspect without judicial authorization. After release, the police can also unilaterally impose electronic monitoring devices on individuals, a serious violation of personal liberty.

The authorities of Malaysia have released since 2009 several individuals detained under the ISA. However, 23 individuals still remain detained under this law as of March 2013, due to the S32 of SOSMA that allows continuous detention under the repealed ISA. Furthermore, the first arrests under the SOSMA were recorded on 7 February 2013.

- Emergency (Prevention of Crime and Public Order) Ordinance (1969) and the Dangerous Drugs (Special Preventive Measures) Act 1985

On a positive note, three emergency declarations (the 1966 Emergency Proclamation to “quell political disorder” in Sarawak, the 1969 national emergency after the May 13 racial riot and the 1977 state emergency proclamation to “quell political discord” in Kelantan) and the emergency-related laws they made possible, notably the Emergency (Public Order and Crime Prevention) Ordinance (EO) 1969, were lifted in 2012. The EO had allowed for detention without trial.

However, the Dangerous Drugs (Special Preventive Measures) Act 1985, which also provides for indefinite detention without trial, remains in force.

III. Human rights violations by the security forces

Since Malaysia 2009 UPR process, OMCT and SUARAM have documented serious human rights violations committed by the police and other law enforcement agencies such as the Malaysian Anti-Corruption Commission (MACC) and the Immigration Department. Human rights violations have included torture and other forms of ill-treatment, notably unnecessary and excessive use of force and firearms when carrying out arrests and public order policing. The Malaysian Police has continued to pursue a “shoot first” policy against suspects with impunity. Since 2009, SUARAM has documented about 173 cases of police fatal shootings and 24 cases of suspicious deaths in custody, while two death occurred at the MACC offices.

Furthermore, the conditions of detention in several detention facilities, including in immigration detention centres, amount to cruel, inhuman and degrading treatment. This is for example the case in Lenggeng Detention Centre.

- Undocumented migrants, refugees and asylum seekers

OMCT and SUARAM remain concerned about the plight of undocumented migrants, refugees and asylum seekers who are often detained in poor conditions or subjected to harsh punishment (including whipping) upon conviction of illegal entry into the country or overstaying under the Immigration Act 1959/63. SUARAM has also documented several cases of asylum seekers being

deported to their home country, where they faced detention and the risk of torture or the death penalty, in violation of the absolute prohibition of non-refoulement.

IV. Impunity

Effective investigations into reports of law enforcement abuses are rare. The Malaysian government has also failed to establish the Independent Police Complaints and Misconduct Commission ("IPCMC") recommended by the Royal Commission to Enhance the Operation and Management of the Royal Malaysian Police ("Police Commission") set up on 4th February 2004. Instead, in April 2011 the Enforcement Agencies Integrity Commission (EAIC) was introduced, supposedly as an alternative to the IPCMC. However, the EAIC lacks prosecuting powers and independence. It cannot initiate an investigation in the absence of a complaint being lodged by the victim and it can only make recommendations against errant officers to their respective disciplinary boards.

The OMCT and SUARAM recall in this regard the obligation of Malaysia to ensure ex officio effective investigations with the aim of bringing the perpetrator of torture and other serious human rights violations to justice.

V. Death penalty

As of March 2013, 930 convicted persons were on death row. The majority of death sentences were for drug offences, followed by murder.

In October 2012, Minister of Prime Minister's Department, Nazri Aziz, announced that the government may replace the death penalty for drug offenders under the Dangerous Drugs Act with a prison term, excluding however death sentence for other offences (such as murder).

Malaysia voted against the UN resolution relating to a moratorium on the death penalty in November 2012.

VI. Recommendations

OMCT and SUARAM urge the government of Malaysia to:

- Show its commitment to abolish torture and other forms of ill-treatment by ratifying and implementing effectively the UN Convention against Torture and its Optional Protocol (OPCAT);
- Ratify the International Covenant on Civil and Political Rights (ICCPR) and its Optional Protocols and the 1951 Convention relating to the Status of Refugees and its 1967 Protocol;
- Include, without delay, a definition of torture in its penal legislation conform with Article 1 of the UN Convention against Torture as a minimum;
- Enact anti-torture legislation that ensures that all acts of torture and other cruel, inhuman and degrading treatment or punishment are punishable by appropriate penalties taking into account their grave nature, with specific provisions that outlaw and penalise torture;
- Withdraw the Security Offences (Special Measures) Act 2012 (SOSMA) and the Dangerous Drugs (Special Preventive Measures) Act 1985 that allow for detention without trial;

- Repeal all laws providing for caning or whipping and all other forms of corporal punishment; including the Immigration Act 1959/63 (Amendment 2002);
- Reform practices to prohibit any deportation, extradition, rendition, expulsion, return where an individual would appear at risk of torture or other ill-treatment;
- Immediately release all remaining individuals detained under the ISA and SOSMA in the absence of valid legal charges and judicial process consistent with international legal standards. If such charges exist, the authorities should bring them before an impartial and competent tribunal and guarantee their fundamental rights to a fair trial at all times;
- Guarantee that any person deprived of liberty be brought promptly before a competent judge, has the right to habeas corpus and is authorized to communicate with and be visited by his or her family, counsel or any other person of his or her choice, in accordance with applicable international law;
- Ensure prompt, effective, thorough, independent and impartial investigation into human rights violations, notably allegations of torture and ill-treatment, by members of the Malaysian security forces, in order to bring those responsible before a competent, independent and impartial tribunal and apply penal, civil and/or administrative sanctions as provided by law;
- Establish the recommended Independent Police Complaints and Misconduct Commission ("IPCMC") with adequate capacity;
- Provide for effective remedies and reparations to the victims of human rights violations;
- Take urgent measures to improve conditions of detention in prisons, police stations and immigration centres;
- Take immediate steps towards the abolition of the death penalty for all offences by declaring an official moratorium on all executions, and commute all death sentences to prison terms;
- Extend an invitation to the UN Special Rapporteur on torture and other forms of cruel, inhuman or degrading treatment or punishment and accept all outstanding country visit requests by UN Special Rapporteurs as well as cooperate fully with their mandates.
