

Malaysia: Security detention must be reviewed to become free of torture, allegations investigated

Statement, 11 November 2019

Kuala Lumpur/Geneva - Suara Rakyat Malaysia (SUARAM) and the members of the SOS-Torture Network Working Group on Torture and Terrorism of the World Organization Against Torture (OMCT) are alarmed over allegations of torture in security detention in Malaysia.

These torture allegations follow the arrest in early October 2019 of 12 alleged Liberation Tigers of Tamil Eelam (LTTE) on the accusation that there was evidence of substantial money transfers made to LTTE and possession of materials related to the group's cause.

On 29 October 2019, all 12 have been charged in court with support to terrorist groups or terrorism and possession of items related to terrorist groups or terrorism under the Penal Code[1] in conjunction with the Security Offences (Special Measures) Act 2012 (SOSMA), that had replaced the country's notorious Internal Security Act in 1960. This prosecution deprives them of any right to bail and possibly subjects them to unfair trial proceedings.

Several of those detained made credible allegations of having been tortured. To date, no investigations have been made into such allegations.

'There must be no exception - in security detention or else - from the fundamental rule of law that any allegation of torture must be investigated and that statements obtained under torture can never be used in any proceedings', commented Sevan Doraisamy, Executive Director of SUARAM and member of the SOS-Torture Network Working Group on Torture & Terrorism. The group is a global effort by the OMCT to provide guidance for a torture-free security response. It brings together the collective knowledge of anti-torture activists, who are conscious of the difficulties working in tense security situations and amid terrorist violence globally.

'Systems of special security detention, like the one in Malaysia, far from making us more secure, create an environment that is conducive to torture. We have looked at the system in Malaysia and concluded that torture allegations like the ones before us are not an accident', said Camille Henry, coordinator of the Torture & Terrorism Working Group at the OMCT.

'The case at hand is a stark reminder for the Malaysian Government to conduct a full review of the special measures under the Security Act. We are ready to offer our expertise and advice as needed', she added.

Security laws in Malaysia including SOSMA, the Prevention of Crime Act 1959 and the Prevention of Terrorism Act 2015, have been mired in arbitrary detention, torture, or abuse and impunity. They violate a person's right to a fair trial either by undermining the fundamental principles of the rule of law, or by allowing potentially indefinite detention without trial.

The Pakatan Harapan administration that took power following its election victory on 8 May 2018 promised sweeping reforms to Malaysia's institutions and legal system, including the ratification of the UN Convention Against Torture. It has yet to deliver on many of them, especially those relating to human rights and other fundamental freedoms. Despite its election manifesto promises, the administration has allowed and endorsed the continued violation of human rights by the abovementioned security laws. The recent arrest and detention of these 12 individuals under SOSMA are yet another stain on the administration's record.

As these 12 individuals and many others remain in detention, SUARAM and the members of the OMCT Torture & Terrorism Working Group would like to remind the Government of Malaysia that it cannot hide away from the reality that these security laws violate fundamental human rights and undermine the rule of law. As these laws provide for solitary confinement for all detainees, extensive interrogation during the remand period and a blanket denial of bail, torture and other degrading treatment will likely continue to occur as long as these laws are in force. The Government is responsible and will be held to account for any torture committed by the police for as long as it allows such legislation to exist.

SUARAM and all members of the OMCT Torture & Terrorism Working Group call for a moratorium to be implemented on the security laws and for the government to establish a transparent and inclusive technical committee to review and abolish legislation which permits detention without trial and undermines the right to fair trial.

They further call on Malaysia to commit to the ratification of the UN Convention Against Torture, as one of the rare democracies who have not yet ratified this universal convention. The ratification would in our view provide valuable guidance for a credible anti-torture and rule of law policy for the country.

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The Torture & Terrorism Working group is an initiative led by the World Organisation Against Torture (OMCT) gathering 17 prominent human rights organizations from around the world, all working in contexts of tense security situations including terrorist violence and counter-terrorism laws and measures. The group seeks to build collective understanding and guide anti-torture advocacy in environments affected by terrorism and violent extremism. It operates under the patronage of the UN Special Rapporteur on Torture, the UN Special Rapporteur on Terrorism and Human Rights as well as that of the OMCT President, Ms Hina Jilani.

The following organizations are members of the SOS Torture & Terrorism working group: The Quill Foundation, KontraS, International commission of Jurists Kenya (ICJ Kenya), SUARAM, Cairo Institute for human rights studies (CIHRS), The Gulf Center for human rights (GC4HR), Christian action for the abolition of torture Democratic Republic of Congo (ACAT DRC), the CLEEN Foundation, Human Rights Association (IHD), PROMO-LexAassociation, ODIKHAR, Human Rights Commission of Pakistan (HRCP), Office of Civil Freedoms, Tunisian League for Human Rights (LTDH), Center for Legal and Social Studies (CELS) and the Russian Committee Against Torture (CAT).

Brief facts:

UN Convention Against Torture (UNCAT)

- Provides a comprehensive blueprint to prevent and eradicate torture, including in security detention
- Malaysia has announced its intention to ratify CAT
- Malaysia is one of only a few democracies outside the system

Security Offences (Special Measures) Act 2012

- Grants police full discretion to detain a person for investigation for 28 days
- Replaces the Criminal Procedure Code in terms of investigation processes and remand procedures when invoked by the police
- Can only be applied to offences under the Penal Code (Chapter VI, VI A & VI B), Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007, and Special Measures against Terrorism in Foreign Countries Act 2015 (only offences under Part III A)
- Those prosecuted for an offence in conjunction with SOSMA will be denied bail on the request of the prosecution and presiding judges have no discretion for all stages of trial
- Evidence requirements and traditional restrictions, such as those against confessions, do not apply under SOSMA.

Prevention of Terrorism Act 2015

- Grants police the power to detain a person for investigation for a period of 60 days
- No trial for detainees as sentence is determined by an administrative board
- No avenue for judicial review according to the Act
- Limited legal representation
- No concrete allegation is required as anyone who falls under the categories described under the preamble of the act is adequate. [...prevention of the commission or support of terrorist acts involving listed terrorist organizations in a foreign country or any part of a foreign country and for the control of persons engaged in such acts and for related matters.]

Prevention of Crime Act 1959

- Grants police the power to detain a person for investigation for a period of 60 days
- No trial for detainees as sentence is determined by an administrative board
- No avenue for judicial review according to the Act

- Limited legal representation
- No concrete allegation is required as anyone who falls under the categories described under the preamble of the act is adequate. [...for the more effectual prevention of crime throughout Malaysia and for the control of criminals, members of secret societies, terrorists and other undesirable persons and for matters incidental thereto.]

[1] Respectively Section130J(1)(a) and Section 130JB(1)(a).
