

AMNESTY INTERNATIONAL

PUBLIC STATEMENT

Index: ASA 28/4576/2016

Date: 29 July 2016

Malaysia: National Security Council Act risks increasing climate of impunity

The Malaysian government must immediately repeal, review and thoroughly revise the National Security Council Act 2016 at its next Parliament sitting. The Act places extraordinary, unchecked and potentially abusive powers in the hands of the National Security Council and contains provisions that are inconsistent with international human rights law and standards and the Federal Constitution.

The National Security Council (NSC) Act, which comes into force on 1 August, is a piece of legislation that provides the executive with extensive powers, including to authorise arrests without warrant, search and seizures the imposition of curfews. Amnesty International is strongly opposed to provisions in the Act that allow measures that would violate human rights and perpetuate the culture of impunity within the police and other security forces that currently exists in Malaysia.

Section 18 of the Act provides the Prime Minister with wide powers to proclaim any zone within Malaysia a “security area”, shifting this power from the King, and removing constitutional safeguards that prevent abuse of power by the Executive. The current tendency of the Malaysian authorities’ to conflate peaceful dissent with ‘threats to national security’ also sparks alarm that the Act will be used to violate human rights.

Amnesty International is particularly concerned with sections of the Act that would exacerbate the climate of impunity and collusion between government agencies around human rights violations. Section 25 and 26-29 provide for wide powers of warrantless arrest, and the power to seize any object, with absolute discretion, while Section 34 allows the use of force, including lethal force, without putting in place the full safeguards provided in the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. In particular, that security forces must as far as possible apply non-violent means before resorting to the use of force, and to ‘exercise restraint and minimize damage and injury’.

It is even more disturbing, with Malaysia’s track record of custodial deaths and police brutality without accountability, that Section 35 of the NSC Act allows Magistrates and Coroners to dispense with inquests into any deaths which occurred “in the security area as a result of operations undertaken by the Security Forces for the purpose of enforcing any written law.” Inquest, a judicial investigative process, has recently benefited from the establishment of the Coroner’s Court in April 2014. Under international law and standards such as the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, the Malaysian authorities must initiate effective

investigations into all killings by security forces suspected to be unlawful, take action against those allegedly responsible, and provide effective remedies to victims, including reparation.

The NSC Act is a worrying addition to a long list of security laws - which have been adopted as replacements to the notorious Internal Security Act (ISA) 1960 - such as the Security Offences (Special Measures) Act (SOSMA) and the Prevention of Terrorism Act 2015. Amnesty International has expressed serious concerns about provisions in these laws that pay no heed to the human rights to fair trial, freedom of movement, freedom of expression and peaceful assembly in Malaysia, which must be respected and protected under both international human rights law and its own Constitution.

Background

In 2011, the government abolished the repressive Internal Security Act 1960, pledging to replace it with laws that “find a balance between national security and personal freedom”. The ISA had been previously used as a tool to stifle peaceful political dissent. Those arrested under the ISA could be detained without trial for or up to 60 days for investigation. The Minister of Home Affairs could then issue detention orders of up to two years, renewable indefinitely. Over many years Amnesty International has documented cases of torture and other ill-treatment of ISA detainees.

In December 2015, the National Security Council Act was passed by both houses of Parliament. The lower house of Parliament passed the Act with less than a day of debate, while the upper house of Parliament passed it with a voice vote without any amendments. The Act then became law, based on Article 66 of the Constitution, when a bill is passed by both houses of Parliament, even though the King did not provide the Royal Assent to it. The request of the Conference of Rulers to have more time to refine the Act was not taken into account and it was passed with no amendments.