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Malaysia: Prevention of Crime Act undermines fundamental fair trial rights and due process

Amendments made to the Prevention of Crime Act (PCA) mark a serious regression for human rights in Malaysia at a time the state's human rights record is to be reviewed by other UN-member states at the Human Rights Council.

Application of the PCA must be immediately suspended, and the Act itself should be immediately reviewed and revised to bring it into line with international human rights law and standards. In the meantime, the Penal Code should be applied rather than the PCA, in strict compliance with international human rights law.

Amnesty International is particularly concerned about amendments to the law which in effect could allow for indefinite detention without charge or trial. Article 19A in the new "Part IVA" of the Act provides that the Prevention of Crime Board, a body effectively appointed by the Executive, can "direct that any registered person be detained under a detention order for a period not exceeding two years, and may renew any such detention order for a further period not exceeding two years at a time". In practice, therefore, it would be possible to repeatedly extend a persons' detention for two years, every two years, as long as such detention is considered in the interest of "public order, public security or prevention of crime". It should be noted that indefinite detention is arbitrary, it violates the prohibition on torture and other cruel, inhuman or degrading treatment or punishment, which Malaysia is bound to respect as a rule of customary international law binding on all nations. The UN Committee against Torture has stated unequivocally that "detaining persons indefinitely without charge, constitutes per se a violation of the Convention [against Torture]".

The Prevention of Crime Board's leading criterion for issuing a detention order is "that the registered person has committed two or more serious offences, whether or not he is convicted thereof". This criterion openly and blatantly flies in the face of the principle of the presumption of innocence, a general principle of law and a key human right enshrined in the Universal Declaration of Human Rights.

Provisions for indefinite detention without trial also run contrary to international human rights as enshrined in the Universal Declaration of Human Rights. Its Article 10 states that "[e]veryone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him".

The UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment state that "[a]nyone who is arrested shall be informed at the time of his arrest of the reason for his arrest and shall be promptly informed of any charges against him". Further, the Body of Principles also states that "[a] person detained on a criminal charge shall be entitled to a trial within a reasonable time or to release pending trial".

The amended PCA does not allow for a process of judicial review, except on matters of procedure, making it almost impossible for individuals detained under the law to challenge the decision to detain them effectively. The amended PCA – as with the original version – remains

largely silent on the right to legal representation. Further, an Inquiry Officer, who is appointed by the Home Minister, has sole responsibility for conducting any inquiries under the PCA. The detainee cannot have legal representatives present during the enquiry other than when he or she is being questioned.

Amnesty International has highlighted in the past how laws providing for “preventive detention” in Malaysia such as the Internal Security Act (ISA), now replaced with the Security Offences (Special Measures) Act (SOSMA), and Emergency Ordinance (EO), sharply increased the risk of serious human rights violations. These violations included denying detainees access to a lawyer and family members, denying detainees the opportunity to report incidents of torture and other ill-treatment and arresting individuals following their acquittal by a court on an ordinary criminal charge. While these laws have been repealed, Amnesty International is deeply concerned that the amended PCA, beyond providing for arbitrary, indefinite detention, will now reintroduce these serious risks.

Amnesty International is further concerned about new provisions which allow for electronic monitoring of persons released under the Act “on the application of a police officer”. The provision does not clarify criteria for electronic monitoring and therefore appears to give excessively broad powers to police officers to make such applications.

The amendments to the PCA were approved by the Malaysian Parliament in the early hours of 3 October 2013 and passed by the Senate on 10 October 2013.

Until recently, the PCA had been a little known and rarely used law in Malaysia. However, it was reportedly used to detain over 200 people in August this year as part of what police described as a crackdown on crime. Amnesty International is also concerned about several provisions in the original PCA which remain in force, and which are incompatible with international human rights law and standards. For example, Article 17 provides for mandatory doubling of prison sentences for certain offenders as well as for “whipping”, which constitutes cruel, inhuman and degrading treatment of punishment and could amount to torture.

Malaysian civil society organizations, activists and human rights lawyers had raised serious concerns about the amendments when they were first tabled on 25 September 2013. While the Malaysian authorities insist that the Act and its most recent amendments are designed to tackle organized crime and to protect victims, many fear that these new provisions mark a return to the draconian measures included in the recent repealed Emergency Ordinance (EO), Restricted Residence Act, and Internal Security Act (ISA).

On 17 October, it was reported that Home Ministry will seek to engage civil society groups on the amendments to the PCA. Amnesty International calls on the Malaysian government to urgently review the PCA, including its new amendments, and to revise them to bring it into line with international human rights law and standards. Further, Amnesty International recommends that the Malaysian government, having accepted recommendations in its previous UN Universal Periodic Review to “take the appropriate steps in view of considering ratification of the [sic] international human rights instruments”, should immediately ratify the International Covenant on Civil and Political Rights (ICCPR) and the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, incorporate their provisions into domestic law and ensure that they are fully implemented in practice as a first step towards greater safeguards for persons in detention or else subject to proceedings within the criminal justice system.