

AMNESTY INTERNATIONAL

PUBLIC STATEMENT

Index: ASA 28/3029/2015
17 December 2015

Malaysia: New Security Bill puts rights at risk

Amnesty International urges the Malaysian Senate to substantially reject the National Security Council Bill (NSC Bill), which was passed by the House of Representatives on 3 December after a hasty two day review.

The Bill provides extensive powers to a Council, headed by the Prime Minister and several other Ministers and officials including the Inspector General of Police, to declare any area of the country a 'security area' and to impose curfews, powers of search, seizure and detention in the 'interests of national security'. A broadly worded provision also authorises the security forces to use such force as the member of the security forces believes is 'reasonable and necessary' to preserve 'national security'.

According to the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, security forces must as far as possible, apply non-violent means before resorting to the use of force, and whenever its use is unavoidable they must exercise restraint and minimize damage and injury. They must not use lethal force except in defence against an imminent threat of death or serious injury. These principles apply at all times: public emergency or exceptional circumstances may not be invoked to justify any departure from them. Section 34 of the Bill, however, departs from these standards by effectively allowing the security forces to use force 'likely to cause death or grievous bodily harm' in order to protect life or prevent serious injury - without any requirement that such a threat be imminent - or in order to protect a designated 'security area against a threat of armed attack'.

International law and standards, including the UN Basic Principles, require that all deaths resulting from law enforcement action by the security forces be subject to prompt, thorough and impartial investigation. In a departure from these standards, Section 35 of the Bill provides judicial authorities with the power to dispense with inquiries or inquests where members of the security forces have killed a person in a security area.

Amnesty International fears that the new provisions will further entrench the climate of impunity within the security forces, in particular the Malaysian police. There has been practically no accountability for numerous cases of deaths in custody, unlawful killings, and torture and other ill-treatment by the police in the last decade.

Section 18, which provides the Prime Minister with powers to declare a 'security area', defines it as an area that 'is seriously disturbed or threatened by any person, matter or thing which causes or is likely to cause serious harm to the people, or serious harm to the territories, economy, national key infrastructure of Malaysia or any other interest of Malaysia, and requires immediate national response'. These categories are far-reaching and extend to matters which are not solely an issue of national security. Amnesty International is concerned that this power could be used to suspend peaceful protests and criticism of government citing 'the interest of Malaysia'.

It is vital that authorities comply with their obligations under international human rights law at all times. Only in exceptional instances, if there is a state of emergency threatening the life of the nation, it may be necessary for states temporarily to restrict certain rights in ways which would not be permissible in normal times. However, this law goes much further than permissible under international human rights law by providing for the declaration of 'security areas' within the country, where human rights are substantially restricted and where civil and criminal liability of security officials can be removed when someone has been killed 'as a result of operations undertaken by the security forces'.

The Bill's Article 37 on obligation of secrecy provides for up to two years imprisonment of anyone with access to information about the affairs of the Council who discloses such information without authorization. Amnesty International is concerned that this could include any information relating to, or criticism of, security operations carried out under other provisions of the Bill, even if such a disclosure relates to human rights violations or is otherwise in the public interest.

Recently, the Malaysian government has prosecuted dozens of government critics under the colonial-era Sedition Act 1948, the Communication and Multimedia Act 1998, and the Security Offences (Special Measures) Act 2012. In some cases individuals have been acquitted by the courts, however the prosecutions have had a chilling effect in silencing critics.

The NSC Bill, if enacted, will be another addition to the list of restrictive laws in Malaysia which have been systematically used to curtail the right to freedom of expression and assembly. It gives expansive powers to the government and the security forces while removing essential safeguards that protect human rights.

While some restrictions on the exercise of the rights to freedom of expression, peaceful assembly and association are permissible if they are provided in law and meet strict tests of necessity and proportionality, the current draft of the Bill fails to meet international human rights standards and contributes further to undermining these rights.

The Senate is likely to table the Bill for discussion next week. It can either accept or reject the Bill or return it to House of Representatives for further amendments. Amnesty International urges the Malaysian Parliament to reject the Bill or substantially amend it to ensure it is consistent with international human right law and standards.