



working for human rights

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Ministry of Home Affairs,
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22 July 2013

Dear Minister,

RE: OPEN LETTER ON ACCOUNTABILITY FOR DEATHS IN CUSTODY AND FATAL SHOOTINGS BY POLICE OFFICERS

On behalf of Amnesty International and Suara Rakyat Malaysia (SUARAM), we would like to take this opportunity to acknowledge the steps taken by the Malaysian government to address deaths in custody, as it recently announced plans to establish centralized police lockups in state capitals and set up permanent coroner's courts. Indeed, we believe that these are steps in the right direction, however they do not sufficiently address the core issues at the root of custodial deaths, including police torture and other cruel, inhuman or degrading treatment or punishment (other ill-treatment) of detainees, and the lack of accountability in many of these cases.

In this letter, we would like to bring to your attention our concerns about ongoing cases of custodial death, often the result of police torture or other ill-treatment, as well as ongoing cases of unnecessary and excessive use of force at the time of arrest, leading sometimes to deaths. It is crucial that wide-ranging measures are taken to prevent all such deaths, as detailed in our recommendations below.

In all cases, where death in custody as a result of police use of force occurs, it is essential that a prompt and independent investigation be conducted, and that where sufficient admissible evidence of criminal offences is found, all suspected perpetrators are brought to justice in proceedings which meet international standards of fairness without resort to the death penalty.

Although the Malaysian government has not ratified key relevant international human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR) and the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), Malaysia, as a UN member state, is legally bound under the UN Charter to promote respect for, and observance of, human rights. More concretely, Malaysia is bound by rules of customary international law which, among other things, prohibit torture and other ill-treatment in all circumstances.

The Universal Declaration of Human Rights enshrines the key relevant human rights, among them:

- Everyone has the right to life, liberty and security of the person (Article 3);
- No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment (Article 5);
- All are equal before the law and entitled without any discrimination to equal protection of the law (Article 7);
- Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law (Article 8); and
- Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to a law in a public trial at which they have had all the guarantees necessary for their defence (Article 11).

1. CUSTODIAL DEATHS

Amnesty International and SUARAM continue to receive regular reports about police officers responsible for a range of human rights violations, including torture and other ill-treatment, resulting in some cases in the death of detainees. According to information compiled by SUARAM, there were at least nine custodial deaths during the first half of 2013 alone, and nine cases in 2012. The Parliament has also disclosed that there had been 231 cases in total since 2000. For many of these cases, there has yet to be an independent investigation to find out the exact circumstances of the deaths, and for those which arose out of torture or other ill-treatment, most perpetrators have never been brought to justice.

Out of four cases of death in custody which have been publicly reported during May-June 2013, Amnesty International and SUARAM are only aware of a criminal investigation being conducted in one of these cases:

- Japanese national **Nobuhiro Matsushita** died in police custody at a police station in Subang Jaya, Selangor on 8 June 2013. According to media reports, Nobuhiro Matsushita may have been suffering from mental illness. He had been arrested for threatening a law enforcement officer on 2 June 2013, and was subsequently found hanged in his solitary detention cell; Investigation is ongoing. In a media interview, a former police inspector general suggested that the standard operating procedure was neglected, asking questions such as why the detainee was not referred to a psychiatrist when he exhibited signs of mental illness, why he was detained alone when it was apparent that he needed medical help and whether the police monitored the CCTV in the cell.
- Malaysian **P Karuna Nithi**, an engineer, died in police custody at the Tampin Police District Headquarters in Negeri Sembilan on 1 June 2013. He had come to a police station to report a domestic incident on 31 May 2013 and was instead arrested for “causing hurt”. He died in police custody the next day. The Negeri Sembilan police chief initially denied any “foul play”, but family members who identified his body told the media that he had bruises and that blood came out from the back of his head. This was confirmed by the autopsy report, which according to the media, found 49 injury marks on his body. His family has called for an independent investigation by the police.
- Malaysian **R Jamesh Ramesh** died in police custody in a lock-up in Penang on 26 May 2013, within 24 hours of being arrested for allegedly taking drugs. The exact causes and circumstances of his death remain unknown, although police reportedly declared it was caused by liver failure. No further police investigation is known to have been conducted on his case.
- Malaysian **N Dhamendran** died in police custody in Kuala Lumpur on 21 May 2013. According to reports, he died due to a blunt force trauma 10 days after arrest, with his body bearing possible signs of torture. According to an autopsy report his ears had wounds from a stapler and he had 52 injury marks and overlapping bruises. A criminal investigation is underway and three police officers have been charged with murder. A fourth suspected police officer is still at large.

Amnesty International and SUARAM note that different types of public bodies and officials can help the police fulfil their obligations and ensure an accountable and professional police service. They

include internal investigations by the police with a view to possible disciplinary measures and/or referral to the prosecuting authorities through the Police Force Commission, investigation by the prosecuting authorities, judicial inquiries into deaths (Coroner's inquests), a specialized independent complaints investigation mechanism responsible for directly investigating police abuse, and investigations by the National Human Rights Commission (*Suhakam*) aimed at obtaining redress for victims or formulating recommendations for legal or institutional reforms.

Our organizations are concerned that at present there is still no independent institutional mechanism effectively performing an oversight function specific to the police in Malaysia. We note that the Enforcement Agency Integrity Commission (EAIC) was created in 2009, in part, "to receive complaints of misconduct from the public against an enforcement officer or against an enforcement agency in general and to investigate into and conduct hearings on such complaints" (Article 4 (1) (a)). The EAIC was tasked to oversee a range of government agencies including the police and has the powers to refer any complaints of misconduct it receives to the appropriate Disciplinary Authority or to the Public Prosecutor (Article 22.(2) and 3). However, this body has so far been unable to systematically investigate all reports of deaths in custody and other human rights violations by police officers in Malaysia. It appears to be due, in part, to the lack of adequate resources for such a broad mandate. To date, the EAIC has not investigated any previous case of custodial deaths, and has only committed to investigating the deaths of N. Dhamendran and R. Jamesh Ramesh. In this context, our organizations believe that a well-resourced, professional, independent external investigation mechanism with a mandate dealing specifically with complaints involving the police and with powers to recommend criminal prosecutions should be established at the earliest opportunity to enhance police accountability. Such an independent police complaints commission was similarly recommended by the Royal Commission to Enhance the Operation and Management of the Royal Malaysia Police in 2005.

2. UNNECESSARY OR EXCESSIVE USE OF FORCE AT THE TIME OF ARREST LEADING TO DEATHS

Amnesty International and SUARAM are concerned that allegations of police abuse are not limited to incidents during the remand period. Our organizations have been receiving reports about unnecessary or excessive use of force at the time of arrest, leading sometimes to deaths:

- On 14 January 2013, Malaysian **Sugumar Chelladuray**, who reportedly suffered from mental illness, died in Hulu Langat, Selangor shortly after arrest, and while still in handcuffs. According to media and other reports, four policemen pursued him for damaging public property, and subsequently beat him. Police deny beating him. An autopsy found that Sugumar died of heart failure, but his family refused to accept this assessment and called for a second, independent autopsy. Media reported that the government responded by requiring the family to obtain a court order before proceeding with an additional autopsy. Almost five months after his death, the second autopsy has not been completed and Sugumar's family have nevertheless decided to bury him. The Attorney-General ordered an inquest in January 2013, stating that an investigation will follow if the inquest finds "criminal elements" in Sugumar's death, however no inquest appears to have taken place.
- On 31 January 2013, police officers appear to have used unnecessary or excessive force leading to the death of Malaysian **Pua Bee Chun**. Media reported that Pua was killed in Klang, Selangor after police fired 25 shots at the car in which she was travelling. The man driving the car has been sentenced to two years' imprisonment and fined for driving a stolen car. According to available information, a criminal investigation into what appears to be unnecessary or excessive use of force which led to the death of Pua Bee Chun has yet to be completed. Her family has called for an inquest into the case. In a worrying development, Pua's husband, journalists who reported on her case, and a Member of Parliament were questioned in parallel by the police for criminal defamation in February 2013. They were interrogated because they had given media interviews or had spoken publically about what happened to Pua and the role the police may have played in her death.
- In December 2012, a High Court overturned a ruling of excessive use of force in an April 2010 case where in Shah Alam, Selangor a police officer reportedly fired 21 shots at **two Malaysian boys, aged 15 and 14**, killing the latter, during a police chase. The police officer allegedly mistook the boys for criminals. In September 2011, the police officer who admitted to shooting at the teenagers was found guilty of homicide and sentenced to five years' imprisonment, with the judge ruling that the use of lethal force was excessive. This ruling was overturned by a High Court in December 2012, leaving so far no one accountable for the death of the 14 year old.

At the heart of international human rights standards governing the use of force lie the human right to life, enshrined in Article 3 of the Universal Declaration of Human Rights.

Under the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (Basic Principles), the police are required to “as far as possible, apply non-violent means before resorting to the use of force” (Principle 4). Where the use of force is unavoidable, they must “Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved”, minimize damage and injury and “Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment” (Principle 5).

International standards emphasize the importance of proportionality in judging whether the use of force is legitimate and strictly unavoidable, in order to protect life. Principle 9 of the Basic Principles states that: “... officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury,” or to prevent “a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger,” and “only when less extreme means are insufficient to achieve these objectives”. The Principle continues: “In any event, intentional lethal use of firearms may only be made when strictly unavoidable to protect life.”

With the exception of circumstances of extreme, immediate danger, law enforcement officials must identify themselves as such and “give a clear warning of their intent to use firearms, with sufficient time for the warning to be observed” (Principle 10).

Amnesty International and SUARAM are deeply concerned that these principles are often ignored by police, resulting in unlawful killings, and that perpetrators often enjoy impunity.

3. RECOMMENDATIONS

In order to prevent custodial deaths and ensure accountability for cases of human rights violations by police officials, including unnecessary and excessive use of force leading to deaths, Amnesty International and SUARAM recommend that the following steps are taken as a matter of priority:

- Establish an independent police oversight body which is operationally independent from the government and the police, is accessible to the public and is empowered to receive complaints and to investigate incidents on its own. Such a body should have sufficient resources to be effective in terms of promptness, thoroughness and the protection of both witnesses and complainants, and be accountable to parliament and transparent to the public, reporting on its activities;
- Ensure that there is a thorough, prompt and impartial investigation of all suspected cases of human rights violations by police officers, including cases where complaints by relatives or other reliable reports suggest unnatural death. Where sufficient admissible evidence is found against suspected police officers, there should be criminal proceedings which meet international standards for fair trial without recourse to the death penalty. Victims and their families should receive reparation;
- Ensure that the planned coroner court is fully independent and impartial, has proven competence in crime investigation, and that coroners are given wide investigation authority so as not to rely on police-supplied evidence, and that coroners are given subpoena powers and a prosecution mandate.

To prevent torture or other ill-treatment leading to deaths in custody:

- Make clear to all members of the police, military and other security forces that torture and other ill-treatment will never be tolerated;
- Ensure that all police officers are fully trained in a standard set of words to ensure that the rights of a detainee are explained in a manner which is understood. Police officers should be issued with a card which lists arrest and custody rights of which they must inform all suspects and detainees at the time of arrest. All questioning sessions must be video or audio recorded and records kept and made available to detainees and their counsel in cases of complaints of torture or other ill-treatment;
- Require that crucial data be recorded at the time of arrest and detention, including the reasons and time for the arrest; the time the arrested person is taken to a place of custody; the time of the detained person’s first appearance before a magistrate or other judicial authority; the identity of the

arresting officer/s; and precise information concerning the place of custody. Information on the arrested person's medical condition, time and date of release or transfer to any other detention facility, and time and dates of each visit (by detention officers, lawyers, doctors, family or friends) should also be recorded;

- Ensure the rights of detainees to contact and be visited by a relative or close friend; to contact and confidentially communicate with a lawyer promptly after arrest and regularly thereafter; to be examined by a doctor without delay; to be brought without delay before a magistrate with powers to determine the lawfulness of the arrest; and to be fully informed about the nature of the remand and any subsequent criminal proceedings are respected;
- Grant regular access, including for unannounced visits, to Malaysia's Human Rights Commission *Suhakam* and other independent inspection panels including members of the judiciary, police, lawyers, doctors, independent experts and civil society representatives to all detention facilities. Such visiting mechanism should include, where requested, a confidential interview of detainees;
- Ensure that all cases of deaths in custody and complaints of torture or ill-treatment include a prompt, impartial and professional medical examination, and collection and analysis of all physical and documentary evidence and statements from witnesses. Those conducting autopsies or medical examinations of detainees should function impartially and independently of any potentially implicated persons or institutions;
- Takes steps towards the ratification of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and its Optional Protocol including by incorporating its provisions into domestic laws and ensure its implementation in policy and practice, including by training police and prison officers on the Convention and its application in practice.

To prevent unnecessary and excessive use of force:

- Ensure that the police record all incidence of use of firearms, whether intentional or not and whether or not they result in injury. Such records should be used to evaluate the operation in order to distil lessons for the future, and as evidence in case an incident leads to any disciplinary or criminal action;
- Ensure that the police guidelines on the use of force and firearms are in line with international human rights standards, and are made available to the public;
- Ensure that all allegations of misuse of force or firearms are investigated promptly, thoroughly, impartially and independently, in accordance with international human rights law and standards;
- Take steps towards the ratification of the International Covenant on Civil and Political Rights, incorporate its provisions into domestic law and implement international standards, including the UN Code of Conduct for Law Enforcement Officials and the UN Basic principles on use of force and firearms into police training and practice.

Human rights should be at the core of police law, philosophy and practice. Amnesty International and SUARAM believe that there is no conflict between human rights and effective policing. Effective policing in Malaysia depends on respect for human rights and rule of law.

Our organizations sincerely hope that you will consider our recommendations, and we remain at your disposal should you have questions about any of the above. We look forward to the Home Ministry and Royal Malaysia Police's constructive engagement with civil society.

Yours sincerely,

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Cc: Inspector General of Police Tan Sri Dato' Sri Khalid bin Abu Bakar