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Malaysia: Amnesty International welcomes Court of Appeal ruling, calls for investigations into custodial deaths

Amnesty International welcomes the judgement by Malaysia's Court of Appeal on 8 August 2014 in the case of A. Kugan, which reinforces the need for prompt, thorough and independent investigations for all deaths in police custody.

Kugan died on 20 January 2009 after being held for five days in the Taipan police station in Selangor State's Subang Jaya on suspicion of stealing cars. Police initially claimed that he had died of "breathing difficulties" after drinking a glass of water, and a post-mortem report said he had died due to fluid in his lungs. But after Kugan's family contested these claims, a second post-mortem in March 2009 found that he had suffered 45 external injuries, stating that the cause of death was acute renal failure following blunt force trauma.

The Court of Appeal found Malaysia's Inspector General of Police Khalid Abu Bakar and two other police officers civilly responsible for Kugan's death, and notably ruled: "Custodial death cannot and should not happen in this country. There should be zero tolerance to any custodial death in all the remand centres in the country. And should custodial death happen, a public independent inquiry must be initiated to commensurate with the right of the family to know of the deceased when there is some doubt as to the cause of death."

The welcome ruling is consistent with the international legal obligation to investigate deaths in custody where there is a possibility that it may have involved violations of the right to life, the right to be free from torture or other ill-treatment or other human rights violations. The Court of Appeal ruling is a first step towards providing justice and an effective remedy to Kugan and his family, but justice will not be fully served until those who have subjected him to torture while in police custody are held to account through robust prosecution and fair trials without recourse to the death penalty.

Where investigations find evidence that the police have used unnecessary or excessive force or torture, all suspected perpetrators must be brought to justice in proceedings which meet international standards of fairness without resorting to the death penalty. Law enforcement officials involved in the torture of detainees must not be allowed to escape justice. Amnesty International reiterates its call for an effective, impartial and thorough investigation into the conduct of all police officers alleged to have been involved in the torture of Kugan.

Amnesty International calls for Malaysia to uphold the commitments it has made to address torture and ill-treatment, including those that result in deaths in custody.

These involve, among other measures, establishing independent coroner's courts and strengthening the Enforcement Agency Integrity Commission, which is mandated to investigate misconduct of all government enforcement agencies, or otherwise establish an Independent Police Complaints and Misconduct Commission (IPCMC), specifically tasked as a permanent and independent police oversight body. So far, the Malaysian government has strongly opposed proposals for an IPCMC.

Background

Amnesty International continues to receive reports of deaths in custody in Malaysia – so far there have been eight recorded in the first half of 2014. At least 12 deaths in custody were recorded in 2013. Investigations have been either lacking or inconsistent, and perpetrators are rarely held to account. In the few instances where there are investigations there are concerns that they are not effective, impartial or thorough.

Amnesty International has previously documented other cases of deaths in custody allegedly caused by torture in Malaysia, including those of B Prabakar, M. Ulagunathan, P Karuna Nithi and N Dhamendran – to the organization's knowledge, none of these men's families have been able to obtain justice.

Malaysia, as a UN member state, is legally bound under the UN Charter to promote respect for, and observance of, human rights. The country is also bound by rules of customary international law which, among other things, prohibit torture and other ill-treatment in all circumstances.

The Malaysian government has rejected calls by civil society groups in the country and internationally to ratify 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).

Some efforts to address deaths in custody are being undertaken by the Malaysian government at the state level – the State of Penang has set up a task force on custodial deaths. However, efforts to ensure effective, impartial and thorough investigations, robust prosecution and fair trials to obtain justice and accountability must be prioritized at a national level.

In June 2013, the national government committed to establishing a permanent coroner's court and centralized lockups in every state as well as to strengthen the Enforcement Agency Integrity Commission.

Amnesty International echoes the demands of Malaysian civil society groups that such moves must go beyond mere formalities and must address the root causes of deaths in police custody, including police torture and the absence of justice for those who have died in the hands of law enforcement officers. The Malaysian government must ensure the independence of the permanent coroner's courts, and review its April 2014 decision to make state magistrate's courts operate concurrently as coroner's courts.

For more information, see:

Malaysia: Government must investigate police torture claims, 22 January 2009.

<http://www.amnesty.org/en/for-media/press-releases/malaysia-government-must-investigate-police-torture-claims-20090122>

Malaysia: Open letter on accountability for deaths in custody and fatal shootings by police officers, (Index: ASA 28/006,2013), 22 July 2013. <http://www.amnesty.org/en/library/info/ASA28/006/2013/en>