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MALAYSIA: @"REHABILITATION" OF COMMUNISTS

I. Detained without trial after December 1989 agreement

On 2 December 1989, the Communist Party of Malaya (CPM) ended its 41-year-old armed struggle against the government with a pledge of loyalty to Malaysia's Yang di-Pertuan Agong (King), constitution and laws. The Government of Malaysia pledged that it "will in due course allow former members of the disbanded armed units, led by the Communist Party of Malaya, who are Malaysian citizens or who have become Malaysian citizens to freely participate in political activities within the framework of the Federal Constitution and the laws of Malaysia".

Following the December 1989 agreement, an unknown number of members of the CPM and of its splinter group, the Communist Party Marxist-Leninist, who had been living in the jungles on the Thai-Malaysian border, opted to settle in Malaysia and identified themselves to the Malaysian authorities who decided to "rehabilitate" them. The rehabilitation took the form of detention without trial under the Internal Security Act (ISA) at the Kamunting Detention Centre where most other ISA detainees are also held.

Answering questions in parliament on 23 and 24 January 1991, Deputy Home Minister Datuk Megat Junid Megat Ayub reportedly said that of a total of 150 ISA detainees, 125 were being held for their communist ideologies, eight for falsifying government documents, seven for spying activities, five for Islamic religious extremism, four for attempting to make Sabah state secede from Malaysia and one for burning a mosque. (Regarding the four Sabah detainees, see Malaysia: New Internal Security Act Detainees, AI Index ASA 28/04/90, issued in September 1990.) He also said that most of the communists who had "surrendered" since December 1989 were now undergoing rehabilitation at Kamunting under the ISA. Under the terms of the ISA, detainees can be held indefinitely with detention orders being renewable every two years by the Home Ministry.

Amnesty International has written to the Deputy Home Minister, who is in charge of administering the ISA, requesting the full list of names of detainees held under the ISA and the reasons given in the detention orders served on each of them. There has been no response.

Amnesty International considers the communists being held under the ISA (whose number in detention may have changed since January) to be political prisoners who have been detained without charge or trial after having voluntarily renounced armed struggle and having pledged their allegiance to the peaceful path of adhering to the constitution and laws of Malaysia, and after having voluntarily identified themselves to the authorities. If they have committed any specific offences, they should be formally charged in court and brought to trial or released immediately and unconditionally.

II. Historical sketch of the Communist Party of Malaya (CPM)

The Communist Party of Malaya (CPM) was founded in 1930. After the invasion of Malaya by Japanese forces in December 1941, the CPM formed the Malayan People's Anti-Japanese Army (MPAJA) which led the resistance and was assisted by British officers, arms and equipment. The MPAJA was disbanded in December 1945 after the Japanese defeat and the return of British colonial rule to Malaya.

The CPM turned towards trying to end British rule, initially through political means, and from June 1948 through armed struggle. As the CPM's cadres were predominantly ethnic Chinese, it received minimal support from the ethnic Malays who formed over 50 per cent of Malaya's population. The relocation of the rural Chinese population in "New Villages" by the British colonial administration further isolated the the CPM guerrilla army, especially from its supporters in the Chinese community.

With the end of British rule in Malaya in 1957, the CPM lost its ideological raison d'etre of serving in the vanguard of an anti-colonial struggle. By 1960, the CPM's remnants had been forced to retreat into the jungles on the border between southern Thailand and Malaysia where they remained dormant, except for some minor skirmishes with Thai and Malaysian security forces, till the December 1989 agreement.

III. The Internal Security Act (ISA)

There are three separate sets of laws in operation in Malaysia which allow the government to detain suspects without trial. The Internal Security Act (ISA), introduced in 1960, invests the Malaysian executive with wide-ranging powers of arrest and preventive detention for persons deemed to be a threat to national security, but has frequently been used in the past to detain individuals on account of their alleged or real non-violent

political activities or beliefs. The Emergency (Public Order and Prevention of Crime) Ordinance of 1969 gives the executive the power to detain suspects on account of their allegedly having committed, or having intended to commit, criminal offences. The third and most recent law allowing preventive detention is the Dangerous Drugs (Special Preventive Measures) Act, 1985. This is intended for use in the apprehension of suspected drug traffickers.

The provisions contained in the ISA exist pursuant to Article 149 of the Malaysian constitution, which invests the Malaysian parliament with the authority to create "special powers against subversion, organised violence and acts and crimes prejudicial to the public." Article 149 of the constitution gives the Malaysian parliament the power to provide for preventive detention under certain specified conditions. This finds expression in the Internal Security Act of 1960 and subsequent amendments. A major amendment enacted in June 1989 barred the judicial review of all actions or decisions taken by the King or Home Minister in exercise of their discretionary power under the ISA, except in regard to required procedures.

In passing the ISA the Malaysian parliament delegated immense authority to the executive in the person of the Minister of Home Affairs who has authority to detain persons without trial. Under Section 8 of the ISA, the Minister of Home Affairs has the power to detain anyone whose activities are deemed "prejudicial to the security of Malaysia". Under Section 73 of the Act, police officers have the power to arrest any person, without warrant, and detain him/her for up to 60 days for investigation if grounds for detention under Section 8 are believed to exist, or if they believe that the person "has acted or is about to act or is likely to act in any manner prejudicial to the security of Malaysia". The authorities have no legal obligation to inform those held in custody of the allegations against them until the end of the investigation period.

If the Minister of Home Affairs is satisfied that grounds for continued detention have been established, he has the authority to issue a two-year detention order, renewable indefinitely. The detention order must be issued before the 60-day investigation period has concluded. All ISA detainees have the right to appear before an Advisory Board, and to appeal against the allegations against them. The Board makes recommendations to the Yang di-Pertuan Agong (King), but these are not binding on the government or the Minister of Home Affairs.

Most ISA detainees have refrained from making representations to, or appearing in front of, the Advisory Board, evidently believing that its role as a constitutional safeguard is illusory, and that it is designed purely to set the seal of legitimacy on the Minister of Home Affairs' decision to order a detention.

In addition, detainees may challenge any possible procedural defects regarding their detention - after a detention order has been issued - through writs of habeas corpus. In practice detainees

have rarely filed applications for writs of habeas corpus. For one thing, they are hampered by the fact that they usually have only the most limited access to their defence counsel, especially during the initial 60-day detention period. Another problem is that detainees (and their families) are afraid that any action taken by a lawyer on their behalf could jeopardize their chances of obtaining early release. The large majority of ISA detainees have in the past come from poor working class backgrounds, and with no legally guaranteed right to the appointment of counsel paid for by the state, have been unable to file for habeas corpus as they could not possibly afford to pay the courts' fees. In any case, detainees who have in the past filed writs of habeas corpus in Malaysia have rarely succeeded in bringing about their release from detention under the ISA.

IV. Summary of concerns

Amnesty International is investigating the identities and the grounds of detention of the communists held under the ISA without being charged in court and tried. Beyond stating that it will continue to take stern action against anyone promoting the communist ideology, the government has not indicated any specific reasons for considering these detainees to be threats to security. It has also, so far, not made public the names of the communists who have been detained.