



Case MYS 151210

Arbitrary detention/ Fear for the safety

The International Secretariat of the World Organisation Against Torture (OMCT) requests your
URGENT

intervention in the following situation in
Malaysia

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Brief description of the situation

The International Secretariat of OMCT has been informed by SUARAM, a member of OMCT SOS-Torture Network, about the arbitrary detention of 39-year-old **Mr. K. Selvachandran**, a key witness who testified against the police in the case of a death in police custody.

According to the information received, on 14 December 2010, Mr. K. Selvachandran was transferred to Batu Gajah Detention camp in the state of Perak after Malaysia's Home Minister issued a two-year detention order under the Dangerous Drugs (Special Preventive Measures) Act 1985 (DDA), which provides for detention without trial for up to two years *(1)*. K. Selvachandran was reportedly not allowed to see his family before his transfer. His habeas corpus hearing is scheduled for 20 December 2010.

Mr. K. Selvachandran was reportedly arrested under unspecified charges under the DDA, on 25 October 2010, by five plain-clothes police officers, only a few hours after a court delivered an open verdict at the inquest into R. Gunasegaran's death in police custody, ruling that the cause of his death could not be conclusively proven. Mr. K. Selvachandran had testified during the inquest that he had seen a policeman kicking Mr. R. Gunasegaran before this latter collapsed

and died at Sentul police station, on 16 July 2009.

During the arrest, Mr. K. Selvachandran was allegedly beaten by the police in front of his wife and children before he was taken to the Kuala Lumpur police contingent headquarters. He would suffer from hearing problems due to the beatings.

The International Secretariat of OMCT is gravely concerned about the safety of Mr. K. Selvachandran and recalls to the authorities of Malaysia that they are legally bound to effectively ensure the physical and psychological integrity of all persons deprived of liberty in accordance with international human rights law.

OMCT further urges the competent authorities to immediately release Mr. K. Selvachandran in the absence of valid legal charges and judicial process consistent with international legal standards, or if such charges exist, bring him before an impartial and competent tribunal and guarantee his procedural rights at all times. OMCT has on several occasions expressed gravest concerns over existing emergency and anti-subversion laws in Malaysia which provide for indefinite detention without trial in clear violation of internationally recognised human rights standards relating to fair trials, namely the Dangerous Drugs Act 1985 (DDA), the Emergency Ordinance 1969 (EO) and the Internal Security Act (ISA) (2). In this regard, OMCT recalls that the UN Working Group on Arbitrary Detention has urged the Government of Malaysia, following his mission to the country, to repeal or amend four preventive laws in force in the country that allow detention without trial, in some cases indefinitely, including the DDA

(3)

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Finally, OMCT calls on the competent authorities of Malaysia to carry out a prompt, effective, thorough, independent and impartial investigation into the beatings suffered by Mr. K. Selvachandran during his arrest, the result of which must be made public, in order to bring those responsible before a competent, independent and impartial tribunal and apply penal, civil and/or administrative sanctions as provided by law.

Action requested

Please write to the authorities in Malaysia urging them to:

- i. Guarantee, in all circumstances, the physical and psychological integrity of Mr. K. Selvachandran;
- ii. Grant Mr. K. Selvachandran unconditional access to a lawyer of his choice and his family, as well as guarantee that he is promptly examined by independent doctors and receives adequate

and free medical care, in accordance, inter alia, with the UN Standard Minimum Rules for the Treatment of Prisoners;

iii. Order his immediate release in the absence of valid legal charges that are consistent with international law and standards, or, if such charges exist, bring him promptly before an impartial, independent and competent tribunal and guarantee his procedural rights at all times;

iv. Carry out a prompt, effective, thorough, independent and impartial investigation into the reports of beatings, the result of which must be made public, in order to bring those responsible before a competent, independent and impartial tribunal and apply penal, civil and/or administrative sanctions as provided by law;

v. Ensure that an effective remedy, including the right to full redress with compensation and rehabilitation be granted to the victim concerned;

vi. Ensure the respect of human rights and fundamental freedoms throughout the country in accordance with national laws and international human rights standards.

Addresses

- Prime Minister of Malaysia Mr. Dato' Sri Mohd Najib bin Tun Abdul Razak, Prime Minister's Office Malaysia, Perdana Putra Building, Federal Government Administrative Centre, 62502 PUTRAJAYA, Selangor, Malaysia, Fax: + 60 3 8888 3444, Email: ppm@pmo.gov.my
- Malaysian Home Affairs Minister Hishammuddin Hussein, Ministry of Home Affairs, Blok D1 & D2, Kompleks D, Pusat Pentadbiran, Kerajaan Persekutuan, 62546 Putrajaya, Fax: 03-88891613/03-88891610, Email: hishammuddin@moha.gov.my
- Director, Batu Gajah Detention camp, Pusat Pemulihan Akhlak, Jalan Brewster, 31000 Batu Gajah, Perak, No. Fax : 05-3661519
- Permanent Mission of Malaysia to the United Nations in Geneva, ICC-1er/ H, Pré-Bois 20, P.O. 1834, CH-1215, Geneva 15, Switzerland, Email : mwgeneva@ties.itu.int, Fax: +4122 710 75 01

Please also write to the embassies of Malaysia in your respective country.

Geneva, 15 December 2010

Kindly inform us of any action undertaken quoting the code of this appeal in your reply.

Notes:

⁽¹⁾ The Dangerous Drugs (Special Preventive Measures) Act 1985 (DDA) gives powers to the police to arrest and detain any suspect who “has been or is associated with any activity relating to or involving the trafficking in dangerous drugs” for up to sixty days without an order of detention. At the end of the 60-day detention, the Home Minister is provided powers to hand a two-year detention order, if he is satisfied that “it is necessary in the interest of public order that such person be detained”. Section 11A of the DDA provides powers to the Home Minister to extend a detention order, for a period not exceeding two years, but the number of extensions is not limited.

⁽²⁾ See for example OMCT joint press release on 1 August 2010, www.omct.org

⁽³⁾ See the UN Working Group on Arbitrary Detention press release on 18 June 2010, « Arbitrary Detention: Preventive Laws should be repealed or amended in Malaysia - UN expert body”.

Kenyataan Akhbar

Penahanan 2 tahun Selvach jelas tidak professional, berniat jahat dan bersifat menghina Mahkamah

15 Disember 2010

Lawyers for Liberty amat kesal dengan tindakan pihak polis dan Kementerian Dalam Negeri yang mengeluarkan perintah penahanan 2 tahun di bawah Akta Dadah Berbahaya (Langkah-Langkah Pencegahan Khas) 1985 terhadap K. Selvach Santhiran di mana pada 14 Disember 2010, beliau telah dihantar ke Pusat Permulihan Akhlak Batu Gajah seawal 9.00 pagi.

Tambah menyedihkan lagi, ahli keluarga Selvach langsung tidak berkesempatan untuk bertemu beliau meskipun pihak polis telah memberitahu isterinya, Puan Saraswathi bahawa ahli keluarga dibenarkan untuk melawatnya di IPK Kuala Lumpur pada pagi sebelum beliau dihantar ke Batu Gajah. Selvach juga tidak berpeluang untuk berjumpa dengan peguamnya yang turut datang bersama.

Seperti yang pihak polis dan Kementerian Dalam Negeri sedia maklum, permohonan habeas corpus Selvach masih belum didengar oleh Mahkamah dan sekarang ditetapkan untuk pendengaran pada 20 Disember selepas di tunda beberapa kali sejak 3 Disember untuk membolehkan pihak polis menfaikan afidavit jawapan. Namun, di dalam masa tersebut, pihak berkuasa telah mengambil kesempatan dan tergesa-gesa mengeluarkan perintah penahanan sebelum permohonan habeas corpus Selvach diputuskan oleh Mahkamah.

Tindakan ini jelas menunjukkan sikap pihak polis dan Kementerian Dalam Negeri yang tidak profesional, angkuh, berniat jahat dan menyalahgunakan kuasa kerana perbuatan yang sedemikian boleh menyebabkan permohonan habeas corpus tersebut menjadi akademik kerana Selvach kini ditahan di tempat lain menurut peruntukan undang-undang yang berbeza.

Tindakan tersebut juga merupakan secara prima facie suatu penghinaan kepada Mahkamah kerana pihak polis dan Kementerian Dalam Negeri telah dengan sewenang-wenang dan berniat jahat menyalahgunakan kuasa mereka dan cuba sabotaj atau mengganggu pendengaran habeas corpus tersebut.

Walaupun perangai buruk sebegitu, peguam-peguam Selvach akan tetap meneruskan pendengaran habeas corpus tersebut pada 20 Disember.

Dikeluarkan oleh:

Lawyers for Liberty

(www.lawyersforliberty.org)