



CPPS POLICY FACTSHEET: EMERGENCY ORDINANCE

CPPS is pleased to bring you its "CPPS Policy Fact Sheet" on the EO (Emergency Ordinance). In this fact sheet we will review the rationale, its problematic nature and the current events pertaining to the EO. Access other CPPS policy fact sheets [here](#).

BACKGROUND

The Yang di-Pertuan Agong is given the authority to issue a Proclamation of Emergency under Article 150 of the Federal Constitution and whereupon seeing that public order, or any part of national security or economic life is threatened, is allowed to govern by promulgating ordinances (Emergency Laws) which are not required to be judicially reviewed. Post-independence, five states of emergency have since be declared under Article 150 of the Federal Constitution and only the First Emergency (1948-1960) which was declared due to the communist insurgency has been revoked; the other four declarations are still in proclamation until today.

The Second Emergency was declared nationwide on the 3rd September 1964 due to the Indonesian confrontation while the Third Emergency was declared (though only limited to the state of Sarawak) on the 14 September 1966 by reason following the dismissal of the then Chief Minister, Stephen Kalong Ningkan. The Fourth Emergency was declared nationwide on the 15th of May 1969 in response to the May 13th racial riots which ignited in Kuala Lumpur following the general elections. Alongside this declaration, the Emergency Ordinance 1969 was promulgated by the Yang di-Pertuan Agong. The final Fifth Emergency declaration (limited only to the state of Kelantan) was proclaimed on 8th November 1977 to deal with the political crisis brewing there.



As four out of the five Proclamations of Emergency have yet to be revoked, this means that Malaysia is still in a state of emergency as of today.

WHAT IS THE EMERGENCY ORDINANCE?

While there have been a few acts, decrees and exceptional laws passed under each of the emergency proclamations, the Proclamation of 1969 has been the framework for a majority of key regulations that are still in effect today. The Proclamation of 1969 which promulgates 92 (Emergency) Ordinances is still utilized today due to the 4 unrevoked proclamations which leaves Malaysia still liable to be governed under Emergency Laws.

Perhaps one of the most controversial ordinances in the Proclamation of 1969 would be the Emergency (Public Order and Prevention of Crime) Ordinance as it is one of three laws (Internal Security Act 1960 and the Dangerous Drugs Act (Special Preventive Measures) 1985 being the other two) which allows the Government to detain someone without trial or the filing of formal charges. The Government is permitted to without warrant arrest anyone who is suspected to be behaving in a manner that threatens public order and detain the suspect for sixty-days without a detention order under the Ordinance.



THE EMERGENCY ORDINANCE TODAY

Till this day, the Emergency (Public Order and Prevention of Crime) Ordinance is still in force and has been used arbitrarily to incarcerate criminal suspects as it bypasses the procedural requirements of conducting a proper investigation. The Emergency Ordinance is often resorted to upon the failure of the police to collect substantial evidence against the criminal suspect. Prime examples of this are the arrest of then seventeen-year-old Jiegandran Panir Selvam last year and the recent re-arrests upon the release of M. Nandakumar (43), M. Thirugnanam (33) and K. Jayaraman (56) in January 2010. Jiegandran Panir Selvam was arrested under the suspicion of having stolen a motorcycle and was subsequently exiled to Negeri Sembilan under the Restricted Residence Order. He has now only been recently granted the right to challenge the home ministry order issued by the Home Ministry that resulted from his earlier detainment under the Emergency Law. M. Nandakumar, M. Thirugnanam and K. Jayaraman who were initially charged with the murder of businessman Datuk M. Gunasegaran but were released after the prosecution dropped the charges were re-arrested and detained under the Emergency Ordinance upon release.

A graver example is the detainment of eighteen-year-old S. Hendry in 2005. He was finally detained (after four successive remand orders) under the Emergency Ordinance for alleged involvement in an armed robbery and two murder cases. However, he was never charged in any of the cases and was ultimately found dead, hanging from the ceiling in his cell. In fact, a large majority of the detainees charged under the Emergency Ordinance at Simpang Renggam are *alleged* gangsters or drug lords who have never been formally charged or have undergone a proper trial convicting them of the alleged criminal activity they were involved in upon arrest.

THE EMERGENCY ORDINANCE TODAY (CON'T)

<p style="text-align: center;"><i>Relevant Sections from the Emergency (Public Order and Prevention of Crime) Ordinance 1969</i></p>	<p style="text-align: center;"><i>Relevant Sections from the Universal Declaration of Human Rights</i></p>
<p>Section 3 permits any police officer to “without warrant arrest and detain pending enquiries an person who on being questioned by him fails to satisfy him as to his identity or as to the purposes for which he is in the place where he is found if the police officer suspects that person of having acted or being about to act or being likely to act in any manner prejudicial to public order or if he has reason to believe that it is necessary for the suppression of violence or the prevention of crimes involving violence that that person should be detained.”</p> <p>It further stipulates that any person “arrested and detained under this section may be detained in police custody for a period up to sixty-days without an order of detention having been made in respect of him.”</p> <p>Section 4 further states that if the Minister “with a view to preventing any person from acting in any manner prejudicial to public order it is necessary that that person should be detained, or that it is necessary for the suppression of violence or the prevention of crimes involving violence that that person should be detained, the Minister shall make an order directing that that person be detained for any period not exceeding two years.” Furthermore, this order can be renewed every two years, making the detainment of the suspect indefinite.</p>	<p>Article 2. Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.</p> <ul style="list-style-type: none"> • Article 5. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. • Article 9. <u>No one shall be subjected to arbitrary arrest, detention or exile.</u> • Article 10. Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him. • Article 11. (1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence. (2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

THE EMERGENCY ORDINANCE TODAY (CON'T)

While the Internal Security Act (ISA) is enforced through direct orders from a government minister, the Emergency (Public Order and Prevention of Crime) Ordinance can be enforced by the police according to their discretion. The possible consequence of such extended authority is reflected through the sheer outnumbering of the Emergency Ordinance over the Internal Security Act detainees (as of 2005, there are 712 detainees charged under the Emergency Ordinance at Simpang Renggam as opposed to 102 detainees charged under the ISA at Kamunting).

Taken from http://blogs.kansascity.com/photos/uncategorized/black_inmates_talking_t



Furthermore, an amendment of the Emergency Ordinance in 1989 prohibits judicial reviews of the cases charged under the Ordinance “save in regard to any question on compliance with any procedural requirement in this Ordinance governing such act or decision”. Even in circumstances whereupon the Emergency Ordinance order is made invalid due to procedural non-compliance and the detainee is released, the detainee may be charged again under the Emergency Ordinance. The amendment also prevents any legal action to be taken towards the police authorities during the emergency period if it was shown that they had acted in “good faith”.

REPEAL OF THE EMERGENCY (PUBLIC ORDER AND PREVENTION OF CRIME) ORDINANCE

Several reports have been released regarding the repeal of the Emergency (Public Order and Prevention of Crime) Ordinance. The Royal Commission to Enhance the Operations and Management of the Royal Malaysian Police established by the Yang di-Pertuan Agong on the advice of the government specifically called for the abolishment of the Emergency Ordinance in its 2005 report. As of 2010, this recommendation has yet to be implemented.

Despite the recommendations of the Royal Commission, a report by the Human Rights Watch released in 2006 indicated that the government is not only aware of the arbitrary usage of the Emergency Ordinance but also defends it. Former Deputy Internal Security Minister Datuk Noh Omar in 2004 had stated that if the police believe that (the suspects) are involved but there is insufficient evidence, the police will then exercise the prerogative to detain the suspects under the Emergency Ordinance. In fact (in July 2005), Datuk Mohamed Nazri, a member of former Prime Minister Badawi’s cabinet defends the Emergency Ordinance by reason that the Emergency Ordinance protects the society from criminals and reduces crime by removing them from the streets. However, there have been no research to back such a claim and not only do the overwhelming majority of the detainees incarcerated under the Emergency Ordinance have yet to undergo a proper trial, they are also still waiting for to be formally charged under existing criminal laws despite their status as *alleged* criminals.

STAKEHOLDERS

Parliament: The YDPA is the recognized Head of State of Malaysia and thus has the power to revoke existing Proclamations of Emergency which will render the Emergency Laws obsolete. The revocation of existing Proclamations of Emergency (as well as the repeal of the Emergency Ordinance) can also be executed by both the Houses of Parliament.

taken from http://iamamalaysian.files.wordpress.com/2008/08/coat_of_arms_of_malaysia.png



Ministry of Home Affairs: The Ministry of Home Affairs is divided into two different ministries which is the Ministry of Home Security and the Ministry of Internal Affairs. The objective of Ministry of Home Security is to preserve and improve safety and public order from any threats; to improve the effectiveness of enforcing public order and national security, among others. The function of the ministry is to amend and execute security and public order policies; enforcing laws related to safety and ensuring public order, among others. The prerogative to grant a detention order under the Emergency (Public Order and Prevention of Crime) Ordinance is with the ministry, thus placing the Ordinance under its powers.

Royal Police: The Police act accordingly under the provisions of Section 3 in the Emergency Ordinance which allow them to conduct arbitrary arrests and detentions. Such allowances are gross human rights violations and may lead to the police abusing their authority.

The Royal Commission: The Royal Commission to Enhance the Operation and Management of the Royal Malaysia Police was created by the Yang di-Pertuan Agong (as advised by the Government) on 4th February 2004 under the Commission of Inquiry Act 1950. The result of their inquiry was a 576-page report which contained 125 recommendations submitted to the Prime Minister was publicly released on 12th June 2005 and among them, the repeal of the Emergency Ordinance as it is now obsolete and is an infringement on human rights was recommended. This recommendation was not implemented.

SUHAKAM: The Human Rights Commission of Malaysia (SUHAKAM) was established by Parliament under the Human Rights Commission of Malaysia Act 1999, Act 597. In response to the hunger strike in Simpang Renggam in November 2004 by 435 Emergency Ordinance detainees due to the indefinite term of detention imposed on them and the demand for an opportunity to defend themselves in a fair trial, the government had sent SUHAKAM commissioners who subsequently submitted the detainees grievances to the Prime Minister. Nothing was done despite that.

NGO Coalition: In 2005, an NGO joint memorandum (consisting of the endorsement of 33 organisations) was released calling for the government to repeal the Emergency (Public Order and Prevention of Crime) Ordinance 1969, not to re-arrest freshly released suspects under the same law, to cease making any further arrests under the POPO and for those detained under the POPO, to be released immediately or charged under existing criminal laws.

Rakyat: Anyone is liable to face arrest and detainment for up to two years.

AROUND THE WORLD

EGYPT: The Egyptian government has been extending the Emergency Law for years since it was imposed in 1967 (due to the Arab-Israeli War) and reimposed after an 18-month break in 1980. Under the Emergency Law, the police are given extended authority, constitutional rights are suspended and censorship permitted. As such, non-governmental political activity is heavily monitored where events such as street demonstrations are banned. It is estimated that about 17,000 people are detained under the law and there are as much as 30,000 political prisoners.

THAILAND: Thailand's Prime Minister Abhisit Vejjajiva has declared a state of emergency in Bangkok and surrounding areas on the 12th April 2009 due to violent anti-government protests. Despite the declaration, anti-government protestors continued to defy the state of emergency and continued protests, clashing with the police. Abhisit Vejjajiva then proceeded to lift the emergency decree in order to find peaceful measures to establish reconciliation between the government and opposition supporters.

POLICY RECOMMENDATIONS

1. The Emergency Ordinance should be repealed as:

Malaysia is no longer in a state of emergency thus should not be governed in accordance in Emergency Laws.

“Any declaration of a state of emergency, and thereby derogation of other human rights, must comply with four requirements: an exceptional situation must exist which involves imminent danger; the emergency must be officially proclaimed and of temporary duration; the adoption of exceptional measures must be one of after other means have failed; and the measures adopted must be proportional to the danger. The essence of these principles is enshrined in Article 4 of the International Covenant on Civil and Political Rights (ICCPR). More generally, the UN Sub-Commission on the Promotion and Protection of Human Rights adopted Resolution 1988/24 - Question of Human Rights and States of Emergency (E/CN.4/1989/3) in September 1988 in which it reaffirmed the basic principles pertaining to states of emergency.”

Taken from http://www.hrdc.net/sahrdc/hrfquarterly/Jan_march_2002/malaysia_emergency.htm

2. The Emergency (Public Order and Prevention of Crime) Ordinance is a blatant disregard for human rights. Those detained should be charged with a crime, given a fair trial and the opportunity to defend themselves before a court of law. The Emergency Ordinance detainees should not be held incommunicado and should be immediately allowed regular access to family members, professional legal and medical counsel. There should be a transparent system of complaints regarding physical and emotional abuse or torture where such reports will be made available to the public.

