

HUMAN RIGHTS WATCH

January 2008 country summary: Malaysia (LOL-EXH-33)

Malaysia continues to confound hopes that human rights progress will parallel the country's strong economic growth. Basic rights such as freedom of expression, assembly, and association are subject to burdensome and unjustified restrictions. A series of stringent and outdated laws and regulations, such as the Internal Security Act (ISA) and Emergency Ordinance (EO), continue to undermine basic due process rights. Routine censorship threats target bloggers; new rules impede workers' right to organize; and indigenous communities face loss of communal land. The government has resisted widespread calls to establish an Independent Police Complaints and Misconduct Commission, as recommended in May 2005 by a Royal Commission.

Detention without Charge or Trial

Malaysian officials use the ISA and EO to indefinitely detain, without charge or trial, alleged terrorists and those suspected of organized criminal activities. Authorities have used the law against members of several Islamic groups, including the Jemaah Islamiah (JI), Kampulan Militan/Mujaahiddim Malaysia, and Darul Islam, as well as criminals engaging in human smuggling and passport and ID forgery. The inspector general of police stated in June 2007 that "there is no JI movement here in Malaysia." According to Suaram, a respected Malaysian nongovernmental organization (NGO), as of September 2007, 87 suspects remained in ISA detention. In June 2007, four alleged JI members held for more than four years were released but sent, under the 1933 Restricted Residence Act, to remote districts where they are required to report regularly to local police.

The Malaysian government has not responded to a request for a visit by the UN Special Rapporteur on the promotion and protection of human rights while countering terrorism, nor has it responded to his request for information related to ISA detention.

The government has insisted on retaining the EO, saying it needs the law to impede the activities of criminal gangs, despite the fact that it violates constitutional due process requirements. In October 2006, in a blow to the rights of suspects, a federal court ordered that once the internal security minister signs a detention order, any prior police abuse or other misconduct may no longer be challenged in court. The court reasoned that when court-ordered release of a suspect is followed by a new detention order, a not uncommon occurrence in Malaysia, appeal of the original order is "rendered academic."

Migrant Workers, Refugees, and Asylum Seekers

Malaysian officials reported in 2007 that there were nearly 1.9 million documented migrants in the country. Although there is no official count of undocumented migrants, estimates suggest the total is 700,000 or more. Some 150,000 people are believed to be either refugees or asylum seekers, only a third of whom have been registered by UNHCR.

In July 2007, the government began one of its periodic roundups, seeking to deport those who had entered Malaysia illegally. Some 10,000 were apprehended during the first month of operation. In addition to deportation, those in violation of the law face up to five years' imprisonment and six strokes of the cane, as provided for by the Immigration Act 1959/63. Such round-ups, which fail to differentiate between people in need of international protection and other migrants, frequently involve violence by the authorities or their agents.

The almost half million strong Peoples Volunteer Force (RELA) is empowered by the Emergency (Essential Powers) Act 1979, as amended, to arrest and detain "undesirable persons" and suspected illegal migrants. Force members, authorized to enter and search any public or private premise without a warrant, have raided migrant housing in the middle of the night, beating up residents, confiscating valuables, and, at times, destroying the ID cards of legal migrants to justify the raids.

For example, on April 5, 2007, RELA volunteers arrested some 20 Burmese refugees and asylum seekers

in downtown Kuala Lumpur. At least five had been recognized as refugees by the office of the UN High Commissioner for Refugees (UNHCR). On June 25, 2007, at 2:00 a.m., Malaysian Immigration officials and RELA volunteers raided the Chin Refugee Centre and Chin communities at Jalan Imbi and Jalan San Peng, Kuala Lumpur, arresting 228 asylum seekers and refugees from Burma, most of whom UNHCR had recognized as refugees.

The migrant work force includes some 300,000 domestic workers, primarily Indonesian. They confront a wide range of abuses, including forced confinement in the workplace, excessively long work hours, lack of rest days, withheld wages, and physical and sexual abuse. Domestic workers not only are excluded from key provisions of Malaysia's Employment Act of 1955, but their work permits tie them to a particular employer, making it difficult to report abuse for fear of deportation. While Malaysia has imposed some penalties on agencies and employers following a 2006 agreement with Indonesia, the agreement does not extend many basic labor law protections to domestic workers. Criminal prosecutions of abusive employers are rare. Nirmala Bonat, whose employer burned and brutally beat her, has remained in the Indonesian embassy since 2004 while the trial of her employer continues. In violation of the Convention on the Rights of the Child, which Malaysia has ratified, children of migrants with temporary residence are not entitled to free public education.

Police Abuse

Complaints directed against Malaysia's police force include allegations of routine physical abuse of detainees. In June 2007, Suhakam, the official Human Rights Commission of Malaysia, said police responded to only 16 of the 34 cases of police brutality brought to their attention over a one-and-a-half-year period. Prison abuse at times includes beatings so severe that hospitalization is required. The police also often rely on a policy of "remand first, investigate later." As a result, suspects spend days in detention, often without access to family members or a lawyer, greatly increasing the risk of mistreatment.

Freedom of Expression

In 2007 Malaysian officials cautioned private media outlets against abusing their privileges, advised newspapers to be wary of repeating blog criticisms of the government, and warned webmasters and bloggers to use their power cautiously. Critical bloggers have been sued for defamation, a powerful tool long used in Malaysia by the government to stifle dissent.

The Internal Security Ministry sent warnings in March and July 2007 to newspapers not to publish cyber-induced speculation on "sensitive" issues. The circular reminded journalists that publishers are required to "always comply with directives issued by the ministry." The 1984 Printing Presses and Publications Act (PPPA) requires that newspapers renew their licenses every year.

On July 13, the police used section 8 of the Official Secrets Act (OSA) to arrest Nathaniel Tan, a staffer at the opposition People's Justice Party, on suspicion of possessing documents related to government corruption. Tan was held on remand for four days before being released on bail. The OSA is a broadly-worded law according to which any public officer can declare any material an official secret, a certification which cannot be questioned in court. The act allows for arrest and detention without a warrant, and substantially reverses the burden of proof.

Freedom of Religion

Islam is the official state religion, but the constitution protects freedom of religion for non-Muslims. Discussions in July 2007 as to whether Malaysia was an Islamic or a secular state grew contentious after Deputy Prime Minister Najib Abdul Razak declared it an Islamic state. The internal security minister then banned further media discussion, but ruled that statements by Prime Minister Badawi and Deputy PM Razak could be aired.

In a landmark ruling, Lima Joy, a Muslim covert to Christianity, lost her six-year battle to have the word "Muslim" removed from her identity card. She had argued she was entitled to freedom of religion

under article 11 of the constitution. The top secular court ruled that only the Sharia court had jurisdiction.

Human Rights Defenders

The NGO community, the Malaysian bar, lawyers, and some opposition politicians are active in defense of human rights despite the serious personal and professional risks entailed.

In June 2007, during a rally in Johor Bahru organized to protest rising crime rates, police arrested two activists from the NGO Suaram for attempting to distribute leaflets supporting the proposed Independent Police Complaints and Misconduct Commission. The Johor Bahru Magistrate Court remanded the two for 24 hours. In October, the Putrajaya district police requested the Malaysian Bar Association president, vice-president, and secretary to appear to discuss the September 26, 2006 "Walk for Justice." The 2,000 strong march to the prime minister's office delivered a memorandum urging the government to set up a Royal Commission of Inquiry to investigate apparent corruption in the appointment of justices. In November, police refused to issue a permit for a rally and march by the Coalition for Clean and Fair Elections (Bersih). When some 40,000 Malaysians defied the ban, police used chemical-laced water and tear gas to disperse peaceful participants.

Tear gas and water cannons were also used against participants in a Hindu Rights Action Force November 25 rally. A total of 99 organizers and marchers were charged in the aftermath. Prime Minister Badawi threatened to use the Internal Security Act to prevent further unauthorized street demonstrations.

Key International Actors

As a key ASEAN member, Malaysian officials initially urged Burma to agree to talk with opposition leader Aung San Suu Kyi without preconditions and even suggested that Burma could be expelled from ASEAN following its violent crackdown on monks, students, and other protesters in September 2007. However, by November 19, 2007, Malaysian Foreign Minister Syed Hamid Albar had backed away from public denunciation of Burma's human rights record and was defending ASEAN's failure to take any steps to censure Burma.

Despite its own lack of enthusiasm and concern over protracted negotiations, Malaysia has pressed reluctant ASEAN members to support a regional human rights body.

Malaysia has not ratified any key UN conventions other than the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women.

New US ambassador to Malaysia James Keith noted a "greater congruence between the interests of America and Malaysia," especially related to counterterrorism, during his May confirmation hearing before the US Senate. US-Malaysia negotiations on a free trade agreement, however, appeared stalled at this writing, in part because of a new Malaysian labor law rescinding key worker rights.

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