



UPR Submission
Malaysia
September 2008

Summary

In April 2006, Malaysia's Aide Memoire in support of its election to the Human Rights Council stated in part that "the increasing threat posed by terrorism worldwide has highlighted the importance of balancing security concerns with the preservation of individual liberties." It went on to say that drawing on prior experience, "Malaysia believes it has achieved this balance." The Aide Memoire also suggested that Malaysia's "experience managing a plural society would bring an important dimension to the work of the new Human Rights Council." Events before and after Malaysia's election to the HRC belie both assertions.

The Malaysian government lets national security concerns trump protection of fundamental human rights. Outdated laws and regulations such as the Internal Security Act (ISA) and Emergency Ordinance undermine fundamental rights and liberties such as freedom of assembly, expression, and the right to due process. While the national emergencies proclaimed in the 1960s and 1970s have long been resolved, the laws introduced then – the ISA and Emergency Ordinance -- remain. RELA (People's Volunteer Corps or Ikatan Relawan Rakyat), an untrained paramilitary force numbering over half a million, is being strengthened and given sweeping new powers to arrest and detain undocumented migrants and criminal suspects. As far as documented migrant workers are concerned, domestic workers lack protection under the law and face a range of abuses.

Arbitrary and Preventative Detention

The nearly five decade old Internal Security Act (ISA) violates a number of international human rights standards, including the right to be free from arbitrary detention, the right to due process and to a fair trial, as well as rights to free speech and to freedom of expression. Under the ISA, at the government's behest, police can indefinitely detain anyone who "has acted or is about to act or is likely to act in any manner prejudicial to the security of Malaysia or any part thereof or to maintenance of essential services therein or to the economic life thereof."

Characterized as "preventative" detention, the act permits an initial 60-day detention period for "investigatory purposes." But after 60 days, the Minister of Home Affairs may extend detention for up to two years, renewable indefinitely. An independent advisory board reviews all ISA detentions, but its recommendations are not binding. ISA detainees have no avenues of redress as the courts are not permitted to review a case on its merits. Appeals on procedural grounds, which are permitted, routinely fail. In short,

the executive branch of government adjudicates without due process those whom it arrests.

As of December 2007, there were 70 persons in ISA detention. According to information from the Abolish ISA Movement (Gerakan Mansuhkan ISA) in April 2008, ten of the 70 had already been detained for six years; and five of those had already been notified that their detention would be extended for at least an additional two years.

Due to the Malaysian government's broad definition of a security threat, anyone who it perceives as a threat to national security or who is seen to be promoting ethnic and religious dissonance can be detained under the ISA. In November 2007, Prime Minister Abdullah Badawai stated that "when it is appropriate to use it [ISA] it will be used.... ISA is a preventative measure to spare the nation from untoward incidents that can harm the prevailing peace and harmony and create all sorts of adverse things." In practice, such use of the ISA has served as an excuse to silence government critics through the use of open-ended ISA incarceration.

In November 2007, the Hindu Rights Action Force (Hindraf), an activist coalition of ethnic Indians in Malaysia, organized a massive rally to draw attention to economic and educational discrimination faced by Malaysia's Indian population. Three weeks later, five Hindraf leaders were detained under an article of ISA which forgoes the 60-day initial phase and permits imposition of an immediate two-year period of detention. Government officials stated that Hindraf posed a threat to national security by undermining religious and racial harmony and having links to international terrorist organizations. No evidence to support such allegations has come to light. As of September 5, 2008, all five remain under ISA detention.

Other political figures once held under ISA include Anwar Ibrahim (leader of Pakatan Rakyat, Malaysia's opposition coalition), Lim Kit Siang, Karpal Singh, and Lim Guan Eng - all prominent political opposition figures.

The ISA is used to detain criminal suspects such as those suspected of human smuggling, currency counterfeiting, and forging documents such as passports and identity cards. The government has threatened to use ISA against web bloggers and activist leaders to limit freedom of expression and to put an end to street protests. On July 25, 2007, Nazri Aziz, a minister in the Prime Minister's Department said that "the government would not hesitate to use the Internal Security Act against bloggers."

The only somewhat positive signal has come from Datuk Zaid Ibrahim, minister in the Prime Minister's Department in charge of legal affairs and judicial reform. He stated in May 2008 that he planned to review the Internal Security Act, but would not challenge the legitimacy of preventative detention.

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.

People's Volunteer Corps (Ikatan Relawan Rakyat or RELA)

People's Volunteer Corps (Ikatan Relawan Rakyat or RELA) is a volunteer paramilitary force whose members now number in excess of half a million. Originally established in 1966 through the enactment of Essential Regulations 1966 under the Emergency (Essential Powers) Act 1964 to help maintain public order, RELA's continued existence and enhanced powers rest on enactment of the Emergency (Essential Powers) Act 1979 and the Essential (Amendment) Regulations 2005.

Over time RELA members have performed roles akin to community policing such as traffic and crowd control and assistance during natural disasters. Since the 2005 amendment, RELA's primary task has been to assist in controlling illegal migration to Malaysia.

The 2005 amendment authorizes RELA members to carry arms and to arrest anyone reasonably believed to be "a terrorist, undesirable person, illegal immigrant or an occupier [squatter]." The regulations authorize RELA members to question suspects and enter premises, either public or private, without obtaining a search warrant where there is reason to believe suspects are housed. Should a suspect refuse to answer questions, produce requested identification, comply with reasonable requests, or make a statement or produce a document that the RELA member believes may be false, RELA personnel may arrest them. No warrant is necessary. The same amendment gives effective legal immunity to RELA members so that they cannot be prosecuted for any act or omission done in good faith in their capacity as a RELA official.

Millions of undocumented migrant workers, asylum seekers, and refugees live in Malaysia without protection. As Malaysia makes no distinction between these three categories, all non-nationals without proper documentation, i.e. passports, visas, and work permits, are subject to arrest and often summary deportation. In conjunction with immigration and police officers, RELA members routinely round up suspected undocumented migrants. In January 2008 the government ceded to RELA members the responsibility for providing security in Malaysia's overcrowded and squalid immigration detention centers.

Migrant workers told Human Rights Watch researchers in May and June 2008 of a range of abuses that RELA members had perpetrated on them during the arrest process and in the immigration detention centers. Such abuses included physical assault, intimidation, threats, humiliating treatment, forced entry into living quarters, extortion, theft, restricted communications with friends or family, disregard and destruction of identity or residency papers, and sexual abuse.

An asylum seeker held in Lenggeng Immigration Detention Center in March-April 2008 told how he witnessed routine beatings late at night to randomly chosen inmates. He described how RELA personnel woke him late one night and took him to the yard with three others. For over an hour, eight or ten RELA personnel punched and kicked them on their backs and in the stomach about 20 or 30 times and slapped their faces until they bled from the mouth. The RELA personnel told the four detainees to slap each other, perform "squats," and tell jokes. If they refused, the RELA staff hit them some more.

Another detainee, hoping to be recognized as a refugee, told how RELA members treated them "like animals." In January-February 2008 when he was in Lenggeng Immigration Detention Center, he said RELA would enter the blocks where male detainees were sleeping, and kick, punch, and slap detainees for no apparent reason. He stated he was beaten three times—suffering bruises all over his body but particularly to his wrist from trying to block the blows.

Independent agencies visiting the detention centers say access is more difficult since RELA took over. At the same time, they report deterioration in the center conditions – more overcrowding, more complaints by detainees of maltreatment, poor food, insufficient water, and insufficient access to medical care.

Malaysian government officials, including the Minister of Home Affairs, the Director-General of RELA, and the head of the Immigration Department's Enforcement Division, have defended the behavior of RELA volunteers, denying allegations or attributing acts of abuse to "a few bad apples."

At present, RELA's existence and powers are, as noted, based on a series of emergency regulations that could be rescinded at any time. Instead of looking seriously at complaints against RELA and at calls to disband this paramilitary force, the Home Ministry is set on expanding its powers. The government plans to table a bill in parliament to turn RELA into a full-fledged enforcement department within the Home Ministry and to permit it to raise its own funds. RELA's director-general has noted that he would like to further expand RELA's authority to include prosecutorial and investigatory powers. However, he has said that he recognizes such an expansion would not be possible at present.

Migrant domestic workers

Approximately 300,000 to 400,000 migrant domestic workers, primarily from Indonesia, are employed in Malaysia. Excluded from key provisions in Malaysia's labor laws and subject to deception and onerous placement fees by recruitment agents, many of these workers confront a wide range of human rights abuses, including labor rights violations such as excessively long working hours, lack of rest days, and unpaid wages; violations of freedom of movement and freedom of association; and physical and sexual abuse. In some cases these situations amount to forced labor, trafficking, or servitude.

Nongovernmental organizations in Indonesia and Malaysia and the Indonesian embassy in Malaysia have received thousands of complaints from or on behalf of domestic workers in the past few years. Many more cases are likely unreported, given domestic workers' isolation in private homes, employers' ability to summarily have workers deported, and migrants' lack of information about their rights.

The 1955 Employment Act, which is the principal source of employment law in Malaysia, excludes "domestic servants" from provisions entitling employees to rest days, limited hours of work, public holidays, annual leave, sick leave, and maternity protections. Domestic workers are also excluded from termination, lay-off, and retirement benefits. Malaysia's 1952 Workman's Compensation Act, which provides a mechanism for

workers to receive compensation for workplace injuries and occupational illnesses, also excludes domestic workers.

Malaysia brokered a 2006 Memorandum of Understanding with Indonesia on domestic workers, yet this agreement failed to establish minimum labor protections or to guarantee domestic workers' rights to hold their own passports. Enforcement of the Immigration Act 2002 has involved periodic mass immigration sweeps resulting in the detention and deportation of tens of thousands of migrants.

Recommendations

Regarding arbitrary and preventative detention the Malaysian government should:

- Rescind the Internal Security Act. All persons arrested in Malaysia should be promptly brought before a judge, informed of the charges against them, and have prompt access to legal counsel and family members. They should be tried in conformity with international fair trial standards.
- Immediately charge or release all individuals currently held under the Internal Security Act. Assure that those charged have prompt access to legal counsel and family members and are tried in conformity with fair trial standards.
- Ratify core international human rights treaties, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Immediately begin the process of bringing domestic law into conformity with these international instruments.
- Revoke all emergency legislation that violates internationally protected human rights.

Regarding People's Volunteer Corps (RELA) and refugees the Malaysian government should:

- Abolish RELA, whose powers under law are inherently abusive. Only fully professional security forces, i.e. immigration, police and prison authorities, should be tasked with apprehension of undocumented migrants and the management and security of immigration detention centers.
- Repeal all regulations under which RELA was established and its powers expanded.
- Investigate allegations of abuses by RELA and ensure perpetrators of such abuses are held accountable.
- Ratify the Convention Relating to the Status of Refugees and its additional protocol and bring domestic law and policy into conformity with the convention.
- Ensure asylum seekers have the right to seek asylum and are treated humanely; do not deport persons holding UNHCR cards or who are facing persecution at home.

Regarding migrant domestic workers the Malaysian government should:

- Sign and ratify the International Covenant on the Protection of the Rights of All Migrant Workers and Members of their Families and bring domestic law and policy into conformity with the convention.
- Extend equal protection of the labor laws to domestic workers and create mechanisms for enforcement.
- Strengthen regulations governing recruitment agencies, with clear mechanisms to monitor and enforce these standards. Oversight bodies to protect domestic workers from abuse should enjoy powers to conduct unannounced inspections of recruitment agencies and the power to impose substantial penalties on agencies that abuse workers or otherwise violate standards.
- Institute screening procedures and support services at its borders, in cooperation with trafficking experts, Malaysia's Human Rights Commission (SUHAKAM), and nongovernmental organizations, to identify and assist trafficking victims and abused migrant workers.
- Ensure refugees, trafficked persons, and abused workers are not subject to penalties imposed under the Immigration Act 2002.
- Revoke the 2006 Memorandum of Understanding with Indonesia and conclude comprehensive labor agreements with all countries that send domestic workers to Malaysia. Such labor agreements should be designed to minimize the workers' vulnerability to trafficking and abuse, among other things by allowing workers to hold their own passports, ensuring workers minimum labor protections, and creating clear and accessible remedies for abuse.

ANNEX

Arbitrary and Preventative Detention

[Detained Without Trial](#)

Abuse of Internal Security Act Detainees in Malaysia

This 34-page report is based on interviews with family members of current ISA detainees, their lawyers and handwritten statements of ISA detainees. It documents the physical abuse, ill-treatment and humiliation of more than 25 detainees in Kamunting Detention Center in December 2004. None of these detainees have been charged or tried.

HRW Index No.: C1709

September 27, 2005 Report

[Malaysia: Hindu Rights Activists Detained](#)

Government Again Uses Internal Security Act to Detain Without Trial

The Malaysian government should order the immediate release of five Hindu Rights Action Force leaders detained under the Internal Security Act, Human Rights Watch said today. Malaysia's Internal Security Act (ISA), which permits indefinite detention without charge or trial, has long been used against peaceful political and rights activists.

December 18, 2007 Press Release

[Malaysia: Detainees Held Without Charge or Trial](#)

Extended Detention Without Trial Violates Due Process

The Malaysian government must either charge or release the scores of detainees held indefinitely under its draconian 1960 Internal Security Act (ISA), Human Rights Watch said today. Earlier this month, the authorities extended by two years the detention of eight men already held for four years without charge or trial.

June 20, 2006 Press Release

[In the Name of Security](#)

Counterterrorism and Human Rights Abuses Under Malaysia's Internal Security Act

This 60-page report documents a pattern of serious abuses against detainees, including beatings, burning with lit cigarettes, and psychological abuse. In addition to suffering from various forms of physical and psychological abuse, detainees held under the Internal Security Act (ISA) have been denied basic due process rights. The Malaysian authorities should allow independent monitors access to the nearly 100 men held under its Internal Security Act—some for nearly three years—on accusations of connections to terrorist groups.

HRW Index No.: C1607

May 25, 2004 Report

[Convicted Before Trial](#)

Indefinite Detention Under Malaysia's Emergency Ordinance

This 35-page report documents how the Malaysian government has detained criminal suspects indefinitely without charge or trial, subjected them to beatings and ill treatment while in detention, and rearrested them upon court-ordered release.

The Emergency Ordinance was enacted in 1969 as a “temporary measure” to respond to ethnic riots. But for nearly four decades the government has used the law to detain criminal suspects without trial for lengthy periods when it finds it difficult to prosecute them.

HRW Index No.: C1809

August 24, 2006 Report

[Malaysia: P.M's Visit Puts Spotlight on Detainee Abuse](#)

Malaysian Prime Minister Abdullah Badawi should declare an end to his country's practice of detaining suspects without trial as he conducts his first visit to the United States and Europe as head of the Malaysian government, Human Rights Watch urged. Abdullah will meet U.S. President George W. Bush in Washington today, French President Jacques Chirac on Wednesday and British Prime Minister Tony Blair on Friday.

July 19, 2004 Press Release

People's Volunteer Corps (Ikatan Relawan Rakyat or RELA)

[Malaysia: Disband Abusive Volunteer Corps](#)

Government Uses RELA Force on Migrant Workers

The Malaysian government should immediately take steps to dissolve the People's Volunteer Corps (Ikatan Relawan Rakyat or RELA), responsible for numerous cases of illegal detentions, unlawful use of force, and extortion, Human Rights Watch said today.

May 9, 2007 Press Release

Migrant domestic workers

[Help Wanted](#)

This 110-page report documents the abuse and exploitation that Indonesian female domestic workers experience at each step of the migration process. Most domestic workers are forbidden to leave their workplace and unknown numbers suffer psychological, physical, and sexual assault by labor agents and employers. Some migrant domestic workers are caught in situations of trafficking and forced labor: they are deceived about the conditions and type of work, confined in the workplace, and receive no salary at all.

HRW Index No.: C1609

July 22, 2004 Report

[Malaysia: Labor Accord Fails Indonesian Migrant Workers](#)

Bilateral Agreement Denies Basic Labor Protections, Excludes Domestic Workers

Malaysia and Indonesia have signed an agreement on labor migration that denies basic protections to migrant workers and excludes household workers, Human Rights Watch said today. Indonesian domestic workers, almost exclusively women, are at grave risk of abuse and exploitation in Malaysia.

May 11, 2004 Press Release