

Malaysia

Malaysia witnessed its first change in leadership in more than two decades when Abdullah Badawi took over from Prime Minister Mahathir Mohamad in October 2003. While there has been some progress since that time—noteworthy examples include the release from prison of former Deputy Prime Minister Anwar Ibrahim in September 2004 and the opening of a notorious detention facility to outside scrutiny in May 2004—significant obstacles remain in place.

Prominent human rights concerns in Malaysia include arbitrary detention of alleged militants under the Internal Security Act (ISA); restrictions on media freedom; constraints on judicial independence; and abuses against refugees and migrants.

Arbitrary Detention of Alleged Islamic Militants

The Malaysian government is holding more than eighty detainees under the ISA without charge or any type of judicial review. Over the years, the ISA has been used as a tool to crack down on political opposition and peaceful dissent. After September 11, 2001, the ISA took on new life with the arrests of scores of Islamists alleged to be connected to international terrorist groups. More than three years later, the Malaysian government has yet to publicly produce evidence against the detainees or bring any of them to trial.

Human Rights Watch investigations have revealed that police and security authorities subjected many of the detainees to serious abuses, including sexually humiliating interrogations, beatings, and sleep deprivation. In addition, the authorities have denied the detainees basic due process rights. In the first several weeks after their arrest, the detainees did not have access to lawyers and were threatened with punishment and indefinite incarceration for trying to legally challenge their detention.

Prime Minister Abdullah has taken some steps toward remedying the abuses under the ISA. For the first time in Malaysia's history, in May 2004, he permitted journalists to enter the notorious Kamunting Detention Center where ISA detainees are held. According to media reports, detainees spoke during the visits of abuses they had suffered after their arrest. The government announced that the Malaysian National Human Rights Commission (SUHAKAM) would conduct an investigation into allegations of abuse at the short-term detention centers where detainees typically are held for several weeks before being sent to Kamunting. At this writing, however, SUHAKAM had yet to report any findings. The government continues to bar independent monitoring or investigation of conditions inside Kamunting prison.

Restrictions on Media Freedom

The Malaysian media continues to face significant resistance and is muted in its criticism of government policy. The government maintains its control through a network of laws curbing free expression, as well as through direct day-to-day monitoring and control of the media.

Malysiakini, an independent news website, remains one of the few openly critical media outlets. While the new government of Prime Minister Abdullah has not indicated that it will impose new restrictions on the media, it has not repudiated the censorial policies of the Mahathir government.

Independence of the Judiciary

The Malaysian judiciary has struggled to regain its independence since the so-called “Operation Lalang” crisis of 1988, in which the government removed several senior judges deemed likely to challenge government policies. Time after time, in politically charged cases, Malaysia's judiciary has found in favor of the government, with judges aware that their careers would suffer if they ruled otherwise.

In September 2004, Malaysia’s highest court ordered the release of Anwar Ibrahim from prison, potentially signaling a transition toward greater judicial independence. The former Deputy Prime Minister had served a nine-year sentence when the court granted his appeal and overturned the sodomy conviction against him. Anwar’s trial had been widely criticized domestically and internationally for being politically motivated and marred by serious violations of due process.

The court will face another test of its independence in a politically charged case when it considers the appeal of human rights advocate Irene Fernandez. Fernandez was convicted in 2003 under Malaysia’s restrictive press laws for “maliciously publishing false news” and sentenced to a year in prison. Fernandez was arrested in 1995 when Tenaganita, a nongovernmental organization headed by Fernandez, published a report documenting beatings, sexual violence, and inadequate food and water in Malaysia’s immigration detention camps. Fernandez’ seven-year trial, the longest in Malaysian history, became a symbol of the Malaysian government’s hostile stance toward human rights defenders. At this writing, she was out on bail pending the outcome of her appeal.

Deportation of Refugees

In July 2004, the Malaysian Home Minister announced plans to round up and deport some 1.2 million undocumented migrant workers, the majority of whom are Indonesian. In 2002, a similar mass deportation program resulted in the death of dozens of Indonesian, including children, from dehydration and disease while stranded in transit areas waiting to find a way home.

Among those likely to be sent back to Indonesia are some ten thousand refugees from the war-torn Aceh region of Indonesia. These refugees are fleeing a brutal conflict marked by routine, grave human rights violations (*see* Indonesia), only to encounter further abuse in Malaysia, where they are denied status as refugees, abused by Malaysia police, and then often sent back to Indonesia where their lives are at risk.

Malaysia is not a signatory to the 1951 Convention on the Status of Refugees, and does not distinguish between Acehnese refugees and other illegal immigrants, even though the United Nations High Commissioner of Refugees (UNHCR) has designated all Acehnese refugees to be “persons of concern.” In 2003, Malaysia forcibly returned thousands of Acehnese refugees; such returns continued in 2004.

Abuse of Migrant Workers

Because of its economic success, Malaysia has long attracted migrants from across Asia. While it relies heavily each year on more than two million migrant workers from Indonesia, Bangladesh, the Philippines, and India to meet its labor demands, Malaysia fails to protect their basic rights.

Human Rights Watch research in 2004 focused on conditions faced by Indonesian women and girls who work as domestic workers in Malaysia. They typically work sixteen to eighteen hour days, seven days a week, without any holidays, and often are forbidden from leaving the houses where they work, even when not on duty. Some workers confront physical, verbal, and sexual abuse from employers and labor agents.

Indonesian domestic workers earn U.S.\$93-105 per month, less than half the amount that Filipina domestic workers and other low-wage workers make. Employers often fail to make complete payments or to pay at all. In the worst cases, deceived about the conditions and type of work, confined at the workplace, and receiving no salary, Indonesian women are victims of trafficking and forced labor.

The Malaysian government’s inadequate monitoring of workplace conditions and profit-motivated labor agencies prevent many domestic workers from reporting abuses or seeking redress through the Malaysian justice system. Labor agencies do not uniformly provide domestic workers with information about their rights or, in cases of abuse, access to Malaysian and Indonesian authorities who could assist them with legal, health, and other support services. In many cases, labor agents are guilty of abuses themselves or actively obstruct domestic workers’ access to information or help.

Indonesian domestic workers are excluded from several legal protections guaranteed other workers by Malaysia’s employment laws and previous bilateral labor agreements with Indonesia. For example, they are excluded from section XII of Malaysia’s Employment Act of 1955, which would otherwise entitle them to one day of rest per week, and limit work hours to eight hours per day and forty-eight hours per week. Malaysia’s immigration laws and policies often prevent domestic workers from escaping abusive situations or seeking help from Malaysian authorities. Domestic workers who escape from abusive situations lose their legal status once they have left their employer’s home, and may be classified as illegal immigrants, detained, and deported, instead of receiving access to help.

The upcoming deportation of over one million undocumented workers, and the proposal of enlisting help from volunteers to carry out immigration raids, only increases the likelihood that abused domestic

workers, rather than being identified as individuals in need of protection and support, will be summarily deported.

Key International Actors

The September 11 attacks on the United States dramatically altered the relationship between the U.S. and Malaysia. Previously, the U.S. had been publicly critical of Malaysia's human rights record in general, and its misuse of the ISA in particular. But the U.S. "war on terror" led the U.S. to change its course and dramatically tone down its criticism.

Malaysia has cooperated extensively with the U.S. in counterterrorism efforts, regularly sharing intelligence information and offering access to ISA prisoners for interrogations. The countries collaborated on creation of the Southeast Asia Regional Center for Counter Terrorism, established in Malaysia in July 2003 with the assistance and training of the U.S. As a result of this cooperation, Malaysian-U.S. relations have improved significantly, and the U.S. has shown little desire to criticize Malaysia's human rights record. The U.S. practice indefinitely detaining terror suspects without charge or trial in the United States, at Guantanamo Bay, and elsewhere in the world, has weakened its desire, as well as its ability, to engage in effective human rights advocacy on behalf of administrative detainees in Malaysia.

In 2004, the Association of Southeast Asian Nations (ASEAN), of which Malaysia remains an influential member, assumed an increasingly prominent role in regional affairs. ASEAN facilitated trade negotiations among member states and between member states and non-member countries such as India and Japan, and, in September, provided a forum for member states to discuss increased cooperation and information sharing on security issues. Despite its increasing importance, ASEAN has failed to make human rights a priority, remaining silent on issues such as Malaysia's denial of due process rights to ISA detainees.