

Malaysia

Malaysia made only marginal progress on human rights in 2005. Although the government of Prime Minister Abdullah Badawi publicized the findings and 125 recommendations of the government-appointed Royal Commission to examine police abuse, and prosecuted two Malaysians for abusing Indonesian domestic workers, significant obstacles to human rights remain. These include the use of antiquated preventive detention laws that allow for arbitrary detention without charge or trial of persons who are a threat to national security and public order, restrictions on religious freedom, and abuses against refugees and migrants.

Detention without Trial

Under the Internal Security Act (ISA), the government is holding over one hundred detainees without charge or judicial review in violation of international standards prohibiting arbitrary detention and the right to a prompt and fair trial. The government has used the ISA to silence critics and political opponents of the ruling United Malay National Organization (UMNO). After September 11, 2001, the ISA was used to arrest people accused of associating with militant Islamist groups. In 2005 it was also used to detain individuals allegedly involved in counterfeiting and forging documents.

This unchecked system of detention is conducive to abuse of detainees. On December 8-9, 2004, prison guards beat and humiliated more than twenty-five ISA detainees, some of whom have been detained for three years, in Kamunting Detention Center in Perak state. The beatings occurred after detainees in one cellblock resisted the unannounced search of their cells conducted as part of an official effort to impose a more rigid disciplinary regime, and the beatings extended to detainees in cellblocks that did not resist the inspection. No official investigation into the incident is known to have taken place, and no personnel involved in the abuse have been disciplined.

In September 2005, nine ISA detainees who had been in detention for four years for alleged ties with Islamist militant groups had their detention renewed for another two years. Subsequently, in November 2005, three of them were released. One was released unconditionally, whereas two remain under a restricted residence order requiring them to report to the police once a week and forbidding them to leave their residential districts.

Malaysia's use of preventive detention laws extends to criminal suspects whom the police find difficult to prosecute due to lack of evidence. Under the 1969 Emergency Public Order and Prevention of Crime Ordinance (Emergency Ordinance) the government is authorized to detain individuals who are a threat to public order without charge or trial. A detainee is initially held incommunicado for sixty days and

denied access to counsel. The minister of internal security may then order such a person to be detained for two years, renewable indefinitely. Demonstrating how government authorities can show scant respect for judicial orders, in May 2005 forty-eight out of fifty-six Emergency Ordinance detainees released on *habeas corpus* petitions were rearrested, on orders of the Ministry of Internal Security, within days of their release, on the same charges and without any additional evidence against them.

More than one thousand persons are detained under the Emergency Ordinance, at the Simpang Renggam Rehabilitation Center in Johor state. In November 2004 over four hundred of these detainees began a hunger strike to protest the conditions and the length of their detention. The Malaysian Bar Council visited the detention center that month and found overcrowded cells and detainees in need of immediate medical attention. In June 2005, the Parliamentary Caucus on Human Rights—comprised of members of parliament from the ruling party and the opposition—visited Simpang Renggam and also concluded that the detention center was overcrowded and unhealthy. Human Rights Watch was denied access to the facility, but investigations through interviews with former detainees revealed inhumane conditions of confinement, including overcrowded cells, inedible food infested with worms, limited access to fresh air or exercise, and unhygienic living conditions.

The Royal Commission recommended the repeal of the Emergency Ordinance because the “law had outlived its purpose” and had “facilitated the abuse of fundamental liberties,” namely, deprivation of liberty without trial.

Restrictions on Religious Belief

Islam is the official religion of Malaysia, and ethnic Malays by definition must be Muslim. Faiths of other ethnic groups are protected under the constitution. Under Shar’ia law, applicable only to Muslims and enforced at the state level, Malays wishing to renounce Islam (apostasy) to profess other faiths or beliefs, and Muslims who hold beliefs that “deviate” from Sunni Islam, are subject to criminal sanctions.

In July 2005 a mob of masked persons launched a pre-dawn attack on a six-acre commune of the Sky Kingdom religious sect in Terengganu state. The commune’s inhabitants were predominantly Malaysian followers of Ayah Pin (Ariffin Muhammad), who claims to be the reincarnation of the holy figures of Buddhism, Christianity, Hinduism and Islam. The mob damaged religious structures, homes, and vehicles. Malaysian police failed to arrest anyone involved in the attack.

In August 2005 forty-five members of the Sky Kingdom were charged with violating Islamic precepts under section 10 of the Terengganu Shariah Criminal Offenses Enactment of 2001. If convicted, they could be fined and jailed for up to two years.

Crackdown on Migrants and Refugees

In March 2005, the Malaysian government began expulsions under “Operation Firm,” following through on plans announced in 2004 to round up and deport some 1.2 million undocumented migrant workers.

Preceding this was a four-month amnesty during which four hundred thousand undocumented migrants returned home without being penalized under the immigration law. At the time of this writing, more than nine thousand undocumented migrants, mostly Indonesians who did not repatriate, are being held in detention centers awaiting trial for immigration violations, which are punishable by caning, heavy fines, or imprisonment.

Refugees, abused migrant workers, and trafficking victims were also rounded up during “Operation Firm.” At the request of the United Nations High Commissioner for Refugees (UNHCR), Malaysian authorities in May 2005 released over five hundred refugees and persons of concern who had been arrested under the 2002 Immigration Act. As of August 2005, 973 persons of concern were detained in prison and immigration detention centers, and 222 of them were being prosecuted for immigration violations.

The exodus of undocumented workers from Malaysia created labor shortages in the agricultural, construction, manufacturing, and service sectors, forcing the government to import workers from Burma, India, Pakistan, and Sri Lanka. In May 2005 the government allowed formerly illegal workers from Indonesia and other countries who had left under the amnesty to return and seek work. In July the minister of home affairs announced plans to absorb sixty thousand asylum seekers, mainly Rohingyas and Chin from Burma, Achenese from Indonesia, and Moro from the Philippines, into the labor force.

Malaysia is not a signatory to the 1951 Convention on the Status of Refugees, and in 2005 it deported over twenty Rohingya refugees to Burma. In contrast, it has allowed 131 Thai Muslims fleeing Thailand’s southern Narathiwat province, which has been gripped with violence, to remain in Malaysia since August 2005. The Malaysian government has stated that it will not repatriate them unless it receives assurances from the Thai government that they will not be harmed.

Migrant Domestic Workers

In 2004 Human Rights Watch documented pervasive human rights abuses against domestic workers, including excessively long work hours, lack of rest days, unpaid wages, and physical and sexual abuse. Migrant domestic workers continue to be excluded from Malaysia’s Employment Act of 1955, which would entitle them to one rest day per week and an eight-hour work day. In May 2004, the Malaysian government signed a Memorandum of Understanding (MOU) with Indonesia regarding migrant workers, but excluded domestic workers. Despite assurances by the governments in 2004 that they would create an MOU within three months to provide greater legal protection to domestic workers, they have yet to do so.

In June 2005 Malaysian courts sentenced a Malaysian man to twenty years in jail for beating to death his Indonesian domestic worker, and another employer received a twelve-year prison term for raping his Indonesian domestic worker.

Human Rights Defenders

Malaysian human rights defenders operate with little intimidation from the Malaysian government. However, human rights advocate Irene Fernandez continued to be on bail pending the outcome of her appeal against a 2003 conviction under Malaysia's restrictive press laws for "maliciously publishing false news," for which she had been sentenced to a year in prison. Fernandez had been arrested in 1995 when Tenaganita, a nongovernmental organization she headed, published a report documenting beatings, sexual violence, and inadequate food and water in Malaysia's immigration detention camps. Fernandez was awarded the 2005 Right Livelihood Awards, known as the alternative Nobels.

Key International Actors

The United States, once a critic of Malaysia's misuse of the ISA, has stopped voicing its disapproval. In June 2005 Malaysian Inspector General of Police Tun Sri Mohamed Bakri Omar, in asserting that governments have valid grounds to enact laws that restrict human rights, cited the U.S. Patriot Act and the United Kingdom's Prevention of Terrorism Act 2005 as justifications for Malaysia's continuing to detain individuals indefinitely without charge. Malaysian cabinet minister Datuk Mohamed Nazri told Human Rights Watch in July 2005 that the U.S. no longer criticizes Malaysia's use of the ISA because of U.S. detention practices at Guantánamo Bay.