

8 September 2008

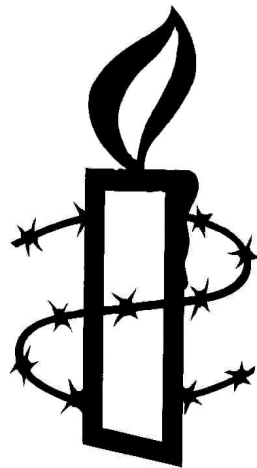
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Malaysia

Submission to the UN Universal Periodic Review

**Fourth session of the UPR Working Group of
the Human Rights Council
February 2009**



Executive summary

In this submission, Amnesty International provides information under sections B, C and D as stipulated in the General Guidelines for the Preparation of Information under the Universal Periodic Review:¹

Under section B, Amnesty International raises concerns, *inter alia*, about legislation that provides for arbitrary arrest and unlawful detention without trial.

In section C, Amnesty International describes concerns over the failure of the state to protect human rights through the curtailment of peaceful public demonstrations and arrests of government critics; lack of legislation to advance human rights-based police practices; torture and other ill-treatment by police; and the death penalty.

In section D, Amnesty International makes a number of recommendations for action by the government in the areas of concerns listed.

¹ Contained in Human Rights Council Decision 6/102, Follow-up to Human Rights Council resolution 5/1, section I adopted 27 September 2007.

Malaysia

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Third session of the UPR Working Group, December 2008

B. Normative and institutional framework of the State

Reforming the National Human Rights Institution

Almost ten years after the creation of Suruhanjaya Hak Asasi Malaysia (SUHAKAM) through the Human Rights Commission of Malaysia Act 1999, the national human rights institution (NHRI) faces a possible status downgrade from “A” to “B” by the International Coordinating Committee of National Human Rights Institutions after failing to comply with the Paris Principles for an independent and effective NHRI. If downgraded, SUHAKAM will lose its right to participate in the regular sessions of the UN Human Rights Council and will be relegated as a non-voting member of the Asia Pacific Forum on Human Rights Institutions. Civil Society has criticised SUHAKAM for being limited to submitting its opinions and reports to the government and not having any enforcement authority to protect human rights. The institution continues to undertake a number of public inquiries on certain cases and it produces an annual report; however, these are not tabled in the Parliament. On several occasions, SUHAKAM has refused to hold public inquiries on allegations of human rights violations, because its mandate restricts it from doing so when a case has been brought to court.

Infringements on human rights in national legislation

The government routinely uses administrative detention laws and other restrictive legislation to deny individuals freedom from arbitrary detention, the right to a fair trial and other human rights. These include the Internal Security Act 1960 (ISA), the Emergency Public Order Preventive Ordinance 1969 (EO), the Dangerous Drugs (Special Preventive Measures) Act (DDA) 1985, the Restricted Residence Act 1933 and other restrictive laws such as the Sedition Act 1948 (revised 1969), the Printing Presses and Publications Act 1984 (PPPA), and the Official Secrets Act 1989 (OSA).

The government continues to use or threaten to use the Internal Security Act 1960 (ISA) against perceived critics of the government, individuals who distribute alleged “false news” through short messaging service (SMS), persons described as suspected foreign agents and people allegedly involved in “terrorist-linked” activities. The ISA allows the police to arrest individuals they believe have acted, or are “about to” or “likely to” act in a way that would threaten Malaysian security, “essential services” or “economic life” (Article 73 (1)b). It allows for detention without trial for up to two years, renewable indefinitely, without the detainee being charged with a crime or tried in a court of law. It limits the political space for important debates on issues of economic policy, corruption and other social challenges. The government has extended the use of the ISA to cover criminal activities such as human trafficking, currency counterfeiting, forgery of passports and identity cards.

Other administrative detention laws such as the Emergency Ordinance (Public Order and Prevention of Crime) 1969 (EO) and the Dangerous Drugs (Special Preventive Measures) Act 1985 (DDA) are used extensively to arrest and detain without trial suspected criminals.

Under the ISA, EO, and DDA, police are empowered to arrest without a warrant any person they suspect of being an actual or potential threat to national security or public order and to detain them *incommunicado* for

up to 60 days for “investigation”. Based on police investigation reports, the Internal Security Minister is empowered to issue two-year detention orders, renewable indefinitely, without judicial review.

Malaysian human rights organization Suaram recorded an estimated 1,000 individuals detained under the EO, including minors. The Internal Security Ministry estimated 1,531 persons to be detained under the DDA in the same year.² As of September 2008, there are approximately 65 individuals detained under the ISA, including foreign nationals.

There are further laws which restrict the rights to freedom of expression. In 1987, the government amended the Printing Press and Publications Act, granting the Minister of Home Affairs absolute discretion, not subject to judicial review, to ban or restrict ‘undesirable’ publications. Permits can be revoked anytime by the Minister, whose decisions cannot be challenged in a court of law.

Section 3(1)(A) of the Sedition Act of 1948 (revised 1969) defines “seditious tendency” as “... excit[ing] disaffection against any Ruler or against any government”, “promot[ing] feelings of ill-will and hostility between different races or classes of the population of Malaysia” or “question any matter, right, status, position, privilege, sovereignty or prerogative established or protected by” the Federal Constitution. Amnesty International is concerned that these vaguely worded provisions can be and are used to suppress freedom of expression, including by arresting persons solely for criticizing the government and its policies.

Failure to address lack of police accountability

In 2005, the government established an independent Royal Commission to Enhance the Operation and Management of the Royal Malaysia Police, as a response to public concern at reports that some police officers had been responsible for persistent patterns of human rights violations, including unlawful killings and torture or other ill-treatment of criminal suspects. The Royal Commission made 125 recommendations focusing on three areas of reform—crime reduction, eradicating corruption and instilling human rights-based policing.

The Royal Commission proposed the establishment of an Independent Police Complaints and Misconduct Commission (IPCMC) to monitor and deal with complaints regarding the police. Rather than acting on this recommendation, the government proposed a Special Complaints Commission (SCC), but unlike the proposed IPCMC, the SCC can only receive complaints, and will not be authorised to inquire, investigate and take action to prevent police corruption and misconduct. The proposed SCC is also seen as lacking independence as the Inspector-General of Police would sit as a permanent member of the Commission - in effect, submissions will be directed to the police to investigate complaints made against themselves. As of August 2008, two years after the Royal Commission’s set deadline for the implementation of its recommendation to establish an oversight body, Parliament has set aside the SCC bill, and no further proposal has been made.

The Royal Commission noted that the Special Branch (SB) of the Royal Malaysian Police operates with a high degree of secrecy and confidentiality, amidst allegations that SB officers tortured and otherwise ill-treated ISA detainees. The Commission recommended that in order to make the SB more accountable, its responsibilities be clearly defined in law. Amnesty International has not received information as to steps taken by the government to improve the accountability of the SB.

The death penalty

Malaysian law provides for capital punishment for a wide variety of crimes. Some crimes carry a mandatory death sentence, including unauthorized possession of firearms, ammunitions or explosives; drug-trafficking; discharging a firearm with the intention to kill or hurt in a scheduled offence; and murder. The carrying out of the death sentences is shrouded in secrecy, as dates of executions are not reported and details of those who

² Malaysia Human Rights Report 2007, Civil and Political Rights, Suara Rakyat Malaysia (Suaram), 2008.

have been or will be executed are not made public. In January 2008, Malaysians Against Death Penalty estimated the number of inmates on death row in Malaysia to be as high as 300, mostly for drug offences.³

C. Promotion and protection of human rights on the ground

Restrictions on the rights to freedom of expression and assembly

An example of the government's use of the ISA to deny the rights of freedom of expression and peaceful assembly is the arrest and detention of five supporters of the Hindu Rights Action Force (HINDRAF) who expressed concerns about the marginalization of Malaysians of South Asian ethnicity. They organized a series of gatherings which culminated in a demonstration of some 20,000 people in Kuala Lumpur on 25 November 2007. The government accused them of being "leaders and legal advisers of an organisation which affects national security of Malaysia and through having illegal assemblies [that]... incite racial sentiment and hatred towards government among Indians,"; however, no charges have been pressed against them. The five men, arrested in December 2007, continue to be held under the ISA in Kamunting Detention Centre.

In 2000, then Prime Minister Mahathir Mohamad was quoted in the media as saying, "...the internet should be free... and we are not going to interfere".⁴ During the period in review, however, the government arrested online social commentators or bloggers not only under civil and criminal defamation suits, but also under the Official Secrets Act (OSA) and the Sedition Act. In July 2007, blogger and opposition party staff member Nathaniel Tan was arrested by the Special Branch and detained for four days under the OSA, on allegations of corruption made by an anonymous commentator on his blog based on unnamed "official secret" documents. In May 2008, editor of the Malaysia Today website Raja Petra Raja Kamarudin was arrested under the Sedition Act and released on bail pending trial. He was arrested for allegedly implying that the Deputy Prime Minister Najib Razak was involved in the killing of a young Mongolian woman.

During 2007, the police violently dispersed a number of peaceful gatherings. On 8 September 2007, at a public meeting on free and fair elections in Batu Buruk, Terengganu State, a police officer was reported to have shot using live ammunition at the unarmed crowd, hitting one man in the chest, and another in the neck, and causing serious injuries to both. Prior to this, violence escalated when the police used teargas and water cannons to disperse the crowd. The two men injured by gunshot were charged in court for participating in an illegal assembly and for causing a policeman to be hurt.

The police again violently suppressed a protest march of some 20,000 Malaysians of South Asian ethnicity led by HINDRAF on 25 November in Kuala Lumpur. Police fired at least 200 tear gas canisters at the crowd and used chemical-laced water canons, causing hundreds of civilians to be injured as they fled.

Torture and other ill-treatment by police

The period in review saw incidents of torture and other ill-treatment by police during arrest and interrogation. These incidents involve mainly plain-clothes police officers of the Special Branch and the Federal Reserve Unit who appear to act with impunity.

On 28 July 2007, Sanjeev Kumar, a healthy 24-year old mechanic was arrested under the ISA by 20-25 members of the Special Branch. During his 60-day investigation period, police officers reportedly beat him repeatedly, stepped on his back and hit his head with a plastic bottle filled with water. On several instances, a police officer made him drink his own urine and inserted a mop into his anus. During this time, he did not have access to a lawyer, a court or his family. When he was transferred to Kamunting Detention Centre on 21 September, he reportedly began suffering from headaches and numbness in his left hand. He is now paralysed on the left side and confined to a wheelchair. He continues to be detained under the ISA.

³ Inter Press Service News Agency, "Death Penalty: Beijing sentence shakes Malaysia's own policy", 23 January 2008.

⁴ Malaysia Human Rights Report 2007, Civil and Political Rights, Suara Rakyat Malaysia (Suaram), 2008.

On 9 May 2008, security personnel believed to belong to the Federal Reserve Unit (FRU) kicked and beat Member of Parliament Lim Lip Eng after he attempted to mediate in a stand-off between police and residents of Bandar Mahkota Cheras in a dispute on road access. Police were about to disperse the crowd using water cannons when Lim stood in front of the water cannon truck. Police then sprayed his face and eyes with pepper spray at close range, as a result of which he required medical attention.

The government has also authorised an estimated hundreds of thousands of armed civilian volunteers, a group called the Ikatan Relawan Rakyat (Rela), to help maintain public order and arrest undocumented migrants, including refugees recognized by the United Nations High Commissioner for Refugees (UNHCR). Rela volunteers have repeatedly been accused by local and international non-governmental organizations of employing unnecessary force and illegal policing methods in the course of their work.

Discrimination based on sexual orientation or identity

Sections 377a and 377b of the Penal Code, which detail provisions on “carnal intercourse against the order of nature”, have created an environment that allows for discrimination against lesbians, gays, bisexuals and transsexuals, and have been used by the government to silence political dissent.

Section 377b details the possible punishment for “unnatural” consensual sex, which includes whipping and imprisonment of up to twenty years. On 7 August 2008, former Deputy Prime Minister and current opposition leader Anwar Ibrahim was charged under section 377b of the Penal Code, which his lawyers referred to as “consensual sodomy”, after a male aide filed a sodomy complaint against him. Previously in September 1998, Anwar Ibrahim was charged with five counts of “consensual sodomy”. He was convicted and spent six years in prison for corruption and sodomy until his release in September 2004 when the sodomy charges were overturned by the Federal Court.

D. Recommendations for action by the State under review

Malaysia has yet to ratify key human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Malaysia has also not ratified the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the 1951 Convention relating to refugees, nor its 1967 Protocol. Malaysia has also yet to ratify the Rome Statute of the International Criminal Court.

Malaysia has ratified the Convention on the Rights of the Child (CRC), but with reservations to Articles 1, 2, 7, 13, 14, 15, 28, paragraph 1 (a) and 37, even after the Committee on the Rights of the Child had asked Malaysia to withdraw them. Malaysia has yet to implement recommendations of the Committee to provide a schedule and allocate resources to fully implement its second National Plan of Action at all levels, to prevent and combat discrimination against children belonging to vulnerable groups. Malaysia has also ratified the Convention on the Elimination of all Forms of Discrimination against Women, but with reservations to Articles 5(a), 7(b), 9(2), 16(1)(a), (c), (f), (g), and 16(2).

In order to uphold its commitment to human rights protection, including as a member of the Human Rights Council, Amnesty International calls on the government to:

Protection of human rights in national legislation

Repeal or reform the Internal Security Act, the Emergency Public Order Preventive Ordinance, and the Dangerous Drugs (Special Preventive Measures) Act 1985 to ensure that they meet international human rights standards;

In particular, repeal all provisions allowing administrative detention in the name of “national security” and on similar grounds;

Amend the Sedition Act to ensure that it conforms with international human rights standards, and cannot be used to violate the right to freedom of expression;

Review and reform the Printing Press and Publications Act and the Official Secrets Act to ensure that clauses containing vague or ambiguous language do not curtail the rights to freedom of the press and freedom of information.

Amend the Police Act to ensure that its 1987 amendments, which require police permits for all public assemblies of three or more persons, do not violate the right to peaceful assembly.

Reform of national human rights institution

Amend Section 2 of Act 597 which created the National Human Rights Commission of Malaysia, to widen SUHAKAM's jurisdiction to cover all rights provided for in the UDHR;

Ensure, through legislation, the independence of the National Human Rights Commission in accordance with the Paris Principles.

The death penalty

Immediately impose a moratorium on executions, with a view to complete abolition, in line with the 18 December 2007 UN General Assembly resolution 62/149;

Lift the veil of secrecy surrounding the death penalty, including by making public detailed information about the imposition and carrying out of executions, and about those being executed.

Policing Reform, torture and cruel, inhuman or degrading treatment or punishment

Implement in full the recommendations regarding human rights protection made by the Royal Commission to Enhance the Operation and Management of the Royal Malaysia Police, including by establishing an independent and impartial police oversight body and clearly defining the role of the Police Special Branch;

Abide by the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, including the use of force only as a last resort, subject to necessity and proportionality;

Ensure the protection of the rights of detainees against human rights violations, in particular torture and other ill-treatment, by implementing fully international legal and other standards on prevention of all such acts, investigation into violations, prosecution of suspected perpetrators (including those with command responsibility) and reparations for victims;

Discrimination based on sexual orientation or identity

Repeal or reform Articles 377A and 377B of the Penal Code, so as to ensure that they do not discriminate against lesbians, gays, bisexuals and transsexuals.

Appendix: Amnesty International documents for further reference⁵

Malaysia: Human Rights Undermined (AI Index: ASA 28/06/99)

Malaysia: Towards Human Rights-Based Policing (AI Index: ASA 28/001/05)

Malaysia: Human Rights at Risk in Mass Deportation of Undocumented Migrants (AI Index: ASA 28/008/2004)

Malaysia: Respect Rights to the Freedom of Peaceful Assembly (AI Index: ASA 28/005/2007)

Malaysia: Charges against Anwar politically motivated (press release 6 August 2008)

Malaysia: Internal Security Act used to punish human rights activists (press release 4 September 2008)

Migrants Rights are Human Rights (AI Campaign 18 December 2007)

Malaysia: Not welcome here: 'Vigilante' force targets migrants in Malaysia (AI Index: ASA 28/007/2007)

Malaysia: Detention without trial/Health Concern (AI Urgent Action 23 April 2008 AI Index: ASA 28/002/2008)

Malaysia: Health Concern/Torture/III-Treatment (AI Urgent Action 8 September 2008 AI Index: ASA/28/004/2008)

⁵ These documents are available at: <http://www.amnesty.org/en/region/asia-and-pacific/south-east-asia/malaysia>