

In the Name of Security: Counterterrorism and Human Rights Abuses Under Malaysia's Internal Security Act

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I. Summary

To bring these terrorists through normal court procedures would have entailed adducing proper evidence, which would have been difficult to obtain.

—Malaysian Prime Minister Mahathir, October 2001

Nearly one hundred men currently languish in Malaysia's Kamunting detention center—some have been there for more than two years—without being charged with a crime or any prospect of a trial. Almost all are accused of being involved with organizations implicated in terrorist activity.

While in detention, detainees report that they have been mistreated, some subjected to sexual humiliation, others slapped and kicked. All were held incommunicado for several weeks after they were first detained. Family members report that detainees showed signs of more extensive physical abuse when they first were able to meet with them.

These men are being held under Malaysia's Internal Security Act (ISA), a form of administrative detention that permits the government to detain individuals without charge or trial, denying them even the most basic due process rights. The ISA allows the government to hold detainees for two years after arrest, and then renew this period indefinitely without meaningful judicial approval or scrutiny.

The ISA has long been used as a blunt tool to stifle political opposition to the government. In 1987, then Prime Minister Mahathir used the ISA to save his own political career, ordering the arrests of scores of politicians in the wake of a vote-rigging scandal that had placed his continued tenure as prime minister in serious jeopardy. In 1998, former Deputy Prime Minister Anwar Ibrahim initially was held under the ISA after his falling out with Mahathir. In 2001, the government detained under the ISA ten prominent political activists who planned protests over the continued detention of Anwar, who by that time was serving a fifteen-year sentence after trials marred by serious rights violations.

The very existence of the ISA and its draconian provisions has acted as a crude form of censorship of political activities and expression. Its past use as a political weapon by the government casts doubt on the Malaysian government's claim that the ISA is now being used as a necessary measure in the "war on terror" and not for political purposes.

Malaysian human rights advocates have for many years campaigned for the repeal of the ISA. In the past they could rely on support from the United States to challenge the government's use of the ISA. Since the September 11, 2001 attacks on the United States, however, the U.S government has not only been conspicuously quiet about the ISA, but has even expressed support for its use against terrorist suspects.

As made clear by the scandal surrounding abuse of detainees by United States forces in Iraq, a story that was breaking as this report was being finalized, abuses flourish in

detention facilities where strong pressure on interrogators to come up with information is coupled with weak or nonexistent oversight mechanisms. Malaysia's ISA, a law that allows individuals to disappear into a legal black hole and emerge only at the whim of those in power, invites such abuse.

This report—based largely on interviews with recently released ISA detainees, family members of detainees, lawyers, and aid providers, as well as affidavits written by detainees and smuggled out of Kamunting—documents violations of the rights of alleged militants held under the ISA since August 2001.¹ Because access is severely limited, the extent of abuse is unknown. It is clear, however, that detainees have been abused during interrogation, that they have been subjected to prolonged detention without trial, and that they have been regularly denied access to counsel.

This report also details attempts by authorities to manipulate detainees and their families so that they do not avail themselves of what limited judicial remedies are available. Detainees were able to meet with lawyers and family members only under constrained circumstances. Prior to the meetings, detainees were told to urge their wives and children not to get a lawyer or to talk to the press or human rights groups. They and their families were warned that making legal challenges to their detention would result in longer and harsher sentences and conditions of detention. When they ignored these warnings, prison officials either hindered or completely blocked meetings between detainees and their lawyers. Fearful of damaging their prospects for an early release, many detainees did not contact lawyers, delaying by several months any legal challenge to their own detention.

Neither the men nor their families have any idea when they will be released. While the detainees fight for their day in court, they have already been tried and convicted in the press. Because much of the Malaysian media is heavily controlled by the government, Malaysian newspapers have, almost without exception, reported on the detentions as though all of the allegations made by the government have already been proven, and have often failed to print information or allegations that cast doubt on the cases or present government actions in a negative light.

Who They Are

The current wave of ISA arrests began in August 2001, when the Malaysian government detained a group of ten alleged militants. The Malaysian government claimed that the detainees were members of a group it called *Kumpulan Militan Malaysia* (KMM, or Malaysian Militant Group), which according to the Malaysian authorities wants to overthrow the government and set up an Islamic state. Eight of the ten men arrested were members of *Parti Islam SeMalaysia* (PAS, or Islamic Party of Malaysia), Malaysia's largest Islamist opposition party. Those arrested included Nik Adli, a PAS member and

¹ This report does not address the handful of individuals detained under the ISA on allegations of involvement with Shi'a Muslim religious groups, smuggling, or counterfeiting, all cause for ISA detentions in recent years. Given the consistency of treatment of individuals detained under the ISA, however, many of the concerns raised in this report would also apply to these other cases. Because of concerns for the safety and liberty of individuals who cooperated with Human Rights Watch, we have withheld the names of some interviewees.

the son of senior PAS cleric Nik Aziz, PAS youth wing leader Noorashid Sakip, and PAS Youth committee member Mohamed Lothfi Ariffin. The detainees were held without charge and, under the ISA, were denied access to counsel. Domestic and international observers criticized the arrests as politically motivated. They were seen as the latest attempt by then-Prime Minister Mahathir Mohamed to weaken the surging PAS in the lead-up to regional elections in 2002 by linking it to radical Islam. In the wake of the arrests, the U.S. government criticized the Malaysian government for once again detaining individuals without trial under the ISA. But the U.S. stance changed after September 11, 2001, when it became supportive of the use of the ISA against alleged militants.

The pace of arrests increased after the attacks on the United States on September 11, 2001. In October 2001, the Malaysian government detained an additional six individuals, five of whom were teachers in religious schools, on the grounds that they too were members of KMM.

Ultimately, more than one hundred individuals have been detained on terror-related grounds under the ISA. A handful have been released, leaving a total of roughly ninety in custody at the time of writing. Of these, approximately seventy are alleged to be members of *Jemaah Islamiyah* (JI, or Islamic Community), a militant group purportedly seeking to create an Islamic state encompassing Malaysia, Indonesia, and parts of the southern Philippines. JI has been accused of carrying out the bombings in Bali and Jakarta in Indonesia in 2002 and 2003, which killed more than two hundred people. Seventeen other detainees are alleged to be members of KMM. One alleged member of the Filipino group Abu Sayyaf, implicated in bombings in the Philippines, is being held at Kamunting as well.

Five detainees are members of the “Karachi 13.” Pakistani authorities detained thirteen young men and boys, the youngest of whom were under sixteen at the time of arrest, in Karachi, Pakistan, in September 2003. They were not alleged to have engaged in any illegal activity, but were arrested on the claim that they were being trained to engage in future terrorist activities. They were arrested by Pakistani security forces, held incommunicado and interrogated by Pakistani and U.S. security personnel, and then shipped to Malaysia. No charges have been brought against any of them. Without judicial recourse, the future of these young men, like the other ISA detainees, is now subject to the whims of the executive branch of the Malaysian government.

Human Rights Watch recognizes the obligations of the Malaysian government to protect its population from terrorist attack and to bring those responsible for engaging in such attacks to justice. There are serious and credible allegations that some of the September 11th hijackers used Malaysia as a transit point and that some of the alleged perpetrators of the bomb attacks in Bali and Jakarta spent considerable time in the country.

But the Malaysian government has yet to demonstrate that any of the individuals it has detained have actually engaged in any illegal activity. More importantly, it has not shown that the investigation, arrest, and detention of alleged militants could not be handled through normal criminal procedures that include proper procedural safeguards to

protect the rights of the accused. Without these safeguards, the Malaysian government cannot be sure that all of the men it has captured are in fact dangerous individuals planning to carry out attacks, or whether it has locked up men whose only crime was an interest in a small group of charismatic Muslim clerics.

Human rights protections can be harmonized with state security, but there is no indication that Malaysia has made any efforts to do so. A cornerstone of international human rights law is the presumption of innocence and the right to a fair trial before one's liberty is taken away. With its broad use of the ISA and its refusal to bring these cases to trial, Malaysia has turned these principles on their head.

The Impact of the Guantanamo Bay Detentions

Although literally halfway around the world, the U.S. detention facility at Guantanamo Bay looms over the men held under the ISA—not so much the facility itself, but its symbolic value expressing a new acceptance of human rights violations in the name of fighting terrorism. Some ISA detainees have been told that they would be sent to Guantanamo if they failed to cooperate. Others were told that they shouldn't complain about their detention under the ISA because, if they were released, U.S. authorities would pick them up and take them to Guantanamo, where they would face an uncertain future far from home.

Guantanamo and the U.S.-led “war on terror” influence ISA detainees in other ways. For decades the ISA has been regularly and harshly criticized by the U.S. for being part of a larger apparatus of repression. That the United States has not challenged the detention of these men under the ISA is a testament to the significant erosions in respect for international human rights norms since the attacks of September 11th. Discussing the ISA, a senior State Department official told Human Rights Watch that the U.S. government would take up cases such as those described in this report if the level of treatment was “worse than Guantanamo.”

The refusal of the U.S. to speak out against the ISA’s provisions and the detention of individuals without charge or trial reflects the reality of international relations in the post-September 11th era: the United States is reluctant to speak out on human rights violations that occur as a putative part of the U.S.-led “war on terror,” while many governments use the threat of terrorism to justify their own, longstanding practices of systematically violating basic human rights norms.

Recommendations

Human Rights Watch calls on the Malaysian government to immediately charge or release all ISA detainees and to thoroughly investigate widespread reports of threats, coercion, and abuse in detention. Prime Minister Abdullah Badawi, who won election in March 2004 and has expressed interest in improving Malaysia’s human rights situation, should take urgent steps to abolish or amend the ISA to bring it into conformity with international human rights standards. Indefinite detention without trial cannot meet such

standards. It has no place in the legal system of a country that in so many other fields has made gigantic strides in recent years.

Human Rights Watch calls on the governments of the United States, the European Union, Japan, and the Association of Southeast Asian Nations (ASEAN) to press for the elimination of the ISA in Malaysia.

As a crucial step, the U.S. should stop overlooking or even supporting the Malaysian government's use of the ISA on the ostensible grounds that it is cooperating with the U.S. in the "war on terror." Cooperation between the U.S. and Malaysian governments on counter-terrorism must only be carried out in accordance with the basic human rights obligations of both countries. Malaysia has cooperated closely with the U.S. over the past two years, sharing information gleaned from interrogations of ISA detainees with U.S. government officials and, on at least two occasions, allowing U.S. government interrogators direct access to ISA detainees.

The U.S. has rewarded Malaysia's cooperation on anti-terrorism handsomely: bilateral relations, which suffered as a result of Malaysia's lackluster human rights record, have dramatically improved, and U.S. criticism of Malaysia's human rights record, once highly vocal, has been muted. The United States should publicly and privately resume the principled position it has historically taken with Malaysia over the use of a law that is anathema to human rights principles.

II. Background: The ISA in Law and Practice

Almost immediately after its adoption in 1960, the Malaysian government began using the Internal Security Act (ISA) as a tool against critics and political opponents. The ISA was passed to deal with the remnants of a communist insurgency in Malaysia. It replaced emergency regulations that had been originally put in place by Malaysia's British colonial rulers.² During the 1960s and 1970s, the Malaysian government used the ISA to suppress political activity, especially of left-wing parties such as the Labour Party of Malaysia and the Party Sosialis Rakyat Malaysia.³ Close to 3,000 persons were administratively detained between passage of the Act in 1960 and 1981, when Dr. Mahathir Mohamed assumed the prime ministership.

The ISA: An Abusive Law

Under the ISA, government officials may order persons detained without even the most basic due process rights. Most importantly, the government may detain individuals it deems a threat to national security for as long as it sees fit, with no meaningful judicial review.

The ISA is extremely broadly worded and allows for virtually indefinite detention. At the heart of the ISA are sections 73 and 8. Section 73 provides for an initial detention period of up to sixty days. Any police officer can detain an individual under section 73, but detentions that last longer than 30 days must be approved by the home minister. An individual may be detained under section 73 if, in the judgment of the executive, he or she is “acting in any manner prejudicial to the security of Malaysia . . . or to the maintenance of essential services therein or to the economic life thereof.”⁴

At the end of two months, an individual can be detained under section 8, which allows for a detention period of two years, renewable *ad infinitum*. The section 8 order must be issued by the home minister, who must be “satisfied that the detention . . . is necessary with a view to preventing him from acting in any manner prejudicial to the security of Malaysia or any part thereof or to the maintenance of essential services therein or to the economic life thereof.”⁵ The home minister has the authority to choose the place of detention, and to dictate the conditions of detention, as she or he sees fit.⁶

No attempt is made in the Act to further define specifically what constitutes a true security threat under the ISA and, without the possibility of narrowing the language of

² Amnesty International, *Human Rights Undermined: Restrictive Laws in a Parliamentary Democracy*, 1999, p. 13.

³ *Ibid.*

⁴ ISA section 73(1)(b).

⁵ ISA section 8(1).

⁶ ISA section 8(3) and (4).

the ISA through judicial interpretation (see below), the government is left with a free hand to pull almost any behavior into the scope of the ISA.⁷

Under Malaysian criminal law as it normally operates, police officers and others are allowed to detain individuals only if they have a reasonable suspicion, or “probable cause,” for doing so. The ISA makes a nod toward probable cause in its requirement that an officer have “reason to believe” that an individual is acting or about to act in a manner prejudicial to the security of Malaysia. In order to engage in long-term detention under Section 8, the Minister must be “satisfied” that such detention is “necessary” for Malaysia’s continued security and stability.

In practice, however, such safeguards, as limited as they are, are ignored. The Special Branch (the federal security and intelligence force) has detained political opponents of the ruling United Malay National Organization (UMNO) under the ISA, for whom no such probable cause for arrest existed.⁸ The April 2001 arrests of the so-called KeADILan 10⁹ is one such example: although the inspector-general of police claimed that the KeADILan activists were arrested for allegedly planning violent military activity, while in custody they were only questioned about their political activity, and no evidence was ever produced supporting the government’s original allegations.¹⁰

Those detained under the ISA for alleged terrorist activity have faced the same problem: the government has made public statements claiming that they were members of terrorist groups, but has yet to substantiate that claim.

Section 8B explicitly rejects a role for the courts in reviewing ISA detentions:

There shall be no judicial review in any court of, and no court shall have or exercise any jurisdiction in respect of, any act done or decision made by the Yang di-Pertuan Agong [the Malaysian king] or the Minister in the exercise of their discretionary power in accordance with this Act,

⁷ Amnesty International, *Human Rights Undermined*, p. 20-21. As one observer put it, “the Executive has been given permanent, unfettered discretion to determine, according to their subjective interpretation, who, what and when a person or activity might pose a potential threat to the wider national interest, national security or public order – and to detain them without trial.” Amnesty International, *Human Rights Undermined*, p. 14. At least as far as detention under Article 73 is concerned, the courts have attempted to give some weight to the requirement that the police have “reason to believe” that an individual is engaged in or about to engage in prohibited activity. In *Mohamad Ezam bin Mohd Noor v. Ketua Polis Negara*, the court, citing the lack of any sufficient substantive basis for the police interrogations of the detainees, held that the police in fact acted in bad faith and therefore should not have been allowed to detain the five men under section 73. But the ruling was explicitly limited to section 73 detentions, making it effectively meaningless: even if a court manages to rule in favor of a detainee during his first sixty days of detention, the government can transfer him to Kamunting under Section 8 and evade a court order to release him.

⁸ UMNO has ruled Malaysia since independence from the British in 1957.

⁹ KeADILan is the National Justice Party. For more on the KeADILan arrests, see below, “The Anwar Case and the Reformasi 10.”

¹⁰ Nicole Fritz and Martin Flaherty, *Unjust Order: Malaysia’s Internal Security Act*, (New York: Joseph R. Crowley Program in International Human Rights, Fordham Law School), pp. 52-3.

save in regard to any question on compliance with any procedural requirement in this Act governing such act or decision.¹¹

This provision effectively eliminates judicial review of ISA detentions, thus leaving detainees without any legal challenge to their detention. Although the law leaves room for review of “procedural requirements,” the procedural burdens placed on the government by the ISA are so few that even this one avenue of challenge is of limited use. And as a result of the section 8B strictures and other restrictions, Malaysian judges have not been willing to use their judicial authority to uphold the rights of ISA detainees.

Although section 11 of the ISA allows for review of all detentions by a nominally independent Advisory Board, the recommendations of the Board are non-binding. The Board is appointed by the Malaysian King on the advice of the prime minister, and its suggestions on individual cases are frequently ignored.¹²

Operation Lalang

After coming to power, Prime Minister Mahathir initially indicated that he would discard the ISA, and his government released nearly 170 detainees and slowed the pace of new detentions.¹³

But any hopes that Mahathir would actually abolish the ISA died in 1987. After beating back a challenge to his leadership of UMNO in a vote that was tainted by allegations of vote-buying and other irregularities, Mahathir found himself in a political firestorm. A court battle ensued over accusations of electoral misconduct, one which, had he lost, almost certainly would have cost him the prime ministership and likely ended his political career.¹⁴ Mahathir was also enmeshed in a controversy over nascent government policies designed to reduce the social and economic imbalances between the Malay majority and the ethnic Chinese minorities, which the government used as a rationale for arrests of senior opposition members of parliament.¹⁵

Mahathir relied on the ISA to end the incipient political crisis. He ordered the arrest of 106 people in October and November 1987, including outspoken human rights advocates and politicians from the Democratic Action Party (DAP), PAS, and UMNO.¹⁶ These arrests took place under the operational codename *lalang*, a type of weed. In casting such a wide net, Mahathir managed to end the crisis and advance his political

¹¹ ISA section 16.

¹² Fritz, *Unjust Order*, p. 89-90.

¹³ Amnesty International, *Human Rights Undermined*, p. 21.

¹⁴ *Ibid.*

¹⁴ Lawyers Committee for Human Rights, *Malaysia: Assault on the Judiciary*, 1989, pp. 12-13.

¹⁵ *Ibid.* See also Democratic Action Party, “The Real Reason: Operation Lallang ISA Arrests,” October 27, 1987, p. 25-37.

¹⁶ See Lawyers Committee, *Assault on the Judiciary*, pp. 41-69.

career, but at great cost both to those arrested and to Malaysia’s legal and judicial framework.

In response to Mahathir’s purge of his political opponents, both inside and outside UMNO, Malaysia’s courts initially expressed a willingness to review the legality of his actions, as well as allegations of corruption against Mahathir. Malaysia had a relatively strong tradition of judicial independence and competence at the time. But Mahathir responded by removing five high court judges, including then-Chief Justice Tun Salleh Abbas, and unleashing a blistering public opinion campaign against the courts.

One of the most significant results of this struggle was the introduction of section 8b of the ISA, drafted during this period, forbidding judicial review of ISA detentions, including those brought as habeas corpus petitions.

The Anwar Case and the Reformasi 10

Following the Lalang crackdown, Mahathir ruled Malaysia without serious challenge for nearly a decade. During that time, Mahathir further consolidated his control over Malaysia’s judiciary and the media.¹⁷

The 1998 Asian economic crisis, during which Malaysia’s impressive economic gains of the past several decades were jeopardized, threw Malaysian politics into turmoil. Mahathir’s position, seemingly unassailable, was placed in serious doubt after his deputy prime minister and erstwhile successor Anwar Ibrahim began to publicly question the prime minister’s decisions in the wake of the crisis. With the country facing a downward economic spiral and perhaps even a depression, Mahathir faced his toughest political challenge since 1988.

On September 2, 1998, Mahathir sacked Anwar from his government posts. Specific allegations of Anwar’s alleged corrupt activities and “deviant” sexual practices soon surfaced, made public in documents relating to the court case of a political associate, S. Nallakaruppan, whose trial was also widely viewed as politically motivated. After being fired, Anwar began leading rallies across Malaysia in support of his newly-formed *reformasi* movement, preaching to enormous crowds in favor of far-reaching political and economic reforms.

Mahathir then ordered Anwar’s arrest under the ISA on September 20, 1999. Anwar was later convicted of misuse of power and sodomy in trials marred by coerced confessions by key witnesses and evidence that Anwar himself had been beaten by the chief of police while in custody. His various appeals repeatedly denied by the courts, Anwar remains in prison.¹⁸

¹⁷ Free Anwar Campaign, *A Brief History of the Struggle for Democracy and Good Governance in Malaysia, 2003*.

¹⁸ Anwar is currently serving a nine-year sentence for sodomy, and his case is on appeal. Despite the fact that the courts usually grant bail in similar cases during the appeals process, the court has refused bail for Anwar, raising concerns over lack of judicial independence. Human Rights Watch, “Malaysia: End Detention of Ex-Deputy Prime Minister,” January 21, 2004.

Anwar's physical abuse and fifteen-year prison sentence did not quiet the Malaysian political scene. Instead, the *reformasi* movement continued, fueled in part by outrage over his arrest and continued detention. Street demonstrations, often put down with water cannons and arrests, became a regular vehicle of popular expression. Invigorated by strong public support, Malaysian civil society and opposition political parties, including the newly formed KeADILan, or Justice Party, led by Anwar's wife, Dr. Wan Azizah Ismail, pressed vocally for Anwar's release.

In response, Mahathir again turned to the ISA to cut short the public protests over Anwar's continued detention in April 2001. Over a two-week period, the government hauled in ten high-profile activists, most of them members of KeADILan.¹⁹ Those arrested included human rights activist Badaruddin Ismail; Raja Petra Raja Kamaruddin, director of the Free Anwar Campaign website; social activist and former student leader Hishamuddin Rais; and senior KeADILan leaders N. Gobalakrishnan, Tian Chua Chang, Mohamad Ezam Mohd Nor, Saari Sungib, Dr. Badrul Amin Bahron, Abdul Ghani Haron, and Lokman Noor Adam.

The government claimed that the KeADILan activists were planning violent protests in order to overthrow the government, and were attempting to procure weapons and explosives. Despite the serious nature of the charges, the government produced no evidence to support its claim.²⁰

With many of the senior KeADILan leaders arrested and more detentions threatened, the "free Anwar" protests fizzled. Within roughly forty days of their initial detention, two of the men, Badaruddin Ismail and Raja Petra Kamaruddin, were released by the authorities. Another two, N. Gobalakrishnan and Abdul Ghani Haron, won their release through a habeas corpus petition.²¹ The remaining six were given two-year terms in early June 2001. Despite repeated calls by both local groups and international observers, including the U.S., the European Union, and Australia, to release the six men immediately, all six served their full two-year terms, and were set free in June 2003.²² In

¹⁹ The Free Anwar Campaign, *A Brief History of the Struggle for Democracy and Good Governance in Malaysia: the story behind political detentions in Malaysia*, 2003.

²⁰ Jasbat Singh, "Jailed Malaysian opposition activists await decision on renewal of detention orders," Associated Press, May 30, 2003.

²¹ The judge ruled that, given the absence of any stated grounds of arrest, the detentions were in bad faith and therefore could not stand. See Zakiah Koya, "Judge orders release of ISA detainees, rules detention 'unlawful,'" Malaysiakini, May 30, 2001. Successful habeas corpus applications are extremely rare in Malaysia, and the courts have reaffirmed that they have no power to review Section 8 ISA detentions. Allegations of bad faith on the part of the police must therefore be heard by the courts in the first 60 days, or the courts will bow out. Fritz, *Unjust Order*, p. 55.

²² Craig Skehan, "Malaysia's Crackdown on Dissidents Under Fire," *Sydney Morning Herald*, April 20, 2001. Australian Foreign Minister Downer highlighted the due process concerns of detention under the ISA: "We have noted that some opposition figures have recently been arrested under the Internal Security Act. We would expect in these circumstances the Malaysians to follow not just due process but also operate on principles of natural justice."

a striking parallel to the Operation *Lalang* detentions, Mahathir managed to severely weaken his political opposition with the KeADILan arrests.²³

While in detention, the KeADILan detainees were regularly threatened, coerced, and psychologically abused.²⁴ Detainees were interrogated for several hours straight, day after day, and told that if they cooperated, they would be released.²⁵ They were kept in solitary confinement and denied access to an attorney or family visits during the first several weeks of their detention. The interrogators also threatened physical abuse in order to try to force the KeADILan detainees to confess to various crimes or to answer questions. All of these tactics were designed to maximize the psychological pressure on the detainees, and to coerce them to make false confessions about taking steps to overthrow the government by force.

As with other political detainees under the ISA, there were allegations of isolated incidents of physical abuse while in detention, allegations which the government failed to fully investigate.²⁶ Although all of the KeADILan detainees have since been released, the ISA continues to cast a pall over Malaysian political life. Opposition politicians and activists know that they could be detained under the ISA at any time, for any reason, or for no reason at all.

Religion and Alleged Militant Activity in Malaysia

Since September 11th, the Malaysian government has justified its use of the ISA as part of its efforts to combat the activities of Islamist armed groups. Although it has yet to offer any evidence in court to prove its claim, the Malaysian government alleges that the detained men are part of a militant network that stretches across Southeast Asia. According to the Malaysian government, this network intends to create a fundamentalist Islamic state in Malaysia, Indonesia, and the southern Philippines.

Malaysia became a focus of international anti-terror investigations only after September 11th. Two of the September 11th hijackers, Khalid al-Mdhar and Nawaq al Hamzi, passed through Kuala Lumpur in January 2000, and were hosted by Yazid Sufaat, an alleged member of Jemaah Islamiyah detained under the ISA in December 2001.²⁷ Two of the alleged plotters of the USS Cole bombing also spent time in Malaysia and were allegedly hosted by members of JI, and a handful of Indonesians connected with the Bali

²³ While the political arrests of the Mahathir years have received the most attention, the ISA has also been used in recent years to crack down on traffickers of migrant workers, counterfeiters, and Shi'a Muslims, among others. Given the relatively small number of individuals detained, these cases have received less attention.

²⁴ Human Rights Watch interviews with KeADILan ex-ISA detainees, Kuala Lumpur, December 2003.

²⁵ Ibid. See also Raja Petra, *All in the Game*, (Seloka Gelora Sdn Bhd: Kuala Lumpur, 2001), p. 2.

²⁶ Human Rights Watch interview with ex-ISA detainee, Kuala Lumpur, December 2003.

²⁷ Leslie Lopez, "Indonesian Cleric Becomes Focus of Terror Manhunt," *Asian Wall Street Journal*, February 1, 2002. Sufaat, whose two-year ISA detention was renewed in January 2004, denied having any knowledge of the identity of the men he hosted.

bombings and the JW Marriott hotel bombing in Jakarta also apparently resided in Malaysia as they prepared their attacks.²⁸

Because Indonesia under President Soeharto was long inhospitable to the small group of Indonesians allegedly pursuing the creation of a fundamentalist Islamic state, a handful of key exiled clerics came to Malaysia to live, preach, and make money. According to anti-terrorism experts, these men, most prominently Abu Bakar Bashir, Abdullah Sungkar (now deceased), Mohamad Iqbal, and Riduan Isamuddin, known as Hambali, formed the nucleus of JI in Malaysia, and engaged in recruitment of Malaysians for several years.²⁹ These men have since become the focus of anti-terror investigations in Malaysia, Indonesia, and elsewhere.

After their arrival in Malaysia in the mid-1980s, Bashir and Sungkar took up the cause of the Afghan jihad and began to send aid and recruits to Afghanistan to fight in the country's civil war and receive military training.³⁰ The first group of recruits was allegedly sent to Afghanistan in 1985; the second a year later. The third group, sent in 1987, included both Hambali and Mohammad Iqbal.³¹ The camp at which these men allegedly trained was run by a Wahhabi cleric and Afghan warlord named Abdul Rabb al-Rasul Sayyaf who was, at the time, supported by Saudi Arabia and Pakistan. While most of the trainees sent there were Indonesian, several of the current Malaysian detainees are also accused of having trained there.

In the mid-1990s, Sungkar switched training facilities from Afghanistan, which was falling under the control of the Taliban, to Mindanao, in the southern Philippines.³² Connections between the leadership of the Philippine Moro Independence Liberation Front (MILF), a longstanding militant group, and JI reportedly were helpful in setting up the new training facility.³³ ISA detainee Yazid Sufaat acknowledges having trained there, and other current detainees are alleged to also have received training there.

Hambali first came to Malaysia in the mid-1980s, and he and Iqbal were for a time living in the same neighborhood in Sungai Manggis, fifty miles southwest of Kuala Lumpur, in the early 1990s.³⁴ Bashir and Iqbal were especially well known for their preaching ability, and both men became popular for their ability to give sermons, lead prayers, and teach Islam. Malaysians who had heard Iqbal and Bashir preach referred to their charisma and expressiveness, which some attributed to the two men's Indonesian

²⁸ International Crisis Group, *Jemaah Islamiyah in South East Asia: Damaged But Still Dangerous*, International Crisis Group report no. 63, August 26, 2003, p. 14.

²⁹ Ibid., pp. 7-10.

³⁰ Ibid., p. 7.

³¹ Ibid., p. 11-12.

³² Ibid., p. 7-8.

³³ Ibid., p. 16.

³⁴ Ibid., p. 17.

³⁵ Rohan Gunaratna, *Inside Al Qaeda: global network of terror*, Columbia University Press, 2002, p. 195.

background. “They are very articulate. Somehow the Indonesian language has more vocabulary than Malay. Their sermons are very inspirational,” one follower of both clerics said.³⁵

For many, the willingness of these preachers to address subjects that many Malaysian clerics considered taboo was also a draw. With the Indonesian clerics, one woman noted, “We go page by page. If it goes to this [sensitive] verse, too bad. Some teachers, when they get to this verse, they just skip it because it is too sensitive.”³⁶

Perhaps not surprisingly, one of the subjects that Malaysian preachers considered too sensitive was the arrest and jailing of former Deputy Prime Minister Anwar Ibrahim. “He [Iqbal] didn’t give a damn about sensitive subjects. He talked about Anwar. When Anwar was taken in, no one wanted to comment on it. If you want to talk, talk!” said one regular attendee of Iqbal’s sermons, throwing her hand up in disgust over the timidity of Malaysian preachers.³⁷

In part because of their willingness to discuss sensitive political subjects, the Indonesian clerics were considered by some to be more honest, somehow more authentic, than their Malaysian counterparts. They claimed that their preaching was heavily text-based, and Iqbal in particular wrote on a range of topics related to Islamic theology and Islamic law. According to one attendee, Iqbal would tell his students that “Islam is Islam. There is no fundamentalist Islam, extremist Islam, no liberal Islam, just the Islam of the Quran and Sunna.” This approach generated a very positive response among some listeners: “He [Iqbal] is very honest in his teaching. We were very attracted to that. When we went to Malaysian *ustaths* [religious teachers], they put us to sleep,” one attendee of Iqbal’s classes said.

Although the individuals that Human Rights Watch spoke to said that they had never heard Iqbal or Bashir talk about any plans for setting up a pan-Islamic superstate across Malaysia, Indonesia, and the southern Philippines, as the Malaysian government has alleged, they did preach and teach about jihad.³⁸ For Iqbal in particular, Malaysian Muslims had a “duty of jihad” in Ambon, Indonesia.

Relations between Christians and Muslims in Ambon deteriorated in the 1990s, in part as a result of increasing Muslim migration into Ambon over several decades and a decline in traditional authority structures.³⁹ In January 1999, Ambon exploded into violence after a fight between a Christian and a Muslim pushed ethnic tensions past the

³⁵ Human Rights Watch interview, Kuala Lumpur, December 2003.

³⁶ Human Rights Watch interview, Kuala Lumpur, December 2003.

³⁷ Human Rights Watch interview, Kuala Lumpur, December 2003.

³⁸ The term “jihad” literally means “struggle”. In the narrowest sense, it refers to religiously sanctioned combat. More broadly, and more commonly, it encompasses any number of situations in which Muslims apply themselves to achieving a religiously sanctioned goal, typically for the improvement of the community, e.g., jihad of construction, jihad of literacy.

³⁹ Human Rights Watch, “Indonesia: The Violence in Ambon,” *A Human Rights Watch Report*, Vol. 11, No. 1, March 1999.

breaking point. Hundreds were killed and many thousands were displaced in the ensuing violence.⁴⁰ Ambon became an important rallying cry for some of Iqbal's followers, and Iqbal encouraged them to support their fellow Muslims in their struggle against the Christians.

According to some, this support was limited to donations of money for humanitarian relief and did not include any sort of obligation to fight alongside the Muslims in Ambon. Other sources dispute the characterization of Iqbal's incitement as being exclusively or even primarily humanitarian in nature; instead, he is alleged to have actively recruited Malaysian fighters to go to Ambon.⁴¹ One follower mentioned going to Ambon as one way to fulfill the obligation to engage in jihad: "If you can't bring yourself to go there, then there are other ways to do it. Give money, or pray. That is your jihad."⁴²

As of this writing three of the alleged ringleaders of JI in Malaysia, specifically Hambali, Bashir, and Iqbal, are in detention.

Mohamad Iqbal, an Indonesian, was being held by the Malaysian government awaiting deportation to Indonesia on charges of overstaying his visa. Arrested in June 2001 in Selangor, Iqbal was held for two years under the ISA, accused of involvement with terrorism. He was transferred to immigration detention in August 2003, where he was held for nine months. Just hours before he was scheduled to appear in Malaysian court for an appeal of his continued detention, Iqbal was returned to Indonesia by Malaysian authorities on May 14, 2004.⁴³ He is currently in detention in Indonesia, and Indonesian police are investigating him on allegations of involvement in terrorist activity.

Hambali has been held in an undisclosed location by the United States since his arrest in Bangkok, Thailand, in August 2003. Hambali was originally reported to be held on the U.S. military base on Diego Garcia, but subsequent assurances from the U.S. government to the British government that no detainees are being held there have since cast doubt on those reports. In addition to holding him without charge or trial, the U.S. has yet to officially legally classify Hambali's detention. The U.S. has not responded to repeated requests from Human Rights Watch for information on Hambali's location, legal status, and conditions of detention.

Abu Bakar Bashir, the reputed spiritual leader of JI, remains in prison in Indonesia. Arrested after the October 2002 bombings in Bali, Bashir was tried and convicted of various immigration violations, but acquitted on all terrorism-related offenses. Many observers did not believe that the prosecution made the strongest presentation possible, while others believe the court ruled on political grounds. Indonesian officials blamed the acquittal on terror charges in part on the unwillingness of the U.S. to provide

⁴⁰ Ibid.

⁴¹ "Kumpulan Mujahideen Malaysia," Jane's World Insurgency, November 21, 2002.

⁴² Human Rights Watch interview, December 2003.

⁴³ "Malaysia deports alleged JI terror suspect," Kyodo News, May 14, 2004.

Indonesian investigators with direct access to Hambali, who they said had information that could have been helpful to the prosecution. On March 9, 2004, an Indonesian court overturned the most serious of the convictions against Bashir, and ordered that his sentence be reduced to eighteen months, most of which he had at that point already served. On April 30, Bashir was re-arrested on the day of his scheduled release, and soon thereafter was once again charged with terror-related offenses, which ensured that he would not be released anytime soon. As this report went to press, he was awaiting trial on the new charges.

Alleged Organizational Affiliations of the ISA Detainees

The ISA detainees, though detained over similar allegations of connections to international terrorism, largely fall into three distinct groups:

The KMM detainees

According to the Malaysian government, the KMM was founded by members of the *Parti Islam SeMalaysia*, or PAS, Malaysia's largest Islamist opposition party, in the 1980s. One alleged motivation for the creation of the KMM was to respond to violence in Memali, in which supporters of local PAS leader Ibrahim Libya had been killed in clashes with police.⁴⁴ According to the government, the KMM was set up with the complementary goals of preparing for jihad and protecting PAS leaders from future attacks by government forces.

Malaysian government officials claim that they became aware of the KMM's existence and the identity of some of its members in large part through the arrest of a group of would-be bank robbers in May 2001.⁴⁵ According to government sources, the subsequent interrogation of the captured suspects led to the arrests of the KMM members, and allowed the police to link the KMM to other crimes, including the assassination of an Indian politician and the bombing of a Hindu temple.⁴⁶

Despite the passage of more than two years since the initial arrests, however, doubts continue to linger over whether the KMM actually exists. Those alleged members of KMM detained under the ISA continue to deny the existence of the group. In testimony to the National Human Rights Commission, Zainon Ismail angrily reiterated his claim of innocence and lashed out at the Malaysian media for reporting government allegations against him as substantiated fact. "I was . . . accused (of) being the founder of the KMM, but all this is just a creation of the police. There is no such thing as the KMM."⁴⁷

⁴⁴ Lawrence Bartlett, "Arrests in Malaysia highlight fears of abuse of war on terror," Agence France-Presse, October 11, 2001.

⁴⁵ Leslie Lopez, "New Picture Emerges of Militant Network in Southeast Asia," *Asian Wall Street Journal*, August 9, 2002.

⁴⁶ *Ibid.*

⁴⁷ Leong Kar Yen, "Malaysia: KMM suspects put media on trial in Suhakam inquiry," Malaysiakini, June 19, 2002.

The government has repeatedly played up the alleged link between the KMM and PAS, raising concerns that the arrests were in fact politically motivated. At a public forum organized by UMNO, party vice president and government minister Tan Sri Muhyiddin Yassin called on PAS to come clean: “The people are waiting for an explanation from PAS regarding its relationship with the KMM but till today it has kept mum although a son of the Kalantan [spiritual leader] is believed to be involved,” the minister said.⁴⁸ For its part, PAS dismissed the arrests, calling them a “political ploy” by UMNO to weaken PAS, and challenged the government to prove its allegations in open court, if indeed it could.⁴⁹

The detainees claim that the government distorted their legitimate participation in a loose network of Malaysian alumni of Islamist schools (*madrassahs*) in India and Pakistan, creating the KMM out of that group of alumni in order to serve its own political needs. In his testimony to Malaysia’s National Human Rights Commission (commonly referred to by its Malaysian acronym, Suhakam), Ismail openly admitted to being a member of this group, referred to as *Pakindo*: “I deny that there is such a thing as the KMM. I am however a member of an alumni association for students who have gone to universities in Pakistan and India called Masa Pakindo, or Malaysian Students Association of Pakistan and India,” he told the Commission.⁵⁰

Sending male children to Pakistan to study Islam is a fairly common practice among devout middle-class families in Malaysia. For many, sending a child all the way to Saudi Arabia is too expensive, and Pakistan’s madrassahs are an acceptable alternative.⁵¹ Most of the PAS-affiliated detainees spent time in Pakistan in the mid-1980s, and many, on their return, stayed in touch. Members described Pakindo as very a informal group, one that did not meet regularly. “I don’t think they’re particularly active. As far as I know, they only met two or three times a year,” one associate of many Pakindo members said.⁵²

Many of the KMM detainees openly admit to having spent time in Afghanistan, and some of the detainees also told Suhakam that they had received military training in Afghanistan or the southern Philippines.⁵³ But they denied having any plans to overthrow the Malaysian government. These admissions, far from justifying their continued detention under the ISA, point to the need for a public trial: the Malaysian government needs to establish just what the detainees were doing in Pakistan and Afghanistan, and whether those who did receive military training were in fact doing so with the intent to take action against the Malaysian government. It has yet to show in court that any of the individuals that it arrested in 2001 had any involvement in the criminal acts it has claimed were carried out by KMM.

⁴⁸ Bernama Daily Malaysian News, “PAS challenged to explain relationship with KMM,” August 25, 2001.

⁴⁹ BBC news, “Malaysian opposition denounces arrests,” October 11, 2001.

⁵⁰ Leong Kar Yen, “Malaysia: KMM suspects put media on trial in Suhakam inquiry,” Malaysiakini, June 19, 2002.

⁵¹ Human Rights Watch interview with Malaysian academic, November 2003.

⁵² Human Rights Watch interview with TY, Kuala Lumpur, December 2003.

⁵³ SUARAM, *Human Rights Report 2002*, p. 30-31.

Jemaah Islamiyah (JI) detainees

The second group of detainees includes a number of young professionals, mostly from in and around Kuala Lumpur. The government arrested most of them in January 2002. The government claimed that all of the detainees were members of Jemaah Islamiyah, and that they had engaged in military training in preparation for a strike against the government.

Government investigations centered on a group called *Persatuan El Ehsan*, which was registered with the government as a charity organization.⁵⁴ Members of El Ehsan claimed that donations the group collected were used for refugee relief work in Ambon and Afghanistan, but the government claimed that El Ehsan was involved in buying weapons for Muslim fighters in Ambon and for the Taliban in Afghanistan.⁵⁵ El Ehsan also set up Arabic lessons and Islamic study groups for its members and organized lectures by various preachers, including Mohamed Iqbal.

The Johor detainees

The third group of detainees includes a mix of professionals and working-class individuals from Johor state, most of whom had ties to the Madrassah Luqmanul Hakiem in Ulu Tiram, Johor.⁵⁶ Founded by Abu Bakar Bashir after his arrival in Malaysia, the school was home to a handful of Indonesians allegedly involved in the Bali bombings, including Hambali.⁵⁷ Closed down by the government in 2001, the madrassah has been referred to as part of the JI “Ivy League,” along with a handful of other religious boarding schools in Indonesia.⁵⁸ The Johor arrests took place mostly in April 2002.

⁵⁴ “Persatuan” is Malay for “union” or “association,” and *Ehsan* (usually transliterated as *Ihsan*) is an Islamic law term related to charity and good works.

⁵⁵ Human Rights Watch interviews, December 2003.

⁵⁶ “Detained students met Osama, say security sources,” Bernama, November 16, 2003.

⁵⁷ “Ministry to decide on fate of Madrasah Luqmanul Hakiem,” Bernama Daily Malaysian News, July 15, 2003.

⁵⁸ International Crisis Group, *Damaged But Still Dangerous*, p. 26.

III. Human Rights Abuses against ISA Detainees

ISA detainees are subject to a wide range of abuses. Their procedural rights, including the right to a fair trial, the right to meet with an attorney, and the right to be informed of the reasons for arrest, are all systematically infringed. But abuse under the ISA is not limited to the denial of procedural rights: detainees are held under difficult conditions that are well below international standards, and are subject to a daily barrage of threats, coercion, intimidation, and, in some cases, physical abuse.

Arbitrary Arrest and Detention

First they came in and showed their police authorization card, then they showed the detention order under section 73 of the ISA. Immediately after that I was handcuffed. [All they said was] national security, nothing more.⁵⁹

— former ISA detainee, December 2003

Authorities refused to give family members any reason for the arrests beyond vague references to national security. The police also did not get a judicially-issued arrest warrant. Instead, wives of the detainees were often given a standard form stating that the detentions were carried out under section 73 of the ISA, with no specific information about what their husbands had allegedly done.

Family members who were present told Human Rights Watch of a similar pattern when arrests were conducted: arresting officers would arrive late at night in a group, mostly in plain clothes, and then, after making an arrest, search the house for several hours. Police would then seize virtually anything that would move, including mass circulation news magazines with pictures of Osama bin Laden on the cover, articles by former ISA detainee Saari Sungib, and even an album by Western pop star Cat Stevens, now known as Yusof Islam.⁶⁰ One detainee had a VCD of the Western music group the Scorpions taken by officials. The authorities also often took computers from those families that had them, mobile phones, and bank books.

As one detainee's family member told Human Rights Watch:

I was very surprised when the men came in at 3 a.m. They brought [name of husband withheld] in handcuffs and three of them came in to ransack the rooms. They gave me a form that said that your husband is being detained under the ISA. They told me that he was going to be detained for two weeks for investigation. . . . They searched for an hour or so, and then left at 4:30. Then at 5:45 a man came back and said that

⁵⁹ Human Rights Watch interview with TY, Kuala Lumpur, December 2003.

⁶⁰ Human Rights Watch interviews with family members of ISA detainees, December 2003.

[name of husband withheld] had been taken in. No information, no nothing about the charges at that time.⁶¹

Another detainee's wife had a similar experience:

When they came, I wasn't in, I was out with my son. I came back at 11:30. When I came back, my husband was already gone. They were already in my bedroom when I came in. My son and I came in and my daughter was crying, saying that daddy was taken by the police. They questioned me. They showed me the paper [the standard form given to ISA detainees, which states that the individual is being detained for reasons of national security].⁶²

The police also gave false contact information to the wives of detainees at the time of arrest, making it impossible for wives and family members to follow up with authorities to find out where their relative was being held. This further exacerbated the sense of confusion and isolation that families felt during and after the arrests.

Torture and Other Mistreatment

Once individuals were taken into custody, they were interrogated by officers from the Special Branch, which, although part of the police bureaucracy, functions as Malaysia's domestic security service.⁶³ During the political unrest in the 1970s and during Operation Lalang in the 1980s, Special Branch officers were called upon to interrogate, intimidate, and silence political detainees who were perceived as a threat to the Malaysian government.⁶⁴ Because Special Branch officers are completely free of outside oversight when they interrogate ISA detainees, they have developed a reputation for abusive and coercive tactics.

Until the detainees are given an opportunity to talk about their experiences in a safe environment, free of government monitoring, it will be impossible to know the extent of the physical or psychological abuse that has taken place. HRW interviews with recently released detainees and family members, and affidavits of current detainees, however, reveal a pattern of physical abuse, including strong indications of torture. Some detainees allege they have been burned, while others reported being slapped in the face or kicked. For instance, Mohamad Kadar, a counter-terror detainee taken in by Malaysian authorities in January 2002, reported that Special Branch officers burned his beard, stepped on his head, and threw dirty water on him.⁶⁵

⁶¹ Human Rights Watch interview with AZ, Kuala Lumpur, December 2003.

⁶² Human Rights Watch interview with RR, Kuala Lumpur, December 2003.

⁶³ For a brief account of the role of that Special Branch played in the Anwar affair, see Thomas Fuller, "Anwar's Trial Brings Tactics of Malaysia's 'Special' Police to Light," *International Herald Tribune*, November 13, 1998.

⁶⁴ See S. Husin Ali, *Two Faces: Detention without Trial*, (INSAN: Kuala Lumpur, 1996); Dr. Tan Seng Giaw, "The First 60 Days: the 27 October 1987 ISA Arrests," Democratic Action Party, June 1989.

⁶⁵ "Violation of Human Rights by Malaysian Police and Ministry of Home Affairs," affidavit signed by 31 current ISA detainees, on file with Human Rights Watch.

International law widely prohibits torture and all cruel, inhuman, or degrading treatment or punishment. States are obliged to investigate all credible reports of torture. Article 5 of the Universal Declaration of Human Rights prohibits torture and other forms of mistreatment. The International Covenant on Civil and Political Rights (ICCPR) in Article 7 and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention against Torture) reaffirm this prohibition. Article 10 of the ICCPR also holds that persons in detention must “be treated with humanity and with respect for the inherent dignity of the human person.” Although Malaysia is not a party to the ICCPR or the Convention against Torture, the ban on torture and other mistreatment is a fundamental principle of customary international law that applies at all times and in all circumstances.

Torture and other physical abuse

Interrogators often forced detainees to stand for long periods while answering questions, an extremely painful form of mistreatment. Detainees were sometimes forced to strip before questioning began. One detainee wrote in his affidavit: “During interrogation, I was asked to stand on one foot for an hour and only wearing my underwear.”⁶⁶

Almost uniformly, relatives of detainees reported that the detainees were visibly in poor physical condition when they first saw them during their sixty-day detention period. Some family members reported seeing overt signs of torture, but the visits were heavily monitored, making it virtually impossible for detainees to give family members any real account of their conditions of detention.

One detainee’s wife told Human Rights Watch that her husband had to be helped into the room for his first family visit:

The visit lasted about one hour. He was pale. He seemed weak. He was limping and had to be assisted by the police as he walked into the room. I asked him what happened and he said that he fell in the bathroom. I was aware that he was being tortured. Generally he is very strong, but that day he cried. I’m not sure if he was crying over the injuries or if he was crying over the children.⁶⁷

Another detainee’s wife made similar observations about her first visit:

During the second visit, I could see that he was under tremendous pressure. I could see that he had lost weight. Also he didn’t walk properly. He didn’t want to talk.⁶⁸

⁶⁶ Written complaint of Mohidin bin Shari, on file with Human Rights Watch.

⁶⁷ Human Rights Watch interview with YC, Kuala Lumpur, December 2003.

⁶⁸ Human Rights Watch interview with AZ, Kuala Lumpur, December 2003.

Other wives noticed less overt signs of physical abuse, but received indirect comments or a refusal to talk about what happened in the early days of detention, which led them to fear the worst. As one wife told Human Rights Watch:

I believe that he was assaulted during the sixty day period. “I had lost hope of seeing you and the children,” he said of his time in sixty-day detention. If he said something like that, then I assume that his suffering was tremendous. I think he was kicked and beaten, but he didn’t want to disclose the details because he didn’t want to upset me.⁶⁹

Another wife of a detainee, on the verge of tears, reported that her husband had refused to talk, but that she had received word that he had in fact been harmed:

When we asked how he was being treated, he said, “Wait until I come out.” I don’t know what happened to him during his sixty-day detention, but I think that he’s been physically harmed. Other detainees have said that he was tortured.⁷⁰

Although most of the wives Human Rights Watch spoke to could only report signs of physical abuse, some of them were told by their husbands that they actually had been abused. One wife told Human Rights Watch that her husband was physically abused by interrogators trying to force him to confess:

He told me that he was asked to make a confession, or else they would arrest [him]. . . . He told me he was kicked around and still he didn’t confess.⁷¹

For some, seeing a loved one in such bad shape was too much to take:

He was shaking all over. I saw some mosquito bites on his hands. He was sweating, and he seemed scared. His mother started to cry when she saw him.⁷²

Most KeADILan detainees reported being threatened by the authorities but not actually physically abused, either during the initial sixty-day detention period or during their time in Kamunting.⁷³ One reason may be that their cases were much more high-profile, and the level of public scrutiny that the authorities were subject to was much higher.⁷⁴

⁶⁹ Human Rights Watch interview with VG, Kuala Lumpur, December 2003.

⁷⁰ Human Rights Watch interview with BD, Kuala Lumpur, December 2003.

⁷¹ Human Rights Watch interview with YC, Kuala Lumpur, December 2003.

⁷² Human Rights Watch interview with EN, Kuala Lumpur, December 2003.

⁷³ There were some isolated cases of physical abuse: shortly before being released, ISA detainees Tian Chua and Hishamuddin Rais reported being assaulted in detention, and filed a report with SUHAKAM urging them to take action. “ISA detainees assaulted: KeADILan wants answers,” Malaysiakini, May 10, 2003; Beh Lih Yi, “Suhakam to probe ex-ISA detainees’ complaint of assault,” Malaysiakini, July 1, 2003.

⁷⁴ One former political detainee told Human Rights Watch that there was in fact a different standard in terms of physical abuse of ISA detainees, and that non-political detainees were subject to worse treatment: “They said if

In the absence of such public scrutiny, Special Branch interrogators may have been more willing to physically mistreat militants among the ISA detainees. One former KeADILan detainee who was in detention at the same time as some of those held on allegations of terrorism stated that the alleged militants had told him that they were physically mistreated, and believed their harsher treatment would not have occurred if they had been able to bring their cases to the attention of the public:

They were tortured. Their beards were burned by cigarettes. They had cigarettes pushed into their skin, their necks. One had [his] genitals [hit]. This all happened because they did not file any *habeas corpus* application.⁷⁵

Cruel, inhuman, and degrading treatment

Prolonged interrogation and sleep deprivation

Detainees are interrogated over and over again by Special Branch officials without the presence of legal counsel. The interrogators work in teams, and often question individuals for several hours straight, day after day. Several released detainees told Human Rights Watch that they had been interrogated daily for nearly the entire length of their initial sixty-day detention. One detainee reported being questioned for a full twenty-four hours without a rest.⁷⁶

In some cases, interrogation sessions went on for so long that the interrogating officers sometimes themselves fell asleep in the middle of a session, leading to errors in the taking of testimony.⁷⁷ Because neither the solitary confinement holding cells nor the interrogation rooms had windows, it was impossible for many detainees to know whether it was day or night, or how long they had been in detention.

Extended interrogation sessions, especially those that make use of sleep deprivation as a tool of interrogation, may amount to inhuman treatment under international law. The United States has repeatedly referred to sleep deprivation as a form of mistreatment in its annual Human Rights Country Reports.⁷⁸

I was not a 'political' detainee, I would be subject to physical abuse," he said. Human Rights Watch interview, Kuala Lumpur, December 2003.

⁷⁵ Human Rights Watch interview with former ISA detainee XY, detained for political activity, Kuala Lumpur, December 2003.

⁷⁶ Interview with ex-ISA detainee detained on anti-terrorism grounds, December 2003.

⁷⁷ "Violation of Human Rights by Malaysian Police and Ministry of Home Affairs," affidavit.

⁷⁸ For example, in its 2001 Country Report, the US government criticized Burma for its practice of "routinely subject[ing] detainees to harsh interrogation techniques designed to intimidate and disorient," and listed such techniques as sleep deprivation, food deprivation, and being forced to remain in uncomfortable positions for long periods of time. U.S. State Department, *2001 Country Reports on Human Rights Practices* (Burma), Sect. 1(c). In 2002, the U.S. government cited Iran for "numerous credible reports that security forces . . . continue . . . to torture detainees," and noted especially the use of sleep deprivation and "prolonged and incommunicado detention." U.S. State Department, *2002 Country Reports on Human Rights Practices* (Iran), Sect. 1(c) and (d). Saudi Arabia, Tunisia, and Turkey, among others, were also cited by the U.S. government for the use of sleep deprivation as an interrogation technique. See generally U.S. State Department, *Country Reports on Human Rights Practices*.

Threats and improper coercion

Threats of physical abuse were a regular feature of interrogation during the initial sixty days of detention.

One detainee told Human Rights Watch, “They threatened me with a wooden stick in my face when they alleged that I wasn’t cooperating.” Another detainee was told to “get ready” to be hit:

[I was] threatened with physical torture and asked to remove [my] spectacles and get ready to be slapped.⁷⁹

Others were threatened with being hit with a rubber hose, a common prison technique because the hose, though painful, leaves little or no mark. According to one detainee, a Special Branch interrogator told him that he would “whip me with a rubber hose if I lied.”⁸⁰

One wife of a detainee told Human Rights Watch what her husband told her:

He was intimidated while in detention. They cursed him, they used obscenities, and they yelled at him during the interrogation. They threatened to assault him, but they never actually hit him. They raised up their hand to hit him.⁸¹

Perhaps the most common form of coercion that Special Branch interrogators used was to promise that “cooperation” would lead to an early release. “Cooperation” apparently meant not only answering questions, but also not fighting the ISA detention through the courts, urging family members not to have contact with human rights groups, and generally following the commands of the Special Branch. While urging cooperation is a common interrogation tactic during regular criminal prosecutions, in the context of the ISA, where persons can be detained indefinitely without trial by the administrative authorities, its use can amount to an unlawful form of coercion.

Threats made in exchange for cooperation were widespread:

They told my husband, if you cooperate, within sixty days, you’ll be released. All of the IOs [interrogating officers] said this over and over. My husband said, “What else can I do to cooperate? This is all I have for you. I don’t know any more.” How can you cooperate if you don’t know how to answer the question?⁸²

⁷⁹ “Violation of Human Rights by Malaysian Police and Ministry of Home Affairs,” affidavit.

⁸⁰ Ibid.

⁸¹ Human Rights Watch interview with NK, Kuala Lumpur, December 2003.

⁸² Human Rights Watch interview with JS, Kuala Lumpur, December 2003.

Conversely, failure to “cooperate” meant that a detainee would definitely be sent to Kamunting for two years under section 8 of the ISA. As one former ISA detainee told Human Rights Watch, “They said over and over again, if I didn’t cooperate, they would send me to Kamunting for two years.”⁸³

Such tactics are a violation of even the extremely forgiving standards of the ISA. Under the ISA, an individual can be detained for two years under section 8 only if he or she is a threat to national security. Failure to “cooperate” with investigators, or even failing to answer questions to an interrogator’s satisfaction, does not constitute grounds for detention under section 8.

In some cases, the Special Branch went beyond making threats about release or transfer to Kamunting. As one detainee told Human Rights Watch, they were also threatened with transfer to U.S. custody at Guantanamo Bay:

They threatened me: they said over and over again, if I didn’t cooperate, they would send me to Kamunting for a two-year ISA detention. They also threatened to send me to Cuba, to Guantanamo Bay. They said, “If you don’t cooperate, we will send you there.”⁸⁴

Officials reinforced the commonly held view that Guantanamo is an unsafe place for detainees:

They told me, if you are sent to Cuba, the torture is severe. You might lose an arm or a leg, you might be paralyzed.⁸⁵

Others were not threatened with transfer to Guantanamo, but instead were told that they should not fight to be released from Kamunting, because they would only be taken in by the United States and sent to Guantanamo if they won their release.⁸⁶

Special Branch officers also threatened to detain family members if detainees refused to cooperate. One wife learned from her husband that she was used by the authorities as a bargaining chip:

They told him that if he didn’t cooperate, then I would be detained, and my son would be sent to a welfare home. Also he would be sent for a two-year detention. But if he cooperates, then they told him that he would be released within sixty days.⁸⁷

⁸³ Human Rights Watch interview with ex-ISA detainee TY, Kuala Lumpur, December 2003.

⁸⁴ Ibid.

⁸⁵ Ibid.

⁸⁶ Human Rights Watch interviews, December 2003.

⁸⁷ Human Rights Watch interview with NK, Kuala Lumpur, December 2003.

Other detainees received similar threats. One detainee wrote on an affidavit smuggled out of Kamunting that “they [Special Branch] threatened to arrest my wife if I did not cooperate.”⁸⁸

Another detainee was told that his brother would be arrested if he did not cooperate:

They threatened to arrest my elder brother by showing me a photo of him being tailed by Special Branch.⁸⁹

In the context of the broad powers available to the government under the ISA, these threats would certainly have seemed very real to most detainees. Faced with the difficult prospect of putting their wives or other family members through arrest, detention, and intensive interrogation under the ISA that they themselves had endured, detainees were under enormous pressure to comply with the investigators’ demands.

The Special Branch also sought to coerce the testimony of detainees by threatening to deport them or their family members from the country. Because some of the detainees were Indonesian or Singaporean nationals who had residency status in Malaysia that could be revoked, Special Branch interrogators used their residency status as a means to coerce them to confess to criminal offenses. One detainee’s wife told Human Rights Watch:

Even now in Kamunting, they keep threatening that he will be sent back to Indon [Indonesia]. . . . They say you must cooperate or we will send you back. My children are Malaysian: what will happen if he is sent back? What will happen over there? Are you going to split us up? And what if he is detained there? My husband is being threatened in that way.⁹⁰

According to one detainee, the interrogation officers claimed that they could change a detainee’s immigration status with a single phone call:

One top official was waiting for me in the interrogation room, along with the six other men who usually question me. His face looked so angry, he spoke very loud, and he tried to threaten and intimidate me. He told me if I didn’t cooperate, he would send me back to Indonesia, my immigration card would be taken away, my work permit would be cancelled, my belongings would be confiscated, and all my children would be sent back to Indonesia.

At that moment he ordered his man to contact the immigration registration officer to cancel my entry permit and also to withdraw the I/C card that I have had for 18 years in Malaysia. I did not know if he meant with what he said or he only tried to threaten and intimidate me.

⁸⁸ Affidavit of Mohidin b. Shari, on file with Human Rights Watch.

⁸⁹ “Violation of Human Rights by Malaysian Police and Ministry of Home Affairs,” affidavit.

⁹⁰ Human Rights Watch interview with RW, Kuala Lumpur, December 2003.

All I knew was that they looked very angry and were not satisfied with my answer. Since then, I found myself being treated very meanly and inhumanely. Even the door guard did not want to open the door for me to go to the bathroom, which lasted for several days.

After that incident, they did not call me for a daily meeting for ten days. They let me stay in a very hot room all night and all day, with no mattress, pillow, nor blanket, and no more mosquito repellent, which they used to give me.⁹¹

Humiliating and degrading treatment

Interrogations often took place under conditions designed to humiliate the detainees. Interrogators forced detainees to strip to their underwear before questioning began. In at least one instance, a detainee was forced to urinate in front of the interrogators.⁹² One detainee was forced to masturbate, and later made to insult himself:

I was forced to masturbate and imagine making love with a JI lady. If I refused, they threatened to pull my fingernails.

I was forced to lift a 20-litre dustbin filled with waste, cigarette butts and dust. Then [they] forced me to put my face into the dustbin and inhale the cigarette dust and [was] forced to say, “I am stupid” on numerous occasions.⁹³

Interrogators also asked questions clearly meant to demean and intimidate the detainees, including questions about the detainees’ sex life, and about the adequacy of their sexual performance.⁹⁴ Within Malaysia’s socially conservative Muslim society, discussions of such issues are extremely invasive.

According to one detainee:

They asked irrelevant questions, such as, “How do you have sex with your wife? Did you lick your wife’s ass? How long do you last when you have sex with your wife?”⁹⁵

⁹¹ Affidavit of Mohamad Iqbal, on file with Human Rights Watch.

⁹² “Violation of Human Rights by Malaysian Police and Ministry of Home Affairs,” affidavit.

⁹³ Complaint by Sulaiman bin Suramin, affidavit on file with Human Rights Watch.

⁹⁴ Written complaints of Sulaiman b. Suramin and Mohidin b. Shari, on file with Human Rights Watch.

⁹⁵ Ibid.

Others faced similar obscene and humiliating questions:

They asked irrelevant and obscene questions of how I carry out sexual relationship with my wife. When I refused to answer, they assaulted me.⁹⁶

Many detainees also reported continually being asked irrelevant political questions, including questions about former Deputy Prime Minister Anwar Ibrahim, the political viability of PAS, and about connections to former KeADILan detainees. Detainees were asked which politicians they had voted for in the past, and what they thought about then-Prime Minister Mahathir's stewardship, and they were taunted about what interrogators said was the failure and impending political death of the opposition KeADILan party.⁹⁷

As with the KeADILan detainees, Anwar was a particular fixation for Special Branch interrogators:

We were asked questions not relevant to the arrest, including the wrongdoing of Anwar Ibrahim. Interrogating Officers said that the Special Branch have a shelf of reports about the wrongdoing of Anwar. They also said that before the case [Anwar's trial on sodomy and corruption], numerous reports were made against Anwar.⁹⁸

Mohamad Iqbal was subjected to similar commentary by the Special Branch:

They told me that Anwar Ibrahim is a sex maniac and a prostitute. [They said that] he has been a prostitute for several men. They also said that he is a foreign agent. . . .⁹⁹

Special Branch interrogators also sought to convince detainees that UMNO was the only viable political party in Malaysia, constantly disparaging UMNO's political rivals. Several detainees noted that both KeADILan and PAS were regular targets. "They . . . said KeADILan will die in the next election, just like PAS," one detainee noted in an affidavit.¹⁰⁰

Another detainee told of being urged to join UMNO:

They asked me which political party I support and talked about the wrongdoing of PAS spiritual leader Nik Aziz. They influenced me to be

⁹⁶ Ibid.

⁹⁷ "Violation of Human Rights by Malaysian Police and Ministry of Home Affairs," affidavit.

⁹⁸ Ibid.

⁹⁹ Affidavit of Mohamad Iqbal, on file with Human Rights Watch.

¹⁰⁰ Affidavit of Mat Sah bin Mohamad Satray, on file with Human Rights Watch.

an UMNO member and support UMNO when released from detention.¹⁰¹

Many KeADILan detainees, arrested on charges of planning to use violence to overthrow the government, reported being subjected to the same irrelevant questions and statements about their political background and activities.¹⁰² The use of such tactics calls into question the motivations of the Special Branch in detaining these men, and raises the possibility that the motivation for the arrests may have been political instead of security related.

The Special Branch interrogators also went to some lengths to keep ISA detainees, many of whom have devout religious beliefs, from seeking solace through religious practice. The authorities used the detainees' sensitivity to religious issues as a weakness to abuse and humiliate them.

This abuse took two forms: denying detainees the ability to fulfill even some of the fundamental tenets of Islam, and openly insulting or degrading their religious practices.

During the first sixty days of detention, detainees were not allowed to have a copy of the Quran for weeks at a time. On various occasions, individual detainees were not told the time of the call to prayer, were not allowed to make ablutions in preparation for prayer, were not given proper dress for prayer, and were not told the direction of Mecca. During the time that they were held incommunicado, detainees were denied access to religious counsel. Some detainees were also forced to shave their beards when they were sent to Kamunting for the first time.¹⁰³ According to one detainee:

[My] request to borrow and read the Quran was denied, and only during the last week of detention [was I given a copy of the Quran].¹⁰⁴

The U.N. Human Rights Committee has made it clear that individuals do not surrender their right to practice their religious beliefs merely because they have been incarcerated:

Persons already subject to certain legitimate constraints, such as prisoners, continue to enjoy their rights to manifest their religion or belief to the fullest extent compatible with the specific nature of the constraint.¹⁰⁵

Refusing to give ISA detainees a copy of the Quran or denying them the opportunity to wash before prayer cannot be justified on security grounds.

¹⁰¹ "Violation of Human Rights by Malaysian Police and Ministry of Home Affairs," affidavit.

¹⁰² See Fritz, *Unjust Order*, pp. 54-5.

¹⁰³ Ibid.

¹⁰⁴ Ibid.

¹⁰⁵ The right to freedom of thought, conscience and religion (Art. 18), 30/07/93, CCPR General Comment 22. (General Comments), Forty-eighth session, 1993, paragraph 8.

The U.N. Standard Minimum Rules on the Treatment of Prisoners also guarantees the right of detainees to practice their religion while in detention, and specifies that religious texts should be made available and that visitations by religious counselors should be allowed.¹⁰⁶

Interrogators also made sexual remarks related to Islam. One detainee was lectured on the appropriateness of sodomizing his wife under Islam, and others were told that they should question their beliefs in other ways.¹⁰⁷ Prison officials tried to deny the detainees' Muslim identity. Detainees were forced to sing Hindi songs; and one guard told a detainee, "You are not a Muslim, but a Hindu Indian."¹⁰⁸

Coerced and false confessions

International law prohibits a person from being compelled to testify against oneself or to confess guilt.¹⁰⁹ Under the pressure of coercive interrogation techniques, many detainees made confessions that they would later recant. In several cases, detainees claimed that they had made false confessions to appease their interrogators. Detainees claimed that in some cases they simply signed on to confessions prepared by their interrogators.

In their joint affidavit, detainees also complained of the rewriting of statements by Special Branch interrogators. According to one detainee:

My statement was doctored by Special Branch. During the representation with the Advisory Board, the Special Branch doctored the statement by stating that I "have the knowledge of the establishment of the Regional Islamic Nation and it is the struggle of Jemaah Islamiyah. The struggle is to topple the Malaysian Government through militant means," but I do not have any knowledge of it. The Chairman of the Advisory Board then said, "Even though you do not know but your top leadership knows," and when I asked why the statement states that I have that knowledge, he kept quiet.¹¹⁰

The detainees further claimed that the Special Branch fabricated allegations against them to include in their original detention orders:

The facts in the detention order and reasons for detention were engineered. We have no knowledge and have never been asked by our interrogators about the establishment of Regional Islamic Nation through militant means. The facts were engineered by Special Branch,

¹⁰⁶ U.N. Standard Minimum Rules for the Treatment of Prisoners, articles 41 and 42.

¹⁰⁷ The detainees made reference to the Islamic law doctrine of *sherk*, which means apostasy.

¹⁰⁸ "Violation of Human Rights by Malaysian Police and Ministry of Home Affairs," affidavit.

¹⁰⁹ See, e.g. ICCPR, article 14(3)(g); Convention against Torture, article 15.

¹¹⁰ *Ibid.*

stating that they received the information from Ministry of Home Affairs.¹¹¹

Conditions of Detention

Conditions of detention during the initial sixty-day detention period are notoriously bad. The current group of ISA detainees was held in solitary confinement, in small cells that lacked windows and even the most basic bedding. Detainees were denied visits from family members for the first several weeks of their detention. Access to legal counsel is usually denied for the entirety of the first sixty days.

Special branch officers have treated the detainees abusively, repeatedly insulting detainees and subjecting them to questions and comments about their sexual habits. Detainees also have been subjected to intensive interrogation and regularly asked irrelevant and demeaning questions during interrogation sessions.

These conditions, most of which in and of themselves violate international standards, also create an environment ripe for other forms of abuse. Extended incommunicado detention ensures that Special Branch interrogators have unfettered access to the detainees, and that any ill-treatment goes unreported, at least initially. This may encourage interrogators and prison officials to act with a freer hand, knowing that wounds heal and memories dim.

Extended incommunicado detention is also part of a broader coercive environment. Forcing detainees to spend several weeks alone, having contact only with prison guards and special branch interrogators, significantly weakens their resolve and allows interrogators to more successfully exert their will over them.

One former detainee told Human Rights Watch:

I was in solitary confinement. It was about an 8x10 [foot] room, with no windows. There was no furniture save for a bunk, and no pillows. The bathroom was down the hall, and we had to ask to use it. I knew the day, roughly, but not the time. I kept track of the days by meals and prayer times.¹¹²

The men had to contend with Malaysia's sweltering heat in their cells, which were often infested with mosquitoes. In a long handwritten affidavit written while in immigration detention, Muslim cleric Mohamad Iqbal described similar conditions during his ISA detention:

[The prison officials] gave me two pairs of blue uniforms. They also gave me a toothbrush and toothpaste, soap, detergent, a plate, and a

¹¹¹ Ibid.

¹¹² Human Rights Watch interview with TY, Kuala Lumpur, December 2003.

cup. After that they took me to a room, which was very hot. There was also no window and a 100-watt light bulb was on 24 hours a day.

The room had two beds, and was about 8x10 feet. There was no mattress, no pillow, and no bedclothes. Near the ceiling there was a machine that looked like an air conditioner. Sometimes it made the room temperature very cold, but sometimes it also made the room very hot. There was a hole for air circulation placed near the floor. This hole allowed many mosquitoes to enter the room at night. The room was never exposed to the sunlight. Living in such a room for 54 days made me feel like I was living underground.

For the first ten days I slept on the plywood, as they did not give me a mattress or a pillow. For ten days after that, they handed me a mattress, a pillow, and a blanket, but after that they took them away again for a month. They brought them back in for the last four days of my stay. During my fifty-four days there they moved me several times to another room they referred to as "the haunted room." They put me there for ten days and then moved me to another room within the same block.¹¹³

Current detainees' descriptions of their conditions of detention closely matched those of earlier, political detainees. According to one former political detainee:

I was finally pushed through a door and when my blindfold was removed and my eyes adjusted to the light I saw that I was in a cell of approximately 8 feet square [probably meaning 8x8 feet, or sixty-four square feet]. There were two wooden platforms placed against the cell walls, one on each side. There was no other furniture of any sort. The cell had no window and ventilation was through two tiny ratholes at the bottom of one wall. There was no bedding or blankets. . . . There was a small thin towel on one platform and beside it was a plastic bowl. The room was brightly lit by an overhead light that was never switched off throughout my stay there.

The glare of the light could not be avoided from any position in that small cell. There was an old vent on one wall that made a continuous horrendous grating sound. This vent did not seem to be moving any air about and was also never switched off. No sound from outside came through the door. The cell was literally soundproof though at times I thought I heard the sound of coughing and heavy breathing as I was led out of the cell to various other places.¹¹⁴

These detention conditions fall far short of international standards. The U.N. Standard Minimum Rules for the Treatment of Prisoners requires that prisoners be provided with

¹¹³ Affidavit of Mohamad Iqbal, on file with Human Rights Watch.

¹¹⁴ Dr. Munawar Ahmad Anees, Statutory Declaration, November 7, 1998.

suitable light, windows, and bedding.¹¹⁵ Article 10 of the Standard Minimum Rules requires that “all accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climactic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation.”¹¹⁶ Article 19 requires that all prisoners be issued “a separate bed, and with separate and sufficient bedding which shall be clean when issued, kept in good order and changed often enough to ensure its cleanliness.”¹¹⁷ The conditions that ISA detainees live under fall far short of these basic standards.

In addition to the conditions described above, ISA detainees being held for alleged terrorist activity have been subjected to daily intimidation and abuse by prison officials and Special Branch interrogators. Special Branch officials openly curse and insult detainees, and regularly force detainees to take off their clothes in front of them. Special Branch officers also force detainees to perform menial tasks for them; some detainees have been forced to make tea for Special Branch officers. Several detainees claimed that they had been told to massage their interrogators.¹¹⁸

Some detainees were denied medical assistance:

[I was] not given assistance for medical attention when I was screaming for help due to severe pain. I thought I was going to die. My body was sweating because of the pain. They gave assistance half an hour later, but they didn’t send me to the hospital. They only took me to a room and gave me some warm water. I was actually having a gall stone.¹¹⁹

Under the Standard Minimum Rules for the Treatment of Prisoners, prison health officials are required to respond to requests for medical treatment from prisoners, and prisoners in need of specialist treatment should be taken to specialist facilities outside of the prison.¹²⁰

Many of the detainees described long-term solitary confinement in such conditions as a form of “mental torture.”¹²¹ While solitary confinement is not forbidden under international law, prolonged solitary confinement has been recognized by the U.N. Human Rights Committee and others as a form of ill-treatment prohibited by the ICCPR.¹²² The Committee against Torture also criticized the use of incommunicado detention.¹²³

¹¹⁵ U.N. Standard Minimum Rules for the Treatment of Prisoners, articles 10, 11, and 19.

¹¹⁶ U.N. Standard Minimum Rules, article 10.

¹¹⁷ U.N. Standard Minimum Rules, article 19.

¹¹⁸ *Affidavit.*

¹¹⁹ “Violation of Human Rights by Malaysian Police and Ministry of Home Affairs,” affidavit.

¹²⁰ Standard Minimum Rules, articles 10, 11, and 19.

¹²¹ “Violation of Human Rights by Malaysian Police and Ministry of Home Affairs,” affidavit.

¹²² Article 7 of the ICCPR prohibits “torture or other cruel, inhuman, or degrading treatment or punishment.” “The Committee notes that prolonged solitary confinement of the detainee or imprisoned person may amount to acts

IV. Violations of Due Process and the Role of the Judiciary under the ISA

I don't know why my husband is in detention. I want my husband to be charged in court and brought to trial.¹²⁴

—Wife of ISA detainee

Although the Malaysian government has publicly made serious allegations against all of the detainees, it has yet to specify, much less actually prove, the allegations against them.

In September 2003, a group of 31 detainees decided to take legal action to try to force the government to prove its allegations against them. In a statement released by their lawyers, the group of 31 detainees declared their innocence and demanded their day in court:

We are being held without trial and have been publicly humiliated and accused with a myriad of unfounded, unproven and unsubstantiated allegations without having a right to be heard or defended in public. This is a betrayal of us, our family, and the due process of law. We collectively condemn the actions of the authorities and call upon them to either charge us in court or to release us immediately.¹²⁵

Since then, the situation remains unchanged: the government has yet to charge any of the detainees, and it has given no indication that it will do so anytime soon.

Denial of Access to Counsel

The Malaysian constitution guarantees the right to counsel. Under Article 5(3) of the constitution, a person who is arrested has the right to be “informed as soon as may be of the grounds of his arrest and shall be allowed to consult and be defended by a legal practitioner of his choice.”¹²⁶ Despite this rather clear statement of the right to counsel,

¹²³ See Chris Ingelse, *The UN Committee against Torture: An Assessment*, Kluwer Law International, 2001, p. 256. See also Nigel S. Rodley, *The Treatment of Prisoners Under International Law*, Oxford University Press, 1999, p. 294.

¹²⁴ Human Rights Watch interview with FH, Kuala Lumpur, December 2003.

¹²⁵ Press Statement of 31 ISA detainees, September 19, 2003, on file with Human Rights Watch.

¹²⁶ Ibid.

¹²⁷ Malaysian Constitution, Article 5(3). Article 5(2) guarantees the right of habeas corpus: “Where complaint is made to a High court or any judge thereof that a person is being unlawfully detained the court shall inquire into the complaint and, unless satisfied that the detention is lawful, shall order him to be produced before the court and release him.”

ISA detainees are regularly denied access to counsel, especially during the first sixty days of detention.¹²⁷

The right of access to legal counsel is a fundamental precept of international human rights law. Recognizing that access to adequate counsel is crucial to mounting a legal defense and to fulfilling the presumption of innocence, Article 14 of the ICCPR states that the accused has the right to “defend himself in person or through legal assistance of his own choosing.”¹²⁸ The right to counsel is more fully articulated in the U.N. Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. Principle 17 guarantees the right to counsel, and Principle 18 elaborates on that right, guaranteeing the right to meet with counsel while in detention, the right to communicate with counsel confidentially while in detention, and the right to adequate facilities for consultation to take place.

In addition, the Basic Principles on the Role of Lawyers (“Basic Principles”) also guarantee the right to counsel, and further specify that access to an attorney should happen as soon as is practicable after an arrest, “and in any case not later than forty-eight hours from the time of arrest or detention.”¹²⁹ The right to confidential consultation and adequate time and facilities for consultation is also stressed.¹³⁰

Under the ISA, Malaysian authorities have paid little heed to the requirements of international law or Malaysian constitutional guarantees. Almost as a matter of course, the authorities have denied all ISA detainees access to counsel during their initial sixty-day detention period, despite the absence of any textual basis in the ISA for doing so. Because the courts are barred from questioning or reviewing the two-year detentions meted out under Section 8 of the ISA, this initial sixty-day detention period becomes all the more crucial in terms of launching a legal challenge. But without access to counsel, the ability of an ISA detainee to get his or her case into court is severely limited.

Coercion against Families

The Special Branch tightly controlled family visits with three apparent goals: to convince family members that the detainee was not being ill-treated; that families should not take

¹²⁷ Two recent court decisions, perhaps recognizing the importance of the initial sixty-day period, have attempted to re-invigorate the legal right to counsel during the initial detention. In *Mohamad Ezam bin Nor and Others v. The Chief of Police* (2002-4 M.L.J. 449), the Federal Court held that the police decision to forbid access to an attorney was in fact a violation of Article 5(3) of the Constitution. A subsequent case, *Nasharuddin bin Nasir v. Kerajaan Malaysia and Others* (2002-4 M.L.J. 617), saw the court once again assert its right to review the decision of the government to deny an ISA detainee access to counsel. When the police failed to explain the grounds for denying access to ISA detainee Nasharuddin bin Nasir, the court found the denial in bad faith, and ordered that the detainee be allowed to meet with his attorney. Yet that meeting, scheduled for June 12, 2002, never took place: when the attorneys tried to meet with their client the day after the court’s decision was handed down, they were met with the news that he had been sent to the hospital for treatment of a medical problem. Perhaps not coincidentally, the government also chose to issue a Section 8 detention order for Nasir on that same day.

¹²⁸ ICCPR, article 14(3)(d). The same article also guarantees the right to be supplied with legal counsel free of charge if the accused cannot pay for it himself.

¹²⁹ Basic Principles, article 7.

¹³⁰ Basic Principles, article 8.

any action on the detainee's case; and that the detained relative was in fact guilty. Many wives quickly realized that their husbands were being told what to say: "I asked him how he was treated, he said everything was OK. But I knew it wasn't OK," one of the wives of the detainees said.¹³¹ Another wife said matter-of-factly, "My husband was parroting what they told him to do."¹³²

In addition to attempting to assure their families that they were not being mistreated in detention, detainees also tried to urge their families not to try to help them in any way:

I held his hands and I felt him trembling. But he smiled at me when he was talking. He told me "don't ever take lawyers, don't ever meet Suhakam [National Human Rights Commission] don't meet *reformasi*, don't meet with JIM."¹³³ He said don't meet with lawyers because we don't have any money. I asked why and the SB [Special Branch] answered for me: they said that SUHAKAM cannot be trusted. And these lawyers, they just want money and they don't want to help.¹³⁴

Detainees who have been released have confirmed that they were told what to say during family visits by Special Branch officials. One ex-detainee taken in for alleged terrorist activity in 2001 told Human Rights Watch that he was coached before his family came to see him:

They told me that I should tell my wife to drop the case. They told me that if I get a lawyer, when you fight against the government it is impossible to win. That I'll just be detained longer. But I didn't say anything to her about it. They were angry that I didn't say anything. . . . After my family left, I was scolded by the officers. They asked me why I didn't cooperate.¹³⁵

Other former ISA detainees interviewed by Human Rights Watch had similar experiences, but most of them chose to obey the Special Branch and say what they were told to say rather than risk losing out on future family visits. An ex-ISA detainee detained for his political activity told Human Rights Watch that he received very specific instructions before his first post-detention family visit:

They told me what I could and could not tell my wife. Then after that I had to go through a debriefing. They told me, "You only talk about family matters, don't tell your wife about your conditions of detention.

¹³¹ Human Rights Watch interview with CQ, Kuala Lumpur, December 2003.

¹³² Human Rights Watch interview with JS, Kuala Lumpur, December 2003.

¹³³ JIM, or Jamaah Islah Malaysia, is an Islamic NGO that does charity work in Malaysia.

¹³⁴ Human Rights Watch interview with JS, Kuala Lumpur, December 2003.

¹³⁵ Interview with TY, Kuala Lumpur, December 2003. Others still in detention have reported being given similar orders. One current detainee, Mohidin bin Shari, wrote in an affidavit smuggled out of Kamunting that "they instructed me not to tell my wife what transpired during interrogation." Affidavit of Mohidin bin Shari, on file with Human Rights Watch.

Don't tell your wife about the interrogation. You just talk about your family and that's it.”¹³⁶

Special Branch officers were often very specific about the subject matters that they wanted covered during family visits. One detainee was told to ask specific questions of his wife, in effect acting as a surrogate interrogator of his own wife, so that Special Branch officers could record the information:

They dictated me the questions that I should ask when I meet my wife during her visit in the detention. The questions included:

Whether or not my wife and my family hired a lawyer for me.

Whether or not my wife and my family were being interviewed by journalists.

Whether or not my wife and my family have accepted funds from various people.

In order to prove that all my testimonies during the investigation are true, the police asked me to apologize to my wife for the wrongdoing I had committed and to say that that was why I was caught and detained.¹³⁷

Family members often got their first glimpse of the intimidation and coercion that their loved ones suffered when they went in for their first family visit, usually three to four weeks after the arrest.

I saw him two weeks later [after he was detained]. He was cold and pale. He had lost weight. His hands were cold. He seemed nervous when we were talking. He was looking at the officers before he answered questions; there were eight of them in the room. We couldn't talk about anything – he was too afraid. He told me not to get involved, not to get a lawyer. Just let him suffer, he said.¹³⁸

All of the wives that Human Rights Watch interviewed said that there were multiple Special Branch agents in the room with them when they met their husbands for the first time. Under no obligation to downplay their presence, officers openly took notes on the conversation and even occasionally took pictures. Several Special Branch officers sat behind visiting relatives, so that they were facing the detainee, and detainees often looked to the Special Branch officers before answering questions from family members.

¹³⁶ Human Rights Watch interview with ex-ISA detainee WK, Kuala Lumpur, December 2003.

¹³⁷ Affidavit of Mat Sah bin Mohamad Satray, on file with Human Rights Watch.

¹³⁸ Human Rights Watch interview with XV, Kuala Lumpur, December 2003.

Some of the detainees found the intense monitoring too much to take and broke down during the family visit:

There were six police officers there in the room [when we visited him]. He didn't say anything. The police said not to worry. He was crying and very afraid. He didn't want to speak in front of the police. Whenever he answered questions, he looked to the officers.¹³⁹

Under enormous pressure, detainees often made what to family members seemed to be scripted statements, praising their captors and urging their wives not to take any action on the outside.

I saw my husband for the first time one month later. This was at the police station. He was under pressure from the police. He tried to convince me that everything was OK. He told me that he sees the doctor once a week, that he was sleeping well, and that the food was good. Everything was good.¹⁴⁰

Manipulation of detainees before, during, and after family visits is a violation of international standards. Under the Standard Minimum Rules for the Treatment of Prisoners, detainees who have yet to go on trial are allowed regular family visits, "subject only to such restrictions and supervision as are necessary in the interests of the administration of justice and of the security and good order of the institution."¹⁴¹ Urging detainees to tell their family members not to retain a lawyer or speak to the press is not a necessary restriction in the interest of justice, but rather hinders the administration of justice in contributing to the denial of counsel for detainees.

The lack of information about their husbands and fathers exacerbated the natural anxiety that family members felt over the arrest of a loved one. The arresting officers often gave family members nonworking phone numbers to call and local officials, when approached after the arrest, often denied any knowledge of the case and refused to help.

According to one wife of a detainee:

My first visit was three weeks after he was detained. Before that, we never knew whether he was alive or dead. The phone number that they gave us was false.

Many of the wives that Human Rights Watch spoke to reported being almost paralyzed by fear. According to one interviewee:

I didn't do anything. I was at a loss. I didn't contact any of my friends whose family members had also been taken away. The awareness wasn't

¹³⁹ Human Rights Watch interview with BD, Kuala Lumpur, December 2003.

¹⁴⁰ Human Rights Watch interview with RW, Kuala Lumpur, December 2003.

¹⁴¹ Standard Minimum Rules, article 92.

there, I didn't know who to contact. I was worried that if I contacted other friends, it might implicate them.¹⁴²

This initial detention period, in which the detainee was held completely incommunicado and the government refused to give even the most basic information about where the individual was being held, took an enormous toll on the family members. One wife reported that her own health began to suffer after her husband was taken away:

Initially I was in shock, I couldn't eat, I was very worried. It was very stressful. I was all alone and no one could advise me.¹⁴³

Although the wives of the detainees bore the brunt of the family burden, the children were often deeply affected as well. Some of the mothers told Human Rights Watch that their children were confused over their father's arrest. Others spoke about children having problems at school. One of the wives of the detainees told Human Rights Watch:

I was restless for the first two months. I couldn't sleep, I wasn't eating. The children were also affected. . . . My son's friends in school taunted him, saying that his father was a terrorist. He started getting into fights. One of my daughters had the same thing happen to her.¹⁴⁴

While a family member's detention is always stressful, the ISA by design exacerbates the tension by limiting access, keeping the family guessing as to what's going on inside, and, in the case of these detainees, wondering why their loved one has been detained.

Because many of the families were single-income households in which only the men worked outside the home, many wives were left impoverished by the detention of their husbands:

Financially we are in a very tough situation. We have lost income. I make homemade snacks to earn a living. That is how we make ends meet. I sell them to local shops and groceries. We received my husband's paycheck for a few months after his arrest, but then we received a letter saying that he had been suspended.¹⁴⁵

The Special Branch also has openly monitored the wives of some of the detainees, occasionally issuing vague warnings and threats to family members.

¹⁴² Human Rights Watch interview with UL, Kuala Lumpur, December 2003.

¹⁴³ Human Rights Watch interview with FH, Kuala Lumpur, December 2003.

¹⁴⁴ Human Rights Watch interview with AZ, Kuala Lumpur, December 2003.

¹⁴⁵ Ibid.

Lack of Judicial Review

Administrative detention under the ISA permits the executive branch of government in Malaysia to detain persons indefinitely without meaningful judicial review. International human rights law requires that persons deprived of their liberty be promptly brought before a court and charged. According to the Universal Declaration of Human Rights, “[e]veryone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and any criminal charge against him.”¹⁴⁶ This basic right, as well as the right to challenge the lawfulness of one’s detention, the right to a fair and public hearing by a competent, independent and impartial tribunal established by law, and the right to judicial review of a criminal conviction, are set out in various international instruments.¹⁴⁷

Under the ISA the Malaysian judiciary has been systematically excluded from playing any meaningful role in ensuring that those detained are treated in accordance with Malaysian or international law. This exclusion is both *de jure*, in the form of explicit limitations written into the ISA, and political, in the form of intimidation of judges by the government.

Crucially, the government can exercise full discretion over which information it hands over to the courts in ISA-related cases, at least as far as Section 8 detentions are concerned. Under Section 16 of the ISA, the government has a free hand in deciding which information to disclose, and may withhold any information that it views as “against the national interest to disclose or produce.”¹⁴⁸

Beyond the explicit right not to disclose key information relating to a case, the government has also limited the power of the courts to question its actions taken under the ISA under section 8B of the act (see above in “The ISA: An Abusive Law”).

The framework for judicial review of actions taken under the ISA falls well short of international standards, as well as domestic guarantees for the right to habeas corpus under the Malaysian constitution.¹⁴⁹ Section 11 of the Act allows for review of all detentions by an executive-appointed Advisory Board. Although it is empowered to review all Section 8 detentions, the Advisory Board has no power to actually free those it determines have been wrongly detained. Instead, it can only make non-binding recommendations to the government about which detainees should be released.

The creation of the Advisory Board is mandated not by the ISA, but rather by Article 151 of the Malaysian constitution. Under Article 151, the three-person advisory board is

¹⁴⁶ UDHR, article 10.

¹⁴⁷ See ICCPR, articles 9 & 14; Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, principles 11 & 32.

¹⁴⁸ ISA, Article 16.

¹⁴⁹ Article 5(2) of the Malaysian Constitution states: “Where complaint is made to a High court or any judge thereof that a person is being unlawfully detained the court shall inquire into the complaint and, unless satisfied that the detention is lawful, shall order him to be produced before the court and release him.”

appointed by the Yang di-Pertuan Agong (the Malaysian king, a largely ceremonial post that rotates among Malaysia's nine state rulers), who has historically acted on behalf of the executive branch. In practice, the government is free to fill the board with individuals sympathetic to its own needs.

Even when the Advisory Board recommends the release of individuals detained under the ISA its views are often ignored by the government. In November and December 2002, for example, the Board recommended the release of five KeADILan activists, Tian Chua, Saari Sungib, Likman Noor Adam, Dr. Badrulamin Bahron, and Hishamuddin Rais. The government simply ignored the Advisory Board's recommendation.¹⁵⁰ Although the activists were eventually released in June 2003, there was no indication that the release had anything to do with the views of the Advisory Board. Rather, the government claimed that, on the expiration of the activists' two-year detention period, they no longer constituted such a threat to security that their detentions should be renewed.

Given the ineffectuality of the Advisory Board, many activists within Malaysia have called for the Board to be eliminated. As P. Ramakrishnan, the head of the civil society group, Aliran, pointed out in the wake of the government's decision to ignore the Board's recommendations to release the KeADILan activists:

If the government cannot honour the decision of the Advisory Board, if it continues to show scant respect to the rule of law, then what is the point in having the Advisory Board? What purpose is served in going through this charade? Let's scrap this meaningless and perverse provision. The Advisory Board comes across as nothing more than a farcical façade of democracy which makes a mockery of justice.¹⁵¹

It appears that the Board merely allows the government to create the appearance of a review process without any substance. The Board's power is so minimal and its independence so compromised that this review cannot be considered meaningful or particularly useful.

All of this is exacerbated by the fact that the Malaysian judiciary is not fully independent. Indeed, it has been subjected to a long campaign of intimidation and interference by the government of Mahathir Mohamed. Many believe that the Malaysian judiciary has never fully recovered from the blows dealt it during the fallout from Operation Lalang, and the memory of this political intimidation, combined with regular threats from the executive, creates a situation in which even suspects with clear-cut evidence of abuses under the ISA have little chance of winning relief.¹⁵² As the American Bar Association has noted:

¹⁵⁰ P. Ramakrishnan, "Scrap the ISA Advisory Board," Aliran media statement, March 10, 2003.

¹⁵¹ Ibid.

¹⁵² International Bar Association, *Justice in Jeopardy: Malaysia in 2000*, p. 63.

[T]here is a widespread perception among senior members of the legal profession and among NGOs that in those cases in which the Government has an interest, the judiciary is not independent. This is either because it is leaned on directly or indirectly by the Government or because it knows what the Government wants and is simply too intimidated in the light of past experiences. It seems that this perception is also held by members of the general public.¹⁵³

The U.S. government has also criticized Malaysia's judiciary for being insufficiently independent:

The Constitution provides for an independent judiciary; however, government action, constitutional amendments, legislation, and other factors undermined judicial independence and strengthened executive influence over the judiciary.¹⁵⁴

One attorney told a visiting delegation that:

The lack of judicial independence in this country is due to a lack of understanding of the proper role of the judiciary. Judges in this country see themselves as nothing more than an arm of the executive branch. They see their job as upholding the judgment of the executive.¹⁵⁵

While the right to a hearing is crucial, it becomes meaningless unless the reviewing body is impartial and able to fully engage in the case without fear of retribution. Under the Basic Principles on the Independence of the Judiciary, the government has a duty to protect the independence of the judiciary¹⁵⁶ and to allow judges to decide the cases before them impartially, without fear of interference.¹⁵⁷ Generally speaking, persons arrested have "the right to be tried by ordinary courts or tribunals using established legal procedures," which calls into question the use of specially created Advisory Boards to review ISA detentions.¹⁵⁸

¹⁵³ Ibid.

¹⁵⁴ U.S. State Department, *2002 Country Reports on Human Rights Practices* (Malaysia), Sect. 1(e).

¹⁵⁵ Fritz, *Unjust Order*, p. 84.

¹⁵⁶ Principle 32(1).

¹⁵⁶ Basic Principles on the Independence of the Judiciary, article 1.

¹⁵⁷ Ibid, article 2.

¹⁵⁸ Ibid, article 5. Article 5 further states that "(t)ribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals."

Threats to Deter Legal Action

The Malaysian authorities go to great lengths to keep ISA detainees from asserting even those weak protections they are afforded under Malaysia's legal system. Many detainees and their families told Human Rights Watch that official intimidation deterred them from immediately challenging the government's detention order. Special Branch interrogators regularly told detainees that getting a lawyer would only increase the likelihood that their detentions would be renewed under section 8. According to one of the wives of the detainees, taking a lawyer was often seen as counter-productive:

My husband told me that he will be in more trouble if we get a lawyer. He told me that if we challenge the government, we can't win.¹⁵⁹

Many of those now in detention fear that the government's decision over whether to let them go will be negatively affected by taking a lawyer. Some have decided to wait out their two-year detention orders before mounting any legal challenge:

They told him, if you cooperate with us, then we will release you within two months. He felt cheated, because they didn't follow through on their promise. Now our plan is to wait until the two-year detention order runs out and then see what happens. If his detention is renewed, we might get a lawyer.¹⁶⁰

Others were dissuaded from taking a lawyer by seeing fellow detainees go to court and fail. One wife specifically mentioned the *Nasaruddin* case, in which the court ordered the release of an ISA detainee who was immediately rearrested by the authorities:

I never thought about getting a lawyer. . . . When Nasaruddin was released and rearrested we gave up hope on that front. My husband comes up for renewal in June. My husband mentioned to me today that his detention might be extended. Perhaps another year or so. But I hope that he will be let out in June.¹⁶¹

The message that a case like *Nasaruddin* sends is a troubling one: even if an ISA detainee can get into court and convince the judge to take action, the government will still thwart the court's order. Beyond official warnings not to take legal action, the *Nasaruddin* case discourages detainees from challenging their detention for the simple reason that they may believe that doing so will be futile, since the government will merely detain them again regardless of what the court may say.

¹⁵⁹ Human Rights Watch interview with LM, Kuala Lumpur, December 2003.

¹⁶⁰ Human Rights Watch interview with PT, Kuala Lumpur, December 2003.

¹⁶¹ Human Rights Watch interview with YC, Kuala Lumpur, December 2003.

V. U.S.-Malaysia Counterterrorism Cooperation

With what we're doing in Guantanamo, we're on thin ice to push on this.

—Senior U.S. State Department Official, December 2003, explaining U.S. reluctance to speak out on recent ISA arrests¹⁶²

The September 11th attacks on the United States dramatically altered the relationship between the United States and Malaysia. Previously, the United States 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.

In June 2001, the U.S. government responded quickly to Malaysia's arrest of the KeADILan activists, saying it was "deeply concerned" over the detentions.¹⁶³ The U.S. also expressed disapproval of the ISA detentions of PAS members that occurred prior to September 11th.¹⁶⁴

But after September 11th, the detentions of alleged Islamic militants elicited no such response. "We've been much less vocal about expressing our concerns about the ISA. That hasn't been our top priority," a U.S. government counter-terrorism official told Human Rights Watch. "That was our underlying concern for our criticism of the ISA in the first place – that it was being used as a political tool," the official said.¹⁶⁵ Whereas the presumption of innocence and suspicion of ulterior political motives characterized the U.S. response to previous ISA detentions, now the U.S. seems to operate on the presumption of guilt in its assessment.

Indeed, the U.S. has actually praised recent ISA detentions as contributing to Malaysia's response to the "war on terror" in Southeast Asia.¹⁶⁶ In Washington in May 2002, then-Law Minister Rais Yatim said that U.S. Attorney General John Ashcroft had expressed support for the ISA in a meeting. "In the context of their own Patriot Act," Yatim said of Ashcroft, "he endorsed the significance of the ISA."¹⁶⁷

The widespread U.S. practice of indefinite detention without charge or trial of terrorist suspects in the United States, at Guantanamo Bay, and elsewhere in the world, has undercut its desire and harmed its ability to engage in effective human rights advocacy

¹⁶² The official was referring specifically to ISA detentions of alleged terrorists.

¹⁶³ "Malaysia raps US over criticism of opposition detentions," AFP, June 7, 2001.

¹⁶⁴ Pamela Sodhy, "US-Malaysian Relations during the Bush Administration: the political, economic, and security aspects," *Contemporary Southeast Asia*, vol. 25, issue 3, December 1, 2003.

¹⁶⁵ Human Rights Watch interview with U.S. Department of State official, November 2003.

¹⁶⁶ Statement of Admiral Thomas B. Fargo, U.S. Navy Commander, U.S. Pacific Command, before the House International Relations Committee, Subcommittee on Asia and the Pacific, hearing on "U.S. Security Policy in Asia and the Pacific: Restructuring America's Forward Deployment," June 26, 2003.

¹⁶⁷ "Malaysia says US has endorsed its anti-terror law," Reuters, May 11, 2002.

on behalf of administrative detainees elsewhere. Speaking specifically about the ISA detentions in Malaysia, a State Department official told Human Rights Watch that Guantanamo significantly limited the ability of the U.S. to criticize the Malaysian government for its use of the ISA against alleged militants.¹⁶⁸

For its part, the Malaysian government has wasted no time in exploiting the comparison to Guantanamo to deflect criticism from the international community. In September 2002, Malaysian Law Minister Rais Yatim made an explicit reference to Guantanamo in justifying the ISA: “It’s just like the process in Guantanamo. What happened to the cases that are still there and there was no due process? Similarly we have got the same treatment.”¹⁶⁹

Despite Malaysia’s poor human rights record, U.S.-Malaysian cooperation within the framework of the U.S.-led “war on terror” has been extensive. The U.S. government assisted Malaysia in the establishment of the Southeast Asia Regional Center for Counterterrorism and has conducted training there for Malaysian government officials.¹⁷⁰ The Malaysian government regularly shares intelligence information with the U.S. government, and has offered the U.S. access to detainees in Malaysia. When the U.S. interrogated thirteen Malaysian students detained without trial in Karachi, Pakistan, in September 2003, the Malaysian government remained silent rather than protest the detentions. After U.S. officials completed their interrogations, the Malaysian government detained all thirteen after their arrival in Kuala Lumpur.

Malaysia has been repaid for its cooperation. Before the September 11th attacks, Malaysia’s relationship with Washington was severely strained over the Anwar affair and the use of the ISA to detain opposition activists. When President George W. Bush came into office in January 2001, the Malaysian government made repeated attempts to improve relations, sending high-level emissaries to Washington three times in the nine months between President Bush’s inauguration and the September 11 attacks.¹⁷¹ These overtures were largely rebuffed, as the Bush administration made clear to the Malaysian government that it was still deeply concerned over the continued detention of Anwar and the KeADILan activists.¹⁷²

But the September 11th attacks drastically shifted the strategic balance: the U.S., anxious to increase its counter-terrorism cooperation with Malaysia, quickly moved to improve diplomatic ties. Within weeks of September 11th, then-Prime Minister Mahathir and

¹⁶⁸ Human Rights Watch interview with U.S. State Department official, December 2003.

¹⁶⁹ “Malaysia defends detention without trial of Muslim militants,” Agence France-Presse, September 9, 2003.

¹⁷⁰ Testimony by Cofer Black, Coordinator for Counterterrorism, Department of State, to the U.S. House of Representatives, Committee on International Relations, Subcommittees on Asia and the Pacific, and on International Terrorism, Nonproliferation, and Human Rights, in hearing “The Challenge of Terrorism in Asia and the Pacific,” October 29, 2003.

¹⁷¹ Rosemary Foot, *Human Rights and Counter-terrorism in America’s Asia Policy*, International Institute for Strategic Studies Adelphi Paper 363, February 2004.

¹⁷² Ibid.

President Bush spoke by phone, and Mahathir pledged to support President Bush in the newly declared “war on terror.”

Mahathir was even invited to the White House in May 2002 for the first time since Anwar’s arrest. The visit was viewed as a major success for the Malaysian government and cemented Mahathir’s new relationship with the U.S.¹⁷³ During the visit, President Bush praised the prime minister, thanking him for “his strong support in the war against terror” and calling Malaysia a “beacon of stability.”¹⁷⁴ In a departure from previous practice, President Bush did not raise the issue of Anwar’s continued detention during the visit.¹⁷⁵

The United States has used prolonged detention without trial and abusive interrogation tactics in its “war on terror” that are similar to those used by Malaysia.¹⁷⁶ This undoubtedly goes far in explaining the unwillingness of the U.S. government to speak out against current detentions under the ISA. In refusing to pressure the Malaysian government to put alleged militants on trial or release them, the U.S. government has missed an opportunity to push for an end to arbitrary detention and promote the rule of law in Malaysia.

The scandal over treatment of detainees in U.S. custody in Iraq that broke as this report was being finalized is a sobering illustration of what can happen when interrogators and prison guards are not subject to proper independent oversight. It is too early to predict what effect, if any, the scandal will have on U.S. human rights diplomacy and the detention practices of other countries around the world. At the very least, the ability of the U.S. to intervene with other governments on cases of mistreatment in detention, already damaged by U.S. practices at Guantanamo Bay, has been further undercut.

A Case Study: The Karachi Detentions and U.S.-Malaysia Cooperation

The arrests of the so-called “Karachi 13” illustrate the Malaysian government’s willingness to support U.S. counter-terrorism efforts that violate international law and the rights of Malaysian citizens abroad, including children. The Pakistani government showed a similar willingness to subvert its own law and its responsibilities under international law in order to accommodate the U.S.

On September 20, 2003, Pakistani authorities detained in Karachi, Pakistan, thirteen Malaysian and six Indonesian students on suspicion of involvement in terrorist activity. The students were studying at Abu Bakar Islamic University and the University of Islamic Studies, two schools located in Karachi. The 13 detained Malaysian students

¹⁷³ “Silencing the critics,” *The Economist*, April 25, 2002.

¹⁷⁴ Rowan Callick, “The all-seeing Mahathir is here to stay,” *Australian Financial Review*, May 25, 2002.

¹⁷⁵ Rosemary Foot, *Human Rights and Counter-terrorism*.

¹⁷⁶ See, e.g., Human Rights Watch, “Enduring Freedom: Abuses by U.S. Forces in Afghanistan,” A *Human Rights Watch Report*, Vol. 16, No. 3, March 2004.

were between sixteen and twenty-five years old. Four of them are sons of men already detained under the ISA for alleged links to JI.

Soon after the arrests, an official in the Pakistani foreign ministry announced that the students were involved in “undesirable activities prejudicial to the interest of Pakistan,” and that they would all be deported after investigations were concluded.¹⁷⁷

The Malaysian government did not protest the detentions, nor inform the students’ families of the detentions. According to relatives of some of the detained students, the Malaysian embassy in Pakistan did not respond to queries by families of the detainees. These families were left to wonder about the fate of their sons until press reports identified the detainees.

One of the Indonesian detainees, Gungun Rusman Gunawan, 27, is the brother of alleged senior JI operative Hambali, who was arrested in Thailand in August and is now in U.S. custody. According to press reports, the Karachi detentions stemmed from information given by Hambali during his interrogation by U.S. counter-terrorism officials. The Malaysian government has claimed that the 13 Malaysian arrestees were in training to become the “next generation” of leadership of JI in Malaysia.

The thirteen Malaysians were held by Pakistan’s Federal Investigation Agency for roughly seven weeks. The conditions of detention were poor: the students were taken blindfolded from their school in a police van, and then initially placed in solitary confinement in 4x6 foot cells that had little more than a mattress to sleep on.¹⁷⁸

Three of the detainees, Noorul Fakri Mohamad Safar, Mohamad Termizi Nordin, and Faiz Hassan Kamarulzaman, were under 18 at the time of arrest.

One of the detainees described his arrest to Human Rights Watch:

I was in class. I was called to the teacher’s room, roughly 12 of us were there, on September 20. Pakistani police came in. One came in, the others not. They said, “We want to take you to the Malaysian embassy,” but didn’t take us there, they took us to the lockup. The first day five of us were in the lockup. We were kept in separate cells, side by side, with a grille on top so we could talk. After midnight prayers we were called and questioned by an American interrogator. I knew from his tone, his skin, that he was American.

The same detainee reported that on one occasion he was interrogated by American and Pakistani agents in English and Urdu, respectively—languages that he did not understand.

¹⁷⁷ Mazhar Abbas, “Pakistan probes Malaysian foreign students for JI links,” Agence France-Presse, September 21, 2003.

¹⁷⁸ Human Rights Watch interviews, December 2003.

While the Karachi students were in detention, however, they were apparently mainly questioned by U.S. interrogators, who asked them about their connections to Gungun and their alleged involvement in JI.¹⁷⁹

One of the detainees reported that he was threatened with being sent to Guantanamo Bay if he failed to cooperate:

They told me, if you don't cooperate, we will send you to Guantanamo. There were other threats. They also said that if I didn't cooperate, my family would suffer. They said that I should cooperate for my mother. They said that she had been crying this whole time and that I should pity her.¹⁸⁰

The U.S. interrogators also threatened the detainees with physical violence:

They threatened me with physical abuse. They said that if I didn't cooperate that they would hit me. But they didn't hit me.¹⁸¹

The treatment of the students by U.S. and Pakistani officials was in violation of Pakistani law and international human rights law. Not only did the Malaysian government not object to the students' mistreatment, but it did not even take the most minimal steps to assist them or their families. The Malaysian government rebuffed calls for assistance from families who suspected that their son might be among those detained, and the Malaysian embassy in Islamabad was similarly unresponsive. Many of the families did not learn for certain that their son had been arrested until after they were flown back to Malaysia on November 10, 2003, and the Malaysian media published a list of the detainees the next day.¹⁸²

It is unclear whether Pakistan or the U.S. flew the students back to Malaysia. Once the thirteen students were flown back to Kuala Lumpur, the Malaysian authorities immediately detained them under section 73 of the ISA. Local human rights groups and others criticized the use of the ISA against the students, urging that the young men be either tried or released. But Prime Minister Abdullah Badawi defended the detentions, saying that they were necessary counterterrorism measures. "Understanding that they may be JI cadres who are to be given training in Pakistan and to continue with the activities of the JI today, it is important security-wise to investigate the extent of their involvement," Abdullah said.¹⁸³

¹⁷⁹ Human Rights Watch interviews, December 2003.

¹⁸⁰ Human Rights Watch interview with former Karachi detainee, Kuala Lumpur, December 2003.

¹⁸¹ Human Rights Watch interview with former Karachi detainee, Kuala Lumpur, December 2003.

¹⁸² Human Rights Watch interviews with family members of the detained students, December 2003.

¹⁸³ "Malaysian PM defends detention of 13 students under ISA," Agence France-Presse, November 11, 2003.

Contrary to prior practice, the government allowed some of the detainees limited access to family members and attorneys within ten days of their detention in Malaysia.¹⁸⁴ Interviews with released students and family members who had visited the Karachi students in detention, as well as conversations with lawyers seeking to represent the students, showed that authorities engaged in the same pattern of intimidation, coercion, and interference with the Karachi students as they had with the earlier ISA detainees.

The coercion began almost from the moment the students arrived in Malaysia. Special Branch interrogators questioned the students for hours at a time, and usually for several days in a row. Interrogators directly threatened the student detainees:

I was threatened. They told me that they wanted me to cooperate. They said if you don't cooperate, we'll strip you naked. If you don't cooperate we'll send you to Kamunting. They also threatened to torture me, but they never actually hit me.¹⁸⁵

Although they were given access to their family members fairly early on, the students were apparently as heavily coached for these meetings as other ISA detainees. Special Branch officers heavily monitored family visits and visits by lawyers. Family members reported seeing similar signs of fear. They also reported that their sons made similar statements praising their conditions of detention. Rohaimah Salleh, the mother of nineteen-year-old detainee Mohamad Radzi Abdul Razak, herself on the verge of tears, told reporters after meeting with her son that he showed clear signs of intimidation:

He told me that he was treated well but when I held his hand, I knew immediately that he was afraid. His hand was shaking the whole time. I didn't believe that he was well at all.¹⁸⁶

Another mother of one of the Karachi students reported that her son gave clearly planted responses to her queries:

It seemed as though he was following a script. I was shocked when he said out of the blue that the ISA is not so bad. He said that he was lucky that the Malaysian police brought him back here, that he wanted to be back in Malaysia. I kept looking at my daughter, wondering why he would say things like this.¹⁸⁷

¹⁸⁴ Unlike the other ISA detainees detained in Malaysia, however, the Karachi detainees had already spent nearly two months in detention in Pakistan with no access to attorneys or family members. Counting their time in detention in Pakistan, the Karachi detainees likely spent more time in incommunicado detention than virtually all of the ISA detainees detained in Malaysia for alleged terrorism.

¹⁸⁵ Human Rights Watch interview with former Karachi detainee, Kuala Lumpur, December 2003.

¹⁸⁶ Yap Mun Ching, "Suhakam: Detained students have rights under Child Convention," Malaysiakini, November 17, 2003.

¹⁸⁷ Human Rights Watch interview with QH, Kuala Lumpur, December 2003.

The authorities also interfered with the students' access to legal counsel in a number of ways. In order to dampen the prospects of any legal challenges, the Special Branch discouraged family members from hiring an attorney. One detainee's mother was told by the authorities that getting a lawyer was "a waste of money" and that she shouldn't get one. Lawyers also had a list of restrictions placed on them: meetings with the student detainees were often limited to as little as twenty minutes, and requests for meetings were regularly denied.¹⁸⁸ Meetings with attorneys were heavily monitored, with several Special Branch officers present. Officers would often sit at the table with the individual detainee and his counsel, taking notes on the conversation.

Although both family members and lawyers reported various forms of interference, the focus of the authorities' attention seems to have been the detainees themselves. According to the lawyers handling their cases, the students showed clear signs of being coerced and coached before meetings, making meaningful dialogue between attorney and client almost impossible. "You know that they're not so free to express their views. This is a major impediment to their defense," one of the defense attorneys said.¹⁸⁹

After meeting with their clients, the lawyers have reported that the students were intimidated, often disorientated, and regularly gave scripted statements about their well-being. Rather than answering questions from lawyers directly, the students would look to Special Branch officers before responding, and sometimes openly acknowledge that some questions were off-limits. "They'll tell us, I'm so sorry I can't answer your question," one of the lawyers said.¹⁹⁰

The coercion and intimidation seem to have had their desired effects on the five students remaining in detention. In a statement released just after meeting with their student clients, the lawyers for the detainees made note of the transformation that their clients had undergone while in detention:

The students appear to have been "mentally and emotionally disfigured" by their continued detention since 20 September 2003. The persons we met on 21 November 2003 and 4 December 2003 are not the same persons we met on 2 January 2004. The exertion of continuous interrogation by the authorities ha[s] "turned over" the students in which we have witnessed an almost complete mental and emotional transformation, institutionalization and reliance on the police. This is hardly surprising when the lives of the students have been and are now on a daily basis monitored and controlled by police personnel.¹⁹¹

¹⁸⁸ Human Rights Watch interview with attorneys handling student ISA cases, Kuala Lumpur, December 2003.

¹⁸⁹ Human Rights Watch interview with attorneys handling student ISA cases, Kuala Lumpur, December 2003.

¹⁹⁰ Human Rights Watch interview with attorneys handling student ISA cases, Kuala Lumpur, December 2003.

¹⁹¹ Messrs. Chooi and Company, Solicitors, Press Statement, 3 January 2004.

Some of the detainees told their lawyers that they provided false confessions as a result of the constant interrogation and intimidation they faced:

At our meeting on 2 January 2004 . . . one of the students broke down and cried to say that although he was not involved with JI and AQ [al Qaeda] as alleged, he nevertheless would just accept what his captors would tell him to say, do or agree to as he has lost all hope in gaining his freedom. He complained about how the frequent interrogation and questioning by the authorities had in [a] sense “broken him down” as a person. He continued to tell us that he is resigned to his fate in captivity as he feared and was told even if he would be freed, the Malaysian and American authorities would track him down and find ways/reasons to incriminate and detain him again.¹⁹²

The government issued a two-year detention order on the remaining five detainees on December 8, 2003, just days before their first scheduled court hearing. The issuance of the Section 8 detention order ensured that the students would not be able to win their release in the courts. Furthermore, the government did not transfer the students to Kamunting Detention Center, instead housing them in an undisclosed location. Lawyers for the students have suggested that the authorities decided against moving them to Kamunting because they wanted to continue to isolate the students, making them easier to control.¹⁹³

To date, neither the Pakistani nor the Malaysian government has brought forth any information to substantiate the allegations of the students’ affiliation with JI. The Malaysian government has not provided any detailed information about the allegations against the students beyond the links to Hambali’s brother Gungun. According to the Malaysian government, two of the student detainees heard sermons by Osama bin Laden himself in Kandahar, Afghanistan, before the September 11, 2001, attacks on the United States, but little additional information has come out. These connections do not constitute illegal acts. The Malaysian government should immediately charge or release the remaining five Karachi detainees in order to publicly establish their guilt or innocence.

Three of the original thirteen detainees were children entitled to the protections of the Convention on the Rights of the Child (CRC), to which Malaysia is a party. The CRC prohibits arbitrary arrest and detention of children, and also guarantees the right to a fair trial with adequate legal representation.¹⁹⁴ States are under a positive obligation to protect children in detention from torture or other cruel, inhuman or degrading

¹⁹² Messrs. Chooi and Company, Solicitors, Press Statement, 3 January 2004.

¹⁹³ Human Rights Watch interview with attorneys handling student ISA cases, Kuala Lumpur, December 2003.

¹⁹⁴ Ibid.

¹⁹⁴ Ibid.

¹⁹⁴ Convention on the Rights of the Child, article 37(b), (c), and (d).

treatment.¹⁹⁵ The Malaysian government's use of threatening, coercive, and intimidating interrogation tactics on children casts doubt on its commitment to its obligations under the CRC.

¹⁹⁵ Convention on the Rights of the Child, article 37(a).

VI. Conclusion: The ISA—A Blunt, Ineffective Tool

Whether the men and boys identified in this report have actually engaged in illegal activity is not known. Until the government puts all ISA detainees on trial or releases them, the guilt or innocence of the detainees will remain in doubt.

Just before he stepped down as prime minister, former Prime Minister Mahathir Mohamed defended his record of ISA detentions by saying, “We have to put a stop to menace by all means, even before it happens. A law like the ISA, which is not blatantly used, is necessary as a preventive measure.”¹⁹⁶

As the detention period for some enters its fourth year without trial, that rationale becomes more and more difficult to accept. Although the government claims that the ISA is necessary to “nip problems in the bud,” as former Prime Minister Mahathir has put it, arresting individuals before they commit a terrorist act does not preclude bringing them to trial.¹⁹⁷ Under Malaysian criminal law, individuals can be tried for conspiracy or aiding and abetting if they are found to be planning an act of terrorism or assisting known terror groups.¹⁹⁸ Yet even now, the Malaysian government has refused to give the detainees their day in court.

On March 1, 2003, a group of 16 ISA detainees launched a hunger strike to protest their continued detention under the ISA. The hunger strike was led by the so-called KMM detainees, those alleged by the government to be part of a militant group called Kumpulan Militan Malaysia.

The hunger strike was the latest tactic adopted by detainees to protest their continuing detention without charge or trial. In September, a group of 31 detainees issued a statement declaring their innocence and demanding their day in court. In January, a group of detainees issued statements alleging threats and abuse by Malaysian security officials. Lawyers for the detainees have repeatedly filed petitions with the Malaysian courts challenging the legality of their detention, but have yet to win full review of a single case by the courts. At the beginning of the hunger strike, two men have collapsed and have been taken to a local hospital, and others later had to be taken to the hospital for treatment.

As this report went to press, revelations of mistreatment and even torture of Iraqi detainees by U.S. soldiers at Abu Ghraib led to an international storm of criticism of the U.S. Governments around the world condemned the U.S. for allowing such abuses to happen, and President Bush promised not only a full and immediate investigation, but

¹⁹⁶ “Dr Mahathir – Government never abused ISA for power, personal gain,” New Straits Times, October 31, 2003.

¹⁹⁷ Ibid.

¹⁹⁸ Criminal conspiracy is handled by s. 120A and 120B of the criminal code. Other relevant provisions include those on aiding and abetting (s. 107-119) and on common intention (s. 35).

also key changes to rules governing the treatment of detainees in order to ensure that such abuses would not happen again.

In the days after the Abu Ghraib story broke, Malaysian Prime Minister Abdullah Badawi joined the chorus of international criticism against the U.S. for allowing such shocking and degrading treatment to take place. “There is no excuse for what happened,” Abdullah told reporters. “We cannot accept it, and there is no justification at all for such inhumane treatment of the Iraqi prisoners.” Malaysian defense minister Najib Razak issued his own stern rebuke, and called for a full investigation. “Those involved should be severely punished, but the overall treatment of prisoners should also be reviewed by the U.S. government,” the defense minister said.

These calls for accountability over the Abu Ghraib scandal are welcome. But the Malaysian government has a pattern of abuse of its own to deal with, one that, up to this point, it has alternately denied and ignored. The Malaysian government needs to fully investigate the charges of abuses against ISA detainees, and punish those responsible. Furthermore, the Malaysian government needs to begin the process of fair trials for all ISA detainees. These trials are long overdue.

VII. Recommendations

To the Malaysian Government

- Abolish or amend the ISA. All persons arrested in Malaysia should be promptly brought before a judge, informed of the charges against them, and have 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 ISA. Those charged should have prompt access to legal counsel and family members, and be tried in conformity with international fair trial standards.
- End the practice of using physical or mental torture or other cruel, inhuman, or degrading treatment, including kicking or hitting detainees, as an interrogation tool.
- Until the ISA is abolished, end the practice of threatening heavier sanctions against detainees if they attempt to exercise what limited due process rights are available to them under the ISA, including seeking an attorney or attempting to challenge their detention in court.
- Take disciplinary or legal action against Special Branch, police, and other officials who interrogate detainees using coercion, threats, or intimidation.
- Set up an independent commission of inquiry into allegations of threats, coercion, and physical and psychological abuse in detention. This inquiry could be folded into the recently formed Royal Commission to investigate police abuse, and in any case should maintain strict independence.
- Prosecute or subject to appropriate disciplinary action any police officers or Special Branch officers found to have abused ISA detainees.
- Set up a desk office for the Malaysian Human Rights Commission (SUHAKAM) in Kamunting Detention Center, and ensure that the desk officer is allowed to meet privately with inmates wishing to report instances of coercion or abuse. SUHAKAM should also have the power to initiate a private meeting with an individual detainee if it has reason to believe that he or she may have been abused.
- Allow immediate and unfettered access to Kamunting Detention Center to both domestic and international human rights NGOs. Any individual detainee who wishes to speak to NGO representatives should be allowed to do so in private.

- Sign and ratify the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and begin the process of reforming all domestic law, including the ISA, to conform with these international instruments.

To the U.S. Government

- Renew the U.S. government's strong pre-September 11th criticism of the ISA, and push for all ISA detainees, including those held on allegations of association with terrorism, to be either tried or released.
- Ensure that U.S. officials do not seek to benefit from arbitrary arrests and detentions carried out by Malaysia, or participate in torture or other mistreatment of detainees. Investigate and discipline or prosecute as necessary all U.S. officials who take part in or are in any way complicit in the mistreatment of detainees.
- Take all necessary measures to ensure that U.S. counterterrorism assistance to Malaysia is not used to violate human rights.

To the United Nations

To the Special Rapporteur on the Independence of the Judiciary

- Investigate allegations of lack of independence of Malaysian judges within the context of the ISA, and urge the Malaysian government to respect the independence of the Malaysian judiciary.

To the Special Rapporteur on Torture

- Call on the Malaysian government to sign and ratify the Convention against Torture, and begin an investigation of reports of torture and other mistreatment of ISA detainees.

To the Counterterrorism Committee of the United Nations

- Call on the Malaysian government to abide by its obligations under international human rights standards when engaging in counter-terrorist activity.
- Establish a long-term plan with Malaysia for developing mechanisms for combating terrorism while protecting human rights.

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