

Convicted Before Trial Indefinite Detention Under Malaysia's Emergency Ordinance

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I. Summary

If there is insufficient evidence, but the police believe they are involved, then they will be detained under the Public [Emergency] Ordinance.

—Former Deputy Internal Security Minister Datuk Noh Omar, June 2004.

The Malaysian government has locked away more than 700 individuals at the Simpang Renggam Behavioural Rehabilitation Centre (Simpang Renggam) in Johor. Some have already been detained for more than eight years. None know when they will be released. They are incarcerated not because they were found guilty of a crime and sentenced by a court of law. Instead, they are detained by executive fiat in violation of international and Malaysian law.

This may not seem surprising. Malaysia continues to rely on “emergency” laws created in the 1960s to deal with racial riots and to counter communist insurgency. The infamous Internal Security Act (ISA), is currently being used against suspected Islamist militants on alleged security grounds; the law allows for preventive detention renewable at two-year intervals.¹ But individuals detained at Simpang Renggam, most of whom are alleged to be involved in criminal and gang-related activities, are not held under the ISA. Instead, they are held without public fanfare under the lesser known—and almost unknown outside Malaysia—Emergency (Public Order and Crime Prevention) Ordinance (EO).²

Like the ISA, the Emergency Ordinance is a preventive detention law that allows the government to detain individuals who it—and not a court—deems to threaten public order. Suspects may be held without charge or trial for two years after arrest and the government may then renew the detention indefinitely. Emergency Ordinance detainees and their families have no idea when they will be released. Not only are they presumed guilty by the government, but they often are tried and convicted in the press. Malaysian newspapers, which are largely controlled by the government, refer to Emergency Ordinance detainees collectively as “thugs” and “gangsters” and report as though government allegations have already been proven.

¹ See Human Rights Watch, “Detained Without Trial: Abuse of Internal Security Act Detainees in Malaysia,” September 2005; Human Rights Watch, “In the Name of Security: Counter-Terrorism and Human Rights Abuses Under Malaysia’s Internal Security Act,” May 2004.

² The Emergency Ordinance is also referred to as POPO, Public Order, and EPOCPO.

Like ISA detainees, EO detainees exist in a form of extra-legal purgatory. Their liberty depends wholly on the arbitrary and non-transparent decisions of government officials about if and when to release them. International human rights law and the constitutions and criminal justice systems of most countries, including Malaysia, mandate that a person can be incarcerated as a criminal only if a court of law has tried and convicted that person for a criminal offence. Yet the Malaysian government has carved out an exception to this fundamental principle, and on an arbitrary basis locks up some criminal suspects without charge or trial. Such a system of detention violates fundamental human rights to liberty and security of the person, as well as standards governing due process and a prompt and fair trial.

The Emergency Ordinance was enacted in 1969 as a temporary measure to respond to race riots. For the past thirty-seven years, however, the law has been used as a shadow criminal justice system to detain persons without the government having to prove any charges against them.

Emergency Ordinance detainees have extremely limited avenues of redress. Due to amendments to the law in 1989, courts are stripped of the right to review the merits of EO detentions. Detainees may challenge their detention on procedural grounds, but this lone avenue of challenge is of limited use. When detainees file *habeas corpus* petitions and are ordered released by a court, the government often re-arrests the detainees on the same charges, thus rendering futile any procedural challenges to EO orders. In October 2005 the government ordered the arrest of eight individuals under the EO for the same offense that they had been acquitted of minutes earlier, violating their right not to be tried or punished twice for the same offense (also known as the principle of *non bis en idem*, or double jeopardy).

The EO is also used to justify the continued detention of persons originally detained under the Criminal Procedure Code (CPC). The CPC allows the police to hold suspects in pretrial detention for up to fifteen days for investigation purposes if they obtain a detention order from a magistrate judge. But the police, in a practice referred to as “chain smoking orders” or “road shows,” obtain successive remand orders for a suspect from different magistrate judges and jurisdictions for alleged involvement in different cases to continue detaining a suspect. Having failed to collect evidence to charge a suspect the police then seek an EO order to continue detention of a suspect for an additional sixty days and then up to two years. In a case documented below, a man named Samsudin was taken to nine different police stations in four states and detained, without access to counsel, for 143 days under successive detention orders by the Malaysian police. He was then detained under the EO for sixty days and banished to a remote village for two years under restricted residence. None of the government’s

allegations against Samsudin were tested or proved in court. His punishment was simply ordered by the government.

EO detainees are held incommunicado and denied access to counsel during the initial sixty days of detention. There, many suffer beatings and other ill-treatment and abuse in Police Remand Centers (pre-trial detention centers). Justice Chand Karam Vorah, former prosecutor and a Court of Appeals judge, and a commissioner of the Human Rights Commission of Malaysia, *Suruhanjaya Hak Asasi Manusia Malaysia* (commonly referred to as SUHAKAM) suggested to Human Rights Watch that the police likely use the EO to detain criminal suspects when confessions they have obtained from the suspects would be inadmissible because obtained under torture or other form of duress.³

Upon transfer to the Simpang Renggam detention facility, detainees live out their detention in conditions which amount to inhumane or degrading treatment, as those terms are used in international law. The Malaysian Bar Council, the Parliamentary Caucus on Human Rights—comprised of parliamentarians from the ruling United Malay National Organization (UMNO) and the opposition—former EO detainees, and an attorney who represents EO detainees claim that conditions of detention at Simpang Renggam are overcrowded and unhygienic. Former detainees told Human Rights Watch of inedible food infested with worms, limited access to fresh air or exercise, and unhygienic living conditions. Although the government claims that EO detainees are sent to Simpang Renggam for rehabilitation from a life of crime, the hardship and discomfort experienced by detainees in the detention facility belie this claim and only reinforce the punitive nature of detention without charge or trial.

In May 2005 the government-appointed Royal Commission to Enhance the Operation and Management of the Royal Malaysia Police (the Commission) concluded that the EO violates international human rights law. It recommended repeal of the EO because “it has outlived its purpose and in some instances has facilitated the abuse of fundamental liberties.”⁴ To date, however, the Malaysian government has shown no sign that it intends to repeal this draconian law.

Human Rights Watch recognizes the responsibility of all governments to fight crime and to deal with criminal gangs and syndicates. But the Malaysian government, like all governments, must not resort to illegal means to address criminal activity. Malaysia has a strong criminal justice system and robust criminal laws. It should deal with alleged

³ Human Rights Watch interview with Justice Chand Karam Vorah, Kuala Lumpur, July 14, 2005.

⁴ Report of the Royal Commission to Enhance the Operation and Management of the Royal Malaysia Police (Royal Commission Report), ch. 10, rec. 6, para. 2.6.4.

criminal acts through its criminal justice system (indeed, it has never offered a credible explanation of why the criminal law and courts would be unable to successfully prosecute cases currently dealt with under the EO). The presumption of innocence must be respected for all persons detained by the government. This means that those held under the EO should be charged or released. In societies governed by the rule of law, guilt or innocence must only be decided by a court of law guaranteeing international fair trial standards.

II. Recommendations

To the Malaysian Government

Repeal the Emergency (Public Order and Prevention of Crime) Ordinance and end the practice of successive remand orders.

- Repeal the Emergency Ordinance and implement the recommendations of the Royal Commission in this regard.
- Release EO detainees unless there is sufficient evidence against them to support criminal charges. 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 successive detention orders. Take disciplinary or legal action against police officers who engage in the practice.

Comply with judicial orders.

- Comply fully and immediately with all judicial orders, including writs of *habeas corpus*, and stop the practice of re-arresting detainees released upon a court order.
- Immediately stop the practice of using the EO to re-arrest individuals acquitted at trial, and release all individuals currently being held under such circumstances.

Investigate conditions of detention in Simpang Renggam and ensure that they meet international standards of health, safety, and human dignity.

- Investigate allegations of overcrowding and unhygienic living conditions.
- Provide immediate treatment to all detainees found to be infected with scabies and any other infectious diseases, with follow-up treatment if necessary.
- Provide detainees with an adequate opportunity to bathe.
- Provide adequate, clean, and well-maintained housing facilities.

Provide access to the International Committee of the Red Cross.

- Provide the International Committee of the Red Cross immediate and unfettered access to Simpang Renggam detention center and comply with any recommendations it makes in respect to conditions of detention.

Ensure that detainees can report abuses and concerns without fear of retaliation.

- Set up a desk office for the Malaysian Bar Council at Simpang Renggam to allow detainees to report instances of abuse or mistreatment, to file complaints on conditions of detention, and to meet privately with a lawyer.
- Any individual detainee who wishes to speak to NGO representatives should be allowed to do so in private.

III. Overview of the Emergency Ordinance

The EO is a lazy way for the police to lock up criminal suspects. The police are not properly equipped and trained. It's a combination of laziness, lack of supervision, and shoddy investigations.

—Ivy Josiah, Commission Member of the Royal Commission to Enhance the Operation and Management of the Royal Malaysia Police, Kuala Lumpur, July 7, 2005.

The Emergency Ordinance was enacted as a temporary measure to control the spread of violence after the May 13, 1969 racial riots. Following the loss of the ruling party United Malay National Organization's parliamentary majority, riots erupted in Kuala Lumpur between ethnic Chinese and Malays culminating in the deaths of over 190 persons. A state of emergency was declared, the Parliament and Constitution were suspended, and the Emergency Ordinance was enacted on May 16, 1969.

Thirty-seven years later the government has not yet revoked Malaysia's emergency proclamations.

An NGO activist has explained the distinction between the use of the ISA⁵ and the EO as follows:

The ISA is top down—a government minister orders detention of someone seen as a threat to the government—whereas the EO is bottom up. The police, having failed to collect evidence to prosecute a criminal suspect, request an EO detention order from the minister.⁶

The Emergency Ordinance is used to arbitrarily detain or restrict the movement of suspected gang members and criminals who the police find difficult to bring to justice due to lack of evidence. Instead of arresting suspects and charging them for offenses under Malaysian criminal law, the police simply lock up hundreds of persons for two

⁵ Since 1960 the Internal Security Act has been used by the Malaysian government to silence critics and political opponents of the ruling United Malay National Organization. More than ten thousand people have been detained under the ISA, including former Deputy Prime Minister Anwar Ibrahim. The ISA allows the police to detain any person for up to sixty days, without warrant or trial and without access to legal counsel, on suspicion that "he has acted or is about to act or is likely to act in any manner prejudicial to the security of Malaysia or any part thereof or to maintenance of essential services therein or to the economic life thereof." Internal Security Act 1960, section 72. After sixty days, the minister of internal security can extend the period of detention without trial for up to two years, without submitting any evidence for review by the courts. Currently more than 100 persons are detained under the ISA.

⁶ Human Rights Watch interview with S. Arutchelvan, Suaram, Kuala Lumpur, July 4, 2005.

years or more under the Emergency Ordinance. According to the Ministry of Internal Security in May 2005, the last time the government made EO detention figures public, there were 712 EO detainees in Simpang Renggam.⁷

The broadly worded provisions of the Emergency Ordinance allow the police to arrest and detain people up to sixty days if a police officer “suspects” that a person has “acted” or is “about to act” in a “manner prejudicial to public order,” or if he has “reason to believe” that a person should be detained if “necessary for the suppression of violence” or for “the prevention of crimes.”⁸ The arresting police officer has to report the circumstances of the arrest to the Inspector General of Police or his designated officer.⁹ The police are not required to obtain a detention order from a magistrate, and thus, the appropriateness of detention is not reviewed by a judge.

Upon expiration of the sixty days, the minister of internal security may order a suspect to be detained for two years, renewable indefinitely if “satisfied with a view to preventing any person from acting in any manner prejudicial to public order . . . or that it is necessary for the suppression of violence or the prevention of crimes involving violence.”¹⁰ The detainees are transferred from police custody to a detention camp for the duration of the order.

Alternatively, the minister may issue a restricted residence order to “control” the suspect’s freedom of movement and place of employment and residence for two years.¹¹ The suspect has to report to the police on a weekly basis and is typically required to remain indoors from 8 p.m. to 6 a.m.

The law allows the internal security minister to order detention without trial for two years if he is “satisfied” that the detention is “necessary” to maintain public order and prevent crimes of violence. Thus, the executive branch may keep someone in detention for two years based on a subjective view of a person’s alleged involvement in a crime without a process whereby evidence of the “necessity” is presented to a court of law.

The EO does allow detainees the opportunity to challenge the decision to detain them before an executive-appointed Advisory Board within three months from the date an

⁷ In July 2005 the Ministry of Internal Security provided this figure to the Parliamentary Caucus on Human Rights following the Caucus’ visit to Simpang Renggam in June 2005. Email from Suaram to Human Rights Watch, June 10, 2006.

⁸ Emergency (Public Order and Prevention of Crime) Ordinance (1969), sections 3(2) and (3).

⁹ *Ibid.*, section 3(3).

¹⁰ *Ibid.*, section 4(1).

¹¹ *Ibid.*, section 4A(1).

EO detainee is served a copy of the detention order.¹² Although it is empowered to review orders of the internal security minister, the Advisory Board makes non-binding recommendations to the government about which detainees should be released.¹³ According to a lawyer who has appeared before the Advisory Board on behalf of clients detained under the Emergency Ordinance, the Advisory Board recommends release in only 2 percent of cases.¹⁴ Moreover, review by the Advisory Board is ad hoc and not scheduled periodically. After an initial review of a detention order, the Advisory Board need only review such orders “from time to time.”¹⁵

Judicial review of EO orders is circumscribed. A 1989 amendment eliminated judicial review of the merits of EO detentions and section 7(C) of the law now specifically prohibits a court from reviewing such challenges:

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 Ordinance, save in regard to any question on compliance with any procedural requirement in this Ordinance governing such act or decision.¹⁶

As the language above suggests, the law still allows for judicial review of “procedural requirements” of the detention order,¹⁷ but this protection has proven all but illusory to most EO detainees.

Emergency Ordinance detainees who have successfully challenged their detention on procedural grounds are often re-arrested after a judicial order declares their detention

¹² Ibid., section 5.

¹³ Ibid., section 6.

¹⁴ Human Rights Watch telephone interview with lawyer (name withheld), June 6, 2006.

¹⁵ Emergency Ordinance, section 7 (compare to section 13 of the Internal Security Act, which mandates the Advisory Board to review a detention order every six months).

¹⁶ Ibid., section 7C.

¹⁷ Ibid., section 4C. The law makes the following procedural defects ineligible for review:

- (a) the person to whom it relates
 - (i) was immediately after the making of the detention order detained in any place other than a place of detention directed by the Minister under section 4(2)....;
 - (ii) continued to be detained immediately after the making of the detention order in the place in which he was detained under section 3 before his removal to the place of detention, notwithstanding that the maximum period of such detention under section 3(3) had expired; or
 - (iii) was during the duration of the detention order on journey in police custody or any other custody to the place of detention;
- (b) that the detention order was served on him at any place other than the place of detention, or that there was any defect relating to its service upon him.

invalid and orders their release. A lawyer whose clients have been successful in having their EO detention orders invalidated but then were re-arrested explained that courts typically declare EO orders invalid because the detainee was not informed of the grounds for his arrest, no police officer appeared in court to explain the necessity of continued detention, or the detainee's lawyer was not advised of the date for the Advisory Board hearing and the detainee was not represented by counsel during the hearing.¹⁸

In addition to the statutory limitations on judicial review, after many years of attack by the government on their independence, higher courts in Malaysia are now generally deferential to the government's sweeping powers under the Emergency Ordinance.¹⁹ In one case an EO detainee argued that the government had not considered whether he should be charged and prosecuted instead of being detained under the EO. The Federal Court in June 2005 held that there is no obligation for the government to bring criminal actions after a detention order is imposed against a suspect, reasoning that the law specifically authorizes the minister to detain persons who are a threat to public order, whereas it entrusts the attorney general with prosecutions.²⁰ The court explained that should the minister have referred the case for criminal prosecution, "it would not be surprising to hear arguments that the minister has exceeded his jurisdiction or that he has taken into consideration matters which he should not have."²¹

A Permanent State of Emergency in Violation of International Law

The preamble to the Emergency Ordinance states: "By reason of the existence of a grave emergency threatening the security of Malaysia, a Proclamation of Emergency has been issued by the Yang di-Pertuan Agong [the Malaysian King] under Article 150 of the Constitution."²² The law has been in effect for thirty-seven years and the government has not yet revoked Malaysia's emergency proclamations.

¹⁸ Human Rights Watch telephone interview with lawyer (name withheld), June 6, 2006.

¹⁹ The judiciary was subjected to a long campaign of intimidation and interference by former Prime Minister Mahathir Mohamed. In October 1987 Mahathir ordered the arrest of 106 people, including human rights activists and politicians from the Democratic Action Party, *Parti Islam Se Malaysia*, and UMNO. These arrests took place under the operational codename *lalang*, a type of weed. Malaysia's courts initially expressed a willingness to review the legality of his actions, as well as allegations of corruption against Mahathir. But Mahathir responded by removing five high court judges, including then-Chief Justice Tun Salleh Abbas, and introduced amendments to the Internal Security Act and the Emergency Ordinance prohibiting judicial review of ISA and EO detentions, including those brought as *habeas corpus* petitions. For further details on the independence of the judiciary see International Bar Association, "Justice in Jeopardy: Malaysia in 2000: Report of a Mission 17-27 April 1999" (2000).

²⁰ *Lee Kew Sang v. Timbalan Menteri Dalam Negeri, Malaysia & 2 Ors*, 4 AMR 725, 740 (2005).

²¹ *Ibid.*, p. 741.

²² Emergency Ordinance, preamble.

Preventive detention laws are commonly justified in times of emergencies. International human rights law makes provisions for circumstances in which the right to liberty can be temporarily abrogated. Such derogation, however, must be of exceptional character where the life of a nation is threatened, strictly limited in time, subject to regular review, and consistent with other obligations under international law. (Derogation is the technical term given to limitation of rights under emergencies). The International Covenant on Civil and Political Rights (ICCPR), which has been ratified or acceded to by 156 states as of August 2006, includes guarantees such as the obligation to treat detainees with humanity, and certain elements of the right to fair trial, such as the prohibition on arbitrary detention of liberty and the presumption of innocence.²³ Although Malaysia is not a signatory to the treaty, these provisions are considered customary international law and, as such, applicable in all states. Malaysian government-appointed bodies such as the Royal Commission to Enhance the Operation and Management of the Royal Malaysia Police²⁴ have cited the ICCPR in setting forth the standards they believe should govern the conduct of Malaysian authorities.²⁵

The ICCPR recognizes that in certain circumstances, temporary restrictions and limitations of these rights may be justified. Article 4 of the ICCPR allows states to “derogate” from some of the standards in times of “pubic emergency which threatens the life of the nation and the existence of which is officially proclaimed.”²⁶ But such measures must be necessary and “strictly required by the exigencies of the situation.”²⁷ Furthermore, any derogation must not be inconsistent with other obligations under international law, especially articles 55 and 56 of the United Nations Charter, which recognize the promotion and protection of human rights as a key aim of the United Nations. Malaysia is a member of the United Nations.

The ICCPR specifically prohibits states from derogating, even in times of emergency, from the right to life (art. 6), freedom from torture, cruel, inhuman or degrading treatment or punishment (art. 7), and the prohibition of retroactive criminal legislation

²³ International Covenant of Civil and Political Rights, December 6, 1966, 999 U.N.T.S. 171, arts. 9, 10, 14; see also U.N. Human Rights Committee, General Comment on Article 4 of the ICCPR, U.N. Doc. CCPR/C/21/Rev/1/add/11 (July 24, 2001), para. 11.

²⁴ In December 2003, Prime Minister Badawi announced the establishment of a Royal Commission to study and recommend measures to develop the Royal Malaysia Police into a “credible force” to maintain law and order, to increase public confidence in the police, and to strengthen accountability of police personnel. The terms of reference for the commission were to inquire: into the role and responsibilities of the Royal Malaysia Police in enforcing the laws of the country; into the work ethics and operating procedures of the police force; into issues of human rights, including issues involving women, in connection with the work of the police; into the organizational structure and distribution of human resources; human resource development, including training and development; and to make recommendations to improve and modernize the Royal Malaysia Police. Report of the Royal Commission to Enhance the Operation and Management of the Royal Malaysia Police (Royal Commission Report), ch. 1, pp. 3-5.

²⁵ *Ibid.*, ch. 4, para. 5.3.4.

²⁶ ICCPR, art. 4(1).

²⁷ U.N. Human Rights Committee, General Comment No. 29 States of Emergency (Article 4), U.N. Doc. CCPR/C/21/Rev.1/Add.11, August 31, 2001, para. 6 (General Comment No. 29).

(art. 15).²⁸ Other non-derogable rights include the right of detainees to be treated humanely, certain elements of fair trial such as prohibition on arbitrary deprivation of liberty, and the presumption of innocence. These rights are not only based in treaty law, but based on customary rules of international law (a rule accepted as binding on all states) or peremptory rules of international law (general principles of law) and, therefore, binding on Malaysia.

In 2001, the United Nations Human Rights Committee, the authoritative body of independent experts which interprets the ICCPR and monitors state compliance with the treaty, held that:

As certain elements of the right to a fair trial are explicitly guaranteed under international humanitarian law during armed conflict, the Committee finds no justification for derogation from these guarantees during other emergency situations.

. . . the principles of legality and the rule of law require that fundamental requirements of fair trial must be respected during a state of emergency. Only a court of law may try and convict a person for a criminal offence. The presumption of innocence must be respected.²⁹

On the issue of detention the Committee further noted that although article 10 of the ICCPR, which obligates states to treat persons deprived of their liberty with humanity and with respect for the inherent dignity of the human person, is not specified as non-derogable, it nevertheless is not subject to derogation on the basis that article 10:

[E]xpresses a norm of general international law not subject to derogation. This is supported by the reference to the inherent dignity of the human person in the preamble to the Covenant and by the close connection between articles 7 [prohibition of torture, cruel, inhuman degrading treatment or punishment] and 10³⁰

The Emergency Ordinance violates international law in many ways. It violates the fundamental right to liberty, right to due process, and a fair trial. Even in states of emergency, human rights standards still prohibit indefinite detention without charge or trial.

²⁸ *Ibid.*, art. 4(2). The ICCPR also prohibits derogation from the right not to be held in slavery, right not to be imprisoned for the inability to fulfill a contractual obligation, right to recognition as a person before the law, and the right to freedom of thought, conscience, and religion (arts. 8, 11, 16, 18 respectively).

²⁹ General Comment No. 29, para. 16.

³⁰ *Ibid.*, para. 13.

Malaysian government advisory groups are also recommending the repeal of the Emergency Ordinance. The government-appointed Royal Commission in 2005 recommended the repeal of the Emergency Ordinance. It expressed concern about preventive detention laws, calling them:

undesirable because they deny the individual his personal liberty without a right to trial in an open court as approved for in Article 5 of the Constitution and in the International Bill of Rights. This right is among the most precious that the individual has and it must be protected.³¹

³¹ Royal Commission Report, ch. 10, para. 1.4(1).

IV. The Emergency Ordinance: A Litany of Human Rights Violations

Under the Emergency Ordinance some suspects have been subjected to torture and ill-treatment, held in poor detention conditions, held incommunicado for up to sixty days and denied access to counsel and family members.

Beatings and Ill-Treatment

Several former EO detainees told Human Rights Watch that they were beaten or otherwise physically mistreated by police seeking to extract confessions. Mohan, a former EO detainee who was detained by the police for his alleged involvement in a robbery, said that during his initial sixty-day detention (a period when, as detailed below, detainees typically are held incommunicado): “They wanted me to confess. They tried their ways. I was ordered to drink urine and to lick the policeman’s shoes. The police beat me on the soles of my feet with a rubber hose.”³² When asked why the soles of the feet were hit, the former detainee responded, “It leaves no marks.”³³ Mohan was sent to Simpang Renggam for two years and then upon release ordered two years in restricted residence.

Tamarai, who was detained in Simpang Renggam for over one year and at the time of our interview was in restricted residence, described how he was mistreated during his sixty-day EO detention in a police remand center:

While in detention in *Bukit Aman* [police remand center], the police tried to provoke me and said that my wife was having an affair with another man and that that is why I killed a person. They beat me twice to make me confess. I did not kill anyone. They then locked me up for one year for extortion.³⁴

On the reasons why the police resort to physical abuse, a former detainee explained: “They [the police] beat you to get a confession. I was willing to confess, but they want a statement to their liking. You finally admit to their version of facts, so they stop beating you.”³⁵

³² Human Rights Watch interview with Mohan (pseudonym), Kuala Lumpur, July 9, 2005. As indicated here and in several footnotes below, we have used pseudonyms in some cases to protect the identity of interviewees who wished to remain anonymous.

³³ *Ibid.*

³⁴ Human Rights Watch interview with Tamarai (pseudonym), Kuala Lumpur, July 9, 2005.

³⁵ Human Rights Watch interview with Mohan (pseudonym), Kuala Lumpur, July 12, 2005.

Detainees may also be subject to abuse at the Simpang Renggam detention center. The respected Malaysian human rights organization *Suara Rakyat Malaysia* (Suaram) has received complaints that wardens routinely beat detainees held in Simpang Renggam.³⁶ Suaram, like other non-governmental human rights organizations, however, is denied access to Simpang Renggam, thereby making it difficult to interview EO detainees. A lawyer representing EO detainees told Human Rights Watch:

When I visit my client [in Simpang Renggam] there is usually no warden present near us. But when I see that my client has a swollen eye or bruises on his face a warden will always stand nearby. When I ask what happened the client usually replies that he slipped. It's a pattern—if my client has been beaten a warden will monitor our conversation.³⁷

Allegations of torture and ill-treatment of detainees held in police remand centers under laws such as the ISA and Emergency Ordinance have been acknowledged by the government-appointed Royal Commission. The Commission noted:

Allegations by detainees of physical and psychological abuse by police interrogation officers during the first few days of investigation while the detainees were held incommunicado. This was especially so to extract confessions from detainees.³⁸

The Commission received oral and written complaints describing beatings, and instances of psychological and sexual abuse from human rights NGOs, family members of detainees, and detainees themselves. The “sheer number” of such reports “warrant concern,” the Commission concluded.³⁹

International law unequivocally prohibits torture and all cruel, inhuman, or degrading treatment or punishment. States are obliged to investigate all credible reports of torture and inhuman treatment. Article 5 of the Universal Declaration of Human Rights sets out the prohibition on torture and other forms of mistreatment.⁴⁰ The International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention against

³⁶ Suaram, “Simpang Renggam Hunger Strike Ends,” November 26, 2004 [online] http://www.suaram.net/display_article.asp?ID=145 (visited October 6, 2005).

³⁷ Human Rights Watch interview with lawyer (name withheld), Kuala Lumpur, July 14, 2005.

³⁸ Royal Commission Report, ch. 4, para. 5.5.2(ii)(d).

³⁹ *Ibid.*, ch. 4, para.5.5.2(iii)(a).

⁴⁰ Universal Declaration of Human Rights, U.N. General Assembly Resolution 217A (III), December 10, 1948, art. 5.

Torture) reaffirm this prohibition.⁴¹ The ICCPR also mandates that persons in detention “be treated with humanity and with respect for the inherent dignity of the human person.”⁴² 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.

Denial of Access to Counsel and Family and Psychological Impact of Indefinite Detention

EO arrests are shrouded in secrecy. During the initial sixty-day period of detention, suspects are given vague grounds for their detention. They typically are denied access to counsel and contact with their family members. Most detainees’ family members are not told where their relative is being held or even that they have been arrested at all.

One former detainee who was detained for sixty days and then ordered to spend two years in restricted residence told Human Rights Watch:

I was told that I had robbed an oil pump in Jitra, but I had never been to Jitra. That’s all they said to me and I was locked up. During that whole time I had no contact with my family or access to a lawyer. I later found out that [my wife] had heard that I was arrested, but had no way of knowing where and she could not visit me.⁴³

Another former detainee, who was denied access to counsel during his initial sixty days of detention, began crying as he recalled:

I was so worried about my wife, she was pregnant and had no idea where I was. She was not told anything by the police. The trauma of not knowing what had happened to me caused her to lose our baby.⁴⁴

Another former detainee told Human Rights Watch that although he was denied access to counsel, he was visited by his wife after twenty-seven days during the initial sixty-day period of detention.⁴⁵

⁴¹ ICCPR, art. 7; Convention Against Torture and Other Cruel, Inhuman Degrading Treatment or Punishment, December 10, 1984, 1465 U.N.T.S. 85 art. 3. The United Nations Body of Principles for the Protection of all Persons Under Any Form of Detention or Imprisonment similarly prohibits torture, cruel, inhuman degrading treatment of punishment. U.N. General Assembly Resolution 43/173 (1988), principle 6.

⁴² ICCPR, art. 10.

⁴³ Human Rights Watch interview with Samsudin (pseudonym), Kuala Lumpur, July 9, 2005.

⁴⁴ Human Rights Watch interview with Tamarai (pseudonym), Kuala Lumpur, July 10, 2005.

⁴⁵ Human Rights Watch interview with Mohan (pseudonym), Kuala Lumpur, July 12, 2005.

The right of access to counsel is guaranteed under the Malaysian Constitution. Under article 5(3), 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.”⁴⁶ Prior to 2002 Malaysian courts had narrowed this right by finding that the right cannot be “exercised immediately after” arrest if it impedes police investigation,⁴⁷ but in that year a Federal Court decision found that denial of rights to counsel during the initial sixty-day period was a clear violation of article 5(3).⁴⁸ In practice, as described above, authorities continue to prohibit any form of communication between most EO detainees and legal counsel during their initial sixty days in detention.

The ICCPR guarantees an accused the right to “defend himself in person or through legal assistance of his own choosing.”⁴⁹ The U.N. Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, approved by the U.N. General Assembly in 1988, guarantees the right to meet with counsel while in detention, and the right to be visited and communicate with members of one’s family.⁵⁰ Similarly, the U.N. Basic Principles on the Role of Lawyers guarantees the right to counsel and specifies that a detainee should have access to an attorney as soon as practicable after arrest and “in any case not later than forty-eight hours from the time and arrest of detention.”⁵¹

Successive Remand Orders Followed by EO Detention

Malaysia’s Criminal Procedure Code provides some safeguards against arbitrary detention. The CPC requires the police to bring a suspect detained without a warrant before a magistrate judge within twenty-four hours.⁵² If the police are unable to complete an investigation, they must apply for a remand detention order renewable for up to fifteen days, including the day of arrest.⁵³ As a way of getting around the fifteen-day limit, police sometimes take the accused person before a different magistrate judge and request remand for investigation into another offense. This tactic is then repeated several times. A Malaysian human rights activist told Human Rights Watch that this tactic is commonly referred to as “chain smoking orders or road shows.”⁵⁴ He further explained,

⁴⁶ Federal Constitution of Malaysia, art. 5(3).

⁴⁷ See, e.g., *Ooi Ah Phua v. Officer-in-Charge of Criminal Investigations Kedah/Peralis*, [1975] 2 MLJ 198; *Hashim bin Saud v. yahaya bin Hashim*, [1977] 2 MLJ 116.

⁴⁸ *Mohamad Ezam in Mohd Noor v. Ketua Polis Negara*, [2002] 4 MLJ 449.

⁴⁹ ICCPR, art. 14.

⁵⁰ U.N. Body of Principles for the Protection of all Persons Under Any Form of Detention or Imprisonment similarly, U.N. General Assembly Resolution 43/173 (1988), principles 18 and 19.

⁵¹ U.N. Basic Principles on the Role of Lawyers, U.N. Doc. A/CONF.144/28/Rev.1 at 118 (1990), art. 7.

⁵² Criminal Procedure Code of Malaysia, sec. 28(1).

⁵³ *Ibid.*, sec. 117.

⁵⁴ Human Rights Watch interview with S. Arutchelvan, Suaram, Kuala Lumpur, July 4, 2005.

“it is used by the police to continue investigation beyond the authorized remand order.”⁵⁵

“Chain smoking orders” are related to the Emergency Ordinance because when police fail to collect evidence after a few rounds of remand orders, they often seek an EO order to detain the suspect for an additional sixty days. The Malaysian Bar Council, which interviewed eight EO detainees in November 2004 in Simpang Renggam, similarly concluded that “most of [the EO detainees] prior to their detention order have been held in remand for 60 or more days under ‘chain smoking orders.’”⁵⁶

For instance, Samsudin told Human Rights Watch that he had been taken to four different jurisdictions and detained under successive remand orders for 143 days by the Malaysian police for his alleged involvement in robbery offenses. After Samsudin’s arrest on December 23, 1999, he was taken before a magistrate judge in Alor Setar and a remand order for a period of nine days was obtained by the police. Samsudin, however, was not released at the end of the ninth day, but was held in police custody continuously in nine different police stations within the states of Kedah, Pulau Pinang, and Perak for an additional 134 days. Throughout this period he was denied access to counsel. He was then detained for “further investigation” for an additional sixty days under the Emergency Ordinance, and then ordered to spend two years in restricted residence.⁵⁷

⁵⁵ Ibid.

⁵⁶ Malaysian Bar Council, “Simpang Renggam Report,” May 15, 2005, p. 2, copy on file with Human Rights Watch.

⁵⁷ Human Rights Watch interview with Samsudin, Kuala Lumpur, July 9, 2005.

Table 1: Samsudin's Saga: Number of Days in Remand and Location of Detention⁵⁸

Dates	Location of Detention	Magistrate Courts Where Remand Sought	Appearance before Magistrate	Number of Days in Remand
December 22, 1999 to January 24, 2000	Alor Setar, Kedah	Alor Setar	1	9
		Jitra	2	11
		Kulim	1	14
January 24, 2000 to February 4, 2000	Pulau Pinang, Pulau Pinang	Pulau Pinang	1	11
February 2, 2000 to February 18, 2000	Lock-Up in Sungai Bakap, Pulau Pinang	Nibong Tebal	1	14
February 18, 2000 to February 25, 2000	Bukit Mertajam, Pulau Pinang	Bukit Mertajam	1	7
February 25, 2000 to March 10, 2000	Butterworth, Pulau Pinang	Butterworth	2	14
March 10, 2000 to March 22, 2000	Bagan Serai, Perak	Bagan Serai	2	12
March 22, 2000 to March 29, 2000	Taiping, Perak	Taiping	1	7
March 29, 2000 to May 12, 2000	Pasir Puteh, Ipoh Lemut, Perak Pasir Put	Ipoh	2	44
		Lumut	2	

Total Number of Days in Remand 143

SUHAKAM Finds Successive Remand Orders a Violation of the Criminal Procedure Code

In the case of eighteen-year-old S. Hendry, documented by SUHAKAM following a public inquiry in 2006, the police sought four successive remand orders before finally detaining the suspect under the Emergency Ordinance for alleged involvement in two murder cases and an armed robbery case. He was never charged in any of the cases.⁵⁹

⁵⁸ Ibid.

⁵⁹ The facts of this case are all from SUHAKAM, "Report of SUHAKAM Public Inquiry into the Death in Custody of S. Hendry, February 17-18, 2006," ch. 2 (S. Hendry Inquiry).

First Remand Order: S. Hendry was arrested for involvement in a murder case on August 22, 2005, and remanded for ten days from August 23 to September 1, 2005, in Kajang. S. Hendry was detained at the Kajang police station lock-up during that time. S. Hendry was not charged in court due to “insufficient evidence.”

Second Remand Order: On September 2, 2005, a different magistrate judge issued a second remand order against S. Hendry for S. Hendry’s alleged involvement in a second murder case in Kajang for ten days from September 2 to September 11, 2005. S. Hendry was detained at the Kajang police station lock-up during that time. The Deputy Public Prosecutor did not charge S. Hendry due to “insufficient evidence.”

Third and Fourth Remand Orders: Having found insufficient evidence to charge S. Hendry in a murder case, the police sought a remand for the suspect’s alleged involvement in an armed robbery case in Mantin. A magistrate’s court in Seremban issued two remand orders, one from September 12 to September 16, 2005, and a second order from September 16 to September 20, 2005. S. Hendry spent nine days in Seremban police station lock-up. S. Hendry was not charged in relation to the armed robbery case.

At the end of the twenty-nine days of remand, S. Hendry on September 20, 2005, was ordered to be detained for sixty days under section 3(1) of the Emergency Ordinance, and was subsequently ordered detained for two years under section 4(1) of the Emergency Ordinance for his alleged involvement in a murder case.⁶⁰ Notably, as reported in the SUHAKAM report, the initial EO detention order was dated September 16, 2005—the day the third remand order was set to expire.

On November 18, 2005, S. Hendry was transferred to Simpang Renggam from the Kajang Police lock-up. S. Hendry’s dead body was discovered, hanging from the ceiling in his cell, by prison officials on November 19, 2005.

SUHAKAM recommended that section 117 of the Criminal Procedure Code be complied with “strictly” and that a remand order be granted only if the “investigation cannot be completed within 24 hours” and there are “grounds for believing that the accusation or information is well founded.”⁶¹

⁶⁰ *Ibid.*, ch. 2.

⁶¹ *Ibid.*, Recommendations, para. 2. The body also recommended that the chief justice issue a circular to magistrates requiring them to take into consideration the entire remand period inclusive of different remand orders and suggested amendments to section 117 to ensure that the magistrate who makes the remand order be satisfied that there is sufficient basis to link the suspect with the offense based on the material produced by the police.

The Findings of the Royal Commission: A Damning Indictment of Government Indifference to Civil Liberties

The Royal Commission to Enhance the Operation and Management of the Royal Malaysia Police found a pattern of abuse of remand procedures and “road shows” by the police. Based on its own inquiries, it found:

- o “A widespread tendency in police investigations to arrest, remand, and then only investigate, instead of first conducting thorough investigations before determining whether it is necessary to remand a person to facilitate further investigations.”⁶²
- o “The practice of ‘chain smoking orders’ or ‘road shows,’ whereby successive remand orders are obtained from the Magistrate, on grounds that the suspect is also being investigated for another offense. The suspect is thus detained for a period in excess of the maximum 15 days [allowed by the CPC].”⁶³
- o “Sometimes the suspect is taken to a different jurisdiction and further remand orders are obtained from the presiding Magistrate who may or may not have been informed of the previous remand orders issued for the suspect. Even if the Magistrate was duly informed, the cycle of automatic remand orders is frequently administered without due regard for constitutional or legal provisions. There have been cases where suspects have been detained for more than two months in various police stations in different states, resulting in severe deterioration of mental and physical health or even deaths in custody.”⁶⁴

Re-Arrests Upon Court Ordered Release

A corollary of the right to liberty is the right to challenge the legality of detention. In 1989, the government amended the Emergency Ordinance to explicitly limit the court from reviewing the merits of such detentions. Section 7(C) of the Emergency Ordinance prevents courts from reviewing the merits of EO detentions, thus leaving detainees without any effective recourse to challenge their detention. The law does leave room for review of “procedural requirements.” Some lower courts have declared Emergency Ordinance detention orders invalid on procedural grounds and ordered detainees to be released. The government, however, usually re-arrests such detainees on the same charges as before. Such actions show that judicial review of procedural defects does very little to protect against abuses, leaving EO detainees with almost no recourse against wrongful arrest and detention.

⁶² Royal Commission Report, ch.4, challenge 4, para. 5.5.2(i)(a).

⁶³ *Ibid.*, para. 5.5.2.(i)(h).

⁶⁴ *Ibid.*

On May 29, 2005, the *New Sunday Times* reported that more than forty-eight EO detainees had been released in 2005 due to successful habeas corpus petitions.⁶⁵ The government responded swiftly and on May 31 the Inspector General of Police announced that while fifty-six detainees had been released, forty-eight had been re-arrested.⁶⁶ Then Deputy Minister of Internal Security, Datuk Noh Omar, announced that lack of senior federal counsel to handle such cases had led to this release of “fifty-six criminals,” and that additional counsel would be assigned to such cases.⁶⁷

The re-arrest of EO detainees released on successful *habeas corpus* petitions is not a new phenomenon. A lawyer representing EO detainees told Human Rights Watch:

When we challenge the legality of the detention the prosecutor does not come forward with affidavits or produce the investigating officer in court because they will have to make sworn statements in court. Why should the police go to court when they know that if [a detainee] is released he can be re-arrested on the same charges?⁶⁸

He continued:

What surprises me is that my clients’ detention orders have detailed information such as date, time, names of persons, but yet they are not formally prosecuted and are locked away at the whim of the government. It’s easy for them. The EO detainees are presumed guilty. Why go through a trial to prove their guilt.⁶⁹

For many, filing a procedural challenge to detention under the EO is a waste of resources. An NGO activist told Human Rights Watch, “The toll on the families is immense. They struggle to come up with the money to pay the legal fees for the habeas petitions and then their relative is re-arrested. So the RM 15,000 [U.S.\$4,061] is a waste.”⁷⁰

The Malaysian government’s abuse of the law has gone so far that it now detains people under the EO for the same offenses the government has been unable to prove at trial. In October 2005, the *New Strait Times* reported that eight individuals were acquitted and ordered released at the end of a murder trial because the prosecution was unable to

⁶⁵ “45 Thugs Released,” *New Sunday Times*, May 29, 2005.

⁶⁶ “Internal Security to Get 20 More Senior Federal Counsel,” *Bernama Daily Malaysian News*, May 31, 2005.

⁶⁷ *Ibid.*

⁶⁸ Human Rights Watch interview with lawyer (name withheld), Kuala Lumpur, July 14, 2005.

⁶⁹ *Ibid.*

⁷⁰ Human Rights Watch interview with Selvaram, *Suara Warga Pertiwi*, Kuala Lumpur, July 12, 2005.

prove its case.⁷¹ Rather than release the men or appeal the court's ruling to a higher court, the government re-arrested them outside the courtroom under the Emergency Ordinance for the same offense for which they were acquitted by the court.⁷²

The principle of *non bis en idem* (double jeopardy)—the right of a person once tried or punished not to be subject to successive punishment or prosecutions for the same offense—is an essential due process right under international law. The ICCPR states, “No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.”⁷³

Case Studies of Re-Arrest after Release

In 2003, the police arrested six men under the Emergency Ordinance—Mohd Haniff bin Mohd Kassim, Thiagarajan Kamalanathan, Sivanathan Subramaniam, Suppiah Supramanian, S. Sivarthinam Munsamy, and Gunasingam Kolasegaram—for their alleged involvement in extortion activities. Rather than charge them under Malaysian criminal law and allow a court to decide their guilt or innocence after weighing the evidence, the six were initially detained for sixty days under the EO and subsequently detained for eighteen months to two years.

Each of the six challenged their detention on procedural grounds—the only ground allowed by law—in *habeas corpus* petitions. On September 10, 2003, the court in Shah Alam Selangor ordered their release deeming their detention orders invalid because the government failed to comply with the procedural requirements of the EO.⁷⁴ However, a month after their release, five of the six were re-arrested on the very same charges alleged in the original detention order, and were ordered to serve another two years in Simpang Renggam by Datuk Noh Omar, then Deputy Minister of Internal Security.⁷⁵

⁷¹ Sharanjit Singh, “Eight Freed of Murder Charge, Freedom Short-lived with Arrest,” *New Straits Times*, October 12, 2005.

⁷² *Ibid.*

⁷³ ICCPR, art. 14(7).

⁷⁴ Judicial Orders of *Mohd Haniff bin Mohd Kassim v. Menteri Dalam Negeri Malaysia*, Dalam Makamah Tinggi Malaya di Shah Alam, Permohonan Jenayah No. 44-12 Tahun 2004, September 10, 2004; *Thiagarajan Kamalanathan v. Menteri Dalam Negeri Malaysia*, Dalam Makamah Tinggi Malaya di Shah Alam, Permohonan Jenayah No. 44-12 Tahun 2004, September 10, 2004; *Sivanathan Subramaniam v. Menteri Dalam Negeri Malaysia*, Dalam Makamah Tinggi Malaya di Shah Alam, Permohonan Jenayah No. 44-8 Tahun 2004, September 10, 2004; *Suppiah Supramanian v. Menteri Dalam Negeri Malaysia*, Dalam Makamah Tinggi Malaya di Shah Alam, Permohonan Jenayah No. 44-10 Tahun 2004, September 10, 2004; *S. Sivarthinam Munsamy v. Menteri Dalam Negeri Malaysia*, Dalam Makamah Tinggi Malaya di Shah Alam, Permohonan Jenayah No. 44-12 Tahun 2004, September 10, 2004; and *Gunasingam Kolasegaram v. Menteri Dalam Negeri Malaysia*, Dalam Makamah Tinggi Malaya di Shah Alam, Permohonan Jenayah No. 44-12 Tahun 2004, September 10, 2004. Copies on file with Human Rights Watch.

⁷⁵ Emergency Ordinance Detention Orders of Thiagarajan Kamalanathan, Sivanathan Subramaniam, and Suppiah Supramanian, S. Sivarthinam Munsamy, and Gunasingam Kolasegaram, dated October 7, 2004, copies on file with Human Rights Watch.

Mohd Haniff bin Mohd Kassim was ordered to spend two years in restricted residence in Kelantan.

Case of Thiagarajan Kamalanathan, Sivanathan Subramaniam, and Suppiah Supramanian

Thiagarajan Kamalanathan, Sivanathan Subramaniam, and Suppiah Supramanian were each subjects of a detention order for eighteen months starting on October 20, 2003. They were accused of being members of a gang active in Pandamaran, Klang, Selangor state and involved in criminal activities. The police presented detailed facts in the EO detention order but, instead of charging them, detained them under the EO.⁷⁶ Their detentions were based on the following same facts, repeated verbatim in each of their EO detention orders:

- That you on July 7, 2003, at around 5:00 p.m. at the metal workshop in Taman Klang Jaya, Klang, along with your criminal peers, equipped with a *parang* [machete] and a helmet attacked the victim and the victim's workers because the victim refused pay protection money of RM 20,000 [U.S.\$5,297] and a monthly amount of RM 2400 [U.S.\$635]. As a result of this attack, the victim's workers sustained injuries to their right shoulder. Out of fear the victim paid RM 2000 [U.S.\$529].
- That you on July 18, 2003, at approximately 1:30 p.m. at the Bukit Tinggi 2, Klang, housing project site, along with your criminal friends, seized two keys to two tractors and threatened to hurt the workers with the purpose of getting protection money.
- That you on July 18, 2003, at around 8:00 p.m. at the Melur, Bandar Bukit Tinggi 2, Klang, along with your criminal peers, requested protection money of RM 3,000 [U.S.\$812] from a Chinese man if he wanted the tractor keys returned and if he wished to continue business at the Bukit Tinggi 2, Klang, housing project site.⁷⁷

Human Rights Watch has copies of similar detention orders in the cases of S. Slvarthinam Munsamy and Gunasingam Kolasegaram, both accused of extortion in their detention orders, both ordered released by a court due to procedural defects in the detention order, and both re-arrested.

This case suggests that, when it wishes, the government does not prosecute suspects even when it has detailed facts, and instead uses the EO to incarcerate them without

⁷⁶ Emergency Ordinance Detention Orders of Mohd Haniff bin Mohd Kassim, Thiagarajan Kamalanathan, Sivanathan Subramaniam, and Suppiah Supramanian, S. Slvarthinam Munsamy, dated October 20, 2003, and Emergency Ordinance Detention Order of Gunasingam Kolasegaram, dated December 3, 2003. Copies on file with Human Rights Watch.

⁷⁷ *Ibid.*

having to prove the charges. Moreover, the re-arrests indicate that judicial review of procedure alone does not provide a meaningful safeguard.

Hunger Strike in Simpang Renggam

In November 2004, EO detainees went on a hunger strike to protest the length of detention and their treatment in Simpang Renggam. Suaram reported that 435 detainees began the hunger strike on November 11, 2004.⁷⁸ By day two 235 detainees were on the strike and ended the strike after three days upon assurances from the prison director that their concerns would be addressed. Eight detainees continued the hunger strike for another five days. One detainee ended the hunger strike on November 25, 2004. He ended the strike after being visited by SUHAKAM commissioners, who assured him that the detainees' grievances would be submitted to the Malaysian Prime Minister.

Suaram reported that detainees addressed a letter to the Prime Minister on November 12 and raised the following issues:

1. They [Emergency Ordinance detainees] were not visited by Home Ministry [Ministry of Internal Security] officials during the first 60 days of their detention. They were unhappy and suspicious that the investigation reports on them may not have explained the full situation. They felt that the Home Minister [Minister of Internal Security] did not have the full account or was not actually aware of the allegations against them.
2. They were never given a chance to defend themselves, nor were they allowed to demand proper investigations.
3. Their detention periods are indefinite and they do not know when they will be released. At least if they are charged in court and found guilty, they would know what their crime was and the duration of their incarceration.
4. Even though their cases were referred to the Advisory Board, they were not given a chance to defend themselves nor were they informed of the outcome of their appeals to the Advisory Board.
5. Some of them were released from the detention center after sixty days of detention, but were re-arrested by police on the same grounds.
6. Some of them were released by the courts but were re-arrested.
7. Upon their re-arrests, the detainees were put on a "road-show"; they were transferred from one police station to allow the police to buy time to prepare fresh detention orders.
8. During the sixty days of detention, they alleged that the statements recorded by the police were obtained under duress through the use of force, torture, and degrading treatment.
9. During the detention period, they were not allowed to make police reports

⁷⁸ The account below is based on Human Rights Watch interview with S. Arutchelvan, Suaram, Kuala Lumpur, July 4, 2005. See also "300 Detainees Go on Hunger Strike in Malaysia," Agence France Press, November 11, 2004; Neville Spykerman, "Hunger Strike by Inmates Continues," *New Strait Times*, November 13, 2004; "235 Detainees Stage Hunger Strike," Bernama Daily Malaysian News Agency, November 12, 2004; "15 Detainees End Hunger Strike," *New Sunday Times*, November 12, 2004; Suaram, "Simpang Renggam Hunger Strike Ends as Last Detainee Stop Hunger Strike," November 26, 2004.

about any irregularities.

10. Those with disabilities were not given sympathetic consideration as their detention periods were also extended.
11. Those who observed all the detention requirements faithfully and did not commit any serious offences had their detention terms extended as well.

The government responded to the hunger strike by permitting SUHAKAM access to the detention center. It did not end its practice of re-arresting released detainees.

Psychological Impact of Indefinite Detention

The Malaysian government has not made public the names of all Emergency Ordinance detainees nor the length they have been detained. The Malaysian Bar Council, however, reports that EO detainees are at times detained without trial for up to eight years.⁷⁹ The indefinite nature of the detention has serious psychological implications for a detainee. A lawyer for several EO detainees told Human Rights Watch:

My clients are always depressed. They have no hopes for the future. They live in a climate of uncertainty because they don't know when they will be released. At least if once is sentenced one knows when one will be released, but with the EO there is no hope.⁸⁰

Family members also suffer emotional strain due to the indefiniteness of EO detentions. A lawyer whose clients are in detention told Human Rights Watch:

Families break up. The wife has no way of knowing when her husband will be released and if he is released he can be re-arrested. My clients, who have been in detention for more than two years, are struggling not only to maintain their sanity in detention, but hope that their wives don't abandon them and file for divorce.⁸¹

Indefinite detention has also been noted as a contributing factor to the alleged suicide of eighteen-year-old EO detainee S. Hendry. He had spent eighty-eight days in police lock up and was sent to Simpang Renggam for two years with possible indefinite renewal for his alleged involvement in a murder. SUHAKAM concluded that “the fact that S. Hendry could have been told of possible renewals of his detention order is a relevant factor in determining the cause of his death.”⁸²

⁷⁹ Malaysian Bar Council, “Simpang Renggam Report,” p. 3.

⁸⁰ Human Rights Watch interview with lawyer (name withheld), Kuala Lumpur, July 14, 2005.

⁸¹ Human Rights Watch interview with lawyer (name withheld), Kuala Lumpur, July 14, 2005.

⁸² SUHAKAM, “S. Hendry Inquiry,” chap. 9. SUHAKAM found that Simpang Renggam does not have a policy on suicide prevention and lacked experienced staff to deal with detainees with suicidal behavior.

Internal Exile Without Charge or Trial

The Emergency Ordinance allows the minister of internal security to “control” the movement of persons who the minister believes are acting in a manner prejudicial to public order and order them to remain in restricted residence for two years.⁸³ This is often a form of internal exile whereby the government restricts a person’s freedom of movement, place of residence and work, and requires weekly check-ins with the police.

Human Rights Watch spoke to detainees who described how they were ordered to live in remote parts of Malaysia, dropped off by the police, and given no assistance in finding a job or housing or initial monetary allowance.

After serving 203 days in detention without any charges being proved against him, Samsudin, discussed above, was ordered to be in restricted residence for two years.⁸⁴ He described to Human Rights Watch the place he was sent to work and live:

I was ordered to live in Jerantut district in Ulu Tembleing, which is a small village accessible only by a six hour boat ride. There were only 200 people in the village. The police escorted me to Ulu and left me there.

I had a curfew—could only go out of the house between 6:00 a.m. and 8:00 p.m. Every Monday I had to register with the police.

I rented a room. My wife gave me money. It’s a small fishing village. I lived there for six months and had no work. If my family was unable to help me then how was I supposed to survive? But what about those who have no family support. Do they have to steal in order to survive?⁸⁵

Tamarai, a Tamil who was detained under the EO for sixty days, transferred to Simpang Renggam for seven months, released on successful procedural challenge to his EO detention, immediately re-arrested on the same allegations of extortion, detained for sixty days, and then ordered to spend two years in restricted residence, told Human Rights Watch:

I was ordered to live in a 2000-person village comprised mainly of Malay Muslims. I am not Muslim and no one would rent me an apartment. I had to ask one of my cousin’s who had converted to Islam to come to that village and rent me a place under his name, so I had a place to live.

⁸³ Emergency Ordinance, sections 4A(1) and 4(1).

⁸⁴ Human Rights Watch interview with Samsudin, Kuala Lumpur, July 9, 2005.

⁸⁵ *Ibid.*

My cousin and I set up a hawker stall selling *roti channa* [bread and chickpeas]. I requested to the authorities that my curfew of 8:00 p.m. be extended to 12:00 a.m. or 1:00 a.m. because most people eat late at night and this would be the most profitable time for me. But I was refused. My hawker stand is next to the police station so they can keep an eye on me but they denied my application.

If I have no work how would I eat? They [referring to the police] want me to run away so they can arrest me again. Someone with no money, how would he survive?⁸⁶

⁸⁶ Human Rights Watch interview with Tamarai (pseudonym), Kuala Lumpur, July 10, 2005.

V. Inhumane Conditions in Simpang Renggam

The Simpang Renggam Behavioural Rehabilitation Centre in Johor houses detainees held under the Emergency Ordinance and the Dangerous Drugs (Special Preventive Measures) Act 1985, as well as convicts and remand prisoners. Former detainees, the Malaysian Bar Council, and the Parliamentary Caucus on Human Rights have described poor conditions of detention. People who had been detained at the facility told Human Rights Watch of overcrowded cells, inedible food infested with worms, limited access to fresh air or exercise, and unhygienic living conditions—allegations which are consistent with those made to the other groups. These continuing claims raise serious concerns that conditions in Simpang Renggam amount to inhumane or degrading treatment, as those terms are defined in international law. These are serious allegations that warrant a serious investigation by the Malaysian government, periodic visits by independent organizations like the International Committee of the Red Cross, and regular monitoring by local and international human rights organizations.

In July 2005, Human Rights Watch requested permission to visit Simpang Renggam, but was denied.

Conditions of Detention

Overcrowding

Simpang Renggam was built to house 2000 prisoners,⁸⁷ but in public figures released by the government in November 2004 the detention center holds 3,911 persons, of which 737 were remand prisoners, 1,486 convicts, and 1,688 people detained under the Emergency Ordinance and Dangerous Drug Act.⁸⁸ The government has not publicly released any updated statistics on the Simpang Renggam population.

Members of the Malaysian Bar Council who visited Simpang Renggam in November 2004 concluded that the detention center “faces severe overcrowding and the Prison Dept do not seem to be able to cope [sic].”⁸⁹ In June 2005 the Parliamentary Caucus on Human Rights, comprised of members of parliament from both the government and the opposition—United Malay National Organization, Malaysia Chinese Association, and Democratic Action Party—visited Simpang Renggam and concluded that the detention

⁸⁷ Media Statement by Lim Kit Siang (member of the Parliamentary Caucus on Human Rights), June 20, 2005, copy on file with Human Rights Watch.

⁸⁸ “Hunger Strike Not Due to Conditions at Rehab Center,” *Bernama Daily Malaysian News*, November 20, 2004.

⁸⁹ Malaysian Bar Council, “Simpang Renggam Report,” p. 3.

center is “over congested.”⁹⁰ The caucus spent three hours at the center and found that “many cells” housed five to six people.⁹¹ A member of the caucus later told journalists that the “conditions seem overcrowded and unhealthy.”⁹²

Poor Hygiene and Cleanliness

Former detainees and the Malaysian Bar Council allege that conditions of detention in Simpang Renggam do not meet basic standards of health and hygiene.

A former detainee described the cell conditions to Human Rights Watch as follows: “When I first arrived in Simpang Renggam I was given a small bucket to be used as a toilet. I was in this cell for seven days. . . . We were given a jug of water to wash.”⁹³ The detainee was then transferred to another cell block and recalled, “There was a tap in the cell and a toilet hole in the ground. It smelled really bad. We did not get water on a daily basis.”⁹⁴ Another former detainee confirmed the inadequacy of water for bathing when he was in Simpang Renggam: “Detainees do not have access to adequate water for showers on a daily basis. It’s dirty, sweaty, and hot.”⁹⁵

One likely consequence of the inadequate supply of clean water has been the spread of skin diseases such as scabies. In November 2004 the Malaysian Bar Council interviewed eight detainees at Simpang Renggam separately and found that “most of the detainees [they] met had serious skin ailments needing immediate attention.”⁹⁶ An attorney representing EO detainees told Human Rights Watch, “Every time I visit my clients I get shocked. They have boils waiting to explode. They have rashes and scabies.”⁹⁷

While not dangerous, scabies, an infestation of the skin, spreads rapidly in crowded conditions where there is frequent skin-to-skin contact between people.⁹⁸ Scabies causes severe itching and discomfort and if untreated may spread over the body. Those with scabies are at risk of secondary bacterial infections if they scratch the affected areas. Scabies may also be transmitted by skin contact and puts detention center staff and their families at risk of contracting the disease.

⁹⁰ Media Statement by Lim Kit Siang, June 20, 2005.

⁹¹ “DJ Malaysian Lawmakers: Detention Camp Conditions Unhealthy,” Dow Jones Newswire, June 14, 2005 (quoting Teresa Kok, a member of parliament).

⁹² “Suspected Criminal Held in Crowded, Unhealthy Prisons: Malaysian Lawmakers,” Associated Press, June 14, 2005.

⁹³ Human Rights Watch interview with Tamarai (pseudonym), Kuala Lumpur, July 10, 2005.

⁹⁴ *Ibid.*

⁹⁵ Human Rights Watch interview with Mohan (pseudonym), Kuala Lumpur, July 12, 2005.

⁹⁶ Malaysian Bar Council, “Simpang Renggam Report,” p. 2.

⁹⁷ Human Rights Watch interview with lawyer (name withheld), Kuala Lumpur, July 14, 2005.

⁹⁸ Center for Disease Control, Fact Sheet on Scabies [online], http://www.cdc.gov/ncidod/dpd/parasites/scabies/factsht_scabies.htm (visited September 21, 2005).

Inadequate Ventilation and Light

A former detainee described the cell conditions to Human Rights Watch: “When I first arrived in Simpang Renggam . . . I was in this cell for seven days. There was no fan or window. There was one light bulb. There were lots of mosquitoes.”⁹⁹ The detainee was then transferred to another cell block. “After the first seven days we were taken to block 3D. . . There was no fan and light in the cell. Light would come from the corridor. I could not read.”¹⁰⁰ Another detainee confirmed the absence of lights and fans in the cells: “There were no lights or fans in the cells. We used to sit in our cells dripping with sweat.”¹⁰¹

Inadequate Food

Former detainees of Simpang Renggam had complaints about the quality and amount of food. “The food was disgusting; I could not eat it,” said a former detainee. “Many times I would find worms in the rice.”¹⁰² A lawyer whose EO clients are in Simpang Renggam confirmed that the food in 2006 has continued to be often inedible.¹⁰³ Another former detainee agreed that the food was “terrible,” but also complained about portions: “They did not give us enough food and I was often hungry.”¹⁰⁴

Little Contact with Outside World

Detainees are allowed family visits, but the frequency is determined by the length of their detention. Those held for periods of three months or less are allowed only a single family visit during their entire stay. A former detainee explained that the length of detention determines the frequency of the visits. The longer a person is in detention the more frequent the family visits.¹⁰⁵ A 2002 SUHAKAM visit to Simpang Renggam confirmed how the length of detention determines a detainee’s privileges in terms of frequency of family visits.¹⁰⁶

⁹⁹ Human Rights Watch interview with Tamarai (pseudonym), Kuala Lumpur, July 10, 2005.

¹⁰⁰ *Ibid.*

¹⁰¹ Human Rights Watch interview with Mohan (pseudonym), Kuala Lumpur, July 12, 2005.

¹⁰² *Ibid.*

¹⁰³ Human Rights Watch telephone interview with lawyer (name withheld), June 6, 2006.

¹⁰⁴ Human Rights Watch interview with Tamarai (pseudonym), Kuala Lumpur, July 10, 2005.

¹⁰⁵ *Ibid.*

¹⁰⁶ SUHAKAM, “SUHAKAM Visit Report, Simpang Renggam Behavioural Rehabilitation Center, Johor, Malaysia Prison Department,” August 10, 2002 (SUHAKAM Visit Report).

Table 2: Length of Detention and Frequency of Family Visits¹⁰⁷

Length of Detention	Frequency of Family Visits
Three months	Once every eight weeks
Seven months	Once every six weeks
Seven months	Once every four weeks
Until free	Once every two weeks

Family visits last no longer than forty-five minutes.¹⁰⁸ A glass separates the detainee from physical contact with his or her family. Families communicate through a telephone.¹⁰⁹

Lack of Opportunities for Rehabilitation and Recreation

A former detainee told Human Rights Watch, “They call it Simpang Renggam Rehabilitation Center, but there is no rehabilitation. We had nothing to do.”¹¹⁰ Another former detainee recalled, “We got very little exercise, only one day per week.”¹¹¹

In November 2004 the Malaysian Bar Council reported that there “does not seem to [be] any form of structured program of rehabilitation or vocation” for EO detainees at Simpang Renggam.¹¹² In June 2005 the Parliamentary Caucus on Human Rights also noted that the detention center lacked adequate work and rehabilitation programs for detainees.¹¹³

During the day the main recreational activity for detainees is watching television. SUHAKAM, in its 2002 report about Simpang Renggam, noted that watching television is the only recreational activity and recommended that other activities be made accessible, such as indoor games like chess.¹¹⁴

¹⁰⁷ Human Rights Watch interview with Tamarai (pseudonym), Kuala Lumpur, July 10, 2005.

¹⁰⁸ SUHAKAM Visit Report.

¹⁰⁹ Human Rights Watch interview with Tamarai (pseudonym), Kuala Lumpur, July 10, 2005. See also SUHAKAM Visit Report.

¹¹⁰ Human Rights Watch interview with Mohan (pseudonym), Kuala Lumpur, July 12, 2005.

¹¹¹ Human Rights Watch interview with Tamarai (pseudonym), Kuala Lumpur, July 10, 2005.

¹¹² Malaysian Bar Council, “Simpang Renggam Report,” p. 2.

¹¹³ “Malaysian Lawmakers: Detention Camp Conditions Unhealthy,” Dow Jones International News, June 14, 2005.

¹¹⁴ SUHAKAM Visit Report, p. 8.

Legal Standards on Detention

International standards require that “[a]ll persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.”¹¹⁵ In 1992 the United Nations Human Rights Committee explained that states have “a positive obligation toward persons who are particularly vulnerable because of their status as persons deprived of liberty,” and stated:

[N]ot only may persons deprived of their liberty not be subjected to treatment that is contrary to article 7 [torture or other cruel, inhuman or degrading treatment or punishment], including medical or scientific experimentation, but neither may they be subjected to any hardship or constraint other than that resulting from the deprivation of liberty; respect for the dignity of such persons must be guaranteed under the same conditions as for that of free persons. Persons deprived of their liberty enjoy all the rights set forth in the [ICCPR], subject to the restrictions that are unavoidable in a closed environment.¹¹⁶

Significantly, the Human Rights Committee also stressed that the obligation to treat persons deprived of their liberty with dignity and humanity is a fundamental and universally applicable rule, not dependent on the material resources available to the state party.¹¹⁷

The United Nations Standard Minimum Rules for the Treatment of Prisoners (Standard Minimum Rules) serves as an authoritative guide for states on how to comply with their international obligations to protect the human rights of persons held in all forms of detention.¹¹⁸ Key provisions require:

- Sleeping accommodations that meet basic requirements of health and hygiene, including adequate sleep space, air, lighting, heat, and ventilation;
- Adequate bathing and shower installations;
- Proper maintenance and cleaning of all parts of a detention facility;
- Provision of toilet articles as necessary for health and cleanliness;
- Food of nutritional value adequate for health provided at normal times; drinking water available at all times;
- Access to medical and psychiatric care and psychological support services;

¹¹⁵ ICCPR, art. 10.

¹¹⁶ U.N. Human Rights Committee, General Comment 21, Article 10 (Forty-fourth session, 1992), U.N. Doc. HRI/GEN/1/Rev.1 at 33 (1994), para. 3.

¹¹⁷ *Ibid.*, para. 4.

¹¹⁸ United Nations Standard Minimum Rules for the Treatment of Prisoners, adopted August 30, 1955, by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, U.N. Doc. A/CONF/611, annex I, amended E.S.C. res. 2076, 62 U.N. ESCOR Supp. (No. 1) at 35, U.N. Doc. E/5988 (1977).

- Absolute prohibition against cruel, inhuman or degrading treatment or punishment;
- System for making complaints;
- Provision for regular exercise and access to natural light and fresh air;
- Provision of a library, educational programs, and access to necessary social services.¹¹⁹

The substandard conditions described above violate internationally recognized basic minimum standards for the treatment of detainees. The Malaysian government should take immediate action and provide medical care to all detainees found to be infected with scabies and other infectious diseases; take preventive measures to avoid the incidence of scabies and other infectious diseases; provide detainees with adequate opportunity to bathe; and provide detainees with edible food to meet all requirements of health and human dignity.

¹¹⁹ Ibid., paras. 9-27, 35-40, 77, 95.

VI. The Malaysian Government's Indefensible Support for the Emergency Ordinance

The Malaysian government publicly admits that the Emergency Ordinance is used to detain criminal suspects when the government has insufficient evidence to try them under existing criminal law. As already noted, former Deputy Internal Security Minister Datuk Noh Omar in 2004 summed up the practice explicitly, saying: "If there is insufficient evidence, but the police believe they are involved, then they will be detained under the Public [Emergency] Ordinance."¹²⁰

Even the government-appointed Royal Commission recommended the repeal of the Emergency Ordinance, explaining in 2005 that, "it [the Emergency Ordinance] has outlived its purpose and in some instances has facilitated the abuse of fundamental liberties."¹²¹ Notably, the entire Commission recommended the repeal of the Emergency Ordinance, including Tun Hanif Omar, the former Inspector General of Police. The Commission "noted" the following allegations in the way the Royal Malaysia Police has implemented the Emergency Ordinance:

- The Commission's inquiry showed that in a number of cases preventive laws were used as a means of detaining persons where sufficient proof could not be ascertained to charge them in open court. Furthermore, detention laws provide a convenient short cut to crime solving instead of rigorous and coordinated investigations. It also reflected weakness in police officers in undertaking high quality evidence-based investigation.¹²²
- In cases where charges under the Dangerous Drug (Special Preventive Measures) Act 1985 and the Emergency Ordinance have been preferred and those charged subsequently acquitted, police have re-arrested and detained them under preventive laws.¹²³

As of July 2006 the Malaysian government has not yet implemented the Commission's recommendations.¹²⁴ In July 2005 a member of Prime Minister Badawi's cabinet

¹²⁰ "Detention Without Trial For Trouble-Making Aliens," *Bernama Daily Malaysian News*, June 9, 2004. Datuk Noh Omar was responding to reports of foreigners involved in an alleged fight which resulted in the death of three people. Initially he claimed that the police would charge them under the penal code "if there is enough evidence against them," but warned that in the absence of such evidence the Emergency Ordinance will be used.

¹²¹ Royal Commission Report, ch. 10, rec. 6, para. 2.6.4.

¹²² *Ibid.*, ch. 10, rec. 5, para. 5.5.2(ii)(d).

¹²³ *Ibid.*

¹²⁴ Prime Minister Badawi has appointed five subcommittees to analyze the recommendations. In July 2005, in response to inquiries from members of parliament, he responded that the government is "in principle" committed to implementing all 125 recommendations, but that "implementation will be based on priority [and] suitability," taking into consideration "financial and legal implications." Beh Lih Yi, "Special Branch reform back on the agenda," *Malaysiakini*, July 5, 2005; "Proposals will be Implemented," *The Sun*, July 5, 2005.

expressed doubt that the EO would be repealed. Datuk Mohamed Nazri, responsible for parliamentary affairs, told Human Rights Watch that despite the recommendation by the Royal Commission he doubts that the government will repeal the law.¹²⁵ He explained, “The EO protects the society against criminals. The EO prevents the commission of crimes and takes ‘thugs’ off the streets.”¹²⁶

Human Rights Watch recognizes the obligation of the Malaysian government to reduce crime in the country and to deal with criminal syndicates, but the government should prosecute persons who are involved in alleged criminal activity through the normal criminal justice system. The presumption of innocence and due process are not to be applied at the whim of the government. Prime Minister Badawi should take the lead by immediately ordering his ministers to stop using this shadow criminal justice system and then work with parliament to repeal the laws that underpin it.

¹²⁵ Human Rights Watch interview with Datuk Mohamed Nazri, Minister in the Prime Minister’s Department, Kuala Lumpur, July 8, 2005.

¹²⁶ *Ibid.*

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