

Malaysia

In April Malaysia's new prime minister, Seri Najib Tun Razak, articulated his view of a multicultural, nondiscriminatory Malaysia and pledged to "uphold civil liberties" and exhibit "regard for the fundamental rights of the people." He demonstrated a new direction for the government by lifting a ban on two opposition party newspapers, releasing 13 Internal Security Act (ISA) detainees, and promising a review of internal security and other repressive laws. But to date, the record has been, at best, mixed.

Freedom of expression and freedom of assembly are still restricted for government critics. Najib and his ministers defend preventive detention and outdated repressive laws in the name of public security and a fragile multi-ethnic society.

Detention without Charge or Trial

The Internal Security Act permits indefinite detention, without charge or trial, of anyone officials regard as a threat to national security, such as suspected terrorists, individuals allegedly promoting ethnic or religious divisiveness, and government critics.

From April 3, 2009, his first day in office, Prime Minister Najib signaled his intent to amend the law. Within a month the government agreed to form a Law Reform Committee headed by a deputy minister in the Prime Minister's Department, and released all but nine ISA detainees. It has itself refrained from using the ISA to detain political opponents, but has rejected calls by the Human Rights Commission of Malaysia (Suhakam), the Bar Association, and civil society organizations to repeal the law.

Migrant Workers, Refugees, Asylum Seekers, and Trafficking

As of March 2009 there were more than two million documented migrants in Malaysia and an estimated one million without valid residency status. The United Nations High Commissioner for Refugees says that, of these, 49,000 are registered refugees and asylum seekers. Refugee communities estimate that an additional 45,000 are not registered.

The Malaysian Immigration Act 1959/1963 does not distinguish refugees and asylum seekers from other undocumented migrants: all those without proper documentation are subject to arrest, detention, and deportation. Members of the half-million-strong People's Volunteer Corps (RELA), who do not need warrants to search premises and arrest suspected undocumented migrants, often join with immigration officers and police to conduct raids on worksites and living quarters. Previously, undocumented Burmese caught in raids usually were deported to the Thai border where they risked being trafficked by organized criminal groups. In April 2009 US Senator Richard Lugar delivered a report to the US Senate Committee on Foreign Relations outlining the collusion between Malaysian immigration officials and human traffickers and smugglers at the border. After the report, the deportations stopped.

Stepped-up arrests, combined with fewer deportations, have increased overcrowding in immigration detention facilities and produced a deterioration of already abysmal living conditions, including contaminated water supplies, inadequate access to medical care, and poor and insufficient food. In May two Burmese migrants detained at the Juru Detention Center in Penang died and 24 others were treated for leptospirosis, a bacterial infection usually caused by contact with water contaminated by urine from infected animals. In August another six Burmese died from leptospirosis probably contracted at the Semenyih Detention Center.

In 2009 Malaysia met a long-sought goal by guaranteeing a day off a week for its estimated 300,000 domestic workers, primarily Indonesian migrants. However, the government still fails to ensure prompt payment of an adequate minimum wage, reasonable limits to work hours, and protection from physical abuse and sexual harassment.

Indonesia suspended the migration of domestic workers to Malaysia in June in response to the continuing high number of abuses, including the highly-publicized case of Siti Hajar, who was owed 17,000 ringgits (US\$5,000) in back wages and was badly scarred from years of violence including repeated scaldings. In another much publicized case, in October Mantik Hani's employer was charged with murder after Mantik died from a savage beating. As of November 2009 Indonesia and Malaysia were still negotiating a revised bilateral agreement including a special Malaysian task force to deal with employer abuse and a higher minimum wage.

Freedom of Assembly and Police Abuse

Article 10 of Malaysia's constitution guarantees freedom of assembly, but the Police Act 1967 severely restricts its application. Police are empowered to break up unlicensed demonstrations, arrest participants, and use force if orders to disperse are not promptly obeyed. Public rallies organized by government critics are routinely denied permits, while those supportive of government positions may proceed unencumbered even without the requisite permit. On August 20, 2009, Home Minister Hishamuddin Hussein announced a review of the Police Act to allow for assembly in stadiums and "certain corners of town." The announcement followed police use of indiscriminate and excessive force to break up an August 1 march supporting repeal of the Internal Security Act, when security forces arrested nearly 600 people (including 44 children), many of them some 10 hours before the demonstration even began, and used teargas and chemically-laced water shot from water cannon trucks to turn back the crowds.

Freedom of Expression and the Media

In April Prime Minister Najib proclaimed, "We need a media ... that is empowered to responsibly report what they see, without fear of consequence." But Malaysia continues to systematically restrict free expression through a series of laws specifically limiting press freedom, as well as the broadly-worded Sedition Act, the Police Act which limits peaceful assembly, and a mainstream media ownership structure favoring the government. Despite its earlier pledge not to censor the internet, the government has found new ways to limit the cyberspace challenge to information controls.

The 1984 Printing Presses and Publications Act acts as a censor by requiring annual renewal of publishing licenses and by controlling production and distribution of foreign publications. In August 2009 the government confiscated copies of the inaugural issue of *Gedung Kartun*, a political satire magazine, on the questionable grounds that it had not yet received a permit. The issue's cover satirized Najib's alleged indiscretions.

Also in August opposition parliamentarian Karpal Singh went on trial for sedition for commenting to journalists that the legality of a decision to return control of Perak state's government to Malaysia's ruling coalition could be questioned in court.

In September the leading online news portal *Malaysiakini* refused to comply with a Communication and Multimedia Commission order to remove two videos from its website on the grounds that it had posted "content which is indecent, obscene, false, menacing or

offensive in character.” After investigation, the matter was referred to the Attorney General’s Chambers.

Freedom of Religion

Although Islam is Malaysia’s official state religion, the constitution affirms that Malaysia is a secular state protective of religious freedom for all. However, Malaysia’s dual-track legal system permits Sharia courts to rule on religious and moral offenses involving Muslims and on issues involving marriage, inheritance, divorce and custody battles, and burial rites, many involving inter-religious disputed claims.

In July 2009 the Sharia High Court in Pahang state sentenced Kartika Sari Dewi Shukarno to six strokes of a cane for drinking beer in a nightclub. In September the Kuantan Sharia High Court Appeals Panel upheld the sentence. Should it be imposed, Kartika will be the first woman caned in Malaysia.

Human Rights Defenders

Malaysian authorities continue to harass and arrest human rights defenders including lawyers, journalists, NGO activists, opposition politicians, and even outspoken members of Suhakam, Malaysia’s official human rights watchdog.

In May police arrested five lawyers seeking to meet with their clients, many of them elected representatives who had been arrested for taking part in one of a series of peaceful vigils supporting activist Wong Chin Huat. Police used the Sedition Act to arrest Wong earlier that month for holding a press conference on behalf of Bersih (Coalition for Clean and Fair Elections) asking supporters to wear black to “mourn the death of democracy ” in Perak, where the national ruling coalition had engineered sufficient defections in the state assembly to retake control.

Although NGOs criticize Suhakam for its lack of action, several commissioners have reminded critics that it lacks enforcement powers. The commission was established by law as an advisory committee and falls under the Prime Minister’s Department, with the prime minister exercising exclusive control over commissioner appointments. As a result, the executive can prevent investigations from going forward and can dismiss investigative reports without explanation. The International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, a body that assesses the extent to which national human rights commissions comply with the Principles relating to

the Status of National Institutions (Paris Principles), has warned it may recommend downgrading Suhakam's status.

Key International Actors

During a joint press conference on May 14, 2009, US Secretary of State Hillary Clinton and Malaysia's Foreign Minister Y.B. Datuk Anifah bin Aman agreed to work together on Burma policy, counterterrorism, refugee policy, and human trafficking. To those ends, the United States acceded to the Treaty of Amity and Cooperation in Southeast Asia on July 22. What may prove contentious is signatories' pledge of non-interference in other states' domestic affairs.

The US Trafficking in Persons 2009 report downgraded Malaysia to Tier 2 for its failure to adequately combat human trafficking. After Senator Lugar's report the head of the US Office to Monitor and Combat Trafficking in Persons welcomed the arrests of immigration officials, but said the US wants to see "sustainability" and court cases.

In February the UN Human Rights Council examined Malaysia under its Universal Periodic Review mechanism. However, Malaysia refused to accept numerous recommendations by member states, including ratification of core human rights treaties and the Refugee Convention, and issue of an open standing invitation to UN special procedures.