



**Economic and Social
Council**

Distr.
GENERAL

E/CN.4/2005/NGO/160
4 March 2005

ENGLISH ONLY

COMMISSION ON HUMAN RIGHTS
Sixty-first session
Item 9 of the provisional agenda

**QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL
FREEDOMS IN ANY PART OF THE WORLD**

**Written statement* submitted by the International Federation for Human Rights (FIDH),
a non-governmental organization with special consultative status**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[10 February 2005]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

MALAYSIA

The International Federation for Human Rights (FIDH) and its member organisation in Malaysia, SUARAM, express their concerns at the situation of human rights in Malaysia. In 2004, despite some positive measures like the long-awaited release of former Deputy Prime Minister Anwar Ibrahim and several other political prisoners, Malaysia's record on civil and political rights remains far from being satisfactory. Malaysia's Four Emergency Proclamations have not been revoked yet, maintaining the country under a state of emergency. Basic international human rights instruments have also not been ratified yet.

2004 marked the **first term of Prime Minister Abdullah Badawi**, who succeeded to the long reign of Mahatir Mohammad at the head of United Malays National Organisation (UMNO). Expectations for change were high, but were disappointed early enough, especially following the high suspicions of irregularities during the **General Elections** in March 2004. The electoral rolls prepared by the Election Commission (EC) may have included about 48% phantom voters, according to the Malaysians for Free and Fair Elections (Mafrel) watchdog. Several amendments to the electoral law in 2003, apparently aimed at weakening the opposition (shortening of nomination time, increased amount for candidates' deposit...). As several incidents occurred on the election day, various groups including opposition parties, monitoring bodies, NGOs, academics as well as the EC called for an independent probe into the election. The re-elected National Front (BN) government ruled out the proposal and refused to make public the EC's report on the election.

The government **maintains laws that are contrary to international human rights standards** (such as the Internal Security Act (ISA), the Emergency Ordinance, the Dangerous Drugs Act) and often makes abusive use of them to **detain suspects without trial**.

As of December 2004, 97 persons were detained under the ISA and none had been charged with any offence. 25 of them had their 2-year detention order renewed for the "need for further investigation". ISA detainees who withdrew their application to a religious group have been released, but placed under restricted residence orders. ISA detention does not respect the basic international guarantees relating to the right to a fair trial, as confirmed by the UN Working Group on Arbitrary Detention in May 2004. ISA allows for an indefinite detention without trial of persons for security concerns - those security concerns being defined very vaguely. The Working Group considered that « administrative detention on such grounds, even being in conformity with a domestic law means to deny the opportunity of a fair trial by an independent and impartial judiciary authority». It consequently declared the detention arbitrary. In 2004, 15 ISA detainees made habeas corpus applications, which were rejected, and 300 detainees launched a hunger strike to protest their detention without trial under the Emergency Ordinance.

Although reported incidents of police brutality decreased in 2004, there is still a great concern about the **excessive use of police powers**. Police shootings occurred at least once per month, very often in unclarified circumstances. In cases of custodial deaths, there is a clear lack of transparency during the inquiries, and lawyers or family members who seek to clarify the circumstances of custodial deaths are being threatened.

The Special Commission to Enhance the Management and Operations of the Police Forces, established by the Prime Minister in February 2004, called for a review of police remand powers, because the police used to arrest people without laying charges, using remands as a form of punishment, and sometimes repeats this procedure for the same person. It is regrettable that this Commission's meetings and reports are not always public.

The **right to peaceful assembly** is regularly violated by the police. A delegation of NGOs and political parties that was meeting in January 2004 to submit a memorandum on police brutality was forcibly dispersed; in February, a public forum on elections held by opposition parties was stopped, opposition leaders were arrested...

The right to **freedom of association** is not always respected in Malaysia: the Parti Socialis Malaysia's application to be registered as a political party has not been taken into account. Furthermore, student's freedom of association continues to be curbed under the Universities and University Colleges Act. In 2004, elected student representatives have been probed on their political beliefs, disciplinary actions were taken against some of them, considered as being 'anti-establishment'.

Laws that affect **press freedom and freedom of expression** are still in use. The government considers that printing and publishing permits are granted as privileges, and not as rights. A number of legislations aim at censoring the media. Few direct violations of press freedom were recorded, but there is a high level of self-censorship and controlled editorial policies.

- in June 2004, a Chinese daily decided not to publish an article due to "a verbal caution and a written advice" from the Home Ministry
- a debate on ISA with opposition leader Lim Kit Siang previously agreed in June was postponed and then held under strict conditions such as "no seditious comments" and no questions from the audience...
- in August 2004, UMNO Shah Alam division lodged a police report against an article written by human rights lawyer Yang Pei Kang aiming at discussing the need for local council elections
- in September 2004, a scheduled TV interview of Anwar Ibrahim was removed
- in October 2004, the government said that it would investigate online newspaper Malaysiakini...

Regarding the **judiciary**, it unfortunately still lacks independence, as confirmed by Minister Nazri Abdul Aziz, who stated in June 2004 that the separation of powers was too idealistic for implementation in Malaysia. In October, Judges were warned to be sensitive to national interest and country's political and social stability. Despite the release of Anwar Ibrahim, several opposition members are still detained.

In the field of **women rights**, the government proposed amendments pushing for stricter rape penalties (public whipping for child rapists, death sentence for rapers who killed their victim), but at the same time, refused to include marital rape as an offence in the Penal Code. The pression of Muslim leaders, considering that marital rape was impossible under Islam since women were obligated to sexually satisfy their husbands, was stronger than the need for protection of abused women.

The authorities employed ruthless measures to arrest, detain and deport **illegal migrants and asylum seekers**. The government refuses to distinguish between illegal immigrants and asylum seekers, citing its non-ratification of the Geneva Convention on the Status of Refugees as justification. Even recognized refugees holding valid UNHCR protection letters were arrested, forcible deportations of Acehnese are regularly taking place in spite of clear risks of persecution in Indonesia¹. In July 2004, the government announced its plan to expel all illegal immigrants by the end of the year, and proposed the deployment of 400.000 members of the People's Volunteer Corps, an organisation of volunteers with certain policing powers. In addition, the government's plan includes prosecution and punishment of all arrested illegal immigrants before deportation. They face fines and/or jail sentences, and mandatory whipping. In October, the government also proposed to give financial reward for every illegal immigrant arrested. In October, more than 6.000 illegal immigrants were being held in Malaysian detention centers.

One positive step however was the government's decision to eventually recognize the refugee status of about 10,000 Rohingyas, a population persecuted and deprived of citizenship in Burma.

Legal foreign workers were also victims of rights violations like physical abuse, humiliation, confiscation of their passport and money, and exploitation. The application of discriminatory labour laws and the corruption of many officials contribute to these violations.

The FIDH and Suaram call on the Commission on Human Rights to adopt a resolution on the situation of Human Rights in Malaysia, asking the authorities:

- to revoke the Emergency Proclamations
- to revoke the Internal Security Act and the Emergency Ordinance
- to charge all ISA detainees with a legal offence or to release them
- to comply with international human rights standards regarding the treatment of prisoners
- to introduce mandatory inquests for all custodial deaths
- to make public the Police Commission's report and to nominate human rights experts amongst its members
- To take steps to ensure that freedom of association, freedom of assembly, freedom of expression are fully respected
- to guarantee the full independence of the judiciary
- to respect UNHCR refugee status, and to ensure that illegal immigrants are treated with due respect to human rights norms (no corporal punishment, no double sentence, ...)
- to accept an independent inquiry on the latest general elections.
- To work together with Suhakam (the National Human Rights Commission of Malaysia) in order to reach a higher level in the observance of human rights.
- To issue a standing invitation to UN Special Thematic Procedures
- to ratify the ICCPR, the IPESCR, the CAT, the ICPRMW, the 1951 Geneva Convention on refugees and the Statute of the ICC

- - - - -

¹ As confirmed in a Human Rights Watch report published in April 2004