



## **MALAYSIA**

### **Amnesty International's campaign to stop torture and ill-treatment in the 'war on terror'**

Human rights are under threat. The absolute ban on torture and other cruel, inhuman or degrading treatment – one of the most universally accepted human rights – is being undermined. In the “war on terror”, governments are not only using torture and ill-treatment, they are seeking to justify it. They argue that interrogation methods which amount to torture or ill-treatment, and detention conditions which constitute ill-treatment, are both justifiable and necessary.

This is a crisis in the struggle to eliminate torture and ill-treatment, and we are therefore redoubling our efforts. We are urging the widest possible network of people to join us in reasserting the absolute ban on torture and ill-treatment, including methods currently being described as “coercive interrogation”. No euphemisms can justify the unjustifiable. We want to stop the torture and ill-treatment that is being inflicted in the “war on terror”. We also want the prohibition on such brutal treatment to emerge all the stronger from our campaign.

### **'Emergency' laws in Malaysia**

“Emergency” laws<sup>1</sup> in Malaysia, particularly the Internal Security Act (ISA), continue to circumvent human rights safeguards enshrined in the Malaysian Constitution and international human rights law. These laws, which allow for indefinite detention without trial and extended periods of incommunicado detention (detention without access to the outside world), have facilitated human rights violations, including torture and ill-treatment, and contributed to the climate of police impunity.

The Human Rights Commission of Malaysia (SUHAKAM), Amnesty International and a broad range of domestic non-governmental organizations have repeatedly called for the repeal or reform of the ISA to help ensure respect for human rights, including the presumption of innocence, freedom from arbitrary arrest and freedom from torture or other ill-treatment. They have also called for the incorporation of effective safeguards for the rights of detainees, including the right to seek judicial review at any stage of detention and the right of access to legal representation.

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<sup>1</sup> “Emergency” laws, most enacted under past states of emergency that have never been officially rescinded, include the Emergency (Public Order and Prevention of Crime) Ordinance. This allows police to detain without charge or trial suspected “hardened” criminals.

## **Internal Security Act**

In 2001, in the context of the “war on terror”, the Malaysian government began to justify the ISA as necessary to combat terrorism. Yet the ISA long predates the attacks in the USA on 11 September 2001 and the subsequent declaration by the US government of a “war on terror”.<sup>2</sup>

The ISA was originally enacted in 1960 and made permanent the temporary measures enacted during the final years of British colonial rule to counter a specific threat of communist insurgency. Justification for the ISA’s continued use changed over the years, as newly perceived threats were identified by successive Malaysian governments. The legislation was amended incrementally to remove key safeguards, including effective judicial review of the lawfulness of ISA detentions. What has changed little over the years is the way the ISA has been used to arrest and detain many people for the peaceful expression of “dissenting” religious beliefs or political opinions.

## **Arrest and indefinite detention under the ISA**

The ISA allows the police to arrest, without evidence or a warrant, any individual they believe has acted, is about to act or is likely to act in a way that would threaten Malaysian security, essential services or economic life.

Detainees can be held for up to 60 days for police investigation. During this period, while held incommunicado and in secret locations, detainees are subject to prolonged interrogations and are at risk of torture or ill-treatment. After 60 days, the Minister for Internal Security can issue a two-year detention order under Article 8 of the ISA. Detainees are then transferred to the Kamunting Detention Centre in Perak state. They can remain there indefinitely as the Minister is empowered to successively renew their two-year detention orders without the detainee ever being charged with a crime or tried in a court of law.

Those arrested under the ISA have limited legal protection. In particular, they have no effective opportunity to challenge their detention or defend themselves in a fair trial. As such, the ISA contravenes international law, including the rights to liberty and freedom from arbitrary arrest, the right to be informed of the reasons for arrest, the right to the presumption of innocence, and the right to fair and public trial by a competent, independent and impartial tribunal established by law. In addition, the lack of judicial and legal safeguards, combined with incommunicado detention and solitary confinement, create a situation where torture and ill-treatment are more likely to occur.

The ISA demonstrates what can happen when states promote security at the expense of human rights. Since 2001 hundreds of individuals alleged to be Islamist militants have been arrested on suspicion of links to domestic or regional terrorist networks. At least 70 individuals alleged to be Islamist militants remain detained under the ISA.

Amnesty International recognizes the duty of states to protect the lives and safety of the public and to take reasonable steps to prevent acts of terrorism. But such steps, including security legislation, should be implemented within a framework of protecting the human rights of all.

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<sup>2</sup> For more details of the ISA, see Section 5 of *Malaysia: Towards Human Rights-Based Policing* (AI Index: ASA 28/001/2005).

## **Torture and other ill-treatment in the ‘war on terror’ in Malaysia**

The prohibition of torture and ill-treatment is a rule of customary international law. It is binding on all states irrespective of whether they are party to international treaties setting out the prohibition. It is also absolute – it permits no exceptions arising from circumstances such as war or public emergency, or individual factors such as offences allegedly committed or danger posed by the individual concerned.

For decades Amnesty International has been gravely concerned by reports of the torture and ill-treatment of ISA detainees. Techniques of interrogation by Special Branch police, including a combination of physical assaults, deception and coercion, and intense mental and physical pressure at times amounting to torture, became entrenched over the years.

Patterns of torture and other ill-treatment of ISA detainees were recorded by Amnesty International during visits to Malaysia in the 1970s, as well as after more than 100 opposition politicians, journalists, community workers and other civil society members were detained in 1988.

In most cases, torture and ill-treatment of ISA detainees take place during the initial 60-day investigation period. Detainees have been assaulted, forced to strip, deprived of sleep, food and water, told that their families would be harmed, and subjected to prolonged aggressive interrogation to coerce confessions or elicit information. During this period, ISA detainees are usually held in solitary confinement, often in a windowless cell where they lose all sense of time. Within a context of actual or threatened physical assault, the interrogation procedure is designed to induce a feeling of complete disorientation and dependence on the interrogators as the only point of human contact. The sense of helplessness is exacerbated by their knowledge that access to effective judicial protection has been blocked, and that visits by lawyers and family members are entirely at the discretion of their interrogators.

Within the context of the “war on terror”, fears that suspected Islamist militants may be particularly vulnerable to torture and ill-treatment are acute. In 2004, 31 ISA detainees accused of links to terrorism lodged complaints with SUHAKAM of ill-treatment during their initial 60-day ISA detention period.

- **Abdul Razak bin Abdul Hamid** (arrested in December 2002) reported that he had been stripped naked, beaten by his interrogators and forced to drink water poured onto the floor.
- **Mohidin Shaari** (arrested in December 2002) and **Azman Hashim** (arrested in February 2003) described how they were stripped naked, kicked and verbally abused.
- **Sulaiman Suramin** (arrested in June 2003) claimed he was stripped, sexually humiliated and forced to kiss rubbish and cigarette ash.

Four of the 31 complainants also reported they were forced to describe how they made love to their wives. Among other allegations were: being hit across the face with a newspaper; spat at and forced to drink the spittle; and being forced to sit in the cold blast of air conditioners during interrogation.

Amnesty International remains gravely concerned that the Malaysian authorities have repeatedly failed to investigate effectively reports of torture or ill-treatment of ISA detainees by police. Even though there has been greater scrutiny of the treatment and detention conditions of ISA detainees in recent years due to the efforts of SUHAKAM and local non-governmental organizations, there are continued grave fears that the safeguards against torture and ill-treatment remain weak or ineffective.

### What you can do

- Take action as part of Amnesty International's campaign – see <http://www.amnesty.org> and the campaign home page at <http://www.amnesty.org/stoptorture>
- Contact your national section/structure to get involved in their work on the campaign. See <http://web.amnesty.org/contacts/engindex> for contact details.
- Please send letters to the Prime Minister/Minister of Internal Security Abdullah Badawi:
  - State that torture and other ill-treatment are human rights violations, condemned by the international community as a crime and an offence to human dignity and prohibited in all circumstances under international law;
  - Welcome the Prime Minister's call on 20 February 2006 for the US detention facility at Guantánamo Bay, Cuba, to be closed, and express concern about the continued detention without trial at Kamunting Detention Centre of at least 70 individuals for their alleged links with Islamist militant organizations;
  - Express grave concern at credible reports of ill-treatment of ISA detainees particularly during the first 60 days of detention;

Also, urge the government of Malaysia to:

- Establish and ensure implementation of effective system-wide measures incorporating all the elements of Amnesty International's *12-Point Programme for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by Agents of the State* (AI Index: ACT 40/001/2005) <http://web.amnesty.org/library/index/engact400012005>;
- Officially and publicly condemn torture and ill-treatment and order that these practices cease, making clear that they are prohibited absolutely and will not be tolerated in Malaysia;
- Ensure that all allegations of torture or ill-treatment are promptly, impartially and effectively investigated by a body independent of the alleged perpetrators;
- Ensure that anyone responsible for having committed, ordered or authorized torture or other ill-treatment is brought to justice in a fair trial;
- Ensure that those detained without trial at Kamunting Detention Centre and all other ISA detainees are charged with a recognizably criminal offence and tried according to international standards of fairness, or released;
- Repeal or reform the ISA, as recommended by the Malaysian Human Rights Commission (SUHAKAM), so that it no longer violates international human rights law.

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**Salutation: Dear Prime Minister:**