

# Malaysia

## Irene Fernandez defends rights of migrant workers despite conviction

*“As a mother, I want to believe that ... the society [my children] belong to is a just society, that it is a society that treats migrant workers as human beings and with dignity.”<sup>1</sup>*



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parliamentary candidate in the 2004 Malaysian elections.

Irene Fernandez, 58 years old, is the director and co-founder of Tenaganita, a non-governmental organization (NGO) which promotes the rights of migrant workers in Malaysia. She was arrested in 1996 and charged with ‘maliciously publishing false news’ following the release of a report by Tenaganita recording allegations of ill-treatment of undocumented migrant workers in detention centres. After a trial lasting more than seven years, she was found guilty on 16 October 2003 and sentenced to 12 months imprisonment. She is free on bail pending an appeal. Her civil rights are restricted: her passport is held by the courts and, as a convicted person, she was barred from standing as

Amnesty International believes that Irene Fernandez has been targeted for her legitimate work as a human rights defender. If she is jailed, Irene Fernandez will be considered by the organization as a prisoner of conscience.

### 1. PERSONAL BACKGROUND

Irene Fernandez, a former secondary teacher, was one of the founding members of the human rights group “Voice of the Malaysian People” (SUARAM, Suara Rakyat Malaysia) and of the Asia Pacific Forum on Women Law and Development (APWLD). She is currently deputy chair director of the women’s wing of the People’s Justice Party (Parti Keadilan Rakyat), an opposition political party formed in 1999 and is currently director of Tenaganita.

### 2. THE ARREST

In 1994-5, as part of a research project into health and HIV/AIDS among migrant workers in detention centres, Tenaganita staff interviewed over 300 migrant workers following their release from detention centres in Semenyih, Juru, Kelantan, Johor and Malacca. Most of the interviewees were of Bangladeshi, Indonesian or Filipino nationality. Patterns of alleged ill-

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<sup>1</sup> “Irene Fernandez found guilty, sentenced to 12 months jail”, *Malaysiakini*, 16 October 2003

treatment, sexual abuse and denial of adequate medical care in the detention centres were reported. A series of deaths caused by malnutrition, beri-beri and other treatable illnesses was also documented.

In August 1995, Tenaganita issued a memorandum detailing their findings and calling for the authorities to open the centres for inspection and set up an independent Commission of Inquiry to investigate alleged human rights abuses. The following month, the Deputy Minister for Home Affairs stated that 42 deaths due to ‘natural causes’ had occurred in the detention centres and announced the appointment of an independent Visitors’ Panel to study conditions in the centres. However, at the same time, a senior Police Field Force officer filed a complaint of criminal defamation against Irene Fernandez, and she and other Tenaganita volunteers were repeatedly called in for questioning by police.

Subsequently, in March 1996, Irene Fernandez was arrested and charged under Section 8A (2) of the Printing Presses and Publications Act (PPPA), on charges of ‘maliciously publishing false news’.

### **3. THE TRIAL**

Irene Fernandez underwent the longest running trial in Malaysia’s legal history, during which she had to appear in court 310 times. In 2000, former migrant workers from Bangladesh who had been detained in immigration detention centres detailed cases of torture and sexual abuse in immigration detention centres in 1994-1995 while testifying for the defence in the trial of Irene Fernandez.

Golam Mawla, a Bangladeshi former detainee, described repeated beatings: “the police always beat us with a police stick. They beat us on our heads, bodies and legs (...) if they found us talking, not sleeping at night or for no reason at all”. Another Bangladeshi witness, Mohd Shahabuddin, testified in court how a police guard had broken his fingers with a “wooden rod”, while Moron Mozumber described how he was assaulted by police guards, including being kicked and caned on the soles of his feet. He described how guards humiliated and punished detainees by forcing them to strip and to masturbate. Former detainees also described poor conditions in the detention centres, including lack of adequate medical care, nutrition and sanitation.

Despite these statements, on 16 October 2003, Irene Fernandez was found guilty of “maliciously publishing false news”, and sentenced to 12 months’ imprisonment. Magistrate Juliana Mohamed, who passed the sentence said that the testimonies gathered by Tenaganita had been obtained “without effort to obtain the truth in their statements”, concluding that the alleged human rights violations detailed in the memorandum were false. The court added that the memorandum had brought disrepute to the Malaysian nation and that Irene Fernandez’s case “must be made an example”.

Observers expressed concern that the conduct of the trial was unfair, and that the defendant's right to trial by an independent and impartial tribunal had not be adequately safeguarded. A perception of partiality and apparent deference on the part of the magistrate towards the public prosecutor was ascribed to the fact that magistrates and public prosecutors belong to the same government legal agency, the Judicial and Legal Service, creating the possibility of an appearance of bias. Concerns were also expressed about witness intimidation. Amid fears of police intimidation, a Bangladeshi labour recruitment agent who was a key source of information for Tenaganita's research project in 1994-95 about the treatment of detained migrant workers, was held in custody on suspicion of immigration offences, and 'investigated' for 50 days. He later became a witness for the prosecution.<sup>2</sup>

Irene Fernandez currently remains free on bail, pending the outcome of her appeal. No appeal date nor court have yet been set. Irene Fernandez's trial has been debilitating in terms of the time, energy and resources required both from Irene and the human rights lawyers who defend her. Not only has her health suffered, but the work entailed in attending and preparing for numerous court proceedings has prevented Tenaganita from devoting time to the advocacy work they provide for migrant and other workers. Irene Fernandez continues to be adversely affected by the duration of this legal process, not least due to uncertainty over when her appeal date will be announced.

#### **4. THE PRINTING PRESSES AND PUBLICATIONS ACT 1984 (PPPA)**

In 1984 the Malaysian government introduced the PPPA, which consolidated and tightened restrictions imposed by previous printing laws. The PPPA provided the Minister for Home Affairs with discretionary powers concerning the granting, suspension and revocation of printing licences within Malaysia and the import and distribution of foreign publications. Licensing offences under the Act are punishable by up to three years' imprisonment or fines of up to RM 20,000 or both.

Following a political crisis in 1987, the PPPA was amended to allow the Minister of Home Affairs to have absolute discretion, not subject to judicial review, to ban or restrict 'undesirable' publications, and the future publications of the publisher concerned. Additional amendments made it an offence to "maliciously" publish "false news". "Malice" was defined by whether or not the accused took "reasonable measures" to verify the truth.

Amnesty International believes that the PPPA violates international human rights standards on freedom of expression. Bans on the publication of "false news", like that set out in Section eight of the PPPA, regarding the charge of "malicious publication of false news", have been found by international bodies like the UN Human Rights Committee and a number of constitutional courts around the world to breach the fundamental right to freedom of expression.

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<sup>2</sup> See Suaram Annual Report 2003, pp116-120.

The PPPA also fails to uphold international standards related to human rights defenders, and in particular the UN Declaration on Human Rights Defenders<sup>3</sup> which outlines the rights and responsibilities of states and other actors in the protection of human rights activists. Rights of human rights defenders that are set out in this instrument include: the right to seek, obtain, receive and hold information relating to human rights; and to make complaints about official policies and acts relating to human rights.

The prosecution of Irene Fernandez under the PPPA has had the effect of intimidating NGOs and other social commentators seeking to monitor and critique issues of legitimate public interest and concern. In 2003, the Human Rights Commission of Malaysia (*Suruhanjaya Hak Asasi Manusia Malaysia*), Suhakam, recommended that the PPPA be reviewed with a view towards repealing provisions which impose excessive restrictions on freedom of the press<sup>4</sup>. Amnesty International believes that the PPPA should be repealed or else amended as recommended by Suhakam.

#### **MIGRANT WORKERS AT RISK OF ILL-TREATMENT**

There are an estimated 2.4 million migrant workers in Malaysia<sup>5</sup>, half of them undocumented. The government regards undocumented migrants as “illegal immigrants” subject to criminal penalties for breaches of the Immigration Act. The authorities regularly arrest suspected undocumented workers and detain them in immigration detention centres prior to deportation. In addition, periodic mass ‘round-ups’ of migrant take place, often resulting in severe overcrowding of detention centres.

Amnesty International remains concerned that poor detention conditions and a lack of safeguards which provided the context for the abuses reported by Tenaganita in 1995 - including ill-treatment, sexual abuse and denial of adequate medical care - have not been fully addressed. Periodic reports of ill-treatment in detention centres continue, as do complaints of inhumane detention conditions including severe overcrowding, insufficient supplies of food and water, and lack of access to adequate health care.

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<sup>3</sup> Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, General Assembly resolution 53/144, March 1999.

<sup>4</sup> “A Case for Media Freedom: Report of Suhakam’s Workshop on Freedom of the Media”, Malaysia National Human Rights Commission (Suhakam, *Suruhanjaya Hak Asasi Manusia Malaysia*), pp 8-9

<sup>5</sup> Accurate figures on the numbers of migrant workers in Malaysia are elusive due in large part to the difficulty of determining the exact population of undocumented migrant workers in the country.

In July 2004, the Minister for Home Affairs announced plans to launch a new extended operation against undocumented migrant workers, which could potentially result in more than a million people being arrested and repatriated before the end of 2005<sup>6</sup>. Amnesty International fears that the risk of human rights abuses will rise as mass arrests and repatriations take place over the coming months. The organization calls on the government to ensure that the rights of migrants are upheld at all times, including the right to adequate medical care, the right not to be subjected to ill-treatment, and the right to a fair trial.

### **MAKE YOUR APPEAL FOR JUSTICE IN MALAYSIA**

**WRITE TO:** Prime Minister Badawi, Minister's Department, Federal Government Administration Centre, Bangunan Perdana Putra, 62502 Putrajaya, Malaysia - Fax: (+60) 3 8888 3344:

- Expressing concern at the arrest, trial and conviction of Irene Fernandez on account of her peaceful exercise of the right to freedom of expression. Call for an immediate halting of legal proceedings against her and the lifting of the threat of imprisonment;
- Calling for the repeal of the Printing Presses & Publication Act or its amendment, so that it conforms with international standards on the right to freedom of expression;
- Urging the Malaysian authorities to publicly and explicitly commit themselves to promoting respect for human rights and the protection of human rights defenders, and ensure that the principles contained in the Declaration on Human Rights Defenders are fully incorporated into national law and mechanisms, and are fully implemented in practice;
- Expressing concern at government plans for the mass detention and repatriation of undocumented migrant workers, and urging that the treatment of migrants arrested and held in detention centres conform to international standards, including the right not to be ill-treated, the right to humane conditions and adequate medical care and the right to a fair trial;
- Calling on the authorities to sign and ratify the International Covenant on Civil and Political Rights, as well as the Convention against Torture and other Cruel, Inhuman and Degrading Treatment and Punishment.

An extensive range of our materials on this and other subjects is available at <http://www.amnesty.org>

**INTERNATIONAL SECRETARIAT, 1 EASTON STREET, LONDON WC1X 0DW,  
UNITED KINGDOM**

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<sup>6</sup> See “*Malaysia: Human rights at risk in mass deportation of undocumented migrants*”, AI Index: ASA 20/008/2004, Amnesty International, December 2004