

MALAYSIA

The Internal Security Act (ISA)

For decades Malaysia has received international criticism in relation to its security legislation, particularly the Internal Security Act (ISA). The legislation violates internationally recognised human rights standards, and has been used against people peacefully expressing their religious and political beliefs.

However, since the attacks on the United States of America on 11 September 2001, governments that were once critical of such legislation have suddenly fallen silent. Having enacted similar security legislation in their own countries they no longer speak out for the protection of fundamental human rights in Malaysia.

The ISA predates the 11 September attacks, being born out of temporary measures enacted to counter a specific threat at the end of British colonial rule. Justification for its continued use changed over the years, as newly perceived threats were identified by successive Malaysian governments, and the legislation was incrementally amended to all but remove judicial safeguards, initially incorporated into the law to prevent its abuse.

The type of people arrested under the ISA also changed over time. Starting with those accused of being communists, it soon was used against students, academics, Shi'a Muslims, human rights activists, journalists, religious clerics, trade unionists, political opponents, civil society leaders, and those accused of being 'terrorists'. What has changed little over the years is the way it has continued to be used to arrest and detain people for the peaceful expression of their religious and political beliefs.

Allowing for arrest without warrant and indefinite detention without trial, hundreds of people have spent years, and in some cases decades in prison without ever appearing in court. Through a combination of solitary confinement, incommunicado detention and aggressive interrogation techniques some of those same people have been subjected to physical and psychological ill-treatment, sometimes amounting to torture.

The ISA demonstrates what can happen when states promote security at the expense of human rights. It shows how temporary measures implemented as a reaction to a perceived threat to a nation's security can become permanent, and through incremental changes, become more restrictive over time, undermining fundamental institutions like the judiciary.

Amnesty International recognizes the duty of states to protect their populations from threats to national security; however such measures, including security legislation, should be implemented within a framework of protection for all human rights, not at their expense.

History of the ISA

In 1948 the British colonial authorities enacted a State of Emergency in the British colony of Malaya as a response to the perceived threat by the Communist Party of Malaya (CPM) and their armed guerrilla force. This was lifted in 1960, three years after independence, with the substantive defeat of the communist forces. However, in the same year the Malaysian government enacted the ISA. Unlike the 1948 Emergency Regulations, which was a temporary measure to deal with extraordinary circumstances, the ISA was made permanent in law.

The ISA was initially justified by the authorities as necessary in order to counter what remained of the communist threat within the country. In the 1970s the communist threat again surfaced as justification, though this time in the context of war in mainland Southeast Asia. Other justifications for the existence of the ISA have been the maintenance of inter-ethnic harmony and economic stability. After 11 September 2001 the main justification became 'terrorism.'

The ISA has been used in a politically-motivated and selective manner to target peaceful members of civil society that the government perceives to be a threat. More than 4,000 people have been detained under the ISA since its inception in the 1960s.

Human rights abuses under the ISA

Under the ISA individuals are deprived of many of their fundamental human rights enshrined in the Universal Declaration of Human Rights. They are deprived of their right to a fair and public trial, the right to be presumed innocent until proven guilty according to law, and their right not to be subjected to torture or other cruel, inhuman or degrading treatment.

Individuals detained under the ISA have been regularly denied access to lawyers and their families. Some have been told their families would be harmed if they did not cooperate. They have been held in solitary confinement, in dirty cells with no windows and poor ventilation, where they have no bedding, and lights are left on 24 hours a day.

Detainees have been physically assaulted, forced to strip naked, forced to imitate sexual acts, denied food, drink or sleep, and subjected to intense psychological interrogation techniques in order to coerce a confession.

Facts about the ISA

- The ISA is a law that allows the police to arrest, without evidence or a warrant, individuals that they believe have acted, or are "about to" or "likely to" act in a way that would threaten Malaysian security, "essential services" or "economic life" (Article 73 (1) b).
- Detainees can be held for up to 60 days for investigation. After 60 days, the Home Minister can issue a two-year detention order under Article 8 of the ISA.

This two year detention can be renewed indefinitely without the detainee ever being charged with a crime or tried in a court of law.

- The ISA, through a series of amendments, has incrementally extended Executive powers, while stripping away the judicial safeguards designed to protect against their abuses. Once a person is detained under the ISA, he or she has no effective recourse to legal protection, nor any opportunity to establish their innocence of the accusations levelled against them. As such the ISA is contrary to fundamental principles of international law, including the right to liberty of the person, to freedom from arbitrary arrest, to be informed of the reasons for arrest, to the presumption of innocence, and to fair and open trial in a court of law.
- Although some of those detained under the ISA have made successful *habeas corpus* applications before a court, most are rejected¹. One detainee whose detention under both Article 73 (1) b and Article 8 was ruled as unlawful by a court was immediately re-arrested by the police on his release and handed down another two-year detention order by the Home Minister.
- The lack of judicial safeguards, combined with incommunicado detention and solitary confinement create a situation where torture and ill-treatment are more likely to occur.
- Several former detainees have suffered mental breakdowns as a result of prolonged intense psychological pressure during interrogation.

Recommendations

Amnesty International calls on the Government of Malaysia to respect and uphold fundamental human rights enshrined in the Malaysian Constitution, the Commonwealth Harare Principles and the Universal Declaration of Human Rights.

Amnesty International;

- urges Malaysian authorities to guarantee that no detainees are subject to physical or psychological torture or ill-treatment in detention. All complaints of torture or ill-treatment must be promptly and impartially investigated and those found responsible brought to justice;
- calls for detainees not to be held incommunicado and to be allowed immediate and regular access to lawyers, their families and independent medical attention;
- calls for all Internal Security Act (ISA) detainees to be released immediately or charged with a recognizably criminal offence and brought before a court of law. Everyone should have the opportunity to defend themselves against accusations in a fair and open trial;

¹ The few successful *habeas corpus* applications have been made challenging the legality of the first 60 days of detention (under Article 73 (1) b of the ISA). Amendments made to the ISA in 1989 prevent acts of the Home Minister under the ISA being brought into question by the courts. This effectively prevents *habeas corpus* applications in relation to two-year detention orders under Section 8, unless on a matter of procedure.

- urges that the ISA be repealed or amended so as to respect fundamental rights and freedoms. These rights and freedoms include: the right to peaceful freedom of expression, association and assembly, freedom of religion and the right to a fair and public trial, the right to be presumed innocent until proven guilty and the right not to be subject to torture or ill-treatment.