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U.S. Department of State

Malaysia Report on Human Rights Practices for 1996

Released by the Bureau of Democracy, Human Rights, and Labor, January 30, 1997.

MALAYSIA

Malaysia is a federation of 13 states with a parliamentary system of government based on periodic multiparty elections, but in which the ruling National Front coalition has held power since 1957. The coalition headed by Prime Minister Mahathir bin Mohamed increased its majority in a general election held in 1995. Opposition parties actively contest elections, although they hold only 11.5 percent of the seats in the Federal Parliament; an opposition party controls one state government.

The Royal Malaysian Police has primary responsibility for internal security matters; it reports to and is under the effective control of the Minister of Home Affairs. The Prime Minister also holds the Home Affairs portfolio. There are allegations that some members of the police committed human rights abuses.

Rapidly expanding exports of manufactured goods, now over 50 percent of gross domestic product, continue to maintain high annual rates of economic growth. Crude oil exports and traditional commodities (tropical timber, palm oil, and rubber) add to trade revenues. Strong economic performance in recent years has led to significant reductions in poverty, an improved standard of living, and more equal income distribution.

The Government generally respected the human rights of its citizens; however, there were problems in some areas. The Government continued to arrest and detain citizens without trial and to impose long-term restrictions on movement without due process hearings. The Government sometimes limits freedom of assembly, association, speech, the press, and judicial independence. These limits make it

very difficult for opposition parties to compete on equal terms with the long-ruling governing coalition. Religious minorities are subject to some restrictions. Domestic violence against women and child abuse continued to be problems. In a development welcomed by women's groups, the Government began to implement the Domestic Violence Act, which covers violence against women and children, after a long delay. Some discrimination against indigenous people and restrictions on worker rights persist. In November the authorities terminated an international conference about East Timor because of the disorder created by demonstrators from the youth wings of the ruling coalition parties. Although nongovernmental organizations (NGO's) are normally free to criticize the Government, the authorities filed criminal charges under the Publications Act against a prominent human rights activist who alleged mistreatment of illegal aliens in detention centers. The authorities punished law enforcement officers implicated in a police brutality case.

RESPECT FOR HUMAN RIGHTS

Section 1. Respect for the Integrity of the Person, Including Freedom from:

a. Political and Other Extrajudicial Killing

There were no reports of political killings.

Following investigations by the Attorney General's office and the police into the circumstances surrounding the 1995 death of a criminal suspect, the High Court sentenced two police officers to 3 years' imprisonment for misconduct during the suspect's interrogation. The deceased, who was a suspect in a burglary case, died while in police custody from "hemorrhage caused by blunt trauma in most parts of his body," raising suspicions of police brutality. The other police officers implicated in the case were subjected to internal discipline.

The Government continued to deny allegations of mistreatment and corruption in illegal alien detention centers. Stating that the death of approximately 50 illegal aliens in the centers last year was not due to misconduct, the Government brought criminal charges against human rights activist Irene Fernandez for publishing a report containing allegations about conditions in the detention centers. The case is currently pending in a magistrate's court (see Sections 1.c., 1.d., and 1.e.).

b. Disappearance

There were no reports of politically motivated disappearances.

c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

There continued to be allegations that police officers abused criminal suspects during interrogation, including strong psychological pressure and sometimes physical abuse. In some cases, government authorities have investigated police officials for such abuses, but because they refuse to release information on the results of the investigations, it cannot be determined whether those responsible for any such abuses are punished.

In one case, however, police officers were sentenced to 3 years' imprisonment for misconduct in the 1995 death of a criminal suspect in custody (see Section 1.a.). This was the first reported instance in recent years of police officials being tried, convicted, and sentenced for abuse of prisoners. In another case, a civil suit filed by a former suspect, a sessions court ordered police officers to pay compensation to the plaintiff for assaulting him in 1995 while in custody.

Responding to public criticism of police professionalism, the Inspector General of Police has stated that he would punish those who abuse their power or use violence in carrying out their duties. Several police officers also were arrested for various criminal offenses including extortion, drug abuse, and murder.

A number of law enforcement officials were arrested on narcotics-related charges. The Prisons Department revealed that at least 12 prison officers were arrested for drug-related activities. A total of 78 prison officers have been arrested for drug-related offenses since 1990.

Criminal law prescribes caning as an additional punishment to imprisonment for those convicted of some nonviolent crimes such as narcotics possession and criminal breach of trust. Early in the year, the Government amended the Immigration Act to make caning a mandatory part of the sentence for those convicted of using forged passports. Judges routinely include caning in sentencing those convicted of such crimes as kidnaping, rape, and robbery. The caning, which is normally carried out with a 1/2-inch-thick wooden cane, commonly causes welts and sometimes scarring.

Prison conditions generally meet international standards. Basic human needs, including medical care, sanitation, nutrition, and family access, are met. Overcrowding is a problem in some large prisons. However, a new prison complex has eliminated the overcrowding problem in the Kuala Lumpur area.

Prison guards have been accused and convicted of criminal wrongdoing, mostly in nonviolent narcotics-related cases. While acknowledging that prison guards have been arrested for such activities, the Director General of the Prisons denied a well publicized allegation by a former inmate that heroin was readily available in the prisons. "Security" prisoners (see Section 1.d.) are detained in a separate detention center. Conditions there are not significantly different from those of the regular prison population.

The Government does not permit visits by human rights monitors.

The Government denied allegations that the 1995 death of approximately 50 illegal aliens was due to inhuman conditions in illegal alien detention centers (see Sections 1.a., 1.d., and 1.e.). Stating that every allegation made in human rights activist Irene Fernandez's report on the centers is false, the Government prosecuted her for publishing a false report. The case was pending in a magistrate's court at year's end. Fernandez alleged that migrants in the camps were denied proper food and water, lacked medical attention, and were subjected to abuse by camp guards. An Independent Board of Visitors appointed by the Government to investigate the allegations of misconduct found no evidence of ill-treatment or abuse of migrant workers. In a report submitted to the Government in December, the board recommended that improvements be made in health and sanitation facilities, and, noting that beriberi was common in the centers, that a more nutritious diet be provided. The Ministry of Home Affairs announced that the Government would seek additional funds to make the improvements.

d. Arbitrary Arrest, Detention, or Exile

Three laws permit the Government to detain suspects without judicial review or filing formal charges: The 1960 Internal Security Act (ISA), the Emergency (Public Order and Prevention of Crime) Ordinance of 1969, and the Dangerous Drugs Act of 1985. The Government continued to use long-term detention without trial in cases alleged to involve national security, as well as in narcotics trafficking and other cases. According to the Home Affairs Ministry, there are 2,008 people being detained without trial under these laws; most are being held under the Dangerous Drugs Act.

Passed more than 30 years ago when there was an active Communist insurgency, the ISA empowers the

police to hold any person who may act "in a manner prejudicial to the security of Malaysia" for up to 60 days initially. The Minister of Home Affairs may authorize, in writing, further indefinite detention for periods of up to 2 years. Those released before the end of their detention period are subject to "imposed restricted conditions," which are in effect for the balance of their detention periods. These conditions limit their rights to freedom of speech, association, and travel outside the country. According to the Government, the goal of the ISA is to control internal subversion, although many observers believe that the act is now sometimes used for other purposes. The Government also uses the ISA against passport and identity card forgers. According to the Home Affairs Ministry, there were 76 ISA detainees at year's end, compared with 34 in 1995. Most of the detainees currently in custody under the ISA are forgers. Since the authorities exposed a criminal syndicate involved in selling forged Malaysian identity cards to illegal aliens last year, 67 suspects have been arrested under the ISA. Of these, the Government has thus far authorized 2-year detentions for 50, including several government officials.

Several members of the outlawed Islamic fundamentalist movement Al Arqam were arrested under the ISA for attempting to revive the movement. The Government authorized 2-year detentions for seven upon expiration of their 60-day remand orders. The wife of the movement's founder was placed under restricted residence under the act. In 1994 the Government outlawed the movement as deviationist and detained its founder under the ISA. After a brief period of detention, the founder apologized for his deviationist teachings and vowed to stop the movement.

Security authorities sometimes wait several days after a detention before informing a detainee's family. Even when there are no formal charges, the authorities must inform detainees of the accusations against them and permit them to appeal to an advisory board for review every 6 months. Advisory board decisions and recommendations, however, are not binding on the Home Affairs Minister, are not made public, and are often not shown to the detainee. A number of ISA detainees have refused to participate in the review process under these circumstances.

Amendments to the ISA severely limit judicial review of detentions, contravening international standards of due process. Opposition leaders and human rights organizations continued to call on the Government to repeal the ISA and other legislation that deprive people of the right to defend themselves in court. The Deputy Home Affairs Minister announced in February that the Government had prepared proposed amendments to the ISA; these proposals reportedly are designed to make the ISA "less ominous."

In a civil lawsuit, the High Court ruled in September in favor of a former ISA detainee who had alleged that the Government's extension of his detention period was improper. After his initial 2-year detention, the Government extended his detention for another 2 years, but without specifying the grounds for detention. Although the court ruled in the plaintiff's favor, it awarded him damages of only about \$0.40 (one ringgit). The judge noted that the plaintiff had been set free because of a technical error and should have rested on his good fortune.

In December senior government officials warned that the ISA would be used against NGO's if they continued to "bait" the Government. Expressing irritation at NGO plans to hold a conference on police abuse in January 1997, the Home Affairs Minister said that the Government may have to use the act if the "situation becomes bad." The Minister added, however, that the Government would not bar the organizations from holding the meeting if they do not break any laws. The Government would take action only if the organizers make it into a public meeting by inviting non-NGO's or the press.

Under the 1969 Emergency Ordinance, which was instituted after intercommunal riots in that year, the Home Affairs Minister can issue a detention order for up to 2 years against a person if he deems it necessary to protect public order or for the "suppression of violence or the prevention of crimes

involving violence." According to the Home Affairs Ministry, there were 56 people in detention under the Emergency Ordinance, compared with 447 in 1995.

Provisions of the 1985 amendments to the Dangerous Drugs Act give the Government specific power to detain suspected drug traffickers. The suspects may be held up to 39 days before the Home Affairs Minister must issue a detention order. Once the Ministry has issued an order, the detainee is entitled to a habeas corpus hearing before a court. In some instances, the judge may order the detainee's release. Suspects may be held without charge for successive 2-year intervals, with periodic review by an advisory board, whose opinion is binding on the Home Affairs Minister. However, the review process contains none of the due process rights that a defendant would have in a court proceeding. As of September, 1,876 drug suspects remained under detention or under restrictions equivalent to house arrest under this statute, compared with 1,810 in 1995. The police frequently rearrest suspected narcotics traffickers and firearms offenders under the preventive measures clauses of the Dangerous Drugs Act or the ISA, after an acquittal in court on formal charges under separate provisions of those acts.

Immigration laws are used to detain possible illegal aliens without trial or hearing. Approximately 8,500 migrant workers who were unable to prove their legal status have been placed in temporary detention under immigration laws. The detainees are not accorded any administrative or legal hearings and are released only after their employers prove their legal status. Those who can produce legal documents are normally released immediately; those who cannot prove their legal status may be held for extended periods before deportation. Illegal aliens are kept in detention centers which are separate from prisons. There are currently an estimated 1 million or more illegal workers in Malaysia.

Following the death of approximately 50 illegal aliens in detention centers in 1995, human rights organizations and opposition leaders accused the authorities of mistreatment and corruption and called for a thorough investigation. After its investigation, however, the Government denied the allegations and brought criminal charges under the Printing and Publications Act against the human rights activist who first brought the controversy to light. She is accused of publishing false information regarding the centers' conditions. The case, which was proceeding in a magistrate's court at year's end, is being monitored by international observers and human rights groups.

NGO's report that the conditions in the centers have marginally improved, and an independent board appointed by the Government found no evidence of ill-treatment and noted that it was satisfied with living conditions in the camps (see Section 1.c.).

Law enforcement authorities also continued to utilize the Restricted Residence Act to restrict movements of criminal suspects for an extended period. The act allows the Home Affairs Ministry to place criminal suspects under restricted residence in a remote district away from home for a period of 2 years. The Ministry is authorized to issue the "banishment" orders without any judicial or administrative hearings. Several professional soccer players and coaches, who were banished in 1995 for alleged involvement in match fixing and bribery, remain under restricted conditions. The restricted residence practice violates due process and is viewed in the same light as detention without trial. Human rights activists have questioned the need for a law that was passed 60 years ago to deal with gambling under very different circumstances and have called for its repeal. The Government continued to justify the act as a necessary tool in dealing with vice and gambling activities. (See also Sections 1.f. and 2.d.)

The Government does not use forced exile.

e. Denial of Fair Public Trial

Past government action, a constitutional amendment, and legislation restricting judicial review undermine judicial independence and strengthen executive influence over the judiciary in politically sensitive cases. A series of election-related decisions and high-profile commercial cases in 1995 intensified the debate on judicial impartiality and independence. Members of the bar and other observers continued to express serious concern about this issue.

The legal system is based on English common law. High courts have original jurisdiction over all criminal cases involving serious crimes and most civil cases. Civil suits involving automobile accidents and landlord-tenant disputes are heard by sessions courts. Magistrate's courts hear criminal cases in which the maximum term of sentence does not exceed 12 months. The Court of Appeal has appellate jurisdiction over high court and session court decisions. The Federal Court hears appeals of Court of Appeal decisions. Islamic religious laws administered by state authorities through Islamic courts bind ethnic Malays in some civil matters, such as family relations and diet.

Most civil and criminal proceedings are generally fair and open. The accused must be brought before a judge within 24 hours of arrest, and charges must be levied within 10 days. Defendants have the right to counsel, bail is available, and strict rules of evidence apply in court. Defendants may appeal court decisions to higher courts and, in criminal cases, may also appeal for clemency to the King or local state rulers as appropriate. All criminal trials, including murder trials, are heard by a single judge. Parliament voted in 1994 to amend the Criminal Procedure Code to abolish jury trials in death penalty cases. The defense in both ordinary criminal cases and the special security cases described below is not entitled to a statement of evidence before the trial.

The right to a fair trial is restricted in criminal cases in which the Attorney General invokes the Essential (Security Cases) Regulations of 1975. These regulations governing trial procedure normally apply only in firearms cases. In cases tried under these regulations, the standards for accepting self-incriminating statements by defendants as evidence are less stringent than in normal criminal cases. Also, the authorities may hold the accused for an unspecified period of time before making formal charges. The Attorney General has the authority to invoke these regulations in other criminal cases if the Government determines that the crime involves national security considerations, but such cases are rare. There were no cases involving this restriction in 1996.

A letter alleging gross judicial misconduct led to an investigation by the Government and the abrupt resignation of a high court judge who was widely assumed to have authored the letter. The Attorney General proposed that the Bar Council's membership include law lecturers and government lawyers, in addition to private attorneys. Members of the Council, however, view this proposal as an attempt to dilute the Council's effectiveness and independence, and have vowed to fight it.

There were no reports of political prisoners.

f. Arbitrary Interference with Privacy, Family, Home, or Correspondence

The law provides for these rights and the Government generally respects them. Provisions in the security legislation (see Section 1.d.), however, allow the police to enter and search without a warrant the homes of persons suspected of threatening national security. Police may also confiscate evidence under these acts. In some cases each year, police have used this legal authority to search homes and offices, seize books and papers, monitor conversations, and take people into custody without a warrant. The law permits the Home Affairs Ministry to place criminal suspects under restricted residence in a remote district away from home for a 2-year period.

Section 2. Respect for Civil Liberties, Including:

a. Freedom of Speech and Press

Although the Constitution provides for freedom of speech and the press, some important limitations exist, and over the years the Government has restricted freedom of expression of media organizations and individuals. The Constitution provides that freedom of speech may be restricted by legislation "in the interest of security... (or) public order." Thus, the Sedition Act prohibits public comment on issues defined as sensitive, such as citizenship rights for non-Malays and the special position of Malays in society.

The Government used the Sedition Act and the Publications Act to file criminal charges against opposition member of parliament Lim Guan Eng before the 1995 general election. The charges were based on Lim's public comments about a statutory rape case involving a former chief minister of Malacca. The trial was still pending at year's end following several continuances. Lim has argued that the case against him is politically motivated. Amnesty International also considers the charges against Lim to be politically motivated, and has called on the Government to dismiss the case. Lim was reelected in the general election, but could lose his parliamentary seat if he is convicted and sentenced to more than 1 year in prison or fined more than \$800 (2,000 ringgits).

The Printing Presses and Publications Act of 1984 contains important limitations on press freedom. Domestic and foreign publications must apply annually to the Government for a permit. The act was amended in 1987 to make the publication of "malicious news" a punishable offense, expand the Government's power to ban or restrict publications, and prohibit court challenges to suspension or revocation of publication permits. Government policies create an atmosphere that inhibits independent or investigative journalism and result in self-censorship of issues government authorities might consider sensitive. Government displeasure with press reporting is often conveyed directly to a newspaper's board of directors.

In practice press freedom is also limited by the fact that leading political figures, or companies controlled by leading political figures in the ruling coalition, own most of the major newspapers and all radio and television stations. These mass media provide generally laudatory, noncritical coverage of government officials and policies, and give only limited and selective coverage to political views of the opposition or political rivals. Editorial opinion in these mass media frequently reflects government positions on domestic and international issues. Chinese-language newspapers are generally more free in reporting and commenting on sensitive political and social issues.

Small-circulation publications of opposition parties, social action groups, unions, and other private groups actively cover opposition parties and frequently print views critical of government policies. However, the Government retains significant influence over these publications by requiring annual renewal of publishing permits.

Although there were no cases of denial of renewal requests in 1996, the Government has in the past used this requirement to place limitations on opposition and other publications critical of the Government.

The Official Secrets Act also can be used to restrict freedom of the press. Pointing out the dangers of abuse to restrict press freedom, the Bar Council and NGO's have called for a review of certain provisions that grant considerable discretion to the authorities. In 1995 the authorities arrested two journalists under the act, but released them without bringing formal charges.

The government-controlled Malaysian News Agency (Bernama) is by law the sole distributor of foreign news, although the Government has not to date used this law to restrict foreign news coverage or availability.

NGO's currently enjoy considerable freedom to speak out against Government policies. The Government's case against NGO activist Irene Fernandez under the Printing Presses and Publications Act is being closely monitored by NGO's and others as a test case of the Government's willingness to permit public criticism.

The Government generally respects academic freedom in the areas of teaching and publication. Academics are often publicly critical of the Government. However, there is a degree of self-censorship among public university academics whose career advancement and funding are prerogatives of the Government. Private institution academics also practice a limited degree of self-censorship for fear that the Government may revoke licenses for their institutions. Legislation also imposes limitations on student associations and student and faculty activity (see Section 2.b.).

b. Freedom of Peaceful Assembly and Association

The Constitution provides for the rights of freedom of peaceful assembly and association, but there are significant restrictions. These rights may be limited in the interest of security and public order, and the 1967 Police Act requires police permits for all public assemblies with the exception of workers on picket lines. Spontaneous demonstrations occur periodically without permission, but they are limited in scope and generally occur with the tacit consent of the police.

In the aftermath of the intercommunal riots in 1969, the Government banned political rallies. The Government continued that policy during the 1995 general election. However, both government and opposition parties held large indoor political gatherings dubbed "discussion sessions" during the campaign period. The ruling coalition also held several large-scale events that very much resembled political rallies.

Government and opposition candidates campaign actively. There are, however, some restrictions on freedom of assembly during campaigns. During the actual campaign period, political parties submit lists of times and places for their discussion sessions. Some opposition discussion group meetings in past campaigns have been canceled for lack of a police permit. An opposition meeting during the 1996 Sarawak state election campaign was canceled for lack of a permit. Outside of the campaign period, a permit also is required, with most applications routinely approved. These restrictions and the ban on political rallies handicap the opposition's ability to campaign effectively.

Other statutes limit the right of association, such as the Societies Act of 1966, under which any association of seven or more members must register with the Government as a society. The Government may refuse to register a new society or may impose conditions when allowing a society to register. The Government also has the power to revoke the registration of an existing society for violations of the act, a power it has selectively enforced against political opposition groups. This threat of possible deregistration inhibits political activism by public or special interest organizations.

Another law affecting freedom of association is the Universities and University Colleges Act; it mandates government approval for student associations and prohibits student associations, as well as faculty members, from engaging in political activity. Campus demonstrations must be approved by a university vice chancellor. Human rights organizations have called for a repeal of the act on the grounds that it inhibits the free flow of ideas and exchange of views.

The authorities terminated an international conference about East Timor in November because of the disorder created by demonstrators from the youth wings of the ruling coalition parties. Both the demonstrators and the organizers of the event were arrested and held for several days. They were all released on bail, and no formal charges have yet been brought against them.

c. Freedom of Religion

Islam is the official religion. Religious minorities, which include large Hindu, Buddhist, Sikh, and Christian communities, generally are permitted to worship freely but are subject to some restrictions. Adherence to Islam is considered intrinsic to Malay ethnic identity, and therefore Islamic religious laws administered by state authorities through Islamic courts bind all ethnic Malays in some civil matters, such as family relations and diet. Government funds support an Islamic religious establishment, and it is official policy to "infuse Islamic values" into the administration of the county. At the same time, the Constitution provides for freedom of religion, and the Government has refused to accede to pressures to impose Islamic religious law beyond the Muslim community.

The Government opposes what it considers extremist or deviant interpretations of Islam. In the past, the Government has imposed restrictions on certain Islamic sects. In August 1995, the Government banned the Al Arqam religious movement for what it termed "deviationist teachings," and it remained banned at year's end. The Government continues to monitor the activities of the Shi'ite minority.

Government authorities continued to emphasize the importance of controlling deviationist groups, and arrested followers of the banned Al Arqam movement for attempting to revive the deviationist sect (see Section 1.d.). The Government announced that the authorities were investigating another 50 or so "deviationist" groups. In most cases, the Government expected to provide "counselling and hold dialogs" to encourage them to return to "the right path." The authorities have warned that such groups would not be allowed to take advantage of freedom of religion to spread discord among the people.

There continued to be allegations that some state governments are slow in approving building permits for non-Muslim places of worship or land for cemeteries for non-Muslims.

The Government discourages the circulation of a popular Malay-language translation of the Bible. Some states have laws prohibiting the use of Malay-language religious terms by Christians, but the authorities do not actively enforce them.

The Government permits but discourages conversion to religions other than Islam. Some states have long proscribed by law proselytizing of Muslims, and other parts of the country strongly discourage it as well. In a March 1990 decision, the Supreme Court upheld the primacy of the Constitution over inconsistent state laws by ruling that parents have the right to determine the religion of their minor children under the age of 18. The decision eased fears in the non-Muslim community over state laws that in religious conversion cases set the age of majority at puberty based on Islamic law.

d. Freedom of Movement Within the Country, Foreign Travel, Emigration, and Repatriation

Citizens generally have the right to travel within the country and live and work where they please, but the Government restricts these rights in some circumstances. The east Malaysian states of Sabah and Sarawak have the independent right to control immigration into their territories; citizens from peninsular west Malaysia and foreigners are required to present passports or national identity cards for entry. The Government regulates the internal movement of provisionally released ISA detainees. It also limits the movement of some released ISA detainees to a designated city or state (see Section 1.d.). The

Government also uses the Restricted Residence Act to limit movements of those suspected of gambling or vice activities (see Section 1.d.).

The Police Inspector General in late 1995 announced that over 400 former communists had been "rehabilitated" by the security authorities and resettled since December 1989. This rehabilitation consists of detention without trial under the ISA at the Kamunting Detention Center in Perak state. In addition, rehabilitated former Communist Party of Malaya members who have reintegrated into society are restricted to certain areas where security authorities watch them carefully for up to 6 years. These rehabilitated persons cannot resume full participation in political life until this period of surveillance demonstrates to the satisfaction of the police that they have abandoned their former ideology.

The Government generally does not restrict emigration. Citizens are free to travel abroad, although in some cases the Government has refused to issue or has withheld passports on security grounds or in the belief that the trip will be detrimental to the country's image. In 1995 the Government prevented an environmental activist from traveling overseas to attend a conference. Most such government actions are taken because of suspected drug trafficking offenses or other serious crimes.

Citizens must apply for the Government's permission to travel to Israel. Travel to Jerusalem for religious purposes is explicitly allowed.

There are 1 million or more foreign workers, concentrated primarily in low-skill jobs, the Human Resources Ministry estimates that as much as 90 percent of the labor force in the plantation sector is foreign. Nearly half of the foreign workers may be in the country illegally. Some illegal workers eventually are able to regularize their immigration status, others depart voluntarily after a few months, and some are formally deported as illegal migrants. The Government instituted a second illegal worker registration program in July, which had regularized the status of 200-300,000 workers by fall, and ran through the end of the year. After a similar registration program ended 3 years ago, the Government launched combined police and military operations to enforce immigration and passport laws. As a result, the authorities detained more than 130,000 foreign workers and deported 50,000 of them in 1994.

Following a report of numerous deaths in the detention centers in 1995, human rights groups and opposition politicians accused the authorities of mistreatment and corruption and called for an independent investigation. A government-appointed independent board reported that a total of 90 illegal immigrants had died in the detention centers, 22 since September 1995; all reportedly died of natural causes (see Sections 1.a., 1.c., and 1.d.).

The Government cooperates with the office of the United Nations High Commissioner for Refugees and other humanitarian organizations in assisting refugees. There were no reports of forced expulsions of those having a valid claim to refugee status. Over the past 21 years, Malaysia gave first asylum to approximately 254,000 Vietnamese; on June 25, it closed its last camp for Vietnamese refugees. Approximately 249,000 Vietnamese were resettled in third countries, with over half going to the United States. As of December 31, 23 asylum seekers from the closed Vietnamese refugee camp remained in custody, the two largest subgroups being screened-in Vietnamese who are awaiting resettlement in third countries (8) and purported "stateless" individuals who claim ties with Taiwan (11).

Section 3. Respect for Political Rights: The Right of Citizens to Change Their Government

By law citizens have the right to change their government through periodic elections, which are procedurally free and fair, with votes recorded accurately. In practice, however, it is difficult for opposition parties to compete on equal terms with the governing coalition (which has held power at the

national level since 1957) because of legal restrictions on campaigning, as well as restrictions on freedom of association and of the press. Nevertheless, opposition candidates campaign actively and agree that the voting and counting of votes are relatively free and fair. The government coalition controls 12 of 13 states. An Islamic opposition party controls the northern state of Kelantan.

Malaysia has a Westminster-style parliamentary system of government. National elections, required at least every 5 years, have been held regularly since independence in 1957. In the 1995 general election the ruling coalition won an overwhelming victory, increasing its seats in the Parliament to 82 percent. Several members of the opposition camp have since joined the coalition, increasing the coalition's representation in the Parliament to approximately 88 percent. The Malay-based United Malay National Organization (UMNO) party dominates the ruling National Front coalition. Within the UMNO there is active political debate, and there was intense competition in the October UMNO party elections.

The Parliament in 1995 passed amendments to its rules that strengthen the power of the Speaker and curb parliamentary procedures heavily used by the opposition. The amendments empowered the Speaker to ban obstreperous opposition Members of Parliament for up to 10 days, imposed limits on their ability to pose supplementary questions and revisit nongermane issues, and established restrictions on the tabling of questions of public importance. The amendments have restricted the opposition's ability to criticize the Government in Parliament.

Women face no legal limits on participation in government and politics, but there are practical impediments. Women are represented in senior leadership positions in the Government in small numbers, including two cabinet-level ministers. Women hold 15 of 192 seats of the elected lower house of Parliament and 13 of 69 seats in the appointed upper house. Women also hold high-level judgeships.

Ethnic minorities are represented in cabinet-level positions in government, as well as in senior civil service positions. Nevertheless, the political dominance of the Malay majority means in practice that ethnic Malays hold the most powerful senior leadership positions. Non-Malays fill 8 of the 28 cabinet posts. Ethnic Chinese leaders of a component party of the ruling coalition hold executive power in the state of Penang.

Section 4. Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights

The National Human Rights Association publicly criticizes the Government, as do other NGO's, although it does not investigate except in response to individual complaints. It seeks repeal of the ISA and is reviewing opposition-controlled Kelantan's efforts to impose Islamic restrictions in that state.

A number of other organizations, including the Bar Council and public interest groups, devote considerable attention to human rights activities. The Government tolerates their activities but rarely responds to their inquiries or occasional press statements. Officials criticize local groups for collaborating with international human rights organizations.

NGO's are becoming increasingly active and critical of the Government. However, the authorities still accuse some NGO's of painting a negative picture of the country to the outside world. Although the Government did not place any restrictions on their activities, the Government announced that it would draw up clearer guidelines for registration of NGO's. Human rights monitors called on the Government to impose guidelines that make it easier for NGO's to operate.

Observers are concerned that the Government's case against a prominent NGO activist under the

Publications Act may inhibit the willingness and ability of NGO's to speak out against the Government.

The Government has not acceded to any of the major international treaties on human rights, generally maintaining that such issues are internal matters. It rejects criticism of its human rights record by international human rights organizations and foreign governments, and has blocked registration of a local chapter of a prominent international human rights organization.

Section 5. Discrimination Based on Race, Sex, Religion, Disability, Language, or Social Status

The Constitution provides for equal protection of the law and prohibits discrimination against citizens on the basis of religion, race, descent, or place of birth. Although neither the Constitution nor laws explicitly prohibit discrimination on the basis of sex or disabilities, the Government has made efforts to eliminate discrimination against women and the disabled. Government policies include affirmative action programs for Bumiputras (i.e., Malays and Muslims).

Women

Government leaders have identified domestic violence as a continuing social ill. Between January and August, there were 514 reported cases of domestic violence. In a development welcomed by women's organizations, the Government began to implement the 1994 Domestic Violence Act. It offers a broad definition of domestic violence, gives powers to the courts to protect victims, and provides for compensation and counseling for victims. Those covered under the bill include a spouse, a former spouse, a child, an incapacitated adult, or any other member of the family. Cases of wife beating or child abuse, which had been tried under provisions of the Penal Code governing assault and battery, are now expected to come under the Domestic Violence Act.

NGO's concerned about women's issues advocate legislative and social reforms to improve the status of women. These groups raise issues such as violence against women, trafficking in women and young girls, employment opportunities with equal pay, and greater participation by women in decisionmaking positions. Women's issues continued to receive prominent coverage in public seminars and the media.

The cultural and religious traditions of the major ethnic groups heavily influence the condition of women in society. In family and religious matters, Muslim women are subject to Islamic law. Polygyny is allowed and practiced to a limited degree, and inheritance law favors male offspring and relatives. The Islamic Family Law was revised in 1989 to provide better protection for the property rights of married Muslim women and to make more equitable a Muslim woman's right to divorce.

Non-Muslim women are subject to civil law. Changes in the Civil Marriage and Divorce Act in the early 1980's increased protection of married women's rights, especially those married under customary rites.

Government policy supports women's full and equal participation in education and the work force. Women are represented in growing numbers in the professions, but women's groups argue that the level of participation is still disproportionately low. According to various studies, only about 1.4 percent of women currently hold decisionmaking posts. The studies also estimate that only about 5 percent of political decisionmakers are women. In the scientific and medical fields, women make up more than half of all university graduates and the total intake of women into universities increased from 29 percent in 1970 to one-half of the student population in recent years. The participation of women in the labor force increased from 37 percent in 1970 to almost one-half in 1996.

In the opposition-controlled state of Kelantan, the state government has imposed restrictions on all

female workers, including non-Muslims. Female workers cannot work at night and are restricted in the dress they may wear in the workplace. The state government justifies these restrictions as reflecting Islamic values.

Children

The Government is committed to children's rights and welfare; it spends roughly 20 percent of its budget on education. The Government has taken some steps to deal with the problem of child abuse. Parliament passed the Children's Protection Act in 1991, effective in 1993. The Domestic Violence Act, which covers children, is also expected to provide protection against child abuse. In 1995 the Justice Minister announced that the Government was considering imposing a mandatory death sentence for those found guilty of child abuse that resulted in death, but the Government has not instituted changes to that effect.

Statistics on the extent of child prostitution are not available, but women's organizations have highlighted the problem of trafficking in underage girls. The Health Ministry announced that it would work closely with the police to stamp out child prostitution. Brothels are frequently raided, and some brothel owners are prosecuted.

People With Disabilities

The Government does not discriminate against physically disabled persons in employment, education, and provision of other state services. However, public transportation, public buildings, and other facilities are not adapted to the needs of the disabled, and the Government has not mandated accessibility for the disabled, through legislation or otherwise. Special education schools exist, but they are not sufficient to meet needs. Nevertheless, the Government as well as the general public are becoming more sensitive to the needs of the physically disabled. New commuter trains are being made wheelchair accessible. The Government also provides incentives for employers to offer employment opportunities for the disabled. The Health Minister announced plans to restructure the health care system to place greater emphasis on rehabilitation of the disabled.

Disabled persons work in all sectors of the economy, but the prevalent feeling in society remains that disabled people cannot work. The Government continued its effort to register those with disabilities under four categories--blind, deaf, physical, and mental. As of August, however, the Government had registered only 57,844 of the estimated 200,000 persons with disabilities in the country. The Social Development Minister encouraged all disabled persons to register, as the registration process is a part of the Government's efforts to provide training to the disabled.

In 1994 the Deputy Prime Minister signed the Economic and Social Commission for Asia and the Pacific proclamation on full participation and equality for people with disabilities in the region, and in response to that commitment the Government has taken initiatives to make public facilities more accessible to disabled persons, and has increased budgetary allotments for programs aimed at aiding them.

Indigenous People

Indigenous groups and persons generally enjoy the same constitutional rights--along with the same limitations--as the rest of the population. In practice, federal laws pertaining to indigenous people vest almost total power in the Minister of National Unity and Social Development to protect, control, and otherwise decide issues concerning them. As a result, indigenous people have very little ability to participate in decisions. Under the Aboriginal People's Act, indigenous people (known as Orang Asli)

have no right to own land. The law does not permit Orang Asli in peninsular Malaysia, who have been granted land on a group basis, to own land on an individual basis or to receive titles to the land. In a development welcomed by the Orang Asli community, the Social Development Ministry announced in March that state governments, which make decisions affecting land rights, had agreed to issue titles to Orang Asli. Amendments were being drafted to enable Orang Asli to hold titles on an individual basis.

In east Malaysia, although state law recognizes indigenous people's right to land under "native customary rights," the definition and extent of these lands are in dispute. Indigenous people in the state of Sarawak continued to protest the alleged encroachment by the State or private logging companies onto land that they consider theirs by virtue of customary rights. A large project (Bakun dam) in Sarawak, which will involve resettlement of a large number of residents in the area, has raised several controversial questions regarding land disputes as well as potential environmental problems. NGO's and opposition politicians have called on the Government to address these issues before proceeding with the project.

The indigenous people in peninsular Malaysia, who number fewer than 100,000, are the poorest group the country. However, according to government officials, Orang Asli are gradually catching up to other citizens in their standard of living, and the percentage of Orang Asli who were still leading a nomadic lifestyle has dropped to less than 40 percent. The Government also has pointed out that the changes allowing Orang Asli to own land in peninsular Malaysia are expected to enhance their economic standing.

National/Racial/Ethnic Minorities

The Government implements extensive affirmative action programs designed to boost the economic position of the ethnic Malay majority, which remains poorer on average, than the Chinese minority despite the former's political dominance. Such government affirmative action programs and policies do, however, limit opportunities for non-Malays in higher education, government employment, business permits and licenses, and ownership of newly developed agricultural lands. Indian Malaysians continue to lag behind in the country's economic development, although the national economic policies target less advantaged populations regardless of ethnicity. According to the Government, these programs have been instrumental in ensuring ethnic harmony and political stability. Early in the year, senior government officials reiterated the need for the programs despite significant improvements in economic standing of the Malay population.

Section 6. Worker Rights

a. The Right of Association

By law most workers have the right to engage in trade union activity, and approximately 10 percent of the work force belong to trade unions. Exceptions include certain limited categories of workers labeled "confidential" and "managerial and executives," as well as defense and police officials. Within certain limitations, unions may organize workplaces, bargain collectively with employers, and associate with national federations.

The Industrial Relations Act prohibits interfering with, restraining, or coercing a worker in the exercise of the right to form trade unions or in participating in lawful trade union activities. The Trade Unions Act, however, restricts a union to representing workers in a "particular establishment, trade, occupation, or industry or within any similar trades, occupations, or industries," contrary to International Labor Organization (ILO) guidelines. The Director General of Trade Unions may refuse to register a trade

union and, in some circumstances, may also withdraw the registration of a trade union. When registration has been refused, withdrawn, or canceled, a trade union is considered an unlawful association. The Government justifies its overall labor policies by positing that a "social compact" exists wherein the Government, employer, and worker are part of an overall effort to create jobs, train workers, boost productivity and profitability, and ultimately provide the resources necessary to fund human resource development and a national social safety net.

Trade unions from different industries may join together in national congresses, but must register as societies under the Societies Act (see Section 2.b.). On international Labor Day, May 1, the Malaysian Labor Organization (MLO), which had split from the MTUC in 1990, officially merged with it again, thus reunifying the principal labor centers.

Government policy discourages the formation of national unions in the electronics sector; the Government believes enterprise-level unions are more appropriate for this sector. In mid-1996, there were six such enterprise-level unions registered in the electronics industry. An enterprise union can be recognized voluntarily by its company, or it can be certified by the Government when it is confirmed as having the support of 50 percent plus one of the workers in that company. Four unions have been recognized through certification, and two of them have negotiated collective bargaining agreements with their employers. Restrictions on freedom of association in the electronics industry have been the subject of complaints to the ILO.

In one case in 1990, a company dismissed all members of one union. The union charged the company with union-busting and wrongful dismissal in industrial court in September of that year. The union appealed a May 1994 industrial court decision that found for the company. In August 1994, a high court remanded the case to an industrial court on procedural grounds for rejudication, but the company appealed the decision for retrial to the higher Court of Appeals. In September the Court of Appeals ruled in favor of the plaintiffs (the union), ordering reinstatement of all dismissed employees with back wages by October 1. Although the company reinstated the plaintiffs as ordered, it appealed the ruling on the issue of back wages. In July 1995, in a case involving the Metal Industry Workers Union, the Ministry of Human Resources went to court to force an employer to disclose information necessary to resolve a claim of recognition--the first action of its kind.

Unions maintain independence both from the Government and from political parties, but individual union members may belong to political parties. Although union officers are forbidden to hold principal offices in political parties, individual trade union leaders have served in Parliament as opposition members. Trade unions are free to associate with national labor societies that exercise many of the responsibilities of national labor unions, although they cannot bargain for local unions.

Relations between the Government and the Malaysian Trade Union Congress (MTUC) remain cool. The low point was reached in 1994 when MTUC President Zainal Rampak and former MTUC Secretary General Dr. V. David were arrested and charged, along with two other labor figures, with criminal breach of trust. Some groups claimed that the arrests (based on events in the 1980's) and the high bail amount were an attempt to keep Rampak from attending international labor forums. Ultimately, however, Rampak was given permission to travel to the ILO conference in Geneva. The accused labor figures appeared in a sessions court on November 21, 1994 and pled not guilty to all charges. The case was postponed several times and is still pending. There is still considerable MTUC and international observer concern about the outcome of this trial.

Although strikes are legal, the right to strike is severely restricted. The law contains a list of "essential services" in which unions must give advance notice of any industrial action. The list includes sectors not normally deemed essential under ILO definitions. There were 13 strikes in 1995 resulting in a loss of

4,884 workdays; the majority of the strikes (8) were in the manufacturing sector. The number of workers involved in strikes in 1995 was 1,748, down 15 percent from 1994.

The Industrial Relations Act of 1967 requires the parties to notify the Ministry of Human Resources that a dispute exists before any industrial action (strike or lockout) may be taken. The Ministry's Industrial Relations Department may then become actively involved in conciliation efforts. If conciliation fails to achieve a settlement, the Minister has the power to refer the dispute to the industrial court. Strikes or lockouts are prohibited while the dispute is before the industrial court. According to 1994 data, the industrial court found for labor in 62 percent of its cases and for management in 14 percent. The remaining 24 percent were settled out of court. Figures for 1995 and 1996 are not available. The Industrial Relations Act prohibits employers from taking retribution against a worker for participating in the lawful activities of a trade union. Where a strike is legal, these provisions would prohibit employer retribution against strikers and leaders. Although some trade unions question their effectiveness, it is not possible to assess fully whether these provisions are being effectively enforced, given the limited number of cases of alleged retribution.

There are three national labor organizations currently registered: One for public servants, one for teachers, and one for employees of state-based textile and garment companies. Public servants have the right to organize at the level of ministries and departments. There are three national joint councils representing management and professional civil servants, technical employees, and nontechnical workers.

Enterprise unions can associate with international labor bodies and actively do so.

b. The Right to Organize and Bargain Collectively

Workers have the legal right to organize and bargain collectively, and collective bargaining is widespread in those sectors where labor is organized. The law prohibits antiunion discrimination by employers against union members and organizers. Charges of discrimination may be filed with the Ministry of Human Resources or the industrial court. When conciliation efforts by the Ministry of Human Resources fail, critics say that the industrial court is slow in adjudicating worker complaints; however, other critics point out that the industrial court almost always sides with the workers in disputes.

Companies in free trade zones (FTZ's) must observe labor standards identical to those in the rest of the country. Many workers at FTZ companies are organized, especially in the textile and electrical products sectors. During 1993 the Government proposed amendments to the Industrial Relations Act to remove previous restrictions on concluding collective agreements about terms and conditions of service in "pioneer industries." Legislation to address this issue was introduced and subsequently withdrawn in late 1994 by the Ministry of Human Resources to take into account other developments in the labor sector. The legislation was not reintroduced. The Government took these measures in part to respond to ILO criticism of its previous policy with respect to pioneer industries. The ILO continues to object to other legal restrictions on collective bargaining. Some labor leaders criticized amendments to the Labor Law in 1980, designed to curb strikes, as an erosion of basic worker rights. The labor critics contend that these changes do not conform to ILO standards.

c. Prohibition of Forced or Compulsory Labor

There is no evidence that forced or compulsory labor occurs. In theory, certain laws allow the use of imprisonment with compulsory labor as a punishment for persons expressing views opposed to the

established order or who participate in strikes. The Government maintains that the constitutional prohibition on forced or compulsory labor renders these laws without effect.

d. Minimum Age for Employment of Children

The Children and Young Persons (Employment) Act of 1966 prohibits the employment of children younger than the age of 14. The Act permits some exceptions, such as light work in a family enterprise, work in public entertainment, work performed for the Government in a school or training institution, or work as an approved apprentice. In no case may children work more than 6 hours per day, more than 6 days per week, or at night. Ministry of Human Resources inspectors enforce these legal provisions. In December 1994, a Japanese electronics firm was fined \$5,400 for violating the Children and Young Persons Act. This was the first time that a large firm had been fined under the act.

According to credible reports, child labor is still occurring in certain sectors of the country. A joint report by the International Confederation of Free Trade Unions and the Asian and Pacific Regional Organization put the child work force at 75,000. However, government officials maintain that the figure is outdated as it was based on a nationwide survey of child labor undertaken in 1980, which estimated that more than 73,400 children between the ages of 10 to 14 were employed full-time. NGO surveys indicate that most child laborers are employed on agricultural estates, but there are indications that some are being employed in small factories. Government officials do not deny the existence of child labor but maintain that child laborers have largely been replaced by foreign workers and that the Government vigorously enforces child labor provisions.

e. Acceptable Conditions of Work

There is no national minimum wage, but the Wage Councils Act provides for a minimum wage in those sectors or regions of the country where a need exists. Under the law, workers in an industry who believe that they need the protection of a minimum wage may request that a "wage council" be established. About 150,000 workers of the 8-million-member labor force are covered by minimum wages set by wage councils. Representatives from labor, management, and the Government sit on the wage councils. The minimum wages set by wage councils generally do not provide for an adequate standard of living for a worker and family. However, prevailing wages, even in the sectors covered by wage councils, are higher than the minimum wages set by the wage councils and do provide an adequate living.

Under the Employment Act of 1955, working hours may not exceed 8 hours per day or 48 hours per workweek of 6 days. Each workweek must include one 24-hour rest period. The act also sets overtime rates and mandates public holidays, annual leave, sick leave, and maternity allowances. The Labor Department of the Ministry of Human Resources enforces these standards, but a shortage of inspectors precludes strict enforcement. In 1993 Parliament adopted a new Occupational Safety and Health Act (OSHA), which covers all sectors of the economy, except the maritime sector and the military. The act established a national Occupational Safety and Health Council, composed of workers, employers, and government representatives, to set policy and coordinate occupational safety and health measures. It requires employers to identify risks and take precautions, including providing safety training to workers, and compels companies having more than 40 workers to establish joint management-employee safety committees. The act requires workers to use safety equipment and to cooperate with employers to create a safe, healthy workplace. Trade unions maintain that relatively few committees have been established and, even in cases where they exist, that they meet infrequently and are generally ineffective.

There are currently no specific statutory or regulatory provisions that provide a right for workers to remove themselves from dangerous workplace conditions without arbitrary dismissal. Employers or

employees violating the OSHA are subject to substantial fines or imprisonment for up to 5 years.

Significant numbers of contract workers, including numerous illegal immigrants, work on plantations and in other sectors. Working conditions on plantations for these laborers compare poorly with those of direct hire plantation workers, many of whom belong to the National Union of Plantation Workers. Moreover, immigrant workers in the construction and other sectors, particularly if they are illegal entrants, generally do not have access to the system of labor adjudication. Government investigations into this problem have resulted in a number of steps to eliminate the abuse of contract labor. For example, in addition to expanding programs to regularize the status of immigrant workers, the Government investigates complaints of abuses, endeavors to inform workers of their rights, encourages workers to come forward with their complaints, and warns employers to end abuses. Like other employers, labor contractors may be prosecuted for violating the labor laws.

The Government admitted that approximately 50 foreign workers died while in detention in 1995 but vigorously denied allegations by NGO's that detainees are tortured, are living in inhuman conditions, and are not given proper medical care. The Government issued new guidelines on foreign worker recruitment, and took action against labor contractors who violate the law. The minimum fine assessed by law is \$8,000. In principle, serious violators can be jailed, but, in practice, such punishments are rare.

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