



General Assembly Security Council

Distr.
GENERAL

A/45/216
S/21248
12 April 1990

ORIGINAL: ENGLISH

GENERAL ASSEMBLY
Forty-fifth session
Items 12, 92, 94, 103 and 112
of the preliminary list*
REPORT OF THE ECONOMIC AND SOCIAL COUNCIL
EFFECTIVE IMPLEMENTATION OF UNITED NATIONS
INSTRUMENTS ON HUMAN RIGHTS AND
EFFECTIVE FUNCTIONING OF BODIES
ESTABLISHED PURSUANT TO SUCH
INSTRUMENTS
ELIMINATION OF ALL FORMS OF RACIAL
DISCRIMINATION
CRIME PREVENTION AND CRIMINAL JUSTICE
TORTURE AND OTHER CRUEL, INHUMAN OR
DEGRADING TREATMENT OR PUNISHMENT

SECURITY COUNCIL
Forty-fifth year

Letter dated 12 April 1990 from the Chargé d'affaires a.i.
of the Permanent Mission of Israel to the United Nations
addressed to the Secretary-General

I have been instructed by my Government to draw your attention to the attached extract from Country Reports on Human Rights Practices for 1989, published by the Department of State of the United States of America, which contains information on the situation concerning human rights in Malaysia. I have underlined passages of special relevance.

In view of the importance of this information, I have the honour to request that this attached extract be issued as an official document of the General Assembly, under items 12, 92, 94, 103 and 112 of the preliminary list, and of the Security Council.

(Signed) Johanan BEIN
Ambassador
Acting Permanent Representative

* A/45/50.

90-09801 1601b (E)

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101st Congress
2d Session

JOINT COMMITTEE PRINT

COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1989

REPORT

SUBMITTED TO THE

**COMMITTEE ON FOREIGN AFFAIRS
HOUSE OF REPRESENTATIVES**

AND THE

**COMMITTEE ON FOREIGN RELATIONS
U.S. SENATE**

BY THE

DEPARTMENT OF STATE

IN ACCORDANCE WITH SECTIONS 116(d) AND 502B(b) OF THE
FOREIGN ASSISTANCE ACT OF 1961, AS AMENDED



FEBRUARY 1990

Printed for the use of the Committees on Foreign Affairs and Foreign
Relations of the House of Representatives and the Senate respectively

U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1990

24-900

MALAYSIA

Malaysia has a parliamentary system of government based on free elections contested by several parties, almost all of which are racially based. Malaysia is a multiethnic society, with Malays comprising a little more than half of the population and the remainder consisting of Chinese (about 33 percent), Indians (about 10 percent), and several other minorities. The ruling National Front (composed of three major and several minor parties) has won a two-thirds or better majority in the federal Parliament in all general elections since 1957, but opposition parties are active and vocal participants in the political system, and they occasionally control governments at the state level. Malaysia is a federation of 13 states, with state governments retaining power over several important areas, including land use and religion.

From the late 1940's until recently, the defense forces were directed primarily at containing a major Communist insurgency that began in 1948 and peaked in the 1950's. The Government states that because of the insurgency that still smolders in a few border areas, the intercommunal rioting in which several hundred persons died following the 1969 national elections, and the country's serious drug problem, classified by the Government as a threat to national security, internal security remains a concern. The Government cites all three factors as justification for laws allowing preventive detention, but human rights groups charge that they are primarily used to stifle dissent.

A strong free market economy, abundant natural resources, and a relatively small population have helped Malaysia become one of the most prosperous of the developing countries.

Detention without trial and restrictions on judicial review of detentions, as well as restrictions on freedom of association, and on freedom of the press, are the primary human rights concerns in Malaysia. In late 1987, the detention without trial of 106 persons under the Internal Security Act (ISA) became a major focus of attention. By June 1989, all those detainees had been released and restrictions on their movements and activities rescinded. Amendments to the ISA enacted by Parliament that same month, however, further restrict the judiciary's power to review detentions under the ISA, the Dangerous Drugs Act, and the Emergency Ordinance.

Restrictions on the independence of the Malaysian judiciary remain a key area of concern. Many legal and other observers see evidence that when hearing cases with political ramifications, the courts are increasingly reluctant to take positions which could be seen by the executive branch as challenging executive authority.

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 or other extrajudicial killings by the Government or by any other political organization.

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b. Disappearance

There was no evidence of abduction, secret arrests, or clandestine detention attributable to the Government or to nongovernmental or opposition forces. There have been reports that, in a number of cases, security authorities waited days after a detention before informing the detainee's family.

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

Allegations of cruel, inhuman, or degrading treatment or punishment are rare, although several Malaysian citizens who were detained by the Government in October 1987 claim that they were mistreated by security authorities, especially during the initial stage of their detention. Their allegations included charges of sleep deprivation, threats and verbal abuse, and, in at least one case, beating. After their release from ISA detention, some former detainees stated that while there was no torture as such, treatment of detainees by the authorities varied, with some receiving harsher treatment than others.

d. Arbitrary Arrest, Detention, or Exile

The Government can detain suspects without benefit of judicial review under three laws: the 1960 Internal Security Act (ISA), the Emergency (Essential Powers) Ordinance of 1969, and the Dangerous Drugs Act of 1985.

The 1960 ISA, patterned after legislation instituted by the British colonial administration during the Communist insurgency of the 1950's, is aimed at controlling internal subversion. It empowers the police to hold for up to 60 days any person who may act "in a manner prejudicial to the security of Malaysia." Further detention (in renewable 2-year segments) must be authorized by the Minister of Home Affairs. The Minister must inform detainees of the charges against them and give them the opportunity to protest those charges to an advisory board. The advisory board reviews each case at least every 6 months. Advisory board decisions and recommendations are not, however, binding on the Minister, are never publicized, and are often not shown to the detainee. A number of the ISA detainees have refused to participate in the review process under these circumstances.

The Malaysian Government does not publish statistics or make regular public statements on ISA detentions. Authoritative information on the number of detainees is not available. In March 1989, however, the Deputy Home Affairs Minister told Parliament that 70 persons were under ISA detention at that time. Prior to the ISA detentions of October 1987, the number of long-term ISA detainees had dropped from nearly 500 in 1981 to about 25. In October and November 1987, however, Malaysian authorities, citing a danger of serious racial strife, detained another 106 persons, including government and opposition members of Parliament, social critics, academics, environmentalists, and religious activists. However, none were charged in court for any unlawful activity. By June 1989, all of these detainees had been released and restrictions on their movements rescinded. In 1988 the Government detained 11 Malaysians from Sarawak under the ISA; all were released by July 1989. Twenty-three from two northern states also were arrested in 1988 under the ISA as arson suspects. A spokesman for the opposition Islamic Party

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of Malaysia announced that several of those arrested were members of that party. The spokesman said the party would investigate to determine whether the arrests were political, without specifying when the determination would be made. Human rights observers claim that the detentions were unwarranted because the defendants could have been arrested and tried under criminal statutes proscribing arson.

In March 1988 the High Court ordered the release of a prominent lawyer and opposition leader detained under the ISA, on the grounds that his arrest was unlawful. Eight hours after his release he was rearrested under a new ISA detention order. In July 1988 and June 1989, Parliament amended the ISA to place additional limitations on judicial review of detentions. The 1988 amendments validate detention orders regardless of textual inaccuracies in place or fact, while the 1989 legislation restricts judicial review of government detention orders to procedural matters only. The Government defended the amendments by stating that court decisions should not be permitted to replace executive decisionmaking in national security matters. Opposition leaders and the Bar Council publicly protested the 1989 ISA amendments as a negation of the rule of law.

The Emergency (Essential Powers) Ordinance of 1969 stemmed from that year's intercommunal riots. The State of Emergency declared at that time has not been rescinded, although Parliament regained its legislative power in 1971. The Emergency Ordinance gives the Government the power to detain anyone "in the interests of the public safety or the defense of Malaysia." As under the ISA, detainees must be informed of the charges against them, and they can appeal to an advisory board. Since 1985 the Emergency Ordinance has been used in some serious criminal cases not related to narcotics.

The Dangerous Drugs (Special Preventive Measures) Act of 1985 was enacted by Parliament to give the Government specific power to detain suspected drug traffickers. Suspects can be held under this law for successive 2-year periods with periodic review by an advisory board. Unlike the ISA and Emergency Ordinance, in the case of the Dangerous Drugs Act the opinion of the advisory board is binding on the Minister. As of June 1989, there were about 1,200 drug suspects in detention under this statute. As with the other two security statutes, the Dangerous Drugs Act was amended in 1988 to validate detention orders with certain defects and, in 1989, to prohibit legal challenges to detention orders. Legal observers have voiced the same strong concerns about these amendments.

With regard to forced or compulsory labor, see Section 6.c.

e. Denial of Fair Public Trial

The right to a fair trial is seriously restricted in security-related matters where the ISA is invoked. Ordinary civil and criminal cases, and some security-related cases, are tried under a fair and open judicial system derived from British jurisprudence. Charges must be levied against a defendant within 24 hours of arrest, and police must decide within 14 days whether to bring the case to court. Defendants have the right to counsel, and lawyers are able to represent clients without penalty to themselves. Bail is available, and strict rules of evidence apply in court. Defendants may appeal lower court decisions to the federal courts and, in

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criminal cases, may also appeal for clemency to the King or local state rulers, as appropriate.

Persons arrested and charged for firearms violations are normally charged under provisions of the Internal Security Act which carry a mandatory death sentence upon conviction. Other security-related crimes, whether or not capital crimes, can be tried under special procedures contained in the Essential (Security Cases) Regulations of 1975. The accused is allowed counsel but sometimes does not receive a statement of the evidence prior to the trial which is by a single judge without a jury; and witnesses may be examined in the absence of the accused. Admissible evidence includes hearsay and secondary evidence, testimony of children and spouses, self-incriminating statements to police, and information from seized records or communications. If the accused is found guilty, the judge must impose the maximum penalty. According to local legal sources, these special trial provisions are rarely, if ever, used.

The Malaysian judiciary has traditionally been regarded by the public and the legal community as committed to the rule of law. The judicial system has exhibited over the years an unusual degree of independence, not hesitating to rule against the Government in criminal, civil, or occasionally even major cases with political ramifications. An example of the latter was the High Court ruling in February 1988 that the dominant party in the Government coalition was illegally constituted.

However, in 1988 Parliament amended the Malaysian Constitution to delete the clause vesting judicial power in the courts and substitute a clause stating that the jurisdiction and power of the courts are "conferred by or under Federal law." Although the practical ramifications of this amendment remain unclear, some members of the legal community charge that it strips the judiciary of its constitutional basis of authority, making it wholly dependent upon specific legislation passed by Parliament.

In another development in 1988 affecting the judiciary, the Lord President of the Supreme Court was dismissed by the King on August 8 following the recommendation of a tribunal which heard the Government's charges against him. The charges included bias and prejudice in speeches critical of the Government and writing a letter to Malaysia's King raising objections to the Prime Minister's criticism of the judiciary, thereby creating misunderstanding between the Prime Minister and the hereditary rulers. Five Supreme Court Justices were suspended for their actions related to the case. A second tribunal appointed by the King ordered the immediate reinstatement of three of the Justices in October 1988, while the other two were dismissed from office. Most nongovernment observers believe the purpose of the dismissals was specifically to strengthen the Prime Minister's control of the judiciary.

The case against the previous Lord President continued to have ramifications in 1989. In March 1989, the Malaysian Bar Council filed a contempt of court motion against the current Lord President for his actions related to the dismissal of the previous Lord President. In April the Supreme Court rejected the Bar Council's contempt motion, and then in June agreed to consider a counter motion filed against the Bar Council Secretary by the Attorney General. The Government's contempt motion has not yet been heard. The Supreme Court's handling

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of the Bar Council's motion is cited by legal observers as evidence that the 1988 confrontation between the judiciary and the executive branches is causing reluctance by the courts to take positions in politically sensitive cases challenging the Government.

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

These rights are, generally, protected by law. Under the security legislation described above, however, the police may enter and search without warrant the homes of persons suspected of threatening national security and confiscate evidence. Under this provision, police have searched homes and offices, seized books and papers, and taken people into custody without a warrant.

Section 2 Respect for Civil Liberties, Including:

a. Freedom of Speech and Press

Despite constitutional provisions for freedom of speech and press, there are some important limitations. For example, the Constitution provides that freedom of speech can be restricted by legislation "in the interest of security... (or) public order." Thus the Sedition Act Amendments of 1970 prohibit public comment on "sensitive" issues such as citizenship rights for non-Malays and the special position of Malays in society. Since 1970, however, the Government has brought only a few cases under the Sedition Act, and in the most recent incident in 1986 the defendant, the President of the Bar Council, was acquitted.

Press freedom is subject to important limitations under the Printing Presses and Publications Act of 1984, under which domestic and foreign publications must apply annually to the Government for a permit. In December 1987, Parliament amended this Act to make the publication of "malicious news" a punishable offense, to expand the Government's power to ban publications, and to prohibit court challenges to suspension or revocation of publication permits. An additional inhibiting factor is that the Government or the business arms of the leading political parties in the ruling coalition own almost all the major newspapers as well as all the radio and television stations.

At the time of the ISA detentions in October 1987, the Government revoked the publication permits of three newspapers. Although all three newspapers resumed publication in March 1988, the revocations and the legislative amendments described above have resulted in significant self-censorship by journalists and editors of the daily newspapers. Nevertheless, opposition parties, social action groups, and a number of private publications regularly provide detailed coverage of opposition political activities and print viewpoints strongly critical of the ruling coalition and its policies. A wide range of information is available to the Malaysian public in newspapers and magazines published in all of the country's four major languages, and major international and regional news publications circulate freely.

b. Freedom of Peaceful Assembly and Association

The Constitution provides for the rights of freedom of peaceful assembly and association, but there are significant

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restrictions. Those rights can be limited in the interest of security and public order, and the 1967 Police Act requires police permits for all public assemblies. In the aftermath of the intercommunal riots in 1969, the Government banned political rallies altogether. While the ban on political rallies has not been formally rescinded, both Government and opposition parties have been able to hold what they refer to as "discussion sessions" for electioneering during political campaigns. In the eight national and state special elections since August 1988, government and opposition candidates campaigned openly and with minimal police interference despite the existence of the Police Act and other restrictions; there were no public complaints concerning the enforcement of the Police Act. Some opposition politicians complained privately, however, that police issuance of permits for campaign events has not been as timely as they would have liked.

Other statutes limit the right of association, such as the Societies Act of 1966, under which the Government can refuse registration to organizations which comment unfavorably on political or public issues. The threat of deregistration under the Societies Act tends to inhibit political activism by public or special interest organizations, but it does not suppress such activity entirely. Another law affecting freedom of association is the Universities and University Colleges Act, which mandates government approval for student associations and prohibits such associations from engaging in political activity. In November 1988, police arrested 11 persons in Lake Garden Park who were participating in a peaceful candlelight protest against the detentions that took place in late 1987. Charged with illegal assembly under the Police Act, the charges were later dropped.

For a discussion of freedom of association as it applies to labor unions, see Section 6.a.

c. Freedom of Religion

The official religion of Malaysia is Islam, and ethnic Malays are legally bound in some civil matters, e.g., family relations and diet, by Islamic religious laws administered by state authorities. An Islamic religious establishment is supported with government funds, and it is official policy to "infuse Islamic values" into the administration of Malaysia. However, the Constitution provides for freedom of religion, and the Government has refused to accede to pressures for the imposition of Islamic religious law beyond the Muslim community. Religious minorities, which include large Hindu, Buddhist, Sikh, and Christian communities, practice their faith with minimal interference by the Government.

There are persistent allegations, however, that some state governments are slow in approving building permits for non-Muslim places of worship. The Government has limited the circulation of a popular translation of the Bible in Bahasa Malaysia, and some states restrict the use of Christian terms in Bahasa Malaysia. Conversion to religions other than Islam is permitted but not encouraged; proselytizing of Muslims is, and has long been, proscribed by law in some states and strongly discouraged in other parts of the country. Government attitudes on religious questions were evident in the October 1987 ISA detentions when several Muslim and Christian teachers and activists were detained.

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In a development affecting the right of parents to teach religion to their children, the state of Selangor passed a bill in August 1989 which allows minors to convert to Islam without parental approval. Although this legislation has yet to be implemented and could be overturned at a later date, its passage in the Selangor State Assembly has caused some consternation among Malaysia's non-Muslim minorities.

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

The Government does not generally restrict the right of individuals to travel within the country and live and work where they please, but it did place significant restrictions on the movement and activities of some ISA detainees after their release from detention. The restrictions on all former October 1987 ISA detainees were rescinded by June 1989. There are also no government restrictions on emigration. Since there are no known Malaysian refugees in other countries, there is no problem of repatriation. There have been some cases of Malaysian citizens being denied passports on security grounds, but Malaysians are generally free to travel abroad. There are restrictions on travel by Malaysians to Israel, South Africa, Cuba, China, Vietnam, and North Korea.

Malaysia has provided first asylum to more than 250,000 Vietnamese refugees since 1975. It has cooperated closely with international organizations and resettlement countries in facilitating the eventual movement of the refugees to third countries.

In June 1989, Malaysia chaired the second International Conference on Indochinese Refugees (ICIR). At the Conference, the resettlement countries and the countries of first asylum agreed to institute a comprehensive plan of action for granting asylum and resettlement to Indochinese asylum seekers. Boat people arriving in Malaysia after March 14, 1989 would be screened; only those determined to be genuine refugees would be eligible for first asylum and resettlement. Malaysia began to screen boat people on August 28. No determinations regarding refugee status had been made as of mid-November.

The yearly arrival rate for Vietnamese boat people to Malaysia remained high in comparison to the mid-80's: about 17,000 arrived during the year ending September 30, 1989. Resettlement did not keep pace with arrivals, and the camp population grew to 21,000, resulting in severe overcrowding at the principal camp of Pulau Bidong and concerns among relief workers for the asylum seekers' health. Domestic opposition to the Vietnamese presence prevented the expansion of camp facilities. The Government did not follow through on its 1988 announcement that it would close Pulau Bidong within the year.

Despite the commitments which it made at the ICIR, the Government began intermittently to deny first asylum to boat people beginning in late May, claiming it could not accept new boat arrivals indefinitely without some assurance all would eventually be removed from Malaysia. According to the United Nations High Commissioner for Refugees (UNHCR), a total of 2,470 persons had been pushed off through the end of October 1989. In most cases the Malaysians repaired and reprovisioned the boats before returning them to sea. All such boats reaching Indonesia have been permitted to land. Nevertheless, one death reportedly occurred when a boat being towed to sea

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overturned, and four persons (including a pregnant woman) died of dehydration as a consequence of being pushed off.

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

Malaysia's parliamentary system is based on the British model. The Prime Minister and Cabinet are responsible to Parliament, from which they are drawn. National parliamentary elections, which the Constitution requires at least every 5 years, have been held regularly since independence in 1957 and have included opposition candidates actively contesting parliamentary seats. In addition, there are regular state and local multiparty elections. Most observers consider Malaysian elections to be generally free and fair, with votes cast secretly and recorded accurately. Opposition candidates won several hotly contested byelections in August 1988 and June 1989. Nevertheless, in several byelections in the last year, there were allegations that government supporters attempted to intimidate voters.

Through the United Malays National Organization (UMNO), Malays dominate the ruling National Front coalition of ethnic-based parties which has controlled Parliament since independence. Non-Malays fill a number of cabinet posts. In August 1986, the National Front won 148 of the 177 seats in the House of Representatives. Although the opposition regularly criticizes government policies within and outside Parliament, government views generally prevail. Since 1957 there has been a peaceful transfer of power in the office of Prime Minister three times.

Opposition parties, such as the Islamic Party of Malaysia (PAS), have occasionally gained control of state governments. Non-Malay parties have also controlled state governments; for example, the ruling party in the important state of Penang is largely Chinese-based, and in Sabah a predominantly Christian party is currently in power.

A new Malay political party called Semangat 46 (Spirit of 46) was registered in July 1989. This party is dominated by former UMNO leaders who challenged Prime Minister Mahathir for the UMNO leadership in 1987 and lost. There has also been some movement toward an opposition coalition led by Semangat 46 to challenge the ruling coalition in the next general election which must be held before October 1991. The new party and the informal coalition have actively campaigned in a series of national and state byelections since August 1988, winning twice and losing the other six times.

Eleven Members of Parliament, 10 from opposition parties and 1 from the government coalition, were included among the persons detained in October and November 1987. After their release, all regained their parliamentary seats and party leadership positions. Opposition leader and former detainee Lim Kit Siang continues to criticize government policy and has also directly challenged the Government in parliamentary sessions since his release.

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

The Government rejects criticism of its human rights record by international human rights organizations and foreign governments. Prime Minister Mahathir, in a speech at the

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Non-Aligned Movement summit in September 1989, stated that developing countries cannot practice the Western liberal "brand of democracy and human rights" to the detriment of meeting basic human needs, such as food, shelter, and schools. Malaysian officials criticize local groups for "collaborating" with international human rights organizations in their studies of the human rights situation. Nevertheless, representatives of international human rights organizations have visited and traveled in Malaysia and have been able to meet with some relevant government officials. In 1989 representatives of the Committee on Human Rights of the New York City bar met with the Attorney General and other government officials. In 1988 the Government permitted delegations from the International Committee of the Red Cross and the Human Rights Commission of the International Parliamentary Union to meet with ISA detainees as well as with government officials. Foreign government officials have met in Malaysia with their Malaysian counterparts to discuss human rights.

In August 1989, a group of prominent Malaysians, including two former prime ministers, applied to the Registrar of Societies to establish a national human rights society. The Registrar had not by year's end ruled on the application, although in December 1988 the Deputy Prime Minister announced that the Government would not object. In addition, a number of organizations, including the Bar Council and various public interest groups, devote some time to human rights activities. The Government tolerates their activities but rarely responds to their inquiries or occasional press statements. The Government has not acceded to any of the international covenants on human rights, generally maintaining that such issues are internal matters.

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

The Government implements on an extensive scale programs designed to boost the economic position of the ethnic Malay majority which remains poorer, on average, than other Malaysians despite its political dominance. These Government programs and policies limit, in varying degrees, opportunities for non-Malays in higher education, government employment, business permits and licenses, and ownership of new homesteads.

The question of the rights of indigenous peoples in Malaysia received increasing attention in 1989. The focus of this attention has been the impact of logging on the indigenous peoples in the East Malaysian state of Sarawak. Between November 1988 and January 1989, 128 members of the semi-nomadic Penan group in Sarawak were arrested and charged with illegally blockading logging roads and bridges. Another 117 Penans were arrested under the State Forestry Ordinance in September for similarly blockading logging roads. While the Penan demonstrators have not yet been brought to trial, the prosecution dropped similar charges against another indigenous group--42 Kayans--in April.

There are no laws or regulations restricting the political and economic rights of women. The position of women in society is conditioned by the cultural and religious traditions of the country's major ethnic groups. With a general resurgence of Islamic piety among Malays, many Malay women have in recent years tended toward close conformity with Koranic stipulations on women's roles. Women's groups are active both within the

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governmental and private sectors. Two important umbrella organizations for women's rights are the National Advisory Council for the Integration of Women in Development in the Prime Minister's Department and the National Council of Women's Organizations.

Violence against women, including wife beating, has resulted in a number of steps to deal with the problem. According to government statistics, reported domestic violence cases increased from 279 in 1982 to 900 in 1988. There are currently no specific laws on domestic violence. Cases of wife beating or child abuse are tried under normal assault provisions of the Criminal Code, which carry penalties of 3 months to 1 year in prison and/or fines up to \$750. A women's aid organization runs shelters for battered wives, and several women's groups led a successful effort in April to toughen the laws against rape, mandating jail sentences of at least 5 years (maximum of 20 years) and allowing the imposition of fines and/or whipping. Women's rights organizations also began promoting new legislation to curb domestic violence against women and children; an interagency group coordinated by the Welfare ministry was formed to draft the legislation.

Section 6 Worker Rights

a. The Right of Association

The Trade Unions Act of 1959 and the Industrial Relations Act of 1967 govern the right of workers to engage in trade union activity. Unions may organize workplaces, bargain collectively with an employer, form federations, and join international organizations. The Industrial Relations Act specifically prohibits any person from interfering with, restraining, or coercing a worker in the exercise of the right to form or participate in the lawful activities of a trade union.

The Trade Unions Act, which is administered by the Director General of Trade Unions (formerly the Registrar of Trade Unions), sets rules for the organization of unions, their recognition at the workplace, the content of their constitutions, election of their officers, and their financial reporting requirements. The Act's definition of a trade union restricts it to representing workers in a "particular trade, occupation, or industry or within any similar trades, occupations, or industries," contrary to guidelines of the Committee on Freedom of Association of the International Labor Organization (ILO).

The Director General of Trade Unions may refuse to register a trade union on a variety of grounds. He also has the power, under certain circumstances, to withdraw the registration of a trade union. A trade union for which registration has been refused, withdrawn or canceled is considered an unlawful association.

Malaysia's electronic components industry, dominated by American and Japanese firms, has been the focus of unsuccessful union organizing efforts since the late 1970's. The Government has used its various powers to prevent the formation of a union in the industry other than strictly "in house" unions. In August 1989, the Director General of Trade Unions refused to register the National Electronics Workers Union on the grounds that it did not meet the definition of a "trade union" in the Trade Unions Act because its members work

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in the electrical and electronics industries, which the Labor Minister has determined are different industries. Union leaders have stated that they seek to represent only workers in the electronics industry. The Government has been repeatedly criticized by the ILO for continued failure to comply with ILO Convention 98 (right to organize and to bargain collectively).

Some critics of the Government's policy toward labor unions, notably the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) and Asia Watch, believe the arrest of V. David under the ISA in the government crackdown late in 1987 (see Section 1.d. above) demonstrated labor leaders' vulnerability to government pressures, which, critics assert, inhibit their carrying out legitimate trade union activities. Mr. David has declared publicly that questioning during his detention related only peripherally to his role in the Malaysian Trades Union Congress (MTUC) and the Transport Workers' Union (TWU). He continues as MTUC Secretary General, campaigned successfully for reelection to that position in December 1988, and has been allowed to travel abroad to trade union meetings.

Federations of trade unions may cover only a single trade or industry or similar trades or industries. The only labor federations currently registered are one for public servants, one for teachers, and one for state-based textile and garment workers' unions. The MTUC, the main labor body, is registered as a society under the Societies Act (rather than the Trade Unions Act). Previous MTUC efforts to register as a trade union federation under the Trade Unions Act were turned down because of its broad membership. In November 1988, however, Parliament approved legislation granting the MTUC the status and rights enjoyed by Malaysian trade unions, although it remains a society.

As of December 1988, there were 392 individual unions in Malaysia with over 616,626 members (10.4 percent of total employment).

Unions are independent both of the Government and of the political parties. While unions are not permitted to engage in political activity, individual trade union leaders have served in Parliament (V. David, the MTUC Secretary General, is currently a Member of Parliament for an opposition party) and individual union members belong to political parties. Malaysian trade unions are free to associate with the appropriate international trade secretariats, and a number of Malaysian labor leaders play major roles in international labor affairs. The MTUC is affiliated with the International Confederation of Free Trade Unions (ICFTU). The Secretary General of the National Union of Plantation Workers is President of the ICFTU, and the MTUC Secretary General has actively participated in the ILO governing body.

While strikes are legal and do occasionally occur, critics claim that this right in practice is severely restricted. The Industrial Relations Act of 1967 requires the parties to notify the Ministry of Labor that a dispute exists before any industrial action may be taken. If government conciliation fails to achieve a settlement, the Minister has the power to refer the dispute to the Industrial Court, which effectively becomes compulsory arbitration. A strike is prohibited while the dispute is before the Industrial Court, and an award made by the Industrial Court cannot be appealed. Industrial Court

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awards are the exception rather than the rule, however, representing only about 18.5 percent of all collective agreements referred to the Industrial Court in 1980. The remaining agreements were reached through bargaining between management and labor.

b. The Right to Organize and Bargain Collectively

Collective bargaining is the norm in Malaysian industries where workers are organized. Malaysia's system of conciliation and arbitration seeks to promote negotiation and settlement of issues without strikes.

In a complaint to the ILO, the MTUC alleged that the 1980 amendments contain prohibitive and oppressive antiunion provisions which erode the basic rights of workers, restrict union activities, and result in government and employer interference in the internal administration of unions. In 1983 the ILO urged the Malaysian Government to amend these laws further to bring them into conformity with the ILO Convention on the right to organize and to bargain collectively. Despite subsequent amendments, the MTUC still believes the labor law to be deficient by ILO standards. Many union leaders also believe that creation of the Industrial Court to handle industrial disputes further weakened their collective bargaining rights.

Labor standards in free trade zones are the same as those in the rest of Malaysia. Workers at many companies located in the free trade zones are unionized, especially in the textile and electrical products plants. Enterprises granted "pioneer" status (whether or not located in a free trade zone) are protected from union demands for terms of employment exceeding those specified in the Employment Act of 1955 during the period of their pioneer status (normally 5 years). The restriction does not apply to wages or benefits not covered by the Employment Act (see Section 6.e. below).

c. Prohibition of Forced or Compulsory Labor

Malaysia is a party to ILO Convention 105 prohibiting forced or compulsory labor and it has effective legal sanctions against such abuses. The ILO has criticized Malaysia for requiring prisoners and ISA detainees to work. Malaysia defends the practice as part of its prisoner rehabilitation program.

d. Minimum Age for Employment of Children

Employment of children is covered by the Children and Young Persons (Employment) Act of 1966, which stipulates that no child under the age of 14 may be engaged in any employment except light work in a family enterprise, in public entertainment, work performed for the Government in a school or training institution, or employment as an approved apprentice. It is illegal for children to work more than 6 hours per day, more than 6 days per week, or at night. The law is effectively enforced through periodic inspections by the Ministry of Labor.

e. Acceptable Conditions of Work

Malaysian wages are relatively high for its level of industrialization and higher than in all neighboring countries except Singapore. The Employment Act of 1955 sets working

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hours not to exceed 8 hours per day or 44 hours per week (5 1/2 days), sets overtime rates for hours in excess of those, and mandates public holidays, annual leave, sick leave, and maternity allowances for workers. Most such provisions are at least on a par with standards in industrialized countries. Minimum standards of occupational health and safety are set by law and enforced by a unit of the Ministry of Labor. Severance benefits are provided under the Employment (Termination and Lay-off Benefits) Regulations of 1980. The Employees Provident Fund (EPF) Ordinance of 1951 requires employers and employees to contribute to a fully funded retirement program. Some 90 percent of workers are covered by either the EPF or the Government's own pension plan for public servants. The Workmen's Compensation Act of 1952, and the Social Security Act provide disability and workman's compensation benefits.

There is no national minimum wage legislation, but certain classes of workers are covered by minimum wage laws: retail clerks, hotel and restaurant employees, cinema workers, and a few others, totaling approximately 140,000 workers. By local standards, and taking into account various worker benefits received by most workers, Malaysian wages provide a decent standard of living for workers and their families. The effective minimum wage for unskilled labor in the urban areas is about \$90 per month. Plantation work is increasingly being done by contract workers, including numerous illegal immigrants from Indonesia, in part due to a shortage of Malaysians interested in such work. Working conditions for contract workers often are significantly below those of direct hire plantation workers, many of whom belong to the National Union of Plantation Workers. Additionally, many of the immigrant workers, particularly the illegal ones, may not have access to Malaysia's system of labor adjudication. In 1989 the Malaysian Government, at least in part to prevent the exploitation of these workers, moved to legalize large numbers of illegal immigrant workers, granting 290,000 work passes to Indonesian plantation workers in August.
