

Long-running trial of Malaysian human rights activist

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The ongoing trial of Malaysian human rights activist Irene Fernandez is another crude attempt by the government of Prime Minister Mahathir Mohamad to silence its critics. The “crime” of Fernandez and her organisation Tenaganita was to publish a report into conditions of migrant detainees in government camps. Rather than investigate the allegations of abuse and torture, the government responded by interrogating Fernandez and charging her with maliciously publishing false news.

The Tenaganita report, based on interviews with over 300 migrant workers who had been detained as illegal immigrants, was released at a press conference on July 27, 1995. The year-long investigation revealed consistent accounts of brutality, disease, little or no medical attention, bribery, sexual exploitation and abuse of female detainees. Many detainees claimed to have been beaten and forced to stand in the sun for hours if they asked for water. In some cases, medical treatment was denied to the sick.

In the largest of the camps at Semenyih, up to 500 people were housed in blocks with only one bathroom and three toilets. Detainees were forced to sleep on wooden floors in unventilated dormitories infested with bugs. All their belongings were confiscated, they were not allowed outside contact and many of the men were shaved bald.

The Fernandez exposé shocked many Malaysians. The government responded initially with denials, then by banning the employment of foreign workers through private agencies. They set up a visitor's panel to study conditions in the camps but it failed to publish its findings. The police also announced that investigations would be conducted.

But what followed was the launching of a defamation case against Fernandez by police commander Abdul Malek Jano, based on an interview by her with *The New Straits Times* on the report. She was required to present

herself for questioning, which went on for 10 days. When the police demanded the names and particulars of informants and documents, Fernandez refused.

In October 1995, police ordered Fernandez to surrender all records on former detainees, interviewers and volunteers, and all documents pertaining to research. Fernandez refused to obey the orders. Three other Tenaganita members and two volunteers were also questioned and a researcher was detained for two months.

In March 1996, Fernandez was charged under the Printing Presses and Publications Act with “maliciously publishing false news”. The Act along with the country's Sedition Act and Internal Security Act, which allows for indefinite detention without trial, were used by the British to enforce their colonial rule. The laws have been retained and enhanced by the Malaysian government.

When Fernandez trial began on June 10, 1996, the prosecution claimed it would call 200 witnesses. But only 35 were finally called. Far from demolishing the evidence contained in the Fernandez report, the witnesses in some cases reinforced it.

The government claimed that the detainees who had died were suffering diseases contracted prior to their arrival in Malaysia. But police commander Abdul Malek Jano, who had issued the defamation writ against Fernandez, revealed under cross examination that there had been deaths in the camp from Beri Beri and exhaustion. Both conditions are readily treatable. Beri Beri is a dietary deficiency disease caused by lack of vitamin B1, which is abundant in unpolished rice.

Superintendent Abu Bakar Lim Mustaffa, the investigating officer, admitted that he had never even asked for post-mortem reports of migrant workers who died in the camps.

The immigration officer for Semenyih Camp, Abdul Rahim bin Endut, denied that he had received complaints of abuse, torture, illness and sexual harassment but

admitted that any complaints would go through the police. The police, and not immigration officers, were responsible for the day to day running of the camp and there was no system for recording complaints.

In August 1998, the prosecution wound up its case and in February 1999, Magistrate Juliana bte Mohamad issued a three-line judgment, stating that the prosecution had made a case for the defence to answer.

When the trial resumed on April 6, 1999, the defence lawyer presented a motion to stop the trial on the grounds that the prosecution had not been able to produce the ex-detainees whom were interviewed by the police. Under Malaysian legal practice, a list of prosecution witnesses interviewed but not called in the trial has to be presented to the defence who may call them if it wishes. In this case the defence was given a list last September but many of the witnesses had been deported. On April 7, 1999, Magistrate Juliana bte Mohamed dismissed the defence motion without citing any reasons.

On the same day, Fernandez took the stand and gave evidence over the next two weeks. She testified that she had released the report to use the press as a channel for information about the conditions in the camp. By exposing the attack on human rights, Tenaganita had hoped to put pressure on the government to develop good governance and to be accountable. She insisted that people had a right to know what was happening in state-run institutions like detention camps.

When asked why Tenaganita did not lodge a police report, Fernandez stated that there had been an erosion of confidence in the police, who were implicated in the abuses. The police would be investigating an institution they managed and controlled. What was revealed was not an isolated incident of abuse but institutionalised violence that effected hundreds of detainees.

Fernandez ended her testimony on May 26, 1999 in what has been the country's longest-running criminal trial. In an interview given this year, Fernandez warned that the political nature of her trial and the loss of independence of the judiciary virtually guaranteed her conviction.

The so-called illegal detainees in the government camps investigated by Fernandez and her group were the unfortunate victims of the guest worker system instituted by the Malaysian government in the 1980s and 1990s to supply workers to the booming Malaysian economy.

Prior to the Asian economic crisis, Malaysia had between one and three million guest workers. The majority were Indonesians, with Bangladeshis, Filipinos and Thais comprising most of the remainder. Many

migrants had sold all their possessions or borrowed heavily in order to make the journey and pay the contract fees for supposedly well-paying jobs.

In many cases, the agencies were accused of charging up to \$3,000 for contracts to work in construction, plantations or factories. Wages were just half what was promised or contracts were with companies that did not exist. If workers were forced to move from one employer to another or one sector to another they lost their accreditation and so became illegal. Among the companies exploiting these so-called subcontracted workers were transnational corporations such as Nestlé's and Bata.

Thousands of workers were arrested for not carrying their passports and work permits. In many cases employers and agents insisted on keeping the papers of guest workers. Thousands of others in desperate need of work came across the border without documentation. Many were caught, held in the horrific conditions in camps and then deported. Instead of defending these workers, the Malaysian unions like their counterparts in every country blamed migrant workers for threatening the jobs of Malaysian nationals.

From 1997, after the Asian economic breakdown, the Malaysian government turned on all migrant workers and intensified the round up and deportation of so-called illegals. A law was passed requiring employers to inform the police of all illegal immigrants. The government has pushed ahead with the trial of Fernandez in a bid to silence her and her organisation and to bury their evidence of the atrocious conditions facing detainees in Malaysian camps.



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