

Rights in Detention in Malaysia¹

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Detainees' Rights

The issue of detainees in Malaysia received public attention due partly to the mass arrests of demonstrators in the past few years. As the detainees were arrested for nothing more than unlawful assembly (in Malaysia, the right to assemble must be accompanied with a police permit²), the detainees seemed more like ordinary citizens exercising certain basic rights³—or persons with whom the general public could relate.

Complaints of alleged abuse and denial of rights of the detainees by the police inundated the media as well as the newly established Human Rights Commission of Malaysia⁴ (SUHAKAM). This led SUHAKAM to focus its Law Reform Working Group studies on “the Rights of Remand Prisoners” as one of the priority areas for the year 2000. As a result of consultations, interviews, testimonies and visits to detention centres, a series of reports was released, further mainstreaming the rights of detainees.

Essentially there are several types of detention centres in Malaysia. They are police lock-up or remand centres where someone is confined pending his or her trial, prisons, rehabilitation centres for women and girls, and immigration detention centres.

Morality and Detention

Rehabilitative Detention for Women and Girls

Prior to its repeal last year, the *Women and Girls Protection Act 1973 (Act 611)* was widely used by the police and social welfare agencies as a tool to control the behaviour of young women and girls under the age of 21. As the name implies, it is legislation that purportedly seeks to protect young women and girls from prostitution and moral danger by detaining them for rehabilitation purposes.

The Act allows detention under both Section 7 and Section 8. Section 7 relates to women and girls who, inter alia, frequent brothels or are under the control of brothel-keepers, while Section 8 refers to women and girls exposed to moral danger.⁵ Of the two, Section 8 is the more ambiguous section and therefore more subject to abuse.

Experience has shown that the Act was used in regular raids of establishments, from karaoke lounges and dance clubs to hotels. While no one else would be charged, such as the operator of the establishments and the male patrons, the women and girls in the club would be detained. Women

and girls under the age of 21 would then be committed to special centres for rehabilitation under the purview of the Social Welfare Department.

A typical example of the joint operations of the police and social welfare department took place in mid-1997 in the state of Penang, where the officers raided a karaoke lounge and detained several girls.⁶ Three 20-year olds and three other girls below 18 were detained and sent to a correctional centre for women and girls. They were at the lounge to celebrate the birthday of one of their friends. Their parents were aware of their whereabouts and they were not taking alcohol, yet the officers deemed the girls to be exposed to “moral danger.”⁷ Not one of the boys in the group or the operator of the lounge was detained.

How and why the karaoke lounge posed a danger to the morals of girls could not be explained by the officers. There appeared to have been no guideline provided to the officers on the definition of “moral danger,” and the officers were left to interpret what constituted “moral danger” in accordance with their own religious and moral judgment, disregarding the protest of the parents of the women and girls detained.

Fortunately on 26 June 1997, in another incident, the High Court of Malaya declared null and void a warrant issued for the detention of a girl aged 19. This, to a certain extent, stayed at the hands of some social welfare officers.

Why are the morals of women and girls deemed to be in need of protection, but not the morals of boys? Why were married women and girls not subject to detention under the Act before?⁸ In the ensuing debate, women's groups raised the issue of the state's patriarchal attitude toward women and girls, and the consequent restrictions imposed on rights of women and girls, reiterating their earlier demand for the repeal of the *Women and Girls Protection Act*.⁹

During its study on rights of remand prisoners, SUHAKAM made a visit to the Moral Rehabilitation Centre for Girls at Batu Gajah, in the state of Perak where many of the women and girls detained under the *Women and Girls Protection Act 1973* were committed. The conditions at the centre were found to be generally satisfactory. The centre was staffed solely by women officers, and male officers were prohibited from entering the premises unless accompanied by female officers; and even so, the men were allowed only

as far as the administration block, and not into the living quarters. But the SUHAKAM also found that there was an acute shortage of professional teachers, particularly for those occupants who were scheduled to sit for their national exams.¹⁰

The issue of control on women's behaviour has progressed into the contentious area of women's dressing. The state of Kelantan has employed the assistance of the local authorities to impose what it interprets as Muslim dress code on women working in establishments that require commercial licences from the authorities.

Morality Under the Syariah Laws¹¹

The need to control women's behaviour and morals grew more acute under the guise, and in the name, of religion. The broadening impact of syariah on civil laws has largely drawn little protest.

To most Muslims, who form 60 percent of the population of Malaysia, the syariah appears to be sacred and immutable. The non-Muslims believe, wrongly, that syariah has no effect on them although in truth, the implementation of syariah affects both Muslims and non-Muslims. The non-Muslims also may not feel capable of arguing the tenets of another religion,

While the Federal Constitution grants the states (provinces) jurisdiction in the administration of the practice of the Islamic religion, the states have gradually expanded this to include more and more criminal aspects, while the Federal government has kept its silence over these incursions into federal jurisdiction.

The *Muftis* (appointed as head of religious affairs in each state) are granted power to issue *fatwas*, or edicts that are gazetted and become law, thus bypassing both legisla-

tive houses (the parliament and state assemblies). This process ensures that there can be no opportunity for public debate on any edicts issued by the *Muftis*. Neither is the edict published in the popular media which could, to some extent, generate public discussion, or at the very least, create public awareness of the edict.

The consequences of this style of lawmaking elicited a public outcry when Muslim contestants in a beauty pageant were arrested a few years ago. Media reports indicated that several police as well as syariah court officials attended the beauty pageant, watched the contest, and at the conclusion or near conclusion of the contest, publicly arrested the Muslim contestants. Neither the organisers nor the contestants were warned of the existence of a *fatwa* against a Muslim's participation in a beauty contest, nor of the liability in transgressing the *fatwa*.

The press was quick to point out that simultaneous with the beauty pageant was another contest, the men's bodybuilding contest, which included male Muslim participants. Yet these men were not humiliated with public arrest at any time before, during or after the contest.

These incidents pointed to a deep inequality in the administration of syariah laws. However because the syariah is equated with religious laws, and draws some of its authority from the Qur'an and the Prophet's traditions, the syariah commands reverence and obedience. The attempts by women's groups and other progressive Muslims to create opportunities to debate the syariah so that they can stress that to a large extent, the syariah comprises interpretation by humans of the Qur'an and the Prophet's traditions have met with angry protests from conservative Muslims.

The issue of control on women's behaviour has progressed into the contentious area of women's dressing. The state of Kelantan¹² has employed the assistance of the local authorities to impose what it interprets as Muslim dress code on women working in establishments that require commercial licences from the authorities. It also imposes the same dress code on women civil servants while discharging their duties at government offices.¹³ In fact some Kelantan women have been fined for breach of these rules.

Remand Detainees

Detainees who have yet to be charged are held in cells in police stations, commonly called police lock-ups. Overcrowding is a common complaint against police lock-ups. During an unlawful assembly incident in Kemas Highway, 11 women were arrested and held in Kapar Police Lock-up, which was designed for only one detainee and women detainees for the district of Kelang.¹⁴

Overcrowding is a critical issue because this means the detainees are unable to sleep at the same time. No bedding is provided, so sometimes, the dirty blankets are used by detainees as mats to lie on, instead of covering themselves. The toilet facilities lack privacy, allegedly by design, to embarrass and humiliate detainees.¹⁵

Following a complaint by a woman detainee that she was ordered to strip and humiliated by the police, the police, during a visit by SUHAKAM to a police lockup, admitted that detainees are body searched and ordered to strip. Detainees are also ordered to squat so that any hidden objects would fall out. This search is conducted regardless of the alleged crime a person is detained for, including unlawful assembly.

Women are also vulnerable to sexual assault while in custody. For example, in August 2003, a police constable was found guilty of raping two migrant women, one a 23-year-old Filipino woman and the other a 24-year-old Indonesian woman, in the control room of a district police station when they were taken into custody a year earlier. The police constable was initially acquitted, but then convicted when the case was remitted to the Judge subsequent to an appeal. The constable was sentenced to 15 years' imprisonment and 17 strokes of the *rotan* (cane) for each charge. The defence has filed an appeal against the conviction whilst the prosecution has filed a cross-appeal to increase the sentence.¹⁶ Bail was refused.¹⁷

The conviction of the police constable for rape constitutes part of the string of allegations of police brutality since the trial of Deputy Prime Minister, Dato Seri Anwar Ibrahim, which shook public confidence in the police.

Anwar was charged for corruption. The charge pertains to Anwar's abuse of power by interfering with police investigations and requesting the police to "threaten" certain witnesses.¹⁸

In court, when questioned how the police could have "threatened" these witnesses, police witnesses testified to the interrogation strategies allegedly employed. Up until that point, these police strategies were unknown to the general Malaysian public.

After a short period in detention, Anwar was brought to court with a black eye. Although initially denying knowledge of the injury, the police finally admitted that the then Inspector-General of Police, the highest ranking police officer in the country, assaulted Anwar while the latter was handcuffed and blindfolded.¹⁹

The admission by the Inspector-General of Police at the time shook public confidence in a system that invests al-

most limitless powers in its law enforcers and served as a wake-up call for the need to re-assess the rights of detainees and monitor the powers of the police.

A string of complaints of police brutality was thereafter made public. Within May to November 2000, *Malaysiakini*²⁰ published four incidences of alleged police brutality, with one leading to death and another leading to blindness.

In addition, complaints that arrests were being made without the detainees' being informed of the charges against them were common, as were complaints that they were not allowed to contact their families, friends or employers, or even make arrangements to obtain the necessary medication.²¹

The Kuala Lumpur Bar Committee found that "the right of access by family members to persons held in remand is virtually non-existent," and that "problems faced by family and friends seeking information on persons detained or under arrest are notorious ... even if it is to determine that he is in fact in custody."²²

Furthermore, the report noted, although by law, criminal proceedings must be conducted in public, remand proceedings were carried out in chambers and in special rooms allocated for that purpose. The defence were not given the right to examine what the police submit before the Magistrate.

Prisons for Women

On the day of its visit to the Kajang women facility, SUHAKAM found this to be holding 787 women prisoners.²³ The capacity of the Kajang facility, however, was only 450. At one point, the facility was said to have had about 1,200 detainees. Of these, 123 were young women, most of whom were detained in connection to prostitution-related offences. Clearly prison was not an appropriate detention centre for these young women.

Out of these 123 young women prisoners, moreover, 103 were foreigners. The presence of such a high number of foreign young women prisoners also created language and communication difficulties.²⁴ It was unclear whether the respective embassies were informed of the detention of their citizens.

SUHAKAM also discovered that there were no educational programmes for young prisoners, except for religious classes. Recreational facilities, if any, were limited, breaching the Standard Minimum Rules for the Treatment of Prisoners and restricting the detainees' ability to re-integrate into society. No rehabilitation and formal counselling services for young offenders were available either.²⁵

SUHAKAM found that pregnant and nursing women received medical attention and care from the Kajang Hospital, but no provisions for their special dietary needs were made available. The children were assigned a children's corner while the mothers carried out their daily duties and were returned to their mothers in the evening. Some of the children suffered skin diseases, possibly due to their restricted access outside and the pollutants from the nearby handcraft training centres.

The fathers of such children could only meet their children at specific counters, which might serve as a disincentive to visit. Unless other male relatives were allowed to visit the children, they would be deprived of male father figures.

Immigration Detention Centres

Soon after the rape in police custody case was made public, the Philippine government alleged the rape of a Filipino child while in a detention centre in the state of Sabah (on the island of Borneo) pending her deportation.

The diplomatic tension was finally diffused when the police announced that the 13-year-old child was not after all a Filipino but a Malaysian. The child was mistakenly identified as a Filipino and deported to the Philippines where she informed the authorities that she was raped.

There was an almost audible sigh of relief among politicians and law enforcers. High-ranking Malaysian politicians were quick to demand that the Philippines apologise for believing that the child was a Filipino. After the flurry of attention over Malaysia's diplomatic row with its neighbour, there was scant regard shown by politicians and law enforcers over the fact that a child, of whatever nationality, had allegedly been raped while in custody.²⁶

Speaking Out

The question remains whether persons in detention, already vulnerable, have the courage to speak out against the enforcement officers who wield power over their fates. Even if detainees and ex-detainees speak out, how will they prove their complaints?²⁷ Will they be believed? There would be so much stacked against the detainees, including their being suspects for a certain crime. Their credibility would be suspect, to begin with.

Examples of the consequences of denouncing the state for maltreatment of detainees pepper the world news. Amnesty International reported that 19 women who denounced rape of women in police custody in a conference in June 2000²⁸ were charged in Istanbul for having "insulted the security forces." The charge was filed not only against the detainees but their lawyers and a parent of one of the survivors as well.

In a highly publicised case in Malaysia, Irene Fernandez was on 16th October 2003 sentenced to 12 months' imprisonment for malicious publication of false news under the *Printing Presses and Publications Act 1984*. Fernandez was released on bail pending appeal.

Fernandez is director of a group that published the "Memorandum on Abuse Torture and Deaths of Migrants at Detention Centres." Not only did the state deny maltreatment, it prosecuted Fernandez. According to the group, during the seven and half year trial, one of the longest in Malaysia, Fernandez went to court 310 times for full hearing.²⁹

Over 90 non-governmental organisations (NGOs) have appealed to Prime Minister Datuk Seri Abdullah Ahmad Badawi to free Fernandez from prison for "speaking the truth" in the alleged ill-treatment of migrant workers.³⁰

What these cases highlight is the swift government response against persons denouncing its alleged treatment of detainees. This in itself creates a culture of fear of the enforcement officers whose duties are to protect those under its custody.

Promoting Better Standards

The unmasking of the assault on Anwar Ibrahim while in detention, varying in form from silence, denial to quiet admission, proves that the police, like others, are capable of grave abuse of power and subsequent initial attempts at cover-ups when the case is made public.

The revelation of the first custodial rape case to the public also served as a reminder of the need to rethink intervention strategies in court as judges, like others, need to be made aware of research, legal developments, international standards and other data on the issue of treatment of detainees in general and the issue of sexual abuse in detention in particular.

The unfolding of the second alleged custodial rape case (pending trial) underlines the vulnerability of women and girls to wrongful arrest and punishment.

These are but three of the more sensational cases that drew public—local and international—attention. For each of these cases, there may be many more where the victims have had to shoulder the abuse in silence.

There is urgent need for reform on the treatment of detainees that demands legislative and policy change, as well as a re-construction of social perceptions affecting persons in detention. By an awesome turn of events, the latter has been achieved and the Malaysian public is now aware of the abuse and potential abuse of detainees' human rights. The former will be achieved through broad-based social and

legislative initiatives and the persistent pressure from civil society.)

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Footnotes

¹ Adapted from a paper presented at the 3rd Expert Meeting on Women and Justice Meeting on "Treatment of Detainees" in Penang, Malaysia, 12th–14th January 2003

² Pursuant to the Police Act 1967, Act 344 and Public Order (Preservation) Act 1958, Act 296.

³ Figures from the Bar Council for the years 1998–2001 indicate that the majority of persons arrested were not charged. Majority of those charged, on the other hand, were acquitted or discharged (not amounting to acquittal). Reported in Freedom of Assembly Report by the Suruhanjaya Hak Asasi Manusia Malaysia (SUHAKAM).

⁴ Human Rights Commission of Malaysia Act 1999, Act 597 established the Human Right Commission of Malaysia (Suruhanjaya Hak Asasi Manusia Malaysia or SUHAKAM). The function of SUHAKAM, as stated in Section 4, is to provide education in relation to human rights; advise and assist the government in formulating legislation and administrative directives; recommend to the Government the subscription or accession of treaties and other international instruments in the field of human rights; and inquire into complaints of human rights violations.

⁵ Section 7 of the Act allows a Magistrate to order the detention of one who: (a) is being trained or used for purpose of prostitution or any immoral purposes; (b) lives in or frequents any brothel; or (c) is habitually in the company or under the control of brothel-keepers or procurers or persons employed or directly involved in brothels or prostitution. Section 8 allows the Magistrate to order the detention of any female under 21 years old whom the Magistrate believes to be ill-treated, neglected or exposed to moral danger.

⁶ Some of the girls' parents protested the detention of their children and lodged complaints with the Women's Centre for Change (then Women's Crisis Centre) in Penang.

⁷ None of the girls were Muslims. Muslims consuming alcohol are subject to other laws enforced by the religious department.

⁸ In 1987, the Act was made applicable to all women and girls under 21 years old, regardless of marital status.

⁹ After much campaigning, the Women and Girls Protection Act 1973 was repealed by the Child Act 2001 that came into force on 1 August 2002. This legislation sought to consolidate all laws pertaining to juvenile offenders and protection of children. The equivalent provision under the Child Act is only applicable to children who frequent brothels or are under the control of brothel keepers or are induced to perform sexual acts.

¹⁰ SUHAKAM's visitation report to Batu Gajah Moral Rehabilitation Centre, 8 November 2001.

¹¹ Syariah laws in Malaysia are mainly drawn from the Shafi'e Muslim Jurisprudential School. However, the principles from other Sunni Jurisprudence have been adopted and incorporated into the enacted laws passed by the State Assemblies and the Federal Parliament.

¹² The Kelantan state government is controlled by the Islamist political party.

¹³ See <http://www.kelantan.gov.my/upen/tip_pelabur.htm>

¹⁴ SUHAKAM visitation report to Kapar Police Station, November 2001.

¹⁵ See also SUHAKAM visitation report to Sungai Buloh Prison and Kajang Prison for Women, November 2001.

¹⁶ The accused was acquitted on 24 September 2002. According to media reports, the trial judge said: "The sexual intercourse here seems to be voluntary, just like between husband and wife... If I want to elaborate on everything, it will be erotic. But I will simplify it by saying that it looked like it was done more on consent." The trial judge also noted that:

- the two women complainants did not scream or push the police office away;
- there was no evidence of bruises;
- they took their clothes off;
- they reported the incident only three days later, after being approached by a policewoman, even though the accused was working in the same police station;
- the incident happened in a brightly lit place, and not in an isolated area;
- the door was unlocked;
- the women were married and had children;
- there were television monitors in the control room;
- the accused was wearing his police uniform and name tag during the incident;
- the women entered the country illegally; and
- the women's "credibility was zero" because they had delayed their report and had cheated the police with forged travel documents.

The decision caused public outcry. The High Court overturned the decision and remitted the case to the Sessions Court where the accused was convicted.

¹⁷ The Star Online, 14 August 2003.

¹⁸ See *PP v Dato Seri Anwar Ibrahim* (No 3) [1999] 2 CLJ 215 – Judgment of Augustine Paul J.

¹⁹ The Inspector-General of Police was charged and sentenced for assault.

²⁰ *Malaysiakini*, 19 May 2000, 18 August 2000, 16 October 2000, 15 November 2000 and 14 December 2000. *Malaysiakini* is a Web-based newspaper.

²¹ See Freedom of Assembly Report, SUHAKAM

²² "The Administration of Justice in Malaysia—A Memorandum from the Kuala Lumpur Bar Committee," 8 January 2001.

²³ *supra* 15.

²⁴ *Ibid.*

²⁵ *Ibid.*

²⁶ Finally, on 28 February 2003, two General Operations Force lance corporals were charged with rape of the said girl. The rape allegedly occurred between 27 July and 12 August 2002. The case is now pending trial in the Kota Kinabalu Sessions Court. See The Star Online, 1 March 2003, <<http://the.star.com.my/2003/3/1/courts/pkrape.asp>>. The trial is still pending. See The Star Online, 17 October 2003, <<http://202.186.86.35/news/story.asp?file=/2003/10/17/courts/6509805>>

²⁷ See custodial rape case *supra* 15.

²⁸ Fact Sheet: Women in Custody, <<http://www.amnesty.org.au/women/fact-custody.html>>.

²⁹ See <http://www.ipetitions.com/campaigns/irene_fernandez/>

³⁰ Star Online at <<http://202.186.86.35/news/story.asp?file=/2003/11/19/nation/6739977&newspage=Search>>. Accessed on 8th December 2003