



**8th Annual Meeting of the Asia Pacific Forum of National Human Rights Institutions
16 – 18 February 2004
Kathmandu, Nepal**

**Report on Standing Issues:
HUMAN RIGHTS COMMISSION OF MALAYSIA**

1. Trafficking in Persons

On its visit to the Kajang Women's Prison in January 2003, the Complaints and Investigation Working Group of the Human Rights Commission of Malaysia (SUHAKAM) noticed that there were women from other countries who had been trafficked into the country for various purposes.

A sub-committee within SUHAKAM (Working Committee) was subsequently formed to study the issue of Trafficking in Women and Children in Malaysia. At subsequent visits to the various detention centres, the Working Committee met with women from various countries. The majority of these women claimed that they had been promised lucrative jobs in Malaysia but were instead forced into the sex trade by their agents or employers. Among those involved were young girls who were trafficked into the country. The women said that they were held against their will in various towns and forced to entertain men, particularly foreign ones. In addition, they claimed to be fed only twice a day, locked in rooms and not paid for services. They were then passed to other agents for a fee and the cycle is repeated.

As a result of the visits to the various detention centres, the Working Committee decided that a roundtable discussion ought to be held with the relevant authorities including the Police, Immigration Department and Prisons Department to ascertain the magnitude of this problem and to suggest ways of combating this social menace. A pre-roundtable discussion was held with the Police on 26 August 2003 as a prelude the Roundtable Discussion.

The Roundtable Discussion, which was held on 24 September 2003, was attended by officers from the Prisons Department, the Immigration Department, the Social Welfare Department, the Police, the Ministry of Culture, Arts and Tourism, the Ministry of Home Affairs and SUHAKAM. Several issues and problems were raised and discussed. They included the following:

- (a) Those arrested often do not divulge any information as regards their agents or persons who trafficked them;
- (b) Employers are often charged for harbouring illegal persons and the alleged trafficked women themselves are often charged for not having valid documents;
- (c) At times, when information is received and arrests are made, a third party will appear and claim that the alleged trafficked woman is in fact his guest and is on a social visit pass. The issue of tourism then arises;
- (d) The need for the co-operation of foreign embassies. It was reported that the majority of the alleged trafficked women were foreigners;
- (e) Trafficking in persons is not confined to women alone. There have been men who were trafficked to provide cheap labour in restaurants and the plantation and construction sectors;
- (f) Some of the alleged trafficked women who were arrested were HIV/AIDS sufferers. For instance, it was reported that the parents of a girl had sold her when she was nine years old. She was then trafficked into Malaysia. She was subsequently arrested and detained. When screened, it was found that she was HIV positive. She recently died of AIDS at the Kajang Hospital at the age of 16;
- (g) There appears to be a shortage of interpreters. Interpreters are particularly important in the preparation of the “good conduct” report that is necessary for those under 18 who are arrested and brought to the welfare homes;
- (h) There appears to be a trend in the way the alleged trafficked women from the different countries were brought into Malaysia. For example:
 - The women from Indonesia were often brought in as housemaids and then sold by their agents. They were then forced to work in entertainment outlets such as discos, primarily to entertain men;

- The women from Thailand often came on their own to work as masseurs in the saloons and massage parlours. Many of them ended up in the flesh trade. They entered into Malaysia with the assistance of Thai agents in their home country. Upon their arrival in Malaysia, they were met by local agents. The Thai women were then put up in condominiums or apartments and were taken to hotels and/or wherever they were required;

 - The women from China often came to Malaysia to be with their boyfriends who claimed to be businessmen. These women claimed to have met their boyfriends whilst they were travelling in China. These men then paid for their airfares to Malaysia and met them at the airport. The women from China stayed with their boyfriends in apartments. They were taken shopping and sightseeing and were bought fine clothes. They ended up being arrested and detained for overstaying in Malaysia with no valid documents. Very often, they did not hear from their boyfriends again.
- (i) Some of the alleged trafficked women had claimed to be treated badly. For instance, a girl aged 21 whom the Working Committee interviewed said she was pushed down the stairs, kicked and burnt with cigarettes butts when she refused or resisted entertaining men. She showed the burnt marks on her body to the members of the Committee;

At the Roundtable Discussion, several recommendations were made. They included the following:

- (a) To urgently form a working committee comprising government agencies, relevant NGO's, interested persons and SUHAKAM to conduct an in-depth study on the issue of Trafficking in Women and Children in Malaysia;

- (b) To review the necessity of the enactment of a national legislation in accordance with the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, Supplementing the UN Convention Against Transnational Organized Crime (2000);

- (c) To further strengthen the co-operation between Malaysia and other ASEAN countries in this area;
- (d) With the co-operation of the respective embassies, to educate foreign nationals who seek employment in Malaysia of the Malaysian immigration laws and inform them of the need to be cautious when dealing with agents;
- (e) To develop guidelines to facilitate the rapid identification of illegal persons who are also victims of trafficking; and
- (f) To review the feasibility of dispensing with the need for the “good conduct” report for minors by the courts where the preparation of such as report is delayed on reasonable grounds.

As a follow-up of the Roundtable Discussion, the Working Committee visited the Kajang Women’s Prison for the second time on 29 October 2003. The Committee interviewed five of the women who were allegedly involved in the flesh trade. The Working Committee found that at the time of visit, there were approximately 1,810 women at the Kajang Women’s Prison, whereby 1,485 were foreigners.

An officer from the Complaints and Investigation Working Group was also sent to Melbourne, Australia to attend the Training Programme on Trafficking in Women and Children that was held between 20 October 2003 and 24 October 2003.

More recently, a dialogue was held with non-governmental organisations (NGOs) on the matter on 14 January 2004. The NGOs raised their concerns on the matter and fully supported the idea of the organisation of a regional Seminar on Trafficking in Women and Children.

SUHAKAM intends to hold a Seminar on “Trafficking in Women and Children - A Regional Perspective” in the near future. The target groups of the Seminar are the relevant government agencies, NGOs, foreign embassies and interested parties.

2. Death Penalty

The Malaysian Parliament has passed a number of statutes that carry a mandatory death

sentence for certain offences. Under Malaysian law, the death penalty is mandatory for some offences and discretionary (the judge decides) for others. Table 1 lists some of the offences for which the death penalty is mandatory while Table 2 lists some of the offences for which the death penalty is discretionary.

Table 1: Mandatory Death Penalty in Malaysia	
Offence	Legal Provision Providing for Mandatory Death Penalty
Trafficking in dangerous drugs (depending on type of drug and amount)	Section 39(B) of the Dangerous Drugs Act 1952
Discharging a firearm in the commission of a scheduled offence	Section 3 of the Firearms (Increased Penalties) Act 1971
Accomplices in case of discharge of firearm	Section 3A of the Firearms (Increased Penalties) Act 1971
Carrying, possessing or controlling fire-arms, ammunition or explosives in any security area	Section 57(1) of the Internal Security Act 1960
Offences against the person of the Yang di-Pertuan Agong, Ruler or Yang Di-Pertua Negeri	Section 121A of Penal Code
Murder	Section 302 of Penal Code

Table 2: Discretionary Death Penalty	
Offence	Legal Provision Providing for Discretionary Death Penalty
Abduction, wrongful restraint, wrongful confinement of a person for ransom	Section 3 of Kidnapping Act 1961
Consorting with person carrying or having possession of arms or explosives in any security area	Section 58(1) of Internal Security Act 1960
Waging or attempting to wage war or abetting the waging of war against the Yang di-Pertuan Agong, a Ruler or Yang di-Pertua Negeri	Section 121 of Penal Code

On 11 November 2003,¹ the Deputy Home Minister reported in Parliament that based on the statistics by the Malaysian Prisons Department, as of 30 October 2003, 121 prisoners (including four women) were on death row nationwide. Table 3 shows the breakdown of the death row inmates.

According to the Deputy Home Minister, after receiving death sentences from the High Court, it takes approximately two years before a convicted person is executed. However, some of the cases exceeded 10 years because of appeals by the convicted persons. An appeal is heard by the Court of Appeal and if turned down, it would go to the Federal Court, the apex court. The last avenue of appeal is to the Pardons Board.

¹ Source: The Sun, 12 November 2003

Legal Provision	Number of Death Row Inmates
Section 39(B) of the Dangerous Drugs Act 1952	77 (including three women)
Section 302 of the Penal Code	36 (including one woman)
Section 3 of the Firearms (Increased Penalties) Act 1971	4
Section 121 of the Penal Code	4
Total	121

Source: *The Sun*, 12 November 2003

Pursuant to Article 42 of the Malaysian Federal Constitution, the Pardons Board is presided by the *Yang di-Pertuan Agong*, Ruler or *Yang di-Pertua Negeri*. The *Yang di-Pertuan Agong* has the power to grant pardons, reprieves and respites in respect of all offences which have been tried by court-martial and all offences committed in the Federal Territories of Kuala Lumpur, Labuan and Putrajaya whilst the Ruler or *Yang di-Pertua Negeri* of a State has the power to grant pardons, reprieves and respites in respect of all offences committed in his State.

The issue of whether the death penalty should be removed from the Malaysian statute books has been a subject of debate.² For instance, in 1982, the constitutionality of the death sentence was challenged in Malaysia. In *Public Prosecutor v Lau Kee Hoo*,³ a five-man Bench of the Federal Court, ruled that the death penalty was constitutional. The Federal Court held that it was clear from Article 5(1) of the Constitution⁴ that the supreme law of land itself envisages the possibility of Parliament providing for death penalty. As such, capital punishment is “not necessarily unconstitutional”. In their judicial capacity, judges were in no way concerned with arguments for or against capital punishment. Capital punishment was a matter for Parliament. It is not for the judges to touch or adjudicate on its appropriateness, wisdom and necessity if the law prescribing it was validly made.

In addition, the case of *Lim Hang Seah v Public Prosecutor*⁵ created quite a stir amongst the

² See for example, *ibid*, “Should The Death Penalty Be Abolished” by Dominic Puthuchearay [1982] CLJ 283, *Public Prosecutor v Lau Kee Hoo* [1983] 1 MLJ 157

³ [1983] 1 MLJ 157

⁴ Article 5(1) reads: “No person shall be deprived of his life or personal liberty save in accordance with law.”

⁵ [1978] 1 MLJ 68

Malaysian public. In this case, a 14 year old boy was convicted and sentenced to death for possession of a pistol and ammunition under section 57 of the Internal Security Act 1960 (ISA). On appeal, the sentence was upheld by the Federal Court. However, the sentence was finally commuted and the offender sent to the Henry Gurney School.⁶

Supporters of the death penalty have maintained that capital punishment has a unique power to deter others from committing crimes, eliminates the “bad and unwanted elements” in society, and is just retribution to heinous crimes like murder and rape. Abolitionists have maintained that the death penalty tends to lessen Society’s appreciation of human life, is cruel, inhumane, degrading or is tantamount to torture and deprives men of the chance to reform.

The debate on whether the death penalty should remain in the Malaysian statute books is likely to be revisited from time to time. Indeed, in recent times, the issue of the death penalty was once again heavily debated in Malaysia.

At the end of 2003, the Penal Code (Amendment) Act 2003 was enacted. The Amendment Act has been published in the gazette on 25 December 2003. As of 15 January 2004, it has yet to come into force. With the coming into force of the Amendment Act, the application of the death penalty will be extended to certain offences relating to terrorism.

In addition, in November 2002, Non-Governmental Organisations (NGOs) working on sexual assault, rape, child sexual abuse, violence against women and human rights urged the Malaysian Government to reconsider its proposal for mandatory death penalty of child rapists. These NGOs were concerned that the mandatory death sentence could, amongst others, led to a decrease in the number of reportings of incidences of child rape.

According to a press statement dated 15 November 2002 released by the NGOs, in 2001, there were 161 reported cases of child rape, out of which 83% were committed by people the victims knew. The child survivor is thus placed in a difficult position for attacking the credibility of a trusted adult. This in turn, has led to reported or investigated cases of child rape becoming an exception rather than a norm. Given the gravity of the death penalty, this will further deter the child victim and those around the child from reporting. In addition, it was argued that a child might feel responsible for the possible death of someone who is in a position of trust and loyalty

⁶ See “Should The Death Penalty Be Abolished?” by Mah Weng Kwai [1981] 1 CLJ 25

over her. This is said to be grossly unfair to her welfare and impedes her recovery process by further traumatising her.

The Malaysian Government appears to have dropped its proposal for mandatory death penalty of child rapists. However, through the Penal Code (Amendment) Act 2003, the death penalty will be extended to a rapist who causes the death of the rape victim when the Amendment Act comes into force.

3. Child Pornography

Malaysia strongly deplores the practice of the sale of children, child prostitution, child pornography and the exploitation of children and has criminalised these activities in the country via legislation which include the Child Act 2001 and the Penal Code.⁷

The Child Act 2001 incorporates the principles of the Convention on the Rights of the Child (CRC). Malaysia became a party to the CRC on 17 February 1995. The entry into force of the Child Act 2001 on 1 August 2002 repealed three other laws – the Women and Young Girls Protection Act 1973, the Juvenile Courts Act 1947 and the Child Protection Act 1991. The Child Act 2001 in effect stipulates heavier punishment for offences relating to the ill-treatment, neglect, abandonment or exposure of children as compared to the Child Protection Act 1991.

Malaysia also feels that the rise and unabated misuse of new information technologies, including the Internet, for purposes of child prostitution, child pornography and child sex tourism must be arrested immediately.

Section 211 of the Communications and Multimedia Act 1998 (CMA) provides that “no content applications service provider, or other person using applications service, shall provide content which is indecent, obscene, false, menacing, or offensive in character with intent to annoy, abuse or threaten or harass any person”.

To this end, the Malaysian Communications and Multimedia Commission, the regulator for the converging communications and multimedia industry in Malaysia, designated a Content Forum

⁷ See for example, Statement by Ambassador Jasmi Md. Yusoff, Representative of Malaysia on Agenda Item 112: Promotion and Protection of Rights of Children, 29 October 1999 (54th Session of the United Nations General Assembly) and Statement by Ambassador Dato’ Mohd. Yusoff Ahmad, Representative of Malaysia on Agenda Item 42: Special Session of the General Assembly in 2001 for the Follow-up to the World Summit for Children, 15 November 2000

in 29 March 2001 pursuant to section 212 of the CMA. The role of the Content Forum is to govern content and address content related issues disseminated by electronic medium by industry self-regulation in line with a Content Code. The Code is a set of industry guidelines on the usage and/or dissemination of content for public consumption. It is currently being finalised. As of 15 January 2004, there is explicit provision in the Code that prohibits child pornography.⁸

SUHAKAM in its Annual Report 2001 (and reiterated in its Annual Report 2002) recommended that Malaysia be a party to the Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography.

In her address at the Roundtable Discussion on the CRC organised by SUHAKAM on 19 – 20 January 2004, the Malaysian Minister of National Unity and Social Development, whose ministry is responsible for children, said that the recommendation by SUHAKAM will be reviewed to ascertain the viability and suitability of the signing of both the optional protocols to the CRC by Malaysia.⁹

⁸ See the websites of the Malaysian Communications and Multimedia Commission (<http://www.mcmc.gov.my>) and the Malaysian Communications and Multimedia Forum of Malaysia (<http://www.cmcf.org.my>)

⁹ The other optional protocol being the Optional Protocol on the Involvement of Children in Armed Conflict