

SUHAKAM's Input for OHCHR on Causes and Human Rights Implications of Over-Incarceration and Overcrowding in Malaysia

1. Introduction

- 1.1. In Malaysia, the administration and management of the penal institutions are under the responsibility of the Prison Department. The Ministry of Home Affairs is the central authority for policy making and administration in relation to the treatment of offenders in Malaysia.¹
- 1.2. In general, based on SUHAKAM's past visits to the prisons, the situation of overcrowding had improved over the past few years. However, some prisons in the country still face the issue of overcrowding.
- 1.3. There are currently 35 prisons in Malaysia and its total capacity, as of June 2013, is 32,000.² In March 2015, there are 49,200 prisoners in the 35 prisons in Malaysia.³
- 1.4. However, these numbers may not reflect the real situation in the prisons. In the prisons, the blocks are designated for different categories of prisoners such as remand prisoners, convicted prisoners and death row prisoners. Subject to the number of prisoners for each category, the situation of each block or cell may differ from one to another.
- 1.5. In March 2013, SUHAKAM visited the prison in Sungai Buloh, Selangor to investigate the complaints received from complainants. The capacity of the prison is 3,000. At the time of the visit, there were 3,242 prisoners in the prison in Sungai Buloh. Out of 3,242 prisoners, there were 2,785 remand prisoners and 389 convicted prisoners. The number of the remand prisoners above reflects the situation of overcrowding in the prison block designated for remand prisoners.
- 1.6. Amongst the factors which contribute to the situation of over-incarceration and overcrowding in the penal institutions in Malaysia such as prisons may comprise the following:

i. Criminal Justice System in Malaysia

The criminal justice system in Malaysia imposes a great deal of importance to imprisonment as a major means of deterring crime and defending society as well

¹ Zulkifli bin Omar. July 2000. Current Issues in Correctional Treatment and Effective Countermeasures. http://www.unafei.or.jp/english/pdf/PDF_rms/no57/57-24.pdf

² International Centre for Prison Studies. <http://www.prisonstudies.org/country/malaysia> [Accessed 21 April 2015]

³ Borneo Post. 1 March 2015. 'Masterminds behind drug traffickers – Ahmad Zahid' <http://www.theborneopost.com/2015/03/01/masterminds-behind-drug-traffickers-ahmad-zahid/> [Accessed 21 April 2015]

as to rehabilitate the offenders. It is also seen as a primary method of punishment.⁴ Hence, as the crime rates increases, more offenders are imprisoned.

ii. Increasing crime rates in the country

The crime rates in Malaysia has been on the rise over the past few years. The form of crimes reported include, among others, murder, gang robbery and theft. For instance, the cases of violent crime increased from 14,811 in 2012 to 15,098 cases in 2013. Robbery (including gang robbery) with firearms also increased from 69 to 74 cases over the same period.⁵ With the increasing crime rates in the country, the number of prisoners would also increase and eventually lead to overcrowding in the prisons.

iii. Recidivism of offenders

One of the reasons for overcrowding in prisons may also include recidivism of offenders. The Human Rights Commission of Malaysia (SUHAKAM) conducts periodic visits to the prisons and detention centres, in accordance with its function and mandate. During SUHAKAM's visits to the prison, it was informed by the prison officials that a considerable proportion of the prisoners are repeat offenders, in particular drug offenders. At the same time, SUHAKAM also observed that some prisons are unable to implement proper rehabilitation programme for these offenders due to shortage of staff. This may contribute to the rise of recidivism of offenders.

iv. Remand prisoners

Aside from the convicted prisoners, remand prisoners are also placed in some of the prisons while waiting for their trials. Halfway through 2014, there are 11,911 remand prisoners in Malaysia.⁶ Based on the information provided by prison officials during SUHAKAM's visits to the prisons, some of these remand prisoners are put in prisons because they were unable to meet bail requirements. In addition, the arduous trial procedures may also be one of the factors which led to longer waiting period and in turn extend the period of imprisonment of the remand prisoners.

v. Overcrowding in immigration detention centres

Aside from the prisons, the immigration detention centres also face the issue of overcrowding. The immigration detention centres serves as a transfer point for

⁴ Zulkifli bin Omar. July 2000. Current Issues in Correctional Treatment and Effective Countermeasures. http://www.unafei.or.jp/english/pdf/PDF_rms/no57/57-24.pdf

⁵ The Star Online. 2 August 2013. 'Pemandu: Police statistics show violent crime on the rise' <http://www.thestar.com.my/News/Nation/2013/08/02/Crime-Pemandu-statistics/> [Accessed 21 April 2015]

⁶ Correctional Statistics for Asian and Pacific Conference of Correctional Administrators 2014. http://www.apcca.org/uploads/34th_APCCA_Statistics_2014_OCT_2014.pdf [Accessed 21 April 2015].

immigrants before they are deported back to their home countries. As of March 2015, there are currently 12 immigration detention depots in Malaysia.⁷

In 2013, SUHAKAM conducted visits to 9 immigration detention depots in various States of Malaysia. Based on these visits, it was found that most of these immigration detention depots were overcrowded where the number of detainees exceeded the capacity of the detention depots. It was said that the overcrowding was caused by the increase in the number of immigrants arrested during the operations carried out by the officers. In addition, some of the detention depots had been verified by the Public Works Department of Malaysia as obsolete and not safe for the detainees, such as the detention depots in Juru (Penang) and Tanah Merah (Kelantan).

The causes for overcrowding in the detention depots may also include the delay in response from embassies regarding these immigrants, as well as language barriers which created difficulties in identifying their home country.

1.7. In relation to the above, some of the human rights implications may include the following:

i. Right to Health of Prisoners

SUHAKAM conducted a thematic study on the right to health in prisons in 2014 and visited a number of prisons nationwide. Based on SUHAKAM's general observations, many of the prisoners have high levels of chronic and communicable diseases such as tuberculosis and scabies. With the issue of overcrowding, this may accelerate the spread of these diseases among other prisoners and aggravate the health conditions of these prisoners.

ii. Mental and psychological health of prisoners and prison wardens

As an effect of overcrowding, it may increase the social tension among the prisoners and lead to potential conflicts between them. In relation thereto, the prison wardens would also be under greater pressure in carrying out their duties in maintaining order among the prisoners and ensuring security in the prisons, in particular due to the shortage of staff.

2. Malaysian Government's Efforts in Addressing Over-incarceration and Overcrowding in the Malaysia

Amongst the efforts by the Malaysian Government to address the aforementioned issues, are as follows:

⁷ The Malaysian Insider. 28 March 2015. 'Immigration staff to 'guard' detention depots after Rela pulls out citing no funds – Bernama'. <http://www.themalaysianinsider.com/malaysia/article/immigration-staff-to-guard-detention-depots-after-rela-pulls-out-citing-no> [Accessed 22 April 2015].

2.1. Parole System⁸

- The parole system is implemented under the Prison Act (Amendment) 2008. It came into effect on 30 June 2008. It is based on the Australian parole system.
- The parole system in Malaysia aims to reduce overcrowding in prisons and the high maintenance costs borne by the Prison Department and the Malaysian Government.
- It would facilitate the reintegration of prisoners into their families and the society, which is one of the important aspects in the rehabilitation process of prisoners.
- According to the Section 46E of the Prison Act 1995 [Act 537], the eligibility criteria for any prisoners to be considered for parole include the following:
 - If he is sentenced to a minimum of one year imprisonment for any offence other than the offences prescribed in the Fourth Schedule contained in the Prison Act;
 - After he has served at least half of his term of imprisonment without taking into account the remission of sentence granted to him; and
 - After he has undergone a rehabilitation programme approved by the Commissioner General while serving his sentence of imprisonment.
- It is also highlighted that any prisoners who is serving a sentence of imprisonment for any offence prescribed in the Fourth Schedule of the Prison Act is not eligible for parole.

2.2. International transfer of prisoners programme

- Malaysia introduced a new legislation in 2012, namely the International Transfer of Prisoners Act 2012 [Act 754]. This Act would assist in addressing the increasing number of foreign prisoners in the country.
- The international transfer of prisoners programme is initiated by signing of treaty between countries to transfer prisoners.
- According to the Government, the programme is scheduled to be implemented before June 2015. As of December 2014, nine countries had expressed their interest to enter into an agreement with Malaysia on the transfer of international prisoners, namely Iran, Latvia, Bulgaria, Azerbaijan, the Philippines, Romania, Turkey, Saudi Arabia and South Korea.⁹

⁸ Ministry of Home Affairs. <http://www.moha.gov.my/index.php/en/maklumat-korporat/maklumat-bahagian/urusetia-lembara-parol> [Accessed on 22 April 2015].

⁹ The Sun Daily. 3 December 2014. 'Wan Junaidi: International transfer of prisoners programme in 2015'. <http://www.thesundaily.my/news/1257029> [Accessed 22 April 2015].

3. Alternatives to Detention in Malaysia

Currently, there are no alternatives to detention in Malaysia. However, SUHAKAM and a group of NGOs had been undertaking efforts to address the issue of children in immigration detention in Malaysia.

Children in Immigration Detention in Malaysia¹⁰

- 3.1. The issue of unaccompanied children in detention is commonly faced by most countries that open their doors to asylum seekers and refugees. Although Malaysia is not a party to the Convention on Refugees 1951, nonetheless, being a State Party to the Convention on the Rights of the Child, it is obligated to protect the rights of refugees and asylum-seeking children.
- 3.2. In view of this, SUHAKAM sees the need to support the Government in identifying and, where necessary, developing an amicable mechanism to ensure that effective protection and assistance is delivered to unaccompanied children in a systematic, comprehensive and integrated manner that is consistent with the principle of 'the best interest of the child'.
- 3.3. In Malaysia, there are currently twelve immigration detention centres (IDCs) which hold detainees including children. The children in detention are divided into the following categories:
 - Boys and girls under 12 years old (placed in female blocks)
 - Boys (13-18 years old) (placed in male blocks)
- 3.4. The undocumented migrants are detained in the detention centres before they are deported back to their home countries. Of the twelve IDCs, only one detention centre has a separate detention block for children. Particularly after an operation carried out by the Immigration Department in January-November 2014, the IDCs are now overcrowded and some of the children had to be sent to other centres in other parts of the country.
- 3.5. Based on SUHAKAM's observations during its visits to the detention centres, many unaccompanied children, mostly refugee and asylum-seeking children, were being detained together with adults in the same cell which not only goes contrary to the principle of separate detention, but also puts children at an increased risk of abuse and ill-treatment.
- 3.6. The children are provided with shelter, food and healthcare at the detention centres. However, they have no access to education facilities due to the nature of the temporary detention. It is highlighted that the Malaysian Government do not provide the cost of deportation, which are borne by the embassies and their family

¹⁰ Human Rights Commission of Malaysia (SUHAKAM). 2014. Annual Report of SUHAKAM.

members which further delays the deportation process, resulting in prolonged detention of the adults detained which affects the children as well.

- 3.7. On 21 March 2012, the Global Campaign to End Immigration Detention of Children was launched at the 19th session of the Human Rights Council in Geneva, Switzerland. In Malaysia, SUHAKAM and a group of non-governmental organisations (NGOs) jointly launched the same campaign on 2 April 2012. Subsequently in the same year, SUHAKAM and the NGOs had a meeting with the Immigration Department and the Ministry of Home Affairs to seek the cooperation of the authorities in order to address the issue of children in immigration detention centres. The Meeting agreed to form a Working Group comprising the relevant stakeholders.
- 3.8. Later in November 2013, SUHAKAM, in cooperation with the SUKA Society and the International Detention Coalition (IDC), organised a Roundtable Discussion (RTD) to promote awareness on the issue of children in immigration detention centres and to seek effective action on this matter. The RTD saw the attendance of representatives of relevant government agencies and other stakeholders such as the Office of the United Nations High Commissioner for Refugees (UNHCR), International Committee of the Red Cross, Voices of Children and UN Committee of Convention on the Right of the Child (CRC). The participants of the RTD emphasised the need to establish a working group and develop a pilot programme on alternatives that focuses on unaccompanied children.
- 3.9. In 2014, SUHAKAM presented a proposal to the Minister of Home Affairs, who supported the initiative and requested SUHAKAM to work with the Immigration Department. Subsequently, a Working Group was formed to study and make recommendations with respect to various models of alternatives to detention. The Members of the Working Group include the Immigration Department, SUHAKAM, the Attorney-General's Chambers, the Department of Social Welfare and civil society groups.
- 3.10. The Working Group had agreed to initiate a pilot project where unaccompanied minors and/ children would be the priority. Children with parents and guardians would not be the focus at this stage due to the detention status of their parents. The current focus is also limited to children in the immigration detention centres in Peninsular Malaysia.

4. Relevant Good Practices and/ or Experiences

4.1. Government Transformation Programme (GTP)¹¹

¹¹ Performance Management and Delivery Unit (PEMANDU). <http://www.pemandu.gov.my/gtp/> [Accessed on 22 April 2015].

- The Government Transformation Programme (GTP) is a broad-based programme of change to fundamentally transform the Malaysian Government into an efficient and people-centred institution. It is implemented under the purview of the Performance Management and Delivery Unit (PEMANDU).
- The GTP is a single blueprint that has been divided into three different phases with its own focus areas. The first phase of GTP was initiated in 2010. The second phase of GTP started in 2013 with the aim to further enhance the transformative initiative initiated in the first phase. The last phase of GTP in 2015-2020 would leverage on the changes brought about by the previous phases to establish new innovative governance structures that are people-centred.
- Under the GTP, several national key results areas (NKRAs) were identified and one of them was to reduce crime in the country. Under this NKRA, a few initiatives were introduced to assist ex-convicts to reintegrate into the society. These initiatives could be perceived as Malaysia's good practices in relation to the issue of over-incarceration and overcrowding in the prisons. The aforementioned initiatives¹² include the following:
 - i. **Industrial prison programme**
This aim of this programme is to provide prisoners with employment opportunities upon their release through vocational trainings. The prison in Kajang, Selangor was chosen to pilot this programme and a bakery had been established within the prison compound. It is expected to supply bread to four other prisons in addition to its own needs under the Self-Sufficient Programme.
 - ii. **After-release development programme**
Under the GTP, the Prison Department established 14 halfway-homes for ex-convicts who were homeless as they lacked a family home or family support. This programme started in May 2010. In the period of 2010-2013, a total of 840 ex-convicts were housed under this programme and 90 percent from these ex-convicts managed to find employment and none of them reoffended.
 - iii. **Improvement to the in-house rehabilitation programmes in prisons**
The Prison Department introduced a streaming process to separate prisoners based on their classification in order to ensure that the prisoners receive proper programmes and to separate first-time offenders from repeat offenders. The streaming process aimed to streamline and enhance the

¹² Performance Management and Delivery Unit (PEMANDU). 2013. Annual Report on Government Transformation Programme (GTP): Reducing Crime. http://www.pemandu.gov.my/gtp/annualreport2013/upload/file/Pemandu_GTP_AR2013_SPEAD_LOWRES_CRI.pdf [Accessed 22 April 2015].

delivery of rehabilitation programmes while ensuring that first-time offenders do not fall under the negative influence of hard-core criminals.

- These initiatives and programmes could indirectly reduce the level of over-incarceration and improve the situation of overcrowding in the prisons in the country.

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