

End Discrimination in the Administration of Criminal Justice in Malaysia

Lock-Up and Prison Reforms, including overcrowding

and pre-conviction detention, cannot be delayed

MADPET(Malaysians Against Death Penalty and Torture) is appalled with the discrimination in the administration of justice, overcrowding of Malaysian prisons and lock-up conditions as recently again disclosed by Lim Guan Eng after he spent overnight in the lock-up.

Lock-Up and Prison Reforms

Written by admin
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Lim Guan Eng was reported saying, “I had to change to the SPRM (MACC) orange T-shirt and slept on the wooden floor in the small lock-up (no pillow, no mattress),...”(Malaysiakini, 8/8/2020). It seems that he may be alone in the lock-up during his detention, but the norm is far worse when many are detained together in a single lock-up.

The conditions these suspects, not even accused persons, face in some of these lock-ups whilst under remand may be far worse even when compared to conditions of prison cells, which houses the convicted. Prison cells, for example, have beds, but not the case for lock-ups.

Repeated calls for reforms and improvement of Malaysian lock-ups and prison conditions, have yet to be addressed by the government, be it the past Barisan Nasional government, the Pakatan Harapan plus government or even the present Perikatan government.

Discrimination of victims of the Administration of Criminal Justice must end

Lim Guan Eng highlighted the differential treatment by the authorities compared to the treatment accorded to others prominent persons like the former premier Najib Razak.

Special treatment accorded to some politicians or personalities, however, is not the issue, but the discrimination against every other persons in Malaysia, who during investigation are forced to spend days in remand, staying in lock-ups which are sub-standard detention places compared to international standards and best practices.

When some of the recent politicians and prominent personalities, are being investigated, many are not even remanded, which means they do not have to spend days in police lock-ups, suffering not just deprivation of freedoms but also being subjected to poor living conditions in police lock-ups.

No remand is needed for the police or enforcement agencies to complete their investigations. Persons suspected of crimes can simply be asked to turn up at particular times for purpose of investigations. If, and only if, they refuse to cooperate, will there be any justification for remand – requiring them to be detained and kept in police lock-ups during investigations.

Over-crowded Prisons

Malaysian Prisons Department Deputy Director-general (Security and Correctional) Datuk Alzafry Mohamed Alnassif Mohamed Adahan, was recently reported saying that there are currently '68,000 prison inmates are currently housed in 42 prisons nationwide...' and that this '...number exceeded the prescribed capacity of 52,000...' "The number consists of 54,508 locals and 14,095 foreigners. Occupancy is increasing and if you follow the trend, the number will not decrease," he said...' (Sun Daily, 8/8/2020)

The then Minister responsible under the previous PH government, Datuk Liew Vui Keong also talked about prison overcrowding. 'Speaking on the severity of prison overcrowding here, Liew noted that one prison made prisoners sleep in shifts to mitigate.... This was due to lack of beds for a 10-person cell housing 20 prisoners, forcing them to take turns with 10 to stand while the other 10 sleep, he said.' (Malay Mail, 9/3/2019). At time, it was said that '...Malaysia could only accommodate a maximum of 45,000 prisoners, but said the current number of prisoners has reached over 66,000...'

Besides, the issue of human rights violations, the other concern is the financial implications to Malaysians. In 2019, the then Minister said that the '...daily cost for a prisoner ranges from RM38 to RM41,...'. This means that the minimum daily cost involved for the 65,222 prisoners would be at least over RM2.4 million...'. Likewise, Malaysians will be paying when persons are remanded in lock-ups for the purpose of investigations.

According to the World Prison Brief, who claims data obtained from the Malaysian government, a large number of persons detained in Malaysian prisons are not persons already convicted and serving out their sentence. 'In 2015, for example, there were a total of 51,602 persons in Malaysian prisons, and about 25.8% (13,000) of them were remand pre-trial prisoners.' These pre-trial detainees would include those poor that cannot afford bail and others who were denied bail, which would include those charged with one of the many offences listed under SOSMA.

Pre-conviction Detention and delayed trials can cause the innocent to plead guilty

Pre-conviction detention or punishment is unjust, a violation of human rights. Article 11(1) of the Universal Declaration of Human Rights states that "Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence." Punishment should best come only after one is convicted and sentenced by court after a fair trial.

Pre-conviction detention, with an uncertainty of when the trial will end, may even cause many an innocent person to simply plead guilty, for then, they can be certain as to when they will be freed to resume normal life.

After all, unlike the 'richer' accused, the possibility of an agreement with the prosecution to discontinue criminal proceedings if they return the fruits of their crime and/or part of it, this possibility is almost non-existent for ordinary accused.

Compensation for innocent for the detention suffered and other consequences

Malaysia needs a law that provides for compensation to innocent victims of criminal justice system, who are ultimately found not guilty and also those remanded who are never even charged. They justly must be compensated for the deprivation of liberty, loss of income and other negative consequences of detention. Thailand today have an act which addresses this, being the Damages for the Injured Person and. Compensation and Expense for the Accused in Criminal Case Act, B.E. 2544.

Such laws may also deter abuse of the powers by law enforcers, and may reduce unnecessary remand or other pre-conviction detentions.

Therefore, MADPET

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- Calls for the end of discrimination of the victims of the administration of justice system in Malaysia;

- Calls for an improvement and reform of lock-up and prison conditions to be in compliance with international standards and best practice;

- Calls for an end of the practice of remanding suspects for the purpose of investigations, safe for very serious crimes and for justified reasons of fear of absconding;

- Calls for the immediate release of all prisoners, who have yet to be tried and convicted, safe for those who have committed very serious crimes and/or have a high justifiable flight risk,

- Calls for speedy trials, for all the yet to be convicted in Malaysian prisons, which should end not later than 6 months;

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-Calls for Malaysia to introduce laws that will provide for just compensations to those who have been deprived their freedoms and rights, by reason of detention and otherwise, who are ultimately not convicted and/or found to be not guilty, and/or those that have not been even charged after spending days in remand;

MADPET(Malaysians Against Death Penalty and Torture)

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