



LESSON
Series 31

Prison Conditions and Complaint Mechanisms

Summary

This lesson examines the human rights of prisoners, both in terms of international standards, and the actual prison conditions in Hong Kong, Thailand and Malaysia. The lesson also looks at the available complaint mechanisms, through which prisoners may obtain redress for human rights violations.

Human Rights Correspondence School

[E-mail: hchool@ahrchk.org & Web: www.hchool.org]

A Project of the



Asian Human Rights Commission (AHRC)

19 Floor, Go-Up Commercial Building, 998 Canton Road
Kowloon, Hong Kong Tel: +(852) 2698-6339 Fax: +(852) 2698-6367

THEME: Prison conditions and complaint mechanisms

THE ISSUE

Prisoners should have the same human rights as everyone else, with certain limitations due to liberty restrictions. Existing human rights documents provide for this. However, in practice this is not the case. The conditions in many prisons around Asia are such that prisoners are denied many basic human rights, such as the right to adequate food, sanitation, health care. Along with these basic necessities, prisoners also have to suffer verbal and physical abuse at times. With all these violations, prisoners have few channels through which they can obtain redress.

THE LESSONS:

There are two lessons in this series. The lessons are based on a thesis by AHRC researcher Audrey Wolffs.

Lesson 1: the lesson examines the existing international human rights documents that apply to prisoners.

Lesson 2: the lesson consists of case studies of Hong Kong, Thailand and Malaysia with regard to prison conditions and complaint mechanisms for prisoners.

Lesson 1

A. Objective: To understand the rights of prisoners under the existing human rights documents.

The existing international human rights documents protect every human being. This means that prisoners are protected against human rights violations under the same documents as other people who are not deprived of their liberty. The international human rights standards for prisoners are either found in the Universal Declaration of Human Rights (UDHR), the United Nations Standard Minimum Rules for the Treatment of Prisoners (Standard Minimum Rules), the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Body of Principles) and the Basic Principles for the Treatment of Prisoners (Basic Principles). These are all documents that do not need to be ratified by states; states are not bound to comply with the provisions of these documents. However, it should be noted that these documents are all part of the United Nations system, and for this reason all states who are members of the UN have an obligation to undertake the provisions of these documents.

The most important provisions for prisoners in the UDHR are:

Article 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 8

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

The Standard Minimum Rules are the most comprehensive guidelines relating to prisoners, and constitute an authoritative guide similar to binding treaty standards. The Body of Principles and the Basic Principles both clearly reaffirm the principle that prisoners retain fundamental human rights:

Principle 6 of the Body of Principles

*No person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. * No circumstance whatever may be invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment.*

Principle 7

1. States should prohibit by law any act contrary to the rights and duties contained in these principles, make any such act subject to appropriate sanctions and conduct impartial investigations upon complaints.

** The term “cruel, inhuman or degrading treatment or punishment” should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental, including the holding of a detained or imprisoned person in conditions which deprive him, temporarily or permanently, of the use of any of his natural senses, such as sight or hearing, or of his awareness of place and the passing of time.*

Other international human rights standards consist of treaties, which need to be ratified by states before they are bound to implement the provisions into their domestic legislation. The most relevant treaties for the protection of the rights of prisoners are the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

Article 7 of the ICCPR is the same as article 5 of the UDHR and prohibits torture. In addition to this, article 10 states:

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation.

Concerning torture, the CAT has more details. Article 1 gives the following description:

1. For the purposes of this Convention, the term ‘torture’ means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent or incidental to lawful sanctions.

2. This article is without prejudice to any international instrument or national legislation, which does or may contain provisions of wider application.

Moreover, in 1992, the United Nations Human Rights Committee explained that states have a special duty to take care of detainees. The Committee said that, apart from not torturing or experimenting on detainees, states should also not place any extra hardships or constraints on them. In other words, these persons must have the

same rights guaranteed as those of free persons. They have the same rights under the ICCPR, except the rights lost because they have been physically restricted. Significantly, the Human Rights Committee also stressed that these rights are universal, and the state cannot limit them by claiming that it does not have enough resources to take care of detainees properly.

B. Questions For Discussion

1. Do you think these guidelines/provisions are sufficient (even theoretically) for the protection of prisoners? How can they be improved?
2. In your opinion, what kind of rights should prisoners have? How should they differ from the rights of other individuals? Do prisoners in your country have their rights protected?
3. Discuss a new set of principles relating to prisoners, encompassing answers from the previous two questions.

Lesson 2

A. Objective: To understand the prison conditions and the complaint mechanisms available to prisoners in Hong Kong, Thailand and Malaysia. Each country study will be split into three sections:

1. Prison conditions
2. Treatment of prisoners
3. Complaint mechanisms and consequences

HONG KONG

Hong Kong is bound to comply with the provisions of the ICCPR and the CAT through the Sino-British Joint Declaration, which states that the treaties applying to Hong Kong prior to 1 July 1997 will continue to apply after that date. The Hong Kong legal system is based on common law, which is supplemented with a large amount of local legislation. The main law concerning prisoners is the Prison Ordinance, which is the basis for the Prison Rules. Together these documents set out the basic ground rules of Hong Kong's correctional system.

1. Prison conditions

a. Overcrowding

- Prisons in Hong Kong have been overcrowded for several years already, in particular the maximum security prisons. For instance, Stanley Prison has 2032 inmates even though its capacity is 1409.
- The situation is even worse for the women's prisons. At the Asian and Pacific Conference of Correctional Administrators, Hong Kong representatives stated that on 26 July 2002, the Tai Lam Centre for Women, Victoria Prison (female section) and Chi Ma Wan Correctional Institution were operating at 228 per cent, 189 per cent and 178 per cent of their capacity respectively.
- The total population for all penal institutions in March 2003 was 12,100. With a capacity of 10,963, the population is 1,137 above capacity.
- Hong Kong prisons consist of both cellular and dormitory accommodations. Cells are mostly found in maximum security prisons for men, while the rest of Hong Kong's prisons have dormitories. The dormitories are of various sizes and generally hold between 10-60 prisoners. Cells generally range in size from 60-90 square feet and they usually hold more than one prisoner. Only male Category A prisoners [prisoners are divided in categories A-D, depending on the seriousness of their crime - prisoners with at least 12 years imprisonment are in category A, while those with less than six months imprisonment are in category D] are always held in individual cells, because of their greater perceived dangerousness. For the other prisoners it means that there are two beds in a cell that is built to hold only one person.
- Another consequence of the overcrowding is the accommodation of Category C prisoners in maximum security prisons such as Stanley and Shek Pik Prison. This means that prisoners with a lower sentence are nevertheless subjected to the high security rules of the maximum security prison. An example is that Category C prisoners now receive closed visits, whereas normally Category C prisoners are allowed to have open visits where they can touch their visitors.

2. Treatment of prisoners

Article 10.3 of the ICCPR says: *The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation.* Rehabilitation often does not receive much attention, while it is important, both for the well being of the prisoner, as well as for the protection of the society for prevention of recidivism.

a. Visits and telephone calls

- According to Hong Kong law, Prison Rule 48 states that no persons, other than the relatives and friends of a prisoner, shall be allowed to visit him except by special authority. In addition, the law states that: *They shall be allowed to visit a prisoner twice a month and no more than 3 persons shall be allowed at one time.* The duration of a visit is 30 minutes.
- Some Hong Kong prisons allow two additional visits per month. Nevertheless, even with these two extra visits the visits are too infrequent and too short to maintain close relationships with family and friends.
- For many people it takes about an hour to get to the prison itself. In the prison, to subscribe for the visit and to bring the prisoner to the visiting room, the visitor has to wait for another approximate half-hour to an hour. In total for an average visitor it takes two to three hours of traveling and waiting just to have a talk for only 30 minutes. Knowing that all visiting hours end at the latest at 5:00 PM (and the visitor has to arrive at least half an hour before the end of the visiting time), during weekdays it is not possible for a full-time employed visitor to visit the prisoner. In addition, there is a problem when there are more persons who want to visit a prisoner at different times. The visitors do not know who has already visited the prisoner. It is possible that family or friends make the trip to the prison and are not allowed to visit because someone else already spent the last half-hour of the month. It is therefore obvious that if the prisoner wants to have regular visits of the same person, he has to restrict himself to allow only one or two persons to visit him.
- Prisoners do not have the right to make telephone calls, which makes visits even more important for them. Foreign prisoners are particularly disadvantaged by this as they usually do not receive any visits.
- The Hong Kong Human Rights Monitor stated that prison officials told them that prisoners can request to make collect phone calls from the administrative areas of the prison. Although they said that such requests are generally granted when prisoners have a compelling reason, the officials appear to have untrammelled discretion to grant or deny such requests. Legitimate justifications for making a phone call include sick family members or pressing legal matters. An example of no legitimate justification was an older woman who was already in prison for 14 years. In that time, she had never made a phone call. One day she wanted to phone her mother who she had not spoken to for all these years in prison. On her request to make a phone call the officer asked her the reason for calling. She did not have a specific reason, she just wanted to talk to her mother. The request was denied.

b. Structure in prison

- Prisoners are treated differently depending on the crime they committed, and depending on their nationality.

Prisoners who are convicted for sexual offences are not easily accepted in the prison community and they can face beatings by other prisoners. Sometimes they even have to fear for their lives. Therefore, these prisoners can choose whether they want to join the prison community or to be in confinement to be protected. The last option is good for safety, but it is almost the same as being in disciplinary confinement. The prisoners are held in their cells approximately 23 hours per day, leaving the cells only for exercise and for showers (meals are taken in the cells). They cannot attend workshops like other prisoners. The result is that the inmate has almost no human contact. This can be dangerous for prisoners who have a long-term sentence.

- Contrary to the sexual offenders, persons who are convicted for murder are the most powerful. This is because of the assumed danger.
- In terms of nationality, there is a difference between Hong Kong citizens and foreigners including Mainland Chinese. Most prisoners that are Hong Kong citizens are organized in gangs/triads and the members protect, support and help each other. Each gang has one leader who is democratically elected by the gang and he is their representative. He negotiates with the officers and keeps order in the gang. If there is a problem from the side of (a member of) the gang, the leader will first consult the officers about the problem and try to solve it. Since the leader has more power than a prisoner on his own, the chance for finding a compromise with the officers is bigger. Similarly, when the officers have problems with some gang members, they consult the leader to make sure that the problem will be solved. However, in return for order and obedience, the leader can demand a lot of privileges from prison officers, such as cigarettes or the allowance of gambling.

Although the prison conditions in Hong Kong are not very bad, the Correctional Services Department (CSD) and prison officers are very careful with providing information about the prison system and the actual life in prison. This can be illustrated by the fact that prison guards ordered one of the interviewed prisoners not to talk about the prison conditions and only to talk about himself. In addition, during the visit a guard was present at all times within sight and sound of the conversation.

Another prisoner was informed that the officers read the letter, written by the author, with the explanation about the research and the request to be put on the list of allowed visitors. Also to him, they said that they would keep a close eye on him during the visit.

3. Complaints and consequences

The penal management provides various channels of complaints for all persons who have dissatisfaction with the CSD and its staff members. The channels can be divided into internal and external channels. Within the

internal channel, prisoners can address their complaints to prison officers of their institution and they can address a complaint to the Complaints Investigation Unit (CIU). The external channels are not directly connected to the CSD; examples of external channels are the Chief Executive, Members of the Legislative Council and the Executive Council, the Office of the Ombudsman, Equal Opportunities Commission, Office of the Privacy Commissioner for Personal Data, the Independent Commission Against Corruption and the Hong Kong Police Force. However, these channels only have jurisdiction over a small, specialized area and are not created to monitor the prisoners' situation. The only channel that is specifically set up for this purpose is the Justice of the Peace (JP). This mechanism is considered to be the best external channel that is available for prisoners. For our purposes, only the major external mechanisms will be discussed, starting with the Office of the Ombudsman, then the Judicial oversight and ending with the Justice of the Peace.

a. Internal complaint channels

i. Prison officers

The most direct channel to address a complaint to is the officer on duty or the head of the institution. A prisoner can explain the situation and the officer can decide whether the complaint should be substantiated. If he decides not to substantiate, the prisoner has the possibility to go to a higher ranking officer to file his complaint.

Prisoners have the right to choose any complaint channel they give preference to, but in practice, it is wiser to try to solve a problem within the prison than to go immediately to an external channel such as the Justice of the Peace.

If the prisoner wants to complain about the misbehavior of one of the prison officers to the internal channel, he has to address his complaint to one of the officer's colleagues. However, it is difficult for this officer to make an objective decision. In case he would agree with the prisoner, it could affect his working relationship with the other prison officer. Interviewed persons agreed that in practice it looked like the prison officers often protected each other. For this reason, such cases should be addressed to and investigated by an independent, external channel.

ii. The Complaints Investigation Unit (CIU)

The CIU is an integral part of the CSD providing investigative services on complaints. It consists of 13 investigators comprising one Superintendent, one Chief Officer, three Principal Officers, five Officers and three Assistant officers. They mainly handle and investigate complaints/requests raised by inmates as well as members

of the public in relation to the day-to-day operation of the Department.

After investigation, its reports are tabled for examination and endorsement at the Correctional Services Department Complaints Committee (CSDCC), which is chaired by the Civil Secretary who is independent of the uniformed stream. Complainants who are not satisfied with the findings of investigations may submit further evidence, if any, to the Committee for re-examination of the cases, or appeal directly to the Commissioner.

The CSD has provided the CIU as an internal channel for complaints and the Case Review Committee to examine, endorse and review the investigation of reportable complaints. These complaints can consist of, for example, unnecessary force, neglect of duty or abuse of authority. Complaints about daily routines, treatment and services, operational procedures, working routines and others are handled at the institutional level and fall under the category of non-reportable complaints. The CIU and the respective review mechanism primarily cover reportable complaints. This means that for non-reportable complaints, which in 1997 constituted 40 per cent of the received complaints, there was no clearly defined review/appeal mechanism, although complainants could always approach the Commissioner of the CSD. In both cases, the detailed review/appeal mechanisms were not well-published or published in written forms for the benefits of users.

b. External complaint channels

i. Office of the Ombudsman

The Office of the Ombudsman of Hong Kong was established in 1989. It was formally delinked from the Government after the Ombudsman (Amendment) Ordinance came into operation on 19 December 2001. The Ombudsman is appointed by the Chief Executive and serves as the community's watchdog to ensure that:

- Bureaucratic constraints do not interfere with administrative fairness
- Public authorities are readily accessible to the public
- Abuses of power are prevented
- Wrongs are righted
- Facts are pointed out when public officers are unjustly accused
- Human rights are protected
- The public sector continues to improve quality and efficiency

The powers and jurisdictions of the Ombudsman include investigation of complaints of maladministration against all government departments (except the Hong Kong Police Force and the Independent Commission against Corruption) and 17 major statutory organizations.

With a prison team of five investigators, the Ombudsman has the power of direct investigation, and can even demand official statements under oath. The Ombudsman has a limited mandate to hear complaints: most notably, they cannot involve a crime (thus no cases of excessive force by guards) and they must be submitted by the prisoners themselves, not by relatives. The Ombudsman does not visit prisons, but like the JPs the Ombudsman is one of the so-called “Specified Persons”, which means that any letter to a prisoner from, or from a prisoner to the Ombudsman should not be opened or searched except in the presence of the prisoner or unless the prisoner indicated that he did not wish to be present; and should not be read.

If the complaint falls within the office’s jurisdiction, it is normally referred to the CSD through an internal complaint handling procedure. Attempts are made usually to successfully resolve the complaint at this level. If, however, the complaint cannot be satisfactorily resolved and it appears that an injustice has occurred, then the Ombudsman’s office undertakes an in-depth investigation that culminates in a judgment and recommendations. If these recommendations are not acted upon, the Ombudsman may submit a report to the Chief Executive.

The disadvantage of the Ombudsman is that its mandate is extremely complaint-specific and reactive: it does not conduct broad investigations or formulate broad recommendations for improving the prison system.

ii. Judicial oversight

Prisoners occasionally go to court to challenge their treatment. These cases are extremely important because of the judiciary’s broad power to protect the rights of Hong Kong residents and, in particular, to enforce the protections contained in the Bill of Rights. It should be emphasized, however, that only few prisoners have the financial resources necessary to litigate cases involving prison abuses. Besides their own lawyer’s fees, which can obviously be substantial, under Hong Kong law the losing parties may be forced to pay the entire costs of the case. It may be possible for prisoners to obtain free legal services under the Legal Aid scheme in some instances, but it is not easy to do so.

iii. Justice of the Peace

Justices of the Peace (JPs) are counted as the primary mechanism for outside monitoring of Hong Kong’s prisons. Their main function is to visit prisons and other institutions. During these visits, prisoners can talk to the JPs and make a complaint. Under section 3.1 of the Justice of the Peace Ordinance (further JP Ordinance) JPs are appointed by the Chief Executive. There are two different JPs, namely official and non-official JPs. Official JPs are persons holding any offices in the public service. Non-official JPs are other persons. At 31 December 2001, there were 335 official JPs and 783 non-official JPs.

According to the Prison Rules, each prison is to be visited by two JPs (preferably one official and one non-official) every two weeks. Within this period, JPs have considerable flexibility to choose the date and time of their visits, and they can arrive without giving prior notice. JPs normally receive a 15–30 minutes orientation from the facility’s Superintendent and then they tour the facility in the company of the Superintendent or a high-ranking officer. Although the amount of time spent at the facility varies according to its size and the JPs’ preferences, they normally spend between one and a half to three hours per visit.

In handling complaint cases, JPs can either initiate investigative actions by making personal inquiries into the complaints (such as seeking background information from staff of the institutions and examining relevant records and documents), or refer them to the concerned institutions for follow-up actions. Regarding the complaint cases referred by JPs to the institutions for follow-up actions on their behalf, the Departments concerned advise the JPs of the outcome of their investigations in writing. JPs are at liberty to instigate any further investigations personally, as they consider necessary. For requests or enquiries made to JPs, the cases are referred to the management of the institutions for follow-up actions. JPs are also informed of the follow-up actions taken.

Power of JPs in practice

a) Qualification and expertise

Section 3 of the JP Ordinance provides that the Chief Executive may appoint “any person...whom he considers to be fit and proper.” Whether somebody is fit and proper depends on the Chief Executive’s opinion and interpretation. It would be expected that independent persons with experience and a background in prison conditions, counseling and human rights would be most fit and proper. However, in practice, these criteria are not used and being a JP is more an honorary job. Official JPs are the holders of any office in the public service and non-official JPs are in general well-recognized members of the society. Even though some may have appropriate experience, the majority are not familiar with prisons/prisoners. This results in their inability to criticize the prison system.

Being a JP is not a full time job. On average, each non-official JP conducts only 1.5 visits per year, while each official JP conducts 3 visits per year. JPs do not get any specific training except for a briefing for newly appointed JPs and a seminar for non-official JPs every year, which was recently implemented by the Administration Wing. But this is not enough to educate the JPs and they stay ill equipped to deal with a comprehensive examination of prison conditions. As a result, JPs frequently focus on superficial issues such as the quality of the food. Another problem is that JPs do not visit the same prison every time. This lack of continuity makes it difficult for them to follow-up on the implementation of recommendations or to monitor the resolution of a

prisoner's complaint. It also negatively affects the JPs' ability to gain familiarity with the prison conditions, as well as with the prison's staff and prisoners.

b) Power of JPs is restricted to prisoners themselves

JPs are only allowed to receive and investigate complaints made by prisoners themselves. However, it is not always possible for a prisoner to file a complaint himself. It is possible that officers do not allow him to see a JP or he is afraid of retaliation after making a complaint. Therefore, to protect the prisoner and to have more channels to monitor the prison conditions, family, friends and non-governmental organizations should have the opportunity to file a complaint about a prisoner's situation with a JP as well.

All these factors influence the quality of the visit. The lack of training, experience, the small number of visits and the lack of continuity prevent JPs to be able to really criticize the correctional system. An illustration of this is that during the years 2000 and 2001, JPs were in total 5 times unsatisfied about the prison facilities, while always satisfied with the services provided by the CSD. Altogether, it can be wondered if JPs comply with the requirements "qualified and experienced" as mentioned in rule 55 of the Standard Minimum Rules.

c) Conducting surprise visits

Section 5 of the JP Ordinance authorizes JPs to visit any custodial institution without any restrictions. Also, Rule 222.2 of the Prison Rules states that the prisons and hostels shall be open to the JPs at all reasonable times during their tour of duty. Even though surprise visits are necessary to ensure that the JPs have uncensored exposure to prison conditions, in practice it never happens that a JP visits a prison unannounced. In 1997 one JP tried to conduct a surprise visit. She was not immediately allowed to come in, which proved that the institution was not prepared for such a visit.

d) Protecting privacy of interviews between the JP and the prisoner

The Prison Rules specifically mandate that a high-ranking officer accompany the JPs around the prison and bring before them any prisoners wishing to speak to them. The rules do not prevent interviews in private, but the normal practice for JPs to speak with prisoners is in the presence of prison officials. The lack of confidential communications between prisoners and JPs is in violation with the Standard Minimum Rules, which state that during prison inspections, "the prisoner shall have the opportunity to talk to the inspector or to any other inspecting officer without the director [of the prison] or other members of the [prison] staff being present." The Ombudsman confirmed the necessity in its report in 1998 stating:

“Insofar as the CSD was concerned, this Office found that the prevailing arrangement for the VJs [Justice of the Peace is also called Visiting Justice (VJ)] to hear inmate complaints in front of the head of the correctional institution was inappropriate. This was because the VJs as an external independent complaint channel should hear inmates’ complaints in private. Otherwise it would compromise the impartiality and credibility of the VJ system.”

Despite the Standard Minimum Rules and this public statement of the Ombudsman, in domestic law there is still no provision that states that it is mandatory for JPs to have private interviews with prisoners.

e) The power to investigate complaints

Rule 228 of the Prison Rules includes the duty of JPs to investigate complaints. In practice, however, the JPs often fail to discharge their duty to investigate in a meaningful manner. Generally, JPs refer inmate complaints to the CSD for investigation, and the CSD will subsequently provide the JPs with a brief investigation report. The CSD, instead of the JPs, will also be responsible for informing the complainant of the outcome of the investigation. The JPs should not delegate their responsibility to investigate complaints to the CSD, which, as a party with a conflict of interest, may be unable to conduct an impartial investigation.

Since 1996, JPs have also been able to refer complaints to the Ombudsman, if they are unsatisfied with the outcome of the CSD investigation. The Ombudsman Ordinance, however, requires that the findings of Ombudsman investigations be kept secret and cannot be revealed to the Justices of the Peace. Consequently, the Ombudsman reports that the “present arrangement is found to have discouraged [visiting JPs] from referring such complaints to the Ombudsman as they will not be informed of the results.”

3. Problems relating to making complaints

i. Prevention of complaints

The right of a prisoner to address his complaint to visiting JPs is often undermined by the CSD. The prisoners are discouraged to make complaints because of the method that is used. When JPs enter a workshop, which consists of approximately 45 prisoners, an officer asks publicly who wants to make a complaint. If so, the prisoner has to raise his hand. This means that everyone will know that this prisoner is going to complain and probably they will also know the nature of this complaint. It is not surprising that it is very rare that prisoners actually raise their hands. Before the JPs visit the prison, the officers will inform the prisoners and ask if they would like to make a complaint. If so, the officers try to find out the nature of the complaint. If they think they are

safe even if the prisoner complains, they will let him make the complaint. But if it is about a sensitive issue, the officers will make sure that the prisoners will “miss” the visit, for instance through mandatory drug testing at the time of the JP visit, or simply locking the prisoner in a room.

ii. Retaliation because of complaints

Besides being prevented from making complaints, all interviewed prisoners reported the use of reprisals against individuals after filing a complaint. Officers can both punish and give privileges to prisoners. Prison Rule 61 has unspecified norms for this, stating that:

Every prisoner shall be guilty of an offence against prison discipline if he ... In any way offends good order and discipline;

It is possible for an officer to accuse a prisoner of committing an offence under these unspecified norms. The prisoner who commits any offence under article 61 can get any punishment described under article 63. These punishments are: issuing a caution, separate confinement, forfeiture of remission, forfeiture of privileges, deprivation of earnings or deduction from earnings. During separate confinement, the prisoner also loses his privileges. This can be the loss of a radio, cassette player and non-academic materials. In addition, they are not allowed to smoke.

Besides the punishments under the Prison Rules, officers can also disadvantage prisoners in other ways. To keep order officers sometimes permit more than the rules officially allow. This means that activities such as gambling and selling cigarettes or different diets are in practice tolerated. However, in this case, prisoners are dependent on the goodwill of the officers. Also officers can transfer the prisoner from a low security facility to a higher security facility or can create a short delay when the prisoner has visitors, resulting in a little less time per visit.

POINTS FOR REVIEW

* Hong Kong’s main complaint mechanism is the Justices of the Peace, however, due to their inexperience they do not offer adequate means of redress for prisoners. Discuss how this can be remedied.

* Overall, how do you find the conditions of Hong Kong prisons in comparison to those of your country? Are there lessons to be learnt from the Hong Kong situation for your own prisons, or vice versa?

THAILAND

Thailand has ratified the ICCPR but not the CAT. However, article 7 of the ICCPR still prohibits Thailand to use torture. The correctional system in Thailand comes under the administration of the Department of Corrections, Ministry of Interior. The Department's main responsibilities are to execute penal sentences imposed by the Courts and any lawful orders. The implementation of these responsibilities is carried out by means consistent with procedures, and measures stipulated in laws. The Criminal Procedure Code B.E. 2477 (1934), The Penal Code B.E. 2499 (1956), the Penitentiary Act B.E. 2479 (1936) are a few of the laws which govern the Department.

1. Prison conditions

a. Overcrowding

- At the end of 2000 Amnesty International reported in its annual report that about 200,000 prisoners nationwide were held in prisons with a capacity of 80,000. Since then the number of prisoners has only increased and is now even more than 250,000.
- In Thailand most prisoners are detained in dormitories. Unlike a single cell, which has limited space, there is no barricade in a dormitory to prevent overcrowding in each unit. Because of the overcrowding there are prisons with units containing 150-180 prisoners although its design capacity is 60-80 prisoners. Other dormitories, for example in Bang Kwang Prison, are 6 by 4 meters and contain 23-26 prisoners. Bang Kwang's original capacity was approximately 4,000 inmates, however, currently there are 8,000 inmates.
- Brian Mounsey, a former prisoner in Bang Kwang Prison describes the conditions in the dormitories of this prison: "23 of us shoulder to shoulder, toe to toe, sleeping on a concrete floor in a cell, the size of a modest living room in a council house. Not very healthy. If one gets a cold or scabies (both permanent conditions) all or most get it, unavoidable when you're so full and packed in."
- As for the freedom of movement, prisoners in Thailand are detained 14 hours in these types of units of confinement each day. With the overcrowding problems, such long hours of detention could affect the prisoners adversely.
- Another example is a Thai women's prison where the height of the dormitories' ceiling was divided into halves, resulting in double capacity in the prison, but very low ceilings in the dormitories.
- Article 10 of the Standard Minimum Rules states: *All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and*

ventilation. The article does not give any specific numbers of the amount of space that a prisoner should get, but floor space of less than one square meter is not spacious or healthy. The warm and humid weather in the summer makes the living conditions even worse.

- Even though the prison population is growing, there is no proportional increase of prison staff. Since 1992, with a ratio of 1 to 8, the staff to prisoner ratio has fallen almost every year (with the exception of 1996 and 2002). In 2002 the ratio was as low as 1 to 23. Starting 2003 the ratio was reported to be 1 to 25. Thai prisons solve the understaffing problem by using the “trusty” system. In this system, certain inmates are selected to perform custodial work such as helping staff to keep order and peace. This is prohibited by article 28.1 of the Standard Minimum Rules: *No prisoner shall be employed, in the services of the institution, in any disciplinary activity*. By becoming a trusty (also called “blueshirts”) the inmates are entitled to more privileges than ordinary inmates are. This often results in abuse and corruption.

2. Treatment of prisoners

a. Malnutrition

The Standard Minimum Rules state in article 20: *Every prisoner shall be provided by the administration at the usual hours with food of nutritional value adequate for health and strength of wholesome quality and well prepared and served. 2. Drinking water shall be available to every prisoner whenever he needs it*. Despite this provision, the prison authorities do not always provide necessities such as food and clean water. According to Thai law, article 77 of the Ministerial Regulations states that prisoners are to be provided with at least two meals a day. Each meal shall consist of rice or another substitute and a side dish or other substitute. However, in many prisons prisoners only get one small portion of rice once a day. This is the consequence of a food budget of 29 Thai Baht per day, which can only provide low quality of food services.

- A prisoner at Klong Prem Prison stated that the meals here consisted of rice of such low quality that it is not for sale outside prison. In addition, the water that is provided by the correctional authorities is reportedly dirty and causes diarrhea among prisoners who drink it.
- In Klong Prem Prison many prisoners put money together and make their own food. The food or ingredients for the food are bribed from the guards or bought from the prison restaurant. Also family, friends or international relief organizations are allowed to supply the prisoners with food.

b. Torture and ill treatment

Even though Thailand has not ratified the CAT, there are other international documents that talk about torture or cruel, inhuman or degrading treatment such as article 7 of the ICCPR, and article 7 of the Body of Principles. In addition, article 10 of the ICCPR (as well as Principle 1 of the Body of Principles and article 1 of the Basic Principles) mandates that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. Article 31 of the Standard Minimum Rules says that corporal punishment, punishment by placing in a dark cell, and all cruel, inhuman or degrading punishments have to be completely prohibited as punishments for disciplinary offences.

Within domestic law section 4 of the Constitution of Thailand states: *The human dignity, right and liberty of the people shall be protected.* Section 31 of the Constitution states: *A person shall enjoy the right and liberty in his or her life and person. A torture, brutal act, or punishment by a cruel or inhuman means shall not be permitted; provided, however, that punishment by death penalty as provided by law shall not be deemed the punishment by a cruel or inhumane means under this paragraph. No arrest, detention or search of person or act affecting the right and liberty under paragraph one shall be made except by virtue of the law.*

- Despite these international and even national laws, torture is so common as to be an integral part of prison life. Convicted criminals are ill treated by prison guards as well as by other inmates (often trusties). This abuse, which generally involves beatings and kicks, is mostly used as a punishment for suspicion of breaking prison rules. One of the rules in Bang Kwang Prison is that Thai inmates have to bow when an officer passes. If they do not bow, the officer hits the prisoner with his (wooden) baton. After being hit, the inmate has to thank the officer for being punished.
- Shouting or quarrelling is penalized by the forced wearing of leg chains weighing more than 20 kilograms. This shackling in heavy leg irons is routine for prisoners on death row in Bang Kwang Prison, although it is not permitted under Thai law.
- Besides shackling, solitary confinement is frequently imposed, with the prisoner being sent to the “jungle”. On the first day of such punishment the prisoner is forced to sign a paper written in Thai which states that he accepts the punishment and the prisoner is then put into a dark room resembling an empty grave. The duration of the punishment is usually extended past the original three months and most prisoners finish the punishment with some type of skin disease.
- The Amnesty International Annual Report 2002 reported: “Five inmates were reportedly beaten to death by prison guards in April when they attempted to escape from Klong Prem Prison. Beatings of African and Burmese prisoners by other prisoners under the supervision of guards were reported in Lard Yao Prison.”

- Also a common method of torture or ill treatment are acts of sexual violence. Such acts include rape and other forms of sexual abuse, ‘virginity testing’, sexually offensive language and touching. In overcrowded prisons with little privacy and inadequate supervision prisoners are easy victims of sexual abuse or sexual intimidation. Victims are both men and women.
- Apart from ill treatment by prison officers, many acts of violence occur between prisoners themselves. However, most problems are caused by trusties. Prisoners pay high amounts to get this position. When they become a trusty, they get certain privileges. They have the power to search other inmates and their belongings in the absence of a guard, and they are allowed to carry sticks like the guards, thereby creating tension in the yard. In these circumstances the trusties have absolute power to beat and torture other inmates if they do not obey their orders. Many people are said to be killed by these trusties. In addition, because the trusties work for the officers, the officers trust and believe the trusties and therefore it is easy for a trusty to set up a fellow inmate, for example for drugs or to make him go to solitary confinement.

c. Bad sanitation

The Standard Minimum Rules state the following about personal hygiene:

15. Prisoners shall be required to keep their persons clean, and to this end they shall be provided with water and with such toilet articles as are necessary for health and cleanliness.

16. In order that prisoners may maintain a good appearance compatible with their self-respect, facilities shall be provided for the proper care of the hair and beard, and men shall be enabled to shave regularly.

- Foreign inmates from building 2, Bang Kwang Prison, describe in a letter to the Government the sanitation situation:

“We are also demanding that the prison upgrade the sanitary conditions, which at present is as primitive as that of the Stone Ages. Prisoners are forced to shower out of horse troughs, which are filled with filthy water pumped from the local river. We demand the installation of hot and cold clean running water. We also call for a proper sewerage system to be constructed, the excretion of prisoners is stored in concrete vaults, which on an annual basis is removed and buried in the prison yard. The general stench of the prison is nauseating. The present open sewerage system emits toxic fumes, which has resulted in many prisoners showing asthmatic symptoms, severe headaches and loss of memory. We are also insisting that the authorities provide all prisoners, Asians, Western foreigners and Thai inmates on a fortnightly basis with toiletries. This should include soap, shampoo, toothpaste, shaving foam, razor blades, washing powder and toilet paper. At present the standard of personal hygiene is shockingly low, these supplies would definitely reduce the already endemic spread of skin diseases.”

d. Diseases and medical care

- With regard to prison medical care, prisoners should receive the same care as they generally would have if they were not in prison. Principle 9 of the Basic Principles states: *Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation.* In addition, articles 22-27 Standard Minimum Rules describe the right to medical care. Bangkok Post reported on 11 February 2003 that an increasing number of prison inmates are suffering from severe stress caused by overcrowded cells. Apichai Mongkhol, deputy director-general of the Mental Health Department, said a survey two years ago showed that 63 per cent of inmates suffered mental health problems and very few were given treatment. The rapid increase in the number of prisoners since the year 2000 had worsened the problem of overcrowded cells, the main cause of stress.
- The survey, at Bang Kwang and Krungthep prisons, showed that 11.4 per cent of prisoners showed signs of being suicidal, while 14.7 per cent had anti-social personality disorders. A psychiatrist said a lack of staff, limited budget and lack of interest in mental illness were big problems. “Many prisoners are chained up unnecessarily because warders don’t know how to deal with prisoners who become aggressive.”
- While the desire to commit suicide was higher among female prisoners (20.1 per cent) than male (12.4 per cent), anti-social behaviour was a bigger problem among men (14.2 per cent) than women (5.7 per cent). Another big cause of severe mental health problems was amphetamine addiction (26.2 per cent), amphetamine use (19.1 per cent), alcohol consumption (16.9 per cent) and alcohol addiction (12.2 per cent).
- Besides the overcrowding, insufficient food or poor diet leads to many cases of malnutrition, semi-starvation or even death. The lack of good quality and quantity of food and water is a cause for many easily transferable diseases, which can be very dangerous, especially in overcrowded prisons. In addition, torture weakens a prisoner and because of the failure to protect inmates from sexual abuse by other inmates or guards, HIV/AIDS is a common disease in many prisons and appears in a much higher rate in prisons than outside.
- The consequence of all these factors, separately or combined, is a high rate of people with diseases and/or illnesses. With more illnesses in prisons, more medical care is needed. However, although the Central Prison Hospital staff is dedicated, they are extremely under funded. They receive per patient per year, less than US\$ 5. “Many prisoners are ill. TB and HIV are rife. The medical care budget is grossly inadequate”, said Dr. Kietisak Vechongvan about Bang Kwang Prison. “The prison hospital is understaffed and under stocked. There is no dental care and most of the older prisoners’ teeth have long since rotted.”
- The consequence is that many prisoners with a wide variety of diseases, some of them life threatening, receive no treatment. Because of this, many prisoners are alleged to die from curable diseases, which have gone untreated. Amnesty International reports that if inmates become seriously ill at night, no prison official

responds to call for help from fellow prisoners. Some of them die in their cells but the bodies are not removed until the following morning.

e. Structure in prison

- There is a difference in the approach of the prison officers towards Thai prisoners and towards foreign prisoners, especially those from western countries, like the United Kingdom and the Netherlands. These prisoners get support from their embassies in several ways. The diplomats can visit the prisoners in special visiting rooms and can speak to them freely and in private by speaking in their native tongue, for example Dutch. Because the diplomats have a high international position, they are capable to start any international action if any human rights violation against one of the foreign inmates occurs. This makes the officers more careful in their treatment towards the prisoners. In addition to the visits the embassy often helps with practical things, such as providing them with vitamins. Also they can help by making requests on behalf of the prisoners. An example is that a Dutch prisoner preferred to stay alone in his dormitory during the day instead of walking around on the outside compound where he is surrounded by 900 other prisoners of which a lot are insane or using drugs. The embassy made a request to the prison authorities asking if the prisoner could stay in his dormitory and the request was approved. Now the prisoner can work, read and write quietly during the day.
- Apart from the privileges that foreign western prisoners have, the position of a prisoner and his prison conditions mainly depend on the amount of money he has. Prison guards do not have a high salary. Therefore, they are willing to make life easier for a prisoner in return for (a lot of) money. It is used every day and for anything. The following are only a few examples. A Dutch prisoner in Bang Kwang Prison said that his situation and that of his foreign friends is relatively good. Because they all have enough money, it is possible for them to 'lease' their own dormitory. Four times a year they go to the officer's room and give him an envelope with money. In return for this money, they are allowed to stay with a small number of prisoners in their own dormitory. For these prisoners it is also possible to eat good food. Every week they give the guard a list with things to buy and the guard gets 20 per cent of the amount of money himself. With this food, they are able to cook their own meals. In addition, other goods like illegal drugs, medicines and even telephones are bought this way.
- Besides goods, also privileges can be bought. Prisoners can pay high amounts to become a trusty, to get rid of their chains or to be transferred or stay in a certain building.

3. Complaints and consequences

a. Internal complaint channels

According to the Ministerial Regulations (articles 120-126), complaints can be made both verbally and in writing to duty custodial officers. Prison officials shall record a verbal complaint and issue a receipt to prisoners. Such a receipt shall also be issued to those who lodge a written complaint. Every prisoner has the right to make complaints under confidential cover to any authority or persons within or outside the correctional system. Prison officials shall arrange such a confidential complaint to be sent out to that persons or authority addressed or referred to without any delay. As for an ordinary complaint, a prison official shall deal and settle such a complaint promptly. Prisoners who are not satisfied with the reply may make another complaint addressed to a higher authority.

b. External complaint channels: National Human Rights Commission of Thailand

The National Human Rights Commission of Thailand (NHRC) was established under the National Human Rights Commission Act B.E. 2542 (1999) as a result of articles 199-200 of the Constitution. The Commission began to officially function in 2001. Section 15 of the Act gives the Commission the following powers and duties:

- To promote the respect for human rights at domestic and international levels;
- To examine and report the commission or omission of acts which violate human rights or which do not comply with obligations under the international human rights treaties to which Thailand is a party;
- To propose polices and amendments of laws, rules and regulations for the promotion and protection of human rights;
- To promote human rights education and research, including the dissemination of human rights information;
- To promote co-ordination and cooperation with governmental agencies, non-governmental organizations and others in order to strengthen human rights in the society;
- To prepare two annual reports on the human rights situation in the country and on the Commission's annual performance;
- To give opinions when the government considers being a party to human rights treaties.

Concerning the Complaints procedure, any person can file a complaint. This can be in person at the Office

of the National Human Rights Commission or by approaching any commissioner. Also a complaint can be filed by letter with the clear identification of name and contact address of the complainant, details of facts and circumstances of alleged human rights violation and the name and address of the alleged violater. Lastly a complaint can be filed through assigned human rights NGOs.

Power of the National Human Rights Commission in practice

As set out in section 15, the duties and powers of the Commission relate to a promoting, preparing and proposing function. The Commission cannot however enforce any rules and therefore remains an advisory mechanism.

Even in terms of advise and recommendations, the Commission has to be careful with making statements. A good example of the Thai government's attitude towards the NHRC was the impeachment of Dr Pradit Charoenthaithawee, the Commission's chairperson. Dr Pradit was threatened with impeachment by the core ruling party Thai Rak Thai after speaking out against the government's drug blacklists, extra-judicial killings, and an alleged failure to bring to court cases involving drug-related deaths. According to the Bangkok Post, Jaran Ditha-apichai, a member of the NHRC, said the impeachment threat illustrated the government's inability to accept criticism from independent watchdogs. In addition, he said that the impeachment threat had rendered the work of the Commission and other independent organizations impossible to carry out. "Thai Rak Thai has warned other bodies not to act like the Commission, or they will also be impeached", he said. This means that the NHRC cannot take strong views independent from the official government stance.

c. Problems for prisoners concerning making a complaint

The NHRC is the only independent channel available for prisoners to address their complaints to. However, in practice it is not possible for a prisoner to write and send his complaint himself. First of all the letter would not be sent by the officers, because they would read it before sending. Second, the prisoner could be punished for trying to make a complaint. This results in few complaints actually being made and the ones that are received by the NHRC are sent by lawyers or NGOs. But even the few complaints that are made, are often signed by prisoners as a group, such as "all foreign inmates", to avoid the possibility of retaliation. Given that torture and physical abuse are common in prison, it is understandable that the complaining prisoner fears for retaliation.

A more rooted problem for prisoners in Thailand lies in the fact that the human rights violations in prisons are a general problem, which affects all prisoners. These problems are difficult to solve, because they are the result of entire policies that need to be changed. However, it seems that a lot of prisoners themselves, as well as

people outside the prison accept the prison situation in Thailand. One of the reasons mentioned for this acceptance was that the standard of living within the prison is not very different from the experience of slum dwellers or rural poor who make up the majority of the inmates. Compared to this life outside the prison, many people take the view that the conditions within prisons should not be better. Their sympathy is for the prison guards and officers; they only have wooden batons to protect themselves, their salary is low and because of the overcrowding and budgetary restraints, the staff to prisoner ratio is very low. The lack of adequate protection for the guards is a justification for the strict discipline and corporal punishments in the prisons.

This attitude of accepting the prison conditions and only sympathizing with the officers and guards does not provide pressure on the government to change its prison policy. Therefore, the international community's complaints about Thai prisons have little effect, with the Thai government seeing this as an exclusively internal matter.

POINTS FOR REVIEW

- * Do Thai prisons comply in any way to international standards regarding prisoners?
- * Given the low budget for health and food in Thai prisons, discuss ways to improve the prison conditions.
- * Discuss the general attitude towards prisoners in Thailand; is this situation similar across Asian countries, and how can it be addressed effectively?

MALAYSIA

Malaysia has not ratified the ICCPR or the CAT. This means that only the UDHR, the Standard Minimum Rules, the Body of Principles and the Basic Principles apply to Malaysia. These are not treaties and only work as guidelines. Still, by looking at the compliance of the current prison situation to these international standards, it is possible to see whether these guidelines are taken seriously.

In the next section about prison conditions, a division is made between prisoners who are detained under the Internal Security Act of Malaysia (ISA) and prisoners who are not. There are several reasons for this. Most attention concerning prisoners in Malaysia is given to persons who are detained under the ISA and therefore this section would not be complete if this issue was ignored. Also, it is not possible for these detainees to be convicted under this Act, although they can be detained for two years. In this sense, they are different from remandees who wait to be convicted. Lastly, the division itself is necessary because the rules and prison conditions vary

from those of “normal” prisoners.

Prisoners not held under the ISA

1. Prison conditions

- Overcrowding in prisons and other detention centres in Malaysia has been acute for many years. From 1999, Malaysia’s prison population grew from 11 to 22 per cent above capacity by 30 September 2002. As of September 2002, the approved capacity was 23,914, while the total inmates in all institutions numbered 29, 286.
- On 18 July 2001, following a visit to the Dang Wangi Police lock-up, the Human Rights Commission of Malaysia (SUHAKAM) found that a lock-up, built to house 38 people, sometimes housed more than 100 people.
- Overcrowding not only creates issues for prisoners, it also generates serious management problems and impedes the ability of correctional systems to meet expected standards, including the Standard Minimum Rules. On 31 July 2001, prisons director-general Omar Mohammed Dan said that the overcrowding in Sabah prisons had not compromised overall security, although he acknowledged that the congestion sometimes led to ‘unexpected problems’, for example fights or illnesses.

2. Treatment of prisoners

a. Ill treatment

- On 19 October 2001, Irene Fernandez, director of migrant workers’ rights group Tenaganita, claimed in a statement that a detainee who tried to escape from a camp in Johor in May that year was beaten profusely for 15 days.
- Another incident in March that year saw a detainee kicked, punched and beaten up for almost a month for being caught with a mobile phone. “With a plastic pipe, the police beat him in his groin and later handcuffed him onto a stool which he had to kneel on for seven days” Fernandez said.
- Fernandez also said that medication meant to be given to detainees, was often sold to them. Detainees who complained of fever were often told to take a cold shower and were only sent to the hospital after they had passed out.

b. Diseases and medical care

- On 20 November 2002 SUHAKAM revealed that a total of 40 prisoners from the Sungai Buloh prison had died of various diseases since January that year. More than half of the adult prisoners died of lung diseases including severe pneumonia and tuberculosis while the other deaths were due to septicaemia, heart disease, haemorrhagic dengue and severe malnutrition leading to a degenerative condition known as the wasting disease. Some of the deceased were HIV-positive. The cause of six other deaths was unknown.
- A preliminary report noted that the Sungai Buloh prison was facing problems in accommodating the medical needs of its 5,000-odd inmates, particularly those afflicted with HIV. SUHAKAM's visitation sub-working group chairperson Prof. Hamdan Adnan said the prison only had two resident hospital assistants and no doctor. Asked if the absence of an in-house doctor had contributed to the large number of deaths, he said: "We cannot say conclusively based on these figures but it may well be one of the main reasons."
- One of the problems is that doctors were unwilling to be posted in the country's prisons. Moreover, the prison authorities were not receiving adequate financial allocation to enable the purchase of sufficient quantities of medicine, particularly since there are more immigration law offenders placed at the prison.

c. Ignorance of rights

- Most detainees interviewed by SUHAKAM had not seen a lawyer and appeared to be ignorant of the fact that they were constitutionally entitled to one. Apparently this is because prisoners are not told about their rights. "Most of them did not understand that they could obtain free legal help, and when explained, they were very receptive to the idea." Hamdan cited the example of a 19-year-old, who had pleaded guilty to a charge of drug trafficking, which carries the mandatory death penalty, without being aware of the legal implications.

Prisoners held under the Internal Security Act

The Internal Security Act (ISA) was adopted on the basis of article 149 of the Constitution and was legislated in 1960 (in its current form) in Malaysia. It was originally enacted to combat the 'communist terrorist threat'. Now that there is no communist threat anymore, the ISA is still applied for other reasons. In June 2002 there were 113 persons detained under the ISA. While actions taken in accordance with the provisions of the ISA are lawful, many of these provisions are in themselves a violation of the rights laid down in the UDHR.

Under article 73.1 of the ISA any police officer, without a warrant, may arrest and detain anyone he/she has

“reason to believe” has acted or is likely to act in “any manner prejudicial to the security of Malaysia.” This can be applied on the assumption of the possibility of future crime. This is in violation with article 11 of the UDHR, regarding the presumption of innocence.

The authorities may initially detain a suspect for 60 days in solitary confinement. During this period the authorities may deny the suspect access to lawyers or relatives. In addition, on approval of the Home Affairs Minister, suspects can be detained for up to two years without trial under section 8.1 of the ISA. This is an infringement of the right to have a fair and public hearing, which is stated in article 10 of the UDHR. In addition there is a possibility of renewal of the detention every two years under section 8.7 of the ISA. Compared to convicted prisoners who know what sentence they have to serve, ISA detainees are uncertain about the actual length of time they are to be detained. Furthermore the act also allows for restrictions on freedom of movement, residence and employment.

1. Conditions of detention under section 73 of the ISA

In June 2002 SUHAKAM did a public inquiry into the conditions of detention under the ISA. The ‘inquiry’ will refer to this specific investigation.

a. Conditions of detention during the first 48 hours

- Generally, during the first 48 hours of detention under section 73, detainees are held in the lock-up of a police station, together with all other suspects held under the Criminal Procedure Code for alleged criminal offences. In practice, the number of persons held in each cell depends on the size of the lock-up, and other factors, including temporary overcrowding resulting from an unexpected influx of certain categories of detainees at that particular lock-up.
- During the detention at the lock-ups, ISA detainees are accorded the same treatment as other criminal suspects. Food and drink are provided by the police from the police station, in accordance with the Lock-Up Rules of 1958.
- The items of clothing worn by the detainee at the time of arrest will be removed, and substituted with the standard attire worn by detainees at all lock-ups, namely shorts and a collarless T-shirt.
- Detainees will have to sleep on the cement floor of the lock-up, and will not be provided with any bedding, except for a blanket.

b. Conditions of detention at the Police Remand Center

- After the initial 48 hours detainees will be transferred to specially gazetted Police Remand Centers (PRCs), which are located at undisclosed locations. Detainees are transported to the PRC blindfolded, in order to preserve the secrecy of the PRC. At the PRC, detainees will be held individually in cells, which are equipped with squatting toilet facilities. The cells are not equipped with a bed, and detainees are expected to sleep on a raised cement platform. However, detainees are supposed to be provided with sheets, mattress, pillows, soap, toothbrush, toothpaste, slippers, and a prayer mat if they require one.
- The detainees are provided with three meals a day, which consist of foods similar to those provided in lock-ups, as the Lock-Up Rules are applied to the PRCs also. The detainees will not generally be able to request different foods unless there are medical or other significant reasons behind the request. However, the detainees will be able to consume food brought by the families of the detainees, during their arranged meetings outside the PRC, usually at a police station.
- Initially, detainees will have virtually no exposure to the outside world, as they are denied access to family visits, books and newspapers. However, after the first two weeks, detainees will be allowed to see their families once a week, for approximately 45 minutes. For such meetings, the detainees are taken from the PRC blind-folded to a police station. Additionally, detainees will not be allowed to see their lawyers during the entire 60 day period. The detainees are restricted from access to the outside world to prevent them from leading the police on a “wild goose chase,” and to enable maximum cooperation with the police.
- Detainees made allegations about human rights violations during the 60 day detention period. One example is Encik Ramdi bin Abdullah, detained in connection with the Al-Maauna group, who stated that he was slapped up to five times while in police custody. He felt that he was slapped because the Interrogating Officers did not believe his answers during the interrogations.
- The inquiry panel also heard the testimony of Mrs Ng Chooi Chun, who is being detained in alleged connection with a document falsification syndicate. Fifty-six year old Mrs. Ng alleged that she was forced on two occasions to strip off her clothes by junior male police officers at the lock-up. Another detainee also claimed that he had been stripped and insulted by Special Branch officers during interrogations at the PRC.
- Besides these examples there were allegations of psychological intimidation during interrogations including threats of sending the detainees’ family to welfare homes or to arrest the detainees’ children.
- In the light of the testimonies received during the inquiry, the inquiry panel concluded that there was insufficient evidence to justify a finding of torture of the detainees, mainly because of the lack of ‘severity’, however, they did conclude that there was sufficient evidence to justify a finding of cruel, inhuman or degrading treatment. Slapping of detainees, forcibly stripping of detainees for non-medical purposes, intimi-

ation, night interrogations, and deprivation of awareness of place and the passage of time, would certainly fall within the ambit of cruel, inhuman and degrading treatment.

2. Treatment of prisoners as under section 8 of the ISA

a. Malnutrition

- A number of detainees who testified made complaints about the food served in Kamunting. They were unsatisfied with the rations of food. In particular the detainees found that the chicken rations allocated to them were insufficient to meet their needs. The detainees mentioned that the portions of chicken were too small, and that the chicken was not served often enough. The detainees also expressed their dissatisfaction at the fact that they are not allowed to consume food brought by their families during visits.
- One detainee stated that he was compelled to survive merely on bread and water for four months because he was suffering from food allergies, which prevented him from consuming the foods served at Kamunting. He contended that he had informed the authorities of his allergies, but that his requests for different foods had been denied. However the Medical Officer at Kamunting stated that he had never been informed of the detainee's food allergies.

b. Diseases and medical care

- The inquiry panel also heard complaints about the medical treatment available to detainees. The inquiry panel notes that the Reformasi 6 had expressed particular dissatisfaction towards the Medical Officer, due to the fact that they wanted to be treated by their own doctors.
- In addition one detainee also alleged that all dental problems of detainees were treated by tooth extractions only, and that all illnesses were treated with the same "KK" pill. The medical officer explained this last case by saying that all medication from the Ministry of Health would be stamped with the same "KK" label. This in no way meant that the detainees were being given the same medication for all their varied ailments.
- The wife of Lokman Adam, ISA detainee since April 2001 said that her husband said that he had blood in his urine and when he moved his bowels, there was also blood. Until that day, 16 October 2001, he had not received treatment from a doctor. His wife described her worries:

"As his wife, I am extremely worried about his health. Before his detention, he rarely got ill. Ever since his detention in Kamunting, the condition of his health has been worrying. He has also had high blood pressure and so far the blood

pressure level has not stabilized. Since his detention, his weight loss has been very obvious. So far, he has lost as much as 11.5 kg.”

- According to Lokman Adam,

“As our meals have little nutritional value, I have to rely heavily on vitamins and supplements brought by the family. Although this was allowed the first two weeks, it has since been blocked – which means the family has to stump out money to send me postal money orders to buy these supplements when I could have got them for free from our family panel doctor.”

3. Complaint mechanisms

During this research, there was no information about the possibility to make a complaint through an internal channel. Therefore, only the available external channels will be discussed. The main external channel for prisoners to make a complaint is the National Human Rights Commission of Malaysia. Besides this, the only other possibility is to go to court. Both of these options will be discussed.

i. National Human Rights Commission of Malaysia

SUHAKAM is the Malaysian Human Rights Commission and has been in operation since 24 April 2000. Its main functions are:

- To promote awareness of and provide education in relation to human rights.
- To advise and assist the Government in formulating legislation and administrative directives and procedures and recommend the necessary measures to be taken.
- To recommend to the Government with regards to the subscription or accession of treaties and other international instruments in the field of human rights.
- To inquire into complaints regarding infringement of human rights.

Everyone can make a complaint to SUHAKAM. Section 12 of the Act says:

The Commission may, on its own or on motion or on a complaint made to it by an aggrieved person or group of persons or a person acting on behalf of an aggrieved person or a group of persons, inquire into allegations of the infringement of the human rights of such person or group of persons. Complaints can be made in writing or by email. After an inquiry, the Commission can make recommendations for the government or the specific authority concerned.

Power of SUHAKAM in practice

a) Appointment and dismissal

Part II, Section 5 of the Act states that the Commission shall consist of not more than twenty members and that the members of the Commission shall be appointed by the King, on the recommendation of the Prime Minister. They shall be appointed from amongst “prominent personalities” including those from various religious and racial backgrounds. They are supposed to hold office for a period of two years and are eligible for reappointment. A member of the Commission may be removed on various reasons mentioned in Part II, section 10. In particular sub-section d should be given attention. It says:

10. A member of the Commission may be removed from office by the Yang di-Pertuan Agong [king] if
(d) the Yang di-Pertuan Agong, on the recommendation of the Prime Minister, is of the opinion that the member-
(i) has engaged in any paid office or employment which conflicts with his duties as a member of the Commission;
(ii) has misbehaved or has conducted himself in such a manner as to bring disrepute to the Commission; or
(iii) has acted in contravention of this Act and in conflict with his duties as a member of the Commission.

These are broad norms, which makes the Commissioners vulnerable and dependent on the government. This is illustrated with the situation in 2002. This year witnessed significant changes and development in SUHAKAM. Three Commissioners were removed despite the fact that they were among those who had actually discharged their statutory duties in the protection and promotion of human rights, without fear or favor. The newly appointed Commissioners were former civil servants with little or no background in human rights. Aliran, a Malaysian NGO stated:

“The fact that three Commissioners have now been axed, is a clear signal to the other Commissioners and the new ones appointed that their tenure is dependent on the Executive. This clearly compromises and undermines the independence of the Commission and will inevitably result in loss of public confidence in the Commission as a whole.”

In addition, it commented that the changes in the composition of SUHAKAM had confirmed the public’s worst fears that SUHAKAM will cease to be an independent Commission and instead become an outright tool of the Barisan Nasional (National Front) government. “Malaysians can be sure that the intended changes to SUHAKAM are not mindless changes planned by Barisan Nasional for the mere sake of change. They are perverse changes intended to make SUHAKAM toothless and meaningless.”

b) Not possible to use legal power

In its 2001 annual report, SUHAKAM says about the visits they undertook to monitor the prison conditions: “SUHAKAM should be able to visit any place, at any time without prior authorization in order to make a true assessment of conditions of detention.”

Section 4.2 of the Human Rights Commission of Malaysia Act states:

For the purpose of discharging its functions, the Commission may exercise any or all of the following powers: d. to visit places of detention in accordance with procedures as prescribed by the laws relating to the places of detention and to make necessary recommendations;

4.3 The visit by the Commission to any place of detention under paragraph 2.d shall not be refused by the person in charge of such places of detention if the procedures provided in the laws regulating such places of detention are complied with.

Despite these regulations and even though SUHAKAM had complied with the procedures when it submitted its request to visit the detainees, in April 2001 the police denied the SUHAKAM Commissioners access to the detainees. Only later they were allowed to visit the detainees and to ask questions.

About the communication in these visits with detainees/prisoners SUHAKAM said in its Annual report 2001: “During all visits made, officials were present at all times. SUHAKAM members could only interact and speak with detainees and/or prisoners within sight and sound of officials.” Furthermore: “During the visits to Tun H.S. Lee Police Station in Kuala Lumpur, the SUHAKAM delegation was informed that there were instructions issued to the officer-in-charge that SUHAKAM members were not allowed to interview the prisoners.” The fact that it is not possible to communicate freely and in full confidentiality with detainees or prisoners at places of detention, within sight but not sound of the authorities, is in violation with principle 29 of the Body of Principles.

c) Recommendations

SUHAKAM states in its annual report of 2000 that it is not an enforcement agency. It says:

“If the inquiry conducted by SUHAKAM discloses that an infringement or violation of human rights has taken place, SUHAKAM will refer the matter to the relevant authority or person with its recommendations. Various considerations and forces, including reaction from the media, NGOs and political parties will influence government action, but ultimately it is up to the Government to decide whether or not to implement the recommendations.”

The problem of the Commission is the indifference of the government towards SUHAKAM, and the lack of response from the government to any of the SUHAKAM reports, such as the 2000 Annual Report, the Kesas

Highway Inquiry report and the Report on Freedom of Assembly. On 19 June 2002, Parliament rejected two motions from parliamentarians to debate human rights issues arising from SUHAKAM's 2001 annual report submitted to Parliament. Another example of no respect for the Commission is in the situation of Anwar Ibrahim, a former deputy prime minister, who is a prisoner in Sungai Buloh, serving a 15-year jail sentence for corruption and sodomy. Since he had been denied bail and was now in prison, SUHAKAM added that "[The] 1995 Prison Act provides that where there are inadequate facilities for the treatment of a prisoner, an order may be made for the removal of the prisoner to a government hospital." Unmoved by the recommendation, Dato' Seri Dr. Mahathir bin Mohamad, the Prime Minister of Malaysia since 1981, instead turned on the Commission, saying, "You cannot expect us to accept directions from SUHAKAM. In that case, it is better if they replace the government and we hand over everything to them."

ii. Judicial oversight

As Malaysia has not ratified the relevant international treaties, it is therefore not bound to comply with international standards. The result is that Malaysia created laws that contradict these standards. The treatment that is given to prisoners, especially the detainees under the ISA, would be in violation with international human rights standards, but they are in compliance with national laws, in this case the ISA. Therefore, going to court is useless. Nevertheless, even if they wanted to, many times there is no opportunity since prisoners are normally not told about their rights and if they know, the state does not automatically grant prisoners access to legal counsel.

POINTS FOR REVIEW

- * How does the ISA violate international law and standards regarding prisoners?
- * Discuss the effectiveness of SUHAKAM in addressing prisoner complaints.

B. Questions For Discussion

1. What is your opinion of the prison conditions and treatment of prisoners in these countries? How does it compare to the situation in your own country?
2. Does the problem lie in legislation or its enforcement?
3. How much does the behaviour of prison guards/officials affect the rights of prisoners?
4. According to the ICCPR, rehabilitation of prisoners should be part of their prison sentence. Do any of these countries address the issue of rehabilitation? Are you aware of any country that does address this issue? Discuss the effective rehabilitation of prisoners in your country.