

MONITORING AND INVESTIGATING COMPLAINTS IN RELATION TO THE DETENTION UNDER ARMED FORCES

Background

1. The Human Rights Commission of Malaysia or famously known in Malaysia as SUHAKAM is established under the Human Rights Commission of Malaysia Act 1999 (Act 597). Under Section 4 (1) of the Act, the Commission is mandated, inter alia, to investigate complaints regarding infringements of human rights; to promote awareness of and provide education relating to human rights; to advise and assist Government in formulating legislation and procedures and recommend the necessary measures to be taken; and, to recommend to the Government with regard to subscription or accession of treaties and other international instruments in the field of human rights. Furthermore, in discharging its functions, SUHAKAM is authorized to visit places of detention including the armed forces detention.
2. Under the law, it is provided that the SUHAKAM's visit to any places of detention shall not be refused by the person in charge of such place of detention. Any refusal of access to a detention is tantamount to obstructing the discharge of the Commission's function, an offence punishable under Section 186 of the Penal Code.
3. In this regard, SUHAKAM's visit to places of detention were of two types, namely periodic monitoring visits and inquiry visits. The purpose of the periodic visits is to ensure that the conditions of the detention and treatments provided to the detainees are on par with the international human rights standards as articulated under the Mandela Rules as well as the local laws. As for the inquiry visits, it is triggered by complaints and the objective of such visit is to verify the allegations that were made against the places of detention. The findings of both visits and the recommendations thereto would be communicated to the Government for consideration of implementation. It is also the Commission's discretion to either make the findings and recommendations public or otherwise.

Complaints on army detention

4. SUHAKAM rarely received complaints in relation to the army. This could possibly due to the nature of armed forces service which is separated and excluded from the public sphere. They have their own Martial Police (MP) and Court system. As such, not many complaints in relation to armed forces lodged with the external bodies or cases reported publicly.
5. However, recently two personnel of Royal Malaysian Navy (RMN) died while they were held in the military detention unit in Sungai Wangi, Sitiawan in Perak. The two were placed under detention allegedly for absence from duties and drug usage.

In the RMN's initial public statement, it said that the two had complained of exhaustion after undergoing physical training according to the standard operating procedures (SOP). RMN also stated that checks by doctors on their bodies showed that there were no signs of physical abuse or beatings. The next day, the police came out with a firm statement reclassifying the case from sudden death report to murder following a post-mortem result that shows the cause of the navy men death was due to bleeding in the lungs and blunt force trauma on the soft tissue.

6. A complaint involving military was also lodged with SUHAKAM this year. The complaint was about allegation of repeated trial and unlawful detention at an army camp. The complainant's husband who is an army personnel was arrested by the military police (MP) as his urine was found positive of drug. He was charged at the Martial court and during the trial he was kept in the military lock-up. At the end of the trial, the court absolved him from the charge and he was released from detention. However, six months after the decision, the Military Commanding Officer claimed that the court has no power to release her husband and hence he ordered her husband to be detained again for the same charge. Currently he is detained in the military lock-up and waiting for the Martial Court to sit for a fresh trial. The complainant is worried that her husband might commit suicide in the lock-up as he is under great mental pressure due to the prolonged detention and repeated trial.
7. SUHAKAM also received complaints from the army veterans. One of the complaints received was lodged by a disabled army veteran, who highlighted the lack of welfare benefits provided to the disabled army veterans.
8. These real reported cases indicate the need for an ombuds institutions such as National Human Rights Institution (NHRI) to play an important role in reinforcing the importance of the armed forces to comply with the human rights principle, and help ensuring it is respected and protected widely within their military territory.

SUHAKAM's experience of monitoring Malaysian Armed Forces Detention Centre (MAF DC)

9. On October 2, 2017, SUHAKAM's Complaints and Monitoring Group visited Malaysian Armed Forces Detention Center (MAF DC) under the management of Kentomen Camp in Kuala Lumpur as part of its monitoring visit. The visit was not the first. There have been several inquiry visits to the military detention center in the past.
10. The detention centre was gazetted on November 20, 1962 located on 0.48 hectares of area. The RMAF DC functions as a place of detention and punishment for armies that have been sentenced for violating the military laws and rules by the Commanding Officer or the Martial Court. The centre also serves as an organization that conducts rehabilitation, care and administrative rehabilitation of military offenders who undergo detention. Military offenders are from lower class members

of the Malaysian Army (MA), the Royal Malaysian Navy (RMN) and the Royal Malaysian Air Forces (RMAF).

11. Among the offenses committed by military personnel who were detained at the detention centre are absence from duty, drug abuse and other disciplinary offenses as specified under Part V of the Malaysian Armed Forces Act 1972. For cases involving drugs, only non-critical offenders are placed under the detention as the detention centre does not have a special program for drug addicts. If the member of the military committed offenses which are not regulated under the Armed Forces Act 1972, the matter will be brought to the attention of the Royal Malaysian Police for their investigation.
12. The inquiry is conducted by the MAF itself and the Commanding Officer decides whether the offenders to be detained in the Unit Detention Room or sent to the MAF DC.
13. The Martial Court decide on whether the convicted offender be sent to the civil prison to serve sentence should they were convicted for crimes that are no fall within the Malaysian Armed Forces Act 1972.
14. The MAF DC only kept military servicemen who have been sentenced to a detention of more than 28. While military servicemen who was sentenced for imprisonment period less than 28 days will be placed in the Unit Detention Room at their military camp. The maximum period of the sentences is 2 years. These rules have been outlined under the Armed Forces (Retention and Detention) Rules of 1976.
15. Through interviews with the detainees and also admission by the management of the MAF DC, most of the military offenders took drug as a way to terminate their services with the RMAF as they could no longer endure the hard training and follow the strict disciplinary rules that are imposed on them by the MAF.
16. After sworn oath to become an army, each army must compulsorily serve with the force for at least 12 years. To qualify an army to earn 50% pension, they must serve from 21 to 22 years. While those serving up to 26 years, are eligible to earn 60% of their pension.

Conclusion

17. There are still many aspects that SUHAKAM has yet to venture in to elevate the standard of human rights within the armed forces. SUHAKAM will continue to carry out its mandates extensively to ensure that ethical and human rights standards are upheld in the armed forces. In undertaking such role, it is important that SUHAKAM be able to maintain its independence and neutrality throughout its activities.