

A BLOW TO HUMANITY

TORTURE BY JUDICIAL
CANING IN MALAYSIA

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1. INTRODUCTION AND SUMMARY

“In all the 29 years of my life I have never experienced pain like this.... My body shivered. Everything went black because of the pain. It hurt so much my butt starting shaking all by itself.”

Mohd Ghazali, a 29-year-old Malaysian who received three strokes of the cane.

“The pain goes up to your head. It felt like an electric shock. I don’t have the words for it.... I only got one and I couldn’t take it. I was thinking, how do people who get more take it.”

Hussain, a 26-year-old Malaysian who received one stroke.

Across Malaysia, government officials regularly tear into the flesh of prisoners with rattan canes (*rotan*) travelling up to 160 kilometres per hour. The cane shreds the victim’s naked skin, turns the fatty tissue into pulp, and leaves permanent scars that extend all the way to muscle fibres. Blood and flesh splash off the victim’s body, often accompanied by urine and faeces. This gruesome spectacle is kept hidden from public view.

The pain inflicted by caning is so severe that victims often lose consciousness as a result. Afterwards the suffering can last for weeks or even years, both in terms of physical disabilities and psychological trauma. As a punishment that intentionally inflicts severe pain and trauma, caning violates the absolute prohibition against torture and ill-treatment under international law.

Amnesty International estimates that as many as 10,000 people each year are subjected to caning in Malaysia, and many of them are foreign nationals. The Malaysian government does not punish officials for these actions. On the contrary, it trains officers how to conduct caning and pays them a bonus for each stroke. Some of these officers also seem to augment their income by soliciting bribes from caning victims, who pay them to miss strokes on purpose.

The execution of a caning sentence is part of a larger process that is rife with abuse. Many caning victims told Amnesty International how they were arrested without being informed of the charges against them. Most of them said they were tried without access to a lawyer, despite the seriousness of the punishment. Failure by the courts to provide adequate translation meant that some foreign detainees were not even informed of their sentence.

Once in prison, victims were routinely left uninformed about the date of their caning. When their caning day suddenly arrived, victims said they were forced to strip and line up, sometimes in groups as large as 60. Victims from prisons across Malaysia said that while waiting in the queue for their caning they were forced to listen to the screams of prisoners

being caned ahead of them. Some victims also witnessed the physical assault that awaited them.

Doctors and other health workers are directly involved in the process of caning, even though the harm they thus engender is clearly contrary to medical ethics. They certify victims for caning, and have the authority to reject victims on medical grounds. When victims lose consciousness on the scaffold, they resuscitate victims so they can receive further blows of the cane.

Caning victims also said that once the caning is over, health workers often fail to provide medical treatment for the wounded prisoners beyond applying a topical antibiotic. A doctor who participated in a caning told Amnesty International that young medical officers from government-run hospitals are pressured to assist, but are nonetheless given the possibility to opt out.

In Malaysia caning is used as a judicial punishment for criminal offences; both Mohd Ghazal and Hussain were caned for drug-related offences. Malaysian criminal law provides for caning as a punishment for more than 60 other offences (see Annex I for a full list). These offences include immigration violations as well as violent crimes such as rape, kidnapping and armed robbery.

Less brutal forms of caning are practiced in schools and, to a lesser extent, for certain offences under Islamic law (Shari'a), whose application varies by state in Malaysia. However, this report examines caning under criminal law (known under Malaysian law as "whipping"). This form of caning has no religious or cultural connotations. In fact, the current practice of caning in Malaysia is a remnant of British colonial regulations dating back to the late 19th century.

Since the 1990s, the range of offences subject to criminal caning has widened. For the first time, certain forms of white-collar crime, such as criminal breach of trust, became punishable by caning in 1994. Caning for drug-related offences has also expanded beyond the offences of possession and trafficking. Drug users face caning if they run away from a drug rehabilitation centre or fail to register with the police each week.

In recent years, the biggest impact on caning sentences in Malaysia has resulted from amendments to the immigration laws. An early step occurred in 1996, when amendments to the Immigration Act made caning mandatory for illegal entry and forging of immigration documents such as passports and visas. In 2002, Parliament made immigration violations such as illegal entry punishable by "whipping of not more than six strokes."¹

Under international human rights law, corporal punishment in all its forms constitutes torture or other cruel, inhuman or degrading punishment, which is prohibited in all circumstances. Malaysia has not ratified the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, or the International Covenant on Civil and Political Rights (ICCPR), which provide for this prohibition.

Nevertheless, Malaysia is legally bound by the prohibition on torture and other ill-treatment at all times. This is because the prohibition is a rule of customary international law—that is,

a rule derived from consistent state practice and consistent consideration by states of it as binding on them (*opinio juris*). This renders the rule binding on all states irrespective of their treaty obligations.

Any punishment that is intentionally inflicted by an official, and causes severe pain and suffering to the victim, is considered torture under international law. The prohibition against torture and cruel, inhumane and degrading treatment is absolute, no matter what the circumstances may be.

In countries around the world, Amnesty International has documented how officials have been responsible for torture and other ill-treatment. Often such states deny the fact of torture or ill-treatment, or else claim that it occurs in violation of their laws and policies.²

The situation with caning in Malaysia is quite different. Malaysian officials do not hide their involvement in the practice of torture and other ill-treatment by caning. Acting in an official capacity, Malaysian judges sentence prisoners to caning, prison officials carry out the punishment, caning officers inflict it, and state-employed medical personnel help implement it.

Amnesty International calls on the Malaysian government to:

- Enact immediately a moratorium on caning as a punishment in all cases, with a view to its abolition;
- Ratify the UN Convention against Torture and its Optional Protocol, as well as the ICCPR; and
- Amend legislation to treat immigration violations as administrative offences rather than crimes punishable by prison or corporal punishment.

1.1 BACKGROUND

“In my prison bloc, not more than 10 people got caned out of 200. Now there’s a lot more caning. And there are offences you used to get two strokes for, you now get four,” said Ismail, a 47-year-old Malaysian who was caned at Kajang Prison, near Kuala Lumpur, for armed robbery in 1989.

Fifteen years later, Abdul Wahab was caned for armed robbery at Pengkalan Chepa Prison, near Kota Bharu. When asked about the incidence of caning in recent years, the 29-year-old Malaysian replied, “Half the people in my bloc got whipped.”

Over the past two decades, the Malaysian authorities have expanded the practice of caning. In 1994, for example, criminal breach of trust became the first white-collar crime subject to caning.³ Prosecution of such white-collar cases, however, remains relatively rare.

In 2002, the Malaysian Parliament made certain immigration offences punishable by caning, notably illegal entry into the country. These amendments to the Immigration Act further

boosted the number of canings, by putting many of Malaysia's two million undocumented migrant workers at risk of caning. Migrant workers who do not have documentation or whose employers have confiscated their documents are frequently arrested in immigration sweeps and sentenced to caning coupled with imprisonment.⁴

Malaysia's large population of drug users, estimated at between 350,000 and 900,000 by Health Minister Chua Soi Lek in 2007, also faces the risk of caning under the country's strict drug laws.⁵ The Dangerous Drugs Act, which provides a mandatory death penalty for drug possession over specific amounts, imposes caning for possession of illicit drugs.⁶

Caning is limited to men between the ages of 18 and 50, except that men older than 50 can be caned for sexual offences such as rape and sodomy.⁷ For many Malaysians, caning is associated with rape. Rape cases, and sentences of up to 10 strokes for convicted rapists, are assiduously reported in the Malaysian press. According to the Malaysian Medical Association, however, rape convictions a year in Malaysia have averaged between 10 and 20 per year. Rape thus accounts for only a miniscule fraction of caning sentences carried out each year.⁸

Caning for criminal offences was introduced by British colonial officials, who imposed the Indian Penal Code on the Straits Settlements in 1870, after which it spread to the Malay peninsula.⁹ In the 19th century, English criminal law provided for caning for a variety of offences. The UK has long since abolished caning, however, as has India.

Judicial corporal punishment by caning is practiced today in a small number of former British colonies, including Singapore and several small island states in the Caribbean and Pacific. Among the Commonwealth countries which have not yet abolished judicial corporal punishment, Malaysia is the only country that has a population of over 10 million people and a high level of human development.¹⁰

In 2007, after the authorities began caning foreign nationals for immigration offences, the Malaysian Bar Association passed a resolution calling on the government to abolish caning for migrants and refugees. The resolution rejected the sentence of caning as "*anachronistic and inconsistent with a compassionate society in a developed nation.*"¹¹

The UN Human Rights Council, to which Malaysia was elected in 2009, has adopted resolutions stating that "*corporal punishment ... can be tantamount to torture.*"¹² The UN Special Rapporteur on Torture, Manfred Nowak, has stated that "*any form of corporal punishment is contrary to the prohibition of torture and other cruel, inhuman or degrading treatment or punishment.*" Under international law, he noted, corporal punishment is not a lawful sanction.¹³

1.2 METHODOLOGY

During a visit in March and April 2010, Amnesty International conducted interviews with 57 people who had been subjected to judicial caning by the Malaysian authorities.

In Malaysia, the organization interviewed 22 Malaysian caning victims, including petty criminals and injection drug users, both in the federal territory of Kuala Lumpur and the state of Selangor. In Kuala Lumpur, the delegation also interviewed 27 Burmese refugees who had been caned for immigration violations.

In Indonesia, Amnesty International conducted interviews with former Indonesian migrant workers who had been just deported from Malaysia after being caned there. Amnesty International conducted detailed interviews with eight migrant workers (in addition to a group survey of 63 migrant workers). Amnesty International appreciates the access that Indonesian officials provided to its reception facilities for returned migrants.

In addition, Amnesty International discussed the issue of caning with members of the Malaysian Parliament, as well as the leadership of the Malaysian Bar and the Malaysian Medical Association. The delegation also met with lawyers, doctors and psychologists, non-governmental organizations, religious groups, and diplomatic missions in Malaysia. In Indonesia, the delegation met with government officials.

Interviews were voluntary and were conducted individually or in a group format. All interviews were conducted in the victim's native language or, in very few cases, a second language which the victim could speak with native fluency. These languages included Malay, Indonesian, Burmese and several other languages indigenous to Myanmar (such as Chin), and English, with translation as necessary. The names of all interviewees have been changed to protect their security and privacy.

2. ARREST AND TRIAL

In Malaysia, prisoners are subjected to caning by judicial order. The judiciary not only fails to protect prisoners from this form of torture, it provides state agents with authorization to inflict it. At the same time, judicial proceedings which fail to meet international standards of fairness, as well as laws that criminalize immigration violations, increase the vulnerability of suspects to caning.

In interviews with Amnesty International, victims of caning described how the authorities failed to meet international standards that protect suspects from additional forms of abuse. These failures occurred during arrest, in pre-trial detention, and during the course of trials.

2.1 ARREST

“They came in a car with guns, [treated us] like criminals, they didn’t say why we were being arrested.”

Khan Kap, a 26-year-old Burmese refugee arrested en route to UNHCR mobile registration.

Caning victims interviewed by Amnesty International were arrested for a variety of offences. None of these offences involved violence, with the exception of one case of armed robbery and another of attempted armed robbery. The vast majority involved immigration offences or drug possession. Although interviewees were convicted for different offences, their accounts show general patterns in the arrest procedure.

Interviewees spoke about a spectrum of human rights violations they suffered during arrest and pre-trial detention. Fahmi, a 30-year-old Indonesian migrant who was caned in early 2010, was stopped at a police roadblock while riding his motorcycle near Kuala Lumpur. When he told police that he did not have his passport with him, he was taken to the police station. He told Amnesty International:

“They beat me in the police station. They told me I have no right to stay in Malaysia. Two policemen beat both my feet with a truncheon, and broke my ankle bone. I spent three days in the hospital.... They called me a foreign bastard [and said] ‘How dare I drive a motorbike in Malaysia!’ I had a license. They tried to make me confess that my bike’s indicators weren’t working properly.... They took 2,000 ringgit (US\$600) and my mobile phone.”

Police obtained a confession from Fahmi in the course of beating him, he said. Under international law and standards, such ill-treatment—which possibly amounted to torture—should have resulted in the court’s rejection of the confession, the prosecution of the police officers who attacked Fahmi, and the awarding of reparations. Instead, the judge sentenced him to yet another form of torture or other ill-treatment: three strokes of the cane.

Caning victims also complained that during their arrest they were subjected to extortion by police and RELA (Ikatan Relawan Rakyat, or People's Volunteer Corps, a civilian volunteer force which the government authorizes to exercise certain police functions, including arresting suspected undocumented migrants). Lian Mang, a Burmese refugee, said: *"I hope police will stop stealing from us. They take everything we have. Sometimes we have only 10 ringgit, but we need that money to eat."* For police and RELA, the ability to commit extortion with impunity provides a financial incentive to target migrants and refugees.¹⁴

Refugees and asylum seekers told Amnesty International how police conduct sweeping arrests of people by following the mobile registration operations conducted by the UN High Commission for Refugees (UNHCR). Khan Kap, a Burmese refugee, said he was arrested in August 2008 while waiting for mobile registration at a church in Seremban.

While Malaysia has not ratified the 1951 Refugee Convention (known as the Convention relating to the Status of Refugees), UNHCR recognizes persons of concern in Malaysia under the terms of the Convention. By their very presence at mobile registration centres, foreigners signal they are seeking recognition as refugees, and police know that they are asylum seekers. The Malaysian authorities should ensure that police are instructed to protect rather than arrest them.

As Khan Kap's testimony above illustrates, police also often fail to tell suspects the reasons for their arrest. The right of suspects to be promptly informed of any charges against them upon arrest has been widely recognized in human rights treaties¹⁵ and other standards.¹⁶

Since many caning victims are foreign nationals, language has been a problem in informing the suspect of charges. Under international human rights law and standards, a suspect has the right to notification in and interpretation into a language he or she understands.¹⁷ Burmese refugees sentenced to caning told Amnesty International that they were denied the right to an interpreter during pre-trial detention, but on occasion were provided limited interpretation at the trial itself.

The right to access to independent lawyers plays a crucial role in defending prisoners' rights to freedom from arbitrary detention, torture and other cruel, inhuman or degrading treatment or punishment. Hence the UN Standard Minimum Rules for the Treatment of Prisoners provide for the rights of prisoners to meet counsel and for the confidentiality of communications with counsel.¹⁸

In almost every case, however, caning victims interviewed by Amnesty International said they were not provided any access to legal counsel. As Ismail, a Malaysian caned for armed robbery in 1989, explained: *"My dad was very poor so I couldn't afford a lawyer. They [the authorities] provided a lawyer, not for representation, just by pleading. Their lawyer was not at all helpful."* The "lawyer" he mentions was, in fact, the prosecutor. He was sentenced to six strokes of the cane and eight years' imprisonment.

Many caning victims interviewed by Amnesty International said they had waited weeks before being brought before a judge. Refugees and migrants who were held in immigration detention said the first time that they were brought before a judge was when they went to trial.

2.2 TRIAL

“I have no idea what the charge was. They didn’t bother telling us.”

Ngai Cin, a 29-year-old Burmese refugee caned at Alor Setar in 2004.

Caning victims interviewed by Amnesty International were held for varying lengths of time in pre-trial detention. However, even in exceptional cases when detainees have advocates working on their behalf, pre-trial detention continued. *“It took UNHCR a year to get him out,”* a Burmese refugee leader said, explaining the case of a refugee who had been arrested and placed in immigration detention. *“He even had the UNHCR card.”*

Indonesian migrants told Amnesty International that they generally could follow the court proceedings, which are conducted in Bahasa Melayu (a language closely related to Bahasa Indonesia). However, foreign caning victims from non-Malay speaking countries could not.

Nuam Niang, a 35-year-old Burmese refugee, was arrested near a construction site in Kuala Lumpur in 2008. Before trial, he was held in immigration detention. Describing his trial at Jalan Duta Court No. 70, he said, *“I have no idea what the charge was. They didn’t bother telling us. There was no translator.”* Ngai Cin, a 29-year-old Burmese refugee tried in Alor Setar for illegal entry in 2004, said, *“There was no interpreter. I didn’t understand what my sentence was.”*

In some cases, caning victims said the court provided an interpreter at their trials. Nonetheless, Myanmar’s majority language, Bama (Burmese), is not spoken by many members of the ethnic nationalities who flee to Malaysia to escape persecution in Myanmar. Khap Khan, a Burmese refugee who speaks the Min dialect of Myanmar’s Chin State, said he could not communicate with the Burmese-speaking interpreter provided by the court. *“The translator didn’t understand all Burmese,”* he said.

After the Malaysian Parliament enacted a law mandating caning for migrants convicted of illegal entry, the authorities established special courts to try suspects directly within immigration detention centres. Nian Vung, a 23-year-old Burmese refugee who received one stroke, told Amnesty International that he was caned at Melaka Johor Keluga prison, but was tried and sentenced at a tribunal inside Melaka Immigration Detention Centre.

Immigration detention centres in Malaysia are closed to the public. As a result, thousands of foreign detainees are tried each year in closed proceedings, violating the right of everyone “in full equality to a fair and public hearing by an independent and impartial tribunal” as enshrined in Article 10 of the Universal Declaration of Human Rights.

“There were 50 of us in the court. They tried us in groups of five at once. It lasted half an hour,” Hau Lian, a 36-year-old Burmese refugee, told Amnesty International. Other detainees who were sentenced to caning by courts in immigration detention centres told Amnesty International that they were tried together in small groups for immigration offences. Kop Thang, a 26-year-old Burmese refugee, said he was tried in a group of 16 detainees at a tribunal inside Lenggeng Immigration Detention Centre.

The assembly-line nature of these proceedings raises serious concerns about their fairness. One issue is the rapidity of trials; another is their collective nature. Such proceedings breach a fundamental principle of criminal law whereby the guilt of each individual defendant must be proven before he or she can be convicted or punished, a principle which is reflected in international human rights law.¹⁹

Kop Thang told Amnesty International that during his trial: *"I asked if I could see a UNHCR representative, that's why they gave me two strokes. Those who didn't say anything in court were only given one. If any of us asked anything, then their whole group got two strokes too."*

Under the Vienna Convention on Consular Relations, which was ratified by Malaysia, foreign detainees have the right of access to representatives of their government or of inter-governmental bodies responsible for them, namely UNHCR.²⁰

Caning victims told Amnesty International that months in prison can sometimes be reduced in exchange for an increased number of strokes. Subramanian, a 43-year-old Malaysian caned in 2007 for running away from a drug rehabilitation centre, explained: *"The prosecutor will ask for a more lenient [prison] sentence if you take more strokes. One stroke equals six months. Sometimes you need a lawyer for that."*

Other caning victims confirmed this equation, and said it was well-known among prisoners. For example, Nassuruiddin, a 28-year-old Malaysian methadone patient who received five strokes at Kajang, said: *"Please let me get out faster,' I said. I bargained a prosecution in Putrajaya, and took one more stroke for six months reduced."*

Some suspects said that they choose to take more strokes to reduce their time, but ended up regretting it later. Ahmad Faisal, a Malaysian convicted of heroin possession, said he took five strokes to reduce his sentence, but has suffered health problems afterwards. *"No, I'll never do that again,"* he said.

As a matter of general policy, the government in 2005 said it was considering increasing the number of strokes in exchange for shorter prison sentences. The rationale was to reduce overcrowding and the cost of maintaining prisons, according to a press report on Internal Security Deputy Minister Datuk Noh Omar's remarks at question time in Parliament.²¹

At the same time, it should be noted that avoiding caning by choosing a longer prison sentence does not appear to be an option for convicts. Fahmi, a 30-year-old Indonesian migrant, told Amnesty: *"The prosecutor said that if I didn't get caned, I would get two additional years in prison."* He said he tried to avoid caning, but still ended up receiving three strokes.

Some laws, such as the Dangerous Drugs Act, set forth mandatory sentences of a specific number of strokes. But mandatory sentences bar the judge from considering the specific circumstances of the offender. In addition, running away from a drug rehabilitation centre carries a mandatory three strokes and up to five years in prison.²²

Mohd Jamil, a 49-year-old Malaysian heroin user caned in 2006, explained:

"I pleaded guilty and asked for a lighter sentence. The judge said that this was as light as possible. I knew before what the sentence would be. Everyone knows if you run away from rehab [that's what you get]. I didn't need for the judge to tell me.... The judge didn't explain why, he just gave me the sentence."

Courts in immigration detention centres routinely fail to communicate sentences in a language understood by the suspect. Groups of suspects, many of whom cannot understand Bahasa Melayu, are herded in and out of the court room in quick succession. The failure to provide an interpreter can be traumatizing. In the case of Kop Thang, a Burmese refugee, it can be dehumanizing as well:

"The sentence was just written on my arm with a marker. I didn't understand what it said. I asked a friend to read it," he said. "I was more afraid when I understand the writing on my arm. I feared it was an additional sentence, that it could be more whipping."

At a facility in Indonesia which receives hundreds of migrants deported from Malaysia each week, almost every male deportee from Malaysia reported having been caned at least once. The vast majority, however, reported being caned three times, solely for immigration violations such as illegal entry or lack of a passport. Illegal entry by migrants is not a violent or malicious crime. Amnesty International has stated that it should be an administrative rather than criminal offence.²³

Making criminal breach of trust subject to caning in 1994 illustrates how the Malaysian legislature has continued to expand the number of offences resulting in caning sentences. The implementation of caning for immigration violations in 2002 greatly increased the number of victims.

"Now first-time offenders are getting whipped," said Ismail, a 47-year-old Malaysian who has been arrested several times in drug cases but was whipped once, over two decades ago, for armed robbery in 1989. Older interviewees said that caning was much less prevalent in the past. A younger Malaysian drug user, 26-year-old Hussain, who was caned in 2006 in Kuantan for failing to register with the police under the Dangerous Drugs Act, summed up the situation today: *"Around half my friends have been caned."*

As the drive for caning has intensified in Malaysia, safeguards protecting people from caning have slipped. In early 2010, a Malaysian lawyer visited a client who had been arrested in premises with forgery equipment. *"He told me he had been caned, even though his case was still on appeal,"* his lawyer told Amnesty International.

Since caning in Malaysia is performed only in prisons, a caning victim must be given a prison sentence as well. But even if an inmate has completed his prison sentence, he must still wait in prison for his caning. Lal Lian, a 26-year-old Burmese refugee caned on 15 January 2009 at Pokok Sena Prison in Penang, said, *"I was supposed to be released 13 January but I didn't get the rotan due to a mistake on the Kad Bilik. Only once I got the rotan could I be released. They kept me two days longer."* Abdul Wahab, a 29-year-old Malaysian caned in 2004,

explained, "*Many migrants, especially Indonesians, get held longer than they should be to get their whipping.*"

In many cases, caning is a supplement to an already substantial prison sentence. But in others, as with the Burmese refugee Lal Lian, the authorities may hold a prisoner until the caning sentence is executed. If done without judicial order, such an action would represent an arbitrary increase of the prisoner's penal sentence by the prison authorities.²⁴

3. PRISON

3.1 WAITING FOR CANING

“They don’t tell you what day you’ll be whipped. You just know your number is coming closer. It was like waiting to be hanged.”

Ramli, a 54-year-old Malaysian given three strokes at Kuala Lumpur’s Pudu Prison in 1982 for heroin possession.

In Malaysia, caning sentences are only carried out in one of the country’s prisons.²⁵ A caning sentence in Malaysia thus entails prison time as well. Caning victims spend weeks, months or even years of their prison sentence waiting for the caning sentence to be carried out. *“I asked other inmates how and when my caning would be,”* said Ismail, who was caned in 1989 while serving an eight-year sentence for drug-related offences. *“They said expect it after three years. I was waiting then and I was worried.”*

After the court sentences the convicted prisoner, the authorities provide him with information on the amount of time that they will spend in prison, but they do not reveal the time and date of the caning. A typical Inmate Card, or *Kad Bilik*, gives the precise number of years and months of the penal sentence, and specifies in which prison it is to be carried out. In reference to the caning sentence, however, the card notes only the number of strokes, not when this sentence will be executed.

“They keep it a secret when they will rotan you. Everyday we were fearing they will whip us,” said Kop Thang, a Burmese refugee given two strokes at Kajang. Of the 57 caning victims interviewed by Amnesty International, none received more than a one-day notification of when they would be caned. The widespread nature of this practice, noted by victims caned in a variety of Malaysian prisons between 1982 and 2010, indicates that this lack of notification is a systematic practice by state officials.

FEAR AND LACK OF NOTIFICATION

The Malaysian authorities’ failure to notify prisoners of their caning date increases their anguish considerably. Caning victims told Amnesty International how this indefinite period of waiting put them in a perpetual state of fear. Many experience serious psychological symptoms as a result:

“They only notified me one day before. I would have been less scared if I had known before. I could have prepared myself. If you don’t know, you just wait and wait. That’s harder.... It made me very worried. I was just listening every Friday for my name to be called.” said Abdul Wahab, a Malaysian who received one stroke in 2004.

Caning victims also told Amnesty International of the anguish caused by this indefinite wait. *"Everyday I was afraid I would be whipped,"* said Rawi, a 24-year-old Indonesian migrant from Sulawesi who was given two strokes at Kajang for illegal entry in March 2010 before being deported. *"I lost my appetite, I couldn't sleep. I kept thinking about when I'd be whipped."*

Because of the injury that caning causes to the body, many victims feared disabilities as a result of the sentence. One commonly cited fear was impotence: *"People told me you can't get an erection afterwards, that you can't have sex. I was very afraid of this,"* Rawi said. As well as a fear of physical disability, this was one with stronger issues of personal identity and social function. Zung Sang, aged 27, was caned at Kajang in January 2007 and imprisoned there with another Burmese refugee. He said, *"I had heard from others you become impotent. We are both bachelors, and we're afraid of becoming impotent, that we'd never be able to have children."*

Sulaiman, a 28-year-old Indonesian given three strokes in 2010, said: *"I was afraid for my penis [i.e. impotence] and the scars."* Prisoners know that the caning will leave deep scars, permanently marking their bodies. As a result, prisoners said they had been physically branded as convicted criminals for life.

Some prisoners also said they feared that they could die as a result of caning. *"I have six children. I didn't know if I would live or die. If something happened to me, how would my family survive?"* said Hau Neel, a 47-year-old Burmese refugee caned in 2007. Others feared contracting serious infectious diseases from the cane itself and the bleeding it causes. Many prisoners were not informed if prison staff took any precautions to disinfect canes before using them again. *"I feared I might die due to the rotan, because the wound would get infected,"* said Burmese refugee Zung Sang.

Contracting HIV from the caning was an immediate fear, given the high rate of seropositivity among prisoners, particularly injection-drug users. *"In 13 months I saw so many people with HIV getting whipped. So I was worried about getting HIV.... I asked a guard; he said they use a separate rotan. But I don't know if they separate them or not,"* said Mohd Ghazali, a 29-year-old Malaysian who received three strokes at Kuantan in 2003 for drug-related offences.

The wider general failure of prison officials to provide information on caning and its consequences fuelled prisoners' fear and psychological suffering. Kop Thang, a Burmese refugee who was caned at Kajang, explained, *"Inside the prison what the prisoners fear most is this rotan."*

UNDUE DELAY

The psychological suffering caused by waiting to be caned without knowing when it would take place intensifies as time goes on, prisoners told Amnesty International. *"In the early part of my sentence I wasn't as scared. But near the end, I was really scared,"* said Mohd Ghazali. Even though prisoners may welcome the end of their penal sentence, they nonetheless understand that their release will be contingent on being caned beforehand.

One pattern evident from interviews with victims is that canings tend to be carried out near the end of prison sentences, not at the beginning. Rawi, a 24-year-old Indonesian migrant who received two strokes, said he was caned 24 days after entering prison on 2 March 2010: *"On 25 March they told me I would be whipped the next day."* He remained in prison until his deportation to Indonesia in April 2010.

Nik Hasan, a 27-year-old Malaysian was given two strokes for drug possession under Section 12(2) of the Dangerous Drugs Act, said that caning was carried out late in long prison sentences: *"...in the seventh or eight year in a 10-year sentence."*

Nazri, a client at a needle exchange in a rural village in central Malaysia, explained the rationale for such delays. These delays in caning, he said, are designed to make prisoners *"reflect on their sentence"* before they are carried out. The systematic nature of these delays indicates that authorities may deliberately intend to impose further psychological punishment on prisoners. Amnesty International is concerned that the failure to notify prisoners of the time of their caning aggravates the torture or other ill-treatment already inflicted on caning victims.

"Before [the whipping] I thought I couldn't take the pain.... For me the fear before was much worse," said Hussain, a 26-year-old Malaysian drug user who received one stroke for failing to register with the police under the Dangerous Drugs Act.

3.2. CALL-UP

"There's whipping every Thursday [in Pahang]. When Thursday comes around we are afraid."

Subramanian, a 43-year-old Malaysian caned in Pahang in 2007 for running away from a drug rehabilitation centre.

According to testimonies from victims, canings in Malaysian prisons are carried out on a regularly scheduled basis. Although prisoners are not informed of the date they will be caned, they know which day of the week their caning will likely be carried out. In some prisons, the canings are done on Mondays, in others on Wednesdays. As Mohd Ghazali, a Malaysian caned in 2003, explained, *"Every prison has its designated day for whipping. At Penuh it was Thursday."*

According to testimonies from a range of prisons across Malaysia, prison officials carry out canings at least once a month. The frequency may vary by prison. *"It was once a month,"* said Mohd Jamil, a 49-year-old Malaysian caned in Alor Setar in 2006 for running away from a drug rehabilitation centre.

"They do whipping once every three weeks, it's always on a Wednesday," said Khawm Lun, a 33-year-old Burmese refugee of his caning at Kajang in August 2007. He was caned again in Johor Bahru in July 2008. In 2005 a caning officer at Kajang told *The Sunday Star* that canings are carried out at the prison every Wednesday and Friday.²⁶

While some prisons carry out canings more frequently than once a month, Amnesty International received no reports of any prison conducting canings less frequently than once a month.

LAST-MINUTE NOTIFICATION

Prison officials notify prisoners that they will be caned by making a group announcement.

"They would call body numbers [prisoners' serial numbers]. We'd have no idea who'd be up next. It's like a Toto [a local lottery]," said Mohd Ghazali, a 29-year-old Malaysian who was caned at Kuantan in 2003: "When the caning day arrives, prisoners listen anxiously as the warden reads out the list of body numbers, or serial numbers, of prisoners. Prisoners who are not called may have a temporary sense of reprieve, but the anguish of indefinite waiting begins all over again."

The exact time at which prison officials announce the next list of caning victims varies by prison, however. Lal Lian, a 26-year-old Burmese refugee caned on 15 January 2009 in Penang, said:

"I learned only the same day, only at 10am. In the common area where we were all lined up they called names and body numbers. We were told we were the group to be whipped. We were about 60 people, in two lines of 30 and 30.... This happened once a week, on Wednesdays." Lal Lian said they were then separated from other prisoners, and taken to be caned.

At most other prisons, however, victims said they were notified the night before. *"I was in for eight months before I was whipped. I was given one-day warning. The evening before they told us by body number,"* said Ibrahim, a 25-year-old Malaysian who also served a 15-month prison sentence for robbery in Kajang.

"At 6pm the night before they make the announcement. They want people to be ready," said Mohd Ghazali, a 29-year-old Malaysian given three strokes in Kuantan in 2003.

For many prisoners, the night before the caning was a period of extreme anguish. Ibrahim, a 25-year-old Malaysian who received one stroke for robbery, said that the night before, *"I was shaking, I felt ill."* Many caning victims said that they could not sleep out of fear.

INCIDENCE OF CANING

Prisoners are called to be caned in large groups, and then caned one at a time. The number of prisoners called to be caned at any one caning session gives an indication of the magnitude of caning in Malaysia. Hussain, a 26-year-old Malaysian caned on drug-related charges, said: *"They didn't tell me the date. Only on the day I was whipped, in the morning, did they tell me. After breakfast they called 15–20 names. It was a small prison [i.e. Kuantan], Kajang has a lot more."*

While a prison like Kuantan may cane 15–20 prisoners in one day, the number can be much larger at larger prisons. Mohd Jamil, a 49-year-old Malaysian heroin user, was caned in 2006 at Alor Setar Prison. He said: *"If there was going to be whipping, they would call 30 people."*

An even greater number of prisoners are caned at Kajang, a large prison near Kuala Lumpur. Khawm Lun, a Burmese refugee who was caned in August 2007 at this large facility outside Kuala Lumpur. “*They called 50 names for rotan the next day,*” he said. “*The 50 of us were whipped one after another.*” The number of caning victims in one day may be even higher, however. Sulaiman, an Indonesian migrant given three strokes at Kajang in March 2010, said that he was among 65 men caned that day.

HOW MANY PRISONERS ARE CANED EACH YEAR?

The Malaysian government has not released overall figures of the number of prisoners it canes each year. Amnesty International has thus used statistical sampling to arrive at a rough estimate of the number of canings each year. According to testimonies from 10 prisoners caned in a variety of prisons, a prison in Malaysia on average canes 30 to 40 prisoners each month. If this figure extrapolated to the country’s 31 prisons,²⁷ the result would be at least 900 to 1,200 prisoners caned each month.

Amnesty International thus estimates that the Malaysian government canes as many as 10,000 prisoners a year. This estimate also squares with sets of official figures given to Parliament in 2004 and again in 2009. It should be noted that these official figures given to Parliament cover only immigration offences and thus do not include canings for some 60 other offences.

In the first 16 months after caning for immigration violations began in August 2002, a total 18,607 of undocumented immigrants were caned, according to Deputy Home Affairs Minister Datuk Tan Chai Ho in December 2004.²⁸ In response to a parliamentary question in 2009, the Malaysian government revealed that 34,923 foreigners were caned between 2002, when the amendments to immigration law went into effect, and 2008. More than 60 per cent of the foreigners caned were Indonesian, 14 per cent were Burmese and 14 per cent were Filipino.²⁹

CANING OF VICTIMS BY NATIONALITY AND HIV STATUS

“It’s very shocking, this system... They called a lot of us at once, 30 to 40. Foreigners and locals both.”

Mohd Ghazali, a 29-year-old Malaysian who was caned at Kuantan in 2003.

Malaysians and foreign nationals were caned separately at other prisons, according to other caning victims. In Kuantan, Hussain, a 26-year-old caned for drug-related offences, said “*We were all Malaysian, when they did foreigners, they only did foreigners. In Kajang they mix them up.*” He said he was not caned in Kajang, however, but only in Kuantan.

Kop Thang, a Burmese refugee who received two strokes in Kajang in 2009, said that he was caned in a group of about 99 people, with two queues and two doctors. “*Indonesians, Bangladeshis, Burmese, they were all foreigners, no Malaysians,*” he said. In Alor Setar, a smaller prison, 49-year-old Malaysian Mohd Jamil said that in 2006 his group was mixed, comprising 10 Malaysians and 20 foreigners. Prisoners in the front of the queue, he said, were caned for more serious offences like robbery.

Another category, apart from nationality, is used to sort caning victims: seropositivity for HIV. As is the case for Malaysians and foreigners, HIV-positive prisoners are housed in different prison blocs. Prisoners said that HIV-positive prisoners are caned at the end of the caning line. Nik Hasan, a 27-year-old Malaysian methadone patient caned for drug possession, explained, “A different rotan is used for HIV people.”

When caning HIV-positive prisoners, caning officers wear a protective suit to protect them from infection by the victim’s splashing blood and flesh, a caning officer at Kajang told the press in 2005.³⁰

3.3. MAKING VICTIMS WITNESS ABUSE

“I was the fifth one in line. I could see everything, hear everything. The strokes were very hard. I could hear them screaming, some fainted. They tie their hands, everything, I was terrified.”

Hussain, a 26-year-old Malaysian caned at Kuantan.

After prisoners are called up for caning, they are assembled in queues, just outside the place where caning is executed. Caning victims interviewed by Amnesty International clearly recalled what position they had held in the queue. Sulaiman, a 28-year-old Indonesian migrant, said that he was caned at Kajang in 2010 along with a group of 65 other people, 62 of whom were fellow Indonesian migrants. Abdullah, a 33-year-old Indonesian, was one of the migrants caned the same day. Both men, who were given three strokes, were interviewed immediately after their deportation to Indonesia. Sulaiman recalled, “I was the 49th on line.” Abdullah responded, “I was the 53rd.”

“In front of me there were 11 people, I was the 12th, and there were many people behind me,” said Hau Lian, who said he was among 49 prisoners whipped on a single day in January 2009 in Kajang.

Prison officials cane prisoners individually, one after another. Some prisoners said that many of them prayed, and that other prisoners cried. For all but the first prisoners, the wait takes a long time. Alex, a 33-year-old Indonesian migrant given three strokes at Kajang in 2010, said “We waited two to three hours.”

ILL-TREATMENT IN THE QUEUE

Prisoners also said that guards subjected them to ill-treatment while they were waiting in the queue. Alex, the 33-year-old Indonesian, said, “While waiting for the rotan they would even beat us if we didn’t say in line. They would take sticks and hit our heads.”

Prison officials made waiting prisoners witness the punishment that they would soon endure themselves. Near the back of the line, prisoners can hear the actual caning of victims ahead of them. Kamil, a 23-year-old Indonesian migrant given three strokes at Kajang in 2010, said “We could hear the whipping ahead. It sounded like fireworks [exploding].”

The exposure of caning victims to the effects of the caning itself causes additional fear and anguish for many prisoners. Hau Lian, a Burmese refugee, said, *“Each stroke made a big boom, it was very noisy. It went on for an hour, an hour and a half. Some were screaming, some crying. I felt very afraid.”* Another Burmese caning victim, Khap Khan said *“I heard the sounds of other people being whipped so I was very afraid.”*

In some prisons, prisoners said they could see, as well as hear, the caning of other prisoners. Ibrahim, a 25-year-old Malaysian caned in Kajang, said, *“I could see the others being whipped. I saw pain when I saw them whipped.”*

Hussain, a 26-year-old Malaysian who saw and heard other prisoners being caned in Kuantan in 2006 said: *“The strokes were very hard. I could hear them screaming, some fainted. They tie their hands, everything, I was terrified.”*

Prison officials thus subject victims to the terror of the punishment they will endure. By putting prisoners in the position to witness the caning of others ahead of them, prison officials are causing further psychological suffering in these prisoners.

3.4. MEDICAL CHECK

“First we had to see the doctor.... The same doctor was present at the whipping. He was witnessing it.”

Mohd Jamil, a 49-year-old Malaysian caned at Alor Setar in 2006 for running away from a drug rehabilitation centre.

Doctors play an integral role in the caning process – before, during and after the caning is administered. They certify that victims are fit to be caned, witness canings and also help revive victims during the caning process. Less frequently, they attend to the wounded victims afterwards. More usually, they leave the task of medical treatment after caning to the hospital assistant from the prison clinics.

“He checked my heart and blood pressure. He was a real doctor, didn't say a word.... He didn't reject anyone. Everyone was approved for whipping,” said Mohd Jamil, a 49-year-old Malaysian who was caned in 2006. All of the caning victims interviewed by Amnesty International said that they were examined by a doctor before being caned.

In various prisons across Malaysia, the standard procedure seems to be for the doctor to check the victim's heart with a stethoscope, and to check his blood pressure as well. Some victims said they thought that this was to screen for the risk of heart attack or other serious condition. None of the victims, however, said they were informed of the medical reason for the check. Mohd Jamil said the doctor rejected none of the 30 men he was caned with at Alor Setar in 2006.

PHYSICIANS' COMPLICITY IN CANING

Doctors have the authority to reject a victim for caning on medical grounds.³¹ None of the victims interviewed by Amnesty International said that they themselves had been rejected. In interviews with 57 victims, Amnesty International heard of only one example of a rejection: Hau Lian, a 36-year-old Burmese refugee, said that the doctor had rejected one person in his group of 50, but was not told why.

A doctor may examine as many as 60 victims in the course of two or three hours, which may leave less than five minutes for each examination. This quick check of heart and blood pressure thus represents a cursory examination rather than a full medical check-up.

Doctors also facilitate the process of caning by noting the height and weight of caning victims. Unlike many caning victims, Nuam Niang is six feet tall (180cm). Before he was caned, the 35-year-old Burmese refugee said, "*The doctor checked my height but didn't say why. They check everyone's height and note it down on paper.*" The caning scaffold must be adjusted to accommodate the victim's height, a fact that doctors note down in their exam.

Most caning victims said that the doctor did not speak to them at all. But in some cases, they said the doctor responded with treatment that they felt was degrading. Rawi, an Indonesian migrant caned in March 2010, said, "*The doctor asked me if I had a passport. I said yes but not with me. The doctor then smiled. The doctor smiled at me in a mocking way. This made me feel pain in my heart.*"

As a young medical officer working in a government hospital, Dr Nisha was asked to serve as the physician in a caning of two prisoners at nearby Kajang Prison in 1996. "*Witnessing it was part of my duty,*" she said. "*Caning is quite painful to watch, no matter what. It's very traumatic to witness this.*"

Participating in the caning session, Dr Nisha said, was part of her job as a government employee. Nevertheless, she emphasized that she was not forced to participate. "*We have liberty to choose to go or not to go.*"

"*They didn't pressurize me. But did they tell me about the terrible crime committed,*" Dr Nisha explained. To persuade her to participate, prison officials told her that the two caning victims were responsible for raping a 13-year-old girl, right in front of the girl's parents.

"*I can't say it was the right thing,*" said Dr Nisha, referring to the five or six strokes each prisoner received. "*If you go to prison for 14 years, you're already punished.*" Afterwards, Dr Nisha never participated in a caning session again.

The role of physicians in approving and facilitating the imposition of caning, a form of torture or other cruel, inhuman or degrading treatment or punishment, makes them complicit in this human rights violation. This is in violation not only of international human rights law in general, but also of internationally recognized codes of medical ethics.

The Declaration of Tokyo, adopted by the World Medical Association in 1975, in Article 1 states that: "The doctor shall not countenance, condone or participate in the practice of

torture or other forms of cruel, inhuman or degrading procedures, whatever the offence of which the victim of such procedures is suspected, accused or guilty, and whatever the victim's beliefs or motives, and in all situations.”

The Declaration goes on to state that doctors “shall not provide any premises, instruments, substances or knowledge to facilitate the practice of torture or other forms of cruel, inhuman or degrading treatment or to diminish the ability of the victim to resist such treatment.”³² Doctors must also “not be present during any procedure during which torture or other forms of cruel, inhuman or degrading treatment is used or threatened.”³³

Amnesty International is seriously concerned that the doctors breach their professional ethics as stipulated in the Declaration of Tokyo and elsewhere by examining prisoners to determine their “fitness” for being caned, measuring their size for the purpose of adjusting the caning scaffold, or noting physical evidence of prisoners’ past caning records for the consideration of the authorities.

STRIPPING THE VICTIM

“They humiliated me. They stripped me. They were inspecting me for tattoos. I was completely naked. They checked my penis too.”

Fahmi, a 30-year-old Indonesian migrant, recalling his check-up by the doctor before being caned in 2010.

Before the doctor’s check-up, caning victims are required to strip naked and put on a type of diaper-like garment, which they must wear during the caning and usually afterwards as well. This consists of a small loin cloth that covers the genitals, but leaves the buttocks completely exposed.

This forced near-nudity is humiliating for prisoners. “*We were standing there all day, naked except for a front covering. I felt so ashamed, I just looked down.*” said Khawm Lun, a 33-year-old Burmese refugee. Forcing prisoners into a state of nudity or near-nudity, unless for legitimate medical purposes, is degrading, and contrary to international law and standards on the treatment of prisoners. For instance Rule 17(1) of the UN Standard Minimum Rules for the Treatment of Prisoners states that clothing provided to prisoners “shall in no manner be degrading or humiliating.”³⁴

Prisoners said that their humiliation was compounded when they were caned in the presence of women, such as female doctors witnessing the caning. “*That was the first time women saw my bottom. I felt shame,*” said Zung Sang, a 27-year-old Burmese refugee.

4. CANING

As far as Amnesty International is aware, in Malaysia there is no detailed written procedure for judicial punishment by caning, unlike judicial execution by hanging. According to a Malaysian lawyer interviewed by Amnesty International, the lack of procedure results in uneven execution of the punishment, leaving the process open to abuse. At the same time, despite this lack of written procedure, interviews with victims revealed standard patterns in the way canings are conducted in prisons across Malaysia. Victims described how the caning process was carried out with almost clinical precision.

4.1. LOCATION

Caning is a process that remains shrouded in secrecy. According to testimonies by victims held at different detention centres, prison staff administer the punishment in a special, restricted site within the prison, which is hidden from the general inmate population as well as closed from public view. *"I was afraid. I didn't know what to expect,"* said Mohd Naim, a 30-year-old Malaysian given three strokes at Kajang in 2009. *"I was afraid because it would be carried out in a private area where no one could see [what was taking place]."*

In addition to the victims, the only witnesses at a caning session are those involved in administering the punishment: the caning officer, squads of prison guards, a prison official, and attending medical personnel. At certain times, however, the prison may invite groups of new magistrates or law students to observe the process.

The layout of the caning area may vary by prison, but according to testimonies of victims caned in different prisons, it appears that the caning area is always a location separated from the prison blocks. At Kajang, Burmese refugee Kop Thang said the caning place was an open pavilion under a roof. Dr Nisha also said canings at Kajang in 1996 took place in an "outdoor area."

4.2. READING OUT THE SENTENCE

Before being caned, prisoners are led individually from the waiting area and taken into the caning area. There the prisoner stands before the head officer, who stands next to a panel of relevant personnel. Abdul Wahab, a 29-year-old Malaysian, said that the panel at Pengkalan Chepa near Kota Bahru consisted of a judicial officer, a doctor, a senior officer with round epaulets, along with three *tuan* (or guards). Victims caned at other prisons also confirmed that the panel comprised of a judicial officer, a doctor and a prison officer.

After the victim enters the caning area, he stands at attention before a standing prison officer, who reads the sentence aloud. *"Just before being whipped I had to say my name, number and 'sir'. They told me I was being caned because of Section [397, ie. armed robbery],"* said Ismail, a Malaysian who was given six strokes in Kajang in 1989. Two

decades later the procedure remains the same at other prisons. Nian Vung, a Burmese refugee caned in Melaka in 2008, said *"They read the sentence. I didn't understand. I understood that 'satu' means 'one'"*, which was the number of strokes that Nian Vung was given.

CONFIRMING THE INTENT

The victim's sentence, which is read aloud, explicitly states the purpose of the caning: the victim is to be caned as punishment for a criminal offence, which is specified under a cited provision of Malaysian Penal Code. In addition, the sentence specifies the number of strokes that the prisoner will receive.

Some of the Malaysian caning victims interviewed by Amnesty International said that the prison officer then asked them if they wanted to appeal the sentence. Rawi, an Indonesian migrant given two strokes in March 2010, explained, *"The officer said the whipping would be carried out [and asked]: 'Do you have any appeal?' I didn't appeal because I had no opportunity... [Even] before the judge gave me the sentence it had been decided. I felt I had no opportunity to appeal."*

However, none of the caning victims interviewed by Amnesty International said that they appealed their sentence, or indeed witnessed any other caning victim lodging an appeal.

Ismail, a Malaysian caned for armed robbery, explained that after reading the sentence, the officer offered him the opportunity to appeal. But at the same time, the officer asked him to confess that he had committed the offence.

According to Ismail, the officer asked, *"Do you admit that you committed this crime?" I said yes. I think if you plead not guilty they will reopen your file and not whip.... I was afraid they'd give me an even worse sentence."*

HUMILIATION

After the prison officer reads the sentence and announces the number of strokes that the victim will receive, the victim is forced to thank his perpetrators for the abuse that he will receive. Hre Ki, a 20-year-old Burmese refugee caned at Kajang, explained, *"We have to say, 'Thank you, sir [terima kasih, tuan]' to the prison officer."* Lal Lian, a Burmese refugee caned in Penang, said, *"You have to say terima kasih and then tuan."*

Christian refugees who had fled the Chin State in Myanmar said they faced additional humiliation on religious grounds. *"As we passed the officers we had to say 'Salaam aleikum' and bow our heads,"* said Kop Thang, a Christian Chin refugee from Myanmar, who was given two strokes in April 2009 at Kajang. Khawm Lun, another Christian Chin refugee, said: *"You have to say 'Salaam aleikum' [lit. 'Peace be with you' in Arabic] and salute the officer. Then they ask you [to confirm] your name and religion."* In contrast, no Muslim caning victim interviewed said he was forced to say "Salaam aleikum."

Next to the head prison officer sits the panel of judicial official, doctor and prison official. Their presence fulfils several functions. First, they witness the reading of the sentence out

loud, which specifies the purpose of the punishment and the number of strokes to be administered. Second, they represent the state as authorities of its juridical and medical powers. Finally, their assent, or lack of objection, is what authorizes the caning to proceed.

As noted above, doctors play a key role in the caning. Adil, a Malaysian convicted for drug offences, recalled one such doctor on the panel before he was caned. He said that the doctor was a young woman. Adil also said that when he stood before the young doctor, she was shaking and crying. When he passed her, he said she looked at him directly and said, “*I am sorry.*”

4.3. CANING PROFESSIONALS

“Behind the glass I could see about 10 men, very big, very strong. They were looking at us, giving us a stare. Some were holding their rotans.”

Nian Vung, a 23-year-old Burmese refugee caned in Melaka in September 2008.

According to accounts from victims, the prison officers who carry out the caning sentences share common characteristics: they are big, strong and powerfully built.

Caning officers are a select group of staff members within the Unit Keselamatan Penjara (UKP, or Prison Security Unit). Abdul Wahab, a 29-year-old who was caned at Pengkalan Chepa, near Kota Bahru, explained: “*They’re UKP officers who carry out the whipping, but they wear other clothes. They still wear a jail badge, but with no name on the badge [when they cane].*”

Only one in 15 applicants is admitted to this elite corps, according to a caning officer interviewed in the Malaysian press in 2005.³⁵ One reason is that the process of caning is a specialized task which requires practice as well as strength.

In 2005, the *New Straits Times* reported that there were 50 caning officers and executioners in Malaysia.³⁶ Nik Hazan, a 27-year-Malaysian caned for drug possession, said, “*Each may do three [prisoners], then rest.*” For each caning day, prison authorities thus deploy teams of caners to execute the task.

Caning is a skill that requires practice. “*We heard the sound of the rotan officer practicing on a sandbag,*” said Khawm Lun, a 33-year-old Burmese refugee. “*He was wearing a uniform.*” A caning officer must be able to lift his cane, and take a full-body swing. He also must be able to hit a small target—the victim’s exposed buttocks restrained in a scaffold—with accuracy.

The canes are over one metre long and are 1.25 centimetres in diameter.³⁷ “*The cane is already rinsed in saltwater so it would be heavy,*” said Hussain, a 26-year-old Malaysian caned at Kuantan in 2006.

According to an official of the Malaysian Bar Association, these canes are not cultivated or produced domestically, but instead are imported from India. Amnesty International requests the Malaysian authorities to provide information on the source and distribution of these implements.

Caning officers use both arms and deploy their full body force when executing a stroke. *"The UKP use two hands, they are very strong. Like Malenko [i.e. Dean Malenko, the US wrestling star known as 'The Cyclops'], they are fucking big,"* said Ibrahim, a 25-year-old Malaysian given one stroke for robbery in 2004.

Given the weight and torque of the caning officer's body, the cane hits the soft tissue of a victim's buttocks with immense force. In their training course, caning officers learn how to wield the metre-long cane at up to 160 kilometres per hour, resulting in a force upon impact of up to 90 kilograms, according an officer interviewed in the press in 2004.³⁸

"They never hit you straight on. They pull it to take off the skin," said Subramanian, a Malaysian caned at Pahang in 2007. *"The skin comes off immediately,"* said Dr Nisha, who witnessed a caning session at Kajang in 1996. *"The skin and subcutaneous tissue came off."*

According to a forensic pathologist who has participated in UN human rights investigations, the impact of the cane on the buttocks results in a blunt force injury which lacerates the skin. The laceration causes bleeding, and leaves permanent scars on the victim's body.

In addition to blood, caning victims interviewed by Amnesty International said the caning resulted in a yellow discharge. The forensic pathologist explained that the yellow fluid is subcutaneous fat which has been crushed into pulp by the impact of the cane.

"I was afraid of them, so I didn't cry out. The man who whipped me was very big and strong. I was afraid he might beat me again," said Khap Khan, a Burmese refugee who received one stroke. Due to intimidation, or fear of further injury, some victims said they were afraid to express the pain they endure on the scaffold. This was particularly the case among Burmese refugees who said they had little or no idea of what was happening.

CASH FOR MORE STROKES, BRIBES FOR FEWER

“They pay 10 bucks [i.e. ringgit] for one whipping... an allowance for each stroke,” said Subramanian, a 43-year-old Malaysian caned in Pahang in 2007 for running away from a drug rehabilitation centre.

The Malaysian state offers direct financial incentives for prison officers to execute canings. Since canings are not carried out everyday, however, at other times caning officers perform other tasks in their role as UKP officers. The caning officers receive regular salaries as UKP officers. In addition, they receive a bonus for each caning they perform, based on the number of strokes.

“Each UKP advertises for who wants to do whipping. [The caning officers get] paid 50 ringgit each. They are all really well-built,” said 27-year-old Nik Hazan.

In 2005, the government increased the bonus paid to caning officers to 10 ringgit (US\$3.20) a stroke, up from 3 ringgit previously.³⁹ (Executioners likewise received a raise for each hanging, with their bonus increasing to 500 ringgit.) Unlike hanging, caning is a highly sought-after job among prison officers, the BBC reported.⁴⁰ By executing 200 strokes a month, a caning officer can supplement his base salary by 24,000 ringgit (US\$7,680), or roughly equivalent to Malaysia's annual per capita GDP.⁴¹

According to ex-prisoners interviewed by Amnesty International, caning officers exploit a loophole in the caning procedure: a stroke that misses is still counted as a stroke. For a bribe, prisoners said, some caning officers will agree to miss a stroke. Since victims do not know which caning officer will be assigned to cane them, the process requires other prison officials as middlemen.

“Sometimes you can pay money to get the force of whipping reduced... I was poor so I couldn't get into that sort of negotiation,” said Ismail, who was caned in 1989. *“I could hear when [the caners] missed and hit the padding. If it misses, it counts. That's why people bribe.”*

“Everything is done in secret without top officers knowing. They will put the caners in touch with your family. The UKP come into the blocks, ‘Whoever is getting whipped, give us your family details... The family negotiates the ‘fee’,” said Abdul Wahab, a Malaysian caned in 2004. He said he thought it cost around 300 ringgit.

The “fee” charged, however, may also depend on the victim's ability to pay. The sister of a wealthy businessman in Kuala Lumpur told Amnesty International that she paid US\$6,000 to reduce the caning of her brother after he was convicted for criminal breach of trust.

In comparison, prisoners such as refugees, migrants and drug users have little money. As a result, they said they could not afford to mitigate their caning through bribery. *“I didn't pay because I didn't have any money,”* said Abdul Wahab. *“It's unfair, it's unjust, that's how I felt.”*

SECURING THE VICTIM

“Two men grabbed me and forced me to walk to the scaffold.”

Khawm Lun, a 33-year-old Burmese refugee, speaking of the first time he was caned in 2007. He was rearrested and caned again in 2008.

Immediately after the sentence is read out, the prisoner is taken to the scaffold to be caned. Some victims said they were allowed to walk freely to the scaffold; others said that their bodies were shaking with fear. Still others, like the 33-year-old Burmese refugee Khawm Lun, said they were forcibly dragged by guards.

As Ismail, a 47-year-old Malaysian caning victim, explained, some prisoners were threatened with harsher punishment en route. Prisoners could not determine the identity or rank of the guards leading them to the scaffold. As Mohd Jamil, a 49-year-old Malaysian heroin user, explained, “*The people taking me to the scaffold wore no uniform, just a T-shirt.*” As noted above, a government’s failure to ensure that prison guards wear IDs makes it harder to hold them accountable for any abuse.

The guards then tie the victim to the scaffold, which is an A-frame truss open at the back. “*They tied me down. They tied my hands and legs and held my head down,*” said Mohd Ghazali, a 29-year-old Malaysian caned in Kuantan. Guards fasten a belt around the victim’s waist, and place an open panel around his buttocks.

Prisoners told Amnesty International, however, that the guards did not inflict physical pain when tying them up. Rather, the aim of the guards is to keep the victim secured during the caning. “*They don’t tie us too tightly,*” said Abdul Wahab, a 29-year-old Malaysian. “*Just to keep us from moving.*”

These restraints render the victim completely immobilized and powerless. According to prisoners, the resulting sense of powerlessness can be terrifying. “*I was terrified when they tied me up,*” said Rawi, a 24-year-old Indonesian migrant caned in March 2010. “*[After the first stroke] I tried to get away but I was held tightly with a belt.*” Victims spoke about their sense of utter helplessness. When he was tied to the scaffold, the 26-year-old Burmese refugee Kop Thang recalled thinking, “*There was no one to help me.*”

“*All I could think is I am going to die,*” said Nuam Niang, a 35-year-old Burmese refugee caned in 2006. “*There was nothing I could do. I was terrified. I knew I had no choice. I couldn’t run.*” Victims also said they feared permanent physical disability as a result of the caning.

“*I was terrified that I might become disabled, paralyzed, impotent,*” said Mohd Ghazali, a 29-year-old Malaysian said of the fear he felt on the scaffold. Other victims spoke about similar fears of “paralysis.”

Prisoners also told Amnesty International they felt like that they were treated like animals when they were put in the scaffold. Fahmi, a 30-year-old Indonesian migrant, said: “*I am not a cow, an animal. I am a human being and human beings should not be beaten like this... They treated me like an animal. They tied me up, they whipped me.*”

“I felt like an ox when they put a hole in its nose,” said Khawm Lun, a Burmese refugee, speaking about being led to the scaffold. *“When we put a hole in an ox, we have to hold him down. I felt like an animal. I was shaking with fear.”*

“They told me not to hold my breath.... Once you exhale they execute the sentence,” said Mohd Jamil, a 49-year-old Malaysian heroin user. What determines the timing of the stroke is the victim's act of exhaling. The caning officer waits until the victim has emptied his lungs. After he received his first stroke, the Indonesian migrant Rawi said: *“I held my breath to contain the pain, to prevent them from hitting me again. It was like I was under water. I held it until I couldn't hold it any longer.”*

ARBITRARY PUNISHMENT

“If they [the caning officers] get mad at you, they really try to hurt you. They will tear the ass, pieces of meat will come off like scraps.”

Subramanian, a 43-year-old Malaysian caned in Pahang in 2007 after running away from a drug rehabilitation centre.

The caning officer has ultimate control over the way the sentence is executed. If the victim's family has paid a bribe, the caning officer may deliberately let a swing miss and hit the frame rather than the victim. On the other hand, the caning officer can elect to punish some victims more harshly than others.

“When they saw my scars from before they beat me even harder,” said Khawm Lun, a Burmese refugee caned in 2007 and again in 2008. *“I heard the handlers say, ‘This time we'll put him in even worse condition.’ They told the caner and he took a twirl with full force.”*

As noted above by a Malaysian lawyer, the government has not established a detailed standard procedure for a caning. Without judicial oversight of the actual caning process, discretion over the severity of a sentence is largely left in the executioner's hands.

4.4. POINT OF IMPACT

“Stroke One, then boom! As soon as he said ‘One,’ it hit me. Stroke Three, I remember they said it very loud.”

Ramli, a 54-year-old Malaysian recalling his caning in 1982.

Once the victim is immobilized in the scaffold, the caning area falls silent until a guard begins to count out the strokes. *“They said one, then Pah! Two, Pah!”* said Subramanian, a 43-year-old Malaysian drug user. The caning officer responds; he lifts his cane, takes a full-body twirl, and lands the end of his cane directly on the victim's buttocks.

The victim's body reacts instantly. Due to the impact, victims lose muscle control in the buttocks. *“For me the first one was the worst because I had never experienced pain like that. My bottom was shaking all by itself,”* said Rasdi, an Indonesian migrant caned for illegal entry at Kajang in 2010. Videos of caning confirm this effect; the victim's body and legs shake uncontrollably.

Due to the physical pain caused by the cane, as well as intense fear, victims may lose control over their urinary and bowel functions. *"I urinated after the first stroke because of the pain. It was unbearable,"* said Ismail, a Malaysian caned in 1989. *"Even faeces and urine came out,"* said Nik Hazan, a 27-year-old Malaysian caned for drug possession. *"People were screaming, crying, calling for their mothers and fathers."* This loss of continence further compounds the victim's degradation.

Loss of consciousness is another common effect of caning. Lam No, a 23-year-old Burmese refugee arrested in the Cameron Highlands and caned in July 2008 at Sungai Pateni Prison with a group of 15 prisoners, said: *"Two or three of us lost consciousness after two strokes. I was blinded by the pain."*

When a victim loses conscious, officials halt the caning. *"I fainted. They waited until I came to,"* said Alex, a 33-year-old Indonesian migrant. *"The pain was so bad it went to my head. I fainted again after the second one."* According to Dr Nisha, a physician who attended victims at a caning session, this fainting results from neurogenic shock, or a loss of nerve signals to muscle caused by trauma. The caning is not terminated after a victim loses consciousness, however. It is merely interrupted.

At this point, medical personnel play a direct role in the process. To revive the victim, a doctor will order a bucket of water to be thrown over his head. The doctor fails to fulfil his obligation to treat the victim's injury or trauma. Instead, the doctor ensures, then certifies that the victim is conscious, and thereby authorizes the caning officer to inflict even more injury.

EFFECTS ON THE BODY

When he whips the cane into the victim's buttocks, the caning officer inflicts a deep wound. Afterwards, when dragging the tip of the cane across the wound, he lacerates the skin. In the double gesture, the cane both crushes and tears the flesh.

"At first it bruised, then it cut," said Ahmad Faisal, a Malaysian heroin user who received five strokes. *"When it gets beyond five, the flesh disintegrates,"* he said. Victims from a range of prisons told Amnesty International that caning officers apply strokes in a uniform pattern. The first three are delivered in parallel stripes across the buttocks. Any subsequent strokes are delivered on top on these.

The task of inscribing the prisoner's body with such precision may be challenging, however, given that the caning officer delivers the strokes from a distance of around two metres. *"I couldn't even handle just one stroke alone,"* said Rasdi, a 34-year-old Indonesian migrant caned in 2010, who explained that he collapsed after the first one. *"Both of my strokes were in the same place."*

Each additional stroke compounds the damage to the victim's body. Subramanian, a 43-year-old Malaysian drug user, spoke of the canings he had witnessed of prisoners sentenced for serious criminal cases, such as "376" (Section 376 is the punishment for rape in the Penal Code). *"When it's five strokes, ten strokes, they really lose their ass,"* he said. *"Their flesh looks like a bowl."*

Victims also reported neurological effects, in addition to losing consciousness. Lal Lian, a 26-year-old Burmese refugee caned in Penang on 15 January 2009, said after the stroke: *"Suddenly I saw a shining light. A light like someone hit me on the head, like in an accident."*

SEVERITY OF PAIN

"It was more than being in a motor accident. It was like cutting your arm open and putting chilli in it."

Nik Hazan, a 27-year-old Malaysian who received two strokes.

As Nik Hazan underscores, the pain is not singular type, but a combination of different kinds of pain. Hre Ki, a 20-year-old Burmese refugee, explained this combination of pain he endured: *"It was like being burned, and being cut with a knife,"* he said.

An intense burning pain was another effect consistently reported by victims. *"When I was hit, the rotan felt like a hot piece of metal,"* said Hussain, a 26-year-old Malaysian caned in 2006. Victims said they felt the physical sensation of burning. *"Hot,"* said Sulaiman, a 28-year-old Indonesian migrant who received three strokes. *"My whole body was burning."*

A simile from the insect world frequently used by victims helps to explain the pain. As Ramli, a 54-year-old Malaysian caned in 1982 for heroin possession, explained, *"The first stroke burned, like I was being bitten by red ants."*

Victims told Amnesty International that the pain shot through the body, well beyond the point of injury on the buttocks. *"I felt pain, heat, burning, dizziness. I cried,"* said Rawi, an Indonesian migrant caned in March 2010. *"My arms were tense. First the pain went to my head then down to my feet. I had never felt pain like this."*

"The pain goes up to your head. It felt like an electric shock. I don't have the words for it," said Hussain, a Malaysian given one stroke in 2006.

"I have suffered toothache, stomach ache, headache, but I have never experienced anything as painful as this rotan. This rotan was the most painful thing of all," said Sian Muan, a 39-year-old Burmese refugee detained at Langkap Immigration Detention Centre and caned in April 2009 at Tapah Prison in Perak. Other victims told Amnesty International that the pain of caning exceeded the pain of any physical ailment that they had ever suffered.

"It was the worst pain in my life. Even after my motorcycle accident I didn't feel like that," said Ibrahim, a 25-year-old Malaysian convicted of robbery. Other Malaysian victims also said that they suffered worse pain caning than road accident injuries, and that the recovery from caning was also more painful.

In a series of interviews, Amnesty International asked victims to rate the severity of the pain inflicted by caning on a scale of 1 to 5. Level 1 represented no pain at all, and Level 5 the worst conceivable pain. All 12 victims surveyed rated the pain they endured in caning at Level 5, the greatest pain imaginable.

NUMBER OF STROKES

All other things being equal, the higher the number of strokes, the greater the injury caused. However, the severity of the initial pain, as experienced during the caning itself, does not necessarily depend upon the number of strokes administered. Ismail, a Malaysian given six strokes in 1989, said: "*The first stroke hurt the most. After that I started feeling numb and couldn't feel it as much. I only heard him say one, two. I didn't hear any of the others coming.*"

"*The second one hurt more,*" said Abdullah, an Indonesian who received three strokes in 2010. "*By the third my whole bottom was numb already. It felt like my bottom had disappeared.*" Victims commonly reported numbness, or complete loss of sensation, in the buttocks after the first or second stroke.

"*For two to three minutes, there was no feeling, then the pain came back,*" Abdullah said. For many victims, the end of caning on the scaffold does not mark the end of pain, but rather its prologue.

5. AFTERMATH

“When you’re tied up you don’t feel the pain as much until after they untie you. That’s when the wound starts to bleed.”

Sulaiman, a 28-year-old Indonesian migrant given three strokes and then deported in April 2010.

Once the caning officer has administered the last stroke, the guards untie the victim and remove him from the scaffold. *“I couldn’t walk, they were supporting me afterwards,”* said Rasdi, a 34-year-old Indonesian migrant who received two strokes in 2010. Following the caning, victims are often unable to walk due to the damage inflicted to the buttocks, or loss of consciousness. As a result, the victim is sometimes dragged away by the attending guards, while other prison staff prepare for the next victim.

Before the victim is taken out of the caning area, however, he is subjected to one last procedure. *“After we were beaten, they put some kind of acid on us so the rotan mark would vanish, to make the wound crack. I didn’t want it but they forced me,”* said Hau Lian, a 36-year-old refugee from Myanmar. *“When they put the acid on, all my flesh burned.”*

Like Hau Lian, other Burmese refugees spoke of a painful “acid” applied after the caning. According to Zung Sang, a Burmese refugee who was given one stroke, *“They put acid on it to make the blood come out.”* According to other prisoners, the “acid” in question is an iodine solution designed to disinfect the torn flesh. Instead, the refugees felt that they were being subjected to a second form of torture, this time with painful chemicals.

Prison medical staff also failed to inform Malaysian victims about the treatment. *“They put yellow liquid on me. It burned. The HA [hospital assistant] didn’t say why.”* said Abdul Wahab, a Malaysian caned at Pengkalan Chepa in 2004. *“I didn’t know if it was to make me worse or better.”*

The iodine solution applied by medical staff can also cause excruciating pain. *“Putting iodine is quite painful so I used normal saline, then gave them an antibiotic,”* said Dr Nisha, who attended to two caning victims in 1996.

5.1. LACK OF MEDICAL TREATMENT

“We didn’t get treatment. They put some red lotion on us, but after that nothing.”

Sulaiman, a 28-year-old Indonesian migrant.

According to most victims, the application of an iodine solution was the only form of medical treatment they received. Although victims are examined by a doctor before they are caned,

doctors do not routinely provide medical treatment afterwards for the injuries inflicted by the caning.

"They won't treat you with painkillers unless you pass out or fall down," said Subramanian, a Malaysian caned in 2007 after running away from a drug rehabilitation centre. He said that prison staff gave him an analgesic, known as Pousten, but limited it to a three-day supply. A Burmese refugee, Kop Thang, said that he was able to obtain a limited supply of Panadol, an over-the-counter painkiller, from staff at Kajang. *"Only people who bribe can get more,"* he said.

Under international human rights standards governing the treatment of prisoners, the state is responsible for their well-being, and in particular for providing adequate medical care, to anyone in its custody.⁴² Because prison staff failed to provide medical treatment, prisoners said they had to rely on self-treatment instead. *"The only people who helped us there were the other prisoners. Everything was the other prisoners,"* said Ahmad Faisal, a Malaysian who was caned in 2002.

Caning victims told Amnesty International about a range of folk treatments which are handed down among prisoners. *"It took a week to heal,"* said Nassuruddin, a 28-year-old Malaysian who received five strokes. *"You can't eat fat, oil, you can't eat eggs. This is the advice passed on from prisoners, not to eat greasy food."* Malaysian prisoners, in particular, discussed similar dietary regimes to aid healing.

Victims also said they resorted to whatever herbal remedies were available. *"We would take 'kayu manis' [i.e. cinnamon] and use it as medicine,"* said Abdul Wahab, a Malaysian prisoner caned in 2004 for armed robbery with a pocket knife. *"In the village my mom would put this on small cuts."* He said he was able to obtain the cinnamon from his prison rations.

"Some prisoners put spider webs on their wounds. Maybe it helps it dry faster," said Subramanian, who was caned at Pahang. *"The doctors don't tell you anything."* As well as failing to ensure medical treatment, the authorities also fail to offer prisoners advice on how to keep their wounds from becoming infected.

After the caning, guards remove the victim from the caning area, which is readied then for the next victim. The victim is then taken to an anteroom, alongside other prisoners. Rather than serving as a medical recovery room, this anteroom warehouses prisoners until they can be sent back to their cell or otherwise transferred.

"They put me face-down on a bare concrete floor," said Kop Thang, after he was caned. Due to the injury inflicted to the buttocks, victims are unable to lie on their backs. Kop Thang said he was dumped onto a concrete floor at Kajang Prison, where as many as 60 prisoners may be caned in a single session.

Sanitation, as well as shelter, is another concern for caning victims. Their wounds make it difficult for them to stand, and all but impossible for them to sit. Ahmad Faisal, who received five strokes in 2002, said he was sent back to his cell even though he still could not even get up to the use the toilet. *"The other prisoners brought a plastic bag for me to put my faeces in. I couldn't do anything by myself."*

Apart from the initial application of iodine, medical staff do not help prisoners clean their wounds. Due to the nature of the wounds, however, many prisoners said they were unable to bathe. *"I couldn't take a bath for three days,"* said Khawm Lun, a Burmese refugee. *"You can't take a bath because the water will make the wound wet. Then it will stick to your clothes."*

Prison authorities also fail to provide adequate clothing to caning victims. As noted, before the caning, prison authorities furnish prisoners with a special seat-less loincloth which exposes the buttocks for caning. However, they do not provide them with clothing appropriate for their recovery. Due to the wounds he suffered after being caned three times at Kuantan in 2003, the 29-year-old Malaysian Mohd Ghazali said, *"I had to wear trousers with the seat cut out for a month. They're not provided by the prison. We had to cut the clothes ourselves."*

5.2. PHYSICAL SUFFERING AND RECOVERY

"The whipping lasts a short time, but it takes such a long time to heal afterwards."

Ismail, a 47-year-old Malaysian who received six strokes for armed robbery in 1989.

The act of caning, prisoners said, marks the beginning of a much longer period of pain and suffering while the wound is healing. The magnitude of the wound is not immediately manifest, explained Ibrahim, a 25-year-old Malaysian given one stroke for robbery in 2004. *"It looks blue, swollen after 15 minutes. That's when there's blood and yellow water. After three days, that's when you see the damage that's been done."*

"The next day you feel the pain. After you wake up your whole ass is burning," explained Subramanian, a Malaysian who received one stroke at Pahang in 2007. But the duration of pain varies, even among victims given the same number of strokes. *"The pain continued for two weeks. For even one stroke it takes two weeks,"* he said. On the other hand, Lian Khai, a 36-year-old Burmese refugee who received one stroke in 2005 in Alor Setar, said, *"I suffered pain for one month afterwards."*

The physical condition of the victim can be a complicating factor. Ahmad Faisal, a Malaysian who was given five strokes for heroin possession, said he was kept in the prison's clinic for one and a half months. He explained that his wounds were slow to heal due to his HIV infection.

"They didn't ask me about my wound," he said, explaining that the clinic focused on his HIV status rather than his caning injuries. *"To them it's nothing because some people have 10 or more. So mine was nothing to them. They thought of it as no big deal."*

Regardless of individual health conditions, caning victims described similar physical symptoms during the healing period. One is the inability to walk: *"After the whipping I felt like I had been tightened. So I could not walk for two days,"* said 26-year-old Khap Khan, a Burmese refugee. For other victims, this persisted much longer. Hre Ki, a 20-year-old Burmese refugee who likewise received one stroke, said, *"For two weeks I couldn't wear trousers or walk."*

Caning can also have impact on bodily functions. The injury to the buttocks can make the act of defecation painful: As Ibrahim, a 25-year-Malaysian, explained, *“It hurt for two weeks. It hurt to take a shit.”* Victims also said that injuries made the passing of urine painful: *“I suffered for 10 days. When I urinated, it felt hot”*, said Kop Thang, a Burmese refugee who received two strokes.

Victims also spoke about another physical symptom that affected an area near the caning wounds. *“For the first three months I couldn’t get an erection. Before that I always woke up stiff. Now it’s OK,”* said Nassuruddin, a 28-year-old Malaysian who received five strokes. Kop Thang said: *“I had no erection for 10 days. Before it was every morning. I was afraid I would become impotent.”*

5.3. MENTAL TRAUMA

“I felt a lot of pressure and stress, in my head and rear, both together. It’s a combination of physical and mental pain.”

Nik Hazan, a 27-year-old Malaysian caned for drug possession.

Caning can also directly lead to psychological pain and suffering. Many caning victims expressed anguish about impotence caused by caning and also its possible consequences. *“Most of us felt terribly sad afterwards. The saddest thing because we were thinking we may have lost our masculinity, and won’t be able to have children.”* said Zung Sang, a Burmese refugee.

“The most painful thing is in my heart, that hurts even more than the wound now,” said Hau Neel, a 47-year-old Burmese refugee who was caned in 2007. Some victims told Amnesty International that the psychological pain they suffered was as great as the physical pain. While the physical wounds inflicted by caning eventually heal, psychological pain persists in memory.

The procedure of caning puts the victim into a state of utter helplessness and powerlessness. For some victims, this was one of the most painful elements of the process. *“The mental pain was more painful,”* said Nian Vung, a 23-year-old Burmese refugee. *“I felt deserted there, that even God had deserted me.”*

5.4. DISCHARGE

“Some people walk out of prison with blood on them. They can’t even sit inside the bus.”

Subramanian, a 43-year-old Malaysian caned at Pahang in 2007.

After the caning, prison officials release some victims before their wounds have healed without ensuring that they receive appropriate medical care necessitated by the state’s own deliberate actions.

Two weeks after receiving three strokes at Kuantan in 2003, Mohd Ghazali was released from prison. *"When I was released I still felt sore inside. I was still in pain,"* During his time in prison, the 29-year-old Malaysian said he received no medical treatment for the pain and injury caused by his caning. *"I saw the doctors [hospital assistants] once, only after rotan. They applied iodine, and that was it."*

Ngai Cin, a 29-year-old Burmese refugee given one stroke in Alor Setar in 2004, said he was released only nine days after being caned. *"I couldn't put on trousers. I had to lean on someone to walk. The wound was still sticking [to my clothes]."*

"I didn't get any medicine. They just put me on a bus and sent me off to Lenggeng [Immigration Detention Centre]. It hurt, it was burning. I couldn't sit, I had to stand, they handcuffed me," said Rawi, a 24-year-old Indonesian migrant caned for illegal entry in March 2010.

In other cases, prison officials have caned prisoners, and then transferred them to other facilities with poor conditions. Nuam Niang, a Burmese refugee caned at Kajang in 2006, said, *"They took me to Blantik camp, it's a big prison camp. There was no room inside, so we slept on the ground outside. I was afraid it would make the wound dirty."* The next day, he said, Malaysian security officials took him to the Thai border and sold him to a group of armed men.

"We were whipped, then taken by bus to the Thai border," said Hau Lian, another Burmese refugee, who was caned in January 2009. *"Our minibus had 50 people. They put in the hands of gangsters, who asked for 1,600 ringgit in ransom. If we didn't pay, they said they'd send us to the fishing boats [for forced labour]."*

6. LASTING DAMAGE

“I can never forget it. I remember the pain, how they hit me, everything about it. Sometimes I just think about it. Nothing triggers it, it just comes.”

Ramli, a 54-year-old Malaysia who received three strokes at Kuala Lumpur's Pudu Prison (since closed) in 1982.

6.1. SCARS

A physical trace that caning leaves on the bodies of victims is the scarring that develops as the wound heals. Although victims cannot directly see the scars on their buttocks, they said they can still feel them, even years after their caning. *“I feel that it's scarred there, I can feel the scar,”* said Ibrahim, a 25-year-old Malaysian who received one stroke in June 2004.

Caning is a deliberate form of scarification. Caning officers apply the stripes in the standard, tripartite patterns when three or more strokes are inflicted. These scars brand the victim as a criminal for life. Even if a conviction is subsequently overturned on appeal, the tell-tale scars remain.

The scars constitute a form of forced, deliberate branding, by the state. The physical scars are also accompanied by psychological scarring. *“I will never let anyone see my scars. I'm ashamed about it. I feel handicapped,”* said Alex, a 33-year-old Indonesian who received three strokes in 2010. For the victim, the scar can serve as a permanent reminder of the abuse he suffered.

6.2. OTHER PHYSICAL EFFECTS

“If I sit down for a long time I get a burning sensation in my butt, at the wound.”

Than Tuang, a Burmese refugee who was caned at Kajang in July 2005, at age 19.

Some caning victims said that sitting in the same position for extended periods of time caused them great discomfort, even if they no longer felt pain from the wound. *“I still can't sit down for a long time. I feel weak and feel pain in the wound,”* said Lam No, a 23-year-old Burmese refugee who was caned in July 2008 at Sungai Pateni Prison.

According to a forensic pathologist consulted by Amnesty International, pain in sitting results from the scarring of fatty tissue in the buttocks by the cane. Pain in standing, he explained, would result from deeper scarring in the gluteus muscle tissue.

"I have back pain, and sometimes I can't walk properly. My left leg is pinched. I still can't stand up straight," said Lal Lian, a Burmese refugee who was caned on 15 January 2009. *"The UNHCR clinic gave me some small tablets, but there's still pain."* He said that he began to experience this pain only after his caning.

Many of the younger victims told Amnesty International about their fear of impotence, or how it affected other prisoners they knew. Amnesty International heard about this fear's longer-term persistence from the oldest victim interviewed, however. Ramli, a 54-year-old Malaysian who was caned 18 years ago, said: *"My penis was hurting a lot. I tried a lot of things, traditional massage, traditional medicine, and I could not use it again. For one year, I didn't have sex because I couldn't."*

6.3. PSYCHOLOGICAL EFFECTS

"I felt mentally and physically unstable. Little by little I'm feeling more normal now."

Lam No, aged 23, a Burmese refugee who was caned in July 2008.

Years after they were caned, victims said that the memories of the caning still intruded upon their thoughts. What caused the most acute psychological suffering was a sense of reliving the experience. *"I feel that I am mentally destroyed,"* said Kop Thang, a Burmese refugee caned on 21 April 2009. *"After they whipped me, I still felt that rotan. I saw only that rotan."*

"I wake up with nightmares about what happened. I have had a lot of them," said Nassuruddin, a 28-year-old Malaysian who received five strokes in 2002. *"I have had no type of counselling."* Nightmares such as these can be defining symptom of post-traumatic stress disorder (PTSD). Nightmares related to the PTSD are more anxiety-provoking and intrusive than ordinary nightmares. Moreover, their content involves the traumatic experience.⁴³

Victims also told Amnesty International about the cognitive impairments they suffered as a result of caning. *"I feel mentally unstable. Psychologically I don't feel the same as before,"* said Lam No, a 23-year-old Burmese refugee caned in July 2008. *"I think slower now, my reactions are slower. When I stand up after sitting down, I feel giddy."*

The symptom most commonly reported by victims, however, was an enduring sense of fear. *"If I hear a loud noise when I'm sleeping I wake up frightened. I think it's the sound of the rotan,"* said Khawm Lun, a 33-year-old Burmese refugee caned in two separate prison terms.

This enduring sense of fear that plagues victims can be real as well as imaginary. *"My main fear is the police,"* said Subramanian, a 43-year-old Malaysian heroin user who, having run away from a drug rehabilitation centre, faces a mandatory caning sentence if he is apprehended. *"I'd be willing to turn myself in if I could get a low sentence. But if I am caught they will sentence me to three strokes, three years. I can no longer bargain because I'll get the maximum, no matter what."*

As Malaysia is not party to the 1951 Refugee Convention, individuals recognized by the UNHCR as “persons of concern” are nevertheless arrested for illegal entry, which carries a penalty of caning. Kop Thang, a 26-year-old refugee who fled from Myanmar to Malaysia, said: *“The police warned us we could get whipped again. So we are living in a fearful state every time we go outside to go shopping.”*

In the case of Burmese refugees, who have fled abuse in their homeland, caning can result in retraumatization. Kop Thang, who had fled abuses by the military in Myanmar’s Chin State, said that, during the process of being caned: *“I was crying. I thought of my past experiences in Myanmar, being abused and tortured, and now being abused here in Malaysia.... I felt I was still not safe.”*

“I suffered abuses in Myanmar, but nothing as bad as this rotan,” said Ngai Cin, a 29-year-old Burmese refugee caned in Alor Setar in 2004. *“In my life this is the worst thing I have suffered.”*

6.4. THE FALSE RATIONALE OF DETERRENCE

“I asked the DPP [deputy public prosecutor], ‘It’s not a serious offence. Why are they giving me three rotan?’ He told me it’s to touch your conscience. The pain is to remind you not to offend again.”

Mohd Ghazali, a 29-year-old Malaysian who was given three strokes in 2003 for drug-related offences.

For the Malaysian state, as the prosecutor explained to Mohd Ghazali, the purpose of caning is not only to punish the victim for a past crime, but deter crime in the future. Officials have characterized caning as a deterrent sentence for the victim, in contrast to the death penalty.⁴⁴

When an official video of the caning of a prisoner was leaked on the Internet in 2007, Deputy Internal Security Minister Fu Ah Kiow said: *“The video is a means to educate the public and to show how hideous caning can be. It is a deterrence for drug traffickers and drug addicts.”*⁴⁵

Amnesty International points out that under international law, the prohibition of torture and other cruel, inhuman or degrading treatment or punishment is absolute. It therefore does not lend itself to any justification based on utility, including deterrence.

Victims of caning, at any rate, questioned whether it actually serves as a deterrent. *“What do you get out of whipping people? It doesn’t make people come to their senses,”* said Ahmad Faisal, a Malaysian given five strokes for heroin possession in 2002. *“Rapists get 20 strokes and are released to rape again. What does it accomplish? If you want to prevent this, keep them in prison.”*

At a government reception centre for deported migrants on the Indonesian island of Bintan, officials gathered 63 migrants who had arrived the night before for Amnesty International to interview. All of them had been caned, many of them three times. For some, the deterrent

effect may be minimal, however. *“Two-thirds of them will be back in Malaysia in a year,”* an official told Amnesty.

In Sabah, Immigration Department Director Datuk Baharon Talib in 2008 said that 4,326 unauthorized migrants had returned to the state to work illegally after they were caned and deported. He said, *“Some have been deported up to seven times, and we have found them back here based on our statistics.”*⁴⁶

“Other countries never do this. What is gained by this? They will be coming back here with a hardened heart,” said Subramanian, a 43-year-old caned Malaysian, when asked about the policy of caning migrants and refugees.

In the case of drug offenders, even former government officials disagreed with the caning policy. *“Drug addicts should not be whipped,”* a former high-level official in the Prison Department told Amnesty International. Combating Malaysia’s drug problem, he said, requires drug treatment, not corporal punishment. At the same time, he emphasized that he believed that rapists should be caned.

“Where’s the benefit?” asked Subramanian. *“What we are facing here is torture. We’re not living in the 15th century, we are living in the modern world.”*

7. RECOMMENDATIONS

7.1 TO THE GOVERNMENT OF MALAYSIA

To the Prime Minister's Office

- Immediately enact a moratorium on caning as a punishment in all cases, with a view to its abolition.

To the Cabinet Office

- Demonstrate Malaysia's commitment to combating torture and ill-treatment by recommending the ratification of the UN Convention against Torture and its Optional Protocol, as well as the International Covenant on Civil and Political Rights and its protocols.

To Parliament

- Amend legislation to treat immigration violations as administrative offences rather than crimes punishable by prison or corporal punishment; and
- Amend legislation on drug rehabilitation to abolish corporal punishment for drug offences, in line with human rights-based approaches to harm reduction.

To the Home Ministry

- Instruct all prison officials, police and other staff involved in the custody of inmates in their obligations to prevent torture and ill-treatment, and establish effective sanctions for non-compliance.

To the Foreign Ministry

- Extend an invitation to the UN Special Rapporteur on torture, and other forms of cruel, inhuman or degrading treatment or punishment.

To the Health Ministry

- Issue a circular to all government health officials prohibiting complicity in torture and ill-treatment, under clear sanction of law.

7.2 TO THE INTERNATIONAL COMMUNITY

To Indonesia, the Philippines and other ASEAN member states

- Call on Malaysia to end the practice of caning migrants, refugees and other prisoners.

To UN member states and UN agencies

- Call on Malaysia to abolish and combat all forms of torture and ill-treatment; and
- Inform Malaysian officials complicit in caning of their possible legal liability under universal jurisdiction for torture.

ANNEX I. OFFENCES PUNISHABLE BY CANING IN MALAYSIA

Malaysian law provides for punishment by caning for at least 66 known offences (listed below by section of the relevant law):

Penal Code (Act 574)

(46 offences)

Causing miscarriage

- 324. Voluntarily causing hurt by dangerous weapons or means
- 326. Voluntarily causing grievous hurt by dangerous weapons or means
- 329. Voluntarily causing grievous hurt to extort property, or to constrain to an illegal act

Criminal force and assault

- 354. Assault or use of criminal force to a person with intent to outrage modesty
- 356. Assault or criminal force in attempt to commit theft of property carried by a person

Kidnapping, abduction, slavery and forced labour

- 364. Kidnapping or abducting in order to murder
- 365. Kidnapping or abducting with intent secretly and wrongfully to confine
- 372. Exploiting any person for purposes of prostitution
- 372A. Persons living on or trading in prostitution
- 372B. Soliciting for purpose of prostitution

Rape, incest and “unnatural offences”

- 376(1). Rape
- 376(2). Aggravated rape
- 376(3). Incestuous rape
- 376(4). Causing death while committing or attempting to commit rape
- 376B. Incest
- 377. Buggery with an animal
- 377A. Carnal intercourse against the order of nature
- 377B. Punishment for committing carnal intercourse against the order of nature
- 377C. Committing carnal intercourse against the order of nature without consent, etc.
- 377E. Inciting a child to an act of gross indecency

Theft

- 380. Theft in dwelling house, etc.
- 382. Theft after preparation made for causing death or hurt in order to the committing of the theft

Extortion

- 384. Punishment for extortion
- 385. Putting person in fear of injury in order to commit extortion
- 386. Extortion by putting a person in fear of death or grievous hurt
- 387. Putting person in fear of death or of grievous hurt in order to commit extortion
- 388. Extortion by threat of accusation of an offence punishable with death, or imprisonment, etc.
- 389. Putting person in fear of accusation of offence, in order to commit extortion

Robbery and gang-robbery

- 392. Robbery (if committed on the highway between sunset and sunset)
- 394. Voluntarily causing hurt in committing robbery
- 395. Gang-robbery
- 396. Gang-robbery with murder
- 397. Robbery when armed or with attempt to cause death or grievous hurt
- 399. Making preparation to commit gang-robbery
- 400. Punishment for belonging to gang of robbers
- 401. Punishment for belonging to wandering gang of thieves
- 402. Assembling for purpose of committing gang-robbery

Criminal misappropriation of property

- 403. Dishonest misappropriation of property
- 404. Dishonest misappropriation of property possessed by a deceased person at the time of his death

Criminal breach of trust

- 406. Punishment of criminal breach of trust
- 407. Criminal breach of trust by carrier, etc.
- 408. Criminal breach of trust by clerk or servant
- 409. Criminal breach of trust by public servant or agent

Mischief

- 430A. Mischief affecting railway engine, train, etc.

Criminal trespass

455. Lurking house-trespass or housebreaking after preparation made for causing hurt to any person

459. Grievous hurt caused whilst committing lurking house-trespass or housebreaking

Dangerous Drugs Act 1952 (Act 234)

(2 offences, plus increased penalties)

6B. Planting or cultivation of certain plants (from which raw opium, coca leaves, poppy-straw or cannabis may be obtained)

12. Possession, custody or control of any dangerous drug

39A. Increased penalty where the subject matter is the prescribed amount of certain dangerous drugs

39C. Increased penalty where person has prior admissions or convictions

Drug Dependent (Treatment and Rehabilitation) Act 1983

(3 offences)

6A. Failure of a on a drug dependant to undergo treatment and rehabilitation at a Rehabilitation Centre

6B. Failure on a drug dependant to undergo supervision by police

19. Escape from lawful custody

Immigration Act 1959/63 (Act 55)

(6 offences)

6. Unlawful entry into Malaysia

36. Unlawful return after removal

55. Conveying a person to Malaysia illegally

55B. Employing more than five people who are person in possession of a valid Pass

55D. Forgery or alteration of immigration endorsement or document

56D. Harboursing a person known or believed to have acted in contravention of this Act

Firearms (Increased Penalties) Act 1971 (Act 37)

(6 offences)

4. Exhibiting a firearm in the commission of a scheduled offence
5. Having firearm in the commission of a scheduled offence
6. Exhibiting an imitation firearm in the commission of a scheduled offence
7. Trafficking in firearms
8. Unlawful possession of firearms
9. Consorting with persons carrying arms

Kidnapping Act 1961 (Act 365)

(3 offences)

3. Abduction, wrongful restraint or wrongful confinement for ransom
5. Knowingly receiving ransom
6. Knowingly negotiating to obtain, or for payment of, ransom

ANNEX II. CANING AS TORTURE OR OTHER ILL-TREATMENT UNDER INTERNATIONAL LAW

1. CANING AND THE DEFINITION OF TORTURE

In the most general terms, the definition of torture in Article 1(1) of the UN Convention against Torture, which is broadly used throughout the international legal system, contains four relevant elements:

- *The element of intention.* The act (causing pain and suffering) was intentional;
- *The element of severe pain or suffering.* The act caused the victim severe⁴⁷ pain or suffering, whether physical or mental;
- *The element of purpose (or discrimination).*⁴⁸ The act was performed for a certain purpose—including punishment; and
- *The element of official involvement.* The act was performed or instigated by officials, or at least with official consent or acquiescence.

It is indisputable that caning in Malaysia is applied by the state, that it involves the intentional infliction of pain by officials for the purpose of punishing a person, and that for many victims the pain and suffering the caning caused, both physical and mental inflicted was “severe.”

2. THE ISSUE OF ‘LAWFUL SANCTIONS’

Another element included in the Article 1(1) of the UN Convention against Torture may be relevant, however. This Article also provides that torture “does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.” On this basis, certain states claimed that since caning and other forms of state-imposed corporal punishment are carried out in accordance with elaborate provisions in their laws, they do not constitute torture or other ill-treatment.

In his report to the UN Commission on Human Rights in 1997, the UN Special Rapporteur on torture laid this argument to rest:

The Special Rapporteur is aware of the view held by a small number of Governments and legal experts that corporal punishment should not be considered to constitute torture or cruel, inhuman or degrading treatment or punishment, within the meaning

of the obligation of States under international law to refrain from such conduct. Some proponents of the proposition that corporal punishment is not necessarily a form of torture argue that support for their position may be found in article 1 of the Convention against Torture, wherein torture is defined for the purposes of the Convention. That definition excludes from the ambit of proscribed acts those resulting in “pain or suffering arising only from, inherent in or incidental to lawful sanctions”. Thus, the argument proceeds, if corporal punishment is duly prescribed under its national law, a State carrying out such punishment cannot be considered to be in breach of its international obligations to desist from torture.

The Special Rapporteur does not share this interpretation. In his view, the “lawful sanctions” exclusion must necessarily refer to those sanctions that constitute practices widely accepted as legitimate by the international community, such as deprivation of liberty through imprisonment, which is common to almost all penal systems. Deprivation of liberty, however unpleasant, as long as it comports with basic internationally accepted standards, such as those set forth in the United Nations Standard Minimum Rules for the Treatment of Prisoners, is no doubt a lawful sanction. By contrast, the Special Rapporteur cannot accept the notion that the administration of such punishments as stoning to death, flogging and amputation—acts which would be unquestionably unlawful in, say, the context of custodial interrogation—can be deemed lawful simply because the punishment has been authorized in a procedurally legitimate manner, i.e. through the sanction of legislation, administrative rules or judicial order. To accept this view would be to accept that any physical punishment, no matter how torturous and cruel, can be considered lawful, as long as the punishment had been duly promulgated under the domestic law of a State. Punishment is, after all, one of the prohibited purposes of torture. Moreover, regardless of which “lawful sanctions” might be excluded from the definition of torture, the prohibition of cruel, inhuman or degrading punishment remains. The Special Rapporteur would be unable to identify what that prohibition refers to if not the forms of corporal punishment referred to here. Indeed, cruel, inhuman or degrading punishments are, then, by definition unlawful; so they can hardly qualify as “lawful sanctions” within the meaning of article 1 of the Convention against Torture.⁴⁹

This analysis makes clear that Malaysia cannot use its own domestic laws to justify a practice that is clearly unlawful under international law. As already noted, this illegality is not dependant on Malaysia’s ratifying relevant treaties, since the absolute prohibition on torture and other ill-treatment is a rule of customary international law binding on all nations.⁵⁰

3. OTHER INTERNATIONAL STANDARDS AND JURISPRUDENCE

International standards and human rights bodies addressing the issue of corporal punishment directly reflect this view.

Under Rule 31 of the UN Standard Minimal Rules for the Treatment of Prisoners:⁵¹

Corporal punishment, punishment by placing in a dark cell, and all cruel, inhuman or degrading punishments shall be completely prohibited as punishments for disciplinary offences.

The UN Human Rights Council has reminded states that:

Corporal punishment, including of children, can amount to cruel, inhuman or degrading punishment or even to torture;⁵²

The UN expert bodies monitoring the implementation of the two key human rights treaties prohibiting torture and other ill-treatment, the Human Rights Committee and the Committee against Torture,⁵³ have consistently determined that this prohibition extends to corporal punishment.⁵⁴

4. CONCLUSION

Caning in Malaysia is applied by officials to punish individuals through the intentional infliction of pain and suffering, both physical and mental, on them. Each and every one of the dozens of victims that Amnesty International has spoken to, from irregular immigrants who received “only” one stroke to criminal convicts who experienced caning more than once, have described the severe suffering inflicted upon them by this method of punishment in the most poignant terms.

Amnesty International is convinced that the sheer pain of the rotan tearing into the skin and damaging the tissue below, the fear and humiliation, the long and painful recovery, the long-lasting physical scars and mental ones – all these in combination have in fact amounted to “severe pain and suffering, whether physical or mental” in the cases we have documented, which means that they constituted torture.

As many as 10,000 canings are carried out in Malaysia each year. Amnesty International is thus not in a position to determine, in each and every case where caning has been carried out in Malaysia, the degree of the victim’s pain and suffering and whether it is “severe.” However, based on the descriptions and analysis provided here, Malaysian authorities must face the fact that all caning carried out in the country is absolutely prohibited under international law and must be halted immediately. In all cases, caning constitutes a form of cruel, inhuman or degrading punishment, which is strictly and absolutely prohibited under international law.

Amnesty International calls on the Malaysian authorities to redress this situation urgently, by placing an immediate moratorium on all forms of judicial corporal punishment, followed by their abolition in law and in practice.

ENDNOTES

- 1 Immigration Act 1959/63 (Act 155), § 6(3).
- 2 For a recent example, see the Amnesty International report, *Agents of Fear: The National Security Service in Sudan* (AFR 54/010/2010), July 2010.
- 3 See SUARAM, *Malaysian Human Rights Report*, Kuala Lumpur: Suaram Komunikasi, 1999.
- 4 For more, see the Amnesty International report, *Trapped. The Exploitation of Migrant Workers in Malaysia* (ASA 28/006/2010), March 2010 (*Trapped*, March 2010).
- 5 "Call for All-Out War Against Drug Abuse," *The Malay Mail*, 23 October 2007.
- 6 Dangerous Drugs Act 1952 (Act 234).
- 7 Criminal Procedure Code (Act 593), section 289.
- 8 The low number of rape convictions is also reflected in the total number of sentences reported by the national news agency *Bernama* from January 2010 through June 2010. Two of the three cases reported involved appeals: "Rape Case: Former Singer to Serve Jail Sentence" (23 March 2010); "Court Dismisses Appeal By Policeman Convicted Of Rape, Extortion" (29 April 2010); "Serial Rapist Gets 50-Year Jail Term, 24 Strokes of Whipping" (19 May 2010).
- 9 See Tun Mohamed Suffian, *Malaysia and India: Shared Experiences in the Law*, Nagpur: All India Reporter, 1980.
- 10 UN Development Programme, *Human Development Report 2010: The Real Wealth of Nations - Pathways to Human Development*, New York: UNDP, 2010.
- 11 Malaysian Bar, *Motion for the Abolition of Corporal Punishment of Whipping*, 61st Annual General Meeting, agenda item 8(e)(xi), carried unanimously on 9 March 2007.
- 12 UN Human Rights Council, Resolution 8/8 on Torture and other cruel, inhuman or degrading treatment or punishment, adopted with a vote on 18 June 2008.
- 13 UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. Concluding statement on visit to Nigeria, 9 March 2007 (HR/07/35).
- 14 See Amnesty International, *Trapped*, March 2010 (Supra No 4); and *Malaysia: Human Rights at Risk in Mass Deportation of Undocumented Migrants* (ASA 28/008/2004), December 2004.
- 15 For instance Article 9(3) of the International Covenant on Civil and Political Rights. Malaysia has not ratified this Covenant.
- 16 For instance Principle 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Body of Principles), adopted by General Assembly resolution 43/173 of 9 December 1988.
- 17 For instance in Principle 14 of the Body of Principles; Articles 14(3)(a) and 14(3)(f) of the ICCPR.
- 18 See for instance Principle 18 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by General Assembly resolution 43/173 of 9 December 1988; Standard 93 of the Standard Minimum Rules for the Treatment of Prisoners. Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolution 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.
- 19 For instance, Article 16 of the ICCPR provides that "Everyone shall have the right to recognition everywhere as a person before the law", a right which collective trials infringe.
- 20 Vienna Convention on Consular Relations, 24 April 1963 (21 U.S.T. 77).
- 21 "Govt considering more strokes of rotan for shorter jail term", *The Sun*, 13 May 2005.

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22 Drug Dependent (Treatment and Rehabilitation) Act 1983, section 19.

23 See Amnesty International, *Trapped*, March 2010 (Supra No 4).

24 For a related case, see V. Anbalagan, "Cane My Client and Set Him Free, Lawyer Tells Prison," *New Straits Times*, 28 April 2007.

25 Prisons Regulations 2000, Regulation 132: Carrying out of punishment.

26 For a rare interview with a caning officer, see Yip Yoke Teng, "The Hand That Wields the Cane", *The Sunday Star*, 20 February 2005, (Yip, "The Hand That Wields the Cane").

27 Portal Rasmi Jabatan Penjara Malaysia, website of the Malaysian Prison Department, www.prison.gov.my (accessed 31 October 2010).

28 "More Than 18,000 Illegal Immigrants Whipped," *Bernama Malaysian National News Agency*, 8 December 2004.

29 Statement in Parliament by Liew Chin Tong, MP for Bukit Bendera, 17 June 2009, <http://www.dapmalaysia.org/english/2009/jun09/bul/bul3805.htm> (accessed 28 October 2010).

30 See Yip, "The Hand That Wields the Cane", Supra No 26.

31 Prisons Regulations 2000, Regulation 133. Rules for infliction of corporal punishment.

32 Article 2.

33 Article 3.

34 Standard Minimum Rules for the Treatment of Prisoners. Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolution 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

35 See Yip, "The Hand That Wields the Cane", Supra No 26.

36 Mimi Syed Yusof, "RM10 for each stroke, RM500 for each hanging," *New Straits Times*, 23 March 2005, (Mimi Syed Yusof, "RM10 for each stroke, RM500 for each hanging.")

37 Prisons Regulations 2000, Regulation 131: Corporal punishment.

38 See M. Husairy Othman, "Striking Fear into Hearts of Most Hardened Criminals," *New Straits Times*, 7 May 2004.

39 See, for example, Mimi Syed Yusof, "RM10 for each stroke, RM500 for each hanging" (Supra No 36).

40 Jonathan Kent, "Malaysia's Floggers Get Pay Rise," *BBC News Online*, 23 March 2005.

41 Calculated using per capita real GDP figures from the CIA World Factbook 2010.

42 See, for instance, the UN Standard Minimum Rules for the Treatment of Prisoners, rules 22-26.

43 Adam Cash and Irving B. Weiner, *Posttraumatic Stress Disorder*, New York: Wiley, 2006, p.40.

44 See, for example, "Youth Spared the Gallows", *The Star*, 19 July 2008, citing the deputy public prosecutor in the case.

45 Quoted in David Williams, "Malaysian Minister Defends Caning of Prisoners as Gruesome Video Appears on Internet," *Daily Mail*, 1 August 2007.

46 Quoted in Muguntan Vanar, "Caning Fails to Deter Illegal Immigrants from Returning," *The Star*, 21 July 2008.

47 All relevant international and regional treaties which define torture require that the pain or suffering be "severe" in order to constitute torture, with the exception of the definition of torture in Art. 2 of the Inter-American Convention to Prevent and Punish Torture.

48 The latter is not directly relevant to this discussion.

49 Commission on Human Rights, Report of the Special Rapporteur, Mr. Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution 1995/37 B, UN Doc. E/CN.4/1997/7, 10 January 1997, paras. 7-8. Footnotes omitted.

50 See for instance Nigel Rodley and Matt Pollard, *The Treatment of Prisoners under International Law*, Third Edition, Oxford: OUP, 2009, pp. 80-1.

51 Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolution 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

52 UN Human Rights Council, resolution 8/8: Torture and other cruel, inhuman or degrading treatment or punishment, sec. 7(a), 18 June 2008, UN Doc. A/63/53, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/148/64/PDF/G0814864.pdf?OpenElement>, (last accessed 1 October 2010).

53 Overseeing the implementation of The International Covenant on Civil and Political Rights and the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment Or Punishment, respectively.

54 See for instance Human Rights Committee, General Comment 20, Article 7 (Forty-fourth session, 1992), UN Doc. HRI/GEN/1/Rev.1 at 30, para. 5; and the concluding observations Committee against Torture on states parties' reports, for instance Report of the Committee against Torture, UN Doc. A/62/44 (2006-7), para. 37(25) (concerning South Africa); UN Doc. A/63/44 (2007-8), para. 32(23) (Benin); UN Doc., para. 36(15) (Portugal), para. 38(19) (Algeria); UN Doc. A/64/44 (2008-9), para. 37(24) (Belgium), para. 38(5)(d) (China), para. 45(2) (Serbia).



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A BLOW TO HUMANITY

TORTURE BY JUDICIAL CANING IN MALAYSIA

Malaysia openly practises widespread torture and other ill-treatment by subjecting thousands of refugees, migrants and Malaysian citizens to judicial caning each year. Amnesty International estimates that as many as 10,000 people a year are caned in Malaysian prisons, including many foreigners from Indonesia and Myanmar.

In prisons that cane up to 60 people a day, specially trained officers tear into victims' bodies with a metre-long cane travelling at up to 160km per hour. On impact, the cane rips the naked skin, pulps the fatty tissue below, and damages muscle tissue. Victims said this punishment caused severe pain and suffering, and left long-term physical as well as psychological damage.

In recent years Malaysian legislators have increased the number of offences punishable by caning to more than 60, including even fraud and immigration violations. This form of corporal punishment, originally imposed under British colonial rule in the 19th century, has nothing to do with Islamic law. Under international law, judicial corporal punishment such as caning constitutes torture or other ill-treatment, which are absolutely prohibited in all circumstances.

Malaysian officials, including state-employed doctors, who are complicit in torture through caning are subject to prosecution worldwide. As a member of the Association of Southeast Asian Nations (ASEAN), Malaysia should consider the regional consequences of caning migrants and refugees. To comply with international law, the Malaysian government must abolish judicial caning altogether.

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