

# £MALAYSIA

## @The cane to claim more victims

The Malaysian Government has introduced a bill in parliament to make caning a mandatory punishment for white collar criminal offenders. In August 1993, Justice Minister Datuk Syed Hamid Albar introduced the Penal Code (Amendment) Bill 1993 for its first reading in parliament. The Bill seeks to enhance the penalty for criminal breach of trust from a fine and/or three years' imprisonment to 10 years' imprisonment, fine and mandatory caning by amending Section 406 of the Penal Code. The Bill is expected to be approved by parliament. The Justice Minister said the penalty had to be harsher to deter the increasing number of white collar crimes.

Caning is already widely used in Malaysia as a supplementary punishment to imprisonment for some 40 crimes listed in the Penal Code including robbery, rape, kidnapping and causing grievous hurt. According to Section 289 of the Criminal Procedure Code, caning cannot be inflicted on females, males sentenced to death and males who are over 50 years of age. The maximum number of strokes of the cane that can be inflicted are 24 in the case of an adult and 10 in the case of a youthful offender. The Shari'a courts can also impose caning on male Muslim offenders for some crimes under Islamic law including drinking of alcohol and adultery.

According to Section 290 of the Criminal Procedure Code, caning "shall not be inflicted unless a Medical Officer is present and certifies that the offender is in a fit state of health to undergo such a punishment... If, during the execution of a sentence of whipping (caning), a Medical Officer certifies that the offender is not in a fit state of health to undergo the remainder of the sentence the whipping shall be finally stopped."

A prisoner in Malaysia who was caned described the pain inflicted by caning as akin to the pain he imagined would result from branding with a red-hot iron. He then went on to say: "I was given two Panadols to ease the pain and I was told to lie down and rest for 10 minutes in the hospital ward... It was going to be weeks before I could lie on my back or sit. Ten minutes didn't help and nor did the two Panadols... Iodine was administered daily and I was instructed to keep the wounds dry until they healed. In the tropics, open wounds can become breeding grounds for all kinds of bacteria very quickly. The cane had left furrows that were weals of bloody pulp. The scars would never heal."

A doctor was actively involved in the caning procedure as described by the same prisoner: "Six of us were dragged off to the hospital compound so that this punishment could be performed... We were instructed to strip and then given small sarongs to wear. One by one, we were led into the doctor's office. The first prisoner was led out of the doctor's office and into the walled punishment compound directly behind... The rotan (cane) is more than a

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metre long and around a centimetre thick. One end is neatly bound in pink string to provide a firm grip for the warder who will arrive with a bundle of half a dozen or so canes tucked under his arm. The warder will be dressed in khaki trousers but will wear a T-shirt instead of his usual uniform top. Freedom of movement is essential... I was led into the enclosure... I was told to remove the sarong, which I did... The prison superintendent stood to my left and slightly behind me with a doctor on one side of him and a prison officer on the other."

Amnesty International opposes caning which is a cruel, inhuman and degrading form of punishment prohibited by international human rights standards including the Universal Declaration of Human Rights (Article 5), the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (Articles 2 and 4) and the International Covenant on Civil and Political Rights (Article 7).

Amnesty International believes that the role required of doctors and medical personnel during the infliction of caning conflicts with international standards of medical ethics. Article 4(b) of the United Nations' Principles of Medical Ethics adopted in 1982 states that it is a breach of medical ethics for doctors and other medical personnel to "certify or participate in the certification of prisoners or detainees for any form of treatment or punishment that may adversely affect their physical or mental health... or to participate in any way in the infliction of such treatment or punishment..." Article 4 of the Convention against Torture prohibits all acts "by any person which constitute complicity or participation in torture".

Article 1 of the World Medical Association's Declaration of Tokyo adopted in 1975 states that "the doctor shall not countenance, condone or participate in the practice of torture or other cruel, inhuman or degrading procedures". Article 3 states that the doctor "shall not be present during any procedure" which constitutes cruel, inhuman or degrading treatment. Amnesty International is gravely concerned that doctors and other medical professionals who are present during the caning procedures are contravening international standards of medical ethics.

Amnesty International urges the authorities in Malaysia to withdraw the Penal Code (Amendment) Bill 1993. Amnesty International also urges the authorities to ensure that no further sentences of caning are carried out and to abolish caning from any legal provisions which permit it to be imposed as a legally sanctioned punishment.

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To: All Sections  
Malaysia country coordinators  
SEAMRAN coordinators  
Medical professionals

From: Malaysia research team  
Medical office

Date: December 1993

### Malaysia: Medical letter-writing action on caning

#### Summary

Caning is widely used as a punishment in Malaysia for some 40 crimes. The Malaysian Government is now seeking to extend caning as a penalty to those convicted of criminal breach of trust through an amendment bill in parliament. Caning is a cruel, inhuman and degrading form of punishment prohibited by international human rights standards. Medical officers are involved in the infliction of this punishment in Malaysia.

#### Keywords

CANING/CORPORAL PUNISHMENT/LEGISLATION/MEDICAL ACTIONS

#### Distribution

This document has been sent direct by the IS to: All sections, Malaysia country coordinators, SEAMRAN coordinators and AI medical networks.

#### Recommended actions

Medical professionals are requested to write to Malaysian Government authorities, the Malaysian Medical Association and to doctors and other medical personnel in Malaysia who may be known to them protesting against caning as a form of punishment and calling for the withdrawal of the Penal Code (Amendment) Bill 1993. They should read the external paper, **Malaysia: The cane to claim more victims**, AI Index ASA 28/08/93, December 1993, before taking action.

Malaysia country coordinators are requested to contact doctors and other medical professionals outside Malaysia to write to the Medical Association and to the persons in Malaysia mentioned above. SEAMRAN coordinators and Sections may file this action for possible reference.

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**December 1993**

**Malaysia: Medical letter-writing action on caning**

Appeals are requested from medical professionals protesting against the continuing practice of caning offenders for a wide range of crimes and calling for the withdrawal of the Penal Code (Amendment) Bill 1993 which seeks to extend caning as a penalty to those convicted of criminal breach of trust. Caning, which is a cruel, inhuman and degrading form of punishment, is inflicted under medical supervision. (Please see the attached external paper.)

**RECOMMENDED ACTIONS**

Please write on letter-headed paper, with or without mention of Amnesty International.

**To government authorities in Malaysia**

- expressing concern at the widespread use of caning as a form of punishment
- asking for the withdrawal of the Penal Code (Amendment) Bill 1993 which seeks to extend caning as a penalty for criminal breach of trust
- explaining that caning is a cruel, inhuman and degrading punishment prohibited by international human rights standards
- urging the suspension of the practice of caning with the ultimate objective of abolishing corporal punishment in law
- expressing your professional concern at the role of medical officers when the punishment is administered, a role which you consider to be contrary to medical ethics

**To the medical association and medical professionals in Malaysia**

- referring to the numerous reports of caning in Malaysia and to the introduction of the Penal (Amendment) Bill 1993 which seeks to extend caning as a penalty for criminal breach of trust
- noting that Section 290 of the Criminal Procedure Code of Malaysia requires a medical officer to examine and certify a prisoner as fit for caning
- expressing deep concern at such a role as being incompatible with the ethical role of a medical professional
- urging the association and medical colleagues in Malaysia to voice their opposition to caning and to the presence of medical officers during the punishment procedures which contravenes universal standards of medical ethics adopted by the World Medical Association and the United Nations
- urging the association and medical colleagues in Malaysia to press the government to abandon caning which is a cruel punishment incompatible with international human rights standards

## **ADDRESSES**

### Minister of Justice

YAB Datuk Syed Hamid bin Syed Jaafar Albar  
Ministry of Justice  
21st Floor, Bangunan Kuwasa  
Jalan Raja Laut  
50350 Kuala Lumpur  
Malaysia

### Attorney General

Tan Sri Abdul Talib bin Othman  
Attorney General's Office  
20th Floor, Bangunan Bank Rakyat  
50350 Kuala Lumpur  
Malaysia

### Minister of Health

Datuk Lee Kim Sai  
Ministry of Health  
Jalan Cenderasari

50590 Kuala Lumpur  
Malaysia

Medical Association

Malaysian Medical Association  
4th Floor, MMA House  
124 Jalan Pahang  
53000 Kuala Lumpur  
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Malaysian medical professionals

Please write to as many doctors and medical personnel as possible in Malaysia who may be known to you or to your colleagues in the medical profession.