

Training for
Malaysian Lawyers
on Representing Foreign Nationals
Imprisoned in Malaysia



September
28 2024

KI Bar Auditorium



“There are no conditions to justify despair, only opportunities to uplift.”

– Alexander Herzen

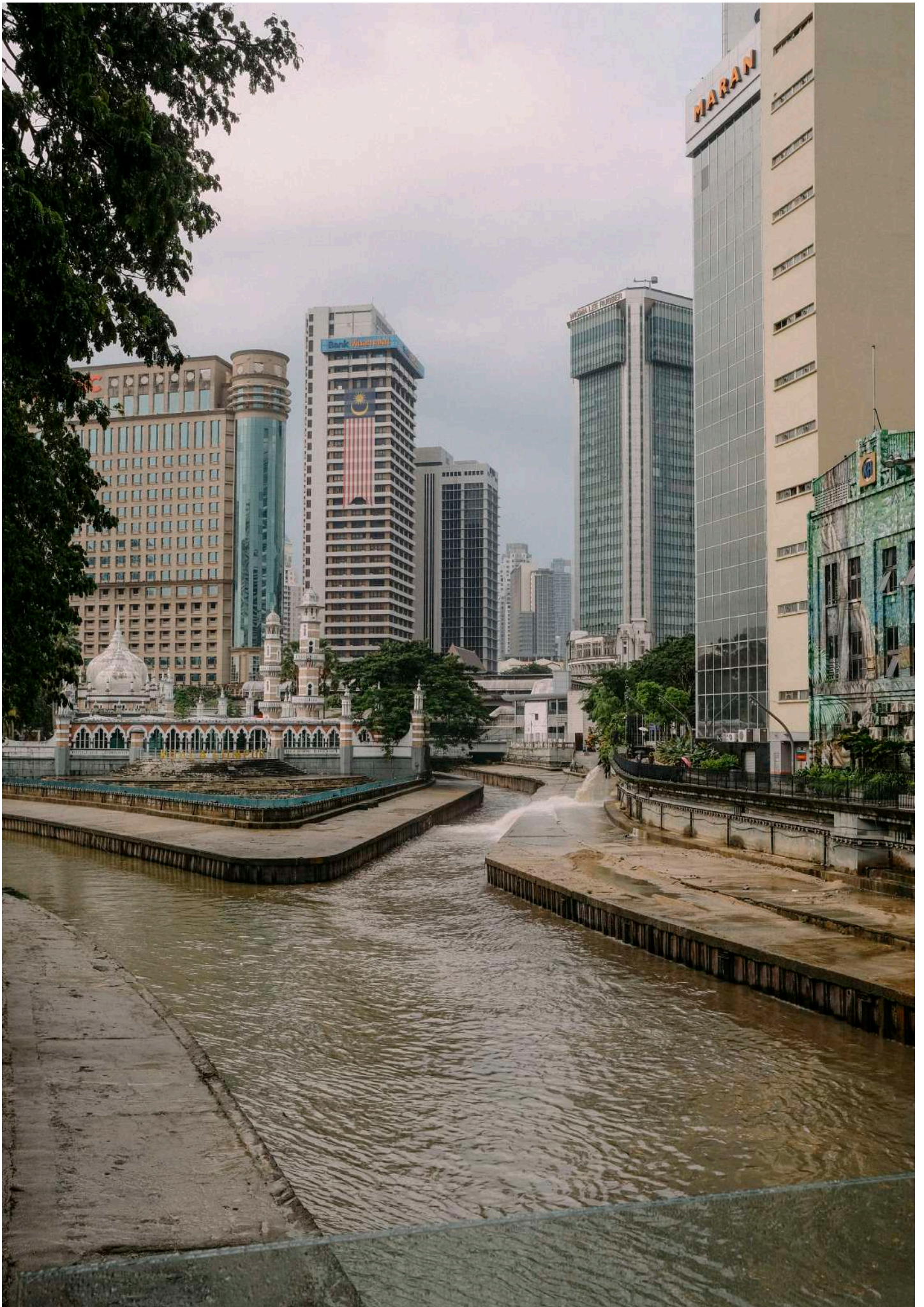
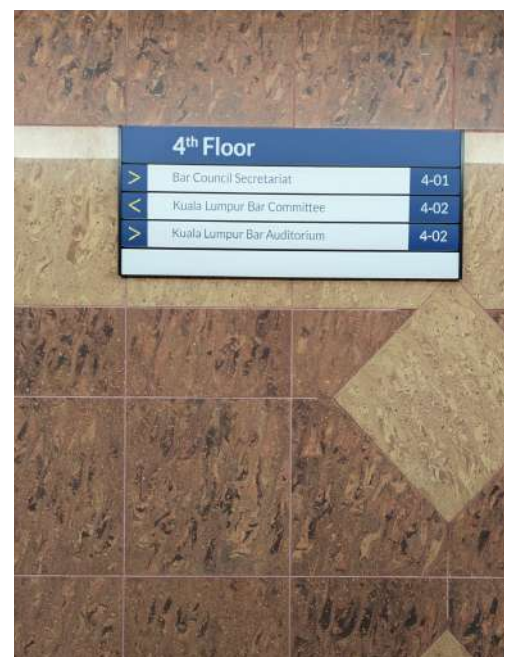
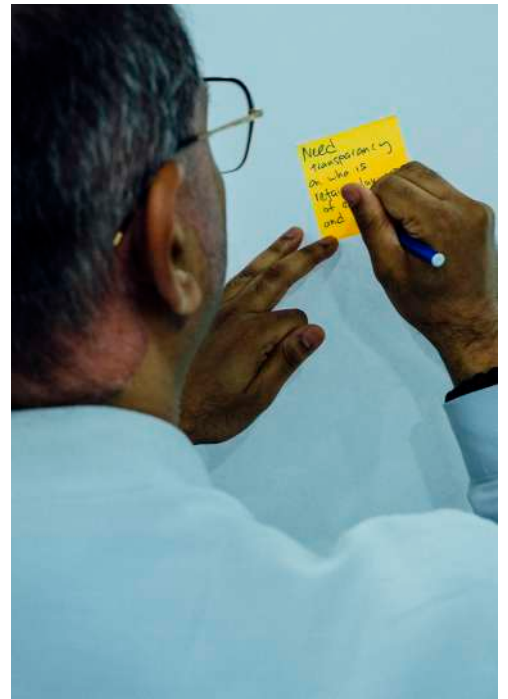


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The Kuala Lumpur Bar was established on 1st July 1992 at a general meeting of advocates & solicitors practising in the Federal Territory of Kuala Lumpur held under section 68(4) of the Legal Profession Act 1976. Before that date, practitioners in Kuala Lumpur were members of the Selangor Bar, which was later called the Selangor & Federal Territory Bar on Kuala Lumpur becoming a Federal Territory in 1974. The Kuala Lumpur Bar represents and serves the interests of legal practitioners in the Federal Territory of Kuala Lumpur. The Bar organises training, networking opportunities, and public interest activities, enhancing access to justice and upholding the rule of law in Malaysia.

The Malaysian Centre for Constitutionalism and Human Rights (MCCHR), founded in 2011, is a not-for-profit organisation established with the mission to provide a strategic and integrated approach towards the protection and promotion of human rights in Malaysia. MCCHR carries out strategic litigation programs, UndiMsia! (civic education) program, as well as law and policy reform work, through its strategic legislative advocacy program. Under its strategic litigation banner, MCCHR has supported strategic litigation cases covering selected areas of the law, including the death penalty. It has carried out capacity building training, published a strategic litigation manual and organised a series of awareness raising talks on the cases supported.

Justice Project Pakistan (JPP) is a Pakistan-based legal action NGO founded in 2009, dedicated to representing the most vulnerable Pakistani prisoners facing the harshest punishments, including those facing the death penalty, mentally ill prisoners, victims of police torture, juvenile prisoners, and overseas Pakistani prisoners. The key to JPP's success is our methodology, which combines investigation, legal action, public advocacy, and capacity development of relevant stakeholders to improve the representation and treatment of individuals facing capital punishment in Pakistan and abroad, aiming to bring systemic change and legislative reform. JPP has extensive experience in capacitating stakeholders in Pakistan's criminal justice system through lectures, trainings, and conferences in areas such as police torture, mental health, and capital defence, representing a key aspect of JPP's core strategy.

Executive summary

On September 28, 2024, Justice Project Pakistan (JPP) and the Malaysian Centre for Constitutionalism and Human Rights (MCCHR), with support from the Kuala Lumpur Legal Aid Centre (KLLAC), conducted a novel one-day training on providing effective legal representation to foreign nationals imprisoned in Malaysia. Hosted at the KL Bar Auditorium, this inaugural training aimed to identify gaps and enhance outcomes for foreign nationals navigating the Malaysian criminal justice system, while establishing a new benchmark for collaborative efforts in safeguarding their rights.

The training brought together a diverse group of 52 participants, representing a broad spectrum of stakeholders in Malaysia's legal and human rights community. Among them were 41 lawyers at various career stages, from early-career practitioners to seasoned attorneys. The event also welcomed 11 key stakeholders, including consular officials from the United States, France, and Indonesia, as well as prominent civil society organisations such as the Anti-Death Penalty Asia Network (ADPAN), Amnesty International Malaysia and the North-South Initiative. Malaysia's National Human Rights Institution (NHRI), SUHAKAM's participation further strengthened the multi-stakeholder approach, with both its Commissioner and the Secretary of the Complaints and Detentions Monitoring Unit actively contributing to discussions on improving conditions and legal protections for foreign nationals in Malaysian prisons. The balanced gender representation, with 28 women alongside 24 men, contributed to diverse perspectives and a more nuanced understanding of the challenges and potential solutions for protecting the rights of foreign nationals imprisoned in Malaysia.

The training consisted of four comprehensive sessions covering critical areas: an overview of foreign nationals imprisoned in Malaysia and consular protections under national and international law; best practices for legal representation at the pre-trial stage; strategy and best practices from trial stage to post-conviction; and immigration detention and deportation. This report synthesises the discussions and insights from the sessions, providing a narrative and analytical overview of the training's proceedings.

Key Objectives

Malaysia ranks 4th in Asia for the highest number of foreign prisoners, following only Macau, Brunei and Hong Kong. With foreign nationals constituting 18.3% of Malaysia's total prison population as of 2021, the need for specialised legal representation has never been more critical. Foreign nationals imprisoned in Malaysia are particularly vulnerable to human rights violations and confront additional challenges because of their unfamiliarity with the legal system, culture, language and environment. They often face challenges understanding their legal rights during arrests, and may have limited access to translation services and consular support from their diplomatic missions, leaving them at the mercy of local authorities and courts. They also face significant challenges in communicating with the courts and are often unable to produce evidence from their home countries in their defence. These challenges significantly impede foreign nationals' access to justice and fair treatment within the criminal justice system and ultimately result in harsher sentences or higher risk of wrongful conviction. The application of the death penalty also affects foreign nationals, including migrants, disproportionately.

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This training initiative directly addressed these pressing challenges by equipping legal professionals and consular officials with essential knowledge and resources for effective representation of foreign nationals. Its comprehensive approach marked the first time key stakeholders from various sectors came together to address the multifaceted challenges faced by foreign prisoners. The collaboration fostered between lawyers, diplomatic missions, human rights advocates, SUHAKAM, and KLLAC has laid the groundwork for a more robust and coordinated support system for foreign nationals navigating Malaysia's complex legal landscape.

The training focused on developing practical strategies for effective legal representation throughout the criminal justice process, from arrest through post-conviction. Participants enhanced their understanding of both international and national laws pertaining to foreign prisoners' rights while building crucial networks and resources to better protect foreign nationals in the Malaysian legal system. The accompanying primer provided lawyers with detailed guidance on legal frameworks, practical strategies, and templates for representing foreign nationals, ensuring the training's impact extended well beyond the day's proceedings. Together, the training and primer represent a significant step forward in ensuring fair treatment and access to justice for one of Malaysia's most vulnerable populations.



Training for Malaysian Lawyers on Representing Foreign Nationals Imprisoned in Malaysia

Kuala Lumpur Bar Auditorium
28th September 2024
09:00 - 17:00

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Justice Project Pakistan (JPP), the Malaysian Centre for Constitutionalism and Human Rights (MCCHR) and the Kuala Lumpur Legal Aid Centre (KLAC) are pleased to invite you to a specialized one-day training session aimed at equipping legal professionals and consular officials with the tools necessary to effectively represent foreign nationals imprisoned in Malaysia.



Agenda: One Day Training for Malaysian Lawyers on Representing Foreign Nationals Imprisoned in Malaysia

Time	Session
09:00 - 09:30	Registration and Networking
09:30 - 09:45	Welcome Remarks by Representatives of JPP and MCCHR
9:45 - 10:15	Opening Remarks by Commissioner Datuk Mariati Robert (SUHAKAM)
10:15 - 10:30	Keynote Address by Chair of the Kuala Lumpur Legal Aid Centre (KLAC) (Morhaneraj Rajakumaraj)
10:30 - 11:30	Session 1: Overview of Foreign Nationals Imprisoned in Malaysia and Consular Protections under National and International Law (Zainab Zeeshan Malik)
11:30 - 11:45	Tea Break
11:45 - 13:00	Session 2: Best Practices for Legal Representation at Pre-Trial Stage (Ravi Chandran)
13:00 - 14:00	Lunch
14:00 - 15:15	Session 3: Strategy and Best Practices for Legal Representation from Trial Stage to Post-Conviction (Kitson Foong)
15:15 - 15:30	Tea Break
15:30 - 16:30	Session 4: Immigration Detention and Deportation (Collin Arvind Andrew)
16:30 - 17:00	Closing Remarks and Way Forward



SPEAKERS



FIRDAUS HUSNI

Firdaus Husni is the Chief Human Rights Strategist of the Malaysian Centre for Constitutionalism and Human Rights (MCCHR), where she leads initiatives to promote constitutional rights and civil liberties in Malaysia. She is a respected former journalist, lawyer and advocate for legal and policy reforms in the country.



COMMISSIONER DATUK MARIATI ROBERT

Commissioner (Datuk) Mariati Robert is a law professor from the University of Malaya and a former Deputy Public Prosecutor. She served as Malaya's State Attorney General (2012-2017) and chaired the Women's Advisory Council (2012-2016), promoting women's needs-oriented policies.



MORHANERAJ RAJAKUMARAJ

Morhaneraj Rajakumaraj is a Malaysian lawyer and Chair of the Kuala Lumpur Legal Aid Centre (KLAC). Elected to the Malaysian Bar in 2013, he is also the principal of Morhaneraj Rajakumaraj & Associates, focused on providing accessible legal aid and advocating for vulnerable and disadvantaged communities.



RAVI CHANDRAN

Ravi Chandran, admitted as an advocate and solicitor to the High Court of Malaya in 2005, is the vice-president of the Bar & Association. With over 20 years of experience in criminal and family law, he has served on the Foreign Bar Committee and is currently the Foreign Bar Representative on the Bar Council (2024-2025) and the Chairperson of the Criminal Law and Technical Legal Aid Committee.



KITSON FOONG

Kitson Foong is a former Counsel with over three decades of experience in Malaysia's civil, commercial, and criminal courts, known for his tenacity and professionalism. He is a dedicated legal strategist and advocate for underrepresented persons through his work with the Malaysian Bar.



COLLIN ARVIND ANDREW

Collin Andrew is the founder of Collin's Law, Chartered and an active practitioner of the Criminal Bar. He is also the chairperson of the Ad Hoc Commission on Human Rights and Co-Chief (Chairperson) of the Bar Council National Legal Aid and TRIP Committee. Collin is a elected member of the Bar Council for the 2024/2025 term.



ZAINAB MALIK

Zainab is an international human rights lawyer. She has undertaken a criminal justice reform, innovation and research consultancy for reform and social justice. She is a Harvard Law Graduate and works on the international development professional in The Hague.



SARAH BELAL

Sarah Belal is the Executive Director of Justice Project Pakistan, a human rights organization dedicated to providing pro bono legal representation to prisoners, facing the death penalty and other human rights abuses. She is a leading advocate for criminal justice reform in Pakistan.

Justice Project Pakistan (JPP), the Malaysian Centre for Constitutionalism and Human Rights (MCCHR) and the Kuala Lumpur Legal Aid Centre (KLAC) are pleased to invite you to a specialized one-day training session aimed at equipping legal professionals and consular officials with the tools necessary to effectively represent foreign nationals imprisoned in Malaysia.



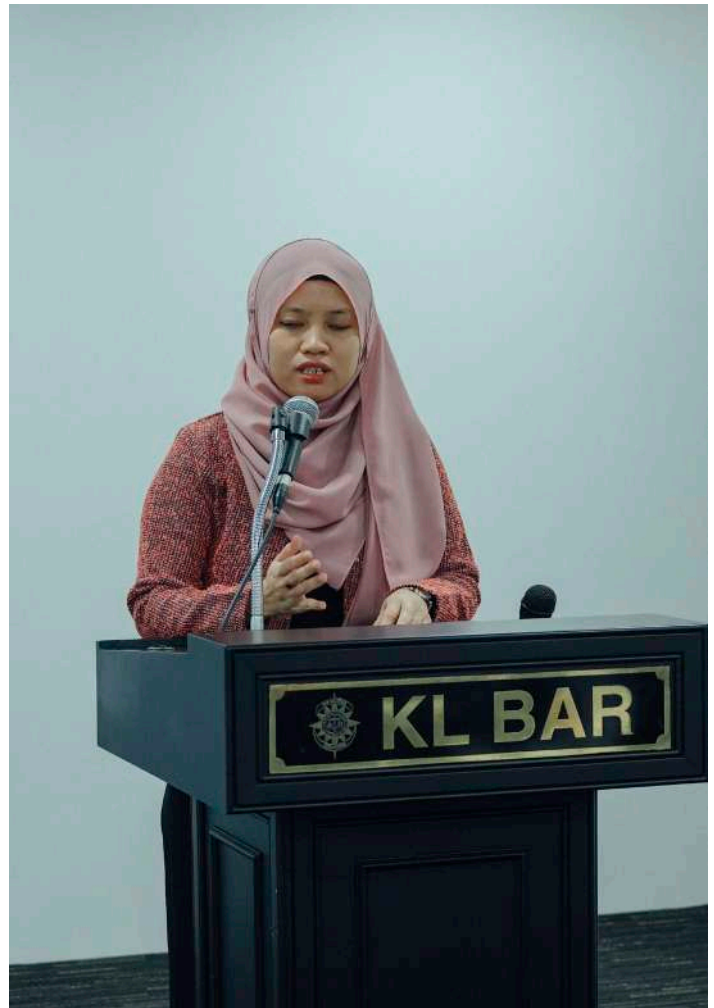
Welcome Remarks by Representatives of JPP and MCCHR

The training commenced with a warm welcome by Ms. Michelle Shahid, Team Lead Policy and Advocacy at Justice Project Pakistan, who greeted attendees and provided a brief overview of the training's structure and objectives.

Ms. Firdaus Husni, Chief Human Rights Strategist at the Malaysian Centre for Constitutionalism and Human Rights (MCCHR) delivered opening remarks which set the tone for the day's proceedings. Ms. Husni emphasised the inclusiveness of Malaysia's legal framework, referencing Article 5 of the Federal Constitution. She highlighted the importance of ensuring that the implementation of laws and access to justice should not differ for individuals unfamiliar with the country's legal systems, culture, or language. In the end, she encouraged attendees to actively engage by asking questions, stressing that this training is an opportunity to enhance collective understanding and support for foreign nationals.

Following Ms. Husni, Ms. Sarah Belal, Executive Director of Justice Project Pakistan (JPP), expressed gratitude to SUHAKAM's Commissioner, Datuk Mariarti Roberts, the Kuala Lumpur Legal Aid Centre (KLLAC), consular officials, and civil society members for their participation in this crucial training. She highlighted JPP's longstanding commitment to advocating for Pakistani prisoners, particularly in Malaysia, where legal reforms, such as the revision of mandatory death penalty laws, have paved the way for strategic advocacy for vulnerable individuals charged with offences in Malaysia. She recounted the impactful case of JPP's client, Shafqat Ali, a Pakistani national whose 15-year death row sentence was commuted due to effective investigation, legal representation and advocacy, underscoring the critical importance of collaboration and dedicated representation for foreign nationals in Malaysia's legal system.

Ms. Belal further emphasised the need for joint efforts between lawyers, consular officials, and civil society to ensure the rights of foreign prisoners are upheld. She encouraged the attendees to use the training as a platform for building partnerships and sharing expertise. She concluded by encouraging attendees to engage fully in the training and share their experiences with the attendees.



Presentation by Commissioner Mariarti Roberts (SUHAKAM): "NHRI Enabling Role for Better Prison Systems"

Commissioner Mariarti Roberts opened the session by reflecting on a recent meeting with the Chairperson of the National Commission for Human Rights (NCHR), Ms. Rabiya Javeri Agha, who raised concerns about the plight of Pakistani nationals in Malaysian prisons. She highlighted several key topics that underscore the urgent need for attention and reform in the prison system.

In her opening presentation, Commissioner Datuk Mariarti Robert highlighted the essential role of SUHAKAM in investigating human rights violations within Malaysian prisons, particularly concerning overcrowding, health issues, and access to essential services. The findings from SUHAKAM's prison visits underscored a range of complaints, including death in custody, torture, and inadequate healthcare. The Commissioner emphasised the urgent need for systemic reform to address these issues, noting that a significant proportion of the prison population consists of foreign prisoners, which highlights the necessity for collaboration with diplomatic missions and National Human Rights Institutions (NHRIs) to facilitate better communication and support for these individuals. Attendees noted the challenges faced by non-citizens, particularly regarding the lack of interpreters, which hampers their ability to communicate effectively with authorities and access healthcare. On this note, participants raised concerns about the impact of prison conditions on both inmates and staff, as well as the stigma faced by imprisoned foreign nationals. The need for greater cooperation between the Prison Department and the Ministry of Health was emphasised,



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particularly regarding healthcare provision.

The Commissioner highlighted Malaysia’s progress under the International Transfer of Prisoners Act 2012, noting that, by 2024, Malaysia had signed prisoner transfer agreements with three countries i.e. Ukraine in 2021, Brunei in 2023, and Iran in 2024, and has received requests from others, including Pakistan.

During her session, a participant raised concerns about the poor treatment of migrants and foreign prisoners, both inside and outside of jail, by consular and jail officials. They also highlighted the issue of indefinite detention, particularly for refugees and individuals detained for other reasons. Commissioner Mariati Robert acknowledged the ongoing public hostility against foreigners, noting that there is no quick solution, but consistent efforts are needed to change these attitudes. She stressed that the media and social platforms can play a significant role by focusing on the offences committed rather than the nationality of those involved. SUHAKAM, she shared, has been working closely with the media and recently held a workshop with the judiciary to address such issues. Another attendee raised concerns about achieving access to justice for foreign nationals, especially given the challenges foreign detainees face in communicating due to language barriers, particularly regarding medical conditions and legal processes.

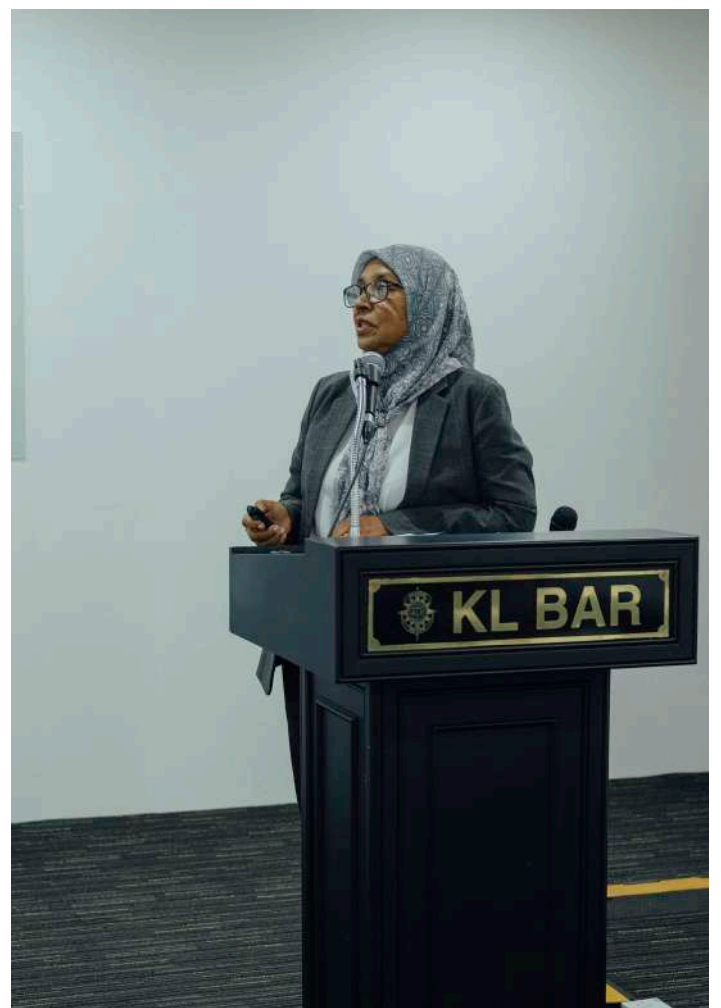
Commissioner Robert acknowledged the importance of communication in ensuring access to justice, noting that SUHAKAM is actively working to address these concerns, including issues related to bail applications.

She concluded by expressing her gratitude for the contributions made during the training, emphasising the critical role that advocacy, collaboration, and continued dialogue play in advancing the human rights framework for all inmates in Malaysia. Overall, the presentation reflected a collective commitment to advocating for the rights of detainees and ensuring that human rights considerations remain at the forefront of ongoing reform efforts.

Keynote Address by Chair of the Kuala Lumpur Legal Aid Centre, Mr. Morhaneraj Rajakumaran

Chairperson Morhaneraj Rajakumaran opened the keynote address by acknowledging the significance of the training on representing foreign nationals imprisoned in Malaysia. He expressed gratitude to JPP and MCCHR for their relentless efforts in advocating for vulnerable populations and making the training possible. Emphasising the importance of human rights, fair representation, and access to justice for all, he highlighted the shared mission of the KLLAC to ensure that the underprivileged and marginalised receive the legal support they deserve.

In his remarks, Mr. Rajakumaran highlighted the specific challenges faced by foreign nationals and refugees within Malaysia’s legal system. He discussed KLLAC’s initiatives, such as the Thai Citizen Legal Aid Scheme (T-CLAS), which provides legal assistance to Thai nationals facing language and cultural barriers. Additionally, he mentioned the Refugee and Asylum Seekers Legal Aid Scheme (RALAS), created in collaboration with the UNHCR, to offer essential legal services to refugees and asylum seekers regardless of their nationality or status.



Mr. Rajakumaran drew attention to the broader issue of foreign nationals in the Malaysian prison system, noting that, as of 2021, they made up 18.3% of the prison population. He outlined the difficulties foreign prisoners encounter, from their initial arrest to navigating the legal system without access to translators or consular support. He further explained that these challenges often result in harsher sentences and the risk of wrongful convictions, particularly for those involved in capital punishment cases.

In closing, Mr. Rajakumaran underscored the importance of collaboration within the legal community and with diplomatic missions, human rights organisations, and international advocacy groups. He urged the participants to volunteer with KLLAC and stressed that by working together, they can ensure justice transcends borders. Mr. Rajakumaran concluded his address by expressing confidence that the knowledge and strategies gained during the training would significantly enhance the legal representation provided to foreign nationals in Malaysia.

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Overview of Foreign Nationals Imprisoned in Malaysia and Consular Protections Under National and International Law (Ms. Zainab Zeeshan Malik)



Session 1: Overview of Foreign Nationals Imprisoned in Malaysia and Consular Protections Under National and International Law (Ms. Zainab Zeeshan Malik)

Ms. Zainab Zeeshan Malik presented a critical examination of the challenges faced by foreign prisoners in Malaysia. She highlighted that foreign nationals constitute nearly 18% of the Malaysian prison population, with an alarming 52% of female prisoners being foreign nationals. Despite their small overall representation, these individuals face a disproportionate risk of pretrial detention and harsher sentencing. Ms. Malik emphasised the dire need for legal protections, citing the fact that 90% of females sentenced to death for drug trafficking are foreign nationals, illustrating the urgent need for reform and advocacy.

Ms. Malik discussed the systemic obstacles that foreign prisoners encounter, such as forced confessions, lack of knowledge about their legal rights, and inadequate access to legal aid and rehabilitation programs. She presented poignant case studies, including a Pakistani national who spent 15 years on death row and experienced severe mental health deterioration, and another individual who was wrongfully accused of drug trafficking after being misled to Malaysia.

The session also addressed Malaysia's obligations under international law, particularly the Vienna Convention on Consular Relations (1963), which guarantees all foreign prisoners the right to consular notification and access. Ms. Malik emphasised the importance of the Nelson Mandela Rules, which advocate for non-discriminatory treatment of detainees, access to legal representation, and appropriate health care.

Ms. Malik actively engaged the audience with thought-provoking discussions, posing the question of whether foreign nationals should be given special privileges despite the law mandating equal treatment for all. While some participants opposed the idea, others recognized the unique vulnerabilities of foreign prisoners. Zainab illustrated this by noting that a Malaysian national typically does not need a translator, whereas foreign prisoners often do, underscoring their specific challenges within the legal system.

Ms. Malik also shed light on the specific challenges faced by foreign women prisoners, many of whom are exploited by drug trafficking networks due to their vulnerable economic and social positions. She underscored the need for more gender-sensitive approaches within the legal system, particularly in cases where women are manipulated into drug-related offences. Highlighting Malaysia's ratification of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), she called for an alignment of national legal frameworks with international obligations, ensuring that foreign women receive equitable treatment and are not disproportionately punished for crimes where they serve as secondary or unwitting participants.

Moreover, Ms. Malik outlined practical strategies for ensuring more effective consular protections for foreign nationals. She suggested that embassies establish formal networks with local legal aid providers and non-governmental organisations to create a comprehensive support system for foreign prisoners. Furthermore, she proposed the creation of dedicated consular staff for detainee matters, trained to navigate the complexities of Malaysia's legal system, as well as regional agreements between ASEAN countries to standardise prisoner treatment and facilitate repatriation. She concluded by advocating for Malaysia to sign additional Prisoner Transfer Agreements (PTAs), similar to the one with Iran, to allow for smoother transfers of foreign nationals back to their home countries, reducing strain on Malaysia's prison system.

While interacting with the audience, Ms. Malik engaged with the audience, asking consular officials to share their experiences in providing protection to prisoners. A United States consular official highlighted that one of the biggest challenges they face is the lack of timely notification from Malaysian authorities, often receiving notification about detained foreign nationals three to four weeks

after their arrest, delaying the consular protection process. While they aim to notify consulates within three hours of being informed and provide loans for repatriation, they cannot directly participate in legal proceedings.

At this juncture, Sarah Belal inquired about practical solutions to improve notification times, to which the US consular official suggested that a less formalised notification process from the police at the time of arrest would significantly expedite consular support. Another participant shared a similar challenge regarding Taiwan, noting that their foreign affairs department often refuses to handle criminal cases, which is a common issue across many Asian countries, particularly affecting refugees. Ms. Malik concurred, emphasising that both the detaining and home countries must collaborate to ensure more comprehensive support for foreign nationals.

While concluding her session, she urged for a concerted effort among lawyers, consular officials, NHRIs and civil society organisations to collaborate in improving the conditions for foreign nationals in Malaysia. By enhancing communication, ensuring regular consular access, and advocating for the rights of foreign prisoners through diplomatic channels, she argued, stakeholders can work towards fostering a fairer and more just system for all detainees.



Best Practices for Legal Representation at Pre-Trial Stage (Mr. Ravi Chandran)



Session 2: Best Practices for Legal Representation at Pre-Trial Stage (Mr. Ravi Chandran)

Mr. Ravi Chandran presented on the essential rights of arrested individuals, particularly highlighting the provisions outlined in Article 5 of the Federal Constitution of Malaysia. He emphasised that while the Constitution mandates that an individual must be informed of the grounds for their arrest and have the right to legal representation, the exercise of this right is challenging for non-citizens arrested under immigration laws. Specifically, these individuals may be detained for up to 14 days without being brought before a magistrate, an exception that poses significant implications for their legal rights and access to justice. The presentation underscored the need for lawyers to advocate for these rights vigorously and explore avenues for challenging such detentions based on violations of fundamental human rights.

Mr. Chandran elaborated on the complexities involved in securing bail for foreign nationals, distinguishing between bailable and non-bailable offences. He noted that while bail is a right for certain categories of offences, additional conditions often apply to foreign nationals, complicating their situation further. For example, the requirement to surrender their passports can expose them to vulnerabilities and potential abuses by authorities. Mr. Chandran urged legal representatives to consider strategies such as involving employers as bailors, thereby enhancing the likelihood of securing bail while protecting their clients' rights. He also advocated for a shift towards rehabilitative justice, particularly for foreign nationals, suggesting that deportation might be a more suitable alternative to prolonged imprisonment.

Additionally, his session emphasised the critical role of pre-trial representation in facilitating effective case management. Mr. Chandran detailed the procedural framework, including the necessity of formal documentation and agreements between prosecution and defence counsel. He highlighted the importance of pre-trial preparation, which encompasses thorough interviews with clients, analysis of evidence, and identification of favourable and unfavourable facts. Legal representatives were encouraged to actively participate in these discussions to streamline trial proceedings and uphold the rights of their clients.

Mr. Chandran also underscored the importance of early consular involvement, especially for foreign nationals, as a critical safeguard in ensuring that detainees are not left without adequate legal representation prior to their trial. He recommended that lawyers work closely with consular officials to expedite access to translation services, which are often lacking for non-citizens. Mr. Chandran argued that the collaboration between lawyers and diplomatic missions can help mitigate communication barriers and ensure that

“Mr. Chandran advocated for a broader use of judicial review mechanisms to challenge prolonged pre-trial detention and potential violations of international human rights law, such as the International Covenant on Civil and Political Rights (ICCPR).”

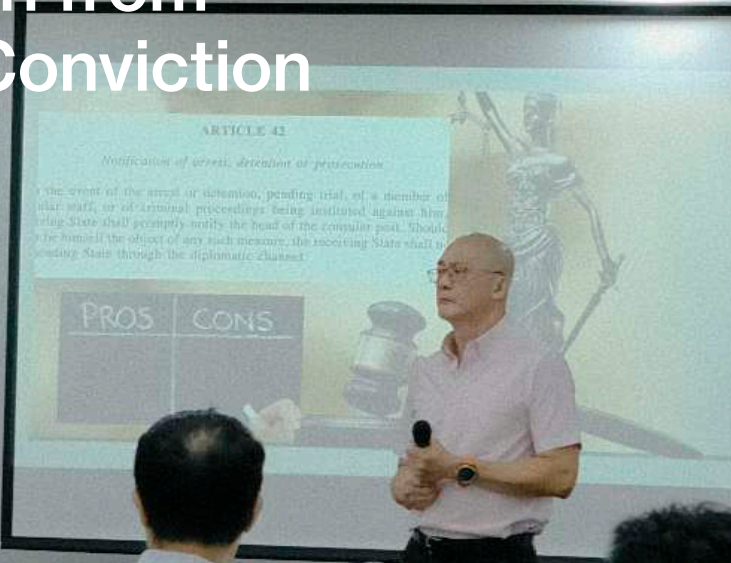


the rights of foreign nationals are upheld from the moment of arrest, particularly in cases involving complex immigration or cross-border legal issues. He also proposed that diplomatic missions establish regular communication with the detainees' families to keep them informed of the legal proceedings and facilitate coordination on essential matters, such as securing bail.

Additionally, Mr. Chandran advocated for a broader use of judicial review mechanisms to challenge prolonged pre-trial detention and potential violations of international human rights law, such as the International Covenant on Civil and Political Rights (ICCPR). He suggested that lawyers explore the option of filing habeas corpus applications when foreign nationals are detained unlawfully or beyond the stipulated legal timeframes, particularly in immigration-related cases. Furthermore, Mr. Chandran emphasised the need to build a case for procedural fairness by challenging detentions under administrative laws, where judicial oversight might be limited. By leveraging these strategies, lawyers can strengthen the defence of foreign nationals, ensuring that they are not subjected to indefinite detention without trial or access to legal recourse. Overall, the session served as a crucial platform for equipping lawyers with best practices for navigating the pre-trial stage, ensuring that foreign nationals receive fair representation within Malaysia's legal system.



Strategy and Best Practices for Legal Representation from Trial Stage to Post-Conviction (Mr. Kitson Foong



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Session 3: Strategy and Best Practices for Legal Representation from Trial Stage to Post-Conviction (Mr. Kitson Foong)

Mr. Kitson Foong focused on the critical role consulates play in supporting foreign nationals during legal proceedings in Malaysia. He highlighted that informing the consulate can be both beneficial and challenging. On the positive side, consulates can contact the detainee's family, recommend vetted legal counsel, and provide financial or logistical support. They can also facilitate interpretation services and the provision of medication, which is particularly important given language barriers and prison overcrowding. The consulate's proactive involvement can significantly aid in navigating the complex legal and bureaucratic processes, ensuring the detained foreign national has adequate representation and basic needs met.

Mr. Foong emphasised that the consulates can assist with urgent passport renewals or urgent travel documents, ensuring that foreign nationals have the necessary documentation for legal proceedings or deportation. He also pointed out that consulates can contact the detainee's family and friends in the home country, helping to maintain communication, which is often restricted by police and prison authorities. Additionally, consulates can provide financial assistance or recommend vetted legal counsel, ensuring the detainee has access to proper representation.

Mr. Foong also mentioned the importance of leveraging consular relationships to address mitigating factors, including assistance in collecting mitigating evidence from the home country, and assisting with urgent matters, such as passport renewals or emergency travel documents. He shared an example of his work with the Iranian Embassy, where, through persistent engagement over the course of several years and representation of several Iranian clients, he was able to negotiate a Prisoner Transfer Agreement (PTA) due to the



“Mr. Foong highlighted the post-conviction challenges faced by foreign nationals, especially in navigating the appeals process”.

high number of Iranian drug trafficking cases. Mr. Foong emphasised that such consular engagements are pivotal for foreign nationals, as they often face additional vulnerabilities, such as stricter bail conditions and limited access to communication.

Mr. Foong further elaborated on the nuanced challenges that arise when foreign nationals face language barriers in court proceedings. He underscored that many foreign detainees do not fully understand the charges against them or the complex legal jargon used during trials. In such cases, the lack of skilled interpreters can severely compromise their right to a fair trial. Mr. Foong urged lawyers to work in tandem with consulates to ensure qualified interpretation services are consistently available throughout the trial, from court hearings to lawyer-client consultations. Moreover, he recommended that lawyers make extra efforts to simplify legal concepts when communicating with foreign clients, ensuring they are fully informed about their legal rights and the implications of each stage of the trial. Failure to do so, he warned, can lead to miscarriages of justice, particularly for those unfamiliar with Malaysia's legal system.

Additionally, Mr. Foong highlighted the post-conviction challenges faced by foreign nationals, especially in navigating the appeals process. He discussed the importance of timely appeals, noting that foreign nationals often struggle with the administrative complexities involved in filing appeals due to lack of access to legal guidance or familiarity with Malaysian judicial processes. To mitigate this, he proposed closer collaboration between lawyers, consular officials, and human rights organisations to streamline the appeals process and explore avenues for sentence reduction or repatriation where applicable. Mr. Foong also referenced recent diplomatic efforts that have successfully resulted in prisoner transfers agreements, emphasising that proactive consular involvement can offer detainees a lifeline, particularly in cases where local rehabilitation options are limited.



Immigration Detention and Deportation (Mr. Collin Arvind Andrew)



Session 4: Immigration Detention and Deportation (Mr. Collin Arvind Andrew)

Mr. Collin Arvind Andrew provided an in-depth analysis of the legal frameworks governing the detention of foreign nationals in Malaysia, with a specific focus on the complexities surrounding 'Executive Detention' and 'Detention Pending Removal'. He highlighted key provisions from Malaysia's Immigration Act, including the lack of a specified timeline under Section 34(2) for how long a foreign national can be detained pending deportation. He also noted the critical barrier posed by Section 59(A), which precludes any decision made by the executive under the Immigration Act from being challenged in court, thereby severely limiting judicial oversight.

Mr. Andrew delved into strategies for mounting legal challenges to immigration detention through Habeas Corpus petitions. He emphasised that while substantive challenges to executive decisions are often restricted, procedural irregularities can provide a legal opening. By building a case around procedural defects, such as the denial of access to clients or the improper authorization of detention, lawyers can effectively challenge the lawfulness of detention. In such cases, the burden of proof shifts to the detaining authority to justify the legality of the detention, offering a potential path to relief for detained foreign nationals.

Mr. Andrew further explored the harsh conditions that foreign nationals often endure while in immigration detention, highlighting overcrowding, inadequate access to healthcare, and poor sanitation as systemic issues that demand urgent reform. He highlighted the specific vulnerabilities faced by detainees, such as lack of access to legal representation, language barriers, and prolonged isolation from their families, which can exacerbate their mental and physical health conditions. Drawing from his experience in handling cases involving immigration detention, Mr. Andrew shared anecdotes of foreign nationals who spent months, sometimes years, in detention facilities without any formal charges or clear timelines for their release. He urged lawyers to focus not only on challenging the legality of detention but also on advocating for improved living conditions and regular access to consular services.

In discussing deportation, Mr. Andrew emphasized the complexities involved in removing foreign nationals from Malaysia, particularly when individuals face risks of persecution, torture, or ill-treatment in their home countries. He pointed to Malaysia's non-ratification of key international conventions, such as the 1951 Refugee Convention and the Convention Against Torture, as a significant gap in safeguarding the rights of deportees. He advised lawyers to collaborate closely

with human rights organisations and consulates to explore alternatives to deportation, such as resettlement in third countries or voluntary repatriation under safer conditions. He also called for increased diplomatic efforts to establish formalised repatriation agreements that ensure the humane treatment of deported individuals, thereby mitigating the risks of arbitrary detention or further human rights abuses.

In addition, Mr. Andrew stressed the need for proactive advocacy and public interest litigation to bring about broader systemic change. He discussed the potential for strategic litigation to not only address individual cases but also influence immigration policy reforms. Concluding his session, he encouraged lawyers to push for procedural safeguards and to explore all avenues of legal redress, even in the face of significant statutory limitations on judicial review.



Participant Feedback

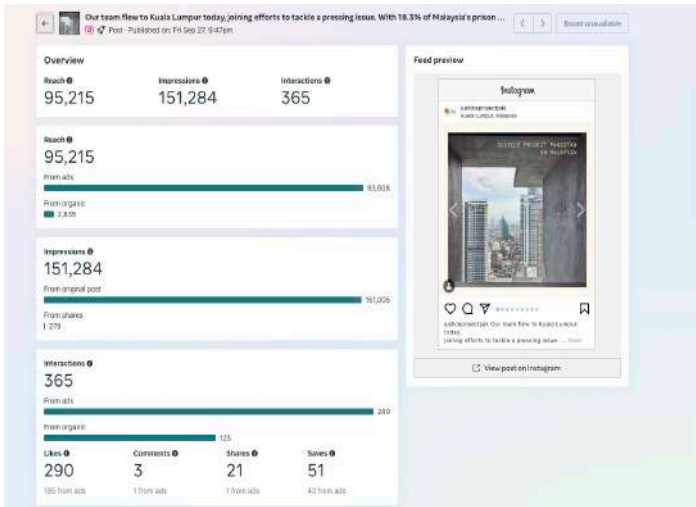
The training generated enthusiastic response from participants, with feedback forms indicating high levels of engagement and satisfaction with both content and delivery. Participants particularly valued the practical, experience-based approach of the sessions and the comprehensive range of topics covered. The session on Immigration Detention and Deportation by Mr. Collin Arvind Andrew received particular acclaim for its thorough coverage of critical issues. Similarly, participants highlighted the value of Mr. Kitson Foong and Mr. Ravi Chandran's practical guidance and expert perspectives.

Participants offered thoughtful suggestions for future trainings, emphasising the need to extend such programs over multiple days to allow for deeper exploration of complex topics. They recommended incorporating content on trauma-informed approaches to client representation and allocating additional time for interactive discussions and Q&A sessions. There was also strong interest in examining more case studies and practical examples and staying updated on developments in international law, along with building stronger networks for knowledge sharing.



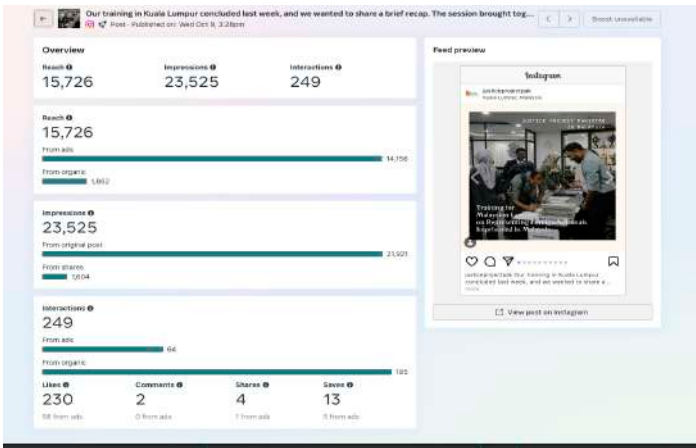
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Social Media Engagement



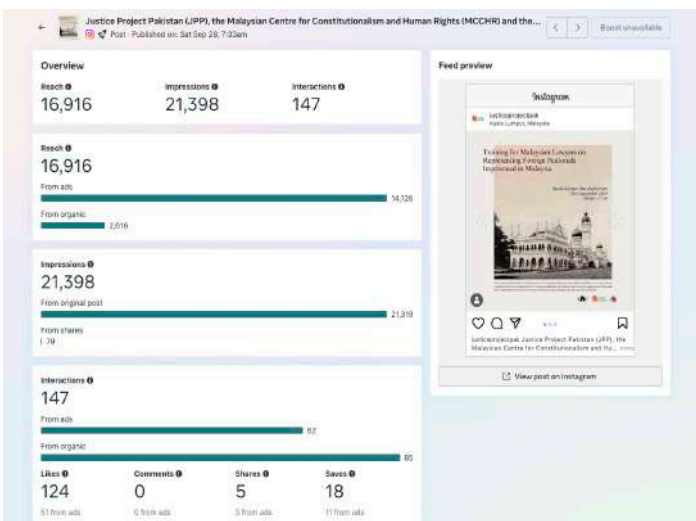
151,284
total number of impressions
through social media engagement

92,215
total reach, from advertisements
and organic



23,525
total number of impressions
through social media engagement

15,726
total reach, from advertisements
and organic



21,398
total number of impressions
through social media engagement

16,916
total reach, from advertisements
and organic

Conclusion

This pioneering training marked a significant milestone in addressing the rights and representation of foreign nationals in Malaysia's criminal justice system. Throughout the day's sessions, participants gained comprehensive insights into the multifaceted challenges faced by foreign prisoners and practical strategies for their representation. The diverse range of expertise shared by speakers - from constitutional rights and pre-trial representation to immigration detention and deportation - provided lawyers with a robust framework for advocating on behalf of foreign nationals.

The training's significance extends beyond the knowledge shared in the sessions. It established crucial networks between lawyers, diplomatic missions, and civil society organisations, creating pathways for coordinated advocacy and support. The participation of key stakeholders, including SUHAKAM and various consular officials, demonstrated a collective commitment to improving access to justice for foreign nationals. The accompanying primer, which provides detailed guidance and practical tools, ensures the training's impact will continue to resonate through Malaysia's legal community.

As Malaysia grapples with the challenges of a significant foreign prison population, this training represents a vital step toward ensuring fair treatment and adequate representation for one of the justice system's most vulnerable populations. The strategies, networks, and resources developed during this training will serve as a foundation for more effective legal representation and advocacy for foreign nationals in Malaysian prisons. Moving forward, such collaborative efforts stand as a model for addressing systemic challenges through coordinated action and capacity building.



