

Media Statement – 18/8/2020

INQUESTS FOR ALL DEATHS OF WORKERS AT WORKPLACE

Prosecute for offences of killing and causing injury, not merely non-compliance of occupational safety and health requirements

We, the 49 undersigned groups, organizations and trade unions demand that Inquests (Inquiries into death) be conducted for all deaths at workplace, to ensure that justice be done, and ensure that those responsible for the death of workers are also charged and tried for killing crimes. Mere fines for non-compliance of occupational safety and health legal requirements, and no prosecution and penalizing those responsible for crimes of causing death and/or injury of workers is simply inadequate and unjust.

INQUESTS (Inquiries into the death), carried out by an Independent Coroner, in open court, to determine not simply the cause of death, but more importantly whether anyone is criminally liable for the death.

Criminal liability will determine also whether employers, owners, contractors and/or their officers ought to be prosecuted for murder, homicide or causing death by negligence, which are all criminal offences under the Malaysian Penal Code. If the risk of death is known, and there is a failure to do what is needed to keep workers safe, which resulted in the death of a worker, then it could be a murder or homicide.

Criminal liability for those responsible for worker's deaths at workplaces

On 8 August, Zaid Berahim, 33, died in a factory in Bayan Lepas, Penang (Bernama, 8/8/2020). In mid-March 2020, Malaysians Azarul Ashraf Nor Akmal Zorkalnain, Che Huzaydy Che Harun, Norfazly Mad Nor, Faidhi Akmal Fadzil and Hadi Syafiq Jamil were reported killed in an accident at a refinery owned by PRefChem, a joint venture between Petronas and Saudi Aramco.(Star, 17/3/2020).

At least 61 workers died at the workplace from January to March 2020, according to Department of Occupational Safety and Health (DOSH) data of reported cases. In 2017, DOSH has recorded 711 deaths at the workplace (Malay Mail, 9/7/2018), but no one seems to have been charged for murder or homicide, let alone causing death by negligence for any of these many deaths.

The current practice seems to be simply fining guilty employers or others for non-compliance of workplace requirements and/or obligations to ensure workplace safety. Sadly, offences carry the same

sentences, irrespective whether a worker died or was injured, in many workplace legislations including the Occupational Safety and Health Act 1994(OSHA). Reasonably, when injury or death is caused by law breakers, there must be a higher deterrent sentence.

Worker's lives matter, and all these deaths must be comprehensively investigated beyond merely looking at permit/licensing laws and/or occupational safety and health legal obligation compliance, but also whether any person may be criminally liable for the crimes of causing death and/or injury.

Death of worker at workplace may be murder or homicide

Malaysian law, as it is now, states if there is '...knowledge that he is likely by such act[or omission] to cause death...', a person commits the offence of culpable homicide.(Section 299 Penal Code)

It would be the more serious crime of murder 'if the person committing the act knows that it is so imminently dangerous that it must in all probability cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death, or such injury as aforesaid.'(Section 300(d) of the Penal Code). The fact that one did not know that someone will be killed by their actions/omissions is irrelevant under this particular definition of murder.

Temerloh Fatal Accident Case could be Murder – A predictable and preventable death?

In Temerloh, in early March 2020, Md Shoriful, 43, and Julhas Rahman, 27, died by reason of being buried alive in a trench while working at a housing development construction site. This could be classified as murder.

The Malaysian Construction Industry Development Board (CIDB)'s Construction Industry Standard CIS 25:2018, as an example, categorizes this kind of work as HIGH risk, with the risk of death by being buried alive. As such, it is a known 'imminently dangerous' work, which can cause death, and any contractor or corporation involved in construction work ought to know this.

To prevent such high risk death, there are clear legal obligations. For trenches/pits, for example, CIDB requires proper shoring, where the shoring design must also be approved by a Professional Engineer (PE) and periodically inspected. The dug-out soil is also required to be placed a certain distance away from the edge of the pit/trench, beyond the 'zone of influence'. Reasonably, machinery that cause vibration that could cause stacked up soil beside a trench/pit falling back burying alive workers, should not be operating nearby when workers are working in such deep trenches.

Media reports about the Temerloh incident, amongst others, said 'Both victims and the third worker are believed to have been inside a six metre-deep pit, while two machines were excavating earth on the ground above the pit. "Heaps of soil which had collected at the edge of the pit then began falling during the excavation works, burying the two workers," said Temerloh district police chief Assistant Commissioner Mohd Yusri Othman.'(New Straits Times, 6/3/2020)

From just these known facts itself, the legal requirements for it to be classified as a murder or homicide case, would have been fulfilled. However, there has been no subsequent news whatsoever whether the police are even conducting a murder investigation.

Inquest prevents 'cover ups' and failings - Muhammad Adib's case

Even if the law enforcement authorities fail to act, an INQUEST finding certainly can prevent possible 'cover-ups', corrupt practices and other failings. It will ensure investigations and possibly prosecutions of those criminally liable for the deaths.

An inquest was carried out in the case of the death of a fireman who died in Malaysia in November 2018, while carrying out his work. 'The death of fireman Muhammad Adib Mohd Kassim was a result of a criminal act by more than two people, an inquest ruled nine months after his death.'(New Straits Times, 27/9/2019).

This inquest finding did result in further police investigations, and recently the Malaysian police disclosed even further plans of setting up a review team to probe into all aspects regarding the death.(Malay Mail, 10/7/2020). There is still much public pressure for the prosecution of those who are criminally liable for Adib's death.

Inquest overcomes inadequacies of law and practice

An inquest by an independent Coroner, is a recognized right in Malaysia for all deaths, and it should NOT only be done for victims who die by reason of stabbing, shooting and/or beatings, but for all persons that die including workers killed at workplaces.

The Coroner, being a judicial officer usually a Magistrate, is a person independent from the various law enforcement agencies, can and will do a determination that will overcome failings and/or mistakes, of responsible for law enforcers.

In workplace deaths, which is usually covered by many different laws and different agencies, where most agencies may act simply in accordance to the particular law that they are responsible for. An Inquest will be able to look at every aspects including law and legal obligations, including also the Penal Code, in their determination of criminal liability.

We reiterate that persons responsible for workplace deaths can be charged and tried for murder or homicide, simply by reason of failure to do the needful, to reduce risk or prevent deaths, when their failings caused death.

INQUEST for all Deaths is provided by Law

Malaysian Criminal Procedure Code (CPC) clearly provides that a magistrate shall hold an INQUEST (inquiry into death) for all deaths, whereby during such inquest, the Coroner (usually a Magistrate or Judge) shall determine as to when, where, how and after what manner the deceased came by his death and also whether any person is criminally concerned in the cause of the death.(Section 333 and 337 CPC).

An INQUEST is open to the public, and, as such, any interested party (and/or their lawyers), including trade unions, can be involved in the inquest, with the capacity of even calling and examining witnesses, and tendering additional evidence to assist an independent Coroner make a determination into the cause of death, which includes also whether any person (including corporations and their officers) could be criminally liable for the death – murder, culpable homicide or causing death by negligence.

Inquest for workplace deaths must consider all relevant laws and facts

For Inquests of deaths at workplaces, the Coroner needs to consider all relevant employer, owner and controller of worksites legal obligations. In Malaysia, there are clear obligations, amongst others, requirements about permits/license, qualification of workers and even standard of materials/equipment used. A failure to get a relevant permit, for example, for the storage of dangerous substance, can result in failure of relevant enforcement agencies inspecting and ensuring due compliance.

In 2018, we saw a case where the employer or factory owner did not having the permit to store hazardous material, which resulted in ammonia poisoning that killed 2 workers died and injured 18 others (Sun Daily, 13/8/2018). This case could be classified as murder or homicide.

The Coroner must consider whether it is a known risk, and whether the employer, owner and contractor did all that was required by law to prevent deaths, especially from predictable and preventable risks. A failure may result in being criminally liable for murder, homicide or even at the very least the crime of causing death by negligence.

For a construction site fatal accident, the relevant agencies that ought to be assisting the Coroner during an Inquest may include also the Department of Occupational Safety and Health (DOSH), Construction Industry Development Board (CIDB), the Local Government, all approving authorities and other relevant agencies.

Protecting Workers Lives Must Be a Government Priority

Malaysian laws, policies are in serious need of reforms, with the object of ensuring safe working environment, and preventing worker deaths and injuries.

Under the Occupational Safety and Health Act 1994, there is still no clear legal obligations to even keep workers safe from Covid-19 or other occupational diseases. There is still no specific workplace regulations, made in accordance with this law that is the primary legislation dealing with workplace safety and health, which imposes clear legal obligations on employer or workplace owners to keep workers safe from even Covid-19, where a breach will be an offence with clear penalties. Only regulations by the Ministry of Health of general application currently exist.

Malaysia also still do not have offence of industrial manslaughter, which deals with workplace deaths. For example, in Queensland, Australia, **industrial manslaughter** is committed when a person conducting a business or undertaking (PCBU), or a senior officer, to negligently cause the death of a worker, whereby the maximum penalty is 20 years imprisonment for an individual, or \$10M for a body corporate.

Therefore, we call

- That public Inquest (Inquiries into death) be conducted for all worker deaths at workplaces by the Coroner;
- That an inquest be forthwith conducted for death of Md Shoriful(43) and Julhas Rahman(27), who died after being buried alive working in a deep trench to determine whether anyone ought to be charged for murder or homicide;
- That the government enact laws that provide for a higher penalty, if by reason of non-compliance of laws, injury or death of workers happens;
- That the government prioritizes worker safety and health, and make the needed legal, policy and practice reforms.

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Apolinar Tolentino

For and on behalf of the following 49 groups and trade unions

ALIRAN

Building and Wood Workers International (BWI) Asia Pacific Region

Clean Clothes Campaign (CCC) South East Asia Coalition

UNI Global Union- Asia and Pacific Regional Organisation (UNI APRO)

WH4C (Workers Hub For Change)

SUARAM

AMMPO-SENTRO- Association of Filipino Nationalist Workers in Malaysia

Bangladesh Group Netherlands

Banglar Manabdhikar Suraksha Mancha (MASUM), India

Cement Industry Employees Union (CIEU)

Center for Alliance of Labor and Human Rights (CENTRAL), Cambodia

Electronic Industry Employees Union Southern Region Peninsular Malaysia (EIEUSRPM)/Kesatuan Sekerja Industri Elektronik Wilayah Selatan, Semenanjung Malaysia (KSIEWSSM)

IMA Research Foundation, Bangladesh

International Black Women for Wages for Housework

Jaringan Solidariti Pekerja (JSP)

Kesatuan Pekerja Atlas Edible Ice Sdn. Bhd.

Labour Behind the Label (LBL), United Kingdom

MADPET (Malaysians Against Death Penalty and Torture)

Malay Forest Officers' Union (MFOU)

MARUAH, Singapore

Marvi Rural Development Organization (MRDO), Pakistan

Migrant Care

NAMM (Network of Action for Migrants in Malaysia)

National Union of Flight Attendants Malaysia (NUFAM)

National Union of Transport Equipment and Allied Industries Workers (NUTEAIW) West Malaysia

North South Initiative (NSI)

Odhikar, Bangladesh

Parti Sosialis Malaysia (PSM)

Payday Men's Network, UK

Payday Men's Network, US

Penang Stop Human Trafficking Campaign

Persatuan Komuniti Prihatin Selangor & KL (PRIHATIN)

Persatuan Sahabat Wanita Selangor (PSWS)

Philippine Alliance of Human Rights Advocates (PAHRA)

PKNS Employees Union

Programme Against Custodial Torture and Impunity (PACTI), India

Sabah Timber Industry Employees Union (STIEU)

Safety and Rights Society (SRS), Bangladesh

SAVE (Social Awareness and Voluntary Education), India

Singapore Anti Death Penalty Campaign

Sosialis Alternatif (SA)

Tamkeen for Legal Aid and Human Rights- Jordan

Tenaganita

Timber Employees' Union Peninsular Malaysia (TEUPM)

Timber Industry Employees' Union of Sarawak (TIEUS)

Union of Employees in Construction Industry (UECI)

Union of Forest Department Employees Sarawak (UFES)

Women of Color/Global Women's Strike

Workers Assistance Center, Inc. **Philippines**