

Women's reproductive health at stake

A 24-year-old Nepali migrant worker was arrested on Oct 9, 2014, after having undergone a termination of her six-week pregnancy. She was charged on Oct 13, 2014 without legal representation and access to an interpreter under Section 315 of the Penal Code for preventing a child being born alive. No plea was recorded as she did not understand Bahasa Malaysia.

She was detained for a month before being sentenced, again without legal representation, on Nov 12, 2014 to one year's imprisonment.

The Joint Action Group for Gender Equality (JAG) raises several concerns:

The Malaysian government supports sexual and reproductive health of women in the country through their international commitments i.e. the Convention on the Elimination of All Forms of Discrimination Against Women (Cedaw), the Beijing Declaration and Platform for Action, and the Programme of Action of the International Conference on Population and Development (Cairo), as well as through domestic policies on reproductive health.

This includes ensuring legal terminations of pregnancies take place safely under very specific conditions.

Section 312 of the Penal Code introduced an exception clause in 1989, which allows termination of pregnancy to be legally provided for by a registered doctor who considers that the continuance of the pregnancy would pose 'a risk to the life of the pregnant woman or injury to her mental or physical health'. The Health Ministry has reaffirmed this and provides guidelines for termination of pregnancy up to 22 weeks in their Current Practice Guidelines on Termination of Pregnancy.

JAG is thus deeply troubled that a woman has been imprisoned for accessing legally available reproductive health services. Health practitioners are aware of the importance of women to have access to such services. Otherwise, women will be forced to seek clandestine and unsafe services for their reproductive health needs, which may result in dire consequences.

The World Health Organisation has clearly stated that in many countries, unsafe abortion is one of the leading causes of maternal mortality and morbidity.

Of equal concern is that the Nepali woman was unrepresented both when charged and when she was convicted. She also did not have an interpreter when she was charged, and the interpreter during her trial apparently did not speak Nepali.

The Criminal Procedure Code (Section 173) states that when a person is charged of a crime and brought before the court, the charge must be read and explained to the person in a language that he or she can understand. The court must also ensure that the accused understands the nature and consequences of his or her plea before passing the sentence.

JAG is deeply concerned over what we see as several violations of the Nepali woman's rights. There appears to be a misinterpretation of the law which has resulted in the unnecessary and unfair imprisonment of a young woman. She has been traumatised and victimised. She was made even more vulnerable due to her being a migrant worker, not having access to legal representation and experiencing a language barrier.

JAG urges the Health Ministry and the Attorney-General's Chambers to investigate what happened and take the necessary steps to ensure that such a travesty of justice does not ever happen again. At the same time, JAG urges the courts to release this young woman and ensure the reinstatement of her job, her work permit and compensation for wages lost as well as trauma incurred.

The Joint Action Group for Gender Equality (JAG) comprises:

- Women's Aid Organisation (WAO)
- Women's Centre for Change Penang (WCC)
- All Women's Action Society (Awam)
- Association of Women Lawyers (AWL)
- Perak Women for Women Society (PWW)
- Persatuan Kesedaran Komuniti Selangor (Empower)
- Persatuan Sahabat Wanita Selangor (PSWS)
- Sabah Women's Action Resource Group (Sawo)
- Sisters in Islam (SIS)
- Tenaganita